

Consumer Right to Information in Internet Services Contracts



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Abstract: This study examines the impact of recent legislative intervention in the UAE Consumer Protection Law of 2023 and the Consumer Protection Regulations issued in 2023 by the Telecommunications Regulatory Authority and the UAE Digital Government. It focuses on ensuring the consumer's right to access information related to internet service contracts as a fundamental condition of maintaining contractual balance at the pre-contract stage. The study employs a descriptive-analytical approach to present and analyze the legal provisions regulating this right, the conditions and criteria for its exercise, and its role in mitigating the informational disadvantages consumers face in market transactions. The research concludes by emphasizing the significance of these legislative amendments in effectively securing consumers' right to information. It calls for joint coordination among relevant regulatory authorities, such as the Telecommunications Regulatory Authority, economic development departments, and the Emirates Consumer Protection Association, to ensure these legal provisions are effectively implemented, safeguarding the integrity of market transactions in the telecommunications sector.

Key Words: Consumer's right to information- Consumer protection- Internet services- United Arab Emirates.

حق المستهلك في الحصول على المعلومات في عقود خدمات الإنترنت

ملخص: بحثت هذه الدراسة في أثر التعديلات التشريعية الحديثة الواردة في قانون حماية المستهلك الإماراتي للعام 2023 وأنظمة حماية المستهلك الصادرة عن هيئة تنظيم الاتصالات والحكومة الرقمية الإماراتي، في ضمان حق المستهلك في الحصول على المعلومات ذات العلاقة بعقود خدمات الإنترنت، باعتباره أحد متطلبات التوازن العقدي في مرحلة ما قبل التعاقد. اتبعت الدراسة المنهج الوصفي التحليلي من خلال عرض وتحليل النصوص القانونية الناعمة لهذا الحق، إضافة إلى شروط ومعايير ممارسة هذا الحق ودوره في التغلب على إشكالات الضعف المعرفي التي تعترض المستهلك في المعاملات السوقية. خلص البحث إلى أهمية هذه التعديلات التشريعية في ضمان حق المستهلك في الحصول على المعلومات بشكل فعال. السلطات الرقابية ذات العلاقة (هيئة تنظيم الاتصالات- دوائر التتمة

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الاقتصادية- جمعية الإمارات لحماية المستهلك) بحاجة الي التنسيق المشترك لضمان ترجمة هذه النصوص القانونية على ارض الواقع، في سبيل ضمان نزاهة المعاملات السوقية في قطاع الاتصالات
الكلمات المفتاحية حق المستهلك في المعلومات- حماية المستهلك- خدمات الانترنت- الإمارات العربية المتحدة



Introduction:

The consumer right to information is a fundamental principle that underpins consumer protection during the pre-contract phase by enhancing consumer awareness and enabling informed decision-making. This right ensures that consumers receive all necessary information before entering a contract, including details about the contract's nature, content, and parties involved. It also ensures that consumers are thoroughly informed about the services they utilize and their corresponding rights¹. By providing comprehensive information, consumers are better equipped to understand all aspects of the contractual relationship and make well-informed decisions, leading to genuine and informed consent. Information asymmetry between consumers and suppliers can lead consumers to make poor purchasing decisions that ultimately benefit the suppliers².

In the United Arab Emirates, internet service contracts are the primary connection between providers and consumers. These contracts facilitate access to the internet, allowing users to obtain information, promote intellectual creations, and engage in social discussions. Essentially, they enable consumers to rent space on the Internet by entering into agreements with licensed providers. Contract terms that outline the rights and obligations of both parties, either established by the agreement or by law, play a key role in influencing the consumer's decision on whether to enter into the contract³. The report titled 'Digital Emirates - Facts and Figures 2023', published by the Telecommunications Regulatory Authority and the UAE Digital Government (TDRA), highlights that 99% of the UAE population engages in various online activities such as social networking, work, entertainment, and shopping. Additionally, the report indicates that smartphone download speeds have surged by 80% compared to previous years.

The provider drafted these contracts in standard forms, while the consumer must sign upon viewing, without the opportunity to review or negotiate the terms. The provider often leverages this advantage to draft contract terms that favor their legal interests at the expense of the consumer's interests, thereby disrupting the balance of the contractual relationship between the parties. In the "English Suisse Atlantique"

¹ Andrzej Nałęcz, 'Empowering the "Unempowerable". Behavioural Insights into Informing Consumers About Internet Access Services in the European Union Under Regulation 2015/2120' (2018) 11 Yearbook of Antitrust and Regulatory Studies 13.

² Hilda Jacob Mwakatumbula, Goodiel Charles Moshi and Hitoshi Mitomo, 'Consumer Protection in the Telecommunication Sector: A Comparative Institutional Analysis of Five African Countries' (2019) 43 Telecommunications Policy <<https://doi.org/10.1016/j.telpol.2019.02.002>>; Giesela Ruhl, 'Consumer Protection in Choice of Law' (2011) 44 Cornell International, Law Journal.

³ Kevin McGillivray, 'A Right Too Far? Requiring Cloud Service Providers to Deliver Adequate Data Security to Consumers' (2017) 25 International Journal of Law and Information Technology 1; Krzysztof Zok, 'Consumer Protection in Cloud Computing Contracts Stipulating Non-Monetary Remuneration' (2020) 28 International Journal of Law and Information Technology 20.



case, Lord Reid examined the circumstances surrounding the formation of standard contracts, highlighting that consumers generally lack the time to read these contracts, and even if they did, they would likely struggle to understand them. Furthermore, if consumers raised objections to any terms, they would usually be told to accept the contract as is or walk away ⁴. A study conducted in the USA revealed that 90% of participants never read the full agreement, with 64% admitting they routinely click “I agree.” Also, 55% of respondents did not believe clicking “I agree” created a binding contract ⁵. Most consumers find standard agreements drafted by lawyers confusing, and it is often impractical to read through them entirely when the only options are to accept or decline the agreement. Additionally, consumers are even less inclined or able to read unclear information when presented on a small screen ⁶.

