

CURRENT STATUS OF CONSUMER PROTECTION IN JAPAN IN THE DIGITAL AGE

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Recent Consumer Issues Related to Digitalization

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- Issues arising from advertising, solicitation, and contract execution on the internet
- Issues arising from transactions on platforms (including cross-border transactions)
- Security issues that accompany digitalization
 - ▣ Individual Number Card information getting linked to other people, unauthorized acquisition of card information through phishing sites, etc.
- Issues arising from reliance on online connections
 - ▣ Spread of fake news
 - ▣ Scams on SNS and dating sites
 - ▣ Easy participation in criminal groups

Scale Expansion of Internet Advertising

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- With the evolution of internet advertising technology,
 - ▣ From FY2021, internet ad spending has exceeded mass media ad spending
 - ▣ From FY2019, complaints received by JARO (Japan Advertising Review Organization) regarding internet ads and representation have exceeded complaints regarding TV ads and representation
- This means that consumers are increasingly exposed to internet advertising

Affiliate Advertising ▪ Stealth Marketing

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- Affiliate Advertising
 - Describing products or services provided by other businesses on a blog, etc., and earning a reward when readers interested in such products or services purchase them or visit the supplier's website
 - The Consumer Affairs Agency has strengthened enforcement of the Act against Unjustifiable Premiums and Misleading Representations, deeming affiliate representations to be representations of the supplier of goods or services
- Stealth Marketing
 - Advertisements and marketing on blogs and other sites that are not recognizable as advertisements
 - In March 2023, the Prime Minister (through the Consumer Affairs Agency) specified stealth marketing as improper representation under Article 5, Item 3 of the Act against Unjustifiable Premiums and Misleading Representations
 - Even if the content is not a misrepresentation of quality or advantage, it is still a misrepresentation by the supplier

Are free services really “free”?

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- The model for consumer protection in consumer transactions is based on the consumer contract as a paid contract (e.g., Specified Commercial Transactions Act, etc.)
 - ▣ Provision of goods, rights, or services by a business
 - ▣ Payment of the price by the consumer
- There are now a growing number of seemingly free consumer services
 - ▣ Online search services, news services, SNS, etc.
 - ▣ In reality, personal information of consumers that creates property value is being provided and collected
- Japan’s consumer law does not address this type of “free transaction”
 - ▣ The EU’s Digital Content Directive (2019), and Consumer Rights Directive (2011) as amended by the Modernization Directive (2019), introduce consumer protection for this type of transaction as well

Targeted Advertising Based on User Information

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- Behavioral targeted advertising and personalized advertising
 - ▣ Collecting user behavior history, such as site browsing history, purchase history, and location information of smartphone users, to analyze their interests and location, and show advertisements that match those interests and location
- Regulation of collection of user information for advertising purposes
 - ▣ In Japan, there have been no legal restrictions on the collection of behavioral history that is not linked to personally identifiable information (personal information), such as names
 - ▣ Partially addressed in the 2020 amendment to the Act on the Protection of Personal Information
 - In cases where the information from the data subject is not personal information to the providing party but can be linked to personal information by the receiving party (information related to personal information, e.g., information collected by third-party cookies), the providing party must confirm that it has obtained consent from the data subject to provide such information to the third party (Article 31 of the same law).
 - ▣ Partially addressed in the 2022 amendment to the Telecommunications Business Act
 - If the user information recorded on the user's PC or smartphone is to be sent to an external third party, the user must be given an opportunity to confirm the information (Article 27-12 of the same law)

Dark Patterns

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- The user interface of an internet browsing screen that leads users to make decisions that they would not have made if they had been given sufficient information and choices
 - ▣ Disguised as a one-time price/fee or free trial, but is a subscription or a recurring contract ← 2021 amendment to the Act on Specified Commercial Transactions
 - ▣ Inducing a rush to purchase by making the user believe that the product is about to run out of stock or that time is about to run out ← partially, 2021 amendment to the Act on Specified Commercial Transactions
 - ▣ Users can easily become paid members or sign up for a contract, but leaving or canceling the contract is extremely troublesome
 - ▣ Making users believe that the content is general content when in fact it is an advertisement ← 2023 Public Notice on the Act against Unjustifiable Premiums and Misleading Representations
 - ▣ When the “Agree” button is pre-selected for the “Agree” or “Reject” part of the page , etc.

Outdated Mail Order Sales Regulations

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- Mail order sales regulations under the Act on Specified Commercial Transactions (at the time of enactment in 1976, the Door-to-Door Sales Act) were premised on paper-based catalog mail order sales at the time of enactment in 1976
 - ▣ Because advertising and the contract conclusion are physically and temporally separated, only the advertising stage is legally regulated
 - ▣ There are a little bit of provisions applicable for online shopping, where advertising, solicitation, and contract conclusion are seamlessly linked
 - ▣ There is no provision for platform providers that link domestic and foreign sellers and service providers with consumers
- The 2021 amendment to establish new obligations for business operators in the case of "specific applications" (mail order applications for which the seller prepares the application screen) to counter fraudulent subscription sales methods remains only a partial measure
- The "Act on the Protection of Consumers Who Use Digital Platforms for Shopping" supplements the Act on Specified Commercial Transactions, but there is no administrative regulation of platform providers, and the focus is on self-regulation

Opinion of the Consumer Commission of the Cabinet Office

- Opinion of the Consumer Commission on the Regulation of Chat-based Solicitation (August 2023)
 - ▣ Sales through solicitation using chat have aspects of unexpectedness, secrecy, inaccurate product information, non-written contracts, and ease of transmission (easy and low-cost solicitation), which are similar to those pointed out in the characteristics in telemarketing sales. The covert nature (the other party cannot be seen) is also seen as a feature.
 - ▣ Chat has characteristics similar to those of telephone calls in that it is interactive and immediate, and the read function increases the sense of urgency on the part of the recipient of the information. It is believed that the norm of reciprocity creates a desire to respond to the other party's persuasion, making it difficult to refuse the other party's invitation and potentially distorting the consumer's decision-making process.
 - ▣ Therefore, consideration is requested to establish the following regulations
 - Clarification of the name of the business, purpose of sale, etc. prior to solicitation
 - Establishment of prohibited acts, etc.
 - Establishment of civil rules (right to cancel, cooling-off period)

Digital Vulnerabilities

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- 3 Types of Consumer Vulnerability
 - ▣ General disparity in information and bargaining power between consumers and businesses (Consumer Contract Act)
 - ▣ Vulnerability of specific demographics/groups
 - Children, elderly, etc.
 - ▣ Vulnerability anyone can develop depending on the situation
 - This vulnerability is also emphasized in recent international trends
- Vulnerabilities of the Digital Society
 - ▣ On one hand, there is the digital divide
 - ▣ On the other, everyone can be vulnerable in different situations
 - Dark patterns are typical
 - ▣ We are given the illusion that we are making decisions of our own free will
 - In reality, we are in some ways manipulated by others
- Issues such as the attention economy (a society in which people's interests have economic value), the echo chamber effect, and filter bubbles at the base of digital vulnerabilities