

Where We Are Now

The Internet has empowered consumers in new and exciting ways. It has opened more efficient avenues to buy just about anything. Want proof? Simply pull out your smartphone, swipe your finger across the screen a few times, and presto—your collector's edition Notorious RBG (Ruth Bader Ginsburg) bobblehead is on its way from China. Unfortunately, however, the Internet has not yet delivered on its promise to fundamentally improve consumer protection.

At the dawn of the Internet age, many futurists predicted that technology would shift the balance of power between consumers and merchants in favor of consumers. In his seminal book *The Cluetrain Manifesto* (written in 1999 with Rick Levine, David Weinberger, and Christopher Locke), Doc Searls predicted that technology would usher in a golden age of consumer choice, where buyers would use the wide range of options provided to them by frictionless e-commerce to play merchants off each other, ensuring that consumers got the best deals and the widest selection in every online exchange.

That vision is still a work in progress. In some ways, the Internet has achieved the opposite, ushering in a new age of consumer confusion and disempowerment. Consumers have access to more information than in the past, but many buyers still have a hard time determining which merchants are the most trustworthy. It is also still too hard for consumers to learn how to resolve transaction problems when they arise. Some unscrupulous merchants and marketplaces have leveraged the wide-open, wild-west nature of the Internet to sow even more fear, uncertainty, and doubt among consumers, further preventing them from holding bad merchants accountable. A new breed of fraudster has emerged as well, savvy in the ways of the Internet and skilled at covering their online tracks. In retrospect, the new reach and choice provided by the Internet have unquestionably expanded purchasing options for consumers, but utopian predictions about a golden age of consumer empowerment remain unrealized.

Almost every industry has been reinvented by the expansion of information and communications technology, from medicine to finance to entertainment. However, the redress processes made available to most consumers have not

evolved in a similar way. Most resolution options available to consumers resemble those available decades ago: a toll-free number, a complaint form, or an unsatisfying online chat process. For most consumers in the modern era, none of those options sound very appealing. At the same time, small claims court is often unavailable or unsatisfactory for many claims due to jurisdictional limits, long time frames, and other complexities.

Making It Tough for Consumers to Get Solutions

When you last tried to call customer service regarding a complaint, how long were you on hold? Hold times are getting longer—sometimes even as long as an hour. Indeed, reaching a live representative is becoming increasingly difficult. It is therefore no surprise that consumers lament the lack of meaningful access to customer assistance with respect to their purchases.

In an effort to reduce contacts into their customer support centers, some companies are quietly restricting remedies for their consumers. Studies have shown that most consumers are unlikely to read their contracts, let alone understand what the contracts really say. In fact, most consumers ignore contract terms when signing up for a site or service, even when the website requires concrete action, such as clicking a link on a website or scrolling through the terms all the way to the end. Contract terms in e-contracts may go right over the heads of most consumers. They are filled with legalese and are often hidden on obscure web pages. It would take enormous patience and intelligence for the average consumer to read and understand the terms in many common contracts.

At the same time, consumers often assume that they will not really be required to abide by the terms of their contracts. For example, they may figure that companies will be honorable and provide remedies if anything goes wrong. They ignore “fine print” exclusions in the terms and conditions. Consumers also may suffer from overoptimism, cognitive dissonance, and confirmation bias with respect to their purchases. At the time of purchase, most consumers optimistically presume there will not be a problem, so they do not worry about checking out terms or eventual remedies when they click the “accept” box to complete a purchase. Likewise, they want to believe that they have made wise purchasing decisions; thus, when problems do arise, consumers often ignore them in hopes of confirming their wisdom.

As consumers, we also suffer from inertia. We avoid action when signing up for new websites, which prevents us from proactively reading or seeking to change contract terms before we agree. That inertia also hinders consumers from pursuing a claim if it would require them to hire an attorney or to file a claim in court or with an arbitration association. The speed of the Internet and the immediacy of searching, ordering, and receiving items makes us pretty lazy when it comes to

reading legal language. Furthermore, pursuing the face-to-face resolution procedures specified in many online terms and conditions requires sophistication and resources that many consumers do not possess. Most consumers do not have the time, money, or education to pursue formal arbitrations or file cases in small claims courts. Indeed, most consumers do not know what arbitration is, much less realize that their contract requires arbitration for any claims that arise.

Merchants also know that consumers very rarely take complaints to the consumer protection agencies, federal regulators, or third parties such as a local chamber of commerce or the Better Business Bureau (BBB). Anger may fuel a consumer's initial e-mail or phone call regarding a purchase problem, but consumers generally do not follow up after receiving no reply or when facing long hold times with customer service. Customer service representatives may also lack authority to provide remedies or make it very stressful for consumers to obtain any redress. All merchants have to do is provide a little procedural complexity and the vast majority of consumers drop the issue.

The Squeaky Wheel System

In the current system, only consumers who are sufficiently motivated to make a lot of noise or pursue options that other consumers would dismiss as too time consuming and frustrating get redress. This creates the squeaky wheel system (SWS) in business-to-consumer (B2C) exchanges. This SWS concept encompasses the notion that the “squeaky wheels” (consumers who are proactive in pursuing their needs and complaints) are most likely to get the assistance, remedies, and other benefits they seek. Meanwhile, those who remain silent because they lack the knowledge, experience, or resources to artfully and actively pursue their interests usually do not receive the same benefits.

Merchants appease the squeaky wheels in order to prevent negative publicity and avoid giving remedies to the majority. They also may point to the resolutions provided to this small number of squeaky wheels as evidence that problems are being resolved. Resolutions are rationed to the customers who make the most noise, while consumers with the least time and resources to learn about, understand, or pursue their claims are left without remedies. Some merchants use the SWS to waylay lawsuits and other public complaints, as well as to keep the majority of consumers unaware of their potential rights. This enables these unscrupulous merchants to save remedy costs and keep claims out of the public eye.

Defenders of the theory that the current market structure promotes efficiency and fairness rely on the power of an informed minority. They argue that, regardless of whether most consumers bargain for efficient contract terms or improved company practices, this informed minority of squeaky wheels will speak for the uninformed masses. The loud voices will pressure companies to improve their contracts and practices or face the risk of lawsuits and negative publicity. However, in-depth studies of this squeaky wheel phenomenon cast doubt on the effectiveness