To overcome these challenges, Federal Decree-Law No. 3 of 2003 in the United Arab Emirates governs the telecommunications sector, including internet services. It specifies conditions for issuing licenses to service providers, sets compliance requirements and technical standards, and ensures user rights protection. The Ministry of Economy collaborates with TDRA to enhance consumer rights, aiming for equitable and secure service access. This coordination emphasizes a commitment to a fair, transparent business environment by setting and enforcing standards. Also, TDRA is the primary authority overseeing licensees in the UAE. Article 12 of Federal Decree-Law No. 3 of 2003, concerning regulating the telecommunications sector and its amendments, designates TDRA as the competent authority for monitoring the telecommunications sector and its licensees. This designation is per the provisions of the Decree-Law, its executive regulations, and the directives of the board of directors. The article underscores TDRA's supervisory role in ensuring licensee compliance with applicable laws and regulations and its advisory role in proposing general policies for the sector. Additionally, it mandates that TDRA prepare an annual report detailing its activities, thereby promoting transparency and accountability in sector management.

According to Item 3 of Article 14 of Federal Decree-Law No. 3 of 2003, which regulates the telecommunications sector and its amendments, TDRA introduced consumer protection regulations in 2023. These regulations play a vital role in safeguarding consumers in the labor market, with a specific focus on customer contracts, which are the main focus of this research. The regulations aim to protect consumer rights and ensure fair treatment by addressing crucial aspects such as safeguarding personal information, ensuring the clarity and fairness of contracts, and

⁴ Thomas Wilhelmsson and Chris Willett, *Unfair Terms and Standard Form Contracts* (2018).

⁵ Dan Svantesson and Roger Clarke, ‘A Best Practice Model for E-Consumer Protection’ (2010) 26 Computer Law and Security Review 31.

⁶ C Bisping and TJ Dodsworth, ‘Consumer Protection and the Regulation of Mobile Phone Contracts: A Study of Automatically Renewable Long-Term Contracts Across Jurisdictions’ (2019) 42 Journal of Consumer Policy 349.



protecting against misleading advertising. Additionally, the regulations establish a clearly defined framework for complaint and dispute resolution, ensuring that consumers receive justice and transparency in their interactions with service providers. This framework helps build trust between consumers and businesses and creates a safer, more transparent business environment.

This research critically examines how Consumer Protection Law No. 5 of 2023 and the 2023 Consumer Protection Regulations by TDRA ensure the right to information for consumers in the internet services sector. It explains the clarity and protection offered by the law regarding consumers' ability to access and understand contract terms, evaluates the enforcement mechanisms in place to uphold these rights, and identifies gaps that may hinder consumers from fully understanding and accessing contractual information. By exploring these objectives, the study intends to provide a comprehensive understanding of the legal protections available to consumers and propose recommendations to enhance transparency and fairness in contractual relationships.

This study examines how Consumer Protection Law No. 5 of 2023 and the Consumer Protection Regulations enacted by TDRA in 2023 safeguard the consumer's right to information in the internet services sector. The research will explore the following key questions:

- How does the law safeguard consumers' right to information in Internet service agreements?
- What measures exist to guarantee that internet service providers honor this right?
- Are there any legal shortcomings that hinder consumers' ability to fully comprehend and access all terms of their Internet service agreements?
- How do present regulatory frameworks promote transparency and guard against misinformation in Internet service agreements?



THE FIRST TOPIC

Provider Obligation to Disclose Information

The provider must disclose information before the formation of the contract, whether it is traditional or electronic. Providers must take care when presenting information to customers, ensuring it is clear, understandable, and free of any language that could lead to misinterpretation ⁷. This information should highlight the essential features and defects that define the quality and effectiveness of the contract's subject matter. To enable consumers to make informed decisions in market transactions, they must have access to accurate, clear, comprehensive, and readily available information regarding the advantages and disadvantages ⁸. This obligation is crucial because the provider typically possesses detailed knowledge about the contract, which the consumer may need more. Pre-contractual information is often defined as the duty of one party to provide the other with essential information before the contract is finalized ⁹. Another definition describes it as a general pre-contractual obligation, where the party responsible (whether one or both of the contracting parties or third parties) must accurately and truthfully inform the other party of all critical details related to the contract that they cannot ascertain on their own, enabling them to make an informed decision. In essence, the obligation to inform is a legal requirement for one party to disclose all essential contract information to the other party clearly and understandably, using appropriate means suitable to the nature and context of the contract ¹⁰.

In this context, the Consumer Protection Regulations issued by TDRA include specific provisions related to this obligation. For instance, Article 5 outlines requirements for providing information to consumers. It mandates licensees offer either Arabic or English information, based on the customer's preference, or in both languages. Additionally, this information must be provided in both paper and electronic formats. Clause 4.1.5 of the same article specifies that all essential post-contract information must be disclosed, including the date and time of subscription or purchase, the name of the product or service, the subscription price, including any recurring fees, if applicable, and a link that allows the customer to cancel the subscription or purchase if desired. Also, Article 6 of the same Regulations mandates that licensees provide new customers with unambiguous written contracts.

