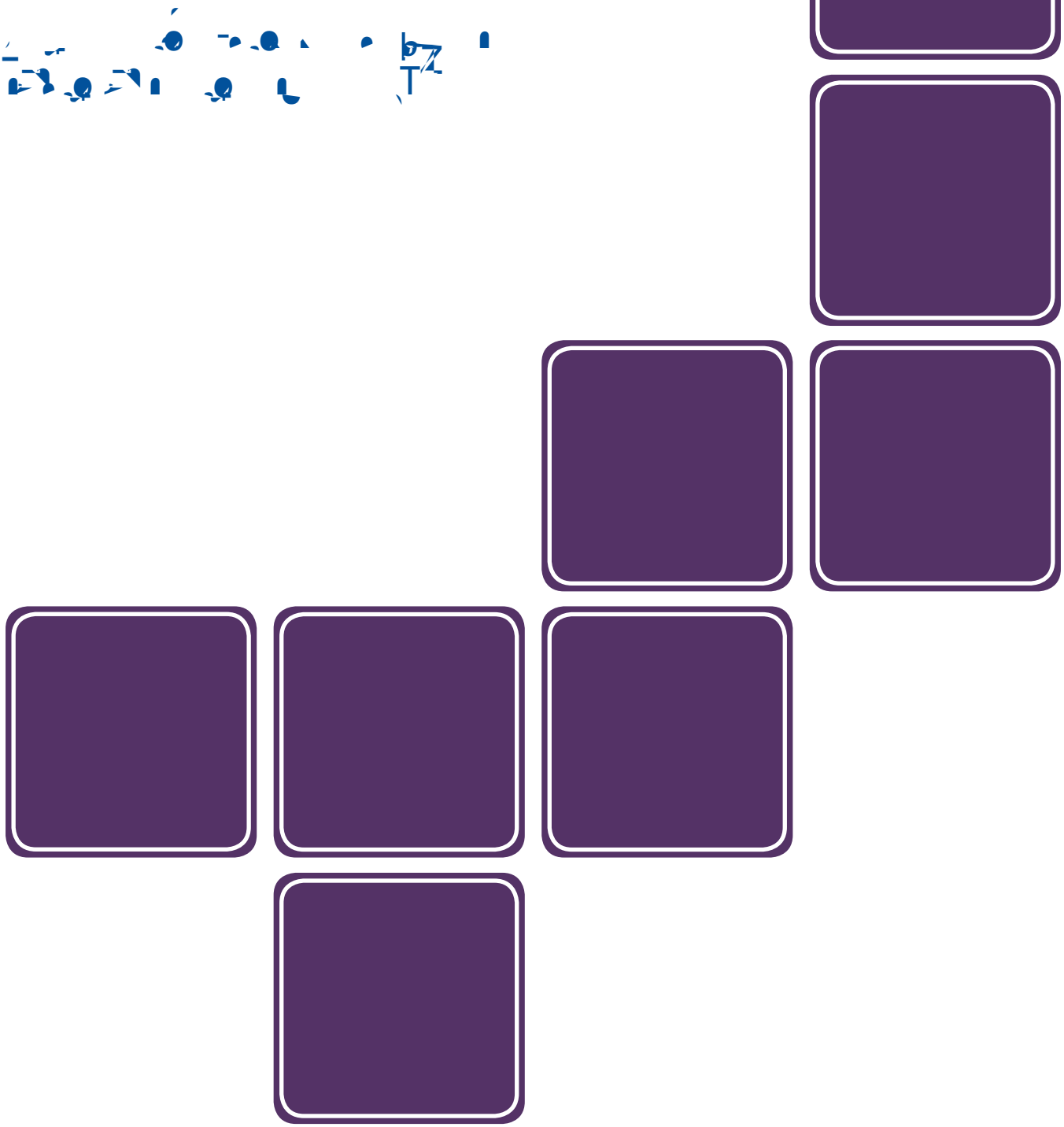
E-commerce – New Opportunities, New Barriers



The National Board of Trade

www.kommers.se

Preface

The internet has created new opportunities for international trade. The geographical distance between buyer and seller has decreased in importance and has changed the way in which companies and individuals conduct business, trade and communicate. However, as new opportunities are created, new barriers to trade are exposed. In this report, we identify the e-commerce barriers faced by Swedish businesses in countries outside of the EU; barriers that limit the opportunities to conduct cross-border e-commerce. Many of these barriers are the same as those for traditional trade, whilst others are speci c to, or more problematic for e-commerce. We observe that, to a large extent, barriers encountered in non-EU countries are the same as those found within the EU.

