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Empowering and Protecting Consumers in the Internet Economy

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**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY
COMMITTEE FOR INFORMATION, COMPUTER AND COMMUNICATIONS POLICY**

EMPOWERING AND PROTECTING CONSUMERS IN THE INTERNET ECONOMY

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FOREWORD

As part of its 2011-12 programme of work and budget, the OECD Committee for Information, Computer and Communications Policy (ICCP) agreed to review progress made in the implementation of the 2008 *Seoul Declaration for the Future of the Internet Economy*. This report, which is part of the paper series developed under the review, addresses the theme “*Empowering and protecting consumers*” in the Internet economy.

The report was discussed by the ICCP and the Committee on Consumer Policy at their respective meetings in October 2012. It was approved and declassified by the ICCP by the written process.

The report was prepared by Brigitte Acoca, with the assistance of Ayako Terauchi, of the OECD’s Directorate for Science, Technology and Industry. It is published under the responsibility of the Secretary-General of the OECD.

MAIN POINTS

This report is part of the paper series of the follow-up work to the 2008 *Seoul Ministerial Declaration for the Future of the Internet Economy*. It addresses the theme “*Empowering and protecting consumers*” in the Internet economy.

The aim of the paper is twofold: *i*) to present developments and progress made in enhancing trust and consumer engagement in e-commerce since the Seoul Declaration; and *ii*) to point policy makers to possible further work to address some key ongoing and emerging consumer challenges. It is important to note that a number of such proposals for further work, which are not included in the upcoming programme of work and budget of the OECD Committee on Consumer Policy, are being raised in the present report for future reflection only. These proposals may be developed at a later stage by the OECD and/or other fora, as appropriate.

Major business-to-consumer (B2C) e-commerce developments

While measuring the B2C e-commerce marketplace is a challenge (data is not available for all countries, and when it is, it is not always comparable¹), estimates generally show that since 2008, the market has grown steadily, on a global basis. According to private sector data, Asia-Pacific is expected to become the largest B2C e-commerce marketplace by 2013 (representing a 34% of total sales share against 31.1% in 2012), followed by North America (31.6% of total sales share in 2013 against 33.4% in 2012), and Europe (29% of total sales share in 2013 against 30.2% in 2012) (EMarketer, 2012*a*). In the United States, e-commerce sales (including retail and selected services) increased by 10.3% between 2009 and 2010 (from USD 385 billion in 2009 to USD 424 billion in 2010) (US Census Bureau, 2012, p. 2). In Europe, between 2008 and 2011, the value of Europe’s online retail sales nearly doubled, from EUR 117.84 billion in 2008, to EUR 200.52 billion in 2011 (Center for Retail Research, 2012). Some developing economies, such as China and Brazil, are also becoming important economic forces. In China, the volume of online sales increased from CNY 1 28.2 billion (about EUR 15.6 billion) in 2008 to CNY 773.6 billion (about EUR 93.9 billion) in 2011, representing approximately a 500% growth rate (iResearch, 2012).

Growth has continued in the context of the financial and economic crisis, triggering social and economic benefits for both businesses and consumers. Private sector research shows that in 2009, the Internet constituted 3.4% of GDP in economies including the G8 countries, China, India, Brazil, Korea, and Sweden (MGI, 2011, p. 12); estimates further indicate that over the past fifteen years, in France, while the Internet economy destroyed 500 000 jobs, it created 1.2 million new ones, generating a net 2.4 jobs creation for every job cut (MGI, 2011, p. 3). The OECD found that in the United States, in 2010, approximately 13% of business sector value-added could be attributed to Internet-related activities (including B2B and B2C e-commerce activities) (OECD, 2012*a*).

¹ Available data varies depending on the source (such as government official statistics and private sector estimates) and methodology used. It often refers, interchangeably, to “the Internet economy,” “Internet usage,” or “e-commerce” without always specifying whether domestic and/or cross-border e-commerce, and/or B2B and B2C e-commerce are being looked at.

E-commerce development in OECD countries has been facilitated by a number of converging factors. These include *i*) increased Internet and broadband penetration and the proliferation of mobile devices; *ii*) enhanced consumer choice and lower prices, *iii*) customized consumer experience, and *iv*) increased competition.

Online shoppers have been increasingly able to access a larger range of products online. These products, which notably include goods and services that are delivered in an electronic format, can be purchased from a number of channels, such as traditional e-shops, IP TVs, social media (such as blogs, social networking sites, and other content sharing sites), and cloud computing platforms. With increasing adoption by consumers of mobile devices, such as smartphones, tablets and e-readers, growth is expected to accelerate.

Research carried out in 17 EU member states between December 2010 and February 2011 (hereafter referred to as the “EU consumer market study”) reveals that online products² are generally offered at lower prices than those sold offline. It has been estimated that this would result in consumer welfare gains of EUR 2.5 billion (Civic Consulting, 2011, p. 9).

The development of innovative and easy-to-use online and mobile payment systems has also helped to drive growth. While still relatively low (EUR 62 billion in 2010), the value of global mobile payments is expected to increase particularly rapidly in the near future, up to EUR 223 billion by 2013 (Capgemini, 2011, p. 16). Research shows that in the United States, the total transaction value for mobile payments will be USD 640 million in 2012, and should reach approximately USD 62 billion in 2016, as consumer usage of smartphones to purchase medium-value products (such as groceries or gas) will continue to increase (EMarketer, 2012*b*). In addition to these new payment systems, businesses have developed a number of loyalty and reward programmes (in particular in the context of digital content products purchases), which have helped to drive new consumer demand. For example, some businesses enable consumers to purchase products through an annual subscription fee for which they can also get free services (such as free product shipping, or unlimited instant streaming of movies, and TV shows).

Consumer information and capacity to research and compare products online have been enhanced through the growing use of search engines, product and price comparison websites, and the growing availability of consumer product ratings and reviews. Social media are increasingly being perceived, by both businesses and consumers, as key platforms where e-commerce may be effectively conducted, based on friends, family and other consumers’ recommendations. Businesses have in this context reshaped their advertising and selling strategies.

Areas for possible further work

Despite these dynamic developments, B2C e-commerce has not yet reached its full potential, at both domestic and cross-border levels; it still represents a small share of traditional retail and is relatively low compared to business-to-business e-commerce. Trust in e-commerce remains affected by a number of problems that both businesses and consumers continue to experience. These include *i*) practical barriers, such as language problems, time required for businesses to set up effective e-commerce platforms, and a lack of interoperability of delivery and payment systems; and *ii*) regulatory barriers, such as complex VAT systems, overlapping frameworks addressing e-commerce issues (including consumer, privacy, intellectual property, telecommunication and competition rules), or regulatory gaps. Such difficulties are perceived to be aggravated in cross-border transactions.

² It should be noted that the study does not cover a number of products including airline tickets and content/music downloads.

Delivery issues (such as long delivery time periods and non-delivery), inadequate information disclosure, concerns over payment security and misuse of personal data, as well as inadequate dispute resolution and redress mechanisms, are the major problems being reported by online shoppers in the OECD area, in both domestic and cross-border e-commerce. These issues may however vary from one region to another, and within regions. According to the EU consumer market study, 35% of respondents reported concerns over long delivery times in online shopping from another EU country. More specifically, this appeared to be a major concern for consumers in some EU countries, such as Poland (49%), Romania (46%), Bulgaria (41%), and the United Kingdom (40%) while in other EU countries, such as Hungary, Malta and Cyprus,^{3 4} concerns were less significant (Civic Consulting, 2011, p. 132). Another area of growing concerns relates to consumer exposure to unsafe products purchased *via* e-commerce. Such products are, in many instances, counterfeit goods, which are available on professional looking websites (including auction platforms) (OECD, 2008*b*). The protection of consumers in this context is a challenge, in particular for consumer protection and market surveillance authorities who have limited capacity to detect counterfeit products in the online environment.

The following provides an overview of some of the key ongoing and emerging challenges which continue to undermine trust and which require further attention. They include: *i*) complex legal landscapes; *ii*) inadequate information disclosure; *iii*) unauthorised, fraudulent and misleading commercial practices; *iv*) geographical restrictions; *v*) privacy concerns; and *vi*) inadequate dispute resolution and redress.

Complex legal landscapes

In a number of countries, B2C e-commerce transactions are covered by various legal frameworks including general consumer protection and contracts rules, specific e-commerce rules, legislation combating fraudulent, misleading and unfair commercial practices, anti-spam, copyright, privacy, and telecommunications rules. In some instances, these frameworks may overlap; in others, they may not cover all issue areas, as is the case, for example, for digital content products purchases, and mobile payments. While some industry voluntary protections have been developed in some countries to remedy legislative gaps or to offer higher levels of protection, more remains to be done to provide consumers with an adequate level of protection. One key concern, for example, relates to the discrepancy that currently exists between consumers' expectations of what they can do with a digital content product, and the restrictions that are often attached to the usage of such products. In today's digital environment where digital content products may be easily shared, copied, transformed and format-shifted, consumers have difficulty understanding that usage conditions can vary significantly from one product to another, depending on the terms and conditions in end-user licensing agreements and the technology being used (digital rights management or copy control technology).