These contracts must include all terms and conditions governing the contractual

⁷ Haofeng Jin and others, 'Not Too Much nor Too Little: Saliency Bias in Mobile Plan Choices' (2021) 45 Telecommunications Policy 102071.

⁸ Svantesson and Clarke (n 5).

⁹ V Iacovoiu, A Stancu and CR Bucur, 'Mobile Phone and Internet Consumers Rights Compliance in Romania' (2014) 16 *Amfiteatru Economic* 501; Nałęcz (n 1).

¹⁰ Fouad Shoaibi, *Al-Nizam Al-Qanuni li-'Uqud Khidmat Al-Ittisalat* (First Edition, Manshurat Al-Halabi Al-Huquqiyya 2014), P. 148.



relationship, such as usage policies, contract duration, service specifications, early termination conditions, and all other provisions detailing the rights and obligations of the parties involved. The importance of the information the supplier provides can be assessed by distinguishing between the supplier's knowledge and the significance of this information to the consumer. The supplier's knowledge encompasses their understanding of the product or service, including its features, benefits, risks, and any associated technical or legal details. Conversely, the importance of information to consumers pertains to how it influences their purchasing decisions. For instance, a product's shelf life, safety, and warranty conditions are crucial as they directly impact the consumer's choice and use ¹¹.

When a provider holds crucial information about a service that could significantly impact the consumer's decision, the provider must disclose this information, even if the consumer does not explicitly request it. This obligation aligns with the duty of disclosure, which entails the provider's legal and ethical responsibility to communicate relevant information transparently. This duty is essential when the consumer is unaware of key details that could influence their decision, thereby protecting them from unfair or biased transactions due to insufficient knowledge ¹².

Thus, this discussion will be divided into two parts: the first will explore the reasons behind the consumer's lack of knowledge regarding service-related information. In contrast, the second part will examine the extent of the provider's knowledge and their obligations before the contract is finalized.

First requirement: Reasons of Consumer Ignorance

Some consumers may exploit the professional's obligation to provide information by deliberately neglecting to seek out or obtain essential details they are expected to know when contracting. This raises questions about the need for specific controls to define the extent of information required. Legal scholars argue that such ignorance by the contractor may be deemed justified and legitimate, thereby necessitating the other party's obligation to disclose this information. This perspective is grounded in the concept of legitimate ignorance, which is based on two factors: first, ignorance arising from the impossibility of acquiring knowledge, and second, ignorance deemed legitimate under the circumstances ¹³.

¹¹ Kamil Ali, 'Al-Himaya Al-Qanuniyya Al-Wiqa'iyya lil-Mustahlik Al-Elektroni, Dirasah Muqaranah bayn Al-Qanunayn Al-Masri wa Al-Faransi, [2022] Majallat Al-Buhuth Al-Qanuniyya wa Al-Iqtisadiyya, Menoufia University, P. 281.

¹² Mahmoud Fayyad, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience?' (2012) 5 International Journal of Private Law 200.

¹³ Ahmed Mansour, 'Al-Himaya Al-Qanuniyya lil-Mustahlik fi Al-Aqd Al-Elektroni, (Master Thesis, Alexandria University 2018), P. 119.



First section: Impossibility of Knowledge Ignorance

The reasons for a consumer's inability to obtain contractual information can vary. These reasons may stem from objective factors related to the location or nature of the contract or personal factors affecting the consumer.

First: Objective Impossibility: Objective impossibility refers to the consumer's inability to acquire information related to the contract or service, such as an internet service, due to limitations in accessing or interacting with the service before the contract. This may include constraints related to the physical setup or functionality of the service, which prevent the consumer from fully understanding or evaluating it before committing. Even if the consumer has a brief opportunity to review the service, more than this preliminary exposure may be needed to overcome the challenge of incomplete knowledge¹⁴.

Additionally, consumers may encounter challenges or obstacles that hinder their ability to inquire about essential contract details due to financial constraints or legal complexities. In such cases, it is the responsibility of licensees to provide all relevant contract information clearly and explicitly. For instance, if licensees advertise an internet package with speeds up to 100 Mbps, but the contract specifies that such speeds are only available during certain times of the day or under specific conditions, such as using a set amount of data per month, these restrictions must be communicated transparently before the contract is signed. This is especially crucial if the consumer faces difficulties accessing this information independently¹⁵.

Some consumers may also need help accessing the contract's duration, early cancellation fees, and additional charges. In such situations, the licensees must clearly and transparently explain these aspects. Suppose the contract includes a penalty for early cancellation. In that case, licensees must explicitly detail this penalty in the contract and ensure that the consumer fully understands it before agreeing to the terms.¹⁶

Second: Subjective Impossibility: Subjective impossibility arises when a consumer cannot complete the contract accurately due to personal circumstances or a lack of capability to conduct thorough research and inquiry. This impossibility occurs when personal reasons justify the consumer's failure to seek out essential data and

¹⁴ *ibid.*

¹⁵ Abdullah Abdul Rahman, *Himayat al-Mustahlik fi al-Qanun al-Arabi* (Dar al-Nahda al-Arabiya lil-Nashr 2015), P. 125.

¹⁶ Mahmoud I Fayyad and Rannen Al-Nazir, 'Inequality of Bargaining Power in Cellular Telecommunication Services Agreements' (2023) 47 Telecommunications Policy 102540.



information about the contract they wish to enter into. It is especially prevalent when the consumer lacks sufficient experience or expertise regarding the subject of the contract, making it difficult for them to understand or interpret the information independently. In such cases, the consumer may be deemed unqualified or lacking proficiency in the relevant field, impairing their ability to finalize the contract effectively¹⁷.

