

Table of Articles

PART I

Consumers and Consumer Protection in the Information Society

1.	The Consumer in the Globalized Information Society — The Impact of the International Organizations	
	<i>David Harland</i>	3
1.	Globalization	3
2.	The Information Society and Electronic Commerce	4
3.	The Role of Law in Regulating Electronic Commerce	7
4.	The Diminished Effectiveness of National Regulations?	10
5.	The Need for a New Approach Internationally to Consumer Protection	12
6.	The United Nations Guidelines for Consumer Protection	15
7.	The International Organizations	18
8.	Co-Operation Among Governmental Agencies	25
9.	Non-Government Organizations	26
10.	Conclusion	29
2.	The Influence of Social Reforms and The Information Society on Consumers in a Transition Economy	
	<i>Heiki Pisuke</i>	31
1.	Introduction	31
2.	Reasons for the Absence of Consumer Policy and Consumer Law in the Former Soviet Union	32
3.	The Transition Period in Economic and Social Relations	33
4.	The Role of Consumer Law in the Legal System	35
5.	The Influence of Information Society on Consumers	37
6.	Intellectual Property and Consumers	39
7.	Conclusion	44
3.	Consumer Protection in the Era of Informational Capitalism	
	<i>Iain Ramsay</i>	45
1.	Informational Capitalism	45
2.	Informational Capitalism and the Consumer	51
	2.1 Inequality, Social Exclusion and Consumer Protection	51

2.1.1 Inclusion/Exclusion and the Panoptic Sort	53
2.2 Insecurity and Risk	56
2.3 Models of Consumer Policy Making: Beyond the Rational and the Vulnerable Consumer	58
2.4 New Normative Paradigms for Information in Consumer Policy?	60
2.5 Identity, Community and Consumerism	62
3. Conclusion	64
 4. The Future of Consumer Education and Consumer Information in a Market Economy <i>Udo Reifner</i>	67
 1. Consumer Information in the 21st Century	67
1.1 Information on Demand — The IFF Service System for Consumer Organizations	68
1.2 The Retreat of Consumer Advice Organizations	70
1.3 Consumer Information as a Commodity	71
2. Needs and Demand for Consumer Information in a Free Market Economy ...	72
2.1 Needs and Demand	72
2.2 Deficiencies in the Allocation of Resources to Needs	73
3. Consumer Information for Sale	74
3.1 Public Consumer Protection	75
3.2 Social Consumer Protection	76
3.3 Collective Consumer Protection	77
4. Conclusion	79

Part II

Electronic Marketing

5. Electronic Marketing from a Consumer Law Perspective <i>Per Eklund</i>	83
1. Background	83
2. Characteristics of the New Technique in the Context of Marketing, etc.	84
3. The Relevant Market	85
4. Cross-Border Malpractice Off-Line	86
5. Cross-Border Infringements On-Line	88
6. Some Specific Issues to be Addressed in the Internet Marketing Environment	89
7. An International Approach	90

7.1	The OECD — The Organization for Economic Co-Operation and Development	90
7.2	The European Union	91
7.3	Other Initiatives	91
8.	Applicable Law and Jurisdiction	92
8.1	The OECD	92
8.2	The European Union	93
9.	Conclusions	100

Part III

Electronic Commerce

6.	The Country of Origin Principle in E-Commerce Viewed from a Greek Law Perspective <i>Elisa Alexandridou</i>	103
1.	Introduction	103
2.	The Provisions of Greek Legislation Which Include More Stringent Regulations Than the Minimum Directives	106
2.1	Regulations on Distance Selling	106
2.2	The Regulations on Unfair Terms in Consumer Contracts	107
2.3	Rules on Distance Marketing of Financial Services	108
2.4	Regulations on Product Liability	108
2.5	Regulations on the Liability of the Service Provider	109
2.6	Regulations on the Obligations of the Organizer of Package Travel	110
2.7	Regulations on Advertising	110
3.	Non-Harmonized Provisions in Greek Legislation	112
3.1	Provisions on the Obligations of the Seller of Durable Consumer Products	112
3.2	Provisions on Direct Advertising	113
3.3	Rules on Promotional Marketing Practices	113
3.4	Provisions on Discounts	115
3.4.1	Seasonal Sales	115
3.4.2	Special Offers	115
3.4.3	Announcements of Business Liquidations	115
3.5	The Use of Commercial Designations to Cause Confusion	115
4.	Final Remarks	116

