

Tokushima International Consumer's Forum 2022  
Joint Session with the Consumer Affairs Agency  
Initiatives Towards Consumer Protection Legislation and  
Consumer Independence in a Digital Society

# Trends in EU Consumer Legislation in Light of Digitalization

Antonios Karaiskos  
Associate Professor, Graduate School of Law,  
Kyoto University

October 25, 2022 (Tuesday)



# Profile

- Graduate of Undergraduate Studies, Faculty of Law, Athens University (LL.B.) and completed the master's course of Postgraduate Studies, Faculty of Law, Athens University (LL.M.)
- Former member of the Athens Bar Association
- Completed the doctoral course of the Graduate School of Law, Waseda University (LL.D.)
- Visiting Associate Professor of the Faculty of Law, Thammasat University (Bangkok, Thailand), and the Faculty of Law, Suor Orsola Benincasa University (Naples, Italy)
- Member of the Board of Directors of the Japan Association of Consumer Law and the Kansai Consumers Support Organization, the Information and Communication Law Study Group of the Japanese Ministry of Internal Affairs and Communications, and the Consumer Affairs Agency's Stealth Marketing Committee



# Profile

▪ Fellow of the European Law Institute (Austria), Member of the Scientific Board of Mediterranea International Centre for Human Rights Research (Italy), the Scientific Committee of the European Journal of Privacy Law and Technology (Italy), the International Editorial Committee of the Journal of Liberty and International Affairs (Republic of North Macedonia), and the Editorial Board of the Journal of Law, Market and Innovation (Italy)

## Books:

- ⇒ **Studia Consumer Law** (Yuhikaku Publishing, To be published) (Co-author)
- ⇒ **Unfair Commercial Practices and Private Law Theory: A Comparative Analysis with EU Law** (Horitsubunkasha, 2020)
- ⇒ **Consumer Law: Present and Future** (Horitsubunkasha, 2020) (Co-author)
- ⇒ **Outline and New Developments of Japanese Inheritance Law** (Adam Marszarek, 2021) (Co-author)



# Outline

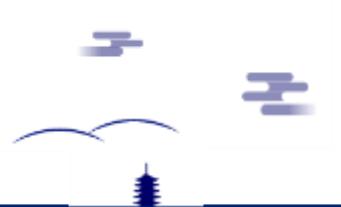
## 1 Challenges in Digitalization and EU Consumer Law



## 2 Addressing Digitalization in EU Consumer Law



## 3 The Future of Digitalization and EU Consumer Law



# 1 Challenges in Digitalization and EU Consumer Law



# Challenges in Digitalization and EU Consumer Law

- Goods and Digital Elements
  - ⇒ Unclear law and consumer remedies applicable to goods containing **digital elements** (e.g., smart watches, smart homes)
    - ✖ The traditional distinction between goods and services as objects of transactions
- Digitalization and Data
  - ⇒ Data as *fuel* for the digital economy
    - ✖ Consumer profiling, processing of consumer **personal data** such as for targeted advertising and personalized pricing



# Challenges in Digitalization and EU Consumer Law

- **Responsibility of Online Platforms**

- ⇒ Presence or absence of contractual relationships

- VS** Actual situation

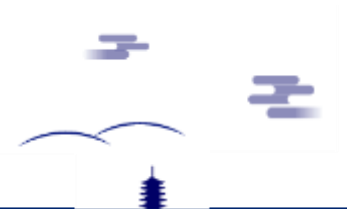
- ⇒ Various business models and scales

- **Legislative** Challenges

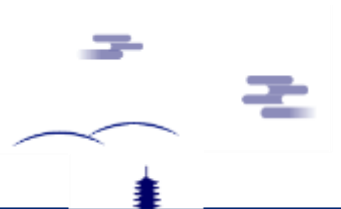
- ⇒ Balance between keeping up with the latest technological advancements and promoting innovation

- ⇒ Consistency with existing legal framework

- ✘ Further development of existing legal framework or deviation from it?



