

# The Establishment of Consumer Regret Right from the Perspective of Economic Law

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## Abstract

With the continuous development of the Internet and big data, e-commerce has become a new business model. The rapid development of online shopping methods enables consumers to quickly and easily complete their purchases without face-to-face contact with merchants. But consumers may have the demand for returns after purchase, from the theory of regret in e-commerce definition discussion, in China the establishment of regret right is necessary. However, the right to regret in the establishment process has also encountered a series of problems. Based on the basic law analysis of consumers' right to regret, this paper analyzes the shortcomings of the current legislation and puts forward suggestions for perfection, on the basis of basic law analysis of consumers' right to regret, and analyzes the shortcomings of the current legislation and puts forward suggestions for perfection, so as to achieve the ideal of substantive fairness of economic law.

## Keywords

Consumer Regret Rights; Economic Law; E-Commerce.

## 1. The Concept of the Right of Consumers to Regret is Explained

### 1.1. The Origin of the System of Consumer Regret Right in E-Commerce

Consumer regret right originated in the United States, also known as the consumer cooling-off period system, China has no clear norms of expression, experts and scholars and legislators, etc. usually use "right to regret", "right of remorse" to call. It refers to the right to unilaterally and unconditionally cancel the contract of sale and purchase and return the purchased goods without having to bear the liability for breach of contract within a certain period of time after the establishment of the contract of sale and purchase of goods. 201The system is referred to as the "no reason return system" in a legal statement issued by the Standing Committee of the National People's Congress in 2001.

### 1.2. The Nature of the System of Consumer Regret in E-Commerce

Regarding the nature of the system of the right of regret, since the concept was put forward, the legal circle put forward various theory, dialectics, right of formation, right of claim, etc., but more inclined to form right theory. That is, the right holder in the meaning of their own side can make the legal relationship have a certain effect of the right. What kind of right is the right to form, the academic view is different, there are two main mainstream views of the right to revoke and the right to release. From a theoretical point of view, referring to Article 96 of the Contract Law, one of the parties to the contract may exercise the right of discharge and notify the other party at the same time, from the notice to the other party when the contract is automatically terminated. In concrete practice, consumers from 0shopping platform to buy goods, and operators online signed a contract of sale and purchase, if consumers are not satisfied with the goods, can enjoy the right to unilaterally terminate the contract of sale, the contract is terminated, consumers return goods, the operator returns the price. This right of discharge is enjoyed directly by only one consumer, once the consumer exercises the right of

unilateral discharge, the rights and obligations of both parties are eliminated, and the contract is also traced back to the state of non-existence, therefore, the consumer's right to regret belongs to a special form of the right of discharge.

### **1.3. The Concept of Consumer Regret Right in Economic Law is Explained**

The consumer's right to regret can be understood as a supplement to the consumer's right to know and the right to choose, that is, to give the national mass as the purchaser a cooling stage in time, that is to say, during this time period, the national mass as the purchaser, that is, the consumer can enjoy unilateral return of goods without any other conditions or termination of the consumption contract, and at this time as the purchaser of the national public is the consumer's behavior is not a breach of contract, Therefore, there is no need to pay any additional costs and what kind of liability.

## **2. The Definition of Consumer Regret Right in E-Commerce**

### **2.1. The Connotation of Consumer Regret Right in E-Commerce**

E-commerce, which has no precise legal definition, is generally distinguished in a broad and narrow sense. The main topic here is the narrow sense of e-commerce, that is, the use of electronic tools such as the Internet for global business and trade activities. In theory, there may be two stages in the consumer's right to regret: the consumer's remorse for a contract for goods or services that has not been performed or has not yet been fully performed, and the consumer's remorse for a contract for goods or services that has already been fulfilled. Obviously, the right of avoidance in contract law has been regulated for contracts that have not yet been performed or have not been fully performed, so the consumer's right to regret should be against contracts that have already been performed. [2]right to regret is the consumer's unilateral right of revocation, so its exercise is unconditional, as long as the law is in line with the consumer can cancel the contract without giving reasons. Given the weak position of consumers, consumers should still be given a chance to think coolly after the contract has been fulfilled, and should not pay too much for the final decision to cancel the contract.

### **2.2. The Division of Consumer Regret Rights in E-Commerce**

#### **2.2.1. Consumer Regret Rights and "No Reason To Return" Boundaries**

"No reason to return" is the business in e-commerce often make a commitment, indeed, there are most of the merchants in the implementation of this commitment, but still need to realize that "no reason to return" is only a unilateral commitment of the merchant, is a marketing means to improve their competitiveness, whether there is no reason to return, to a large extent still need consumers and merchants to further negotiate, its scope of application and procedures are developed by the merchant. [2]can be said that the initiative to return the goods and obtain a refund is still in the hands of the merchant. However, the right to regret is different, the right to regret is a legal right, the scope of its implementation, procedures, consequences are provided by law, the state force to ensure the implementation, does not allow anyone outside the state to make arbitrary changes.

