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THE CONSUMER IN THE CYBERSPACE CONTENT-DISTRIBUTION CONTRACT: APPLICATION OF THE «WEAKER PARTY» DOCTRINE

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Abstract: This article examines the legal status of the digital content consumer and the «weaker party» doctrine. Based on EU Directives 2019/770 and 93/13/EEC and the German BGB, the necessity of four special guarantees (cooling-off, conformity, transparency and protection against unfair terms) is substantiated. Proposals for the Civil Code and the consumer-protection law are developed.

Keywords: digital content consumer; weaker party doctrine; cyberspace; cooling-off; digital conformity; unfair terms; transparency; contract of adhesion; consumer rights; informed consent.

Annotatsiya: Maqolada raqamli kontent iste’molchisining huquqiy maqomi va «zaif taraf» doktrinasi tadqiq etilgan. To‘rt maxsus kafolat zarurligi asoslangan. Fuqarolik kodeksi va iste’molchilar qonuniga takliflar ishlab chiqilgan.

Kalit so‘zlar: raqamli kontent iste’molchisi; zaif taraf doktrinasi; kibermakon; cooling-off; raqamli muvofiqlik; adolatsiz shartlar; shaffoflik; qo‘shilish shartnomasi; iste’molchi huquqlari; axborotlangan rozilik.

Аннотация: В статье исследован правовой статус потребителя цифрового контента и доктрина «слабой стороны». Обоснована необходимость четырёх специальных гарантий. Разработаны предложения в ГК и закон о потребителях.

Ключевые слова: потребитель цифрового контента; доктрина «слабой стороны»; киберпространство; cooling-off; цифровое соответствие; несправедливые условия; прозрачность; договор присоединения; права потребителя; информированное согласие.

Introduction.

The digital economy has given rise to a qualitatively new mode of civil commerce — the consumption of digital content. Today the citizens of Uzbekistan make daily use of platforms such as Netflix, Spotify, the Apple App Store, KinoUz, OnlineKino and BookUz, purchasing digital films, music, e-books and games. While these relations of digital consumption have become a substantial part of national economic life, their legal regulation lags considerably behind.

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The principal problem is that the Law on the Protection of Consumer Rights, No. 221-I of 26 April 1996, was adopted long before digital content emerged as an object of mass consumption and accordingly does not directly address the specific issues of the digital consumer. This lacuna generates legal problems that grow with the development of the digital economy: consumers are insufficiently protected in many respects, while platform operators are able to impose unilateral terms without effective constraints.

A significant factor underlying the topicality of the subject is the distinctive weakness of the digital content consumer as compared with the traditional consumer. First, digital content contracts are concluded almost without exception in the form of contracts of adhesion (contract of adhesion): the consumer is wholly deprived of the possibility of negotiating the terms of use. Secondly, information asymmetry is extreme — the operator's algorithms, internal procedures and data-processing practices are not transparent to the consumer. Thirdly, purchased content may at any time be removed or altered by the operator's unilateral decision. Fourthly, the transboundary element is widespread: the law and forum applicable to disputes are often uncertain. These four features individuate the digital content consumer as a subject requiring the special application of the weaker party doctrine [8; pp. 37-57].

At the international level the leading model for the protection of the digital consumer is Directive (EU) 2019/770 of 20 May 2019 [6]. The Directive establishes a body of mandatory guarantees concerning the conformity of digital content and services, the consumer's right of withdrawal, the regime of liability, and the obligation of periodic updates (Aktualisierungspflicht). Germany has transposed it into the Civil Code (BGB) as §§ 327f–327i [3]. Directive 93/13/EEC has, in turn, introduced a mechanism rendering unilaterally imposed unfair terms non-binding [5]. In the United States, the protection of the digital consumer is shaped primarily through Federal Trade Commission practice and judicial precedent [7]. The aim of the study is to identify the distinctive features of the digital content consumer and to develop concrete proposals for improving the Civil Code of Uzbekistan and the consumer-protection law (No. 221-I).

