Spotlight Litigation

When contracts, products and compliance systems are put to the test

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Who are we?



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Spotlight ON

- **Digital compliance claims:** When a button label becomes a business model
- **Recourse against the IT provider:** Who pays when the processor causes the outage?

Judicial Trends & Authority Relations

JUDICIAL TRENDS

"Bad cases make bad law": The rise of outcome-driven rulings

- Courts (esp. CJEU) increasingly draft judgments backwards from desired results (e.g., Russmedia, Meta, Coyote).
- Terminological inaccuracies create massive legal uncertainty and technically impossible mandates.
- This legal ambiguity directly opens attack vectors for the claimant industry.

Roadmap at Risk:

Preliminary injunctions lack grace periods, immediately hijacking engineering sprints.

AUTHORITY RELATIONS

Navigating Authorities: Cooperation beats Confrontation

- In the digital landscape supervisory authorities have become much more important in the last years.
- DSA, DMA, AI Act and GDPR all have supervisory authorities.

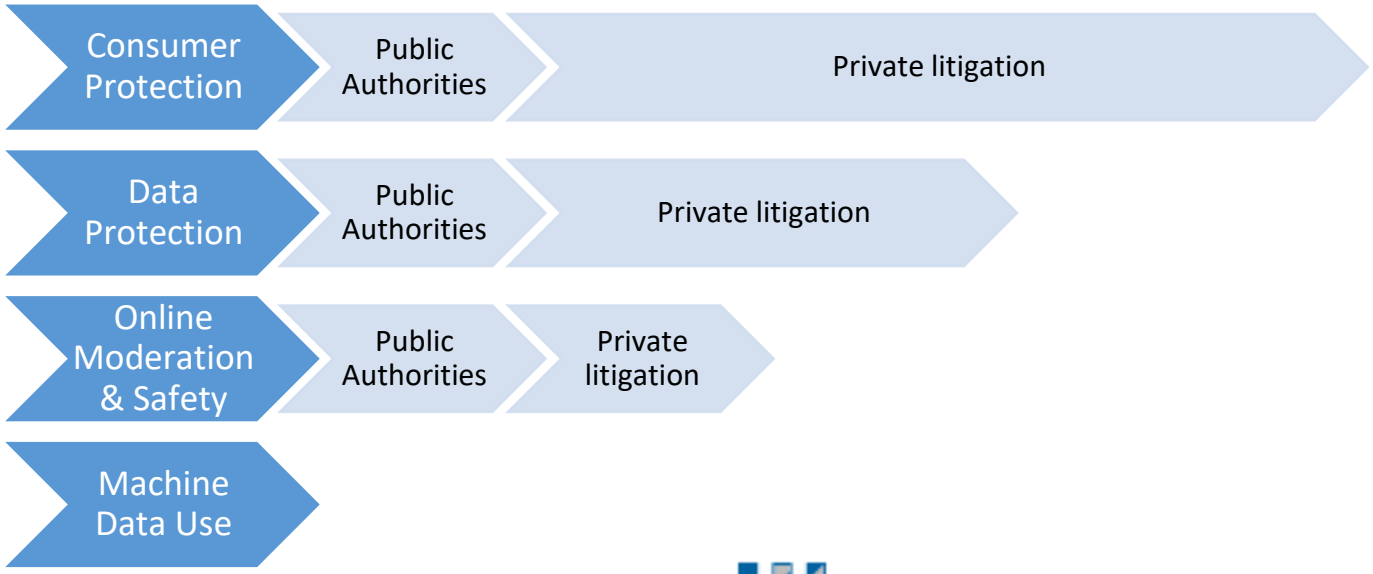
Strategic Advantage

Proactive Product Education > Defensive Litigation

Towards supervisory authorities, proactive "Product Education" yields better results than formal defensive litigation.

Spotlight 1 – Tech Litigation and Compliance

Digital Regulation – Stages of Maturity



Verbraucherzentrale Bundesverband

Dr. Stoll & Sauer Rechtsanwaltsgesellschaft mbH

cyfirelegal

SOMI STICHTING ONDERZOEK MARKTINFORMATIE

When a button label becomes a business model

Order-button mass claims against a consumer software provider

1. WEAKNESS

- Online sale software to consumers across the EU
- Checkout button not worded as required by § 312j(3) German Civil Code (BGB) + CJEU (C-249/21)
- Consequence: no contract formed

2. SCALE

- "Cancel and get your money back"
- Claims: restitution (§ 812 BGB), withdrawal, and tort (§ 823(2) BGB)
- Automated filing before local courts nationwide, run by a legal-tech provider and backed by litigation funders

3. EXT. DEFENCE

- Commercial defence strategy + automated templates + central case management
- Attack on the claimant's business model: powers of attorney, funder terms and assignments
- Counterclaims for the value of the services provided

4. INT. DEFENCE

- **Trial:** External counsel in court, Inhouse manages enterprise.
- **Strategic Risk:** Preventing bad precedents & PR/political dimensions.
- **Settlement Timing:** Optimal moment to protect resources.
- **Board Translation:** Unquantifiable risks to provisions.

