

Protection of Civil Electronic Consumer at International and Domestic Laws

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Abstract

The world has witnessed a great technological development in the communications and information exchange field. This has opened the way for a new type of transaction using modern means of communication, especially the World Information Net (Internet). The Internet has become a commercial center that can accommodate all the world's population and dominate the majority of businesses. Contracts transactions done through it, consumer contracts are considered part of electronic transactions with the risk of shading and fraud by electronic vendors and professional professionals, which requires providing protection to the electronic consumer commensurate with this status quo. Most countries around the world have worked to protect electronic consumers by enacting legislation and laws to protect the weak party and prevent vendors and professional professionals from exploiting, shading, cheating, and circumventing it. Therefore, the protection and care of electronic consumers has become one of the main duties of the modern state, which is responsible for protection in order to obtain the needs of consumer and service methods and new legal mechanisms in line with the requirements of this era. The first topic dealt with the concept of consumer in international and domestic legislations. In the first demand, it dealt with the nature of electronic contracting for the consumer. Then, the second demand dealt with consumer protection in international and domestic laws. In the second topic, The right of the electronic consumer to face the arbitrary conditions of the contract, the protection of his personal data as well as his right to grant him a license to withdraw from the contract. If the contract was free of nodal defects, and reached the results of the most important update the laws currently in force, or the establishment of special laws to protect the electronic consumer, in addition to international cooperation in this area to exchange experiences.

Keywords: Consumer - Electronic Consumption - Civil Protection - Online professional vendor and professional - International and local laws for the protection of electronic consumer - Solutions prescribed for the electronic consumer.

Introduction:

The world is witnessing rapid developments that are difficult to pursue and control in various fields, especially in telecommunications field which has led to the emergence of the international Internet network, that contributed to the development of the international and domestic trade movement and allowed the conclusion of many contracts easily and quickly among all people through the world by Modern communication means which have become common to all parts of the world, so the spatial and temporal distances have been reduced. They have allowed the doubling of risks to consumers. Countries have been forced to work on legislation to regulate these transactions in terms of legislation and control. And mitigate the risks.

It should be noted the weak party in electronic transactions is the consumer, which makes him under the influence of risks in the face of the power and economic dominance of vendors and professionals, requiring lawmakers to enact special laws or update existing laws to rebalance contractual relationships between consumers and professionals. The reasons for consumer electronic protection lie in a number of considerations, the most important of which is the modern development in the Internet, the need for electronic services, and the limited knowledge of the consumer about the latest technological developments in information.

The importance of this research is the need to study these laws governing the electronic contract and to indicate the extent of its protection to the consumer, and work on the possibility of reaching the results on this subject in order to make recommendations.

Therefore, we will show through this research the scope of civil electronic consumer protection in international and domestic legislation to reach the conclusion that the consumer is protected by different laws, or that he needs more laws to extend legal protection in consumer electronic contracts. The question raised in this study is to answer this question: Has international and domestic legislation been able to achieve the necessary protection of the civilian consumer from the risks of electronic contracting? To answer this question, this topic will be studied through two topics: The first topic, the concept of consumer electronic protection in international and domestic legislation, and in the second topic, the legal rights prescribed to the consumer in domestic and international legislation.

First: The Concept of Electronic Consumer Protection in International and Domestic Legislation:

In order to understand and protect the concept of electronic consumer, we need to clarify and study the nature of electronic contracting for the consumer, and then research the protection of electronic consumer in international and domestic legislation.

1: What is the Electronic Contracting of the Consumer?

Jurisdiction and legal opinions differed in the definition of the consumer in particular. European Directive No. 97/7 defined in the article 2¹ defined that every natural person who enters into a contract under this direction for purposes not within the scope of his professional activity, The French law didn't define the consumer, but we find the definition of the consumer in the ministerial decision in France of 14/1/1972 concerning the organization of the declaration of prices of goods that he uses the goods and services to satisfy his personal needs and the needs of dependents and not the goal of reselling or converting or use in his professional activity².

As well as the many international trends in defining the definition of electronic commerce for various objective considerations, the World Trade organization (WTO) has known that electronic commerce is a complete package of transactions and the establishment of commercial links and the distribution and marketing and sale of products by electronic means. While the UNCITRAL Model Law did not include a definition of electronic commerce, the international legislator merely defined the electronic information exchange system, which includes electronic commerce, and included in this definition electronic transfer between two data computers using an agreed system of information preparation³.

