

IMPLICATIONS OF ELECTRONIC COMMERCE LAW IN ROMANIA

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Abstract

We live in an environment in which e-commerce continues to grow and evolve while state legislators attempt to catch up to the ever-changing technology. Today electronic transactions are more and more frequently supplementing or even entirely replacing traditional channels and business models. Even though, in theory, is easy to apply laws to Internet, in practice is harder. This article synthesizes a number of issues on the application of Romanian legislation on e-commerce and offers practical solutions both to managers and to authorities. The article use quantitative and qualitative methods in order to identify the information provided by catering web sites to their consumers in Romania, compared to United Kingdom. The research results raise question marks about how is written and applied Internet law in Romania and also about the limitations of Romanian electronic commerce legislation. Also it shows how companies fail to comply with applicable legislation and to attract their consumers. Managerial implications related to these findings are provided and future studies are encouraged to be investigated.

Keywords: *electronic commerce law, consumer right, catering website, European Directive*

JEL Classification: K22, K23

1. Introduction

Economic activity is today to a great extent, commercial transactions are more and more frequently developed in the electronic market. For most of us e-commerce is online purchasing in World Wide Web, but this is more than that, in the perspective of European Commission “electronic commerce is about doing business electronically, it is based on the processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of landing, commercial auctions, online sourcing, public procurement, direct consumer marketing and after-sale service; e-commerce is seen as the best way to transcend national borders and enable businesses and consumers to get the most out of the European Single Market”². Definition of e-commerce is not static, but is frequently changing because of the new opportunities offered by the ever changing technologies, thus we face new ways of making business. There are two different variations of e-commerce that are carried out worldwide, known as direct and indirect e-commerce. Direct e-commerce relates to goods or services that can be received immediately, such as software downloads, or mp3 files. Indirect e-commerce refers to goods or services that are purchased online but delivered offline via courier or post. In light of the growth of both these types of online shopping, a series of EC Directives were adopted by the European Union to help protect consumers within their jurisdiction. Electronic commerce has a feature that makes it special - is not always addressed only to a specific consumer from a well-established country boundaries. This significantly complicates things in legal matters. If in member states of the European Union this problem is beginning to be solved, through the European Directives, in other states may arise Legal and tax issues.

The present research approach is dedicated to the Romanian online stores which deliver food, catering and fast food websites. Most of these websites are specialized in only one of these categories. In order to provide their food fast, hot, and with fresh ingredients most of them are specialized in only one type of food. The range of such products became in the last few years wider and wider, and includes categories such: fast food, pizza, Chinese food, Lebanese food, Arabic food, traditional Romanian food, delivery from restaurants etc.

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² European Commission , *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions*, Brussels, 11.01.2012 , SEC(2011)

The major goal pursued by the paper is to evaluate the status of the application of E-commerce Law in Romania, in online food distribution. At the beginning of the 2000 when e-commerce was considered revolutionary not only for retailers but for the way of business was generally conducted many companies have tried to break through this market. Many pioneers have failed in their try to sell food on Internet, but when e-commerce really have had spectacular growth and when consumers begin to have trust in online transactions, when security problems, e-payment methods and authentication were no longer an issue, then, niche market of ordering food online began to truly develop. In Romania this market is still growing, is at its beginning, but in countries like Switzerland, UK, Belgium, and many others this is a great industry with rapid growth and per capita sales ranging between 82 euro/delivery in Switzerland and 23 euro/delivery in Belgium. For Romania this sales are smaller than European average (20euro/delivery), is 10 euro/ delivery.

2. Literature review. European Internet Law Harmonization

There are many worldwide and country specific rules, regulations and laws that govern how websites and in particular ecommerce enabled website should be presented, work and what content should feature on them. Some authors think that “the competition authority may need to step in with more intrusive measures and to offer new forms of protection to the consumer.”³ “In support of the standard consumer protection laws a raft of legislation was enacted”⁴ to protect consumers or buyers making purchases across the internet from web sites. It is important that specific legislation was created as many vendors saw the internet as a way of avoiding day to day regulations and laws. “It is in the benefit of all market members to increase the consumer confidence in online environment, which can be reflected in the amount of e-commerce transactions.”⁵ The EU has been the main force behind these new laws which regulate the on-line selling process. Key to these laws is the fact that a company could not hide behind a website in an attempt to evade their responsibilities. “The pressure for changes in the law tilt the balance of Internet consumer rights”⁶, in particular these now refers to a wide range of protection and freedoms: personal data protection, sensitive data protection, children data protection, freedom of expression, freedom from blocking and filtering, freedom of religion, etc.

