

Rights and Remedies in the Internet and Mobile World

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Illustration: Fotolia, sdecorel

Shopping in our digital e-commerce world can be simple, quick and easy. Just a click on the mobile phone or on a website and we find a package delivered within days or even hours. The same is true for payment processes at the end of e-commerce transactions.

E-commerce makes shopping easy. But what can you do, as a consumer, if extra charges are billed by the company? What if your payment has been settled but your product does not arrive? What if it cannot be used as intended, or if you just want to return it?

For consumers in Austria, the Austrian consumer laws apply, i.e. the implementation of the EU Consumer Rights Directive. This Directive sets forth strict rules on how to conduct e-commerce business. Shops need to comply with a set of provisions that include those for the general appearance of a website, and obligations regarding the ordering and check-out process (such as a button for consumers to confirm a purchase). EU legislation has strengthened consumers' rights in all EU member states and established favorable terms for delivery and the risk delegation when purchasing goods online.

Explicit confirmation by the consumer

In the check-out process, online shops must disclose the total cost of the product or service, and also all extra fees that may be charged. You do not have to pay any extra charges if they were not disclosed before ordering. Austrian consumer protection law also provides for special rules on fees for payment services (e.g. credit or debit cards) or on charges for telephone hotlines operated by online shops (e.g. premium numbers or service numbers starting with 0900...). Also, the use of pre-ticked boxes on websites for additional services is forbidden by the Austrian rules. Unintended buying of travel insurance or car rental when purchasing a flight ticket should therefore belong to the past.

Right of withdrawal: 14 days to change your mind

One of the most important consumer rights is the right of withdrawal from a purchase. Generally, the period in which you can withdraw from a purchase made online is 14 calendar days. During this time, you can return the

purchased goods if you change your mind, regardless of the reason. If the shop has not fulfilled certain information requirements before the purchase (e.g. about your right of withdrawal), then the period to withdraw is extended by an additional 12 months.

There are no specifics you need to follow when making use of your right to withdraw; you could either inform the shop by using an online form or simply return the goods to the seller. Any written or conclusive way is fine, as long as the intention to withdraw from the contract is presented in a clear manner. Again, you are not obligated to provide the reason why you are withdrawing from the purchase.

Who pays for returning costs?

If shops want you to bear the shipping costs for returning their goods, they have to clearly inform you about this beforehand (i.e. before you have placed your order); otherwise, they need to pay for the return themselves. Shops must also clearly give at least an estimate of the maximum costs of returning bulky goods bought over the internet, so consumers can make an informed choice before deciding whom to buy from (this also applies to mail orders).

How to deal with digital goods?

Shops selling digital content (e.g. online music, video downloads or streams) are obliged to give clear information about the compatibility of their content with hardware and software and any technical protection measures they use (e.g. limiting the right for the consumers to copy the content). While you also have the right to withdraw from purchases of digital content, be aware that this right only applies until the moment the actual download process begins.

'Right To Be Forgotten'?

This is a different topic, but very useful and efficient in case correct but damaging information about your person is circulating in the net and can be found via search engines, e.g. Google. The Court of Justice of the European Union (CJEU) found in the Google Spain case C-131/12 that search engines are data controllers in respect of their search results, that European data protection law applies to their processing of the data of EU citizens, even where they process the relevant data outside the EU, and that a 'right to be forgotten' online applies to outdated and irrelevant data in search results unless there is a public interest in the data remaining available and even where the search results link to lawfully published content.



Illustration: Fotolia, jipe

What does this mean for you?

The mentioned ruling states that you may ask search engines to remove specific search results that include your name, where your privacy rights outweigh the interests in those results appearing publicly. You may therefore request Google, for instance, to delete certain search results. Google will, according to the court ruling, balance your privacy rights as individual with the public's interest to know and the right to distribute information. When evaluating such request, Google will also look at whether the results include outdated information about you, as well as whether there's a public interest in the information.

How does the takedown work?

You will have to fill out the form, e.g. with Google, "Search removal request under data protection law in Europe". It requires you to select one of the 28 EU member states or 4 EEA member states Iceland, Liechtenstein, Norway and Switzerland. You will need a digital copy of a form of identification to complete this form. In particular, you also have to explain why a certain URL is "irrelevant, outdated, or otherwise inappropriate", a wording that goes back to the original court ruling on why results can be removed. Google takes a big step forward in complying with this 'right to be forgotten': Thousands of requests are reviewed on a case-by-case basis, while Google involves an expert advisory committee to take a thorough look at these issues, assessing the individual's right to be forgotten and the public's right to know.

In case your rights are violated or in case you require further information or legal support, we are happy to assist you and give adequate advice.

(See page 12 for contact information).