

# LEGAL MECHANISMS GUARANTEEING CONSUMER WITHDRAWAL RIGHTS IN E- COMMERCE CONTRACTS: A COMPARATIVE ANALYSIS OF VIETNAM AND SELECTED JURISDICTIONS

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## I. INTRODUCTION

Amid digital transformation, e-commerce transactions are increasingly replacing traditional face-to-face commercial exchanges. While this shift offers significant convenience, it also introduces notable legal risks for consumers<sup>3</sup>. E-commerce often creates information asymmetry, as consumers lack detailed product or service information and cannot physically

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<sup>3</sup> Muhammad Nuruddeen and Yuharif Yusof, *A Comparative Analysis of The Legal Norms For E-Commerce and Consumer Protection*, 26 (2021).

inspect goods before purchase. To address the imbalance between merchants and consumers, legal systems have recognized the right to withdraw, also referred to as a “cooling-off” period or the “right of regret”<sup>4</sup>. This right enables consumers to unilaterally terminate a binding contract within a short period after its formation, typically without providing a reason or incurring penalties. Such mechanisms are intended to mitigate psychological pressure and informational disadvantages inherent in online or distance transactions<sup>5</sup>. Internationally, the European Union (EU) has established a harmonized standard granting consumers a 14-day withdrawal period for distance and off-premises contracts<sup>6</sup>.

By contrast, jurisdictions such as the United States adopt a more limited approach, with “cooling-off” regulations typically confined to specific high-pressure

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<sup>4</sup> Ahmad Mahmoud Al Masadeh, Ahmed M. Khawaldeh, and Mohammad Assaf Al-salamat, *The Electronic Contract in Civil and Commercial Codes*, published online 17 May 2021, doi:10.5281/zenodo.4766801.

<sup>5</sup> Christian Twigg-Flesner (Ed.), *RESEARCH HANDBOOK ON EU CONSUMER AND CONTRACT LAW* (2016).

<sup>6</sup> Wolfgang Kilian, *EU DIGITAL MARKETS LAW: A CONCISE GUIDE TO THE REGULATIONS AND DIRECTIVES ON IT AND MEDIA LAW* (2025).

sales contexts and often permitting merchants to opt out by clearly posting return policies<sup>7</sup>. Vietnam is actively participating in this global trend, ranking highly in online shopping engagement within Southeast Asia and internationally<sup>8</sup>. In response, Vietnam has recently enacted the Law on Protection of Consumer Rights 2023 and the Law on E-Transactions 2023. Although the 2023 Law on Consumer Protection allows consumers to unilaterally terminate a contract within 30 days if a business fails to provide required pre-contractual information, it does not establish a comprehensive, unconditional withdrawal right comparable to the harmonized standard in the EU<sup>9</sup>. The absence of general “cooling-off” provisions in all e-commerce contracts may lead to disputes and impede the sustainable growth of the digital economy. Consequently, a comparative legal analysis between

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<sup>7</sup> Omri Ben-Shahar & Eric A. Posner, *The Right to Withdraw in Contract Law*, 40 THE JOURNAL OF LEGAL STUDIES 115 (2011).

<sup>8</sup> Thi Dung Nguyen, Thi Phuong Pham, & Huyen Mai Thi, *Research on Vietnam's E-Commerce in the Process of International Economic Integration*, 5 EUROPEAN JOURNAL OF DEVELOPMENT STUDIES 28 (2025).

<sup>9</sup> Lê Thị Vân Anh & Hoàng Văn Nhất, *Pháp luật về hợp đồng thương mại điện tử - Một số bất cập và kiến nghị hoàn thiện*, 422 TẠP CHÍ DÂN CHỦ VÀ PHÁP LUẬT (2025).

Vietnam and other jurisdictions is necessary to identify optimal legal frameworks for electronic contracts. By studying established legal mechanisms, Vietnam can refine its regulatory system, strengthen consumer confidence, and ensure its laws remain effective amid rapid technological advancement and international economic integration<sup>10</sup>.

## II. LITERATURE REVIEW

Scholarship on consumer withdrawal rights has shifted from an initial focus on doorstep selling to a primary emphasis on the digital transformation of the marketplace, where transactions are instantaneous and borderless. Researchers have examined this topic because traditional sales rules are increasingly obsolete and inadequate for addressing the complexities of e-commerce. The current landscape is characterized by a system in which only sophisticated consumers can obtain remedies, leaving the majority vulnerable to

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<sup>10</sup> Zulfikar Satriatama & Budi Santoso, *Comparison of Legal Regulations on E-Commerce in Southeast Asia (Indonesia – Singapore)*, 6 INTERNATIONAL JOURNAL FOR MULTIDISCIPLINARY RESEARCH (IJFMR) (2024).

one-sided standard-form contracts<sup>11</sup>. Recent studies highlight information asymmetry and psychological pressures in online environments, including dark patterns and impulsive one-click purchasing.