In internet service contracts, consumers may need help comprehending technical details associated with the service they are considering, which can result in better-informed decisions. For instance, a consumer needing more technological knowledge might need help to differentiate between various internet speeds or subscription plans offered by a provider. This challenge is exacerbated if the consumer is unfamiliar with terms such as 'download speed' or 'monthly data allowance.' Additionally, special circumstances like limited time for research or difficulty understanding complex technical information may lead the consumer to select a subscription plan that does not meet their needs. For example, the consumer might choose a plan with inadequate speed for their daily use or one overpriced compared to competing options. Factors such as the type of network router, distance from the connection point, and the number of connected devices all affect internet quality and speed, making it difficult to provide a fully accurate or objective assessment of service performance for each customer¹⁸.

Second section: Legitimate Trust Ignorance

Consumers may choose not to inquire about the specifics of a contract or its rights and obligations because they trust the integrity and reliability of the other party. This trust might stem from the consumer's belief in the professionalism of the counterparty or their confidence in the effectiveness of regulatory and supervisory bodies to ensure fair practices in the market. When a party relies on the other's integrity, they are not required to demonstrate that they could not have investigated the information independently. Instead, it is anticipated that the other party will proactively provide the necessary details before the contract is finalized¹⁹.

This legitimate trust necessitates that each party proactively and honestly disclose all material information related to the contract that could impact the other party's decision. This obligation arises from the inherent trust placed in one party by the other, especially when there is an imbalance in the parties' knowledge. For instance, in contracts where trust is a foundational element—such as agency contracts—the

¹⁷ Badi Abdul Hamid, 'Obligation to Inform the Electronic Consumer at the Pre-Contract Stage' (2019) 3 Algerian Journal of Law and Political Science.

¹⁸ Hadi Al-Kaabi, 'Al-Iltizam Qabl al-Taaqudī bil-Ilam' [2015] Majallat al-Muhaqqiq al-Halabi lil-'Ulūm al-Qanūniyya wa al-Siyāsīyya, University of Babylon, P. 55.

¹⁹ Mahmoud Fayyad, 'Measures of the Principle of Good Faith in European Consumer Protection and Islamic Law, a Comparative Analysis' (2014) 28 Arab Law Quarterly 205.



expectation is that the party with more knowledge or authority will provide essential information to ensure fair and transparent dealings²⁰. Legitimate trust can be influenced by the contract's nature or the parties' character. For example, in agency contracts, where one party represents the interests of another, a natural level of trust is expected. This trust aligns with the principle of good faith, which should govern all stages of financial transactions, including both negotiations and execution. It is particularly relevant at the pre-contractual stage, where the obligation to inform is crucial to ensuring that all parties can make well-informed decisions. This type of trust emphasizes the importance of transparency and integrity, reinforcing the need for full disclosure to prevent potential exploitation or unfair advantage²¹.

Second requirement: Information Disclosure Scope

The provider must disclose specific information to the consumer before entering into a contract and must acknowledge the importance of this information to the consumer. The duty to inform must arise before the contract, and the provider must recognize the significance of this information to the consumer's decision. According to the French Court of Cassation, the provider's awareness of such information is essential to fulfilling this obligation²². This implies that more is needed for the provider to disclose information; the provider must also know how this information impacts consumer satisfaction. The licensee must possess this information and understand its relevance to the consumer's decision-making process. Therefore, the licensee's obligation extends beyond mere knowledge to ensure that this information significantly influences consumer satisfaction²³.

Regarding the information subject to the obligation, Article 7 of the UAE Consumer Protection Law mandates that providers ensure transparency about the information provided regarding goods for sale and offer protection against any potential dangers associated with their use. The article requires explanatory information to be displayed on the product's packaging or at the point of sale, ensuring it is clear and legible. This information includes details on the installation and use of the item. This obligation ensures that consumers are fully informed about the product's characteristics and proper use and that the information complies with national standards and specifications. Furthermore, the second paragraph of the same article imposes an additional obligation on the supplier to warn consumers about any potential risks associated with using the product. If a product poses a specific danger,

²⁰ Mansour (n 13).

²¹ Syed Shaarawi, 'Al-Himāyah al-Madaniyah lil-Mustahlik fī Uqūd al-Bay al-Ilktrūniyyah' (PhD Thesis, Ain-Shams University 2010), P. 437.

²² Mansour (n 13), P. 124.

²³ Karim Al-Shazli, *Al-Nizām al-Qānūnī li-Himāyat al-Mustahlik al-Ilktrūnī* (Dār al-Jāmi'ah al-Jadīd 2019), P. 61.



the provider must highlight this risk per the law's implementing regulations. These regulations specify how to apply this obligation, ensuring consumers know potential risks and take necessary precautions when using the product.²⁴

Although Article 7 specifically addresses goods, there is no reason why similar obligations should not apply to service providers, with adjustments made for the distinct nature of services compared to goods. Jurisprudence supports the view that the extent of knowledge required for information disclosure varies based on the nature of the obligation. In cases of common faults or defects in will, if a consumer seeks to annul a contract due to a fundamental mistake arising from a provider's failure to disclose crucial information, the consumer must demonstrate the provider's knowledge of this information and its significance in affecting consumer satisfaction²⁵. Many comparative legal systems consider non-disclosure of such information as a kind of fraud or concealment, especially if it is proven that the other party was aware of this information (e.g., Article 144 of the Jordanian Civil Code, Article 125 of the Egyptian Civil Code, Article 186 of the UAE Civil Transactions Law). Additionally, the price of a good or service is crucial information that the provider must disclose to the consumer before contracting, as outlined in Article 8 of the UAE Consumer Protection Law, highlighting its essential role in the consumer's decision-making process and the contract itself.