In Romania there are a few specific laws which refers only to electronic commerce (Electronic Signature Law, Electronic Commerce Law, Electronic Data Protection, Electronic Contract), but are plenty other legislative provisions which apply also to online environment. Therefore interpretation of legislative framework and legislation are very important tools that any retailer should understand and apply. Another important pillar for e-commerce legislation is the Services Directive, introduced in 2007 which creates a single market for goods and services that can be regarded as another step of the European Union for growth, innovation and legal harmonization. National laws were aligned and harmonized at European Union standards on consumer protection in several important areas, such as information that consumers must receive before they buy something and the right to cancel online purchases. A high degree of harmonization means that consumers can now count on the same rights wherever they shop in the EU. ⁷ The Directive brings mutual recognition between states, bringing down internal market barriers. “Common rules and principles give consumers the same protection against unfair practices and rogue traders whether the buying from their corner shop or from a

³ Svetiev Yane, *How consumer law travels*, “Journal of Consumer Policy”, New York ,7 August 2013, pg. 227

⁴ Claypoole Ted, *Privacy considerations limit geolocation technologies*, “Business Law Today”, Vol. 21, Issue 21, March, 2012, pg. 232

⁵ Gerry Felicity, Berova Natalia, *The rule of online law: treating data like the sale of goods: Lessons for the internet from OECD and CSIG and sacking Google as the regulator*, “Computer Law and Security Review”, No. 30, 2014, pg. 473

⁶ Markou Christiana, *Online penny auctions and the protection of the consumer under EU law*, “Computer Law and Security Review”, No. 30, 2014, pg. 553

⁷ Doru Plesea, Maiorescu Irina, Cirstea Alice, *Consumers` Attitude towards Consumer Protection in the Digital Single Market, as Reflected by European Barometers*, “Amfiteatru Economic”, vol. XVI, No. 36, May, 2014, pg. 564

website.”⁸ “Until the adoption of the unfair commercial practices Directive each Member State had its own, distinct laws on unfair commercial practices, leading to discrepancies between countries.”⁹

Romania has experienced rapid growth in Internet accessibility and e-commerce, therefore “the authorities were forced to adopt these new changes into national legislation, and moreover they were forced to implement, adapt and align to European Aquis”.¹⁰ As a result in 2002 Romania enacted the Electronic Commerce Law which aims to facilitate e-commerce and e-payments and to designate certain related crimes, but e-commerce bring new opportunities as much as new challenges for its consumers and fundamental human rights need to be protected.

In the UK there are three major acts and directives which refer to e-commerce and any enabled website must comply with. These acts and directives are Data Protection Act(1998), Distance Selling Act (2000) and E-commerce Directive (2002). In UK law the EU E-Commerce Directive was put into action in the guise of the E-Commerce Regulations in 2002. The Directive was introduced to clarify and harmonize the rules of online business throughout Europe with the aim of boosting consumer confidence, and adopted by member states.

“The complementary effect produced by electronic commerce integrated with home delivery services creates real opportunities”¹¹. Those opportunities support markets to expand new services, allow satisfying any shopping wish and shorting delivery time for consumers. Some studies have been made in this area concluding that there are real possibilities to develop new strategies but also it is a lack of development for traditional products. One of the basic principles of electronic commerce in Romania is “freedom of operating principle - which means that it is not necessary to get any special permission from a state entity to start in Romania electronic commerce activities.”¹²

3. Case study

In terms of legislation, Electronic Commerce Law No. 365/2002 aims to facilitate e-commerce in Romania and to protect consumer’s rights. This refers to an "information society service". This is defined as "any service normally provided for remuneration at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, at the individual request of a recipient of the service". In my opinion this covers more than just e-commerce businesses, this it is not restricted at buying and selling online but includes also the catering services. The online catering industry is at the edge of e-commerce and traditional commerce. Main characteristics of classic commerce are:

- physical presence of the seller
- sales contract
- delivery
- payment

Whereas in electronic commerce the physical presence of the seller is replaced by the website, the sales contract is made electronically, usually by e-mail, or by accepting the terms and conditions of the site, delivery can be digital for content, services, or digital goods, and payment can be made online.

