

Legal Regulation of E-Commerce and Consumer Protection: A Comparative Analysis of the UK, USA, China and Other Jurisdictions

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Abstract

this article examines legal mechanisms regulating e-commerce and consumer protection in the context of digital transformation. Particular attention is paid to UK distance selling legislation, including requirements for information disclosure, the right of withdrawal, and transparency of contractual terms. The study analyzes US legal approaches, focusing on jurisdictional issues, classification of websites, and the application of UETA and the E-SIGN Act. It also explores China's mandatory registration system for e-commerce entities, along with regulatory practices in Germany, Kazakhstan, and Singapore. The paper concludes that diverse regulatory models are emerging, combining elements of state control and self-regulation.

Keywords: E-commerce, consumer protection, distance selling, jurisdiction, electronic contract, offer and acceptance, personal data, comparative legal analysis, digital economy.

Introduction

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ЭЛЕКТРОННОЙ КОММЕРЦИИ И ЗАЩИТЫ ПРАВ ПОТРЕБИТЕЛЕЙ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ВЕЛИКОБРИТАНИИ, США, КИТАЯ И ДРУГИХ ГОСУДАРСТВ

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Аннотация:

в статье исследуются правовые механизмы регулирования электронной коммерции и защиты прав потребителей в условиях цифровизации экономики. Особое внимание уделяется законодательству Великобритании в сфере дистанционной торговли, включая требования к раскрытию информации, праву на отказ от товара и обеспечению

прозрачности договорных условий. Анализируются особенности правового регулирования электронной коммерции в США, включая вопросы юрисдикции, классификацию интернет-ресурсов и применение актов UETA и E-SIGN. Рассматриваются подходы Китая к обязательной регистрации субъектов электронной торговли, а также практика Германии, Казахстана и Сингапура. Делается вывод о формировании различных моделей регулирования электронной коммерции, сочетающих элементы государственного контроля и саморегулирования.

Ключевые слова: электронная коммерция, защита прав потребителей, дистанционная торговля, юрисдикция, электронный договор, оферта и акцепт, персональные данные, сравнительно-правовой анализ, цифровая экономика

ELEKTRON TIJORAT VA ISTE'MOLCHILAR HUQUQLARINI HIMOYA QILISHNI HUQUQIY TARTIBGA SOLISH: BUYUK BRITANIYA, AQSH, XITOIY VA BOSHQA DAVLATLAR TAJRIBASINING QIYOSIY TAHLILI

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Annotatsiya:

Maqolada raqamli iqtisodiyot sharoitida elektron tijorat va iste'molchilar huquqlarini himoya qilishni huquqiy tartibga solish mexanizmlari o'rganiladi. Buyuk Britaniyada masofaviy savdo sohasidagi qonunchilikka alohida e'tibor qaratilib, axborotni oshkor qilish majburiyati, tovardan voz kechish huquqi va shartnoma shaffofligi tahlil qilinadi. AQShda elektron tijoratni tartibga solishning o'ziga xos jihatlari, jumladan yurisdiksiya masalalari va UETA hamda E-SIGN qonunlari ko'rib chiqiladi. Xitoyda elektron tijorat subyektlarini majburiy ro'yxatdan o'tkazish tizimi, shuningdek Germaniya, Qozog'iston va Singapur tajribasi tahlil qilinadi. Tadqiqot natijasida davlat nazorati va o'zini o'zi tartibga solish uyg'unlashgan turli modellarning shakllanishi aniqlanadi.

Kalit so'zlar: elektron tijorat, iste'molchilar huquqlarini himoya qilish, masofaviy savdo, yurisdiksiya, elektron shartnoma, oferta va aksept, shaxsiy ma'lumotlar, qiyosiy-huquqiy tahlil, raqamli iqtisodiyot

Under UK law, a consumer must understand that a person who has purchased goods or services for non-commercial purposes is a consumer, subject to the provisions of the Consumer Protection Act 2000. ¹This law provides for the protection of consumer rights:

- Provide accurate and clear information (before purchasing a product);
- Confirm this information in writing;

¹Consumer Protection (Distance Selling) Regulations 2000 // UK Statutory Instruments. – 2000. – No. 2334. – URL: <https://www.legislation.gov.uk/ukSI/2000/2334>

- The right to refuse a product or service within seven days from the date of purchase;
- Protection against bank card fraud.