Clarification of consumer rights and obligations in online and mobile commerce is therefore needed. Work in this area could be done through countries' examination of the effectiveness of their B2C e-commerce frameworks, including through initiatives aimed at providing consumers with the information

³ Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

⁴ Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

and tools they need to make informed decisions in e-commerce. This could also be done through the development of standards which would specify the type of essential information that should be provided to consumers prior to purchasing products. In the area of digital content products, this could cover information on the functionality and interoperability of products. Any such work should take concerns relating to competition, the rapid pace of technological innovation, and differences in legal frameworks.

Imperfect information disclosure

Inadequate or unclear information on products, businesses and online transactions is a leading concern. It is often long and complex, and not always easily accessible online (information is sometimes presented in small size, buried in footnotes, or accessible through a series of web links or windows). As a result, consumers, in many instances, do not read information online. This may lead them to suffer detriment in the form of *i*) dissatisfaction with a product that did not meet expectations; *ii*) surprisingly high bills (*i.e.* “bill shock”); as well as *iii*) frustration with the procedures and costs that may be incurred in terminating a transaction and trying to obtain redress. With a view towards providing consumers with relevant information that enables them to make informed decisions in e-commerce, work could be conducted on enhancing consumer access and understanding of such information.

Unauthorised charges, misleading and fraudulent commercial practices

A number of unauthorised charges, misleading and fraudulent commercial practices have been identified as an emerging challenge for consumers, requiring further work. These are often tied to inadequate or misleading information disclosure. Examples include issues that consumers encounter in the purchase of “free” application (“apps”) for mobile devices; specific focus is made on products that may be purchased by children within the framework of free apps without knowledge of their parents or guardians, and which may lead to expensive bills. The need for developing more effective tools to address such purchases is being looked at by stakeholders.

Geographical restrictions

More should be done to increase consumers’ ability to access products across borders. Offers for a number of products are indeed still available only at the domestic level. Such limitations are, in many instances, due to geographical licensing restrictions or other specific limitations placed on products by suppliers. This is mainly due to the territorial character of *i*) copyright protections, as established in the international copyright legal framework, with which businesses must comply, and *ii*) the licensing of content, which aims to respond to some challenges being faced by rights holders including varying a) legal frameworks, and b) needs of local distributors. Some industry stakeholders take the view that consumers would not necessarily be better off if pan-territorial licensing were mandatory, for the grant of such rights could entail a high cost, thereby possibly excluding smaller innovative services from launching and/or being successful in smaller markets.

Privacy

The extensive collection of personal information as a condition for acquiring or using digital content products (such as apps) raises privacy concerns, particularly when such information is *i*) not necessary for the conclusion of a transaction or for the product purchased to work, and *ii*) shared and used with third parties without consumer knowledge or consent. Consumers (and, in particular, children) need to be better informed about the types of permissions they are giving away in exchange of product purchases and the conditions under which such permissions may be changed over time. As the OECD updates the 1980 privacy guidelines, OECD governments and other stakeholders should consider the consumer dimensions of privacy policy.

Dispute resolution and redress

Providing consumers with more adequate dispute resolution procedures has become key in e-commerce where a large number of parties may be involved. This is particularly true in the case of low value purchases of intangible digital content products. Determining, for example, who a consumer should turn to in case of problems with a product is often unclear (for example, should the consumer turn to the app developer or to the online platform on which the app is published). Work is underway in various countries and international organisations to develop easy-to-use, faster and less onerous means for resolving disputes, in particular across borders.

Redress is another area where further work could be conducted. Specific concerns have been raised in relation to the purchase of intangible digital content products, where consumers are encountering great difficulties in obtaining any remedies. This is largely due to the fact that legislation in a number of OECD countries does not indicate whether such products are goods or services, and thereby what redress (such as refund, price reduction, and/or replacement of a product) consumers may have.

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INTRODUCTION

As part of its 2011-12 programme of work and budget, the OECD Committee for Information, Computer and Communications Policy (ICCP) agreed to review progress made in the implementation of the 2008 *Seoul Declaration For The Future of the Internet Economy* (“the Seoul Declaration”) (OECD, 2008a). The structure of the complete review, which aims to reflect the essential parts of the Internet economy, as defined in the Seoul Declaration, includes the following seven thematic parts (OECD, 2010a):

- i. Laying the foundation for the Internet economy: Access to the Internet via a high-speed infrastructure.
- ii. Understanding the data-driven economy: the development of a smart Internet Economy.
- iii. Innovating for economic growth and sustainability: Review of the major areas of digital content and green ICTs.
- iv. Cybersecurity and privacy.
- v. Empowering and protecting consumers.
- vi. Ensuring the global participation in the Internet economy for development.
- vii. Ensuring an open Internet economy.

This paper addresses the fifth theme “*Empowering and protecting consumers*” in the Internet economy (Box 1).

Box 1. Consumer empowerment and protection objectives in the Seoul Declaration

WE [Ministers] SHARE a vision that the Internet Economy will strengthen our capacity to improve the quality of life for all our citizens by:

- Empowering consumers and users in online transactions and exchanges.

WE DECLARE that, to contribute to the development of the Internet Economy, we will:

a) Facilitate the convergence of digital networks, devices, applications and services, through policies that:

- Ensure that convergence benefits consumers and businesses, providing them choices with respect to connectivity, access and use of Internet applications, terminal devices and content, as well as clear and accurate information about the quality and costs of services.

c) Strengthen confidence and security, through policies that:

- Ensure the protection of digital identities and personal data as well as and the privacy of individuals online.
- Ensure that consumers benefit from effective consumer protection regimes and from meaningful access to fair, easy-to-use, and effective dispute resolution mechanisms, including appropriate redress for economic harm resulting from online transactions.

WE INVITE the OECD to further the objectives set out in this Declaration, through multi-stakeholder co-operation, by:

- Assessing the application of current OECD instruments addressing consumer protection and empowerment, privacy ... in light of changing technologies, markets and user behaviour and the growing importance of digital identities.

Source: OECD, 2008a. The Seoul Declaration For The Future of the Internet Economy.

I. Scope

This report provides an overview of developments, since the Seoul Declaration, in B2C e-commerce, at both domestic and international levels, and identifies remaining obstacles to e-commerce expansion. It focuses on a selected number of issue areas which raise important ongoing and emerging consumer concerns, and where attention is required. These include: *i*) complex legal landscapes, *ii*) inadequate information disclosure, *iii*) fraudulent and misleading commerce practices, *iv*) geographical restrictions, *v*) privacy concerns, and *vi*) inadequate dispute resolution and redress.

The report draws largely on research and analysis that is being conducted by the OECD Committee on Consumer Policy (CCP) in the area of online and mobile payments (OECD, 2012*b*), digital content products (OECD, 2011*b*), and the participative web (OECD, 2012*c*). Such work, which follows discussion among stakeholders at a 2009 *OECD Conference on Empowering Consumers: Strengthening Consumer Protection in the Internet Economy* (OECD, 2010*b*), is being developed as part of an overall review of the OECD's 1999 *Guidelines for Consumer Protection in the Context of Electronic Commerce* (OECD, 1999). The report is also based on work being developed by the OECD's Working Party on the Information Economy (WPIE) on the app economy (OECD, 2012*d*), as well as on country responses to the Seoul questionnaire (OECD, 2011*d*).

For the purposes of this report, e-commerce transactions refer to the sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the services do not have to be conducted online (OECD, 2011*c*).

II. B2C e-commerce developments

Growth of the e-commerce marketplace

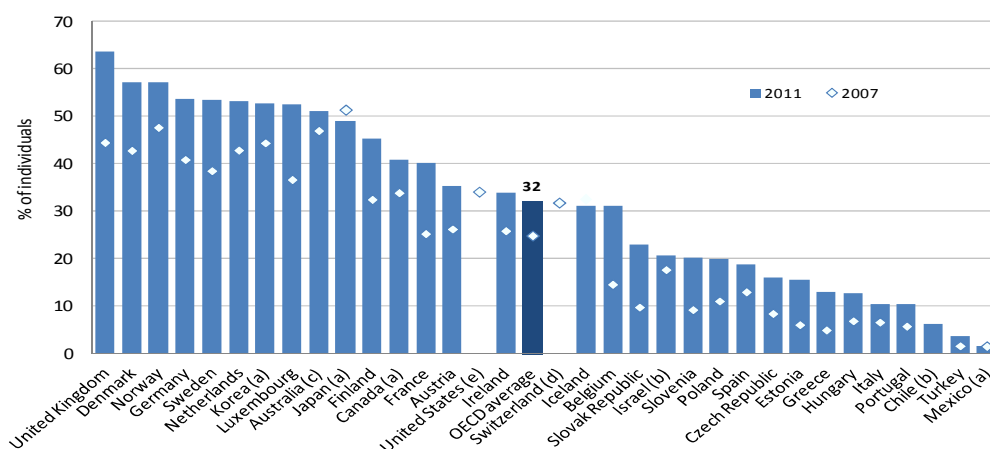
Measurement of the volume of B2C e-commerce is not an easy task. Data is not available in all countries, and when it is, it is not always comparable.⁵ Statistics can vary (sometimes quite significantly) from one source to another (e-commerce platforms, market research firms, and official government statistics) and depending on the product category (goods or services) or the nature of the transaction under consideration (domestic versus cross-border). However, available data and estimates generally show that since 2008, the market has grown steadily on a global basis. According to private sector data, Asia-Pacific is expected to become the largest B2C e-commerce marketplace by 2013 (representing a 34% of total sales share against 31.1% in 2012), followed by North America (31.6% of total sales share in 2013 against 33.4% in 2012), and Europe⁶ (29% of total sales share in 2013 against 30.2% in 2012) (EMarketer, 2012*a*).

