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A MODEL FOR RESOLVING CONSUMER DISPUTES IN ELECTRONIC COMMERCE IN LITHUANIA

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Summary. The article analyses the Lithuanian model of pre-trial resolution of consumer disputes in electronic commerce. The current situation in the resolution of consumer disputes in electronic commerce is discussed and a potential model for pre-trial resolution of such disputes is presented.

The article discusses the principles and possibilities for their application in resolving consumer disputes in electronic commerce. The article focuses on issues in electronic commerce and their impact on the existing principles governing consumer dispute resolution. Deficiencies in the existing model are described in detail and proposals made on how to modify the model and apply it to the reality of electronic commerce. The article also presents the model's key principles and their practical implications.

JEL classification: L81, D12.
Keywords: electronic commerce, consumer disputes, dispute resolution.
Reikšminiai žodžiai: elektroninė komercija, vartotojų ginčai, ginčo sprendimas.

1. Introduction

Electronic space is increasingly becoming a more popular and convenient environment for doing business. This space provides new opportunities and possibilities [1]. However, the growing use of electronic space triggers disputes arising from legal relationships existing in electronic commerce [2]. Alternative dispute resolution mechanisms are becoming more and more popular when dealing with such disputes. The main difference between these alternative dispute resolution mechanisms and formal legal procedures (traditional dispute resolution mechanisms) is that the former ones are most frequently resolved voluntarily [3]. Therefore, in cases where another party to the agreement refuses to resolve the dispute using an alternative method, it is important that the consumer's rights are ensured when resolving the dispute in a traditional way.

The existing traditional mechanisms for resolving consumer disputes have been created to address disputes arising within the boundaries of the territory of one state and most frequently entail the resolution of the dispute in a written form. Meanwhile, electronic commerce introduces a number of novelties into the legal relationships between consumers and sellers of goods or providers of services, starting with differences associated with the physical presence of the parties through to the immaterial nature of the goods themselves.

Such features of the new type of electronic commerce may result in obscurities not only in the legal relationships of the consumer and the other party, but may also create problems when resolving arising disputes. Traditional dispute resolution mechanisms may not be capable of ensuring a proper protection of consumer rights. It is important that consumers trust electronic commerce and one of the

preconditions of such trust is the protection of consumer rights in cases of dispute. It is therefore important to ensure the conformity of traditional mechanisms for resolving consumer disputes to real situations in electronic commerce and to create a model for the resolution of consumer disputes in Lithuania that would be appropriate to the features and principles of electronic commerce.

The **aim** of this article is to analyse the traditional pre-trial model used to resolve consumer disputes in Lithuania. The object of research is the traditional model of pre-trial resolution of consumer disputes in Lithuania. Comparative, analytical and other methods are used in the article. Opinion of scholars in this field is taken as a basis, with a review of the main principles of consumer dispute resolution and the impact of electronic commerce on the application of these principles. The model of consumer dispute resolution existing in Lithuania is examined and a model for pre-trial resolution of disputes in line with specificity of electronic commerce is proposed.

2. Principles for resolving consumer disputes

Both in the documents of the European Commission and other organizations, such as the OECD (Organisation of Economic Co-operation and Development), a number of principles are distinguished which should be used for the resolution of consumer disputes. The main documents describing the principles are as follows:

- Commission recommendation N 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes [4];
- Commission recommendation No 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes [5];
- 2007 m. OECD Recommendation on Consumer Dispute Resolution and Redress [6].

It is thought that the principles mentioned in these documents could accelerate the introduction of mechanisms of out-of-court settlement of consumer disputes, ensure greater confidence in out-of-court bodies involved in the consensual resolution of consumer disputes, particularly in cases of cross-border disputes, and could also ensure better consumer confidence in national dispute settlement procedures.

In summary of the above documents, the following principles of consumer dispute resolution may be emphasized:

1) The **principle of effectiveness**. Based on this principle, the effectiveness of the procedure is guaranteed through the following measures:

First, a consumer should have access to the procedure without having to use the services of a legal representative.

Second, the procedure should be either free of charge to consumers, or any necessary costs should be both proportionate to the amount in dispute and moderate.

Third, the span of time between the moment of applying and taking the resolution should be reasonable.

Fourth, a competent institution should be given an active role.