It is also noted that the 2023 Consumer Protection Regulations issued by TDRA provide detailed guidance on the information that licensees must disclose to consumers. Specifically, clause (5.5) outlines the pre-contractual information requirements, mandating that licensees furnish sufficient details to enable consumers to make informed decisions. This includes disclosing whether the contract involves an exit fee. If such fees are applicable, licensees must provide precise information about the duration during which the exit fee will be charged and the exact amount in monetary terms. This ensures that consumers are fully aware of any potential costs associated with early termination of the contract, allowing them to make well-informed decisions.²⁶

²⁴ Article (7) of Federal Law No. 15 of 2020 and its amendments on Consumer Protection provides that:

1. The supplier must provide clear and legible explanatory information on the cover, packaging, or display of the goods offered for sale. This information must include instructions for installation and use and comply with the national legislation and standard specifications in force.
2. If the use of the good presents any risks, the supplier must indicate such risks as stipulated by the executive regulations of this law."

²⁵ Adnan Sarhan, 'Ḥaqq al-Mustahlik fī Ḥusūl alā al-Ḥaqqā'iq (al-Malūmāt aṣ-Ṣaḥīḥah an al-Silah wa al-Khidamāt)' (2012) 7 Majallat al-Mufakkir, p. 13.

²⁶ Clause 5.5 of Article 5 stipulates that licensees must disclose whether the contract includes an exit fee. If such a fee is applicable, they must provide detailed information on the duration during which the exit fee will be charged and the specific monetary amount of the fee.



Additionally, paragraph 5.5.2 of the same regulations outlines consumer rights under the customer compensation system, including the right to receive appropriate compensation for any service malfunctions. It also guarantees that consumption does not exceed the agreed limit without the consumer's consent and provides rights for managing and monitoring credit balances. Furthermore, the consumer has the right to cancel the service within a specified period without incurring a fine, particularly in the event of a price increase, thus protecting them from unforeseen costs. Also, Clause (5.5.3) of the same article requires the contract to include detailed pricing information for the service provided. It mandates a comprehensive explanatory statement for all costs incurred by the customer, including rental fees for any devices or equipment used. The clause also specifies the frequency of payment demands, whether monthly or based on another agreed schedule.

The regulations also mandate that licensees provide consumers with precise details on how voice units are calculated, whether included in the package or billed separately. This information is crucial for consumers to understand how their minutes or calls will be utilized and whether additional costs will be incurred if they exceed the package limits. Licensees must also clearly specify which charges apply outside the package, including fees for consumption that surpasses the package balance or for services not covered by the package.²⁷ These additional costs for overuse must be communicated to help customers fully understand their financial obligations and avoid unforeseen charges.²⁸ Furthermore, the regulations require licensees to explain how data sessions are calculated and deducted from available data packages. This ensures that consumers can accurately track their data usage and understand how their consumption impacts their selected data.²⁹

In addition, licensees must disclose any limitations or restrictions imposed on the use of the service. This includes, for example, restrictions on usage volume, data transfer speeds, and the use of services or applications provided through OTT technology.³⁰ Providers should also clarify fair use policies and any associated fees

²⁷ Clause 5.5.4 of Article 5 stipulates that providers must detail how voice units are calculated, both within and outside of the package.

²⁸ Clause 5.6.3 of Article 5 requires the disclosure of all prices and price components, including rental fees, associated with the service. It also mandates the provision of information regarding the payment frequency and any additional fees that apply when the service exceeds the package balance or is not included in the package.

²⁹ Clause 5.5.5 of Article 5 specifies that providers must explain how data sessions are calculated and deducted from data packages.

³⁰ OTT (over-the-top) refers to the delivery of television and film content over the Internet, tailored to the preferences and demands of individual consumers. The term "over-the-top" signifies that the content provider delivers media directly over existing internet services, bypassing traditional broadcast and cable systems. For more details, visit the following link: <https://www.telestream.net/video/solutions/what-is-ott.htm> visited on August 12, 2024.



that apply when these limits or restrictions are exceeded. Providing this information ensures that consumers are fully aware of any additional costs they may incur if they exceed the established usage limits.³¹

The previous article outlines the requirement for licensees to disclose essential information that may impact consumer satisfaction before contracting, recognizing that this information could influence a consumer's decision to enter into a contract. This obligation extends beyond mere disclosure to assist consumers in understanding the information provided.³² Also, Clause (5.6) of Article (5) mandates that licensees must help customers grasp the service's key aspects. To fulfill this requirement, licensees must provide a clear written summary of the main terms and conditions of the product or service. This summary should include accurate descriptions of the services offered, detailed financial fees, the number of payments required, and any applicable discounts, along with their validity periods. Additionally, licensees must outline any restrictions on package balances, such as limits on data or call usage, and specify the charges that will apply if these limits are exceeded. This comprehensive information enables customers to manage their consumption and financial obligations more effectively, ensuring they are fully informed of potential additional costs.

On the other hand, if the customer is an individual receiving postpaid mobile services, the applicable credit limit must be clearly outlined per sub-article 8.7. This ensures that the customer is fully aware of the limits governing their use of the services. Additionally, the licensee must explain any restrictions or special policies, such as fair use policies, available capacities, and speed limits applied to data downloading or uploading. This transparency ensures the customer fully understands any limitations impacting their overall service experience.³³

³¹ Clause (5.5.6) of Article (5) provides “details of any limitations or restrictions on the use of the service, including but not limited to, any limits on the volume of use, any restrictions on data transfer speed, any restrictions on the use of services or applications provided via OTT technology, any fair use policies and details of any fees that become payable when such limitations are exceeded.

