

Digital Content Markets For Consumers: Characteristics And Challenges

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SUMMARY

Nowadays digital content markets have almost equal role as other fields of consumer markets in our society. According to this important role there is need for researching about consumer protection mechanism, particularly in the digital marketing. Constant developments in the area of digital technology are fundamentally changing the way consumers interact and shop online.

With the digitization of entertainment and information and the tools for its production, the distribution of digital content has increasingly shifted from the physical to online domain. More recently mobile business has begun to conquer the consumer market, assisted by expanding transmission capacities of mobile networks as well as the escalating functionality of mobile “phones”. Digital content is offered via a plethora of different business models, and an end to the innovation and development in this sector is not yet in sight.

Keywords: digital content markets, consumers’ rights, doing business online, digital consumers, consumers’ choices and expectations, consumer fair contracting, consumer protection, Directives on consumer rights, The Consumer Rights Act

Characteristics of digital content markets

Consumers can choose between “on-demand” offerings (consumers can decide when to watch a specific movie or other type of content), near-on-demand” content (digital content is offered in time intervals, e.g., hourly or every ten minutes), on-demand downloading (digital content is delivered from the providers’ servers to consumers’ digital devices, e.g., a computer or digital video recorder), streaming (digital content is stored on the distributors’ servers and can be delivered to users individu-

ally as they access it. However, no permanent copy remains on the consumers’ hardware. The streaming process leaves only an ephemeral copy of the file on the users’ devices. When the application or device used to access the stream is turned off, the ephemeral copy is deleted), webcasting (digital content is streamed over the Internet. It can be accessed over a conventional web browser or client software such as RealPlayer, Windows Media Player or Apple’s iTunes), the subscription to purchase of e-books, e-journals and newspapers, social broadcasting and many, many more.

A new and increasingly valuable currency in digital content markets is personal data. Many services that are seemingly offered “for free” are financed through the collection and re-use of the (personal) data of consumers – for example, for purposes of targeted advertising or reselling consumer data.

From the point of view of consumer law and policy, this raises important definitional questions regarding concepts such as “remuneration”, “commercial transaction” and “economic service” as well as questions of a more political nature – namely, how to protect consumers’ privacy in digital environment.

Choice and diversity

The ease with which consumers can switch between services and (technical) platforms can also affect consumers’ choice and the diversity of digital content consumed. The fact that consumers have a choice, however, is a necessary prerequisite for a consumer policy that is largely oriented towards principles of party autonomy and market competition. For individual consumers, the ability to avoid services that do not respond to their interests or respect their rights is one – if not the most important – way to protect their interests and exercise power in the digital market. At the same time, the abili-

ty to switch between services and access different services is a stimulus and precondition for a well functioning competitive market. Restrictions of consumer choice are thus not only of concern to individual consumers but also to public policy.

Closely related to the possibility to access digital content and to exercise choice is the aspect of media diversity. A well-balanced diet of media content from different speakers, viewpoints, ideas and ideals is the matrix for cultural exchange, democratic participation and personal self-deployment. The primary goal of European media policies is then also to ensure that viewers have access to pluralistic media content. Such are the demands from people's fundamental right to freedom of expression, which "will be fully satisfied only if each person is given the possibility to form his or her opinion from diverse sources of information". Consumers' ability to benefit from media diversity is seriously limited if they are not free to choose between a variety of different sources of content.

Usage restrictions

Consumers do have certain expectations regarding digital content. Two categories of expectations can be distinguished:

1. The first category includes being able to perform certain usages that consumers are already accustomed to from traditional media. Examples include the ability to copy and play a CD or MP3 on different devices - for example, a CD player, a car audio system, a computer (consumptive use) or portable music player. Consumers become concerned when DRM, and the contractual conditions it enforces, restricts these forms of usage.

2. A second category includes new forms of usage that are brought to consumers by digitization, such as the ability to forward digital content, share it electronically with friends, access digital content, use it on different devices, etc. From the perspective of consumers, digitization adds new usage possibilities, such as the ability to make better quality copies or the possibilities to transform digital music into MP3 files. To some extent, this attitude is stimulated by the content industry itself by advertising CD quality as superior and by marketing MP3 players. Consumers expect certain customary features of digital products, even if they have to pay extra for them.

Consumer Information and Transparency

The next most commonly experienced problem is the lack of information or the low quality of information provided, combined with the fact that key information is often obscured, as when it is

hidden away in lengthy terms of use. At the same time, when talking about consumer protection in digital content markets, the need for transparency is probably the most frequently made suggestion of how to improve the situation for consumers.