7.	The Consumer in Electronic Commerce: Beyond Confidence	
	<i>Benoît De Nayer</i>	117
1.	Introduction	117
2.	The Characteristics of E-Commerce and Their Impact on the Consumer	119
	2.1 Mediatization	119
	2.2 Acceleration and Virtualization	119
	2.3 Internationalization	121
	2.4 Parcelization	121
	2.5 Transparency	122
3.	Beyond Confidence: the Next Steps	123
	3.1 Consumer Education and Information	123
	3.2 Consumer Participation in Decision-Making Processes	124
	3.3 Consumer Redress, Access to Justice	124
4.	Conclusion	124
8.	EU Internet and Electronic Commerce Law: Consumers and Non-Consumers	
	<i>John Dickie</i>	127
1.	A Community Law Focus	127
2.	Electronic Commerce as a Valid Subject for Discrete Legal Analysis?	129
3.	Foci Within the Law	130
4.	Future Directions	132
9.	Access to Justice in the Information Society	
	<i>Judit Fazekas</i>	137
1.	Introduction — Consumer Protection and Recent Advances in Information Technology	137
2.	Categories of Access to Justice	138
	2.1 National Level	138
	2.2 Community Level	138
3.	Commercial Use of the Internet	140
4.	Special Obligations and Remedies with Respect to Distance Selling	141
5.	Crimes Related to Computer Networks	143
6.	The Protection of Privacy	144
7.	Conclusions	144

10.	The Information Duty in Connection with Consumer Sales over the Net	
	<i>Lena Olsen</i>	147
1.	Introduction	147
2.	The Present Legal Situation in Sweden	148
	2.1 General Aspects Concerning Electronic Sales and the Duty to Provide Information	148
	2.2 Information Duties Remedied by Way of Punishments, Administrative Fines, Orders of Prohibition/Information	149
	2.2.1 Generally About the Legislation and Its Applicability	149
	2.2.2 Information Requirements as to the Relevant Seller	150
	2.2.3 Information About the Relevant Goods	151
	2.2.4 Information as to the Price and Time for Delivery	151
	2.2.5 Information as to Other Contract Terms	152
	2.3 The Contractual Liability of the Traders	152
	2.3.1 Legislation	152
	2.3.2 Information Requirements as to the Relevant Seller	153
	2.3.3 Information About the Relevant Goods	153
	2.3.4 The Price and Time for Delivery	154
	2.3.5 Other Contract Clauses	154
	2.4 The Liability of the Traders to Pay Non-Contractual Damages	155
3.	Recent and Pending EC Legislation	156
	3.1 The Relevant Legislation	156
	3.2 The Distance Contracts Directive (97/7/EC)	156
	3.3 The Directive on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees (99/44/EC)	158
	3.4 The Proposal for a Directive on Certain Legal Aspects of Electronic Commerce in the Internal Market	158
	3.5 Other Possible Directives	159
4.	Conclusions	160
11.	Consumerism and Citizenship in the Information Society — The Case of Electronic Contracting	
	<i>Norbert Reich</i>	163
1.	Preliminary Remarks	163
2.	Aspects of Indeterminacy in Electronic Contracting	165
	2.1 The Traditional Model of Contracting	165
	2.2 The Importance of Place, Persons and Time in Conflict of Law Rules ..	166
	2.3 The Indeterminacy of Cross-Border Contracting via Electronic Commerce	167

3.	The Conflict of Law Rules Applicable to Cross-Border Electronic Contracting	169
3.1	The Applicability of the Law of the Supplier	169
3.2	Choice of Law	169
3.3	The Protection of the Consumer Through Conflict of Law Rules	170
3.4	New Trends in Conflict of Law Discussions	171
3.5	Cross-Border Litigation in the Context of the Brussels Convention	172
3.6	Other Criteria Determining Applicable Law	173
3.7	Some Remarks on the Problems Incurred by Using Payment Cards	174
4.	EC Rules on Distance Selling	174
4.1	Different EC Initiatives	174
4.2	Some Remarks Relating to the Distance Selling Directive	175
4.3	The Amended Proposal of an EC Directive on Distance Marketing of Financial Services	175
5.	The Proposed EC Directive on Electronic Commerce	176
6.	The Preferred Solution: EC Law as the Mandatory Law of the Forum	177
12.	Co-Regulating the Internet	
	<i>John Rothchild</i>	179
1.	Introduction	179
2.	The Role of Governments in Controlling Deceptive Marketing Practices in Electronic Commerce	182
2.1	Market Forces and Government Regulation	183
2.2	Four Dogmas of Cyberspace Utopianism: the Argument Against the Government Regulation of Electronic Commerce	190
2.3	The Dogmas Dissected: Cyberspace Utopianism Has No Clothes	192
2.3.1	The Special Characteristics of On-Line Communications Do Not Undermine the Legitimacy of Territorially-Based Jurisdiction	193
2.3.2	The Argument from Futility Refutes Only One, Particularly Poor, Enforcement Approach	196
2.3.3	The Problem of Overlapping Jurisdiction Can Be Addressed Through Approaches Less Drastic Than Abdication	197
2.3.4	Deceptive Marketing Practices Are Not Likely to be Adequately Controlled by Market Forces Alone	197
3.	Letting On-Line Commerce Grow	199
4.	Conclusion	202

