

HOW CAN CONSUMERS INTERNATIONAL CREATE POSITIVE CHANGE FOR CONSUMERS IN THE DIGITAL WORLD?

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Digital consumers are unequal across the world. Some need access to the internet, others are preoccupied with protecting the masses of data that are collected about their digital footprints or worried about the safety of their credit cards when paying online. Many live in areas of the world where the legal framework is lacking, while others belong to well-developed regional and national legal systems that have now tackled online activity for a few decades, and are becoming more reactive to their needs. The digital world moves a pace everyday, opening up new challenges. It is those challenges that an organisation like Consumers International can help tackle, with a targeted response, as positive change for consumers will not look the same in all regions of the globe.

As my expertise lies in the UK and Europe, I must preface my essay with a warning that my views are largely informed by what I see as positive changes in the European sphere. I have limited expertise in other regions of the globe and would not want to purport to offer a view that would work for all. Having said that, many of the challenges facing European consumers also face consumers around the globe. Big data, payment protection or protection against scams is unfortunately not the only reserve of the developed countries.

European consumers already benefit from a robust legal system of protection, although it is indeed always a work in progress and able to be improved. It forms nevertheless a good base line of protection especially if compared to other regions, even those with high online penetration rates and established legal systems (e.g. USA – note the recent cut-back on data protection by the Trump administration, the absence of a right to withdraw from online transactions, etc.).¹²³ Divergence in levels of protection is one of the key problems consumers face around the globe. It hinders cross-border sales and redress.

A European study conducted in 2015 showed that geo-blocking has negative impact on the single digital market.⁴ Geo blocking is a practice whereby retailers refuse to sell to consumers situated in another state, or service providers prohibit the streaming and download of content from particular regions (tv programme, video download in particular).

The practice is essentially a form of discrimination that is quite rife across Europe, a market where consumer laws are essentially aligned.⁵

Geo blocking is aimed at controlling pricing in so much that it sometimes lead to redirecting consumers to websites in operation to their region of the globe where higher pricing or different condition of sales apply, simply based on their nationality or geographical location. The EU is in the process of adopting legislation to block this practice across the European Union but other regions are lagging behind.⁶

Furthermore, while many countries (including those in the EU) have good legislation in place, my experience is that the way it is applied by judges and enforcement authorities varies widely and the existence of laws on the books does not necessarily translate into adequate protection on the ground.

For example, in Serbia, consumer protection has been transformed over the last 10 years through no less than four versions of the Law on Consumer Protection. The latest incumbent brings Serbian law in line with Directive 2011/83/EU on Consumer Rights and therefore offers protection for online shoppers.

Yet, **“while the new law offers all the hallmark of a fully functioning legal system of protection, Serbian consumer law lacks the teeth needed on the ground to make it a reality. This can be explained by a series of factors including resistance towards the recognition of consumer as an autonomous branch of the law and non-application of consumer law by the Serbian courts, amongst others”**.⁷

Raising the base level and ensuring adequate implementation would therefore be a positive change in itself. Support of the G20 may be invaluable in raising the profile of the protection that is required, work that Consumers International is already tackling.⁸

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- 1 US Federal Communications Commission, [Protecting the privacy of customers of broadband and other telecommunications services](#), 02/11/2016
 - 2 US Federal Communications Commission, [Protecting the privacy of customers of broadband and other telecommunications services](#), 01/04/2016
 - 3 [What really happens when the FCC’s online privacy rules are cancelled](#), Fortune, 03/04/2017
 - 4 [Obstacles to the digital single market \(perceived and actual barriers\)](#), European Commission, Market studies, September 2015
 - 5 ‘[Geo-blocking of consumers online: findings of a mystery shopping carried out by the European Commission](#)’, European Commission; Market studies, May 2016
 - 6 ‘[Proposal for a Regulation on addressing geo-blocking](#)’, European Commission; Laws, 25/05/2016
 - 7 Riefa, C & Durovic, M, ‘Maastricht Journal’. Serbian Consumer Law, out with the old, in with the new, Vol 22 (6) (862-878), 2015.
 - 8 ‘[Consumers International welcomes G20 leaders support for consumer protection in the digital economy](#)’, Consumers International. 10/07/2017 recommendations
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But such initiative remains limited and does not necessarily provide impetus for less economically stable countries. The work of the OECD and the United Nations is thus equally important to reach out further afield and impress upon all the virtues of protecting consumers.⁹¹⁰¹¹

“Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard”.¹²

John F. Kennedy

Many years have passed since President J.F.Kennedy’s speech to Congress in 1962, and yet consumers do not seem to have made that many advances. Giving actual power to consumers by becoming an effective pressure group should be a priority for Consumer international. Lobbying for strong consumer protection is a key action point to be taken on by consumer organisations and Consumer International in particular, for without them, I am unsure such task can be left to businesses and legislators alone.

Tech companies spend an astronomical amount on lobbying activities every year. In 2016, Alphabet, Google’s parent company, spent upwards of USD11 millions in the USA alone and Google’s spend in the EU is known to have increased markedly in the last few years.¹³¹⁴ Consumers International is unlikely to be able to match this expenditure. It can however, reach out to legislators and bring about positive change.

In Europe, BEUC¹⁵ and a number of consumers associations are credited with positive impact on the legislative (and enforcement) process, without the financial might of tech giants.¹⁶ In any event, Consumer International can contribute to the creation and application of good digital practices. Consumers’ education, alongside support to small and medium businesses is an essential stepping-stone to ensure a fair deal for consumers in the digital economy.



The 2015 Consumer Conditions Scoreboard showed that retailers had rather low levels of knowledge of their legal obligations.¹⁷ In the online world, there is evidence that ‘small copies large’. This is particularly acute when it comes to the use of terms and conditions on websites. A survey into the online auction industry showed that a large amount of cross-fertilisation existed between the legal terms of many sites operating.¹⁸

The reason for such cross-fertilisation is often due to small operators ‘copying’ others without necessarily seeking legal advice. One way to improve this situation may therefore be to educate businesses while also forcing bigger industry players to comply (through enforcement), if they do not already do so. Indeed, big players tend to have a better compliance record than smaller intermediary or retail sites.

This is possibly because they have better access to legal advice, but also because they find themselves more often the target of enforcement authorities, courts and the media; thus forcing better behaviour. In addition, the creation of a terms and conditions blueprint by national enforcers, professional organisations and/or consumer associations for all to use would offer an excellent tool bank for smaller businesses.

9 OECD, [OECD Recommendation of the Council on consumer protection in E-commerce](#), 12/05/2016
10 UNCTAD, [United Nations guidelines on consumer protection](#), 2016
11 UNCTAD, [Manual on consumer protection](#), 2016
12 ‘John F. Kennedy, special message to the Congress on protecting the consumer interest (1962)’, The American Presidency Project, 15/03/1962
13 ‘The 17 tech companies that lobby the government the most’, UK Business Insider, 22/12/2016
14 ‘Google, trying to endear itself to Europe, spreads \$450 million around’, The New York Times, 19/06/2016
15 BEUC website; Latest successes, <http://www.beuc.eu/successes>
16 Consumers International, [Annual Report 2015](#), 2015
17 European Commission, [Consumer Conditions Scorecard](#), 2015
18 C Riefa, [Consumer Protection and Online Auction Platforms: towards a safer legal framework](#). Routledge, 2015

DIVERGENCE IN LEVELS OF PROTECTION IS ONE OF THE KEY PROBLEMS CONSUMERS FACE

Another possible tool may be the use of software to detect potential unfair terms and require their modification. For issues beyond terms and conditions, collaboration with industry also seems a smart move. Even with the big tech companies, it seems possible to build bridges, understand their technology better and offer practical rather than legal solutions. This solution is unlikely to work in all cases, especially where the trader has rogue predisposition, or where there is not sufficient popular pressure. But it will enable some companies to improve products thanks to the feedback received by consumer associations and other representatives.