#### **2.2.2. Consumer Regret Right and "Three-Pack" Provisions of the Boundary**

Article 23 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests stipulates: "If an operator provides goods or services and undertakes repair, replacement, return or other liabilities in accordance with the provisions of the State or with the consumer, he shall perform such duties in accordance with the provisions or agreements of the State, and shall not intentionally delay or unreasonably refuse." "Three-pack" provisions are in fact only for the repair, replacement, return of goods or services, its application is premised, that is, goods or services are defective, and its application has a certain scope, limited

to home appliances, mobile phones and other 22 kinds of goods. The application of the right to regret has the characteristics of non-cause, and the scope of application is also much wider.

### **2.2.3. The Division between the Right of Consumer Regret and the Right of Contract Avoidance**

The right of contract avoidance refers to the right of a party to unilaterally terminate the contract in accordance with the circumstances prescribed by law, the application of the right to avoid the contract is strictly limited, and the circumstances of the right to avoid a contract stipulated in Article 54 of the Contract Law include only the right to cancel the contract due to a material misunderstanding, manifest unfairness or the party's fraudulent, coercive means or the risk of taking advantage of the person, so that the other party enters into a contract against the true meaning, and the aggrieved party has the right to apply to the court or the arbitration institution for cancellation of the contract. [3] In contrast, the greatest characteristic of the right to regret is the unprovoked right to exercise, the right of unjustified avoidance, and the right to avoid the contract to bear certain responsibilities, but the right to regret has exoneration. In addition, the right to avoid the contract needs to be confirmed by the judiciary, and the right of regret can be directly exercised by the consumer, without judicial confirmation.

## **3. Consumers Regret the Right to Establish a Dilemma**

### **3.1. Use Range Blur**

#### **3.1.1. Trading Methods**

Although the relevant legal provisions of our country on the right to regret the system of transactions (network, telephone, television, mail order, etc.) made a certain explanation, but this provision for other trading methods left a lot of room, after all, in the process of economic and social development may also emerge other sales methods.

#### **3.1.2. Blurred Range**

The implementation of the legal system needs to be provided by the legal provisions of a clear basis, China's "Consumer Rights protection law" provides that consumers' own customized goods, fresh perishable goods, delivered newspapers, periodicals and other five commodities are not suitable for the use of regret right system, it can be said that the first four commodities stipulated in the legal provisions can be clearly located, but the fifth provisions that "other according to the nature of goods should not be returned" can not use the right to regret system to request return. [4] The scope of this article needs to be judged on the nature of the goods, but there is no third-party authority or relevant legal department in the actual consumption behavior that can provide consumers and businesses with fair judgments on the nature of the goods, thus causing inconvenience to the implementation of the relevant laws.

### **3.2. The Condition is Blurry**

Although the law provides that consumers can apply for a refund within seven days after receiving the goods without any reason, but whether the merchant can cooperate with the completion of the refund behavior to determine whether the secondary sale of goods is affected by the purchase of consumers, the so-called "good goods" should be defined is a relatively vague question, [5] consumers did not open the packaging after the goods and the quality of goods has not been damaged by individual consumers, however, whether this criterion to safeguard consumer rights and interests is a questionable issue.

### **3.3. The Responsibility is Unclear**

In exercising the right of regret, the seller of the goods may refuse to refund them for various reasons for their own benefit, and there is no clear provision as to whether the current Third Party Platform on the Internet should assume certain responsibility for the exercise of this legal

system in the process. If the above two issues are not clearly defined from the legal level, the interests of consumers will be in the implementation stage of the formal, the role of this legal system will also be greatly reduced.

### **3.4. Abuse of the System**

#### **3.4.1. Malicious Consumption**

The limited period of time in the right to regret refund led some consumers to buy goods on the online platform and apply for a refund within the prescribed period, because some merchants in order to expand sales to consumers promised to try, which led to individual consumers through the system free of charge to enjoy the trial services provided by the merchant.

#### **3.4.2. Unfair Competition**

In real life, there are some competitive businesses in order to crowd out their competitors to hire consumers to buy each other's goods, and then use the right to regret the system of constant returns and interfere with the other side's normal business activities, because frequent returns and poor ratings will cause serious damage to the business's social reputation and consumer information to the business. Both of these cases are malicious acts that seriously violate the spirit of the system of regret and it is difficult to control such acts effectively at the current regulatory level.