13. Electronic Commerce and Travel Law

<i>Klaus Tonner</i>	205
1. Introduction	205
2. General Problems	206
2.1 Conclusion of Contract	207
2.2 Jurisdiction	207
2.3 Conflict of Laws	208
3. Airlines	209
3.1 Economic Background	209
3.2 From Computer Reservation Systems to the Internet	209
3.3 Jurisdiction According to the Warsaw Convention	212
4. Package Tours	213
4.1 Economic Background	213
4.2 Distribution: From Travel Agent to Internet	214
4.3 The Package Tours Directive	214
5. Travel Agents	216
6. Conclusion	218

Part IV**Financial Services****14. Changing Technology and Consumer Credit Regulation**

<i>Elizabeth V. Lanyon</i>	221
1. Introduction	221
2. Hybrid Credit Contracts	222
2.1 Introduction	222
2.2 Features of Credit Contracts	222
2.2.1 The Combination of Fixed and Variable Rates	222
2.2.2 Home Loans and Personal Loans	223
2.2.3 Complex Purchase Money Loans	224
2.2.4 Combined Debit and Credit Facilities	226
2.2.5 Combined Credit and Other Facilities	227
2.3 The Australian Experiment	228
2.3.1 Consumer Credit Code	228
2.3.1.1 The Removal of Legislative Distinctions Between Types of Credit Contract	228
2.3.1.2 The Removal of Ceilings and Floors	230

2.3.1.3 Pricing Flexibility	230
2.3.1.4 The Australian Approach to the Regulation of Credit Providers	230
2.3.2 Issues Arising Under the Consumer Credit Code	231
2.3.2.1 Introduction	231
2.3.2.2 The Generic Nature of Disclosure Requirements Leads to Indeterminacy	231
2.3.2.3 Disclosure Fails to Achieve the Truth in Lending Objective	232
2.3.2.4 Information Overload for Consumers	232
2.3.2.5 Fails to Cope Satisfactorily With Debit and Credit Arrangements	233
2.3.3 Financial Services Bill: Another Model?	234
3. Electronic Communication	235
3.1 Introduction	235
3.2 The Application of Electronic Communication to Consumer Credit	237
3.2.1 Product Information	237
3.2.2 Transacting Electronically	238
3.2.2.1 Legal Infrastructure Generally	238
3.2.2.2 The Application of General Infrastructure to Consumer Credit	239
3.2.2.3 Are Additional Safeguards Required?	240
3.2.3 Special Rules for Real Property Mortgages?	244
4. Conclusion	245
 15. Banking in the Informations Society: a Brazilian Vision <i>Cláudia Lima Marques</i>	 247
1. Introduction	247
2. Technological Innovation in Banking Services and Consumer Protection in Brazil	249
2.1 The Consumer of Banking Services	249
2.1.1 Banking Services: Falling Under the CDC Provisions	249
2.1.2 The Prejudice Against Low Income Consumers and Technological Advances	251
2.2 Electronic Advantages in Banking Services	254
2.2.1 Automated Teller Machines, Prices and Brazilian Consumers	254
2.2.2 Homes Banking, Internet Banking, Credit Cards and Other Banking Cards	255
3. Contractual Relationships Between Banks and Consumers Today: Consumer Protection in Financial Services in Brazil	257