In the OECD area, the average proportion of consumers purchasing products *via* e-commerce increased from about 25% of individuals in 2007 to 32% in 2011. In the same year, the United Kingdom topped the list of countries where consumers engaged the most in e-commerce (almost 64% of individuals in 2011 against about 44% in 2007), followed by Australia, Denmark, Germany, Korea, Luxembourg, the Netherlands, Norway and Sweden, with more than 50% of individuals purchasing products online (Figure 1).

⁵ Available data varies depending on the source (such as government official statistics and private sector estimates) and methodology used. It often refers, interchangeably, to "the Internet economy," "Internet usage," or "e-commerce" without always specifying whether domestic and/or cross-border e-commerce, and/or B2B and B2C e-commerce are being looked at.

⁶ EMarketer's estimates for Europe include Germany, France, the United Kingdom, Italy, Spain, the Russian Federation, and "other" countries.

Figure 1. Individuals who ordered or purchased goods or services on the Internet, 2011 or latest year available (percentage of individuals)



Note: Data from the EU Community Survey covers EU countries plus Iceland, Norway and Turkey. It refers to individuals aged 16-74 years, except for Canada (16+), Israel⁷ (20-74), Japan (6+), Switzerland (14+). Data refer to individuals who have bought or ordered goods or services over the Internet, for non-work use, in the last three months (for countries covered by Eurostat). For the rest of the OECD countries it refers to individuals placing orders over the Internet in the last 12 months.

Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

1. 2010.
2. 2009.
3. 2008.
4. 2005.
5. 2003.

Source: OECD, (2012a). *OECD Internet Economy Outlook 2012*.

In addition to the number of consumers using the Internet to purchase products, other indicators, such as the volume of sales, are being looked at to help measure growth. In Europe, between 2008 and 2011, the value of online retail sale⁸ nearly doubled, from EUR 117.84 billion in 2008, to EUR 200.52 billion in 2011 (Center for Retail Research, 2012). In the United Kingdom, online retail sales grew from 8.6% of total retail sales in 2008, to 12% of total retail sales in 2011 (Center for Retail Research, 2012). In France, online retail sales amounted to 7.3% of total retail sales in 2011, representing a 24% increase from 2010 (Center for Retail Research, 2012). In the United States, e-commerce sales (including retail and selected services) increased by 10.3% between 2009 and 2010 (from USD 385 billion in 2009 to USD 424 billion in 2010, accounting for 4.4% of total retail sales and 2.3% of total revenues in selected services industries, including transportation, publishing (non-Internet) and securities/brokerage (US Census Bureau, 2012).

In some developing countries, such as China and Brazil, growth has been exponential. In Brazil, in 2011, the value of online sales amounted to about USD 11 billion (about EUR 8.5 billion), a 26% increase from 2010 (Forbes, 2012). In China, the volume of online sales increased dramatically from CNY 1 28.2 billion (about EUR 15.6 billion) in 2008 to CNY 773.6 billion (about EUR 93.9 billion) in 2011, representing approximately a 500% growth (iResearch, 2012). In March 2010, 41% of Chinese

⁷ Footnote for Israel: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

⁸ Whether these figures cover both domestic and cross-border online retail sales is not always indicated.

Internet users spent more than 10% of their monthly spending in online shopping; this contrasts with the situation in other developing countries, including Egypt, Saudi Arabia, South Africa, Pakistan and the United Arab Emirates where about 47% of Internet users had never made an online purchase (Nielsen, 2010).

E-commerce growth has been facilitated by a number of converging factors. These include *i*) increased Internet and broadband penetration and the proliferation of mobile devices; *ii*) enhanced consumer choice and lower prices, *iii*) customised consumer experience, and *iv*) increased competition.

Increased Internet and broadband penetration

Back in 2008, consumers with broadband access were described as the most active in e-commerce (OECD, 2009). In recent years, broadband connections have notably boosted digital content products purchases, enabling consumers to download larger files quickly and at relatively low cost (OECD, 2012a, Chapter 5). In 2011, in the OECD area, an average of almost 67% of households reported a broadband subscription (OECD, 2012a, Chapter 3).

In developing countries, the proportion of households with Internet access increased from 12.5% in 2008 to 20.5% in 2011. The proportion of individuals using the Internet increased from 14.7% in 2008 to 24.4% in 2011 (International Telecommunication Union, undated).

Enhanced consumer choice and lower prices

Consumers can today access a wider range of products at lower prices *via* e-commerce (OECD, 2012a, Annex A). Research carried out in 17 EU member states between December 2010 and February 2011 reveals that online products⁹ are indeed generally offered at lower prices than those sold offline, resulting in consumer welfare gains of EUR 2.5 billion (Civic Consulting, 2011, p. 9).

Among the many categories of products that are today available *via* e-commerce, consumers increasingly purchase intangible digital content products (*i.e.* goods and services delivered electronically), through downloading and streaming. Such growth in demand, which concerns a wide range of OECD countries, is expected to continue to rise in the near future; in 2010, the European Commission predicted that by 2020, digital content and related applications should become almost entirely delivered online in the EU area (EC, 2010). In the United States, in 2010, 65% of Internet users paid to download or access online content (Pew Internet & American Life Project, 2010). In 2011, digital content products were the fastest growing e-commerce category, with a 26% growth rate, followed by consumer electronics. An increase in e-book downloads has been seen as a strong driver of this growth (ComScore, 2012, p. 28). In a 12 month period ending in February 2012, one-fifth of Americans had read e-books (Pew Internet & American Life Project, 2012). In the United Kingdom, in 2009, some 34% of consumers streamed videos online and 20% purchased music online (Consumer Focus, 2010). In France, between March 2011 and March 2012, digital music sales increased by 15.7% while total sales of the music market decreased by 9% (SNEP, 2012). In Japan, in 2010, the market for digital content was estimated at JPY 6 815.8 billion (about EUR 68.2 billion), an increase of 10.9% from 2009 (DCAJ, 2011). Survey results show that in Australia, from November 2010 to April 2011, 34% of consumers purchased audio or video content online (ACMA, 2011).

⁹ It should be noted that the above referred study does not cover a number of products including airline tickets and content/music downloads.

Customised consumer experience

To help consumers engage further in e-commerce and provide them with a more convenient experience, some reward and loyalty programmes have been successfully implemented in recent years. For example, the *Amazon's Prime* model enables consumers, subject to an annual subscription fee, to get a free two-day product shipping with no minimum size order, unlimited instant streaming of a large number of movies and TV shows, as well as a limited free lending of e-books for those consumers owning *Amazon's* e-reader device (*Kindle*). These advantages may also be passed on, although to a limited extent, to a third party of the subscriber's choice. Providing more individualised and convenient experiences to consumers has included enabling them to purchase single music tracks instead of full albums, or selected chapters of a book. For example, some travel book companies, like *Lonely Planet*, allow consumers to purchase selected chapters of its country guides rather than the entire book so as to enable consumers to customise their product (which can be printed out and downloaded multiple times on a variety of digital devices) to their travel itinerary. Moreover, through on demand "windows" for film and TV, consumers can watch a premiere of a TV event or movie. Companies such as *Hulu* (the video platform of *News Corp*, *Walt Disney*, and *NBC Universal*) are now expanding their on-demand windows offers by enabling a consumer, for example, to watch the full season of a TV series based on a monthly subscription fee. And consumers can do so from a variety of platforms including mobile devices, console game players, Internet enabled TVs, and PCs (OECD, 2011b).

Consumer access to their own personal data

In some countries, such as the United Kingdom, enhancing consumer access to their own personal data within the context of commercial transactions is being regarded as an increasingly important means to empower consumers that should also drive innovation and enhance competition in the marketplace. Such a tool will help consumers make better informed decisions by being able to compare prices, get an overview of their transactions history, and/or look at the value of their own data. In 2011, a voluntary programme, *Midata*, was launched by the UK government with industry with a view towards providing consumers with increased access to their personal data in an electronic format (BIS UK, undated).

Increased competition

Consumers can today purchase products online from a wider range of *i*) shopping platforms, including traditional online retail stores, cloud computing-based e-shops, and social media (such as blogs, and social networking sites), and *ii*) parties, including apps developers, mobile operators, and Internet service providers (ISPs). They can do so based on research carried out *via* product and price comparison websites, which help consumers to quickly identify cheaper and/or better quality products in one or more countries.

