



## **From the warehouse to the living room: the evolution of e-commerce**

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### **Summary of the final report of the research project presented by Union des consommateurs to the Office of Consumer Affairs of Innovation, Science and Economic Development Canada**

Ecommerce has evolved considerably since the 1990s, when consumers first started making online purchases. Many new players have emerged in the course of this evolution: third-party sellers, marketplace operators (Amazon, Walmart, etc.), payment service providers, social network operators, and so on. In 2020, this evolution became more visible than ever, as closures caused by the Covid-19 pandemic pushed consumers and merchants alike towards buying and selling goods online.

In this report, we attempt to provide an overview of ecommerce in Canada from a consumer protection perspective. We examine the evolution of ecommerce in order to ascertain whether changes over the past decades have accentuated difficulties encountered by consumers, whether new problems have arisen, and whether the existing legal framework remains adequate for protecting consumers. To do so, we study the entire online transaction from the consumer's point of view, looking at how it unfolds from the moment the consumer visits a business's website to the moment the product is delivered to his home. It identifies the actors the consumer deals with along the way, the problems he encounters and the remedies he has. We have limited the scope of our research to the online purchase of physical goods.

This report begins with a snapshot of ecommerce in Canada and the various parties involved in electronic transactions. It then provides a summary of the legislative framework within which online purchasing takes place in Canada, an analysis of a new ecommerce directive in Europe, a survey of over 1,000 Canadian consumers on their experiences, knowledge and perceptions of online shopping, and a field survey that analyzes and compares the compliance of online merchants with Canadian ecommerce laws. In the final sections of the report, we analyze the results of this research in order to determine whether the existing legal framework is adequate for protecting consumers, and we present the opinions of three experts we consulted on our findings.

The primary conclusion of our report is that ecommerce has outgrown its legal framework. While ecommerce laws have remained virtually unchanged since the 2000s, online shopping has continued to evolve. In particular, we note the growing importance of certain new players in electronic transactions, in particular, marketplace operators. The emergence of these new players has created a conceptual problem with Canadian

ecommerce laws. When several actors are involved in an online transaction, which one is or should be responsible for fulfilling the obligations imposed by our laws, such as providing certain information or reimbursing the consumer in the event of a problem? The answer to this question is far from clear, especially when the transaction takes place on an online marketplace.

Marketplaces are among the most popular ecommerce websites and they host a growing number of third-party sellers. In our field survey, we found that third-party sellers on marketplaces were less compliant with their legal obligations than other types of sellers, and that they often played a much less important role in the transaction than the marketplace operators themselves. Indeed, the latter often assumed responsibility for most obligations found in Canadian ecommerce laws, including those related to pre-contractual disclosure of information. Marketplace operators also sometimes took responsibility for shipping, dispute resolution, customer service, etc. In some cases, they even appeared to take responsibility for ensuring that products sold by third-party sellers on their platforms matched their descriptions and were fit for use.

It therefore seems to us that these operators should be primarily responsible for ensuring that transactions taking place on their marketplaces comply with Canadian ecommerce laws. However, the responsibility of marketplace operators is not explicitly or clearly envisaged in ecommerce laws, and we believe this lack of clarity leads to confusion regarding their application. We thus argue that there needs to be greater clarity regarding the responsibility of the various parties involved in online transactions.

Our research also revealed other problems in the existing ecommerce legislation: the lack of a legal framework for regulating user reviews, the absence of specific remedies for certain problems which consumers frequently encounter, the overly-narrow scope of the chargeback remedy, etc.

For these reasons, we recommend that provincial legislators update their ecommerce laws on several points. Firstly, these laws should be updated to clarify the responsibility of marketplace operators for transactions occurring on their marketplaces. We also recommend further updates to these laws, for example, to ensure that the disclosure obligations provided for are appropriate for the digital context, and to ensure that these laws explicitly provide consumers with useful and accessible remedies for certain problems (late deliveries, inaccurate descriptions of a product). We also recommend clarifying and broadening the scope of the chargeback remedy. Since most provinces do not specify whether their ecommerce laws apply abroad, and since this leads to confusion, we recommend that provincial legislators adopt rules concerning the applicability of ecommerce laws abroad. Finally, we suggest that provincial legislators monitor emerging ecommerce practices on an ongoing basis, and in particular, we recommend they study certain problems identified (such as fake user reviews) and solutions proposed in other jurisdictions, in order to ensure that the province is equipped with a legislative framework that truly protects consumers when they shop online.