Literature review and methodology.

The empirical basis comprises two groups of sources. **National legislation**: the Civil Code of the Republic of Uzbekistan [4], the Law on the Protection of Consumer Rights of 1996 (No. 221-I) [14], the Law on Electronic Commerce (URQ-792) [15] and the Law on Personal Data of 2019 (URQ-547) [16]. **Foreign legislation and case-law**: Directive (EU) 2019/770 [6]; Directive 93/13/EEC on unfair terms [5]; the German BGB §§ 327f–327i [3]; the US Federal Trade Commission Act and the Magnuson-Moss Warranty Act [7]; CJEU case-law Aziz v. Caixa d'Estalvis and Océano Grupo [2]; US precedents AT&T Mobility v. Concepcion, Specht v. Netscape and ProCD v. Zeidenberg [1].

The doctrinal sources cover three directions. **European consumer-law theory**: Reich's foundational work on the general principles of EU civil law [12]; Hesselink's analysis of unfair terms [9]; Loos on the modernisation of European consumer law [11]. **Doctrine on digital consumer protection**: the leading work of Helberger and others [8; pp. 37-57]; Wendehorst on consumer contracts in the digital environment [17]; Spindler on the supply of digital content [13; pp. 183-217]. **CIS doctrine**: Karapetov and Savelyev on the limits of the freedom of contract [10].

The methodological algorithm comprises four stages: at the first, the distinctive features of the digital content consumer as compared with the traditional consumer are identified; at the second, foreign experience (EU, Germany, US) is comparatively analysed; at the third, the lacunae of current Uzbek legislation are demonstrated; at the fourth, concrete proposals are formulated.

Discussion.

The «weaker party» doctrine is interpreted within the civilist tradition as a restriction upon the principle of freedom of contract: where one party is, in economic, informational or negotiating power,

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significantly weaker than the other, the principle of formal equality fails to deliver substantive justice, and correction by mandatory norms is necessary. As Reich has emphasised, consumer protection is not paternalistic intervention but a mechanism for restoring contractual balance [12]. In the digital environment, a technological weakness is added to the traditional weakness factors: the consumer does not understand the platform's internal algorithms and technical infrastructure, yet his vital interests are bound up with that system.

As Hesselink has indicated in his investigation of the EU doctrine of unfair terms, click-wrap contracts deprive the consumer of real opportunities of negotiation [9]. Wendehorst has shown that the protection of the digital consumer requires a regime of its own; the mere transposition of traditional consumer legislation to the digital environment is insufficient [17]. Spindler has emphasised that the dynamic nature of the digital conformity guarantee — its persistence throughout the term of the contract — fundamentally differs from the traditional notion of a one-off conformity [13; pp. 183-217]. The US experience demonstrated, in AT&T Mobility v. Concepcion (563 U.S. 333, 2011), that the Supreme Court's recognition of the binding force of mandatory arbitration clauses in platform user contracts inflicted serious damage on consumer protection [1] — a negative lesson for Uzbekistan. Loos has examined in detail both the successes and the shortcomings of the modernisation of European consumer law [11]. Karapetov and Savelyev have likewise pointed to the need to harmonise mandatory protective rules in the regulation of the digital consumer at the international level [10].

Within the Uzbek legal system the protection of the digital consumer lies in the lacuna formed by several normative acts. The Law No. 221-I [14] is adapted to traditional goods and services. Article 360 of the Civil Code on the contract of adhesion provides general protection but does not include the concrete guarantees specific to the digital environment [4]. The Law on Electronic Commerce (URQ-792) is based on the goods-sale model [15]. The Law on Personal Data of 2019 (URQ-547) constitutes a foundation for the protection of the consumer's personal data in the digital environment [16] but does not address the specific issues that arise in the context of digital content consumption. A hypothetical illustration: a Uzbek citizen «purchases» a film from KinoUz, only to find subsequently that the platform has removed the film from its catalogue owing to the expiry of the licence. Under current legislation the consumer's rights are uncertain — he is neither owner, depositor, nor a classical recipient of services.