The dominant research methodologies are doctrinal and comparative, analyzing legal texts across jurisdictions such as the European Union (EU) and the United States (US) to identify solutions for future development. Recent studies have also employed data-driven text mining to map e-commerce provisions in Regional Trade Agreements (RTAs)<sup>12</sup>. Theoretical frameworks include Legal System Theory, with frequent reference to Lawrence M. Friedman's model, which divides legal systems into structure, substance, and culture, to evaluate the effectiveness of e-commerce law enforcement. Behavioral Economics challenges the rational choice model by introducing bounded rationality and information overload, arguing that consumers are often conditioned to accept terms

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<sup>11</sup> John A. Rothchild, RESEARCH HANDBOOK ON ELECTRONIC COMMERCE LAW (2016).

<sup>12</sup> Ines Willemyns, DIGITAL SERVICES IN INTERNATIONAL TRADE LAW (1st ed.) (2021).

without reading them. Law and Economics applies a breach-and-damage model to analyze withdrawal rights as a trade-off between allowing consumers to learn about a product and protecting sellers from depreciation.

Previous research has established that the EU model, particularly the Consumer Rights Directive (2011/83/EU), serves as the global benchmark for full harmonization, mandating a 14-day withdrawal period for distance contracts<sup>13</sup>. In contrast, studies on the US highlight a reliance on voluntary merchant policies and narrow cooling-off periods for high-pressure sales, rather than a general statutory right. Research also confirms that withdrawal rights function as a forcing rule, incentivizing merchants to offer more favorable contract terms to remain competitive.

A major contradiction in the literature concerns the mandatory nature of withdrawal rights. One school of thought contends that withdrawal must be mandatory to protect the weaker party, while economists such as

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<sup>13</sup> Lorenzo Sasso, *Certain Comparative Notes on Electronic Contract Formation*, 1 LAW JOURNAL OF THE HIGHER SCHOOL OF ECONOMICS 204 (February, 2016).

Ben-Shahar and Posner argue for a default (opt-out) rule, suggesting that mandatory rules may shrink the market by requiring all consumers to pay for insurance they may not desire. The information paradigm is also contested: although EU law relies on mandated disclosures to empower consumers, empirical behavioral studies (e.g., Bakos et al.) provide strong evidence that these disclosures are rarely read or used, challenging the foundation of current regulatory techniques.

Several research gaps remain. There is significant ambiguity in distinguishing between goods, services, and digital content (such as streaming versus downloads), which creates uncertainty regarding when a consumer unseals a product and loses the withdrawal right. While the EU is well-studied, there is a lack of comprehensive research on harmonized frameworks within ASEAN, where complicated return processes and inadequate delivery services remain significant barriers<sup>14</sup>. Additionally, there is an urgent need to

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<sup>14</sup> Andrew Betlehn, *Harmonization of Laws on Electronic Contracts Based on International Instruments for the ASEAN Economic Community*, 1 GLOBAL LEGAL REVIEW 1 (2021).

analyze the practical implementation of Vietnam's Law on Protection of Consumer Rights 2023, particularly regarding whether it provides an unconditional right of regret comparable to international models such as those in Brazil or the EU.

This topic is critical because consumer trust is a primary driver for a sustainable digital economy<sup>15</sup>. Without robust withdrawal mechanisms, online fraud and information crime could impede international economic integration. Further research is necessary to adapt legal frameworks to emerging technologies, including AI-driven smart assistants and mobile applications, where the traditional click-to-agree paradigm is increasingly insufficient. The current research supplements previous studies by applying established theories of information asymmetry and behavioral bias to Vietnam's recently reformed legal landscape (2023 laws)<sup>16</sup>. It contributes to the global

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<sup>15</sup> Biswajit Tripathy & Jibitesh Mishra, *A Generalized Framework for E-Contract*, 8 INTERNATIONAL JOURNAL OF SERVICE SCIENCE, MANAGEMENT, ENGINEERING, AND TECHNOLOGY 1 (2017).

<sup>16</sup> Stijn Michiels, Roel Gevaers, & Wouter Dewulf, *A Historical Overview and Analysis of E-Commerce's Milestones and Its Growing Connection with Air Transport*, 10 JOURNAL OF SHIPPING AND TRADE, 14 (2025).

comparative discourse by bridging the gap between the EU's rigid maximum harmonization and the US's self-regulation approach, using Vietnam as a case study of an emerging economy balancing consumer protection with digital growth.

