

The Dilemma of Consumer's Rights Protection in Internet Platform--Taking the Event of Notability Changing Service Content as the Entry Point

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Abstract: In fact in life will find that with the development of information and science and technology, the wide use of electronic applications, the Internet platform usually require a consumer after the agreement to be able to use certain functions, and the agreements are in the form of format terms, also is the Internet's ping worked out in advance, on the basis of this, how to safeguard their legitimate rights and interests of consumers, In this case, Notability unilaterally changed from buyout system to subscription system, ignoring the services previously purchased by old users. This behavior is undoubtedly closely related to the rights and interests of consumers. In this case, can consumers protect their rights and interests?

Keywords: Standard Terms; Internet Platform; Consumer Rights and Interests; Agreed Arbitration

1. The Notability event and some thinking

In the early stage, Notability was a software with buyout system in Apple App Store. Users needed to pay 60 yuan to download the software, and after downloading, they could enjoy all the functions of the software for life. However, in the new version of the software, the buyout system was changed to subscription system, that is, 80 yuan per year was paid to obtain the service. In addition, the old users who had been bought out before were forced to change to the subscription system. As compensation, the old users were given one-year subscription service as a gift. Compared with before and after the upgrade of Notability software, all the functions purchased by buyouts users on the old version are cleared, and the users can continue to use these functions only when they upgrade to the latest version that has been changed to the subscription system. However, the upgrade means that they can use them only after the lifetime buyout of 60 yuan is changed to the subscription payment of 80 years. After this happened, it quickly became a hot list and consumers kept teasing. Although later Notability received dissatisfaction from old users about the content of the change, The content of the agreement was revised in time to ensure that consumers could continue to use the service content they had purchased before, but the impact of this incident was also quite profound. The Internet platform usually require an agreement in a standard terms before using certain functions. And the standard terms are the Internet's formulated in advance. In this case, Notability unilaterally changed from buyout system to subscription system. Such behavior is undoubtedly closely related to consumers' rights and interests. Can consumers protect their rights and interests?

2. In this case and similar incidents, consumers' rights protection approaches are explored

2.1 The dispute settlement clause agreed in the user agreement -- arbitration

2.1.1 The dilemma of this case in reality

When purchasing the Notability software for the first time and logging in, the platform will require you to read and agree to the pact of the software. If you do not agree to the pact, you cannot continue to use the software. The dispute resolution terms are clearly stipulated in this user Agreement: If such negotiations fail to resolve the dispute, it shall be resolved by binding arbitration in San Francisco County, California, or final resolution through JAMS Consumer Arbitration Minimum Standards Minimum

Standards. In addition, the operating body of Notability software is "GINDER LABS, INC", which has no representative office outside the United States, which means that if consumers outside the United States have a dispute with them, it will be a very difficult and complicated foreign-related civil dispute. In other words, no matter how to seek a third party to resolve the dispute, it must be conducted in the United States. Considering the arbitration fee and practical distance, almost no consumer would go to the United States to apply for third-party arbitration for the annual fee of 80 yuan. The cost of applying for arbitration almost makes it impossible for many users to Sue in the real world.

2.2 Practical difficulties caused by agreed arbitration on consumer rights protection

Agreed to arbitration in fact now is widely used in various Internet company's user agreement, the arbitration characteristic is the referee faster trial period is shorter and practice the single ruling system, which is beneficial to avoid the parties in dispute for a long time, to avoid litigation, reduces the time cost of resolving dispute. Does the rights and interests of consumers can be adequately protected?

The cost of consumer rights protection is too high, even far exceeding the part of "rights and interests" that they want to "maintain". The classic case of this is OfO deposit case, which is mentioned in the OfO Small Yellow Car User Service Agreement in the platform: Any dispute arising out of or in connection with this Agreement shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitration shall be conducted in Beijing. The arbitration award shall be final and binding on both parties. However and handle with the cases handled by the China international economic and trade arbitration commission of the minimum charge is 6100, that is to say, if a user on this case in order to take back the \$200 deposit rights by means of arbitration, even if not travel expenses, so consumers also have to invest 6100 yuan in the early stage of the arbitration, and once lost the arbitration fee shall bear all risks. In order to safeguard the legitimate rights and interests of 200 yuan deposit, but to invest almost 30 times the money is likely to succeed, in this case, and how many consumers want to continue to safeguard their rights? This high threshold of arbitration fees has caused practical obstruction to consumer rights protection. In daily life, more consumers would rather lose 200 yuan than take the road of rights protection, because only in this way can the personal loss here be "reduced to the minimum".

