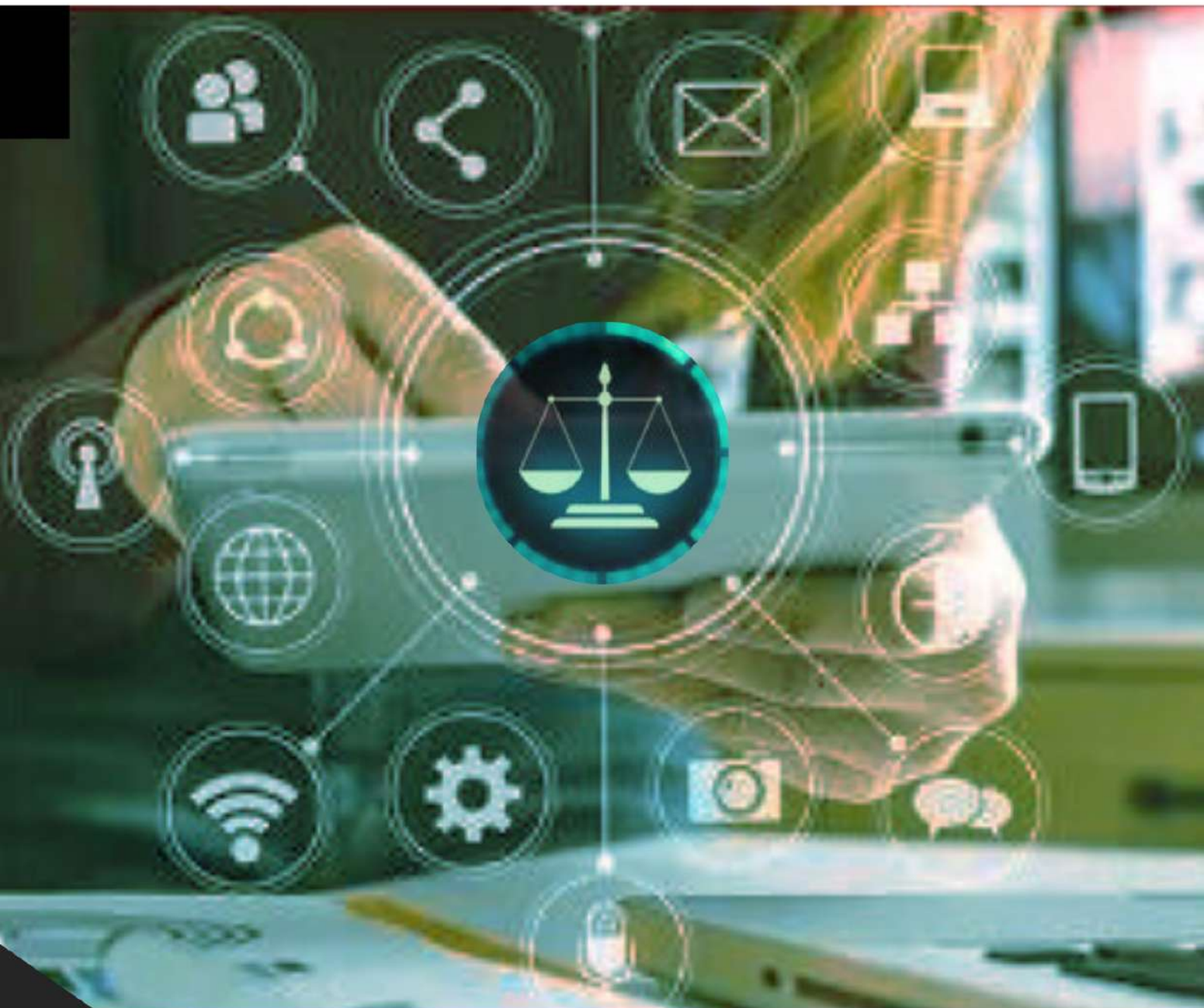


UNLOCKING THE DIGITAL ECONOMY IN KENYA: YOUR LEGAL GUIDE TO SAFE ONLINE TRANSACTIONS



INTRODUCTION

The Digital Economy and Its Impact on Consumers

The digital economy, a modern economic system that leverages digital technologies like the internet and cloud computing, has significantly reshaped consumer-business interactions globally, including in Kenya. Kenya has a Digital Economy Blueprint that aims to transform the country into a digitally empowered society. The vision is to ensure every citizen, enterprise, and organization has digital access and the capability to participate and thrive in the digital economy. Furthermore, a 2020 report by the United Nations Conference on Trade and Development ranked Kenya 7th in Africa in terms of digital entrepreneurial ecosystem readiness, indicating a vibrant digital economy.