Moreover, it is by educating consumers and galvanising them to demand high levels of protection that actions can be most effective. Most online models now rely on consumers' data. It is not feasible for any online business to function without in-depth knowledge of their customers' habits and preferences. The once unbalanced relationship between the trader and the consumer may be about to shift. Data is currency and in many respects, this ought to force online platforms and retail websites to want to engage more fairly with their customers.¹⁹

Their custom, not only fuels direct revenues, buying goods and services, but their data also enables the platforms to a) tailor offering and sell more than they would have otherwise managed and b) use the data to generate revenue streams by renting or selling the data gathered to aggregators. Those can therefore be powerful arguments to engage with tech companies and force a change if consumer demand can be swayed away from

- 19 'Is data the new currency' World Economic Forum, 14/08/2015
- 20 C.Riefa and C.Markou, Online Marketing: Advertisers know you are a Dog on the Internet!, in Andrej Savin and Jan Trzaskowski (Eds.), Research Handbook on Internet Law, Edward Elgar (2014) 383.
- 21 European Commission website; Digital privacy, <https://ec.europa.eu/digital-single-market/en/online-privacy>

suppliers that do not provide consumers a high level of protection. Yet, we still see a real imbalance mostly due to information asymmetry and the fact that the technology has somewhat runaway from human control. Algorithms can be so complex that even data collectors can be at odds with explaining exactly how the data gathered is being used to build profiles, unless they are IT specialists. Even the simplest of technologies can empower traders to discriminate between consumers.

Through the use of cookies, suppliers are able to collect data on consumers and charge different prices, (price discrimination)making use of their preferences.²⁰ This is contrary to the Unfair Commercial Practices Directive, but it is not a phenomenon that is particularly well framed in traditional contract law, or by current distance selling rules in Europe. If the consumer wants to regain control, we must educate them as to the risks the technology poses, and/or legislate to avoid extreme manipulations of data to the disadvantage of consumers. In Europe, privacy laws are in place but still fall short.²¹ Consumer education can take place in classrooms and I, for one, would welcome consumer rights and digital literacy being included in all schools' curriculum.

But it can also, in the meantime, take the form of short campaigns to warn of the dangers of particular products and/or seek their removal from the marketplace, thanks to the work of enforcers. One recent example is a campaign conducted by the Norwegian Consumer Council: #toyfail. 'My friend Cayla' and the I-Que robot are toys sold in a number of markets, described as interactive. They can be controlled via an app on an iPad or smart phone/ tablet. Children can ask questions and get answers, have conversations, etc.

Yet, the toys are not as innocent as they look. In the case of the doll, it can easily be hacked through a mobile phone enabling the hacker to talk and listen through the toy, without even having access to the physical doll. The child's conversations with the doll are also recorded and transferred to a US based company which reserves the



right to use the voice recording and information gathered from the child, through its terms and conditions of use.

The doll also shares commercially endorsed preferences (for Disney movies for example) and promotes products through targeted advertising based on what information the child shared with the doll.²² In Germany, the sale of such toys has been banned, but the toys continue to be sold in various countries.²³

With increasing appetite to protect one's privacy, inaction does not seem to be an option for tech companies. Indeed, even newer technologies such as block chain may disrupt the current digital market and enable consumers to keep a hold of their data, as well as enable them to transact safely and directly with one another. It has the potential to underpin the next level of the sharing economy, where intermediaries are no longer required to process financial transactions. Block chain technology indeed ensures high levels of security through a decentralised network. It also enables reliable authentication of payment source.²⁴

[Openbazaar](#)²⁵ is one example of how technology can enable consumer transactions, without the fees that are normally reserved for the intermediary. Yet, the role and liabilities of such platforms is still unclear and requires attention. Unfortunately, to date, consumer rights are largely ignored on these platforms.

This is due to two issues already raised earlier. First, it is because the sellers come from multiple jurisdictions, all with varying levels of protection. Second, it is because the platform template itself does not offer the possibility to document and provide the information normally required in a typical e-commerce transaction (at least under European Law).