### III. METHODOLOGY

This study employs a qualitative research design, specifically utilizing a normative juridical approach to examine legal phenomena. This method is appropriate because legal studies achieve scientific rigor when they move beyond the interpretation of positive rules to investigate the underlying principles and social preconditions of those rules. The research integrates comparative law analysis, systematically juxtaposing different legal systems to identify more effective solutions to specific legal problems<sup>17</sup>. This qualitative approach facilitates a comprehensive understanding of the dynamics of contractual relationships and the situational imbalance characteristic of digital business

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<sup>17</sup> Konrad Zweigert & Hein Kotz, *AN INTRODUCTION TO COMPARATIVE LAW* (Third, 1998).

transactions. The research relies on secondary data obtained through library-based research. Data collection tools include searches of academic databases, government portals, and legal repositories to retrieve two categories of materials. Primary legal materials include authoritative texts such as national statutes (e.g., Vietnam's Law on Protection of Consumer Rights 2023), international treaties, and official court decisions. Secondary legal materials consist of scholarly opinions, law books, journal articles, and Ph.D. dissertations that provide theoretical foundations and critiques of existing norms. Moreover, the research examines legislative frameworks and legal norms governing e-commerce in Vietnam and selected jurisdictions. Purposive taxonomic sampling is employed, with Vietnam serving as the primary case study representing an emerging economy undergoing international economic integration. The European Union and the United States are selected as benchmark jurisdictions. The European Union is included for its maximum harmonization model, exemplified by the Consumer Rights Directive,

while the United States provides a contrasting approach through its emphasis on self-regulation and specific cooling-off rules. The collected data is processed using content analysis and functional comparison. Analysis is conducted at two levels. Macrocomparison evaluates the general style, procedures, and methods of thought within the legal systems under review. Microcomparison focuses on the specific legal mechanisms and rules governing the resolution of conflicts of interest when a consumer seeks to withdraw from a contract. The principle of functionality is applied to ensure that only rules serving the same function, namely protecting the weaker party in a distance contract, are compared, regardless of their conceptual labels.

#### IV. RESULTS AND DISCUSSION

##### A. The Nature of the Right of Withdrawal

###### 1. Definitions and origins

The right originated in national systems but was first codified at the EU level in the 1985 Doorstep

Selling Directive to protect consumers from aggressive marketing. It has since evolved into a horizontal standard under the Consumer Rights Directive (2011/83/EU), which provides a mandatory 14-day period for distance and off-premises contracts. The EU right of withdrawal is not a product of ancient contract law. Still, it is deeply linked to several pre-existing traditional EU principles and specific legislative developments that emerged during the integration of the internal market. While it is considered revolutionary because it restricts the traditional principle of *pacta sunt servanda* (contracts must be respected), it is grounded in the following EU rights and frameworks.

The right of withdrawal is fundamentally linked to the Free Movement of Goods and Services (Articles 34–35 and 56 TFEU)<sup>18</sup>. Initially, EU consumer protection was not an end in itself but an “annex” to market integration. The right to withdraw was created as an instrumental tool to foster the confident

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<sup>18</sup> Vanessa Mak, *Redefining Equality in European Contract Law: Protecting Consumer Interests in a Post-Consumer Society*, 3 EUROPEAN LAW OPEN 561 (2024).

consumer who would be willing to engage in cross-border shopping within the Single Market without fear of being trapped in unfavorable contracts. Moreover, the right serves the principle of legal certainty by replacing fragmented national rules with a uniform standard (now 14 days under the CRD), removing barriers for businesses operating across borders<sup>19</sup>.

The Principle of Freedom of Contract (Private Autonomy). Scholars argue that while withdrawal rights seem to limit contract stability, they are actually an extension of private autonomy in a modern context. In EU law, autonomy is framed—it is both guaranteed and limited to ensure it can be exercised effectively. The right to withdraw provides a cooling-off period that ensures the consumer's consent is free and rational, particularly when psychological pressure (doorstep selling) or information asymmetry (e-commerce) is present. It protects freedom of contract in a material

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<sup>19</sup> María Campo Comba, *THE LAW APPLICABLE TO CROSS-BORDER CONTRACTS INVOLVING WEAKER PARTIES IN EU PRIVATE INTERNATIONAL LAW* (2021).

sense by allowing the weaker party to reconsider a commitment made under situational imbalances<sup>20</sup>.