Fifth, the procedure should be easily accessible and available to both parties, for instance, by electronic means, irrespective of where the parties are situated.

2) **Transparency and provision of information to the user**. Consumers should receive clear and accurate information on the procedure, including information on:

- The process of initiating the dispute and the selection of the resolution mechanism, requirements for the parties of the dispute, other information on the rules of the dispute;
- The expected costs in connection with dispute settlement;
- The period of time within which the dispute will be settled;
- The potential outcomes of the dispute;
- The possibility to appeal;
- Whether the resolution will be legally binding, and what fines would be imposed on the defaulter;
- Restrictions relating to the territory or financial implications of the dispute.

3) **Access to the procedure without being obliged to use a legal representative**. Irrespective of its stage of development, the procedure must not obligate the parties to use a third party for representation purposes. A consumer should be able to cope without the assistance of a legal representative.

4) **Fairness and impartiality**. Under this principle, a fair and honest process and adversarial procedure should be respected, including:

First, that the parties should be notified of their right to withdraw from the procedure at any stage of the dispute if they are dissatisfied with the settlement.

Second, that both parties should be able to submit any information, evidence, arguments or counter-arguments and comments at any stage of the dispute settlement until the final decision is taken.

5) **Independence of the body authorized to settle the dispute**. Independence of the body resolving the dispute should be guaranteed. When an individual person is authorized to settle a dispute, their independence should be ensured by sufficient com-

petence of such authorized person and by other means. If a collective body is authorized to settle a dispute, both consumers and professionals should be adequately represented in this body.

6) The **principle of freedom**. The resolution of the body authorized to settle the dispute may be binding on the parties only if they have been informed on the binding nature of the resolution in advance and have agreed to it.

7) The **principle of legality**. The resolution of the body authorized to settle the dispute should not be prejudicial to imperative legal norms. In cases of cross-border disputes, the resolution of the body authorized to settle the dispute must not contradict the imperative legal norms of the state of the consumer's domicile.

These principles are also confirmed in scholarly literature. For instance, T. Shultz states that it is possible to identify a number of essential requirements for an on-line dispute resolution (ODR). These requirements cover the already existing requirements applicable to an off-line dispute resolution, including new ones that have evolved through the use of information technologies:

- The process should be transparent;
- The body authorized to settle the dispute should be impartial and independent;
- The procedure should be carried out expeditiously;
- The system should be readily accessible;
- The procedure should be globally fair;
- In case of B2C, the resolution should be binding on the service provider/seller [1].

The following similar principles are also mentioned in cases of exclusively on-line settlement of consumer disputes:

- Consumer access to the procedure at no cost or moderate cost;
- Independence;
- Transparency;
- Expedience of dispute settlement;
- Free access;
- Voluntary nature of the process;
- Obligatory nature of the resolution [7].

A recommendation adopted by the OECD in 2007 regarding consumer dispute resolution has also established a principle on the submission of standard forms of documents. In cross-border disputes, possibilities for consumers to defend their rights have also been provided.

Among the measures, improved use of information technologies is also indicated, for instance, in the dissemination of information, electronic filing of the case of the dispute and electronic settlement of the consumer dispute [6].

Meanwhile, it should be emphasized that Article 25(3) of the Law on Consumer Rights Protection of the Republic of Lithuania [8] specifies only three principles that govern settlement of the dispute: the dispute is settled on the basis of adversarial procedure, expedience and transparency of dispute settlement.

3. Distinctive features of electronic commerce

Electronic commerce along with progressive information technologies create new opportunities for delivering goods to other countries or supplying services to their nationals. However, it is important to establish how such new opportunities change commercial relationships whose effective regulation requires new methods. By their very nature, Internet-based relationships with consumers are simply "permeated" with problems of regulatory character [9]. Furthermore, the mechanism that has traditionally existed in commerce for the purpose of resolving consumer disputes is not capable of ensuring effective implementation of pertinent principles in commercial relationships appearing in electronic space.