This leads us to perhaps one of the most pressing issue to empower consumers worldwide: dispute resolution in the digital sphere. Without enforcement, private or public consumer protection is not worth the paper it is written on. It is therefore essential that consumers can seek and obtain redress where required. Knowledge of the available consumer rights is a first hurdle to clear. A survey conducted in the EU showed that most consumers making digital purchases were unaware of their rights from the outset.²⁶

In addition, cross-border dispute resolution, still in its infancy, does not yet allow effective and cheap methods for consumers to return goods and get their money back in a timely fashion and at a cost that is not prohibitive. Unfortunately, when consumers buy cross borders, they will be presented with a host of obstacles. This may include;

- Finding out that their contract is subject to a foreign law.
- Potentially having a foreign court elected the competent court to hear the dispute.
- Their contract being subject to an arbitration clause that prevents them to seek redress in a state sponsored forum.

In Europe, these inconveniences are, in theory, somewhat avoided. This is thanks to Article 15 and 16 of Regulation EC 44/2001, which enables consumers to bring an action, or be sued, where he or she is domiciled, providing that the business pursued or directed its activities to this territory.²⁷

In addition, Article 6 of Regulation EC593/2008 also favours the law of the consumer's domicile.²⁸ Finally, a prohibition on unfair terms that applies to arbitration clauses and jurisdictions clauses limits the potential harmful effects of such terms.²⁹ However, while out-of-court dispute resolution systems are favoured, trust in Alternative Dispute Resolution (ADR) and courts by European consumers remains low.³⁰

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22 [‘Connected toys violate European consumer law’](#), Forbrukerradet, 06/12/2016

23 [‘Bundesnetzagentur removes children's doll "Cayla" from the market’](#), Bundesnetzagentur press release, 17/02/2017

24 Block Geeks website, <https://blockgeeks.com/guides/what-is-blockchain-technology/>

25 Open Bazaar website, <https://www.openbazaar.org>

26 GfK Belgium, [Identifying the main cross-border obstacles to the Digital Single Market and where they matter most](#), 2016

27 Official Journal of the European Communities, [Council Regulation \(EC\) No 44/2001](#), 22/12/2000

28 Official Journal of the European Communities, [Regulation \(EC\) No 593/2008 of the European Parliament and of the Council](#), 17/06/2008

29 European Economic Community, Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. 1995

30 C Hodges, I Benohr & N Creutzfeldt, Consumer ADR in Europe. Hart Beck Nomos, 2012

Consumer Conditions Scoreboard also notes that no clear improvement has been seen since 2010, a fact that is extremely troublesome. Meanwhile the volume of complaints received by European Consumer Centres Network (An EU-wide network that provides free legal assistance and information to consumers) is rising year-on-year and one of the main reason for not complaining about E-commerce purchases is the assumption that the problem encountered is unlikely to get a satisfactory solution.¹⁷

Access to justice is an international preoccupation. An OECD report from 2006 highlights the importance of cross-border dispute resolution mechanisms.³¹ More recently, UNCITRAL started looking into viable ways to resolve disputes and is developing procedural rules on online dispute resolution (ODR).³² Its latest output is a draft outcome document, reflecting elements and principles of an ODR process. This instrument is aligned to the European ODR model, although at first glance not as protective, bringing us back to one of our first points: the difficulty in protecting consumers in a world where levels of protection and development of technology are so disparate.³³

Many challenges lie ahead for digital consumers and organisations that purport to help them get better protection. Internet of Things, 3D printing, human chip implants, driverless cars are all issues that digital consumers will at some stage be confronted with.³⁴ We could not in this essay address them all. While the size of the task ahead is immense, it is with optimism that I conclude.

Consumers International has, over the years, achieved great things and the openness and collaborative nature of its network sets it in good stead to be able to adapt to the realities on the ground and effect positive change for consumers. I wish all involved the best of luck in their campaigns and activism.



**GIVING ACTUAL POWER
TO CONSUMERS BY
BECOMING AN EFFECTIVE
PRESSURE GROUP SHOULD
BE A PRIORITY**

31 OECD, [Consumer dispute resolution and redress in the Global marketplace](#), 2006.

32 United Nations Commission on International Trade Law, [Working Group 3 on Online Dispute Resolution](#), 2016

33 European Commission, [Alternative and Online Dispute Resolution \(ADR/ODR\), or more on these issues](#), 2016

34 'Human Microchipping, the benefits and downsides', Richard Van Hooijdonk, 2017