³² Clause (5.6) states: “Notwithstanding what is stated in Article 6, licensees must help customers understand the main points of the product or service being sold to them. To this end, licensees must provide each customer with a clear written summary of the main terms and conditions of the product or service in question. This summary provides the following information: the correct name(s) of the licensee's service (s). The minimum contract period, if any, and the exit fees applicable once they are enforced. Accrued fees and the number of payment installments. Details of any applicable discounts and their validity period. Restrictions on package balances. Prices for services used outside the package. Detailed information on the credit limit applicable to non-corporate customers with postpaid mobile services as outlined in sub-article 8.7. Any specific restrictions applied by the licensee, including but not limited to fair use policies, available capacities, and speed limits for downloading/uploading data.”

³³ Clause (5.6) of the 2023 Consumer Protection Regulations, issued by the Telecommunications Regulatory Authority and Digital Government in the UAE.



About the time and place of the licensee's obligation to inform, the Consumer Protection Regulations of 2023, issued by TDRA, stipulate in Article 6.4 that licensees are required to provide the contract to the customer at the point of sale, and if requested, also furnish a copy of the contract at any subsequent time. The author argues that while this provision offers flexibility, it does not sufficiently protect consumers' rights. By allowing the contract delivery to be contingent on the customer's request, the regulations fail to ensure that all consumers automatically receive a copy of their contract, potentially leaving them without key information. The author suggests that the regulations should have mandated licensees to provide a copy of the contract automatically, regardless of the consumer's request, ensuring full transparency and accessibility. In support of this view, the author conducted a field study, visiting one of the telecommunications providers in the UAE. After signing an internet service contract on a tablet, the researcher requested an electronic copy via email, but the requested copy was never received. Telecom companies operating in the UAE often justify this by claiming that all contracts are readily available on their websites, allowing customers to review them before visiting retail outlets.

However, the practical reality shows that only some consumers access these contracts online. The assumption that all customers will proactively seek out and read these contracts before engaging with service providers is highly questionable. Based on these findings, the author contends that the TRA and the digital government should revise the regulations, making it mandatory for licensees to automatically send a flexible, electronic copy of the contract to customers after it is signed. This would improve consumer protection by ensuring vital contact information is always accessible.

THE SECOND TOPIC

Clear and Transparent Information

When entering a contract, the contract must be drafted in simple, clear, and easily understandable language for the consumer. This ensures the consumer receives the necessary protection during the contracting process³⁴. Often, consumers may find themselves bound by terms they were unaware of because they agreed to a standard contract that includes a clause like "the terms and conditions of the provider's internal regulations apply" without having the opportunity to review or understand them. Such clauses may allow providers to impose terms that solely benefit their interests, especially concerning prices, service fees, or after-sales conditions. Evidence shows

³⁴ Mark Armstrong, 'Interactions Between Competition and Consumer Policy.' (2008) 4 Competition Policy International <<https://ora.ox.ac.uk/objects/uuid:ff166fcf-c3c1-4057-9cf5-10e295b66468>> accessed 14 September 2024; Nałęcz (n 1).



that Internet providers often draft ambiguous clauses that can be interpreted based on the situation while claiming that the contract language is clear. The company has been transparent in its terms. In competitive mobile telephony markets, this lack of clarity and imperfect information can lead to a low-quality equilibrium³⁵.

For this reason, contracts should be written in clear, straightforward language (the principle of transparency), considering the consumer's ability to comprehend. The consumer must be informed of the legal implications of any contractual terms that involve legal matters, and they should have sufficient time to read and understand these terms³⁶. Contract transparency is a legal requirement and a vital element in fostering trust between consumers and service providers. This trust, in return, bolsters market integrity and ensures the adequate protection of consumer rights³⁷.

Transparency involves the obligation to provide accurate and clear information to the counterparty in a manner that is understandable and accessible, considering the average person's visual and cognitive abilities. However, providers may intentionally draft contract terms using complex legal language that is difficult for the average consumer to grasp, making it hard to comprehend the legal implications. This allows providers to exploit legal provisions that require ambiguous contract clauses to be interpreted in favor of the obligated party, putting the consumer in a weaker legal position when enforcing or interpreting the contract³⁸. Thus, contracts should be drafted in a form that is clear and easily understood by the average consumer (Section I). Any ambiguity should be resolved in favor of the consumer (Section II), maintaining balance and fairness during contract execution.

First Requirement: Contract Terms Clarity

Ensuring clarity in contract terms embodies the principle of good faith during contract negotiations³⁹. This principle demands that the service provider's information be transparent and credible. Civil law generally prohibits deceptive practices, mainly when a party conceals significant information that could affect the

³⁵ Mwakatumbula, Moshi and Mitomo (n 2).

³⁶ Bashar Al-Momani, 'Nahu Tashrī Khāṣ li Ḥimāyat al-Mustahlik fī Marāḥil al-Aqd fī al-Qānūn al-Urdunī, Dirasah Muqāranah' (2018) 2 Majallat Kullīyat al-Qānūn al-Kuwaitīyah al-'Ālamīyah, P. 606.

³⁷ Fayyad, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience?' (n 12).

³⁸ Zechariah Joffe, 'Mabda' al-Shafāfiyah li Ḥimāyat al-Mustahlik fī Zill Qānūn al-Mumārasāt al-Tijāriyah' (2017) 4 Majallat al-Ḥuqūq wal-Ḥurriyyāt, Jāmi'at Muḥammad Khayḍar – Biskrah, P. 661.

