

DISPUTE PREVENTION AND RESOLUTION IN ONLINE SHOPPING

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Abstract

In the digital age, with development of e-commerce, consumer spending has dominated the Gross Domestic Product (GDP). The continuously increasing consumer spending has raised the probability of consumer disputes. The traditional litigation used for resolving consumer disputes is often inconvenient, impractical, time-consuming and complex. This paper aims at examining dispute prevention alongside resolutions in online shopping. The article also discusses dispute prevention options that aim at ensuring the overall success of online Business to Consumer (B2C) transactions.

Keywords: Dispute Prevention, Online Consumer, Online Dispute Resoluion, Online Shopping

ONLINE ALIŞVERİŞTE ÇIKABİLECEK ANLAŞMAZLIKLARIN ÖNLENMESİ VE ÇÖZÜMÜ

Öz

Dijital çağda, elektronik ticaretin gelişmesiyle birlikte, tüketici harcamaları Gayri Safi Yurtiçi Hasıla (GSYH) içindeki en yüksek paya sahip olmaya başladı. Sürekli artan tüketici harcamaları, tüketici anlaşmazlıklarının ortaya çıkma olasılığını da artırmıştır. Tüketici uyuşmazlıklarını çözmek için kullanılan geleneksel yollar genellikle etkisiz, zaman alıcı ve karmaşıktır. Bu makale, çevrimiçi alışverişteki uyuşmazlıkların çözümü yanı sıra çevrimiçi tüketici işlemlerinin genel başarısını sağlamayı amaçlayan anlaşmazlık önleme seçeneklerini tartışmaktadır.

Anahtar Kelimeler: Anlaşmazlıkların Önlenmesi, Çevrimiçi Alışveriş, Çevrimiçi Tüketici, Çevrimiçi Uyuşmazlık Çözümü

1. Introduction:

Electronic commerce (e-commerce) is one of the most growing markets in the world. It offers users a vast choice of good and services without limitations of time and geography. Every day, millions of e-commerce transactions are completed in

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the world. In 2020, over 2 billion people bought goods or services online.² In the digital age, with development of e-commerce, consumer spending dominates the Gross Domestic Product (GDP). In the European Union (EU), consumer expenditure accounts for 52.6 % of the total GDP³, while in the United State of America (USA) consumer spending is approximately 70 %⁴ and almost 58% in Turkey⁵.

According to the Turkey Statistical Institute data, in Turkey the internet penetration rate is slightly less than 80% (about 67 million users out of 83 million) and households with access to the Internet is over 90% in 2020.⁶ A recent survey carried out by the Turkish Statistical Institute shows that the percentage of shopping online was slightly less than 40% in Turkey in 2020.⁷ Nevertheless, more than one out of five consumers faced problems when purchasing good and services over the internet in the last 12 months in 2020.⁸ This figure shows that the spread of the internet and the expansion of its use has brought with it many legal problems and regulation requirements, especially in the field of consumer protection.

In Turkey, courts are still considered as the main dispute resolution forum for civil disputes. Evidence of this is the exorbitant number of pending cases (approximately 3.8 million cases), which take an unreasonable time (for commercial disputes is around 547 days, for labour disputes is 555 days) to reach a final judgement.⁹ Regarding consumer disputes, the average duration of a case

² 'Number of Digital Buyers Worldwide from 2014 to 2021' (Statista 2020) <https://www.statista.com/statistics/251666/number-of-digital-buyers-worldwide/> , Access Date: 5.1.2020.

³ Statistics Explained, (Eurostat 2020) 'Household consumption by purpose' https://ec.europa.eu/eurostat/statistics-explained/index.php/Household_consumption_by_purpose , Access Date: 25.12.2020.

⁴ Bureau of Economic Analysis (U.S. Department of Commerce 2020), <https://www.bea.gov/news/2020/personal-consumption-expenditures-state-2019> , Access Date: 25.12.2020.