The right to withdraw is a specific manifestation of Article 38 of the Charter of Fundamental Rights of the European Union (CFREU), which mandates that Union policies ensure a high level of consumer protection<sup>21</sup>. Within the EU's constitutional framework, the right of withdrawal is often balanced against Article 16 CFREU (the freedom to conduct a business). It is also connected to the right to respect for private and family life (Article 7 CFREU / Article 8 ECHR), particularly in directives regulating doorstep selling where the element of surprise intrudes upon the home.

US law generally uses the term “cancellation” rather than withdrawal. Its origins are narrower, primarily in Federal Trade Commission (FTC) rules established to counter high-pressure sales,

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<sup>20</sup> HANDBOOK OF RESEARCH ON INTERNATIONAL CONSUMER LAW (Geraint G. Howells, Ed.), RESEARCH HANDBOOKS IN INTERNATIONAL LAW, 1 (2011).

<sup>21</sup> RESEARCH HANDBOOK ON THE PHILOSOPHY OF CONTRACT LAW (Mindy Chen-Wishart & Prince Saprai, Eds.) (2025).

which provide a 3-day cooling-off period for doorstep or home-solicited sales. The EU uses the term “withdrawal” to describe a “revolutionary” power that allows consumers to unilaterally terminate a binding contract without providing a legal reason or proving a breach and chose “withdrawal” as a neutral term to facilitate its goal of full harmonization across diverse national legal systems. The drafters of the Draft Common Frame of Reference (DCFR) intentionally avoided terms with specific national baggage such as “rescission” or “annulment”, opting instead for “unilateral withdrawal” as a term that could be easily translated and applied uniformly across Member States. In EU law, withdrawal is distinguished from traditional remedies because it does not require a breach or non-conformity. It is conceived as a power tool to protect the consumer's rational self-determination in situations of information asymmetry, effectively allowing them to go back on a decision within a cooling-off period. Under

the Consumer Rights Directive (2011/83/EU), withdrawal is an autonomous legal institution that allows a consumer to release themselves from a contract simply because they change their mind, a concept referred to in some jurisdictions as the right of regret. In the United States, the term “cancellation” is the predominant terminology used in federal and state regulations governing similar consumer rights. The term is most commonly associated with specific regulatory exceptions to the finality of a contract, such as the Federal Trade Commission (FTC) “cooling-off rule”. This rule allows for the cancellation of contracts in limited high-pressure sales environments, such as door-to-door or telemarketing sales, rather than serving as a generic horizontal right. In US law and the Uniform Commercial Code (UCC), “cancellation” is often defined as the termination of a contract by an aggrieved party specifically upon a material breach by the other party. While it is also used in

the context of cooling-off periods, the general common law of contract does not recognize a generic “right to withdraw” from a contract for conforming goods once it is executed. The US approach is market-oriented and sectoral<sup>22</sup>. Rights to cancel are often narrow and based on specific consumer vulnerabilities, such as the infancy doctrine, which allows minors to cancel or disaffirm contracts—or are offered voluntarily by merchants as return policies rather than mandated as a generic withdrawal right.

In Vietnam, the concept is relatively new and is identified in scholarly discourse as the “right of regret”. Although traditionally absent from general contract law, this right has been incorporated into the Law on Protection of Consumer Rights 2023. Under this legislation, consumers may unilaterally terminate a contract within 30 days if the business fails to provide the required pre-contractual information. However,

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<sup>22</sup> Caterina Gardiner, UNFAIR CONTRACT TERMS IN THE DIGITAL AGE: THE CHALLENGE OF PROTECTING EUROPEAN CONSUMERS IN THE ONLINE MARKETPLACE (2022).

consumers remain responsible for payment for goods and products used, and the seller is only obligated to return the amount for unused goods and products, along with late payment interest<sup>23</sup>. Within the context of e-commerce law in Vietnam, consumer rights remain limited, as consumers are not yet able to fully utilize the functions of e-commerce platforms. These functions constitute legally binding contracts, yet consumers often accept them without fully understanding their obligations, largely due to the rapid pace of digital transformation<sup>24</sup>. Many consumers assume they can withdraw from contracts at any time, even after receiving goods or losing interest in the product, which undermines the effectiveness of contractual agreements on e-commerce platforms. Consequently, Vietnam has implemented a stricter approach to the right of withdrawal, significantly restricting the right of regret. While this approach continues to provide consumers

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<sup>23</sup> Article 38, Clause 3 and 4, Law on Protection of Consumer Rights (2023).