In the catering industry the physical presence of the seller is mostly required and the delivery cannot be made digital in any case, but the information is available online through the website, ordering can be done online and also the payment can be done online. One of the major impediments is the necessity to be physically close to your costumer, because you can’t deliver food at a great

⁸ Velentzas John., *Unfair commercial practices on marketing- advertising and consumer protection in EU member states*, "Procedia Economics and Finance", no 1, 2012, pg. 413

⁹ Bernitz Uldirch., Weatherill Simon, *The Regulation of Unfair Commercial Practices under EC Directive 2005/29, New rules and New Techniques*, "Hart Publishing", Oxford, 2007, pg. 353

¹⁰ Blythe Stephen, *The legal environment of Romanian e-commerce: a critical analysis and recommendations for improvement*, "Economics, management and finance markets", Vol. 7, no 4, pg. 443

¹¹ Polanski Petra, *Quo vadis information society? Notification of draft rules on e-services in the EU*, "Computer Law and Security Review", no. 30, 2014, pg. 663

¹² *Legea nr. 365/2002 privind comerțul electronic*, Monitorul Oficial, Bucharest, 2002, art. 4, para.. 1

distance. Nevertheless website catering can be classified as electronic commerce, and in this paper this will be its status. More and more restaurants and food suppliers felt the opportunity offered by the Internet and extended their presence online.

In Romania there are plenty of specialized websites in food delivery, especially fast food, which number has grown after 2010. There were more than 250 catering websites in Romania at the beginning of 2014. Usually Romanians order in weekend twice as much as in the rest of the week.

Now that mobile commerce and mobile applications are so widespread, consumers can order from any location, even if they are in the bus or in their own car going home, they are not required any more to be in front of their computer.

The main information monitored the research is related by Service providers, whether involved in e-commerce or not, they should provide the following minimum information, which must be free, easily, directly and permanently accessible:

- name of the service provider must be given somewhere easily accessible on the site. This might differ from the trading name and any such difference should be explained
- the geographic address of the service provider must be given;
- details of the service provider including email address, telephone number so long as it allows rapid contact, direct and effective communication.
- details about any registration number, should be provided; if the business is a member of a trade or similar register available to the public, confirmation of that. For example, if a company, the company's registration number should be given;
- the particulars of the relevant supervisory authority if the services are subject to an authorisation scheme;
- details of any professional body or similar institution with which the service provider is registered, his or her professional title and the Member State where that title has been granted besides reference to the applicable professional rules where the service provider exercises a regulated profession;
- a registration number, tax registration code, if a business has one should be stated – even if the website is not being used for e-commerce transactions;
- prices on the website must be clear and unambiguous and, in particular, state whether prices are inclusive of tax, VAT and delivery costs.

The study aims to observe if these basic requirements are met by catering websites, and also if supplementary information about products is provided. In this regard are studied 50 catering websites (food home delivery) from Romania and 50 catering websites from United Kingdom.

Businesses that fall under the umbrella of the E-Commerce Regulations have to comply with those information, for example providing just a PO Box address is not acceptable. If providing a 'contact us' form, a seller should still provide a contact email address. A large part of the E-Commerce Regulations focuses on the forming of contracts. The regulations state that electronic contracts should be able to be completed online, and that the consumer has the right and the ability to revise any mistakes in their order prior to making their purchase (their conclusion of the contract). Once the order is placed, confirmation of the order and all relevant information including terms and conditions, delivery times and prices should be sent to the consumer without 'undue delay'. Figure no. 1 presents a comparative study between information provided by catering websites both in Romania and in United Kingdom. These information categories are mandatory by law in both countries.

The research results show that online stores do not always comply with the expectations of consumers about the obligations to provide information before purchase. The catering websites provide less information than consumer expect mainly in the following categories: contact information such as: e-mail and fax number, geographic address, name of the service provider. In Romania, E-commerce Law requires that any service provider should contain a link to ANPC- National Authority for Consumer Protection. Only 27% of the websites offer this information.