3. Through litigation

3.1 The difficulties of conducting litigation in reality

In the case of disputes, we usually think of the solution of litigation, but according to Article 5 of the Arbitration Law: if the parties reach an arbitration agreement and one party brings a suit to the people's court, the people's court will not accept it, except for the invalid arbitration agreement. That is to say, if consumers want to protect their rights in litigation, first have to confirm that the arbitration agreement is invalid. Then look at the "arbitration Law" provisions of Article 17 arbitration agreement invalid situation: the agreed arbitration matters beyond the scope of arbitration stipulated by the law; An arbitration agreement concluded by a person without or with limited capacity for civil conduct; Where one party forces the other party to conclude an arbitration agreement by means of coercion. However, the agreement between consumers and Internet platforms does not fall under the above circumstances.

Although the Interpretation claims that the jurisdiction agreement is invalid, there is no criterion for determining the "reasonable way to draw the attention of consumers" mentioned in it. Simply marking a large section of the text in the service agreement in black and bold will complete the obligation of prompting, that is, not under the adaptation of this judicial interpretation, just like the aforementioned agreement of the large members of Bilibili website, which in the eyes of ordinary people, even a bit outrageous provisions are legally legitimate. In 2017, some consumers applied to the court to confirm that the arbitration agreed in the agreement was invalid, and the result was "about whether the Qingdao Arbitration Commission has the right to arbitrate. Moreover, the fact that the Qingdao Arbitration Commission has not set up an arbitration office in Shanghai does not affect the fact that the Qingdao Arbitration Commission conducts arbitration in Shanghai..... The reason given by the applicant that arbitration should not be conducted in Shanghai by the Qingdao Arbitration Commission in accordance with its arbitration rules is not tenable and cannot be supported by the Court."

3.2 Breakthroughs in the judicial field

This kind of problem actually have some breakthrough in the field of judicial practice, such as wen-lin liu and taobao three times to the jurisdiction of the court case, the court's decision was largely reflects the special considerations for the consumer, the

court said the "case" taobao service agreement "to print this page 19, agreement jurisdiction clause in the complicated information, is in at the end of the page, is a bold, But the font is small, and not placed in a prominent position is easy to be ignored by the user "does not meet the requirements of" reasonable way to prompt ", and in the case of the judgment of the third point: "whether the format agreement jurisdiction provisions increase the cost of consumer rights protection. Once deemed agreement jurisdiction clause valid, is bound to cause huge amounts of foreign consumers have been to the place of site investigations or prosecution, forced a large number of additional, compared with shopping price obviously unreasonable travel expenses and time cost, and can measure the benefits of this lawsuit deterrent consumers reasonable right to appeal, is not conducive to the construction of the market credit system ".I think this case in fact in the judgment of this kind of dispute is like a opening, breaking through the Internet platform and consumer agreement form of legal limitations, more is the consideration of the reality of the decision made in favor of consumer rights.

4. Thoughts on this case

4.1 The reasons why it is difficult for consumers to safeguard their rights under the Internet platform

First of all, the service agreement is formulated in advance by the operator in the form of standard terms, and the operator holds the initiative. It is impossible for the operator to formulate the content of the agreement which is unfavorable to itself. The contract party completes the contract, and the consumer does not participate in the conclusion of the contract, so he loses the opportunity to safeguard his rights and interests when the service agreement is concluded.

4.2 Analysis of the current situation

From these cases, it can be seen that it is very difficult for consumers to protect their rights when they have disputes with Internet platforms when arbitration is agreed. Actually based on the particularity of the Internet, the Internet platform service agreement between customers in the form of format terms set by the Internet ping's is inevitable, the Internet platform for broad consumer distribution, number, impossible to take the form of "one man, one about", but we should also see on this basis, the contract is drawn up, this is the Internet flat Taiwan side Combined with obvious unequal economic ability and information, Meanwhile service agreements and rules on the dispute resolution clause, the dispute resolution clause followed by high costs for protection of rights, this is equivalent to the road of consumers' rights protection and added obstacle, difficulty in agreed way to increase the cost of litigation or arbitration to consumers outside the court, this is actually a disguised form of consumer rights and interests of a kind of injury.

4.3 Solutions

First, considering the inequality between consumers and Internet platforms, occasions like that, consumers infringes the rights of the Internet platform, happens hardly. Between them, the operator is often the one who is stronger. So we can consider more convenient ways to help consumers seek judicial law, For example, certain restrictions should be placed on the agreed arbitration between such special parties, so as to reduce the arbitration clauses which are legal in form but unreasonable in substance.

Second, industry associations should strengthen supervision. Consumer associations can supervise the content signed between some Internet platforms and consumers, which can not only urge operators to conclude fair service agreements, but also find problems in time through the supervision of consumer associations to alleviate the dilemma of consumer rights protection.

References

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