Distance selling legislation is designed to increase consumer confidence in e-commerce transactions and to regulate and limit the requirements for sellers' business practices ². One of the key requirements of the UK Consumer Protection Act 2000 (Distance Selling) is the provision of accurate and truthful information to consumers:

- information about the seller, type of activity and its organizational and legal form;
- goods (services) provided, as well as their cost and characteristics;
- Terms of payment and delivery;
- the right to refuse the goods and the procedure for their return;
- the period during which the specified value of the goods is maintained;
- If necessary, specify the minimum contract term.

The law stipulates that the information must be confirmed in writing or via a stationary storage medium. The Law on the Protection of Consumer Rights does not define this concept, but government authorities regulating these relationships understand it to mean a storage medium that does not allow text editing and ensures its long-term preservation ³. Examples include email, brochures, letters, and faxes. It should be noted that websites cannot be classified as storage media, as they are subject to change without notice to the consumer.

The emergence of e-commerce has led to a number of new controversies, as leading US lawyers note. One of the key questions facing the government is "to what extent are online transactions for e-commerce regulated by law?"

Another important issue, "jurisdiction," arose before the new law was adopted by the US government. There is considerable domestic and international experience with traditional government contracts, but long-distance trade required a specific interpretation of "jurisdiction" under which courts, lawyers, and legislators could set the rules.

It's worth noting that laws can vary greatly between states, which impacts e-commerce within the country. Until the early 21st century, states in the United States traditionally maintained jurisdiction over businesses located in other states ⁴. For example, before e-commerce was adopted in the United States, a store owner operating in Michigan had the right to waive state regulations unless they were doing business in Michigan. With the rise of online shopping, this has become somewhat more difficult, as today almost every American can shop online.

When it comes to e-commerce law, American lawyers fall into three categories:

- Interactive (for online sales and transactions);
- Passive (for reference);
- Middle group (includes two elements) ⁵.

²Shalashova ME Electronic commerce in the EU: new rules for regulating vertical restrictive agreements in the field of Internet commerce // Modern competition. - P. 61.

³Agamirova ME Electronic commerce in the EU: new forms of regulation of vertical restrictive agreements in the field of Internet commerce // Modern competition. 2021. No. 2. - P. 60-68.

⁴Haig , M. Fundamentals of Electronic Business. Translated from English by S. Kosikhina / M. Haig . - M.: FAIR-PRESS, 2019. - P. 208.

⁵Bugaeva , ES Modern problems i prospects management development innovative economics : materials Mezhdunar . Nauch. - prakt.konf . (Belgorod, 18-19 October 2012) / ES Bugaeva , RG Asadullaev . – Belgorod: MD “Belgorod”, 2018. – 400 rub .

The interactive element grants the right to regulate issues related to interactive websites, while obligations are provided for minimal oversight. Issues falling within the middle category were considered by the courts on a case-by-case basis.

The main laws passed in the field of electronic commerce in the United States are the Uniform Electronic Messaging Act of 1999 (Uniform Electronic Transactions Act , UETA), as well as the Electronic Signature Act (E- Sign The Electronic Signature Act (ESA) came into effect in the fall of 2000. ⁶Under the ESA, an electronic digital signature on a contract is equivalent to a traditional signature. This means that transactions conducted online and falling under US jurisdiction are treated as traditional transactions. The US government has a strong foundation for regulating online commerce thanks to its accumulated practice in resolving jurisdictional disputes. Today, the Federal Trade Commission (FTC) oversees online retail in the United States ⁷.

Entrepreneurs operating on e-commerce platforms are advised to carefully monitor privacy and tax laws. Online sellers are exempt from paying local sales tax to customers if they do not have branches in that state. For example, a number of states have already abolished sales tax—Alaska, Delaware, Oregon, Montana, New Hampshire, and Hawaii. The abolition of sales tax has allowed online stores to lower prices, which is a significant competitive advantage ⁸.

Internet, are carried out in accordance with the legal address of the seller (supplier), based on the jurisdiction of the country in which it is registered as a business entity. "In 2000, the European Union published a number of recommendations to ensure the use of a common commercial infrastructure:

The first recommendation is terms and conditions – commercial terms and conditions should be made available to users before any online transactions can begin.”