To understand which novelties affect traditional commerce and traditional settlement of the disputes between consumers and sellers, we must define particular features of electronic commerce and take note of the differences between traditional and electronic commerce. Not all features of electronic commerce have a distinctive effect on the protection of consumer rights in comparison with well-known traditional business models. According to D. A. Hardesty [10], it should be possible to distinguish the following exclusive characteristics of electronic commerce which may encumber adherence to the said principles:

Global commerce. Historically, geographical boundaries of states had been a barrier for selling goods in the territory of another state. New possibilities of electronic commerce allow companies to easier launch their businesses not only in the national territory but also across the globe. Numerous transactions of electronic commerce are made on the Internet daily [11]. Small and medium-sized businesses have the most to gain as they can start an international business without too great an investment. Such an opportunity is made possible by the Internet covering the entire world.

Novelty, particularly in consumer disputes, manifests itself in that sellers can trade across the globe through electronic commerce without overstepping the borders of their own country. Electronic commerce makes it possible for the seller and the buyer to avoid face to face communication at any stage of transaction. Great distances between the buyer and the seller do not ensure that the principle

of effectiveness is implemented using the old means of dispute resolution. Use of information technologies in electronic commerce has made it possible to overcome the barrier of geographical distance. Deployment of these technology-based models can also ensure a more effective settlement of consumer disputes. Traditional dispute settlement has become slow and even uneconomic in cases of small transactions (financial and time costs of dispute resolution are too high as compared with low-value transactions).

Anonymity. The majority of buyers and sellers taking part in Internet-based transactions don't ever see each other [12]. The deployment of electronic money or other means of electronic payment distances sellers from buyers even further. Information transfer protocols facilitate the identification of IP addresses of computer systems, but this does not provide information on the merchant who uses a particular computer system. Although the Electronic Commerce Directive (2000/31/EC) requires sellers to present all information about themselves (including contact data), some web sites (usually those representing small businesses) ignore these requirements. In most European Union countries, such a requirement does not exist at all.

Consumers are advised, prior to the resolution of a dispute, to contact the seller and clarify the issues directly. Some sellers have embedded tools for dispute resolution into their websites. However, some web sites do not observe the principle guiding the presentation of information to the consumers and, furthermore, make no indication regarding the behaviour of the buyer in case of a conflict. As soon as the transaction is completed, the seller distances themselves from the buyer.

This gap, evolved due to the anonymity and the global scope of electronic commerce, does not guarantee an effective implementation of the principle on the provision of information to consumers. Furthermore, it reduces consumer trust in shopping in electronic space and obstructs the development of electronic commerce.

Remote server management. Most companies do not manage servers by right of ownership. Generally, they use the servers of other independent companies. These companies lease their servers and ensure their continued operation. Most such entities are providers of Internet services. Some companies, even those that have their own servers, hire independent companies to ensure the necessary technical maintenance for their servers.

However, operations that exert influence on commercial activity may be carried out by remote means. This is mostly made possible by the software features. Through such software, the seller can determine which goods they intend to sell, set the desired prices, place advertisements, settle accounts with buyers for commodities or services, as well as transfer goods to the buyer's computer system [12].

In the case of disputes, this feature of electronic commerce can create situations where buyers and sellers are in two different countries, while the server hosting the web site (an equivalent of shop premises in traditional commerce) is in a third country. If the seller provides only Internet or other contacts based on information technologies, the body authorized to settle the dispute may not be able to identify the respective institutions of a particular country to be contacted for the purpose of addressing the case. Extraordinary efforts to establish the buyer's location and a traditional application of the dispute resolution method do not justify themselves in small and medium transactions. Namely, these types of transactions are mostly encountered in retail electronic commerce. Thus, the emphasis is on the resolution of cross-border disputes [13].

Digital products. Not all products can take a digital form. These are products which information technologies render into a digital form suitable for moving them in electronic space [12]. Products sold using a digital form include software, music, books, video products. Companies selling such products can entirely dispense with certain stages of commercial activity. Thanks to software, buyers can download copies of the only product existing in the seller's data base without wasting time and performing additional instructions. Delivery of such a product is controlled exclusively by information technologies. Therefore, when disputes arise, it is impossible to rely on the information supplied by the couriers. It is more difficult for the consumer to substantiate his requirements in connection with the violation of his rights.

However, such specifics of product delivery do not prevent the seller from allowing the downloading of the same product repeatedly. Only when the system registers that the digital product has been delivered in full, access to downloading that product is denied. Most companies provide for multiple downloading opportunities. In the case of dispute, such information in the seller's computer system would easily prove that one of the parties of the dispute is right.