The cross-border nature of the digital economy complicates the application and enforcement of local consumer protection laws, which are designed to prevent businesses from engaging in fraud or unfair practices, and to protect individuals from scams. Addressing consumer protection in the digital economy requires a comprehensive approach, including strong legal protections, effective enforcement, and consumer education. The following sections will delve into these issues, offering practical advice for consumers, detailing available legal protections, and offering practical recommendations.



THE CONSTITUTION OF KENYA

Article 46 of the Constitution provides that every consumer has the right to goods and services of reasonable quality; to the information necessary for them to gain full benefit from goods and services; to the protection of their health, safety, and economic interests; and to compensation for loss or injury arising from defects in goods or services.

LEGAL FRAMEWORK FOR CONSUMER PROTECTION IN KENYA

Consumer Protection Act of 2012: This Act defines a consumer and outlines their rights. It has been enforced in various ways to safeguard consumer rights. It regulates commercial transactions, including the amounts quoted in consumer agreements, and prohibits unfair practices. The Act also provides for the rescission of agreements where unfair practices occur and protects consumers from being charged for unsolicited goods or services. It marks a significant milestone for consumers nationwide as it formally documents consumer rights and provides guidelines on various consumer-supplier interactions.

Competition Act of 2010: This Act complements the Consumer Protection Act by curbing restrictive trade practices and shielding consumers from unfair and misleading market conduct. It encompasses agreements between undertakings, decisions by associations of undertakings, or concerted practices by undertakings. The Enforcement and Compliance Department of the Communication Authority of Kenya (CAK) is tasked with investigating these practices and ensuring adherence to the Orders issued under the Act. They also assess exemption applications and provide advisory opinions. A notable enforcement of this Act when the CAK penalized juice companies for false advertising of product quality on their packaging, with fines ranging from KES 47,711 to KES 776,025.

Central Bank of Kenya Amendment Act of 2021: Effective from December 23, 2021, this Act regulates digital credit providers in Kenya. It allows the Central Bank of Kenya (CBK) to license, supervise these providers, and control their business conduct. The Act specifically targets unethical practices by digital lenders, such as high lending rates and borrower shaming.

E-commerce Laws in Kenya: Kenya has embraced the United Nation's Model Law on Electronic Commerce of 1996 through the Kenya Communications (Amendment) Act of 2008. This legislation bolsters e-government and e-commerce by enhancing public trust in electronic transactions. It legally recognizes electronic records and digital signatures, and introduces new offenses related to cybercrimes involving electronic records, transactions, and the use of computing and telecommunications equipment. However, online trade platforms in Kenya are not regulated under the Kenya Information and Communications Act (KICA) as they do not constitute electronic services as envisaged under the act and are therefore not licensable. This implies that consumers cannot enjoy protection under the Consumer Protection Regulations (2010) which apply in instances where the Authority's licensees offer services

Regional Agreements: In addition to these national laws, Kenya is part of several regional agreements impacting consumer protection, including the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and the African Continental Free Trade Area (AfCFTA). These agreements uphold fair competition and consumer protection, providing an additional layer of protection for consumers and promoting fair trade practices in the region. While existing laws provide a solid framework for consumer protection, they may not fully address the unique challenges of the rapidly evolving digital economy.

The Threat Landscape in the Digital Economy

The digital economy, while offering numerous benefits, also presents challenges for consumers: deceptive practices:

1. **Misleading Advertisements:** These may encompass concealed fees, bait-and-switch tactics, and false claims about products or services. Misleading advertisements can lead consumers to make suboptimal purchasing decisions based on inaccurate or incomplete information. For example, during the COVID-19 pandemic in 2020, the Competition Authority of Kenya (CAK) warned businesses against such practices.
2. **Fake Online Reviews:** Fake online reviews are contrived endorsements intended to artificially enhance the reputation of a product or service. They can be overly positive reviews posted by the sellers themselves or negative reviews aimed at competitors. Fake reviews can mislead consumers about the quality or value of a product or service. In 2020, data analytics firm Fakespot reported that up to 42% of 720 million Amazon reviews were unreliable or fake.
3. **Subscription Traps:** Subscription traps ensnare consumers into ongoing payments through misleading sign-up processes or concealed terms and conditions. Consumers may believe they are making a one-time purchase or signing up for a free trial, only to find themselves committed to a recurring subscription with stringent cancellation policies. In Kenya, some consumers were unknowingly subscribed to premium rate services. Safaricom addressed this by

refunding affected customers and launching a subscription management service.

Deceptive practices in the digital economy can mislead consumers, cause financial losses, and foster distrust. The following sections will explore strategies for consumer protection and the available legal safeguards.