The second recommendation is equal status: electronic contracts are equivalent in their commercial and legal effect to their printed form. They can be used in court along with electronic authentication elements (electronic signatures);

The third recommendation is that the geographic location of other people is independent of the internet, where the server hosting the transaction is located; the fourth recommendation is that a single merchant/dealer may offer online commerce services in the European Union as long as they comply with the trade laws and regulations in force in the country of origin. Another category of disputes arising from e-commerce, namely online auctions, relates to the content or type of goods sold on websites. The internet allows for the sale of any property that is illegal, unethical, or simply unavailable ⁹.

Based on the above, it can be concluded that the United States has successfully adapted the jurisdictional rules for e-commerce used in international distance selling practices. Theoretically, if an online store refuses to comply with the laws of another country, it will not be allowed to conduct business in that country or with citizens residing in that country.

⁶Klimchenya , L. S. Electronic Commerce : Textbook . n special / L . WITH . Klimchena . - Mn .: Vysh . school , 2019. – S. 191.

⁷Aymore D. Electronic business. Evolution and/or revolution. Moscow: Williams, 2020. P. 320.

⁸Gary P. Electronic Commerce, Ninth Edition, Schneider, Ph.D., CPA. Printed in the United States of America, 2017. P. 4.

⁹Eimor D . Electronic Business . Evolution and/or Revolution. Moscow: Williams, 2020. P. 320.

In the People's Republic of China, the E-Commerce Law came into force in 2019, establishing regulations for online commerce. This law covers all types of e-commerce (B2B, B2C, C2C, including sales through WeChat and streaming services) and absolutely all forms of e-commerce business activity (sale of legally permitted goods and provision of legally permitted services in an online environment). A new feature introduced by this law is the mandatory state registration of entities wishing to conduct e-commerce, even through WeChat or social media ¹⁰.

Business entities are required to display information about their state registration (i.e., the legality of their business) and licenses, if the activity requires a license, on their website, or provide links to these documents. E-commerce platforms are required to provide information about entrepreneurs to government agencies and remind them to register. There's a simple solution for Chinese citizens: if they engage in small-scale online sales, they can register as a sole proprietor at their permanent address and obtain a business certificate (the primary registration document) designated for online business only. The advantage of this form of business is that a sole proprietor conducting their business online is not obligated to rent separate office space, but can list their permanent residence as their legal address ¹¹. It's important to note that registering as a sole proprietor online prohibits them from conducting business offline.

In the Republic of Kazakhstan, regulatory issues in this area are addressed by the State Program "Digital Kazakhstan," the Concept of Legal Policy for 2021-2030, and the State Program for Trade Development for 2020-2025. Given the current state of this institution, it seems necessary to examine the theory and practice of this phenomenon in foreign countries, primarily those recognized as world powers. Such an analysis can serve as a sound basis for filling existing gaps in legislation and preventing negative experiences, if any, in other countries. According to the Law of the Republic of Kazakhstan dated April 12, 2004, No. 544 " On the Regulation of Trade Activities," e-commerce is defined as entrepreneurial activity involving the sale of goods, carried out using ICT ¹².

No less interesting is the experience of Germany, based on the fact that contractual relationships are multi-stage, and e-commerce contracts vary depending on the stage at which information technology is used. Direct or immediate e-commerce is typical when all stages of the legal relationship take place electronically (from establishing contacts between the parties to assigning liability for failure to fulfill obligations) ¹³. If only the contract is concluded online, and performance occurs in tangible form (specifically, through the transfer of tangible items), then indirect e-commerce is used. In Germany, there is no specific law directly regulating e-commerce; however, the German Civil Code (hereinafter referred to as the BCC) contains specific provisions on e-commerce contracts.

¹⁰Klimchenya , L.S. Electronic Commerce: Textbook . p special / L.S. Klimchena . - Mn.: Vysh . school , 2019. – P. 191.

¹¹Summer , A. E - COMMERCE . E-commerce. Marketing: The Fifth Wave / A. Summer , Gr. Duncan. - M., 2019. – P. 152.