As for Jordanian legislation, the Electronic Transactions Law set an temporary law No. (85) of 2001, amended by the law of 2015 and defined in article 2, states that the agreement is held by electronic means in whole or in part.

The Commission on International Trade Law has shown that the objective definition of electronic commerce goes to every use of electronic information in commerce, the so-called electronic commerce⁴.

An electronic contract is an agreement in which the acceptance is accepted by an open international network for remote communication, by means of a visual audio that allows for interaction between the seller and the buyer. It is also a contract concluded through electronic means or that contract is made over the Internet and remote with different characteristics than traditional contracts. It is also known as a contract that is validly accepted, such as ordinary contracts concluded and signed in writing, but the offer and acceptance is achieved electronically without the need for a written document.

With the prevalence of users of electronic consumption around the world and the development of the electronic commerce system, it became necessary to protect the weak electronic consumer against the strength of the professional, in order to preserve the rights and prevent fraud by electronic means, making most of the world is drafting legal legislation to protect this weak party, It is an electronic consumer.

For this reason, most countries have issued laws and directives for the protection of electronic consumers. The most important is the European Directive No. 97/7 on 20/5/1997 concerning consumers in electronic contracts. European Directive No. 97/489 of 30 July 1997 on electronic payment, As well as European Directive No. 99/93 of 13 December 1999 on electronic signature, as well as Directive 2000/31 of 2000 on electronic commerce. These laws all protect the electronic consumer⁵. In addition to these laws, international agreements have been signed in this regard, most notably the Convention on International Cooperation in Combating Cyber Crime, which was signed by the European Union in 2001 between 12 European countries.

In light of this unlimited acceleration of international and domestic economic transformations and the role of large electronic commerce, which may bring with it many challenges to the weak consumer, which requires the issuance of laws with great flexibility in line with developments.

As for the definition of the consumer in the field of electronic contracting, it is the person who enters into various electronic contracts of purchase, rent, loan, use and other, in order to provide all the goods and services needed to satisfy his personal or family needs, without the intention of re-marketing, and without the technical expertise to deal with these things, and there is a close link between the idea of electronic contract and consumer protection, if the problem of the application of electronic contract applications such as signature and electronic records is to facilitate the handling and speed of completion, these considerations should not exceed consumer rights and protect it from fraud and so on which may arise as a result of the completion of actions through electronic means.

As for the profession and its definition, it is the strong party in the contract of electronic consumption, a natural or moral person who appears in the electronic contract as a professional and owns a website and calls for the conclusion of contracts, to enter into contractual relationship with consumers in one or several countries, The title of the trader is any natural person, and also the moral person is the corporate⁶.

¹ See Article 2 of European Directive No. 24/7/1997 of 1997.

² Abdul Fattah Bayoumi Hijazi, Introduction to Intellectual Property Rights and Consumer Protection in Electronic Commerce Contracts, University Thought House, Egypt, First Edition, 2005, p. 48.

³ Mohamed Hassan Qassem, Remote Contracting, New University Publishing House, Egypt, 2005, p. 19.

⁴ Abdul Fattah Bayoumi Hijazi, op. Cit., P. 1.

⁵ Abdel Fattah Bayoumi, op.

⁶ Amadou Siham, Consumer Electronic Protection, Master of Economics and Business, Faculty of Law and Political Sciences, University of Abdul Rahman Mira, 2013, p. 12.

2: Protection for the Consumer in Domestic and International Legislation:

The consumer electronic protection takes a number of forms at the international and local levels, in the interest of the consumer, who is considered the weak party in the contract and which is met by the strong party, the professional seller or professional, and has worked for several bodies and organizations at the international level to protect him in electronic contracts.

Section I: Protection for the consumer in International legislation :

There are several legislations at the international level concerned with the protection of electronic consumer in a significant manner, the most important of which:

A: International Consumer Organization and Consumer Protection:

There are major international efforts to protect consumers, especially with the increasing problems facing the consumer. This is the main reason for the emergence of the International Consumer Organization, which was founded in 1960 by five consumer organizations. The United States, Belgium, Britain, the Netherlands and Australia. The number of members up to 1995 is more than 100 countries and more than 200 members. It is stipulated in the countries and organizations that are signatories to this organization that certain measures are not to have commercial goals and to be independent states, and not to resort to publicity in their publications or in their fields.