Continued access to the market by new online retailers is seen as an important factor influencing e-commerce activities, leading to more consumer purchases (FEVAD, 2012). According to research, e-retailers that are present in several countries are growing faster than those selling products in just one or two countries (Oracle, 2011a).

Changing consumer demand

Internet ubiquity, easier access to online information about products and brands, wider product choice and cheaper prices, have changed consumers' shopping attitudes and businesses' commercial strategies. The economic and financial crisis has accelerated such a trend. While shopping online and offline used to be, until recently, separate experiences, the line between the two areas is blurring.

Consumers increasingly search for information online to then purchase products offline, and conversely. Businesses advertising and selling products across various channels including online, mobile, and physical stores are expected to succeed in such changing environments (Oracle, 2011b). Consumers have, for example, the possibility to test products online before purchasing them online or offline. They can preview movies online before watching them in cinemas; they can listen to part of a song track or album online, before downloading it. The spread of mobile devices, including those requiring proximity for mobile payments through Quick Response Codes (“QR codes”), near field communication (NFC) technology, and audio signals, combined with added-value services, such as loyalty rewards (such as m-vouchers) and location-based services, has also helped to bring those consumers, who used to shop exclusively online, back into physical stores.

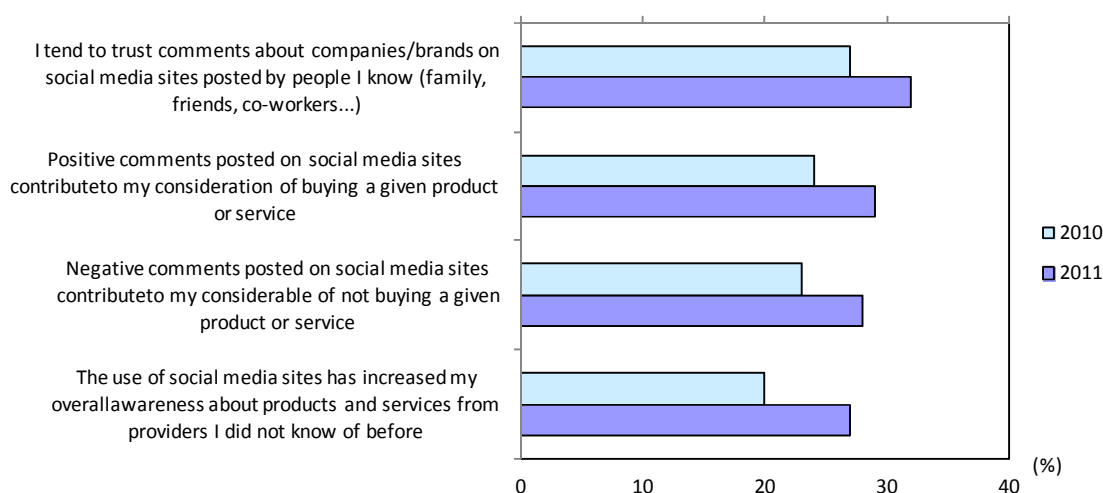
Mobile commerce

Consumers increasingly use mobile devices to engage in e-commerce. The mobile channel is in that respect seen as a key platform through which e-commerce sales will continue to grow rapidly. Most consumers, including children and young adults, have today ready access to the Internet through smartphones, tablets and e-readers. At the end of 2008, the number of mobile subscriptions worldwide reached 4 billion, with emerging economies being the most dynamic in this area. By the end of 2011, this number reached 6 billion, corresponding to a global penetration of 86% (ITU, 2012). In the United Kingdom, the percentage of sales *via* mobile devices, which amounted to 0.4% of e-commerce sales in 2010 (Q1), reached 5.3% in 2011 (Q4), representing a growth rate of 1 320% over the 2-year period (EMOTA, 2012). In Japan, sales *via* mobile devices, which amounted to EUR 13.4 billion in 2008, reached EUR 18.9 billion in 2011, representing a 40.9% growth (MIC, 2012).

Social commerce

Greater consumer interest in purchasing products through social media, based on other consumers, friends and family’s reviews and recommendations, is also seen as a promising source for further e-commerce growth. Today, consumers tend to regard reviews and ratings on social media as more transparent and trustworthy than traditional advertising (Figure 2).

Figure 2. Influence of social media in 2010 and 2011



Source: Accenture (2012). *Accenture 2011 Global Consumer Research Survey*.

Businesses, in turn, consider such consumer reviews and ratings as key drivers of sales enabling them to keep existing customers and reach out to a potential larger audience. Brands and e-retailers indeed increasingly use social media as platforms where they can *i*) sell their products directly, *ii*) advertise their products, *iii*) drive traffic to their own e-shop, and/or *iv*) receive feedback from existing or potential customers. Some businesses rely on these sources to help reshape their products' features and thereby meet consumer expectations, on an accelerated basis (OECD, 2012c). For example, on *Ideastorm*, which is a blog maintained by *Dell*, consumers can suggest ways to improve the company's products.

Online and mobile payments

In recent years, B2C e-commerce has been facilitated by the growing availability of sophisticated payments mechanisms. These include: *i*) online payments, which are payments made *via* the Internet using, among others a) credit, and debit cards; these may be linked to an online wallet account, and b) electronic currency systems (or prepaid payment services); and *ii*) mobile payments, which can be a) online payments made *via* a mobile device (paid by credit, debit, or pre-paid cards), b) payments made through SMS, or c) payments charged onto consumer mobile operators' bills (OECD, 2012b).

In 2010, the worldwide value of online payments was estimated at EUR 824 billion; this was expected to reach EUR 1 400 billion in 2013. The value of global m-payments was estimated at EUR 62 billion in 2010, with the level expected to reach EUR 223 billion by 2013, mainly driven by developments in developing economies (Capgemini, 2011, p. 16). Research shows that in the United States, the total transaction value for mobile payments will be USD 640 million in 2012, and should reach approximately USD 62 billion in 2016, as consumer usage of smart phones to purchase medium-value products (such as groceries or gas) will continue to increase (EMarketer, 2012b).

The spread of mobile devices, combined with the aforementioned increased engagement of consumers in social media activities in recent years, have driven the development of new business models offering consumers specific easy-to-use payment mechanisms aimed to facilitate, for example, purchases of intangible digital content products. For example, *Facebook Payments*, which have been introduced in the United States, the United Kingdom and Germany in September 2012, enable consumers to purchase virtual items on the social platform via carrier billing (International Business Times, 2012).

Geographically, mobile payments usage varies from country to country. In general, m-payments are mainly used to process low-value transactions. In the United States and Canada, mobile payments are being used primarily to purchase digital and virtual goods (such as music, ringtones, and "in-game" items). In some Asian and European countries, mobile payments are made to purchase a broader range of products, including transport tickets, movie downloads and physical goods (OECD, 2012b).

With the introduction of new payments business models which are based on near field communication (NFC) technology, growth in mobile payments, and, thereby, mobile commerce, is expected to accelerate. A number of mobile operators, payment card networks, and financial institutions, are joining forces in this regard. For example, in February 2012, *Visa* and *Vodafone* established a partnership with a view towards enabling Vodafone customers to make small value purchases at retail stores by waving their devices in front of a payment terminal; payment will be made from their Visa pre-paid account. Under the partnership, Vodafone customers will also be able to make high value purchases using a secure password (FT, 2012).

Remaining obstacles to e-commerce

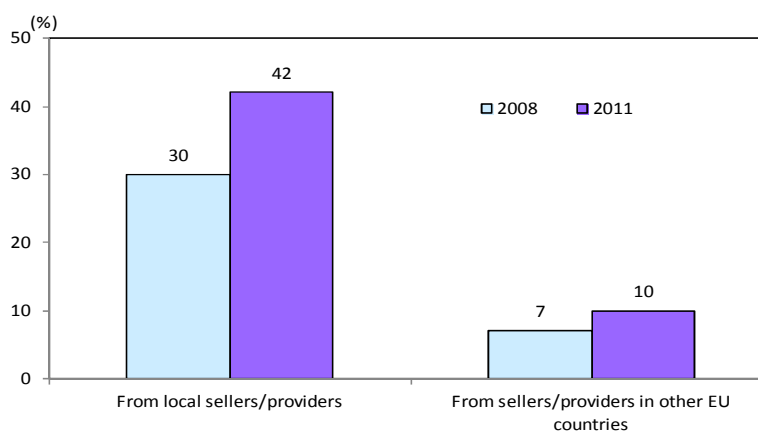
The above developments have enabled continued e-commerce growth, despite the financial and economic crisis. Growth has triggered a number of economic and social benefits including job creation (EC, 2012b) and enhanced consumer welfare through lower product prices, increased information about

products and more product choice. Private sector research shows that in 2009, the Internet constituted 3.4% of GDP in economies including the G8 countries, China, India, Brazil, Korea, and Sweden (MGI, 2011, p. 12); estimates further indicate that over the past fifteen years, in France, while the Internet economy destroyed 500 000 jobs, it created 1.2 million new ones, generating a net 2.4 jobs creation for every job cut (MGI, 2011, p. 3). In the United States, in 2010, approximately 13% of business sector value added could be attributed to Internet-related activities (including B2B and B2C e-commerce activities) (OECD, 2012a).