<sup>24</sup> Nguyen Ngoc Minh. *Solutions for Protecting Consumer Rights on E-commerce Platforms under Vietnamese Law*, 12 INTERNATIONAL JOURNAL OF SCIENTIFIC RESEARCH AND MANAGEMENT 8113 (2024).

with certain protections, it also enables individuals and legal entities conducting business on e-commerce platforms to operate with greater confidence that their contractual rights are protected<sup>25</sup>.

## 2. Constituent Factors and Legal Characteristics.

In the EU, the right is absolute and mandatory; traders cannot opt out, and it does not presuppose any mistake or misrepresentation by the seller. This mechanism is notable because it does not depend on consumer error, seller misrepresentation, or product nonconformity; rather, the contract's continuation depends exclusively on the consumer's decision<sup>26</sup>. The right of withdrawal operates through a defined

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<sup>25</sup> L. T. Giang, *Electronic Contracts And Consumer Protection In Vietnam's E-Commerce: Legal Framework, Challenges, And Reform Directions*, 23 VEREDAS DO DIREITO DIREITO AMBIENTAL E DESENVOLVIMENTO SUSTENTÁVEL (2026).

<sup>26</sup> Steennot, Reinhard, *The Right Of Withdrawal Under The Consumer Rights Directive As A Tool To Protect Consumers Concluding A Distance Contract*, 29 COMPUTER LAW & SECURITY REVIEW 105 (2013).

procedural framework, not as an automatic process<sup>27</sup>.

It consists of three essential stages<sup>28</sup>:

- **Legislative Requirements:** The law presumes a situational imbalance in specific contexts, particularly in distance and off-premises contracts<sup>29</sup>
- **Exercise of the Right:** The consumer must actively communicate their intention to withdraw within a defined period.
- **Occurrence of Effects:** The legal extinction of the contractual relationship upon successful exercise.

In the US, the right is often a default rule or a matter of voluntary merchant policy rather than a

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<sup>27</sup> Patricia S. Abril, Francisco O. Blázquez, & Joan M. Evora, *The Right of Withdrawal in Consumer Contracts: A Comparative Analysis Of American And European Law*, REVISTA PARA EL ANÁLISIS DEL DERECHO N°1 - 2026 (2026), <https://indret.com/the-right-of-withdrawal-in-consumer-contracts-a-comparative-analysis-of-american-and-european-law/>.

<sup>28</sup> Nathalie Dreyfus, "Consumer Law: What Are The Rules Governing The "Three-Click" Right Of Withdrawal In The European Union?" Dreyfus Law Firm (2026), <https://www.dreyfus.fr/en/2026/03/06/consumer-law-what-are-the-rules-governing-the-three-click-right-of-withdrawal-in-the-european-union/>.

<sup>29</sup> Elena Kantorowicz-Reznichenko, Adrianus v. Heusden, & Jaroslaw Kantorowicz, *Consumers' Rights in the Shadow of the Brand: A Conjoint Experiment on the Valuation and Trade-Offs of Contractual Rights*, JOURNAL OF CONSUMER POLICY (2026).

generic statutory right. This mechanism is known as cancellation or a cooling-off period. Instead of a universal statutory right for all e-commerce, it consists of specific federal mandates, default state rules, and judicial doctrines. The US right of cancellation is established through several distinct legal mechanisms, including statutory triggers such as sectoral mandates. At the federal level, the Federal Trade Commission (FTC) has introduced the “click-to-cancel” rule, which requires businesses to enable consumers to easily cancel unwanted subscriptions and memberships by ensuring transparent terms, obtaining consent prior to charges, and providing clear disclosures about the status of free trials or promotions. This right applies only in specific high-pressure situations, such as door-to-door sales or transactions away from a seller’s permanent business location.

- **Threshold Requirements:** Federal protections generally apply only to contracts above a certain value, typically \$25 for doorstep sales.

- **Default Return Rights:** Some states, including New York and California, have statutory default rules.

In New York, for example, consumers may return unused, undamaged goods within 30 days.

- State-Specific Sectoral Windows: Some states require longer cancellation periods for certain industries. For example, Alabama law grants buyers the right to cancel a home solicitation sale until midnight of the third business day after signing the purchase agreement, with cancellation becoming effective upon delivery or when mailed to the seller with proper address and postage.

- Procedural Formalities: Exercising this right requires submitting a formal notice of cancellation, which may be delivered directly or sent by mail. Consumer protection laws are designed to protect purchasers from deceptive, unfair, or fraudulent practices, and in many jurisdictions, the return of goods is recognized as an implicit withdrawal.

In Vietnam, under the Law on Protection of Consumer Rights 2023, the right is primarily triggered by a failure to fulfill the information duty. Unlike the EU's unconditional right, Vietnam's mechanism serves as a remedy for information asymmetry rather

than a general right to change one's mind for all e-commerce transactions. The operation of this right in Vietnam is governed by specific triggers, timeframes, and procedural requirements.