Consumer Protection Tips

In the digital economy, consumers face challenges like misleading advertisements, fake online reviews, and subscription traps. Here are some strategies for protection:

1. **Research:** Consumers should research the product, service, and company before purchasing, including checking reviews and the company's rating with consumer protection agencies.
2. **Read the Fine Print:** Reading terms and conditions before making a purchase or signing up for a service can help avoid hidden fees or unexpected charges.
3. **Secure Personal Information:** Consumers should be cautious about sharing personal information, use strong, unique passwords for online accounts, and be wary of unsolicited requests for personal information.
4. **Monitor Accounts:** Regularly checking statements, such as M-Pesa and bank statements, can help catch fraudulent charges early.
5. **Know Your Rights:** Familiarizing yourself with consumer rights is important. For instance, under the Consumer Protection Act in Kenya, consumers have the right to quality goods and services and compensation for loss or injury from defective.

Online Due Diligence and Consumer Protection

Online due diligence refers to the research and verification of the legitimacy and reputation of a company or individual online before engaging in a business transaction or contract. It's a crucial step for consumers to protect themselves in the digital economy. In Kenya, agencies like the Business Registration Service (BRS), Kenya Revenue Authority (KRA), and eCitizen have facilitated this process. For instance, the BRS provides an online platform where consumers can verify the registration status of a business. The KRA offers an online tax compliance certificate verification service, which can be used to confirm a business's tax compliance status. Ardhisasa, a Kenyan digital public services platform, provides a range of services that aid in online due diligence. For example, it offers an online land search service, which allows users to verify the ownership and size of a piece of land before purchasing it.

However, there's potential for enhancement by these agencies in areas like, user experience, transparency, data protection, customer support, inter-agency collaboration, and public awareness campaigns and , national coverage for Ardhisasa. Addressing these areas can make online due diligence more efficient, thereby enhancing consumer protection in the digital economy.

Challenges and Legal Recourse in the Digital Economy

Despite legal protections, Kenyan digital consumers often face fraud or financial loss due to factors like cross-border digital operations, rapid tech advancements, limited enforcement capabilities, and lack of awareness. Attracting digital Foreign Direct Investment (FDI) requires a friendly investment climate, but the fragmented global data governance can hinder the enforcement of Kenyan laws.

Counterfeit goods are a significant issue in Kenya, with a significant percentage of consumers opting for them due to lower costs, according to the Kenya Anti-Counterfeit Authority (ACA). The ACA should deepen partnership with Kenya's Digital Markets to combat online counterfeiting, especially in fast-moving consumer goods and electronics sectors.

Jumia, a large Kenyan online marketplace, faced backlash in 2023. The COMESA Competition Commission intervened, finding that Jumia had exempted itself from responsibility for third-party sales. COMESA compelled Jumia to review misleading clauses and disclaimers, making it liable for platform transactions. In response, Jumia committed to adhering to COMESA's recommendations and enhancing customer protection. This underscores the importance of regional cooperation in consumer protection and highlights the challenges in the digital economy.

Strengthening Consumer Protection in the Digital Economy

Enhancing existing data protection laws could involve stricter regulations on how companies manage consumer data, requiring companies to obtain explicit consent from consumers before data collection. This could lead to increased consumer trust but may pose compliance challenges for businesses. Regulating online platforms could include requirements for platforms to verify seller identities and monitor and remove misleading advertisements. While this could protect consumers from deceptive practices, it may increase operational costs for platforms. Strengthening enforcement mechanisms and consumer education could involve providing more resources and training for regulatory bodies and implementing initiatives to educate consumers about their rights. This could lead to better law enforcement and informed consumers but would require significant investment.

International Cooperation and Navigating the Digital Economy

Given the cross-border nature of the digital economy, it's necessary to work with international partners to harmonize laws and regulations, share best practices, and cooperate on enforcement actions. For example, Kenya is part of the African Consumer Protection Dialogue (ACPD), a platform for African nations to collaborate on consumer protection issues. Such cooperation can lead to more consistent and effective consumer protection across borders, demonstrating the feasibility and benefits of international cooperation in consumer protection.

In this complex landscape, access to advice and legal representation can be beneficial, ensuring that both consumers and businesses can navigate the digital economy with confidence and security.

CONCLUSION

Despite Kenya's robust legal framework for consumer protection, the effectiveness of these laws hinges on consumer awareness and vigilance. The rapidly evolving digital economy introduces new challenges like data privacy and digital fraud, and its global nature can complicate national law enforcement. Therefore, legislative bodies must continually update these laws to effectively protect consumers.

Consumer protection in the digital economy goes beyond laws and regulations; it's about empowering consumers with knowledge and tools for self-protection. This includes understanding their rights, practicing online due diligence, and knowing how to spot and avoid deceptive practices. As Kenya's digital economy grows, the need for vigilance intensifies. Consumers, businesses, and regulators must collaborate to create a safer, more transparent digital economy where fair business practices are the norm, and consumers can engage with confidence and security.

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