⁵ Turkish Statistical Institute 'Household Consumption Expenditures', <https://data.tuik.gov.tr/Bulten/Index?p=Quarterly-Gross-Domestic-Product-Quarter-IV:-October-December,-2019-33603> , Access Date: 25.12.2020.

⁶ Turkish Statistical Institute 'Information and Communication Technology (ICT) Usage in Households and by Individuals' (2020) https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1028 , Access Date: 8.1.2021.

⁷ Turkish Statistical Institute 'Information and Communication Technology (ICT) Usage in Households and by Individuals' (2020) https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1028 , Access Date: 8.1.2021.

⁸ Turkish Statistical Institute 'Information and Communication Technology (ICT) Usage in Households and by Individuals' (2020) https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1028 , Access Date: 8.1.2021.

⁹ Republic of Turkey Ministry of Justice Statistics (2019) <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1062020170359HizmeteOzel-2019-baski-ISA.pdf> , Access Date: 25.12.2020.

in a consumer court is 425 days.¹⁰ According to the recent report published by the Directorate General of Consumer Protection and Market Surveillance, 547,207 complaints submitted to the Consumer Arbitration Boards in 2019 (See Table 1).¹¹ In 2019, 55.219 consumer complaints were also submitted to the Directorate General of Consumer Protection and Market Surveillance.¹² Moreover, the Ministry of Trade received 371.601 calls via dialling 175 concerning consumer complaints in 2019.¹³

Areas of Complaints	Number
Consumer loan contracts	56.254
Defective goods	202.335
Defective services	123.903
Subscription agreement	36.296
Housing finance agreement	4.899
Distance contracts on financial Services	4.734
Warranty certificate	8.627
Distance contracts	17.702
After sales services	4.635
Out of office contracts	4.272
Insurance contracts	3.667

¹⁰ Republic of Turkey Ministry of Justice Statistics (2019) <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1062020170359HizmeteOzel-2019-baski-İSA.pdf> , Access Date: 25.12.2020.

¹¹ Republic of Turkey Ministry of Trade Statistics (2019) <https://tuketici.ticaret.gov.tr/yayinlar/istatistikler> , Access Date: 25.12.2020.

¹² Republic of Turkey Ministry of Trade Statistics (2019) <https://tuketici.ticaret.gov.tr/yayinlar/istatistikler> , Access Date: 25.12.2020.

¹³ Republic of Turkey Ministry of Trade Statistics (2019) <https://tuketici.ticaret.gov.tr/yayinlar/istatistikler> , Access Date: 25.12.2020.

Timeshare vacation and Long-Term Vacation Service Agreements	1.007
Hire purchase agreements	1.029
Packet tour contracts	1.002
Prepaid house sales contracts	51
Price tag	200
Introductory and user guide	12
Promotional Implementations in Periodical Broadcasting Organizations	7
Others	76.603
Total	547.235

Table 1: Consumer Complaints going to Consumer Arbitration Board in 2019¹⁴

Types of Problems	Total
Technical failure of website during ordering or payment	20.1
Difficulties in finding information concerning guarantees or other legal rights	13.6
Speed of delivery longer than indicated	46.5
Total cost higher than indicated (unexpected delivery cost or transaction fee)	9.8
Wrong or damaged goods or services delivered	49.1
Problems with fraud faced (misuse credit card or undelivered)	15.0

¹⁴ See Consumer Complaints going to Consumer Arbitration Board in 2019 <https://tuketici.ticaret.gov.tr/yayinlar/istatistikler> , Access Date: 25.12.2020.