## **4. Proposals for Improving the System of Consumer Regret**

The original intention of the state to carry out consumer regret right legislation is to avoid network operators to use some of the existing laws and regulations are not perfect to infringe on the legitimate rights and interests of consumers, then in the consumer regret right legislation should be such as the scope of returnable and other similar vague boundaries to be clear, not because of the unclear boundaries to bring bad businesses can be used to continue to infringe on the legitimate rights and interests of consumers space. There is also a clear division of responsibilities in the process of return of goods, such as when the goods due to transport caused by the responsibility of the goods can not be sold twice, to make a clear division.

### **4.1. From the Original Intention of Making Legislation on Consumers' Right to Regret**

Starting from the original intention of the legislation to formulate the right of consumer regret, to minimize the network operators to take advantage of the vague concept loopholes in the legislation, harm the rights and interests of consumers, such as the above-mentioned "unfit goods" vague scope, "returned goods should be intact" in the "good" concept of vague issues, can be refined, as far as possible to cover the practice of the process of understanding differences. In the process of formulating the relevant rules, network operators, consumers, third parties of the network trading platform, relevant law enforcement departments and other related entities can be called upon to participate, as far as possible to take into account the interests of all parties, while avoiding the operator unilaterally or in an unfair way such as abuse of the format of the contract terms arbitrarily expand the scope of goods that are not suitable for return.

### **4.2. Share Responsibility for Clear Damage to Goods on the Way Back**

Consumers exercise the right to regret the return of goods should be intact, among them, there will be returns before the hands of consumers or intact, but in the process of returning force majeure, accidents, or by couriers, logistics companies due to improper operation and other man-made reasons damaged or even lost. [6]Therefore, when there is a situation where the goods are not in good condition due to the consumer's own reasons, the operator cannot deny the consumer's right to regret all. At this time, the specific problem should be analyzed, first,

when force majeure, accidents lead to the destruction of goods, the author believes that the responsibility should be borne by the operator, in this case, the operator can use insurance to share the loss. Second, when the commodity is due to improper operation of the relevant personnel in the course of transport and other man-made reasons for the destruction, in this case, consumers should not be allowed to give evidence, the burden of proof can be used in the inversion system, in the legislation requires the carrier to bear the burden of proof, when the carrier can not prove that the goods are not damaged by their own reasons, should bear liability.

#### **4.3. Reasonable Allocation of Freight Sharing Issues at the Time of Return**

The new Law stipulates that in the case of non-special agreement, the consumer wants to exercise the right of regret, and the return freight fee shall be borne by the consumer. From the legislative intent analysis, the original intention of this provision is to guide consumers to return rationally, not abuse of this right. If the provision that consumers can return at will without incurring any costs, is unfair to the operator, but as mentioned above, there are also new problems, first, the return of goods are small items, their own value is less than freight, and second, consumers abuse the right to regret, purchase valuables for trial and re-return. At this point, on the issue of freight returns, the issue of the legislative classification can be provided for.

#### **4.4. Take Advantage of the Internet to Build a Safeguard Mechanism**

Today's society has entered the Internet era, it is like a double-edged sword, bring convenience to people's lives, but also because of its virtuality, non-directness, a series of problems. In this new era, we should actively explore the advantages of the Internet for my use, to play its benefits. On the one hand, we can make use of the advantages of big data on the Internet to establish a two-way network credit system. In the construction of the operator's network credit system, we should use technical means to stop the network poor evaluation, brushing orders and other improper business [7]when consumers choose the operator, can quickly identify the operators who are often returned due to product quality problems, to make up for the asymmetry of consumer information in online shopping defects. At the same time, the industrial and commercial departments and the relevant quality supervision departments may, in accordance with the network credit system, conduct regular sampling inspections of relevant operators and promptly investigate and punish the illegal sales practices of the operators. On the other hand, for consumers who abuse their right to regret or maliciously try, the network credit system should be recorded, reduce their credit rating, and the operator has the right to refuse to deal with them, thereby reducing the losses to himself.

### **5. Conclusion**

At present, online shopping has become one of the main ways of consumer shopping, the right of consumers to regret into the law, is to give consumers as a vulnerable group more comprehensive protection, but at the same time should weigh the interests of consumers and merchants, to avoid overdoing. The law pursues not only formal justice but also substantive justice. Based on practice, this paper finds the problems existing in the practice of consumer regret right, on this basis put forward perfect suggestions, is actually a peeping leopard, hope to put the role of the law into practice, maintain the steady development of China's online consumption environment, to achieve mutual benefit and win-win situation between consumers and merchants.

As a system that balances the position between consumers and operators and promotes the healthy development of the market, the system plays a unique role in protecting the legitimate rights and interests of consumers and guiding the direction of market[8]development. Of course, the system needs scientific and reasonable construction and continuous improvement

of the supplement, so that while protecting the rights and interests of consumers, it can also take into account the interests of operators, maintain the normal market trading order, to achieve the goal of fair trading.

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