- Information-Triggered Mechanism: Unlike the unconditional right in the European Union, the primary trigger for the right of withdrawal in Vietnam is failure to fulfill pre-contractual information obligations. According to Article 38(3)(b) of the Law on Protection of Consumer Rights 2023, if a business does not accurately and fully provide required information, such as product utility, price, or contact details, the consumer acquires the right to terminate the contract<sup>30</sup>.

- 30-Day Window for Remote Transactions: For online or electronic transactions where consumers cannot physically inspect goods, the law grants a 30-day period after contract conclusion during which unilateral termination is permitted<sup>31</sup>.

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<sup>30</sup> Article 38, Clause 3(a), Law on Protection of Consumer Rights (2023).

<sup>31</sup> Article 37, Clause 3(b), Law on Protection of Consumer Rights (2023).

- Reconsideration Periods for Direct Selling: In certain high-pressure sales environments, the law mandates shorter cooling-off periods. In door-to-door sales, Consumers are entitled to a minimum of 3 working days to reconsider and terminate the contract without incurring penalties<sup>32</sup>. Sales outside fixed locations, for transactions exceeding VND 10 million conducted outside the permanent business premises, consumers are provided with a three-working-day period to terminate the contract upon receipt<sup>33</sup>.

- Restitution Obligations: Upon termination, the business must refund the consumer for the unused portion of the product or service within 30 days. The consumer remains liable only for the portion actually utilized<sup>34</sup>.

### 3. The nature of the withdrawal right

The right to withdraw is not recognized as a property right (right in rem); rather, it is classified as a

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<sup>32</sup> Article 44, Clause 2, Law on Protection of Consumer Rights (2023).

<sup>33</sup> Article 47, Clause 1, Law on Protection of Consumer Rights (2023).

<sup>34</sup> Article 37, Clause 4, Law on Protection of Consumer Rights (2023).

personal right or a legal faculty within the law of obligations. Property rights are considered real rights that an individual holds in relation to a specific object and can assert against all others. By contrast, the right to withdraw constitutes a personal power enabling a consumer to require a specific counterparty (the seller) to terminate a contract and return payments. The right of withdrawal as a “power tool” or “faculty” that permits one party to unilaterally extinguish contractual rights and obligations. This right serves as a procedural solution to eliminate commitments made under conditions of imbalance, rather than as a mechanism to establish a direct, absolute legal bond with a tangible object. Furthermore, during the cooling-off period, the consumer's status as a full owner is considered suspended or unstable<sup>35</sup>. Although the consumer may possess the item physically, genuine “ownership” or “mastery” is typically established only after the period expires or the right to withdraw is relinquished. In some interpretations, the purchase price paid is

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<sup>35</sup> Hein Kötz, *Rights of Withdrawal*, EUROPEAN CONTRACT LAW (2017).

regarded merely as a deposit for the duration of the withdrawal window. Additionally, even legal theories that describe contract formation as a form of “transactional acquisition” limit this acquisition strictly to the relationship between the parties. Unlike the unilateral acquisition of property (such as first possession), contractual rights are representational and do not create the same type of real property interest as found in property law<sup>36</sup>. The right to withdraw also constitutes an exception to the principle of *pacta sunt servanda* (contracts must be respected), which is fundamental to contract law rather than property law<sup>37</sup>. This addresses psychological pressure or information asymmetry present in transactions, rather than the long-term control of an asset<sup>38</sup>. In summary, the right to withdraw functions as a remedial mechanism designed to protect contractual freedom and the

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<sup>36</sup> Molina, Crescente, *The Conceptual Foundations of Contract Formation*, REINACH AND THE FOUNDATIONS OF PRIVATE LAW (Marietta Auer, et al., Ed.), 305 (2025).

<sup>37</sup> Wolff, Lutz-Christian, *The Relationship Between Contract Law and Property Law*, 10 *SAGE Open* 1 (2020).

<sup>38</sup> Normann Witzleb, *Pacta Sunt Servanda – A Maxim and Its Exceptions in Comparative Perspective*, CONTRACT LAW IN CHANGING TIMES: ASIAN PERSPECTIVES ON PACTA SUNT SERVANDA (2023).

integrity of consent, operating within the domain of personal obligations rather than as a right of ownership over property.