Results.

First result: the digital content consumer differs from the traditional consumer in four respects. The first feature is the form of contract conclusion: the digital content consumer must accept the contract of adhesion as a whole through the «I accept» button. The second feature is information asymmetry: the operator's algorithms, moderation policies and data-processing practices are not transparent to the consumer. The third feature is content stability: the platform may remove content from the catalogue at any time. The fourth feature is the transboundary element: the consumer is in Uzbekistan while the platform operator may be in a foreign jurisdiction.

Second result: the cooling-off period — the first special guarantee. Article 14 of Directive (EU) 2019/770 and Article 9 of Directive 2011/83/EU on consumer rights provide the consumer with the right to withdraw from the contract without reason within fourteen days [6]. The German BGB §§ 327o–327q have transposed this regime [3]. The Uzbek Law No. 221-I does not provide for a fourteen-day right of withdrawal for distance contracts, and no special regime has been formulated for digital content.

Third result: the digital conformity guarantee. Articles 7–9 of Directive (EU) 2019/770 and §§ 327e–327h of the BGB have established the concept of digital conformity (digitale Konformität). Subjective conformity (conformity to the terms of the contract) and objective conformity (conformity

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to reasonable consumer expectations) are distinguished. The operator is, moreover, placed under an obligation to maintain the conformity of the digital content throughout the term of the contract, including the obligation to provide software updates (Aktualisierungspflicht) [13; pp. 183-217]. Fourth result: transparency and informed consent. Article 5 of Directive 2019/770 and § 327c of the BGB require the operator to provide the consumer, prior to conclusion of the contract, with information that is clear, plain and complete. In the United States, Specht v. Netscape (2002) and ProCD v. Zeidenberg (1996) demonstrated that the consumer's opportunity to acquaint himself with the terms is a precondition of the binding force of click-wrap contracts [1].

Fifth result: protection against unfair terms. Directive 93/13/EEC introduced a mechanism rendering unfair terms in consumer contracts non-binding [5]. According to the Directive, a term is unfair where, contrary to the requirement of good faith, it causes a significant imbalance to the detriment of the consumer. The CJEU judgments in Aziz v. Caixa d'Estalvis (C-415/11, 2013) and Océano Grupo (C-240/98, 2000) imposed upon courts an obligation to examine unfair terms ex officio [2]. Sixth result: the inadequacy of Law No. 221-I in respect of digital consumption. The Law of 1996 [14] does not directly address the specific issues raised by digital content — early removal of content from the catalogue, protection against the unilateral modification of the contract, digital-conformity guarantees, and the cooling-off period. In the United States, the FTC Act and the Magnuson-Moss Warranty Act operate principally in the sphere of goods and services warranties [7].

Conclusion.

The methodological analysis at four stages yields the following final conclusions. First, the digital content consumer differs from the traditional consumer in four respects — the form of contract conclusion, information asymmetry, content stability and the transboundary element. Secondly, the special application of the «weaker party» doctrine to such a consumer is substantiated by the addition of the technological weakness factor to the traditional weakness factors. Thirdly, the protection of the digital consumer must consist of four special mandatory guarantees: the cooling-off period; digital conformity; transparency and informed consent; and ex officio protection against unfair terms. Fourthly, the current legislation of the Republic of Uzbekistan does not directly cover any of these guarantees.