Domestic e-commerce still represents a small share of countries' total retail sales. In Australia, in 2010, it was estimated at 4% of total retail sales (Productivity Commission, Australia, 2011); in France, in 2011, it amounted to 7.3% of total retail sales (Center for Retail Research, 2012); in the United Kingdom, in February 2012, it accounted for 10.7% of all retail sales (excluding fuel) (ONS, UK, 2012).

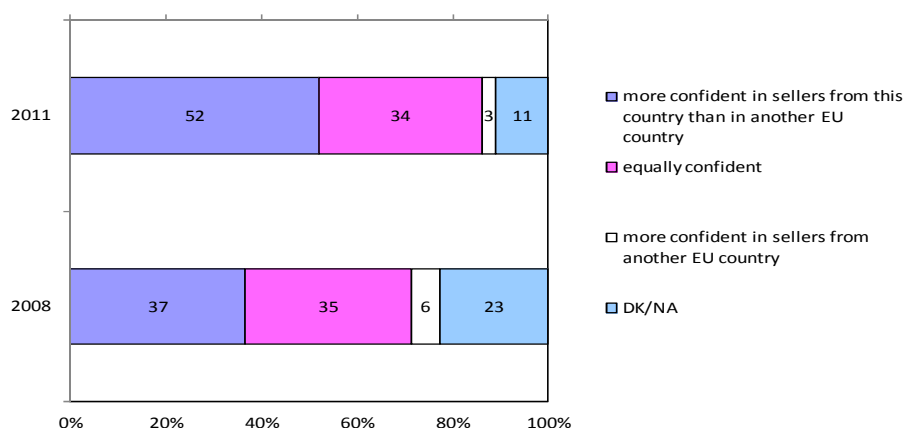
Cross-border e-commerce is also lagging behind. In the European Union (EU), in 2011, online retail sales only accounted for 3.4% of total retail trade (EC, 2012b). Between 2008 and 2011, the number of purchases made by EU consumers in their country of residence has been increasing more rapidly than those made across borders (Figure 3). Consumer confidence in cross-border Internet purchases actually dropped from 6% in 2008, to 3% in 2011 (Figure 4). Moreover, most businesses selling products online still limit their offers to domestic markets (EC, 2012c, p. 47).

Figure 3. Domestic and cross-border Internet purchases in EU countries (2008-2011)



Source: EC (2012a). *Consumers' Attitude toward Cross-Border Trade and Consumer Protection*, and EC (2008). *Consumer Protection in the Internal Market*.

Figure 4. Consumer confidence in domestic and cross-border Internet shopping in EU countries (2008 and 2011)



Source: EC (2012a), *Consumers' Attitude toward Cross-Border Trade and Consumer Protection*.

Trust in e-commerce remains affected by a number of problems that both businesses and consumers continue to experience. These include *i*) practical barriers, such as language problems, time required for businesses to set up an effective e-commerce platform, and a lack of interoperability of delivery and payment systems; and *ii*) regulatory barriers, such as complex VAT systems, overlapping frameworks addressing e-commerce issues (including consumer, privacy, intellectual property, telecommunication and competition rules), or regulatory gaps. Such difficulties are perceived to be aggravated in cross-border transactions.

Delivery issues (such as long delivery time periods and non-delivery), inadequate information disclosure, concerns over payment security and misuse of personal data, as well as inadequate dispute resolution and redress mechanisms, are the major problems being reported by online shoppers in the OECD area in both domestic and cross-border e-commerce. These issues may however vary from one region to another, and within regions. According to the EU consumer market study, 35% of respondents reported concerns over long delivery times in online shopping from another EU country. More specifically, this appeared to be a major concern for consumers in some EU countries, such as Poland (49%), Romania (46%), Bulgaria (41%), and the United Kingdom (40%) while in other EU countries, such as Hungary, Malta and Cyprus,^{10 11} concerns were less significant (Civic Consulting, 2011, p. 132). Within the United States, while long delivery times remain a concern for some online shoppers, these concerns have been mitigated, in large part, by the availability of premium shipping services and by newer innovations like *Amazon's* push toward same-day delivery. According to a survey conducted in the United Kingdom in 2009, some 19% of Internet shoppers had experienced at least one problem between January 2008 and 2009, while 16% of them did so in 2006. Major problems in the country concerned *i*) product delivery

¹⁰ Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

¹¹ Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

(48%); *ii*) damaged/faulty products (6%); *iii*) privacy issues (5%); and *iv*) inadequate information (4%); (OFT, 2009). In France, in the first half of 2010, non-food product-related issues topped the list of the overall amount of consumer complaints; 45% of such complaints concerned online transactions and related to: delivery (24%), fraud (19%), and redress issues (9%) (France DGCCRF, 2010). In Japan and the United States, in 2009, nearly 80% (Japan) and 75% (United States) of consumers did not conduct cross-border online shopping. While most of them were not interested in cross-border online shopping as the top reason (about 70% of consumers in both countries), nearly 50% (Japan) and 40% (United States) of those consumers who did not conduct cross-border Internet shopping had concerns over after-sales services, as well as over a lack of available dispute resolution and redress mechanisms (METI, 2010). Similar problems have been reported by consumers in a number of developing countries. For example, in 2011, in China, Indonesia, and Vietnam, more than one third of consumers experienced delivery problems (METI, 2012a).

Another area of growing concerns relates to consumer exposure to unsafe products purchased *via* e-commerce. Such products are, in many instances, counterfeit goods, which are available on professionally looking websites (including auction platforms). The protection of consumers in this context is a challenge. Market surveillance and customs authorities have indeed limited competence to detect counterfeit products; and consumers have difficulty identifying whether information on the seller and the product is accurate (OECD, 2008b). In recent years, a number of problems have been reported by consumers who purchased, *via* e-commerce, counterfeit batteries used in electronic devices, and who were exposed to explosion hazards. Ways to enhance consumer protection against unsafe products sold *via* e-commerce was briefly discussed by some countries at the OECD's Working Party on Consumer Product Safety (WPCPS) meeting held in April 2012. The French government for example indicated that new legislation should be adopted in the country in 2013 with a view towards enhancing market surveillance and enabling market surveillance authorities to: *i*) carry out mystery shopping initiatives through which they will be able to act as consumers, purchase a suspicious product to then test it in a laboratory; and *ii*) request closing of a website through which an unsafe product was sold. In Japan, in June 2012, the Japanese Ministry of Economy, Trade and Industry co-operated with five major auction shopping platforms to raise consumer awareness, through the latter's websites, on product non-compliance issues (METI, 2012b). The launching of an OECD global portal on product recalls by the WPCPS in October 2012 will also help improve consumer protection in e-commerce. The web portal, which will enable jurisdictions to upload information on their product recalls in a timely and multilingual fashion, will be promoted on e-commerce platforms, such as *eBay*.

III. Assessment of selected consumer policy issues

The following provides a snapshot of some of the key consumer issues which, since the Seoul Declaration, have been identified as ongoing or emerging barriers to trust in e-commerce. These include: *i*) complex legal landscapes; *ii*) inadequate information disclosure; *iii*) unauthorised charges, misleading and fraudulent commercial practices; *iv*) geographical restrictions; *v*) privacy, and *vi*) dispute resolution and redress.

Complex legal landscapes

As highlighted in the first part of this report, the e-commerce marketplace is evolving rapidly with new technologies and business models surfacing constantly. In this context, policy makers and law enforcers have difficulty keeping up with new developments while working towards enhancing consumer confidence and promoting fair and transparent commercial practices. The challenge is exacerbated by the complex nature of the e-commerce regulatory framework, which varies among countries. Many OECD countries and non-members apply general consumer protection rules (such as contract and distance selling rules) to address issues, while others have applied more specific regulations. In some instances, the rules overlap with other regulations on, for example, misleading and deceptive advertising, telecommunications,

privacy, and copyright; how these interrelate in the e-commerce context is not always clear. In other instances, existing consumer protection rules do not cover developments, such as issues arising from tangible/intangible digital content purchases, and mobile payments. For example, in a number of OECD countries, legislation does not indicate whether intangible digital content products are goods or services, and thereby, what consumer rights and obligations are (OECD, 2011*b*). This may have important implications for consumer rights (such as a right of withdrawal from a transaction) in some OECD countries (BIS UK, 2012, p. 5). It should be noted however that the distinction may not matter in all areas of consumer law. For example, general consumer protection laws against deceptive and unfair commercial practices may apply regardless of the format in which digital content products are being delivered.

In such a complex environment, consumers, merchants and other parties involved in e-commerce transactions have difficulty understanding what legal framework applies to their transaction, and thus what rights and responsibilities they may have in the event of a problem.