There is no doubt that these features of electronic commerce distinguished by D. A. Hardesty are unique in comparison to traditional commerce and pertain to electric commerce only. However, electronic space is also of great importance and has a significant impact on dispute resolution. It is thought that this concept was first coined in 1984, in W. Gibson's book "Neuromancer". W. Gibson described electronic space as an imaginary world created by

each of us at the moment of connecting to the global computer network[14].

Another feature of transactions with consumers in electronic space is that the value of such transactions is low, because people usually buy books, works of music, software or other products and goods satisfying the needs of the consumers [15]. In general, some authors treat this factor and situation as a certain challenge for the private law [13].

Relocation of trade into electronic space should result in the modernization of the traditional mechanism of dispute resolution. Advantages created by electronic space would also make it possible to implement the principle of effectiveness in resolving disputes that arise in electronic commerce.

4. The traditional mechanism of the pre-trial resolution of consumer disputes in Lithuania

4.1. A general model for resolving consumer disputes in Lithuania

Unlike alternative mechanisms of resolving consumer disputes, traditional resolution mechanisms are subject to rather detailed regulation by legal acts of the Republic of Lithuania. The Law on Consumer Rights Protection of the Republic of Lithuania is the main law in this area (*Official Gazette*, 2007, No 12-488). Article 19 of the Law on Consumer Rights Protection provides for certain means of protecting the rights of consumers. Namely, a consumer who thinks that the seller or the provider of services has violated their rights or interests protected by law is entitled to an approach, as prescribed in the procedure of this chapter, which identifies the following subjects:

- A seller or service provider;
- Consumer Rights Protection Authority;
- State Non-Food Inspection at the Ministry of Economy of the Republic of Lithuania;
- State Public Health Service;
- Other dispute resolution bodies specified in the law;
- Court.

The mechanism of legal protection of the consumer rights has been defined in the Civil Procedure Code of the Republic of Lithuania.

To sum up, the mechanism for the settlement of consumer disputes (including pre-trial and legal protection of consumer rights) may generally be described in Figure 1.

We will further discuss only the out-of-court mechanism for protecting consumer rights. Meanwhile, a separate legal mechanism for resolving consumer disputes requires an individual study; therefore it will be not discussed in this article, leaving the analysis of this mechanism to other studies.

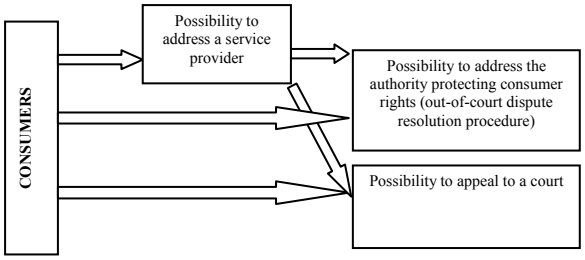


Figure 1. Mechanism of resolving consumer disputes

The idea of applying alternative principles of resolving consumer disputes for traditional dispute resolution procedures has already been expressed in scholarly literature: "It is necessary to adapt some alternative dispute resolution aspects to traditional dispute resolution procedures in state institutions. For example, addressing of the dispute itself, which has arisen from legal relationships of electronic commerce, could proceed in an electronic form. Explanatory information of the party which is appealed against and the required documents should be communicated in an electronic form. Resolution made by the state authority resolving the dispute could also be submitted to the consumer in this form. Then the mechanism of dispute resolution administered by the state would become more flexible and would better meet consumers' needs related to electronic commerce" [12]. Therefore, the article will analyse specific procedures of the currently existing mechanism and the possibilities of adapting these procedures to the legal relationships of electronic commerce.

4.2. Pre-trial institutional dispute resolution model in Lithuania

As mentioned above, there is more than one state institution competent and authorized to settle consumer disputes by way of pre-trial dispute resolution. As much as it concerns the out-of-court dispute resolution, a typical mechanism for resolving consumer disputes by the Consumer Rights Protection Authority will be analysed. This mechanism has been chosen because disputes arising from legal relationships of electronic commerce are most often settled namely through the State Consumer Rights Protection Authority.

A representation of the mechanism for resolving consumer disputes as applied by the State Consumer Rights Protection Authority is provided in Figure 2.