The aim of the International Organization for Consumption is to support the establishment of consumer protection societies around the world and to act on behalf of consumers in the world to enable them to provide them with the right to nutrition, drinking and necessary services. Improve standards, services and consumer education programs wherever they are in the world and adopt the International Consumer Organization as a clearinghouse for information, areas and periodicals that concern consumer protection.

This international organization is working with all its power to protect the consumer electronically and prevent problems that may occur between consumers electronically and professional vendors.

B: Organization for Economic Co-operation and Development and Consumer Protection:

There is a significant and effective role for the Organization of Economic Cooperation and Development (OECD) in developing guidelines to ensure the protection of electronic consumers in 1999, where cooperation between governments, enterprises and consumers has emerged at the international and local level¹. One of the guidelines recommended by the Organization for Economic Cooperation and Development for the protection of consumers in e-commerce contracts is that the information is clear to the consumer in a language understandable to him, and to indicate the identity of the company that carries out electronic business activities, in addition to the type of goods and services it provides, and there must be a certain level from the protection of the consumer who conducts e-commerce or telemarketing operations, and to provide comprehensive information on the offer made by the supplier, including determining the price, method of payment, guarantees provided and turnkey method, and also obtaining explicit approval from the consumer and to give the consumer electronic time to think about the completion or termination of the contract, as well as among the important directives of the Organization for Economic Cooperation and Development to establish means to document electronic transactions between the merchant and the consumer and the definition of law applicable to electronic contracting and the competent courts and thus develop international cooperation between States and international organizations Concerned with consumer protection².

C: European Directive and Consumer Protection.

There is no doubt that electronic contracting is often done at the international level, and this requires working on the development of effective legal means to protect the international consumer electronic. The European Council issued several directives on this matter, the most important of which is that for the sake of international protection of consumers, For electronic commercial transactions, especially those outside Europe, as well as guidance on rules defining the best consumer court, in particular the Rome Treaty of 1980³.

The European Directive 97/7 of 1997 is the most important directive on the European level. It regulates rules for the protection of consumers in remote contracts by obligating suppliers and professionals with the duty of information to consumers with basic data and information for the goods or services, Article (6): In contracts concluded remotely by means of a remote communication technique, the consumer may withdraw from the contract within seven working days from the date of delivery for the goods, from the date of signing the contract

¹ Nabil Mohammed Ahmed Sabeeh, Consumer Protection in Electronic Transactions, Comparative Study, Journal of Law, No. 2, 2007, p. 169.

² Ibrahim Khaled Mamdouh, op. Cit., P. 41.

³ Ochan Hanan, Consumer Protection in Electronic Contracting, Master of Administrative Law, Annaba University, 2012, p. 6.

for the services without penalty and fine, and without Ha The statement of reasons ¹.

The European Directive on trade issued in 2000 also stipulated that the sites providing services and goods within the information society should provide all basic information about them, such as the full name, address, e-mail address and registration number in the Commercial Register and its tax number. Through the Internet to provide consumers and before contracting a series of explanatory information, the most important about the technical stages to be followed in order to conclude the contract and on the means of the mechanism to correct mistakes in the provision of data and correct them and the language of contracting and any Rules of conduct are mandatory followed to ensure the proper functioning of the contractual relations.

In 2002, the EU adopted a directive on the marketing of remote financial services aimed at providing some kind of security for electronic commerce and communications and protecting its private life in the field of electronic communications².

Section II: Local legislation and Consumer Electronic Protection:

All domestic legislations have been concerned with the protection of electronic consumers through legislation regulating them. These legislations are closely related to the economic security of a single country. All international legislations have issued laws governing the electronic consumer, including Jordan. Jordan passed the Electronic Transactions Law, For the year 2001 and amended by law in 2015.

Second: The Rights Prescribed for the Electronic Consumer in Domestic and International Legislations:

International and local laws have worked to determine the rights of the consumer through the promulgation of the laws and regulations governing it. The most important of these are the right of the consumer to inform the contract's details and conditions, his right to cancel the contract and its implementation, and his right to demand the annulment of arbitrary conditions.