This is particularly true in the area of online and mobile payments where a number of parties, including financial institutions and non-financial institutions are increasingly interacting with consumers. The availability and level of consumer protection in this area vary significantly within and among countries, depending on (OECD, 2012*b*):

- The tool being used to process a payment (including debit/credit cards, SMS, pre-paid card, payment charged to a mobile phone bill). Except for countries including Korea, Japan, Norway, Sweden and Denmark, pre-paid payments, and those processed by mobile operators, are not covered by existing regulations.
- The payment organisation involved (financial or non-financial institution, including, for example, mobile operators and some social networking platforms).
- The nature of the problem. In most countries, consumers have a high or some level of protection in case of non delivery, or late delivery, unauthorised charges or processing/billing errors; the level of protection is however unclear or inexistent in some countries in cases where products do not conform with the order.
- The nature of the purchased product. In a number of countries, consumer protection laws do not address issues associated with the purchase of intangible digital content products, and therefore rights and responsibilities of consumers and other parties involved are unclear or inexistent.

Much has already been done to date to try and address the above concerns. Regulatory initiatives have been implemented with a view towards: *i*) expanding the scope of consumer protection laws to, *inter alia*, mobile payments and digital content products-related issues; and *ii*) clarifying/simplifying copyright laws that may overlap with consumer protection laws in this area.

As regards *i*), in Canada, the *Competition Act* was amended in December 2010 to include specific provisions to address false and misleading representations and deceptive marketing practices in the electronic marketplace. These amendments have not yet come into force. Taking into account the crucial role that mobile payments increasingly play in the development of e-commerce, some countries have taken steps to reduce legal uncertainty in this area. For example, in Mexico, a new regulatory framework is being developed by the Mexican Central Bank and the Ministry of Finances, with the participation of the National Banking and Securities Commission to adapt to new mobile payments schemes that have been implemented for the first time in the country in 2011. In Israel, the Consumer Protection Authority is examining, together with the Ministry of Justice, ways in which the Israeli debit card legislative framework may need to be adapted to apply to mobile payments. In Canada, a major review of the payments framework is underway to determine how existing rules should be adapted, or new rules developed, to adequately tackle emerging issues; recommendations were made in that regard to the Minister of Finance in December 2011. On 19 September 2011, the UK minister responsible for consumer policy announced

that a new *Consumer Bill of Rights* would be developed with a view towards clarifying overlapping consumer protection and copyright legislation and regulation, and providing stronger consumer protection, including in the area of digital content products. Also in 2011, the UK Office of Fair Trading launched a *Distance Selling Hub*, which is a portal providing guidance for retailers and business support organisations on regulations that affect buying and selling goods and services via the Internet, phone, mail order, e-mail, interactive TV. It contains downloadable documents and checklists that businesses can use when they do business through distant-selling (UK OFT, 2011).

In a report being finalised on mobile payments, the International Consumer Protection and Enforcement Network (ICPEN) calls for enhanced enforcement efforts in this area. The organisation points out the fact that consumer issues with mobile payments fall under civil law in most jurisdictions and thus are outside the authority of most consumer protection law enforcement agencies. Co-operation with other governmental and non-governmental bodies is therefore regarded as crucial to help assist consumers in their civil cases in this area.

As regards *ii*) in Ireland, in May 2011, a Copyright Review Committee (CRC) was established with a view towards examining the existing copyright framework and identifying areas where attention would be required to, notably, adapt to the digital economy (CRC, 2012). Based on discussion with a wide range of stakeholders (including business and consumer organisations), the CRC is expected to issue recommendations by the end of 2012. In Canada, a proposal for legislation amending existing copyright laws (the *Copyright Modernization Act*) received royal assent in June 2012. The act aims to legalize a number of consumer practices including *i*) using a personal video recorder to record a TV show for later viewing (“time shifting”), *ii*) copying music from a purchased CD to an MP3 player (“format shifting”) and *iii*) editing existing copyrighted material on the condition that this be made for non-commercial purposes (“mashing-up”). The act includes restrictions on these practices to ensure that the legitimate interests of rights holders are respected, for instance, by not permitting the circumvention of technical protection measures to make a copy, and prohibiting mash-ups from being used for commercial purposes or from interfering in markets for the original work (Government of Canada, 2012). In June 2012, the Australian Law Reform Commission (ALRC) was required to review the existing copyright framework and examine ways that it may notably affect participation of consumers in the digital economy. The ALRC published a consultation paper in August 2012 (ALRC, 2012) where it notably points out to new consumers behaviour in the digital economy and the issues that may arise in this context; the paper notably focuses on the increasing use, by consumers, of cloud computing services to store copyrighted material which they and other parties (for example, family and friends) may access and use, and which, under certain conditions, may infringe copyright (see ALRC, 2012, p. 27). The ALRC is developing a discussion paper with proposals for reform; a final report is to be delivered by 30 November 2013.

Some of these issues are also being addressed by industry through efforts to increase the interoperability of digital content products. For example, in late 2011, a consortium of major movie studios, consumer electronics manufacturers, retailers, network hardware vendors, systems integrators and DRM vendors launched *Ultraviolet*, a digital rights authentication and cloud-based licensing system enabling a consumer to *i*) make a digital copy of an *Ultraviolet* certified purchased CD, DVD, Blu-ray disk, or content delivered in an electronic format; *ii*) store it onto a server in the cloud; and *iii*) stream and/or download that copy to a certain number of devices (up to 12) connected to the Internet. Under the initiative, consumers can create an account. Up to six members will be able to sign up for this account and access the purchased product from the cloud without having to pay any additional charges. Some other industry initiatives have moved towards offering consumers with the possibility to benefit from some of the rights associated with the purchase of physical digital content products. For example, *Amazon*, offers its US customers the possibility to loan *Kindle* e-books once to other consumers for a 14 day period; and in 2009, *Apple* changed its policy and made its *iTunes* music DRM-free making it accessible to other companies’ devices.

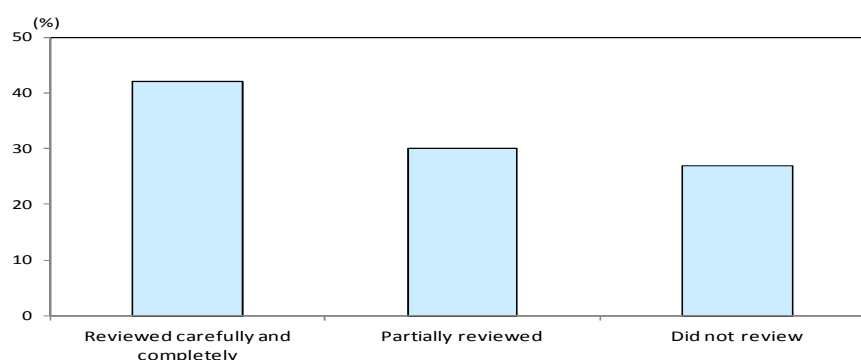
Information disclosure

While continued competitiveness and innovation in e-commerce have, in recent years, provided consumers with access to more and better quality information about products and related transactions, there is general recognition among stakeholders that such information is still imperfect. As a result, consumers may be prevented from *i*) being able to compare product quality and price; and *ii*) understanding fully the nature, length, level and scope of the commitments that they are making in e-commerce. Research in behavioural economics indicates that in such contexts, consumers may end up using heuristic “rule of thumbs” to make purchase decisions. This may result in *i*) dissatisfaction with a product that did not meet expectations, *ii*) surprisingly high bills (*i.e.* “bill shock”); as well as *iii*) frustration with the procedures and costs that could be incurred in terminating a transaction and trying to obtain redress (OECD, 2010c, and OECD, 2011a).

Transparency, clarity, completeness, and timeliness of information disclosure

Recent surveys carried out in a number of countries suggest that a majority of consumers purchasing products online do not fully read or understand the terms and conditions in e-commerce transactions (including those relating to payment procedures). According to a survey carried out in the EU in 2010, 27% of survey respondents did not read the terms and conditions at all, and 30% read them partially (Figure 5).

Figure 5. Proportion of EU consumers reading the terms and conditions in online purchases



Source: EC (2011b), *Special Eurobarometer 342, Consumer Empowerment*.

The main reasons explaining why consumers do not read terms and conditions at all, or carefully, are as follows:

- Information is often presented in lengthy and technical legal terms that are difficult for consumers to understand.
- The terms are sometimes presented in small size, are buried in footnotes, or require accessing a series of web links or windows. A mystery shopping survey on digital content products carried out in 2010 in the United Kingdom for example reveals that 56% of mystery shoppers could not find information on dispute resolution in the terms and conditions, even though such information was, in most instances, available (Consumer Focus, 2010).
- Consumers would need to invest considerable time to review and access information.

As highlighted in the OECD *Consumer Policy Toolkit*, the situation is even more complex in the mobile context where consumers tend to take decisions on an accelerated basis (in an “on the go” context);

their ability to review the terms of a transaction sufficiently before concluding is more limited (OECD, 2010c, and see OECD, 2011a).

In recent years, a number of information problems have been identified in relation to price comparison websites, billing statements provided by mobile operators, and premium SMS.