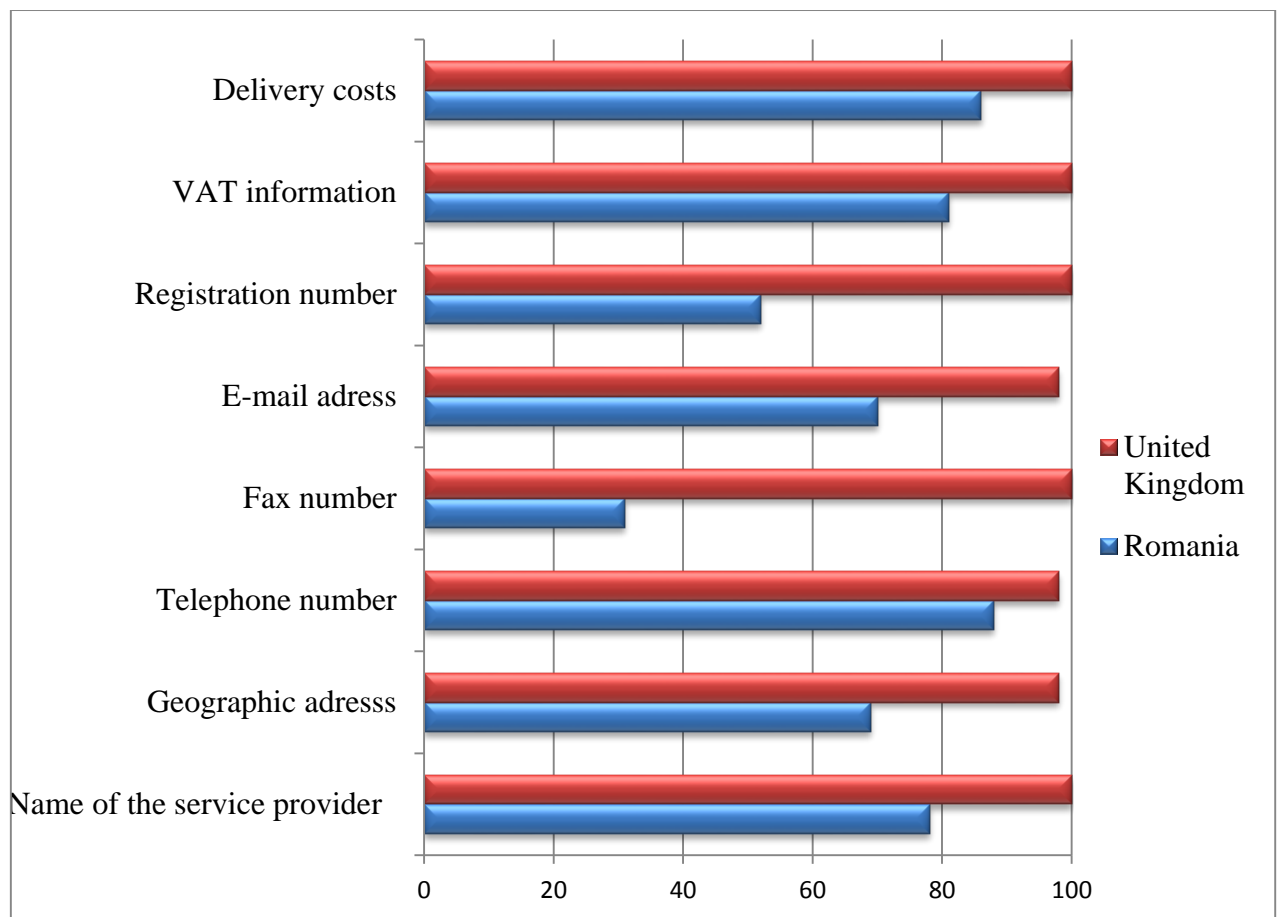


Figure no. 1. Comparative presentation of the information provided by catering webstes from Romania versus United Kingdom (%)

Source: The author

There are also categories of information that are provided by default, which are not subject to any regulation so far, but in the near future will be. This information is strictly related to food industry, like the following: ingredients used, delivery time, payment methods (cash/card), the possibility to pay with debit/credit card at delivery, delivery areas, minimum order, other. In Figure no. 2 are presented these categories. Every information synthetized in figure no 2 is essential for consumer, because he really needs to know if his order will be delivered where he wants, at a specific moment of time, if he has to make an order for which amount of money will receive the product, let alone the ingredients used, and if there are any potential allergens. In this regard, the EU Regulation 1169/2011 on the provision of food information to consumers, requires” information about:

- nutrition information on processed foods (mandatory);
- origin labelling of unprocessed meat from pigs, sheep, goats and poultry (mandatory);
- Highlighting allergens e.g. peanuts or milk in the list of ingredients;
- Requirements on information on allergens also cover non pre-packed foods including those sold in restaurants and cafés.”¹³

¹³ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, available online at: http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=tyxDJxhQclyxlrk wQsXznG7nHBGvNrgfMg4Xn90vFVGtKLGnZPP!-84351661?uri=CELEX:32011R1169

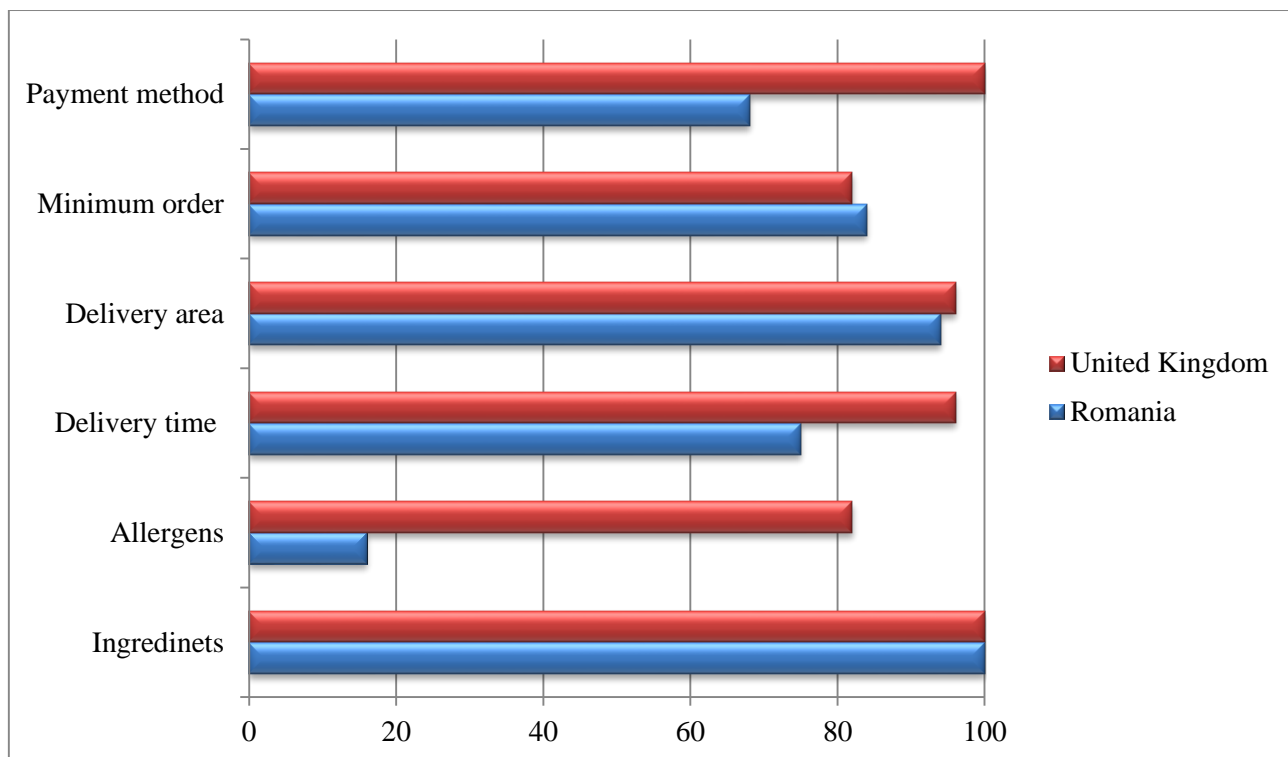


Figure no. 2 Other information provided by catering websites Romania versus United Kingdom (%)

Source: The author

The research shows that in terms of regulation both Romania and UK adopted European Directives regarding services, consumer right and information society, but still Romanian catering websites do not respect those regulations, moreover UK’s catering websites offers a wider quantity of information, (other consumer review, potential allergens, business terms and conditions, possibility to refund or to change the order, information about ingredients and their origin, which is the taste of the food etc.) which is not always mandatory, but helps consumer to make a decision and increase trust in online environment. Romanian websites should also adopt this strategy in order to increase the online sales.