This is the fourth report on e-commerce produced by the Swedish National Board of T foures in

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3. Barriers Relating to Customs

Many companies, particularly those in the retail sector, have suggested that tariffs present the greatest barrier to cross-border e-commerce. This problem does not exist within the EU, which is a free-trade area; however, when exporting to countries outside of the EU tariffs are, indeed, a major problem. One business suggested that “outside of the EU, tariffs are always the mosfs]TJ ET82MC /Span <</Lang (en-GB)/MCID 581 >>BDC 0T /T1_2 1 Tfare, i

where local credit or debit cards cannot be used outside of their country of origin (e.g., Brazil), and countries that do not permit e-signatures (China and Russia) or credit cards to be used in on-line transactions. One company described how they offer their own credit payment solutions, but that it was not possible to offer this option to customers outside of the Nordic countries. Many businesses use on-line payment services such as PayPal and Moneybookers. Several regarded these companies as having too much power, leaving e-traders at the mercy of their terms and conditions.

One alternative payment method is for businesses to offer customers the option of paying via their internet banking service. To be able to provide such payment services, businesses must open a local bank account with those banks whose internet services they wish to use. In order to offer consumers the ability to pay via as many different banks as possible, businesses must, in effect, open a large number of local bank accounts in different countries. This, in turn, leads to costs and additional administration for the firms. Another problem that was highlighted was the requirement to carrying out sales in the local currency. When selling products and services to customers in China, all transactions must be carried out in the local currency. The same is also applicable in South Africa, for example.

The right to get access to customers' credit history was also highlighted by many businesses. This right is often weaker outside of Sweden, and in many countries only banks have permission to access credit reports. In some other countries, only 'negative' information (such as missed or late payments) is disclosed, and not 'positive' information (e.g., annual income), making it difficult for firms to make a balanced evaluation of potential consumers' creditworthiness.

In a number of countries, businesses are not able to offer certain internet-based services because the laws and regulations of these countries are not up-to-date with the digital economy. One clear example of this is the requirement to use paper invoices and handwritten contracts. This increases the administrative burden for companies and makes the use of various online-based services impossible. One business gave an example of a service using an internet based platform where the delivery of goods is automatically registered in the recipient's invoicing system. It is not possible to use this service in countries such as Kazakhstan, Russia and Ukraine, where the use of paper invoices and hand written contracts is a requirement.

E-commerce creates revenues overseas, and there is, therefore, a risk of double taxation. Fortunately, bilateral agreements often exist to deal with this. Despite such agreements being in place, one business reported having problems in Norway, in this respect. The company had established a subsidiary in Norway and sold its products online to customers from this subsidiary in order to avoid double taxation.

shared via their websites. This question is just as prevalent within as it is outside of the EU. Depending on the industry, businesses may have conflicting interests and ways to classify problems. Copyright proprietors consider it the task of the third-party to monitor what is distributed via their websites and services, and to immediately remove material that violates, or that may even be considered as contributing to the violation of copyright. Companies that act as third-parties, however, state that they neither wish, nor have the legal obligation to monitor the material distributed via their websites and services, and hence take no responsibility for the actions of their customers.

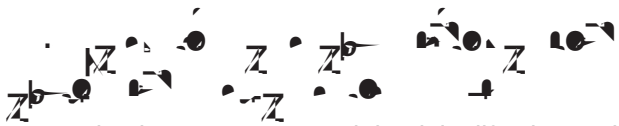
Copyright proprietors who discover infringements can contact either those who are responsible for the infringement directly, or the third-party and request that they remove the material. Therefore, it is extremely important that there are regulations in place which clearly state the responsibilities of third-parties. Such regulations do not exist in certain countries, Turkey being one example. One of the businesses interviewed, which has a third-party role, stated that, as a result of this, they always include in their user terms and conditions that they reserve the right to shut down a service if a governmental agency so demands. However the business stated that they neither reserves the right, nor have the legal authority to monitor their customers' activity themselves.