A survey carried out in the EU between December 2010 and February 2011 reveals the following issues associated with price comparison websites: a majority (53%) do not provide their full business address; only 20% provide information on delivery time; 62% do not provide any information on product availability; and in 60% of the cases, there is no clear information about whether the referenced retailers pay to have their products listed (Civic Consulting, 2011).

The ICPEN report on mobile payments indicates that unclear or incomplete information on billing statements provided by mobile operators is a growing challenge for consumers. In many instances, such statements do not provide enough details of, for example, premium rate services purchased. Typically, information about the supplier of the service, or time of purchase, is usually not specified. This may create problems for consumers who might have difficulty fighting unauthorised charges on their bill, or prepaid credit.

Information disclosure problems in premium SMS was discussed at an OECD Toolkit workshop on communication services held in October 2011. Reference was made to a contest secretly carried out by the Belgian government which imitated some SMS competitions being run on the Internet. Participants were directed to the contest through platforms such as *Facebook* and *Google*. They had to send an SMS, in return for which they received a code to validate on the website; if they won, they were told that they would win a smartphone. All of the thousands of people who took part in the contest received a message warning them to be on the lookout for fraudulent SMS services. Had they carefully read the terms and conditions of the contest, which contained many absurd clauses, they would have been aware of the fraud. A review of the visitors to the campaign website revealed that less than 1% actually clicked the general terms (OECD, 2012e).

Some regulatory initiatives have been developed in recent years to improve information disclosure. The EU directive on consumer rights, adopted in 2011, for example, introduced for the first time specific information disclosure requirements to be provided to consumers by businesses prior to purchasing digital content products. In Switzerland, in April 2012, amendments to the *Unfair Competition Act* entered into force. These amendments notably introduced specific information obligations for businesses engaging in e-commerce. In Germany, a law was adopted by the Parliament in March 2012, requiring businesses to provide consumers with a set of information (including price) when selling goods or services on the Internet, whether *via* a local computer, smartphone or tablet. In Norway, in 2009, the Consumer Ombudsman developed guidelines for online shopping, which specify the type of information that businesses should provide to consumers including product price, privacy policy, payment processes and available dispute resolution and redress mechanisms (Consumer Ombudsman, Norway, 2011). In the United States, the Federal Trade Commission is currently exploring how best to make disclosures to consumers in new media, including on smartphones and social networks; the agency, which organised a workshop in this area in May 2012, is now in the process of developing guidance (US FTC, 2012b).

More needs to be done, however, to provide consumers with relevant information that enables them to make informed decisions in e-commerce. Work could be for example conducted on enhancing consumer access and understanding of such information.

Contract clarity

Concerns continue to be expressed about a lack of clear information in contracts regarding consumer rights and obligations in e-commerce. This is particularly true in cases where consumers purchase digital content products which are often sold with restrictions on use (OECD, 2006). Discrepancy between usage restrictions and consumer expectations in this area is growing. While it is generally easy for consumers to determine what they can do with physical products, their understanding of what they can or cannot do with digital content products has become difficult in today's Internet economy where *i*) through technology advances, content may be easily shared, copied, transformed and format-shifted by many parties (Hargreaves, 2011, p. 43, paragraph 5.10): and *ii*) usage conditions can vary significantly from one product to another, depending on the terms and conditions in the end-user licensing agreement consumers have agreed to prior to the purchase, and the technology being used (digital rights management or copy control technology).

Consumers have generally little knowledge about the applicability of copyright laws and related restrictions to their transaction. This, while they may be prevented from: playing a digital content product on different devices (interoperability limitation); copying, sharing or transferring products to others; downloading a product (such as an e-book) several times (functionality limitation). Moreover, there have been instances where consumers had not been notified about changes in the terms of use of products that they had previously purchased. In one case, for example, a supplier of e-books imposed limits on the number of times a book could be downloaded, after which re-purchase was required. Mention of the limit was not included in the license agreement under which consumers were actually given a non-exclusive right to keep a permanent copy of the applicable digital content product and to view, use, and display such product an unlimited number of times (The Consumerist, 2009).

Clarification of consumer rights and obligations in online and mobile commerce is needed. Some countries, such as Sweden, are in that regard reviewing the effectiveness of their e-commerce framework, from both policy and enforcement perspectives. Other stakeholders have suggested developing standards which would specify the type of essential information that should be provided to consumers prior to purchasing products. In the area of digital content products, this could cover information on the functionality and interoperability of content (University of Amsterdam, 2011, p. 289). It should however be noted that with a view towards ensuring flexibility, such standards should be broad enough to encompass all types of digital content products, and should also evolve along with advances in technology.

Unauthorised charges, misleading and fraudulent commercial practices

Misleading and fraudulent practices, which may involve unauthorised charges, continue to undermine trust in e-commerce. These are often tied to inadequate or misleading information disclosure. The following provides examples of some problematic practices which have been reported by consumers in recent years; these relate to in-apps purchases and renewals of premium SMS services.

In-apps purchases

Unauthorised charges related to the purchase of "apps" for mobile devices have been identified as a growing source of concerns by stakeholders at both an OECD roundtable on digital content (OECD, 2011a) and a workshop on online and mobile payments (OECD, 2011b). An example was given of a case in the United States involving free games targeting children, within which additional items ("in-apps") were available for sale; such items had been purchased by children without their parents' knowledge, exposing the latter to expensive bills. In Australia, in November 2012, the Assistant Treasurer provided terms of reference to his expert advisory committee on consumer policy, the Commonwealth Consumer Affairs Advisory Council (CCAAC), to examine the Australian app market and the implications for

consumer policy. The CCAAC released an *Issues Paper* in this area (CCAAC, 2012a), and, on 12 December 2012, opened consultations on app purchases. Such consultations will conclude on 31 January 2013 (CCAAC, 2012b).

Some countries have taken action to address the situation, highlighting the need for better and timelier information disclosure about the price of products which are sold within free apps. Under these initiatives, information should be provided each time, and prior to in-apps, purchases are to be made. In Finland, for example, the Consumer Agency has worked with the business community to develop an opt-in procedure whereby mobile content is delivered to consumers only after confirmation has been given, through, for example, an SMS.

Negative option and cramming

The practice of negative option involves a company taking a consumer's silence or failure to cancel as acceptance of an offer and permission to bill them. While potentially convenient to consumers, a lack of express consumer consent and/or information about the offer and related financial consequences on a long term basis could be problematic and lead to consumer detriment. Another practice leading to unauthorised charges is cramming, which involves including fees and charges on bills for services consumers did not purchase or authorise, usually after they responded to an e-mail or downloaded an item that they believed was free or of nominal cost.

Negative options problems have been reported on the increase, in particular in the mobile context (OECD, 2012b). Likewise, cramming has been identified as a growing problem for consumers purchasing products through their mobile devices (US FTC, 2012c). Some initiatives have been carried out since the Seoul Declaration to help resolve issues. On 1 July 2009, the Australian Communications and Media Authority (ACMA) gave legal force to an industry-developed mobile premium services code (MPSC), which introduces a double opt-in requirement whereby a prospective consumer will have to give two independent confirmations before being able to subscribe to an ongoing premium SMS service. Since November 2010, ACMA is able to issue a temporary *Do Not Bill* order to stop suspect content suppliers from charging customers while it investigates a premium service. At the OECD Toolkit workshop on communication services, the Australian Competition and Consumer Commission reported on a significant decrease in the number of complaints concerning mobile premium services; this was seen as a sign of success of the policy measures that had been taken to address problems (OECD, 2012e). In the United States, the Mobile Marketing Association's *US Consumer Best Practices Guidelines* require vendors to ask consumers twice to confirm that they want to make a purchase, before charging them for a premium service (MMA, 2011).

Enforcement

More could be done in the enforcement area to fight against domestic and cross-border misleading and fraudulent commercial practices. On the domestic front, some OECD members are obtaining new powers to deal with these issues. For example, in Finland, in February 2011, the *Communications Market Act* was amended to provide new enforcement powers to the Consumer Ombudsman. This included the authority to order a telecommunications company to close an SMS number used to offer fraudulent or deceptive mobile content services. In the United States, in 2012, Congress reauthorized the US SAFE WEB Act of 2006, which provides the Federal Trade Commission with enhanced tools to combat online cross-border frauds, for an additional seven years.

In Israel, investigations carried out in 2012 revealed a number of misleading practices and violations of distance selling legislation on the part of some fixed and mobile operators when charging consumers for products supplied by such operators or third party content providers. To protect consumers

against such practices, the Consumer Protection and Fair Trade Authority proposed an amendment to the consumer protection legislation that would prevent fixed and mobile operators from billing consumers for products purchased from such operators or third party content providers, unless consumers' explicit written and prior consent is obtained. Likewise, in 2012, the Ministry of Communications proposed amendments to the licenses of mobile operators with a view toward prohibiting consumer billing in the absence of *i*) documentation containing consumers' explicit request for a service; and *ii*) consumers' explicit consent to the service. However, in light of the fact that the enforcement of the license terms (to be carried out by the Ministry of Communications) is administrative in nature and does not deal with consumer protection *per se*, the Israel Consumer Protection Authority is working on the development of a broader amendment to the consumer protection legislation that *i*) will apply to all types of payments (including mobile payments); and *ii*) will prevent any businesses from charging consumers without the latter's explicit and prior consent, regardless of whether the transaction was made directly with them or with a third party provider. The burden of proving consumer prior and explicit consent will be borne by the business charging consumers or claiming payments from them. Any breach of such provision will bring about criminal penalty.