Consumers experience a lack of, or incompleteness of, legal information regarding instructions on how to report problems to suppliers, the cancellation policies, the terms of use, the license agreements, and the information on the warranty. They also encounter difficulties understanding the information that is provided, due to the complexity and technicality of the language as well as the length of the information provided. Other studies demonstrate that users are badly informed about the usage of cookies and behavioural advertising strategies, for example. Still other problems identified were a lack of information on charging and payment structures as well as product bundling. Transparency of contractual or technical restrictions is another concern in this context. Surveys among digital music users and digital video content users found that a majority of the users of digital music or video offerings felt inadequately informed about eventual usage restrictions or the fact that DRM is used to enforce such conditions.

Privacy

According to a survey in Germany, 87% of consumers interviewed were concerned about their right to privacy when shopping online. This finding stands in sharp contrast to the findings of another study, according to which only 2% of the problems experienced during the past twelve months were related to privacy. The apparent contradiction in the valuation of privacy problems can possibly be explained by the fact that, while it is probably true that consumers are (very) concerned about their privacy in abstracto, in practice they will find it difficult to identify threats to their privacy or recognize privacy issues as the source of problems they experience. In other words, while users may complain – for example, about receiving personalized advertising – they are not necessarily aware that this is (also) a potential privacy issue and problem with respect to the protection of their personal data. Also, users are often not informed (or only to a limited extent) about potential privacy threats. The privacy problem that was most perceived by consumers in the Europe Economics study, for example, was related to the amount of information that was requested which felt excessive or inappropriate, while most did not realize how much monitoring and collecting of information occurred on their own actions.

Fair Contracting

Similar to the situation with privacy, the fairness of contractual terms is a much-cited consumer concern and is frequently referred to especially by consumer representatives. Yet only 2% of the problems mentioned in the survey related to unfair contract terms. Again, it needs to be noted that it can be difficult if not impossible for laymen to recognize the unfairness of contractual terms. Yet evidence exists that the fairness of contractual conditions that are imposed on consumers is not always beyond doubt. Suspicious provisions include the followings:

- The reservation to unilaterally change the terms and conditions of the contract is included. As a consequence, the provider of digital content who reserves the possibility to do so can change the number of copies of a song a consumer is allowed to make even after the consumer has bought the song and downloaded it onto his computer.
- Wide-ranging disclaimers exclude liability for several types of damage on consumer hardware or software.
- The vendor places restrictions on the possibility of criticizing the product publicly.
- Through the sale of the product, the vendor is able to monitor usage behaviour.
- The product only works with software and/or hardware provided by the same vendor or a supplier preferred by the vendor.
- Suppliers of software reserve the right to update software remotely and without warning.
- Rights of long-term ownership of personal data are secured.

Security and Safety

Security and safety issues are a concern - also and particularly in the online environment - where viruses, malware, and other corruptive technology can spread easily and in no time. Security concerns mentioned by consumers included email scams, spam, identity theft, viruses, loss of information, and the security of online possessions and communication, as in the context of social networks or email. Security concerns were also raised in the context of DRM technology. DRM systems may come in conflict with other software installed on a computer. Since most DRM systems and the relevant online services need an Internet connection, they are relatively open for external attacks but can hardly be controlled by consumers in this respect. Accordingly, consumer organizations demand that DRM software should not hamper or limit the use of other protection software on consumers' computers. As a general demand, market players should

not confront consumers with immature technology. The technical design of digital content should not bring new vulnerabilities into customers' computing equipment, and the systems must enable consumers to set their own policies and levels of security for their own machines.

The security and safety of consumers' hardware and software is not only a concern of consumers; it is also in the interest of society as a whole: "For information technology to also function reliably in the future it is important to make people increasingly aware of the importance of IT security.

Consumer protection in the digital single market is one of the main priorities of European policy makers. Legal framework for consuming process and consumer rights reflected in several legislative acts. For example, within the EU more general legislation that also covers electronic commerce (Directive 2011/83/EU on consumer rights, Directive 2006/114/EC concerning misleading and comparative advertising and Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data). More specific legislation in this area is: Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market; Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services; Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes; and Directive 2002/65/EC concerning the distance marketing of consumer financial services.

Also we can mention The Consumer Rights Act which adopted by United Kingdom government came into force on 1 October 2015. The law is now clearer and easier to understand, meaning that consumers can buy and businesses can sell to them with confidence. Chapter 3 of this Act is "Digital Content" and it aimed to answer some questions such as what digital content contracts are covered about, what statutory rights are consumers under a digital content contract and etc. The Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality.

Finally, we have indicated that particular attention is needed with regard to the consumer law and digital content matters. Ultimately, consumer protection law in the area of digital content may very well become the crowbar needed for the long-awaited



improvement of the legal standing of consumers of copyrighted content, contributing to a better balance between the rights of consumers and the rights of copyright holders.

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