## 2 Addressing Digitalization in EU Consumer Law





# Addressing Digitalization in EU Consumer Law

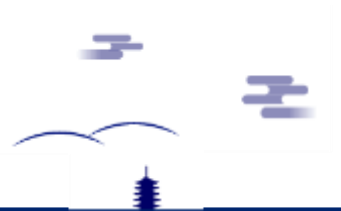
- Digital Contents and Services under **General Law**

⇒ Expanding the scope of application to digital contents and services

- ▪ ▪ ▪ ▪ Unfair Commercial Practices Directive,  
Consumer Rights Directive

⇒ Extension of scope to digital content and services supplied in  
**exchange for the provision of personal data**

- ▪ ▪ ▪ ▪ Consumer Rights Directive



# Addressing Digitalization in EU Consumer Law

- **Specific Regulations** for Digital Contents and Services

- ⇒ Conformity rules for digital contents and services

- ✖ Including updates ▪ ▪ ▪ ▪ ▪ Digital Content Directive

- ⇒ Clarification of remedies consumers have in case of lack of conformity

- ✖ Almost the same as for goods ▪ ▪ ▪ ▪ ▪ Digital Content Directive

- ⇒ Providing personal data to gain access

- ✖ Access for *free*?

- ◇ In this case as well, consumers have the same remedies as if they paid money ▪ ▪ ▪ ▪ ▪ Digital Content Directive



# Addressing Digitalization in EU Consumer Law

- **Specific Regulations** for Digital Contents and Services

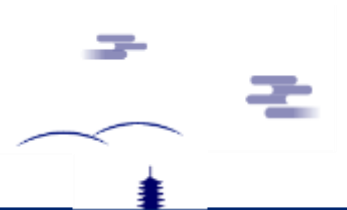
⇒ Data Protection

## ✖ Personal Data

- ◇ Consumer protection regarding processing of personal data
  - ..... General Data Protection Regulation (GDPR)

## ✖ Non-Personal Data

- ◇ Data created through the use of digital content or services
  - Recovery and restrictions (for business operators)
    - ..... Digital Content Directive



# Addressing Digitalization in EU Consumer Law

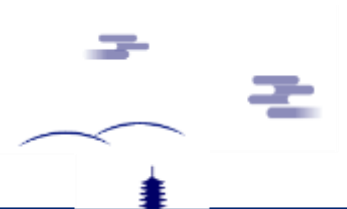
- Merging **physical goods** with **digital elements**

⇒ Goods with digital elements

✖ Digital Products

◇ Lack of conformity of digital elements is treated as **lack of conformity of goods**

..... Sales of Goods Directive

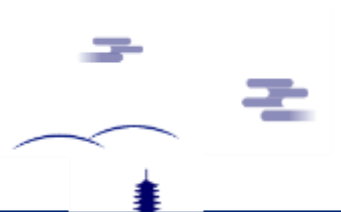


# Addressing Digitalization in EU Consumer Law

- Several Aspects of Personal Data Protection (GDPR)

⇒ Right to object to processing of personal data  
including profiling

⇒ Right not to be subject to a decision based solely on  
automated processing including profiling



# Addressing Digitalization in EU Consumer Law

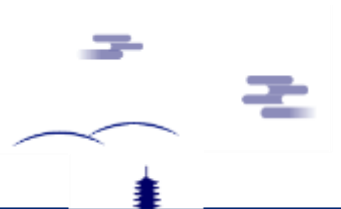
- Responsibility of Online Platforms

⇒ Judgments focused on business model analysis

- ■ ■ ■ ■ A series of judicial decisions by the Court of Justice of the European Union (CJEU)

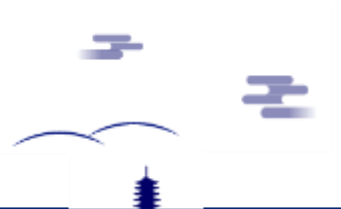
⇒ PF's role-based obligations (liability)

- ■ ■ ■ ■ Digital Services Act and Digital Markets Act



---

### 3 The Future of Digitalization and EU Consumer Law



# Digitalization and EU Consumer Law From Now

- AI and Consumer Protection

- ⇒ AI Usage and (Vulnerable) Consumer Protection

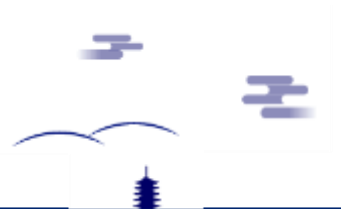
- ■ ■ ■ ■ Proposal for an AI Regulation

- Digitalization and Product Liability

- ⇒ The problem of product defects where the product is neither a tangible thing nor incorporated into a tangible thing

- ■ ■ ■ ■ Review of the Product Liability Directive

- ⇒ Product liability of online platforms





---

Thank you for your attention!

[karaiskos.antonios.7c@kyoto-u.ac.jp](mailto:karaiskos.antonios.7c@kyoto-u.ac.jp)