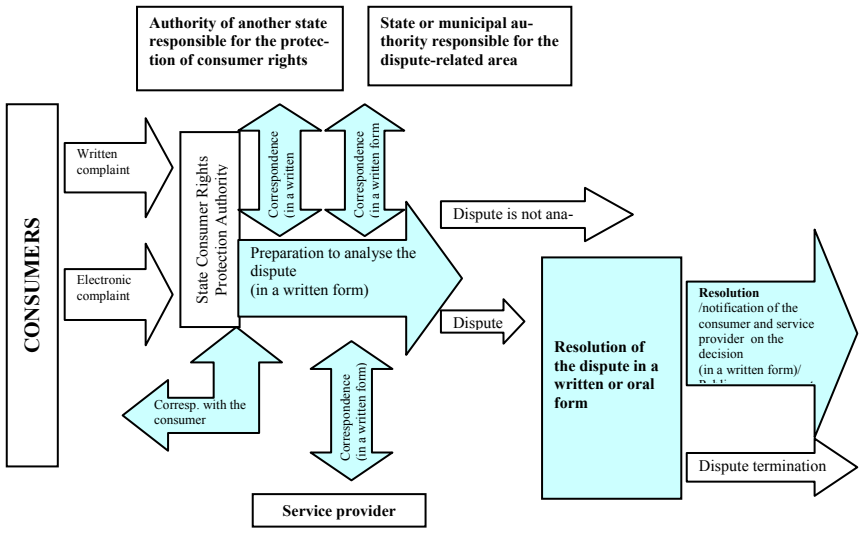


Figure 2. Representation of the mechanism for resolving consumer disputes as used by the Consumer Rights Protection Authority

Under the current procedure, when the consumer initiates a dispute, there is an opportunity to address the State Consumer Rights Authority both in written and electronic form. The electronic request form is submitted signed with an electronic signature verified by a qualified digital certificate received from registered service providers or it can be printed and signed.[1]

The remaining part of the procedure—readiness to start a dispute (including correspondence with the service provider, consumer, other state body defending consumer rights and other institutions) and the process of dispute settlement proceeds in a written or oral form (to the extent it concerns the settlement of the dispute). These procedures are depicted in blue in Figure 2.

This model of dispute settlement is not flexible. It is not convenient for the consumer. Often consumers refuse to defend their rights aware of what procedures await them. In small transactions, this model cannot be deployed altogether, because dispute settlement costs would be higher than the value of the transaction itself. Since retail electronic commerce is dominated by small and medium transactions, this model becomes ineffective. Without an effective dispute resolution mechanism, consumer confidence in electronic trade will not be encouraged.

On account of the distinctive features of electronic commerce, ineffectiveness of the traditional mechanism for resolving consumer dispute and efforts to ensure implementation of the above-mentioned principles, communication technologies should be utilized and the old model should be improved. A typical illustration of the new model is presented in Figure 3.

In this model, the consumer of electronic commerce will be able to defend his rights using the same environment that he used at the time of transaction—namely, electronic space [16]. Consumers concluding electronic transactions will supposedly possess all relevant data only in electronic form [17].

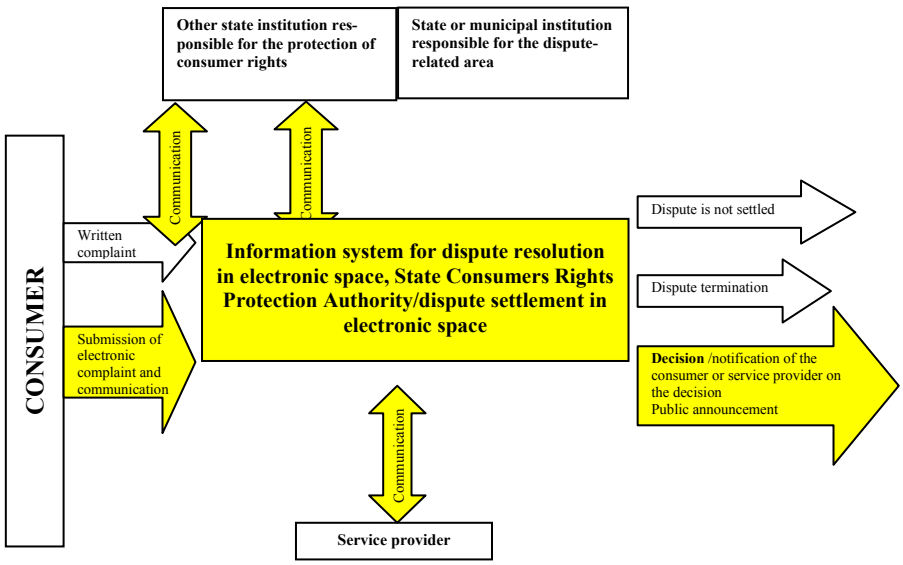


Figure 3. A typical model for the settlement of consumer disputes.