A twofold proposal for legislative improvement: **A. To the Civil Code:** «1. The digital content consumer shall have the right to withdraw from the contract without reason within fourteen days of its conclusion. This right shall not apply where the consumer has begun to use the content directly upon his prior, express and separate consent. 2. The platform operator shall be obliged to maintain, throughout the term of the contract, the conformity of the digital content, including the provision of necessary software updates. 3. The terms of the contract shall be provided to the consumer in a clear, simple and accurate form prior to the conclusion of the contract. 4. Terms unilaterally imposed by the operator that cause a significant imbalance to the detriment of the consumer shall be non-binding; the court shall be entitled to examine such terms on its own motion.» **B. A separate chapter «Special Rights of the Consumer of Digital Content and Digital Services» shall be inserted into the Law on the Protection of Consumer Rights, No. 221-I of 26 April 1996** — defining the concepts of digital content and digital service, specifying in detail the consumer's special rights, fixing the obligations and liability of the platform operator, and securing the mandatory protection of the Uzbek consumer in transboundary settings.

References / Adabiyotlar / Литература:

HSR (LONDON),
HOUGHTON STREET REVIEW JOURNAL
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http://houghtonstreetreview.com/index.php/hsr

1. AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011); Specht v. Netscape Communications Corp., 306 F.3d 17 (2d Cir. 2002); ProCD, Inc. v. Zeidenberg, 86 F.3d 1447 (7th Cir. 1996).
2. CJEU, Case C-415/11, Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa), Judgment of 14 March 2013, ECLI:EU:C:2013:164; CJEU, Joined Cases C-240/98 to C-244/98, Océano Grupo Editorial SA v. Roció Murciano Quintero, Judgment of 27 June 2000.
3. Bürgerliches Gesetzbuch (BGB), §§ 327f–327i (introduced by Act of 25 June 2021). URL: https://www.gesetze-im-internet.de/bgb/
4. Civil Code of the Republic of Uzbekistan. 21 December 1996, No. 256-I. URL: https://lex.uz/docs/111181
5. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts // OJ EC. L 95, 21.4.1993. – P. 29–34.
6. Directive (EU) 2019/770 of 20 May 2019 // OJ EU. L 136, 22.5.2019. – P. 1–27.
7. Federal Trade Commission Act, 15 U.S.C. § 45; Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301–2312. URL: https://www.ftc.gov/legal-library
8. Helberger N., Loos M.B.M., Guibault L., Mak Ch. Digital Content Contracts for Consumers // Journal of Consumer Policy. – 2013. – Vol. 36. – № 1. – P. 37–57.
9. Hesselink M.W. Unfair Terms in Contracts Between Businesses // The Foundations of European Private Law / R. Brownsword et al. (eds.). – Oxford: Hart Publishing, 2011. – P. 341–366.
10. Карапетов А.Г., Савельев А.И. Свобода договора и её пределы: в 2 т. – М.: Статут, 2012. – Т. 2. – 453 с. (Karapetov A.G., Savelyev A.I. Freedom of Contract and its Limits).
11. Loos M.B.M. The Modernization of European Consumer Law: A Pyrrhic Victory? // European Review of Private Law. – 2019. – Vol. 27. – № 1. – P. 113–146.
12. Reich N. General Principles of EU Civil Law. – Cambridge: Intersentia, 2014. – 305 p.
13. Spindler G. Contracts for the Supply of Digital Content // European Review of Contract Law. – 2016. – Vol. 12. – № 3. – P. 183–217.
14. Law of the Republic of Uzbekistan «On the Protection of Consumer Rights», No. 221-I, 26 April 1996. URL: https://lex.uz/docs/91633
15. Law of the Republic of Uzbekistan «On Electronic Commerce», No. URQ-792, 29 September 2022. URL: https://lex.uz/docs/6201943
16. Law of the Republic of Uzbekistan «On Personal Data», No. URQ-547, 2 July 2019. URL: https://lex.uz/docs/4396428
17. Wendehorst C. Consumer Contracts and the Internet of Things // Digital Revolution: Challenges for Contract Law in Practice / R. Schulze, D. Staudenmayer (eds.). – Baden-Baden: Nomos, 2016. – P. 189–223.