3.1	Special Contractual Duties of Banks: Consumers' Rights During Negotiation and After Payment	257
3.1.1	Information Duties: a Protected Choice of Financial Service	257
3.1.2	Duties of Co-Operation and Care: a Protection of Dignity	258
3.2	Banks, Contractual Liability: Consumer Rights During the Contract	259
3.2.1	The Interpretation of Consumer Contracts and Adequate Performance	259
3.2.2	The Protection Against Unfair Contract Terms and Practices in Financial Services	260
16.	The Protection of Privacy: A Consumer Perspective	
	<i>Nevenko Misita</i>	263
1.	Introduction	263
1.1	Issues to Be Covered in This Chapter	265
2.	International Framework	266
3.	The Community Secondary Law Response	268
3.1	Data Protection Directive	268
3.1.1	Scope	269
3.1.2	The Applicable Law	270
3.1.3	The Main Requirements	270
3.1.4	The Rights of the Consumer	274
3.1.5	Remedies and Compensation	277
3.1.6	The Transfer of Personal Data to Third Countries	278
3.1.7	Supervision	280
3.1.8	Implementation	280
3.2	The Telecom Data Directive	281
3.2.1	The Main Requirements	282
4.	Certain Issues Revisited	286
4.1	Privacy as a Consumer Policy/Protection Issue	286
4.1.1	A Right's Point	287
4.1.2	A Quid Pro Quo Point	288
4.2	As to (De)regulation	289
5.	Concluding Remarks	291

Part V**New Responsibilities****17. The Millennium Bug and Product Liability***Geraint G. Howells* 295

1. Introduction 295
2. Awareness of the Millennium Bug 296
3. Time Limits and Product Liability 298
4. Defectiveness 299
5. Development Risks Defence 301
6. Who to Sue? 302
7. Conclusion 303

Part VI**Access and Intellectual Property****18. Access to the Information of the Public Sector: Problems with Intellectual Property and Public Registers Regarding Safeguards for Consumer***Sergio Cámara-Lapuente* 307

1. Introduction. The Green Paper on Public Sector Information in the Information Society 307
2. The Right of Access of the Consumer-Citizen and the Commercialization of Public Sector Information 309
 - 2.1 New Perspectives in Comparative Law 309
 - 2.2 The Intellectual Property of Official Texts and Documents and Their Exploitation 311
 - 2.3 Other Problems with Intellectual Property 316
3. Public Registers: Access and Commercial Exploitation of Their Contents. The Property Register 321
 - 3.1 The Limits of Formal Publicity: The Fight Against the 'Private Parallel Registers' to the Property Register 323
 - 3.2 The Property Register as a Protected Database Under the New 'Sui Generis' Right of the Directive of 11 March 1996 326

19. Intellectual Property Confronts Counterfeiting in Africa, Protecting Innovators and Consumers in Cybersociety	
<i>Bernard Sihanya</i>	329
1. Contextualizing Counterfeit Trade in Africa	329
2. The Nature and Extent of Counterfeit Trade in Africa	330
2.1 The Definition and Nature of Counterfeit Trade	330
2.2 The Impact of Counterfeit Trade	337
2.3 Robin Hood's Defenders	340
3. Anti-Counterfeiting Policy: Africa in Context	341
3.1 Transnational Anti-Counterfeiting Regimes	342
3.2 (Sub)regional and National Anti-Counterfeiting Regimes in Africa	347
4. Anti-Counterfeiting Law and Enforcement in Africa	348
4.1 Criminal Law Confronts Counterfeit Trade in Africa	348
4.2 The Civil Law of Counterfeiting	350
4.3 Intellectual Property Confronts Counterfeit Trade in Africa	351
4.3.1 Patent Law	352
4.3.2 Copyright Law	354
4.3.3 Trademarks and Related Doctrines	356
4.4 Sui Generis Anti-Counterfeiting Regimes in Africa	360
5. Towards Confronting Counterfeit Trade in Africa	361
5.1 Some Reforms of the Transnational Policy on IP and Counterfeiting ...	362
5.2 Reforming IP and the Anti-Counterfeiting Law and Enforcement in Africa	363

Part VII

Consumers and the Media

20. The Consumer's Right to Knowledge and the Press	
<i>Thomas Wilhelmsson</i>	367
1. The Media as Consumer Products	367
2. Selling a Newspaper as a Sale of Consumer Goods	369
3. Freedom of Speech and Its Counter-Principle	371
4. Hidden Marketing	375
5. Product Liability	377
6. Consumer Sales Remedies	379
7. Does Consumer Law Matter?	383