[1] http://www.vartotojoteises.lt/index.php?4061884442

This model would considerably facilitate the submission of such information in defending their rights. The essence of this model is that consumer disputes arising from legal relationships of electronic commerce (as, indeed, all other disputes as well) could be settled using an information system of dispute settlement in electronic space. This information system could be used for both, communication with different entities and with the consumer (applicant) himself. Further yet, the very decision and notification of this decision could be executed using the same information system. Authors propose to implement this pre-trial consumer dispute resolution model in the respective legal acts of the Republic of Lithuania, including the Law on Consumer Rights Protection of the Republic of Lithuania.

It should be noted that the model of dispute settlement in electronic space has already been used in the private sector for some time. One of the first initiatives in Europe has been that of the Dublin and Namur university project ECODIR (www.ecodir.org), funded by the European Commission in 2001. The project created a system providing Internet services which was oriented to transactions concluded by business to consumers on the Internet. Successful functioning and promotion of the system among system users was possible because of its effectiveness, moderate cost and expeditious solution of problems.

Saved money and time, anonymity of the parties during the dispute, convenience of negotiation and possibility to avoid tricky jurisdiction problems are among the few most important advantages of the system, as pointed out by the authors [16]. Considering the fact that dispute resolution in electronic space, like electronic commerce, rests on information technologies, it should be possible to ensure the implementation of the principles of effectiveness and consumer information submission.

5. Conclusions

The following principles of resolving consumer disputes should be distinguished: effectiveness, transparency and submission of information to consumers, access to the procedure without being obliged to use a legal representative, fairness, impartiality, independence of the authority responsible for resolving the dispute, freedom and legality.

Distinctive features of electronic commerce (global trade, anonymity, global server management, digital products) negatively affect traditional mechanisms intended to resolve consumer disputes.

The traditional pre-trial mechanism applied in Lithuania for resolving consumer disputes (analysed using the example of dispute resolution of the State Consumers Rights Protection Authority) cannot ensure effective resolution of consumer disputes arising from legal relationships in electronic commerce. This mechanism of dispute resolution should be improved by developing an information system for dispute resolution in electronic space.

The new model would allow effective implementation of the principles of effectiveness and submission of information to consumers on the condition that transactions are concluded in electronic commerce. The pre-trial model of dispute resolution in electronic space would increase consumer confidence in electronic commerce and stimulate its expansion in Lithuania.

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GINČŲ SU VARTOTOJAIS SPRENDIMO ELEKTRONINĖJE KOMERCIJOJE MODELIS LIETUVOJE

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Santrauka. Straipsnyje nagrinėjamas tradicinio ikiteisminio ginčų su vartotojais sprendimo elektroninėje komercijoje Lietuvos modelis. Aptariama dabartinė situacija, susijusi su ginčų su vartotojais sprendimu elektroninėje komercijoje, bei pristatomas galimas ikiteisminio ginčų su vartotojais elektroninėje komercijoje sprendimo modelis Lietuvoje.

Aptariami ginčų su vartotojais sprendimo principai ir šių principų taikymo elektroninėje komercijoje sprendžiant ginčus su vartotojais galimybės. Nemažai dėmesio skiriama elektroninės komercijos ypatumams ir šių ypatumų poveikiui egzistuojantiems ginčų su vartotojais sprendimo principams. Analizuojant esamą ikiteisminį ginčų su vartotojais sprendimo elektroninėje komercijoje modelį Lietuvoje, išryškinami šio modelio trūkumai ir teikiami pasiūlymai, kaip egzistuojantis modelis turi būti modifikuotas bei pritaikytas elektroninės komercijos realijoms. Straipsnyje taip pat pateikiamos naujo modelio apraiškos ir pagrindiniai principai.

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