4. Identified issues and recommendations

In order to satisfy consumer needs, websites should also provide information regarding other consumer feedback, a suggestion and reclamation form, they need to make available a way to reimburse consumers money if they are not satisfied by products, or services provided. More than 50% of analyzed Romanian websites did not possessed information about “terms and conditions”, and none of them had any provision regarding the minimum age that consumer must have to place an order.

Feedback

“With the growing availability and popularity of web-based opinion platforms, online product reviews are now an emerging market phenomenon that is playing an increasingly important role in consumer purchase decisions.”¹⁴ Many companies understand that reviews are important to the growth and development of their business and why spending the time to develop the reviews on third party site is so crucial to their success. Any website should allow consumers to post a comment about

¹⁴ Ziqiong Zhang, *The impact of e-word-of-mouth on the online popularity of restaurants: A comparison of consumer reviews and editor reviews*, “International Journal of Hospitality Management”, No. 29, 2010, pg. 694

provided services, like delivery time, if it is usually respected, the taste of food etc. The study revealed that only 10% of the analyzed websites allow consumer to post a feedback or review.

Compensation

According to Consumer Rights Directive¹⁵, the period under which consumers can withdraw from a sales contract is extended to 14 calendar days. This means that consumers can return the goods for whatever reason if they change their minds. What about catering websites? Can consumer return food if he doesn't like it? Can he receive his money back or can the restaurant offer him the possibility to order another meal? Can he receive a coupon or a part of his money back if he doesn't like the food? We have to pay attention that there is a big difference between a traditional restaurant and an online restaurant (human presence to guide you in your choice, the delivery time, also legal provisions, not all legal provisions apply to online environment and vice versa). In this regard there is no legal provision about a catering website. We may assume that the law on consumer rights can apply by extension to such online services, but the authorities should refer to this specific situation.

Cancelation form

Another specific situation is when consumer already pushed the "order" button. Can he withdraw from the contract? None of the Romanian analyzed website had a cancelation form, while more than 50% of UK's analyzed websites had a cancelation form. According to Consumer Rights Directive consumers are also protected and enjoy a right of withdrawal. The withdrawal period starts from the moment when consumer receives the goods. The rules apply to internet, phone and mail order sales, as well as to sales outside shops. The current research shows that only 15 percent of Romanian websites accept to cancel the order, but only within the first 10 minutes, if you call the vendor.

5. Conclusions

In this article the aim is to challenge conservative thinking, by trying to raise issues regarding the problems concerning the application of Electronic Commerce Law, which is generally recognized as having a big impact on consumer protection. During the past decade, Romania has experienced rapid growth in internet accessibility and e-commerce, and as a Member State of European Union, Romania has harmonized the internal legislation to European level. The most important legal provisions regarding information society are that the seller also has to provide details about its name, contact details such as: address, e-mail, telephone number, also about membership with any society, professional body that they belong to, or other publicly available register that they appear on. If the company is subject to an accreditation or authorization scheme, then details purporting to that supervisory body must also be provided. The company should provide its registration number. The E-Commerce Regulations are very clear on the pricing policy that all relevant companies and service providers should adopt. The basis of the regulations states that any prices referred to on the website should state whether they include 'hidden' charges such as VAT and delivery costs.

Since searching has become second nature to most of us, the possibility to see other company reviews has become a part of consumer making decision to buy. Essentially, the importance of reviews is growing and growing. While it is imperative for companies to understand their value, it is even more important to begin (or continue) to build online review portfolio.

The article helps Internet users to understand and exercise their rights," the right to be informed is an integral part of consumer rights and has a real potential to become an area of study for researchers and practitioners"¹⁶

¹⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

¹⁶ Balan Carmen, *Consumer right to information before purchase: research on the Romanian online stores for technical consumer goods*, "Amfiteatru Economic", vol. XVI, no 36, May, 2014, pg. 563

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