The subjects of the right of withdrawal include tangible movable items, digital content, and services. Tangible movable items refer to physical goods purchased online, such as clothing, electronics, or furniture. These are classified as goods because they are physical objects that can be moved at the time the contract is concluded. Digital content encompasses data supplied in digital form, including computer programs, mobile applications, music downloads, videos, and e-books. Digital content not provided on a tangible medium, such as a DVD, is governed by a *sui generis* legal regime that is distinct from both sales and service contracts. Services comprise various intangible performances, such as internet access, streaming, or professional consulting (for example, legal or psychological advice) delivered online<sup>39</sup>.

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<sup>39</sup> "Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services," OFFICIAL JOURNAL OF THE EUROPEAN UNION (2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770>.

Within the context of the right of withdrawal, digital products are classified as intangible property rather than immovable property, since immovable property is expressly excluded from consumer withdrawal rights. Contracts involving immovable property, such as real estate, land, or long-term tenancies, are generally excluded because these transactions are closely tied to the jurisdiction where the property is located and are subject to specific local laws and registration requirements. Furthermore, contract finality is enforced more strictly for immovable property, reflecting its substantial value and the need for legal certainty in land registries. In contrast, most assets associated with e-commerce, including software, data messages, and digital content, are considered intangible due to their lack of physical form. These assets are typically classified as general intangibles or intangible property, as they grant a set of legal rights, such as a license to use, rather than ownership of a tangible object. Despite their intangible nature, e-commerce assets are regarded as movable property because they can be transferred electronically

across borders or through digital networks<sup>40</sup>. This feature of movability is essential to the operation of the right of withdrawal, which aims to address the inherent imbalance in remote transactions by allowing the return of goods or the termination of access to digital content.

The consequences of exercising the right of withdrawal differ substantially depending on whether the asset is a physical good, digital content, or a performance-based service. For tangible movable property (goods), the consumer must return the goods by communicating their decision to withdraw. The seller is required to reimburse all payments, including standard delivery costs, within the same timeframe. Regarding liability for diminished value, the consumer is generally responsible only for any reduction in value resulting from handling the goods beyond what is necessary to determine their nature, characteristics, and functioning, which corresponds to the level of inspection permitted in a physical store. In terms of

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<sup>40</sup> Yurii Riabchenko & Andrii Onyshchenko, *Digital Assets And Property Rights: Regulation And Legal Implications Within The EU And Globally*, 46 STATUTE LAW REVIEW (2025).

risk transfer, the risk of loss or damage typically remains with the seller until the consumer or their agent acquires physical possession of the goods. The right of withdrawal is often lost if the consumer unseals certain types of goods, such as hygiene products or DVDs, or if the goods are personalized or perishable. For digital content not supplied on a tangible medium, the right to withdraw is typically excluded once performance has begun, provided the consumer has given express consent to start and acknowledged the loss of the withdrawal right. If the trader fails to obtain this express consent or does not provide confirmation on a durable medium, the consumer bears no cost for the digital content supplied, even if it has already been used. For service contracts, the withdrawal period generally begins on the day the contract is concluded. If a consumer requests that a service begin during the withdrawal period and subsequently withdraws before completion, they are liable to pay the trader a proportionate amount for the services actually rendered. The right to withdraw is permanently lost once the service is fully performed, provided the

consumer consented to the early start and acknowledged the loss of the right to withdraw. If the trader fails to provide the required pre-contractual information on the right to withdraw, the consumer incurs no costs for services performed during the withdrawal period.

#### B. Evaluation of Practical Application: Advantages and Disadvantages

The European Union offers a high degree of legal certainty for consumers. The widely recognized 14-day withdrawal period facilitates online shopping by reducing psychological barriers. However, this standard imposes high costs on traders, particularly small businesses, who must absorb the risk of returned and depreciated goods. It can lead to “showrooming”, where consumers inspect goods in-store but purchase online to retain the right of withdrawal. For example, in *VKI v. Amazon*, the CJEU held that choice-of-law clauses in standard terms are unfair if they mislead

consumers regarding their mandatory protection rights under the law of their place of residence<sup>41</sup>.

The United States system is characterized by flexibility and efficiency. Because return rights are typically voluntary, merchants use them as a competitive tool, leading to innovative return policies such as Walmart's 90-day period, which often exceed statutory requirements. However, this approach creates a system in which only informed consumers or those shopping at major retailers benefit from robust protections. There is no consistent safety net for consumers engaging with smaller or less reputable online merchants. For instance, *ProCD v. Zeidenberg* and *Hill v. Gateway* established the "rolling contract" doctrine, whereby a consumer's failure to return a product within a specified period, such as 30 days, constitutes acceptance of the enclosed terms, thereby creating a contractual withdrawal window.<sup>42</sup>

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<sup>41</sup> Campo Comba, *The Law Applicable to Cross-Border Contracts Involving Weaker Parties in EU Private International Law*. Verein für Konsumenteninformation (VKI) v. Amazon EU Sàrl (Amazon), Court of Justice of the European Union (CJEU) (2016).