Complaints and redress were difficult or no satisfactory response after complaint	19.5
Cross border retailer did not sell the country	7.3
Other	1.8

According to the Turkish Statistical Institute, the three most common problems which consumers in Turkey faced are ‘wrong or damaged goods or services delivered’, ‘speed of delivery longer than indicated’ and ‘technical failure of website during ordering or payment’ (See Table 2).¹⁵

Table 2: Individuals who encountered problems when buying or ordering goods or services over the Internet in the last 12 months and type of problems in 2017¹⁶

To date, many procedural reforms have been adopted and the consumer redress system and other legislative instruments have obtained positive results. However, there are still challenges ahead. In order to provide adequate legal protection for consumers in the modern digitalised world, it is not only necessary to make the traditional litigation system more effective, but also to establish and develop an extra-judicial system through which consumers can resolve disputes at an initial stage. This article critically examines the role of dispute avoidance methods to prevent consumer disputes or resolve disputes through the use of Information and Communication Technology (ICT).

2. Dispute Avoidance Methods

Dispute avoidance refers to the use of ICT to prevent the existence of disputes between parties and the resolution of disputes at an initial stage without requiring from the disputants to be entirely involved in the dispute resolution process.¹⁷ Dispute resolution involves the use of ICT in the settlement of disputes. This paper concentrates on some methods to escape from disputing as they make contribution to a preferable recognition of the potential of ICT for settling disputes. The mechanisms can assist parties to mitigate the need for external resolution bodies, saving time and money for the parties. There are several types of dispute avoidance methods, and those are addressed to below.

¹⁵ Turkish Statistical Institute ‘Information and Communication Technology (ICT) Usage in Households and by Individuals’ (2020) https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1028 , Access Date: 8.1.2021.

¹⁶ Turkish Statistical Institute ‘Information and Communication Technology (ICT) Usage in Households and by Individuals’ (2020) https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1028 ,Access Date: 8.1.2021.

¹⁷ CORTES, Pablo, *Online Dispute Resolution for Consumers in the European Union*, 1st Edition, Routledge, 2011, p. 68.

2.1. Interior Complaint-handling Services

These might also be named internal dispute settlements, in-house customer satisfaction systems, call centres or consumer complaint services. Empirical research shows that interior complaint-handling services are the most common and favoured way to prevent the emergence of B2C disputes.¹⁸ The OECD (The Organisation for Economic Co-operation and Development) has issued the 'Recommendation of the Council on Consumer Protection in E-commerce' in 2016, where it was emphasised the necessity to utilise these internal complaint-handling mechanisms efficiently due to the fact that it is a practical procedure for granting consumers and businesses with fast and low-priced solutions.¹⁹ It is also stated that these mechanisms should be used at an early stage without any cost.²⁰ In this sense, it has been recommended that businesses should establish and develop their customer complaint-handling mechanisms before applying to external Online Dispute Resolution (ODR) -which is a combination of alternative dispute resolution (ADR) with ICT²¹- bodies.²² It is suggested that merchants should provide internal procedures to handle consumer problems.²³ Recently, Article 63 of China E-commerce Law 2019 states that 'e-commerce platform business operators may establish online dispute resolution mechanisms, formulate and display dispute resolution rules, and settle disputes fairly and justly according to the principle of voluntariness.'²⁴

Similar to the requirements of the Australia Corporation Act 2001,²⁵ the Turkish E-commerce Law numbered 6563 and Consumer Protection Law numbered 6502 can make it obligatory for online businesses to establish their internal complaint-handling services. Since 2014, service providers in telecommunication sector have been obliged to have their online consumer complaints systems by the Electronic Communication Law. This provision can be expanded in E-commerce Law and Consumer Protection Law and apply to all online traders. It is worth noting here that, when applying this provision, some significant principles should be set out

¹⁸ European Commission, 'An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings' (17 January 2007), Health and Consumer Protection Directorate-General Directorate B Consumer Affairs Study Centre for Consumer Law, Centre for European Economic Law Katholieke Universiteit Leuven, Belgium, 9.

¹⁹ OECD Recommendation of the Council on Consumer Protection in E-commerce (March 2016).

²⁰ OECD Recommendation of the Council on Consumer Protection in E-commerce (March 2016) 16.