¹²Bugaeva , E. S. Modern problems i prospects management development innovative economics : materials Mezhdunar . Nauch. - prakt.konf . (Belgorod, 18-19 October 2012) / ES Bugaeva , RG Asadullaev . – Belgorod: MD “Belgorod”, 2018. – 400 rub .

¹³Summer , A. E-COMMERCE. Electronic commerce . Marketing: The Fifth Wave / A. Summer , G. Duncan . - M. , 2019. – P. 152.

Thus, §312i of the Civil Code lists the general obligations regarding electronic commerce, while §312j of the Civil Code specifies the specific obligations regarding electronic commerce towards consumers. According to §312i of the Civil Code, an entrepreneur who uses electronic means of communication is obligated to: provide the other party with appropriate, valid, and accessible technical means by which the counterparty can recognize errors before placing an order; provide clear and concise advice on the technical steps leading to the conclusion of the contract, as well as on how to correct errors; promptly confirm receipt of the order electronically, etc.¹⁴

In Southeast Asia, Singapore is the leading country in e-commerce. The main regulatory act governing the activities of financial market institutions in Singapore is the Securities and Futures Act (hereinafter referred to as the Singapore Act). Regulation and supervision of the activities of trading organizers, including electronic trading systems, is carried out by the financial market mega-regulator – the Monetary Authority of Singapore (MAS). Authority of Singapore (hereinafter referred to as MAS). Based on the Act, the mega-regulator developed Financial Market Regulation Standards (hereinafter referred to as the Standards), which clarify and detail the main provisions of the legislation. It is important to note that in Singapore, many provisions and procedures related to the operation of trading systems are not regulated by law, including: operating mechanics, the procedure for admitting participants to trading, the rights and obligations of trading participants, the procedure for concluding transactions, managing collateral, etc. Trading system operators independently determine these provisions and enshrine them in their trading rules¹⁵.

Let's take a look at the factors that are driving the growth of e-commerce in Singapore:

- Singapore is the gateway to Southeast Asia.

- Internet users make up 89% of the total population, and in figures this looks like this: out of 5.45 million, about 4.8 million have access to the Internet.

The city's infrastructure facilitates fast international delivery. Additionally, Singapore boasts an airport with first-class services, roads, and transportation. Furthermore, the distances between destinations are very short due to the country's compact size, enabling fast delivery.

Singaporean shoppers are considered demanding because they have a strong legal awareness. For example, after placing an online order, they expect next-day delivery from local businesses.

- Singaporeans speak English and Chinese fluently, which is another reason for the development of cross-border e-commerce. Furthermore, they are adapted to the export and import of goods, that is, conducting transactions internationally. According to 2020 figures, 73% of Singapore's population made an online purchase from abroad¹⁶.

After analyzing the experiences of various foreign countries in e-commerce, we realized that while they share some similarities in how they regulate this area, it's important to note that they also have their own implementation specifics. Our research has shown that many countries are focusing on developing and improving e-commerce, and it's worth noting that there are various reasons for

¹⁴Gillam L. (2018). *Cloud Computing: Principles, Systems and Applications* / Nick Antonopoulos, Lee Gillam. L. : Springer .

¹⁵Summer, A. E - COMMERCE . E-commerce. Marketing: The Fifth Wave / A. Summer, Gr. Duncan . - M. , 2019. – S. 152.

¹⁶Gary P. *Electronic Commerce*, Ninth Edition, Schneider, Ph.D., CPA. Printed in the United States of America, 2017. P. 4.

this¹⁷. For example, the country's economic development, interest in using new information and communication technologies and the new capabilities of the internet, or the transition from traditional market relations to a more convenient form of shopping, where consumers can order anything from home. Furthermore, during the pandemic, we all realized the importance of developing this area of activity. Speaking about protecting consumer rights online, we realized that, due to the growing trend of e-commerce, some countries already have regulations directly regulating this area. However, there are also other countries where this issue is regulated by civil law regulations and, as yet, there is no specific regulation governing this area. In this case, Singapore stands out for its uniqueness in that it lacks a specific regulation governing this area, but it does have dedicated operators who, upon receipt of a request, resolve the issue at their discretion.

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¹⁷Eimor D . Electronic Business . Evolution and/or Revolution. Moscow: Williams, 2020. P. 320.