There have been many lawsuits involving online platforms and copyright holders. One example is that of the on-going case in the Netherlands concerning the responsibility of telecoms service providers regarding the material downloaded via file sharing. One business believed that the time for litigation is over, and that the way forward is through collaboration between stakeholders. The pace of technical development has created better filters that can block the material that causes infringements. The same business also stated that collaboration within the EU has been driven forward thanks to the Commission taking the initiative to encourage unanimous agreements between the relevant stakeholders.

Those wishing to use copyright protected material must apply to collecting societies (such as STIM in the case of Sweden) in each country. Sometimes copyright holders have not registered with these organisations and some countries do not even have them.

Even the EU regulation in this respect is fragmented and poorly adapted to the digital environment, particularly with regard to the clearing and collective management of copyright and to cross-border licences.[13] In addition to the difficulties encountered when trying to find out whether something is protected or not, this leads to high transaction costs being incurred when licensing copyrighted material.[14]

Some businesses described how problematic it is to secure the rights to films that are sold on the internet via streaming. One company described the system for copyright protected films as "a labyrinth, impossible to navigate". First and foremost, regulations governing digital films are less clear than for films that are sold physically. For the latter, the business pays what is known as a private copying fee for the physical product – i.e., the DVD – that in turn is passed on to the copyright owners. For digital films, however, the same simple system does not apply. Additional problems also arise when selling digital films across borders. When retailers of streamed films enter into a new market, they are required to compensate (sometimes both for the film itself and the music used in it) the copyright proprietors and collecting societies in that country. This needs to be done even though the business had already bought a licence from the copyright proprietor when they first began distributing the film. A further problem is that licensing is usually not technology neutral. According to many businesses we have interviewed, the combination of all the above acts as an impediment to the development of new and innovative e-services within the film industry. One business further suggested that charges are generally much higher for digital films because the big copyright proprietors, mainly from the United States, are large corporations who hold a strong market position when setting prices.



Some businesses suggested that it is dif cult to nd information about the intellectual property rights that must be registered – trademarks, patterns and patents – thus businesses risk violating intellectual property rights unwittingly. One business explained that, since bots can search the internet for infringements, inadvertent violations are more easily discovered by the intellectual property rights holders. Many businesses would like to see central

7. Cross-border Data Transfer

Many businesses interviewed by the Board have highlighted laws and regulations that restrict their ability to store and transfer data across national borders – mainly in the form of personal details and other con dential information – as a major problem. Even if this type of legislation is required in order to protect individuals' privacy and personal integrity, it is essential that it is designed in a way that promotes technological innovation and the economic advantages associated with cross-border data transfer. Norway was mentioned by the businesses as a problematic country in this respect. Many have complained that Norwegian law forbids the collection and storage of Norwegian customers' social security numbers. Businesses must, therefore, adapt their systems accordingly to manage informa tion about their Norwegian consumers. Also, this restriction prevents businesses from accessing credit reports on their Norwegian customers in order to determine their creditworthiness.

The ability to transfer data across borders is a prerequisite for the utilisation of, so called, cloud services. By making use of such services, data stor age can be managed via external, often remote, data centres. Instead of storing data on local servers, information is stored on external servers (in 'the cloud') that are accessible via the internet. These servers are often located in a different country to where the cloud user is based. In effect, restrictions on cross-border data transfer form an indirect bar rier to the use – and promotion – of cloud services.[16] These restrictions have been reported as problem atic by a Swedish company active in Russia and Kazakhstan. They encountered problems when they wished to integrate information about their employees (regarding their salary, employment terms etc.) into their cloud-based HR system, which was hosted on a server based in Germany. Legisla tion on the management of personal details in Rus sia and Kazakhstan was described by the company as being so complicated and restrictive that the business had decided to store and manage the information locally instead. According to this business, Russian law states that each individual employee must provide written permission stating that their details may be stored abroad. This per mission must also be continually renewed (annu ally or similar). The business stated that in Kazakh stan, storing 'sensitive information' abroad is for bidden; however, there is no clear de nition of what is considered to be sensitive information. In both cases, the local regulations forced the com pany to adapt accordingly, thus creating additional administrative costs.