²¹ For more details about ODR see: KAYA, Serkan, **Consumer Dispute Resolution in the Digital Age: Online Dispute Resolution** 1st Edition, Oniki levha, 2020.

²² OECD Recommendation of the Council on Consumer Protection in E-commerce (March 2016) 17.

²³ COTEANU, Cristina, **Cyber Consumer Law and Unfair Trading Practices**, 1st Edition, Routledge, 2017.

²⁴ China E-commerce Law 2019, Article 63.

²⁵ Australia Corporation Act 2001, Section 119.

according to which the systems should be visible and freely accessible, easy to use with fairness and consistency.²⁶

2.2. Escrows and Online Payment Providers

Another conflict avoidance mechanism is the escrow service, which is an alternative e-payment system that requires an independent trusted third-party, keeping funds on behalf of the buyer and the seller to ensure that these funds are issued only when determined states are convinced.²⁷ After the agreement to the terms of the transaction, when the buyer collects and validates the goods or services, the money is transferred to the seller's account. In other words, the seller is not paid until the buyer receives the items and take them in his/her possession. This system assists in building and strengthening fraud protection. Online payment systems, such as PayPal, Shopify, WorldPay, Amazon Pay and Alipay, increase the confidence of the consumers to complete their transactions online. Recently, AliExpress has launched Alipay, which has more than a billion users. Thanks to Alipay, it has been provided that consumers are protected against unauthorised transactions, loss from non-delivery or misrepresentation.²⁸ Alipay Member Protection guarantees that the buyers will receive their items on time and as described. In the event that the buyer or the seller is not satisfied from the transaction, parties will try to negotiate. If they cannot reach an agreement on a satisfactory result, the buyer may submit a claim within 15 days after his order. After the submission of the claim, the parties have 30 days to negotiate. Within these 30 days the buyer may either ask Alibaba.com to resolve the dispute or may continue to negotiate with the seller. When the seller replies, the buyer should respond within 7 days, otherwise the case will be closed. If the parties cannot reach an agreement or do not ask alibaba.com to be involved in the dispute, Alibaba will act as an online arbitrator after the case escalates.²⁹

Similar to eBay, Amazon and Alibaba, Turkish online companies should offer consumers a secure online or mobile payment system to feel confidence when doing their shopping online. Currently some companies have already started to use secure online payment systems in Turkey. For example, 'Gittigidiyor' has started to offer a secure payment system called Sifir Risk (Meaning zero risk) to consumers that money will be transferred to the sellers' account after the buyers

²⁶ These principles are also stated by International Chamber of Commerce, see ICC, 'Putting it Right: Best Practices for Customer Redress in Online Business' (November 2003).

²⁷ CORTES, p. 68; European Commission, 'An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings' (17 January 2007), Health and Consumer Protection Directorate-General Directorate B Consumer Affairs Study Centre for Consumer Law, Centre for European Economic Law Katholieke Universiteit Leuven, Belgium, 53-68.

²⁸ 'Alipay' (Intl.alipay.com, 2020) <https://intl.alipay.com/ihome/user/protect/memberProtect.htm> , Access Date: 25.12.2020.

²⁹ 'Alipay' (Intl.alipay.com, 2020) <https://intl.alipay.com/ihome/user/protect/memberProtect.htm> , Access Date: 25.12.2020.

receive the items.³⁰ It is worth noting that this system is not used much, but its use should be extended and be encouraged.

2.3. Online Shopping Assistants

Another way to avoid disputes is online shopping assistants, which provide information to the consumers about the seller before making a purchase on the internet. Thanks to the online shopping assistants, consumers may check whether a website is secure, or an online trader is reliable or not. Recently the European Consumer Centre has set up a software tool, which is called 'Howard', which researches websites on behalf of the consumers and helps them decide whether to purchase goods or services from it or not.³¹ If a consumer types the name of a website, Howard will study when the website was created and how long it has been running for. Howard also helps consumers avoid fraudulent websites, find trusted e-shops, know their rights when buying on the Internet and see the feedback or the comment from other consumers. Howard is of great help, especially if the site is new, offers low prices or asks for prepayment.