1: The Right of the Consumer to Inform the Data and Conditions of the Contract

The right to information means the right of every human being to receive and impart information, news and opinions to any form without interference from anyone. This right is closely related to the different images of freedom of opinion and expression, in particular the freedom of the press and the media, Freedom of access to and dissemination of news resources is free of charge in research and reception, and this right constitutes an obligation of the producer or the professional. The advertising goals are an attempt to attract the consumer while the obligation to inform the media is to alert the consumer and take note of all the details related to the products, which may make him either submit to conclude or abandon the contract.

It is certain that providing this information to the consumer in the pre-contract stage will have a significant impact on his or her decision to contract or not, and on those who accept the conditions.

Subject (L 111-1) of the French Civil Code No. 949-92 of 26 July 1993 explicitly provides for information³, which states: "Every professional who sells goods or services before entering into a contract to enable the consumer to know the basic characteristics of the commodity or service"

Information is considered to be essential information and data in a way that takes into account sufficient and comprehensive knowledge of important topics for consumer protection, because it helps in selecting the services and products correctly and acceptable. In order to protect the electronic consumer, the European legislator, in subject (10) of European Directive 97/7 on electronic commerce, made some statements regarding the process of concluding the contract and specified the steps to be followed to conclude the contract⁴.

The right of the Internet media is to provide the consumer with all the necessary information to help him or her decide whether to contract or not. It is the obligation of the professional to provide the consumer with the necessary information to help him or her decide to contract negatively and positively⁵. This also implies the right of the consumer to the media⁶ by e-mail, through discussion boards or forums, Les chats, and advertisements on web pages, which are directed by the professional to the public T in order to urge the request of the item or service.

Many modern legislations have been concerned with the right to information, such as the e-commerce law, such as French Law No. 17 of 1978 on Informatics and Freedoms, which entitles consumers to access their data for verification purposes. Duration required.

The French legislature, in the Consumption Act of 1993, in subject 1-121, prohibits the deceptive

¹ European Directive on Consumer Protection under Remote Contracting of 1997. www.juriscom.net

² Mohammed Saeed Ahmed Ismail, Legal Protection Techniques for Electronic Commerce Transactions, Comparative Study, Halabi Rights Publications, Lebanon, 2009, p.379

³ French Consumption Act No. 949 of 1993.

⁴ Mohamed Hassan Qasim, op. Cit., P. 34; European Directive No. 24/7/97 of 1997.

⁵ Samir Abdel Samie Adon, The Electronic Contract, Knowledge Establishment, Egypt, 2011, p. 119.

⁶ Farid Menem Jabbour, Online Consumer Protection and Combating Cybercrime, Halabi Human Rights Publications, Lebanon, 2010, p. 3.

declaration in any form¹, which may include false statements or presentations and all that may lead to deception and fall on one or more elements of the commodity Product or service, such as components or quality, or terms of sale or use. The consumer law requires the general conditions of the contract to be added to the law of consumption article 121/18, which obliges the professional, the seller or the service provider to inform the consumer who contracts with him, so that the media is sufficient regarding the characteristics of the basic commodity or service, To inform the consumer in order not to occur the consumer in fraud and fraud.

If we go to the position of the Arab legislations with regard to the right of the consumer to the media, the Egyptian law requires in subject (6) of the Consumer Protection Act of 2006 to each provider to provide the consumer with correct information about the nature of the product and its characteristics and avoid what may lead to create an unrealistic or misleading impression of the consumer or the advertiser is exempted from liability if the information contained in the advertisement is technical and the normal advertiser can not verify it and the provider has provided it.

The Jordanian law did not refer to the existence of such a commitment in the Electronic Transactions Law No. 85 of 2001, and did not impose on the provider the obligation to provide the information, but to return to the rules of the Jordanian Civil Code 1976, we find that this commitment was written in different locations of some types of contracts Such as subject (466) of the Jordanian Civil Code². However, this subject can not be applied in any way to the initiation / e-mail, because it is concerned only with traditional contracts and not electronic.