Some countries have suggested that closer informal co-operation or co-ordinated actions with the business community could also be pursued to help address issues. This issue was discussed at the OECD Toolkit workshop on communication services. Belgium, for example, reported on a case where consumers located in Belgium had been victims of fraudulent billing for ringtones by a vendor located in the Netherlands. Instead of suing the third party vendor abroad, the Belgian authorities turned to the Belgian mobile operator that had processed the payment and asked the company to terminate the fraudulent transaction. The authorities specified that in the absence of such action, the operator could be named as accomplices to the third party vendor (OECD, 2012*e*).

Geographical restrictions

While consumers might expect that products sold *via* e-commerce are accessible wherever they happen to be located, in practice, access to a number of such products (including, in particular, digital content products) is restricted to geographic regions. Kindle's e-books, for example, may only be accessed from a store based in a consumer's country of residence, or based on the country where their credit card is registered (Consumer Focus, 2010, p. 12). This is mainly due to the territorial character of *i*) copyright protections, as established in the international copyright legal framework, with which businesses must comply, and *ii*) the licensing of content, which aims to respond to some challenges being faced by rights holders including varying a) legal frameworks, and b) needs of local distributors. Some industry stakeholders take the view that consumers would not necessarily be better off if pan-territorial licensing were mandatory, for the grant of such rights could entail a high cost, thereby possibly excluding smaller innovative services from launching and/or being successful in smaller markets.

Developing an adequate framework that will help increase the volume of cross-border offers is seen as an important goal to achieve by the European Commission. This is, in part, because digital music distribution rights are generally administered by domestic collecting societies in the EU and are subject to territorial restrictions. As a result, for digital music to be accessible across the EU, licences from the relevant collecting society in each of the 27 EU member states need to be obtained. Accordingly, the EU is planning, within the framework of its European Strategy for Intellectual Property Rights, to submit proposals to create a legal framework for the collective management of copyright, with a view to enabling multi-territory and pan-European licensing (EC, 2012*b*).

Privacy

The purchase of products *via* e-commerce often requires that consumers provide a significant amount of personal information. In many instances, consumers do not realise what may be done with their personal information, with whom it may be shared, and for what purposes it could be used. Disclosure about privacy policies is in that regard reported to be often unclear, incomplete, and/or missing.

The CCP, in the context of its analytical work on digital content products, and the WPIE, in the context of its work on apps, are both exploring these issues. The work is being conducted in consultation with the OECD's Working Party on Information Security and Privacy, which is currently reviewing the 1980 OECD guidelines on privacy (OECD, 1980). Focus is being made on the conditions under which consumers are granting permissions when purchasing apps for their mobile devices (OECD, 2012*b*). The work is looking at both the *Apple* and *Android*'s systems. With respect to *Apple*, "apps" that collect or transmit a user's contact data without the company's prior permission are in violation of its guidelines. *Apple* requires that explicit user approval be secured before contact data could be accessed. However, once the app has been downloaded, consumers have no possibility to review the permissions they have granted. With respect to *Android*, prior to installing an app on a mobile device, consumers must be informed about the permissions that they are granting. Following the app's download, consumers can access the list of permissions they have provided, without however being able to change it.

Additional concerns have been further raised as regards "apps" that enable developers to access data stored and processed through mobile phones, without consumer knowledge and/or consent. This would include address books, consumers' location, phone number, call logs, unique identifiers (such as an *iTunes*' user's account number) and personal information being transmitted to a business during a mobile payment process through the use of near field communications technology (New York Times, 2012).

The issue of the collection and use of personal data *via* apps is of particular concern in the case of children. The US Federal Trade Commission has called on industry to provide parents with greater transparency about businesses' data practices (US FTC, 2012*a*). The action is being taken under the provisions of the US Children's Online Privacy Protection Rule ("COPPA"), which requires operators of online services, including mobile "apps," to provide notice and get parental consent prior to collecting information from children under the age of 13.

Dispute resolution and redress

Dispute resolution

E-commerce has become a complex multi-party environment where consumers do not always know who to turn to in case of problems with a product. Unclear division of responsibilities between the parties that are involved in a transaction (such as a mobile operator, a financial institution and a merchant) can make it difficult for consumers to claim their rights in an efficient manner.

As described above, the situation may be particularly complex for consumers purchasing products online or *via* mobile devices. Issues have also been raised in the context of apps purchases on online platforms from third party developers. There have been instances where, after consumers had unsuccessfully tried to reach out to a third party developer to resolve problems with the transaction, the role of the online platform on which the product had been sold, was unclear. Research shows that under a number of EU country legislation, the online platform provider may only be held liable for problems in instances where *i*) the product was sold under its own brand; *ii*) the contact details of the vendor provided on the platform were inaccurate; or *iii*) the platform had negligently allowed a third party vendor to use its platform (University of Amsterdam, 2011, p. 123).

Developing effective dispute resolution mechanisms and informing consumers about the existence of such schemes is a crucial area where work needs to be furthered to help to enhance consumer confidence in the e-commerce marketplace. According to an EC survey, 28% of consumers who did not purchase online over a 12 month period ending in September 2011, and 35% of consumers who did not buy from an online seller based in another country in the same period, claimed that they did not do so due to the potential difficulties they may encounter to solve problems if something went wrong (EC, 2012*d*).

In order to facilitate the resolution of problems, some businesses are turning to alternative dispute resolution mechanisms (ADRs), such as mediation and arbitration.

In this context, in 2011, the European Commission proposed both a directive on ADR and a regulation on online dispute resolution (ODR) with a view towards ensuring effective dispute resolution processes (EC 2011*c*, and EC, 2012*b*). The development of a European online dispute resolution platform that enables consumers to resolve their problems out of courts in a rapid, inexpensive, and easy way, is also envisioned. The United Nations Commission on International Trade Law (UNCITRAL) is developing a legal standard for online dispute resolution involving cross-border e-commerce transactions. Draft procedural rules were discussed at the Working Group III's meetings held in May and November 2011 and June 2012. The rules are aimed at facilitating, in particular, the handling low-value, high-volume transactions. In Belgium, BELMED, a new online platform for resolution of consumer disputes was launched in April 2011.¹² Both consumers and businesses can use the platform for out-of-court online resolutions of consumer disputes with the help of an independent mediator. BELMED targets not only domestic consumer disputes but also cross-border consumer disputes (Belgium, SPF Economie, P.M.E. Classes Moyennes et Energie, 2011).

Redress

In 2007, the CCP developed a *Recommendation on Consumer Dispute Resolution and Redress*, which was adopted by the OECD Council (OECD, 2007). The Recommendation recognises the rapid growth of e-commerce, and recommends the development of a wide range of redress mechanisms for both online and offline transactions, including compensation for economic harm, whether in the form of a monetary remedy (such as voluntary payment, damages, restitution, or other monetary relief) or conduct remedies with a restorative element (such as exchange of a good or service, specific performance or rescission of a contract). Such remedies however may, or may not always be available to consumers in e-commerce transactions, depending on:

- The nature of the problem.
- The payment mechanisms used and the parties involved. As seen above, in many instances, consumers do not obtain any remedies when payment has been processed by mobile operators. This is in contrast with the level of protection afforded to consumers in most countries in cases where a credit or debit card is used.
- The nature of the product (tangible, or intangible), depending on the legal framework.

As a result, the level of protection afforded to consumers may vary within and across countries, leaving consumers exposed to legal uncertainty that may, or may not, be addressed by voluntary business practices. With respect to tangible digital content products, it is often not possible to return them, for any reason; this would be the case, for example, once a packaging seal has been broken. Whatever remedies that exist for defective or undelivered digital content products are often available only at the discretion of

¹² See: http://economie.fgov.be/en/disputes/consumer_disputes/Belmed/.

retailers. According to a mystery shopping survey carried out in the United Kingdom in 2010, most terms and conditions of contracts exclude liability for damaged software (Consumer Focus, 2010, p. 24).

The situation is further complicated when digital content products are delivered electronically. In a number of OECD countries, legislation does not indicate whether such intangible digital content products are goods or services, and thereby what remedies consumers may afford. As discussed at an OECD workshop on digital content products held in April 2012, a majority of retailers, it seems, do not provide consumers with redress for non-conforming, defective or undelivered digital products, in particular for products accessed in the process of downloading or streaming (University of Amsterdam, 2011, p. 229). In the United States, in a case where e-books were deleted remotely by an online retailer from consumers' e-readers, consumers sued the retailer in a class action, alleging fraud. The online retailer ultimately agreed to a settlement allowing all affected consumers to replace their e-books with an identical copy, or receive compensation; it also agreed to pay USD 150 000 to the plaintiffs and suffered substantial media backlash.

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