There is no known software tool similar to Howard in Turkey yet. However, there is a private company called Sikayetvar that helps consumers when seeking solutions to their complaints in relation to the companies they shop from. Sikayetvar informs website users about companies before shopping, provides data about the companies and assists in finding satisfactory solutions to complaints so that companies maintain or regain their customers and protect their brand reputation.

It is worth noting here that the establishment of a software tool similar to Howard by the Directorate General of Consumer Protection and Market Surveillance will provide significant benefits for the consumers to avoid fraudulent websites in Turkey.

2.4. Reputation and Feedback Systems in Online Shopping

Dissimilar to physical sales in stores, where consumers can touch, feel and taste the goods or services they purchase, this close touch is absent in e-commerce, and the buyers may not be able to verify the seller's identity. For an online business to grow, hence, it is essential that buyers and sellers of online transactions feel at ease and trust each other, and for that they require having protections that mitigate the obstacles created by asymmetric information. Reputation and feedback systems are one of the more practical ways of increasing the buyers and sellers' confidence by providing them previous users' recommendations, information and experience. It is commonly accepted that eBay's success is not only due to the

³⁰ 'Sıfır Risk Sistemi ile Dokunarak Alışveriş Gittigidiyor'da' (*Gittigidiyor.com*, 2020) <https://www.gittigidiyor.com/sifir-risk-sistemi/>, Access Date: 25.12.2020.

³¹ This tool was created by Denmark in 2007, then it has become accessible in most EU Member States.

integrity and transparency of its auction system, but also the use of a reputation and feedback system which is a distinguished figure employed first by eBay that was later reproduced and adopted in another format by most online traders. After the completion of purchases on eBay, buyers have 60 days to give either a positive, negative, or neutral feedback for the seller of goods or services. If buyers on eBay want to find out the history of the seller's transactions, they can see the feedback score of the seller in the feedback profile page. The buyers can learn how many positive/neutral/negative feedbacks the seller has got in the last month, six months or a year.³²

On other e-commerce companies, feedback is usually formulated through a star rate system (usually between 1 and 5), and the buyers can click on the rate to learn more about the seller and what the most recent ones are, what is the breakdown of feedback, and whether there are any noteworthy complaints. It is critical to highlight here that reviews or feedback may be about the goods or services rather than the seller, such as the product reviews on Amazon.

A recent survey entitled 'Local Consumer Review Survey 2017' showed that 85% of the consumers trust online reviews as much as personal recommendations before purchasing items.³³ It was also indicated that 93% of the consumers look at the reviews to determine if a business is reliable or not and 68% of the consumers read four or more reviews before deciding upon the trustworthiness of a business.³⁴ Similarly, an empirical research conducted by Nosko and Tadelis showed that buyers, who have a better experience on eBay, continue to purchase items on eBay again.³⁵

It may be possible for retailers to obtain unfairly a reputation that they do not have merit in some cases where this practice happened on eBay.³⁶ Similarly Xu et al. demonstrate the growth of a centralised market for fake reputations for retailers on the Alibaba Platform in China.³⁷ Recently, the Taiwan Fair Trade Commission started an investigation in 2013 into allegations that Samsung paid students to

³² While the feedback score is computed by applying all past activities, the per cent positive only seems back at the last one year of a transaction for a seller and except repeat feedback from the same buyer for completed transactions within the same calendar week.

³³ 'Local Consumer Review Survey 2017' (BrightLocal, 2020) <https://www.brightlocal.com/learn/local-consumer-review-survey/#q1>, Access Date: 25.12.2020.

³⁴ 'Local Consumer Review Survey 2017' (BrightLocal, 2020) <https://www.brightlocal.com/learn/local-consumer-review-survey/#q1>, Access Date: 25.12.2020.