It is noted that this right has become very important in the field of consumer contracts, as it provides a measure of protection for the consumer, and neglecting assesses the responsibility of professionals in the face of consumers³ and does not depend on the limits of the product, but must know the consumer to the professional who is in the contract with the provision of this order of safety to the consumer⁴, and certainly providing this information in the pre-contracting stage will have a significant impact on the decision of the consumer in the contract or not, and on those who accept the conditions.

Consumer protection has become a necessity in this world governed by the mechanisms of the market, which is an exhibition to manipulate its interests and attempt to deceive and deceive through the methods used by the seller to ignore the safety of consumers, and the use of fraud methods fake advantages in the product provided, and therefore the reality to protect consumer and the search for appropriate mechanisms to achieve this, the risk to the consumer in the context of electronic commerce is greater than the risk in traditional trade, because the scope of electronic commerce is wider and more serious, and therefore must take into account the media aspect of various types.

It is noted that the right to media is a means to resist the risks of advertising and advertising by providing sufficient objective information about the products, and enables the consumer to know the quality of the product and its advantages and even disadvantages or disadvantages, and for the Jordanian consumer and since it occupies a small area in dealing with the network, Attention must be given to their development by giving priority to and interest in electronic commerce and the development of consumer information awareness.

2: The Right of the Consumer to Abandon the Contract and its Implementation:

The right of the consumer to opt out of the contract is to return the contractors to the situation they were in before the contract, meaning that the consumer will return the goods he received, regardless of the reason for the delay and the refund of the item. This legal mechanism aims to provide strong protection to the consumer in the face of the temptations of advertising and advertising by professionals and sellers, especially with the facilities granted by the consumer electronic market⁵.

It should be noted that this license is for the consumer only because of the nature of the contract, even if there is no fraud, even if the product is intact and free from defects, provided they are not used by the consumer or not open the outer envelope to be sold to another consumer⁶.

It can be said that the right to redress aims to protect consumer satisfaction by giving it an additional period of deliberation and deliberation to avoid potential risks as a result of the rush to conclude an electronic contract.

The Directive of the European Directive No. 97/7 on the report of the right of the consumer to repeal the contract in subject 6, and pursuant to this directive, the French Decree No. 2001-741 adopted this right, which became the decision of the consumer not only in the field of goods and products remotely, But also in the field of performance of services remotely. Under this decree, the law of consumption was added to subject 121/20, which includes the right of the remote contracting consumer to waive the contract. This right was laid down in

¹ French Consumption Act No. 93/949 of 1993. www.justic.gouv.fr

² Jordanian Civil Law of 1976.

³ Samir Abdel Samie Ouden, op. Cit., P. 120.

⁴ Khalid Mamdouh Ibrahim, Consumer Electronic Security, University House, Egypt, 2008, p. 82.

⁵ Abdel Fattah Bayoumi Hijazi, op. Cit., P. 32.

⁶ Muhammad Hassan Qasim, op. Cit., P. 58.

electronic contracts by Law No. 88-12 of 1988 selling remotely and selling through television, giving the buyer these rights to deduct for the contract.

Some jurists believe that the consumer has the right to opt out of the electronic contract as stipulated in conventional contracts, which is complementary to the right of the media. He buys the commodity in this type of contract mostly via the Internet and has not actually seen it¹. He saw a model on the screen the computer, if it accepts a model, has the right to cancel and then can conclude the contract or claim its dissolution to protect it from any forms of manipulation or fraud by the seller.

The French legislator followed this trend, as stipulated in various consumer protection laws for the years 1971, 1972 and 1978 on the consumer loan, the 1988 Law No. 21 of 1988 on remote sales, and finally the amended law No. 659-2005 of the consumption law, in which the consumer is entitled, after the delivery of the sale, his refund and return and refund of the price within seven days calculated from the date of delivery of the sale, without being bound by any justification upon its return. Which is the same as the European Directive on Remote Contracts, which enshrines the principle of the consumer's right to opt out of a contract established remotely at the same time.

Here is a fixed duration of the right to redress, which is set by the European Directive for at least seven working days, while the law specifies French consumption for seven full days, and the exercise of the right to set aside the prescribed effects of refunding the price to the consumer within thirty days from the following day for the use of this right², if delayed return of the return of interest and this is stipulated in the European Directive in the second paragraph of resolution No. 97/7, and the provisions of the French Consumption Law No. 121-20-1.