8. State Controls

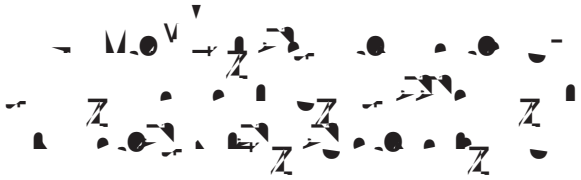
Many businesses have highlighted various types of state control in countries outside of the EU which constitute barriers to e-commerce. The problems

10. Case Study: Norway

Norway is a large, important market for Swedish e-traders. Four out of ten Swedish e-traders who sell abroad list Norway as their largest foreign market.[19] The Norwegian market is particularly lucrative for e-commerce businesses, not simply because of its geographical location; a study has shown that one in four Norwegians shop online at least once a month, often on foreign web shops as these usually have both a greater variety of products and lower prices, compared with Norwegian competitors.[20] Nonetheless, Swedish businesses claim that sales to Norway could be even higher if it were not for the trade barriers that exist within the country. One business stated the following: “Norway should be the obvious go-to market for Swedish e-traders wishing to expand. However, it is, unfortunately, incredibly problematic to conduct e-commerce there.”

Below, we describe the two major e-commerce barriers that Swedish e-traders face in Norway: the requirements for local establishment when registering top-level domains, and custom procedures. The descriptions illustrate how these two barriers present themselves in relation to Norway. General information about the same barriers can be found in sections 3.1 and 8.1, respectively. Other barriers related to Norway, brought up by businesses, are the ban on the storage of social security numbers and double taxation. These are, however, not described in detail here.

In Norway, there is a requirement for businesses and individuals who wish to register a Norwegian top-level domain to be established within the



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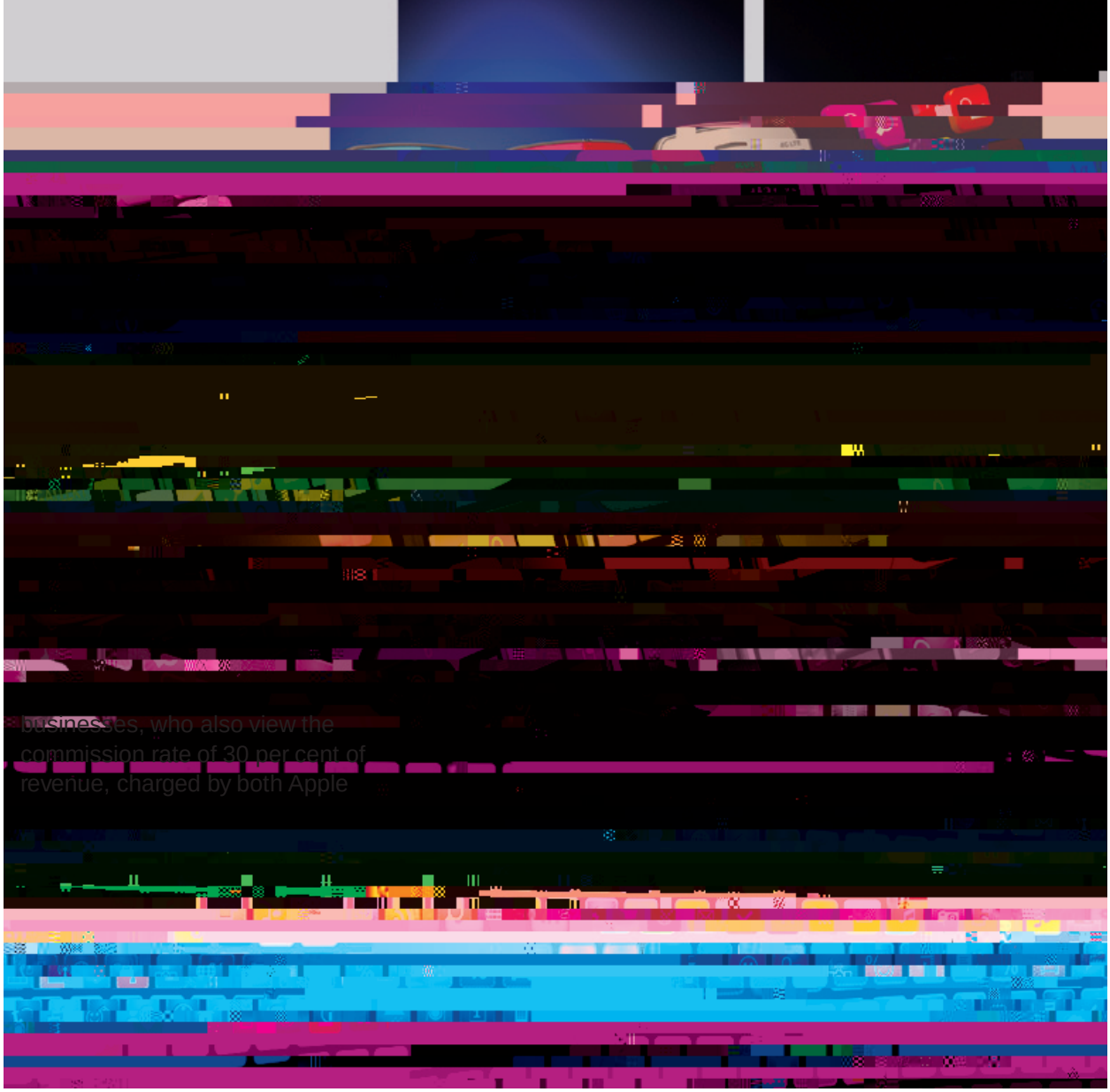
businesses, who also view the
commission rate of 30 per cent of
revenue, charged by both Apple