³⁵ NOSKO, Chris and TADELIS, Steven, 'The Limits of Reputation in Platform Markets: An Empirical Analysis and Field Experiment' [2015] The National Bureau of Economic Research Working Paper, 2.

³⁶ BROWN Jennifer and MORGAN, John, "Reputation in Online Auctions: The Market for Trust" *California Management Review*, Vol.49, Issue 1, 2006, p. 61.

³⁷ XU, Haitao et al, 'E-commerce reputation manipulation: The emergence of reputation-escalation-as-a-service' (2015), Proceedings of 24th World Wide Web Conference <https://www.eecis.udel.edu/~hnw/paper/www15.pdf>, Access Date: 25.12.2020.

leave negative feedbacks and poor start reviews about HTC phones.³⁸ Samsung was also purportedly paid the students to leave positive feedback and five starts reviews about Samsung phones. After investigation, Samsung was fined \$340,000 for fake reviews and feedbacks.³⁹ Similarly, in 2014, the Italian Competition Authority fined TripAdvisor half a million Euros for fake reviews.⁴⁰ Hence, designers of the platform must be mindful of such practices and take necessary precautions to disclose and punish this kind of activities.

With regards to Turkey, it can be said that some large online companies, such as Hepsiburada, Trendyol, Gittigidiyor, N11 and Amazon, have a review or feedback system, however small and medium-sized companies have not launched such a system for their customers or such system is not used effectively. Gittigidiyor has established a Seller Development and Badge System, which involves the classification of sellers on the basis of an evaluation and rating of the quality of the products and services offered to the buyers.⁴¹ A seller, who has been a member of GittiGidiyor for at least 30 days and has made at least 20 sales transactions in the last 3 months, can benefit from this system. In this system, the products, service quality and sales performance offered by the sellers are evaluated and scored. Sellers are classified as sub-standard, standard, successful and very successful according to their conduct.⁴² At the end of each month, the performance level of all sellers and the successful or unsuccessful elements are indicated by the Seller Service Scorecard.⁴³ In this way, by giving feedback to sellers, they aim to increase their product and service quality to reach the desired result. Sellers, who are successful in service and sales performance, are rewarded with successful and very successful badges which are displayed on their profile page, product pages, search result pages, and next to their products. The advantage of having these budgets is that successful and very successful sellers' products are brought to the

³⁸ 'Samsung Must Pay \$340,000 After Paying People to Write Bad Reviews' (*Mail Online*, 2013) <https://www.dailymail.co.uk/sciencetech/article-2476630/Samsung-ordered-pay-340-000-paid-people-write-negative-online-reviews-HTC-phones.html> , Access Date: 25.12.2020.

³⁹ Samsung Must Pay \$340,000 After Paying People to Write Bad Reviews' (*Mail Online*, 2013) <https://www.dailymail.co.uk/sciencetech/article-2476630/Samsung-ordered-pay-340-000-paid-people-write-negative-online-reviews-HTC-phones.html> , Access Date: 25.12.2020.

⁴⁰ STONE, Jone, 'Tripadvisor Fined Half A Million Euros for Fake Reviews' *Independent*' (2014) <https://www.independent.co.uk/news/world/europe/tripadvisor-fined-half-a-million-euros-for-fake-reviews-9942151.html> , Access Date: 25.12.2020.

⁴¹ Satici Gelisimi ve Rozet Sistemi (Gittigidiyor.com, 2020) <https://www.gittigidiyor.com/satici-bilgi-merkezi/basarili-saticinin-rehberi/satici-gelisimi-ve-rozet-sistemi.html> , Access Date: 25.12.2020.

⁴² Criteria for success are calculated according to the seller's last 3 months performance based on the following criteria: percentage of products shipped in the last three months, percentage of completed sales with no problems, such as refund or return, and percentage of recommendations by other buyers.