3: The Right of the Consumer to Face Arbitrary Conditions and Protect his Personal Data:

The consumer in e-commerce contracts is always the weak party in this relationship, which is characterized by monopoly and hegemony and often involves an alien element, which increases its gravity and complexity³. Therefore, it should be protected as these contracts should be regarded as contracts of concession to the consumer the right to demand their cancellation or protection against arbitrary conditions, and this is because these contracts are difficult to negotiate in their terms.

An arbitrary condition is defined as the condition imposed on the consumer by the seller or the professional in the use of the arbitrary condition for the purpose of obtaining an unfair advantage, and this condition results in an imbalance between the rights and obligations arising from the contractual relations and is not subject to the contractual negotiations, Without the consumer having any effect on the electronic contract⁴.

The French law states in Article 9 of the Consumer Protection Act of 1992 that consumers must be protected from arbitrary conditions, as well as in the new French Consumption Act No. 949-93 of July 26, 1993, which includes five parts related to consumer information and protection, The services have been based on these things⁵.

4: Is to Grant the Consumer A Return License:

In order to provide greater protection to the consumer, the French legislator granted the consumer the right of return called, the right to reconsider the sale, on remote sales, where the buyer granted products in all sales across distances the right to return the sale to the seller, Replace the sale within seven days from the date of delivery. In addition, the French legislator imposed a period of thought that precedes the conclusion of the contract in favor of the propose, in addition to the withdrawal permit for admission in certain cases⁶.

Research Conclusion:

We have discussed the role of international laws and organizations in consumer protection, and the most important ways to protect consumers through international and domestic laws, in addition to their rights, as his right in the media and his right to face arbitrary conditions and his right to opt out.

The consumer's need for protection is increasing day by day, which requires all countries to pay attention to it because of the many problems facing consumers through the Internet to ensure that misleading and false advertising is handled and that contracts that contain arbitrary conditions are not passed. The practical reality of the inequality between the parties to the contractual relationship.

Despite the attempts to put legal solutions in the laws of electronic consumer protection in order to protect it, it does not reach the level required for inadequate and difficult to apply, especially in the absence of legislation

¹ Farid Menem Jabbour, op. Cit., P. 53.

² Muhammad Hassan Qasim, op. Cit., P. 66.

³ Abdel Al-Fattah Bayoumi Hijazi, op. Cit., P. 10.

⁴ Omar Khalid Zreikat, Electronic Commerce Contract, Online Sales Contract, Dar Al Hamed Publishing and Distribution, Jordan, 2007, p. 355.

⁵ See Article 9 of the French Consumption Act No. 949 of 1993.

⁶ Al-Rifa'i, Ahmed Mohamed: Civil Protection of Consumers on Contractual Content, Dar Al-Nahda Al-Arabiya, Egypt, 1994, p.107

to protect consumer electronic in most Arab countries.

In line with what has been decided in many countries of the world that have developed special legislation to protect the electronic consumer, we have cited a lot of innovative and planned solutions that give the consumer effective protection.

Therefore, we recommend, through this research, the speed of issuing independent and modern legislation or amend the current legislation in accordance with the nature of electronic contracts, while working to cooperate with developed countries in this area in order to exchange experiences and improve the level of e-learning. At the national level, it was recommended to keep abreast of developments in the developed world through the enactment of legislation that would fill gaps in electronic consumption transactions and to regulate all matters relating to it.

At the conclusion of this research, we must recognize that the subject of electronic contracting has become a reality that should not be overlooked all over the world. The consumer is a weak party in this unequal relationship and full of huge risks, especially with what distinguishes the producers from the features of monopoly and professional high, It had to be protected by special rules because the general rules regulating contracts were not able to do so.

If the Western countries have gone a long way in the field of electronic consumer protection by preparing laws and adapting them to accommodate the development of the idea of electronic contract, which is concluded through the Internet and without the presence of contractors, in a manner that ensures the consumer deal with satisfaction, the Arab countries are still lagging behind in this field and aspire to walk in the direction the correct.

Therefore, the study recommends that the global developments in the field of consumer electronic protection be accompanied by the issuance of legislation that ensures effective and flexible protection for the electronic consumer to suit all developments.

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