EUR 100–200

Typical claim amount per consumer
Average ca. EUR 185

EUR 550

Typical attorney fees per claim

ca. 15%

Consumers engaging the claimant firm

Button claims: litigation puts compliance under scrutiny



1. Check compliance

- The claimant industry actively seeks compliance weaknesses, including failures to provide mandatory information
- Incentive for compliance reviews for commercially critical junctions

2. Prepare the defence

- Establish defence strategies beyond substantive law at an early stage
- Close vulnerabilities that could affect the business model

3. Implement requirements

- Work closely with operational teams to implement mandatory information requirements
- Provide clear guidance and ongoing oversight

Post-Litigation Feedback Loop:

- Translating legal outcomes into long-term UX/UI guardrails.
- Preventing contractual penalties (Vertragsstrafen) years down the line.
- Embedding legal constraints directly into design systems (Figma) and CI/CD pipelines (Legal by Design).

A practical case for investing in compliant e-commerce design

Spotlight 2 – Data Breach Recourse



Two weeks offline, EUR 1.3m (left?) on the table

Recourse against the IT provider after a phishing-triggered outage

Parties: Mid-size corporation v. its central managed service provider

Trigger: Phishing email, systems shut down for almost two weeks

Impact: No access to customer files/inboxes, no new orders, complete standstill

Outside Counsel Entry Point: Data Protection Breach notification → Get IT litigators on the case early

Side remark:

Fulfilling regulatory info duties (e.g., Art. 34 GDPR notifications) often means doing the opponent's groundwork.

- Inhouse must balance mandatory regulatory transparency against feeding the mass-claimant industry.





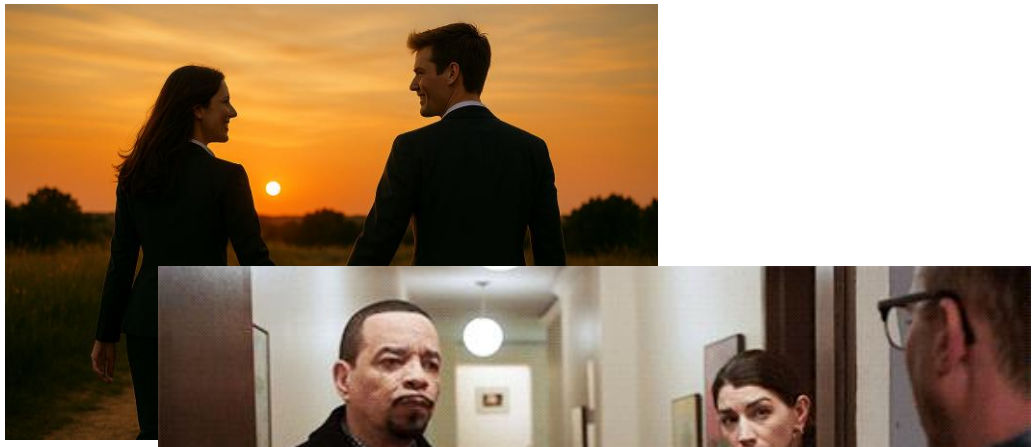
DAMAGE SECTORS

- Customer claims
- Lost profit
- Frustrated expenditure
- Emergency workarounds
- Fees paid to the provider
- Legal costs

Recourse is secured in the first days, not in the courtroom

Preserve

- Priority one is recovery. But the original set-up is lost unless it is captured
- Agree on joint cooperation in the restoration, including handover of all documentation
  - Where cooperation breaks down: independent evidentiary proceedings (§ 485(2) ZPO).
  - A court-appointed expert's opinion is directly usable as evidence



Recourse is realised where evidence is preserved

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Quantify

- Record what failed, for how long, overtime, and the provider's crisis communication
- Lost profit: statutory presumption (§ 252 sentence 2 BGB) and power to estimate (§ 287(1) ZPO). **But judex non calculat:** courts avoid estimating damages.
- Build an itemised claim schedule that a court can follow line by line.

Enforce

- An IT incident is always also a breach of contract
- Litigation is not purely defensive. Critical vendor failures require active enforcement.
- Strategic use of preliminary injunctions against software providers to secure access, data handover, and system stability during a crisis.
- Think of follow-on claims from day one
- Consider securing litigation funding or sale of claims?

deminor LITIGATION FUNDING

NIVALION Elevating legal finance

Recourse is realised where evidence is preserved

Questions?



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