⁴³ Satici Gelisimi ve Rozet Sistemi (Gittigidiyor.com, 2020) <https://www.gittigidiyor.com/satici-bilgi-merkezi/basarili-saticinin-rehberi/satici-gelisimi-ve-rozet-sistemi.html> , Access Date: 25.12.2020.

fore and buyers are more likely to make purchases from those sellers with high service quality.

As mentioned above, review and feedback systems are not provided and used effectively in Turkey. Turkish consumers usually submit their feedback, reviews or complaints about the seller or products to consumer complaint websites, such as Sikayetvar⁴⁴, not to sites from which they purchase the products from. Reviews and feedbacks on consumer complaint websites play a major role in whether or not consumers purchase these goods or not. Hence, in order to not only increase consumer confidence but also to have a better reputation, online shopping platforms should establish and develop feedback and rating systems for consumers in Turkey for building trust between sellers and buyers.

2.5. The Establishment of Notice and Action (or Takedown) Procedures

Another measure for reducing or preventing consumer disputes is to encourage online intermediaries to implement notice and takedown (NTD) procedures in response to the notification of illegal content. It is possible that incorporating ODR mechanisms into the NTD system and merging the NTD system with the data breach notification mechanism will most likely increase fairness and efficiency of consumer protection online.⁴⁵ The NTD procedures commence when a user reports a hosting service⁴⁶ about illegal content on the internet and end when an online intermediary takes action by blocking or deleting the alleged illegal content.⁴⁷ The NTD procedures are considered to be necessary measures in the aggression against the sale of counterfeit goods via the internet.⁴⁸ It is also usually applied to battle against other Intellectual Property rights' infringement, defamatory content, terrorism-related content, illegal gambling, child abuse content, misleading advertisements etc.⁴⁹

Online intermediaries may get 'actual knowledge' of illegal activity or information upon the receiving a notification of illegal content. A notification of

⁴⁴ Şikayet Var (2020) <https://www.sikayetvar.com/hakkimizda> , Access Date: 25.12.2020.

⁴⁵ WANG, Faye, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China*, 2nd Edition, Routledge, 2014, p. 423.

⁴⁶ 'Hosting service providers can be identified as one type of online intermediary. Defining the hosting service provider can be questioning as it is a relative term. For instance, the social network provider can be considered as hosting service provider if it owns and runs its server consisting of 'the storage of information provided.' See EC Directive on Electronic Commerce 2000, Article 14.

⁴⁷ European Commission, 'Commission Staff Working Document Impact Assessment: Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on Preventing the Dissemination of Terrorist Content Online' COM (2018) 640 final.

⁴⁸ European Commission, 'Commission Staff Working Document Overview of The Functioning of The Memorandum of Understanding on The Sale of Counterfeit Goods Via the Internet Accompanying Document to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A Balanced IP Enforcement System Responding to Today's Societal Challenges' COM (2017) 707 final.

⁴⁹ European Commission, 'A Clean and Open Internet: Public Consultation on Procedures for Notifying and Acting on Illegal Content Hosted by Online Intermediaries', 4 June 2012.

illegal content is usually expected to be in a designated form to make the online service providers aware of the alleged illegal content.⁵⁰ The Court of Justice of the EU in the case of *L'Oréal and Others v. eBay* stated that if notifications of allegedly illegal activities or information turn out to be inadequately precise or insufficiently substantiated, the online service providers may not be able to recognise the illegality and take action expeditiously to remove or disable access.⁵¹ In the US, in the case of *Hendrickson v. eBay Inc.*, it was ruled that it was inadequate to provide eBay with the movie's title without naming the eBay item number listings.⁵² In other words, information concerning the claimed illegal content should be adequately precise and sufficiently substantiated for online service providers to obtain 'actual knowledge' and 'awareness' of illegal activities.