³⁹ Fayyad, 'Measures of the Principle of Good Faith in European Consumer Protection and Islamic Law, a Comparative Analysis' (n 19).



other party's satisfaction, thus leading them to agree to terms they otherwise would not have accepted (Article 186 of the Civil Transactions Law). Ensuring the clarity of contract terms addresses issues related to ambiguity, which can prevent consumers from fully understanding their rights and obligations. Ambiguity can arise from vague or unclear language in contractual clauses or from how these clauses are presented to the consumer, potentially confusing⁴⁰.

Enumerating instances of unclear contracts and the reasons why a consumer might accept ambiguously formulated terms is challenging, but several common scenarios illustrate these issues. For example, a consumer might be pressured into signing a contract without adequate time to review and understand its terms, leading to an agreement on terms that need to be fully comprehended. Additionally, if contract terms are presented in very small print on a contract or invoice, it can impede the consumer's ability to read and interpret them. Furthermore, when terms are articulated in complex legal jargon that the average consumer cannot easily understand, it creates a disconnect between the parties. These issues contribute to an imbalance in the contractual relationship, where the provider's position is exploited, underscoring the need for legislative measures to address and rectify these problems.

The UAE legislator, through the Consumer Protection Law, emphasizes the principle of clarity and transparency by mandating that providers deliver accurate and clear information about products or services. Article 17 of Federal Decree-Law No. 5 of 2023 on Consumer Protection explicitly prohibits advertisers, providers, and commercial agents from presenting goods or services in a misleading manner or with incorrect data. The primary aim of this article is to safeguard consumers from false information that could compromise their satisfaction. Misleading advertisements or inaccurate data can lead consumers to make ill-informed decisions, potentially resulting in commercial fraud. Therefore, Article 17 underscores the obligation for advertisers, providers, and commercial agents to be truthful and precise in their disclosures related to goods and services.⁴¹ In alignment with these principles, Clause (28.9) of the Consumer Protection Regulations issued by TRDA mandates that licensees must be prepared to provide necessary evidence—whether documentary, photographic, audio, or otherwise—upon request by the authority to substantiate the accuracy of all data, facts, claims, or allegations contained in the contract forms provided to subscribers.⁴²

⁴⁰ Al-Momani (n 37), P. 606.

⁴¹ Article 17 of Federal Decree-Law No. 5 of 2023 on Consumer Protection states: 'Advertisers, providers, and commercial agents are prohibited from describing goods or services in a manner that contains incorrect information or from advertising them in a misleading way.'

⁴² Clause 28.9 of the Consumer Protection Regulations** stipulates: "Licensees are required to maintain and provide, upon request by the authority, the necessary evidence—whether documentary, photographic, audio, or otherwise—to substantiate all statements, facts, claims, or



Furthermore, Article 26 of the UAE Consumer Protection Law emphasizes the role of language in safeguarding consumer rights and ensuring clarity. It stipulates that all statements, advertisements, and contracts related to consumer transactions must be written in Arabic, with the option to include another language besides Arabic. This provision ensures that information is accessible in the official language of the United Arab Emirates, as per the country's Constitution, thereby enabling all consumers to fully comprehend the terms and conditions of the products or services they engage with. This requirement aims to prevent misunderstandings due to language barriers, thereby enhancing consumer protection and increasing transparency in commercial transactions.⁴³

Also, Article 3 of TDRA Regulations outlines detailed procedures that licensees must follow when interacting with consumers, especially concerning providing written information. The article mandates that when regulations require licensees to provide written information to consumers, the information must be clear and transparent, regardless of whether the transaction is conducted electronically. This approach facilitates efficient communication and aligns with modern technological advancements, allowing information to be conveyed swiftly and effectively. The article also stipulates that written information must be provided in Arabic or English, according to the consumer's preference. This requirement ensures that consumers receive information in a language they comprehend well, helping them make informed decisions about the products or services offered. If the consumer does not specify a language preference, the article obliges licensees to provide the information in Arabic and English, ensuring comprehensive understanding.

Second requirement: Contra Proferentem Rule

The legislator aimed to protect the weaker party in adhesion contracts by granting judges the discretion to interpret ambiguous terms in a manner that favors this party. Comparative legal systems have established a rule stating that "doubt in adhesion contracts must be resolved in favor of the adhered party." This interpretive rule is a critical component of the legal safeguards for adhesion contracts, where one party—typically the stronger—dictates the terms without negotiation, leaving the weaker party with no option but to accept.⁴⁴ The importance of this principle becomes

allegations made in their contract forms, in a manner that reasonably satisfies the authority's requirements."

⁴³ Article 26 of the UAE Consumer Protection Law** states: "All statements, declarations, and contracts related to consumer transactions must be provided in Arabic. The use of an additional language alongside Arabic is permitted."

⁴⁴ Fayyad, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience?' (n 12).



evident when disputes arise between the parties during contract execution. The weaker party may encounter terms they did not anticipate or fully understand when contracting, particularly if these terms are vague. In such cases, the ambiguous terms are interpreted according to general legal provisions to reflect the parties' apparent intent at the time of the contract's formation. The Civil Transactions Law emphasizes interpreting contracts based on the apparent will of the parties. One established legal principle is that trial judges have broad authority to interpret contracts and documents to ascertain the parties' intent based on the facts and circumstances of the case. This authority is generally not subject to review by higher courts, provided the judge's interpretation aligns with the ordinary meaning of the contract's terms⁴⁵.