<sup>42</sup> *ProCD v. Zeidenberg*, 86 F.3d 1447 (1996); *Hill v. Gateway*, 105 f.3d 1147 (2000).

In Vietnam, recent legal reforms enhance consumer protection by introducing a clear 30-day period for contract withdrawal when required information is not provided. These reforms establish a modern legal framework for online transactions and intermediary platforms. However, the absence of an unconditional “right of regret” for all distance contracts represents a shortcoming relative to international standards. Additionally, effective implementation is challenged by inadequate delivery services and complex return procedures throughout the ASEAN region. Although specific landmark cases are not extensively documented in the available sources, the Law on Consumer Protection 2023 explicitly shifts the burden of proof to businesses in consumer disputes, providing a significant practical advantage for Vietnamese consumers<sup>43</sup>.

The comparative analysis reveals that while the EU, US, and Vietnam all recognize the consumer as the “weaker party” in e-commerce, their approaches to

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<sup>43</sup> *Handbook on ASEAN Consumer Protection Laws and Regulations*, (Competition Policy and Law in ASEAN (CPL II), 2018).

withdrawal rights are fundamentally distinct. The EU model is characterized by mandatory, generic, and unconditional protection aimed at market harmonization. The US model favors market-driven, contractual, and default rules that prioritize economic efficiency and merchant flexibility. Vietnam is currently in a transitional state, using a conditional, information-triggered withdrawal mechanism to bridge the gap between traditional contract stability and modern digital protection.

## V. CONCLUSION AND RECOMMENDATIONS

Comparative analysis indicates that the right of withdrawal has developed from a sector-specific remedy for high-pressure sales into a foundational instrument in modern e-commerce law. The European Union employs an absolute, mandatory 14-day withdrawal period to promote market harmonization and enhance consumer confidence. In contrast, the United States adopts a relative approach, providing narrow statutory cancellation rights for specific risks while voluntary merchant policies and market

competition govern broader return rights. Vietnam's Law on Protection of Consumer Rights 2023 marks significant progress but retains a remedial, information-triggered model. The 30-day termination right primarily serves as a sanction for businesses that fail to provide pre-contractual information, rather than establishing a general, unconditional right of regret as seen in international standards. In all three jurisdictions, the right of withdrawal is classified under the law of obligations as a legal faculty rather than a property right. Its application is limited to movable assets, including tangible goods, digital content, and services, while immovable property is excluded to maintain territorial legal certainty.

Drawing on identified legal gaps and the strengths of the EU and US models, several measures are recommended. First, to establish a valid unconditional right, Vietnam should move beyond the information-triggered mechanism and codify a clear, unconditional "right of regret" (recommended duration: 7 to 14 days) in the Law on Electronic Transactions or related decrees. This reform would align Vietnam with

international standards, such as Brazil's 7-day rule, and enhance trust in the digital economy. Second, to prevent consumer abuse and protect small traders, future regulations should clearly define consumers' liability for diminished goods value. Regulations should specify that consumers may inspect goods only as permitted in a physical store, without incurring depreciation costs. Third, consistent with the EU's horizontal approach, Vietnam should standardize intermediary platform responsibilities for managing returns and refunds, ensuring that platform terms and conditions do not circumvent mandatory consumer protections. Finally, within the context of ASEAN cooperation, Vietnam should actively lead or participate in developing a harmonized ASEAN framework for cross-border e-commerce to address the logistical and legal complexities of returns in international transactions.

This research provides a unique contribution by focusing on the 2023 legislative reforms. Unlike previous studies that examined Vietnam's 2010 Law, this analysis offers an up-to-date assessment of the

2023 Law on Protection of Consumer Rights and the 2023 Law on Electronic Transactions. The functional taxonomy introduced here compares the EU’s “Market Integration” model with the US’s “Efficiency/Learning” model, offering Vietnam a clear legislative direction.

With a methodological focus on doctrinal and comparative study, this research examines the “law in books”. It may not fully capture the “law in action,” particularly as Vietnamese courts interpret the 2023 Law amid increasing litigation. Due to limited data and the novelty of Vietnam's 2023 legal framework, there is a lack of domestic judicial precedents and empirical data on the practical impact of the 30-day termination right. Regarding Jurisdictional Scope, the analysis is confined to the EU, the US, and Vietnam. Other emerging digital markets with distinct right-of-regret models, such as Russia and Japan, were not examined in detail.