and Communication Technology (ICT), and cross-border e-commerce.[29] These principles include refraining from discriminating against foreign service providers in sectors that are important for e-commerce, and from arbitrarily blocking cross-border access to information. If more countries were to incorporate these principles into their national legislation, an important step towards more open international e-commerce would be made.

Another international initiative that has great potential for opening up cross-border e-commerce is that of a plurilateral trade agreement for trade in services, known as the 'International Service Agreement' (ISA). This is currently being discussed amongst a number of countries, including the EU. Such an agreement would lead to new commitments and rules that go further than those set down in the GATS, and which would benefit the international trade in services in general, not simply cross-border e-commerce. When it comes to the problem of burdensome customs procedures for e-traders, one step in the right direction could be made via a new international agreement on trade facilitation that is currently being negotiated within the WTO.[30]

The EU and Sweden may also address many of the barriers identified in this study bilaterally through dialogues and free-trade agreements with other countries. In this context, it is important to achieve mutual recognition of digital payment systems and e-signatures, to strengthen international co-operation on the protection of intellectual property rights in the digital environment, and to make commitments to open up the cross-border trade in services in sectors that are important for e-commerce, such as IT, telecoms and data services. Another important issue for e-commerce that, up until now, has received very little attention in the EU's free-trade agreements is that of cross-border data flows. Through future free-trade agreements, the EU should attempt to reach agreements where all parties commit not to introduce or maintain unnecessary barriers to cross-border flows of electronic information.[31]

Within the EU, much has already been done to harmonise regulations that affect e-commerce. Whilst this is positive for e-commerce within the EU, it is, however, important that the Union's internal solutions do not create new barriers that hinder e-commerce with third-countries. In order to avoid this, the EU should, to the greatest possible extent, develop its legislation in line with solutions that have already proved successful in other countries. Another option is to 'export' EU solutions by incorporating these into the EU's free-trade agreements. The European Commission has recently proposed the establishment of a 'Common European Sales Law' that businesses may implement on a voluntary basis. The aim is to reduce the uncertainty that arises amongst both businesses and consumers about the conditions that apply to cross-border purchases made via the internet. In order to help resolve disputes between traders and consumers, the Commission is also investigating the possibility of a web-based dispute settlement mechanism, a 'one-stop-shop', which consumers within the EU can easily access. Once introduced in the EU, solutions such as these should, if it is deemed feasible, be expanded to other countries by incorporating them into the EU's free trade agreements.

Finally, there is much action required within Sweden and the EU in order to improve the condi

Notes

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