The contra proferentem rule is a principle in contract law that governs the interpretation of ambiguous contract clauses. According to this doctrine, if a contract clause is unclear or can be understood in multiple ways, it should be interpreted against the interests of the party who drafted, provided, or demanded the inclusion of that clause. This rule guides the legal interpretation of contracts and is commonly applied in disputes, particularly when challenging a contract in court. It safeguards against potential misuse of contract language, offering protection to parties disadvantaged by ambiguous terms. The contra proferentem rule is frequently invoked in disputes with telecommunications and insurance companies, especially in cases where claims have been denied.

In this context, Article 266 of the UAE Civil Transactions Law states, "1- doubt should be interpreted in favor of the debtor. 2 However, ambiguous terms in adhesion contracts must not favor the party who did not draft the terms". Thus, if the contract terms clearly reflect the parties' mutual intent, the contra proferentem rule does not apply, even if the contract contains arbitrary conditions. In such cases, the judge is bound to enforce the contract, given that it constitutes the law between the parties. However, if the judge identifies that the terms, although clear, are arbitrary, they are not subject to the contra proferentem rule. Instead, the judge may amend or invalidate such arbitrary conditions based on the case's specifics, thus providing enhanced protection for the weaker party in the contractual relationship.

Many legal texts stipulate that this interpretation is not applicable if the terms are clear. The first paragraph of Article (265) of the UAE Civil Transactions Law states that if the contract phrase is clear, it is not permissible to deviate from it by interpreting it to identify the contractors' will. This means that the will of the parties to the contract is the essential element, significantly affecting the order of the consequences that may result from it. Accordingly, the traditional method, which is a hypothetical means of interpretation, should be done after exhausting all the

⁴⁵ Mohammad Sadat, 'Himāyat al-Mustahlik min al-Shurūṭ al-Ta'assufīyah fī al-Qānūn al-Injlīzī, (2015) 12 Majallat al-Ḥuqūq, Kuwait University, P. 464.



necessary means to reveal the content of this subconscious will or common intention. This rule aims to protect the weaker party to the contract, ensuring that they are not subjected to injustice within the framework of the contract.

This means that general rules of contract interpretation establish that, in cases of conflict between the objective meaning derived from the contract's terms and the parties' subjective intentions, the objective meaning prevails. Interpretation should focus on the contract's explicit terms rather than the parties' subjective intentions, particularly in agreements with internet service providers. These general rules, prioritizing the objective interpretation of contract terms, effectively endorse the practices of many internet service providers. These companies often present an intention that differs from what is stipulated in the contract terms, which can prevent consumers from challenging discrepancies by claiming the company had a different intention than what was expressed in the written contract. This practice allows service providers to exploit ambiguities in contract language, interpreting clauses in a manner that may be contrary to their true intentions. When disputes arise over contract terms or their interpretation, the apparent meaning derived from the contract's terms takes precedence over any hidden intentions of the consumer. This allows companies to argue that the terms are clear and that the consumer must adhere to them.

The rule provides judges with legislative solutions for interpreting ambiguous contract terms when other interpretative methods, such as examining the nature of the transaction, current customs, or good faith, are insufficient to reveal the parties' common intent. In such cases, where significant ambiguity remains, comparative laws also guide judges in uncovering the parties' true intent.



Conclusion

An internet services contract is an agreement between a licensee and a consumer in which the licensee commits to providing the consumer with internet access, enabling them to use the available information and services online. In return, the consumer pays a specified amount within a defined period. These contracts are typically standard agreements, pre-prepared by the provider. The consumer is often required to sign them upon review without any opportunity for negotiation or amendment. This highlights the necessity for government authorities to intervene to ensure the fair representation of consumer interests and protect the consumer's right to information, thereby maintaining balance in the contractual relationship.

The consumer's right to information is crucial in distinguishing between the services offered and making well-informed decisions. This right is fundamental for ensuring a balanced contractual relationship at the pre-contract stage. It encompasses the consumer's right to be fully informed of all contract terms by obliging the provider to fulfill the duty of information. Additionally, it includes the consumer's right to read and comprehend all contractual terms, which mandates that the provider must draft the contract in clear and understandable language. Furthermore, any ambiguous contract terms should be interpreted in favor of the consumer, acknowledging their position as the less powerful party in the contractual relationship.

The UAE Consumer Protection Law 2023 and the regulations issued by TDRA emphasize the consumer's right to access all contractual terms, mandating the provider's duty of information. They explicitly state that any contractual clause not made available to the consumer is unenforceable. Objective reasons for a consumer's lack of access to contract terms include referral to the provider's systems and inaccessible instructions at the time of contracting or insufficient time for review due to many customers. Personal reasons may include the consumer's trust in the provider's integrity or the regulatory authorities' oversight in reviewing contract models before market use. The TRA's instructions require providers to obtain prior approval before listing contract forms on the market, ensuring a thorough review and compliance.

Ensuring the consumer's right to access the contract terms will only achieve its desired goals if the standard contract forms are prepared clearly and understandably for consumers. The language of these contracts, the font size used, and the formatting should all contribute to the clarity and comprehensibility of the information provided. The Consumer Protection Law and the TRA regulations mandate providers to prepare standard contracts in both Arabic and English, at the very least, allowing the consumer to sign the contract in the language of their choice. These legal provisions

also require the provider to draft the terms of these standard contracts in simple and understandable language for the average consumer. The rule of interpretation of doubt in the consumer's favor is explicitly included in these legislative texts, establishing this rule as the primary legal standard in place of any other interpretative principles that may be detrimental to the consumer's interests.

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