In practice, some online service providers have put their own technical systems into action for the NTD process. For instance, it may be remarked that eBay has improved its NTD system, named 'VeRO Programme' (Verified Rights Owner) which is a self-regulated, filter program designed to provide IP owners with support in removing or blocking infringing listings from the online marketplace.⁵³ The complainant fills out a Notice of Claimed Infringement (NOCI) form identifying the allegedly infringing listings and infringed works, signs and emails it to eBay.⁵⁴ Amazon also created its NTD procedures to handle rights infringements.⁵⁵ Unlike eBay, Amazon has up separate forms for different rights infringement, such as 'notice and procedure for notifying Amazon of defamatory content' and 'notice and procedure for making claims of right infringements'.⁵⁶

In the EU, the EC Directive on Electronic Commerce stated that once the notified illegal content and its nature of infringement have been confirmed, the online service provider is required to act 'expeditiously'⁵⁷ to unload or disable access to

⁵⁰ WANG, p.429.

⁵¹ Case C-324/09, *L'Oréal and Others v. eBay*, [2011], para. 122.

⁵² *Hendrickson v. eBay Inc.*, [2001], 165 F Supp 2d 1082.

⁵³ 'Vero Programme: Notice of Infringement' (*eBay*, 2020) <https://pages.ebay.co.uk/vero/notice.html>, Access Date: 25.12.2020.

⁵⁴ 'Vero Programme: Notice of Infringement' (*eBay*, 2020) <https://pages.ebay.co.uk/vero/notice.html>, Access Date: 25.12.2020.

⁵⁵ 'Report Infringement' (Amazon, 2020) <https://www.amazon.co.uk/report/infringement>, Access Date: 25.12.2020.

⁵⁶ 'Report Infringement' (Amazon, 2020) <https://www.amazon.co.uk/report/infringement>, Access Date: 25.12.2020.

⁵⁷ There is no clear definition of 'expeditiously' or of the specific actions required so as to 'remove or disable access'. In practice, as the consultation indicated, some service providers may send the notice party a confirmation of receipt when they receive a notice and inform the notice party when the requested action has been taken. This measure bears some similarity to that of the 'without undue delay' principle for data breach notification discussed earlier. For example, it was proposed that the controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken. See European Commission, 'A Clean and Open Internet' p.13; European Commission, Proposal for A Regulation of The European Parliament

information.⁵⁸ In the US, the responsible online intermediates are also expected to reply ‘expeditiously’ to a notification.⁵⁹

Similar to the EU and the US, the Turkish Electronic Commerce Law should regulate ‘notice and takedown’ procedures on the Internet and encourage the online provider services to voluntarily create self-regulated NTD procedures to fight against counterfeit products and misleading advertisements.

3. Conclusion

The paper suggested various mechanisms, such as interior complaint-handling services, escrows and online payment providers, online shopping assistants, reputation and feedback systems and the establishment of notice and action procedures, which aim to minimise disputes arising from online consumer transactions. In preventing disputes, ODR can be used by online traders to prevent complaints to escalate to disputes. Preventing dispute involves consumer empowerment, which involves informing consumers about their rights, duties and how to prevent disputes in the course of consumer protection. If disputes are not prevented and not resolved through online negotiation between the parties without any third party’s participation in the process at an early stage, ODR systems should be offered as an ultimate solution to resolve disputes before escalating to consumer arbitration board or consumer court.

and of The Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), SEC (2012) 73 final; WANG, p, 433.

⁵⁸ EC Directive on Electronic Commerce, Article 14(1).

⁵⁹ Copyright Act Title 17 USC (1976): §512(b)(2)(E) and §512(c)(1)(c).

EK BEYAN

Araştırma ve Yayın Etiği İlkelerine Uygun Hareket Edildiğine Dair Metin

Makalenin tüm süreçlerinde İMHFD araştırma ve yayın etiği ilkelerine uygun olarak hareket edilmiştir.

Çıkar Çatışması Bildirimi

Bu çalışmada herhangi bir potansiyel çıkar çatışması bulunmamaktadır.

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