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**The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.**

## **DATA AND ECOMMERCE**

Today, global trade is going through a tremendous change, which transforms traditional ways of doing business at an unprecedented pace. It has been called different names but most frequently, it is called the Digital Revolution.

Previous revolutions that shaped world trade has changed the way we produce, what we produce, and the way we deliver what we produced. Today’s Digital Revolution however defines *how* we communicate and decide, *where* we produce what we produce and how we *sell* what we produce. In other words, Digital Revolution changes every step of doing business and encourages us to think outside the boundaries.

E-commerce, digital commerce, digital economy are the names we give to this relatively new phenomenon of new ways of doing business. It is easy to think of e-commerce as simply ordering a good online, however, it is necessary to think of ecommerce as a web of services inputs from all over the world for the production, sale, advertisement, payment, and transport of a good as well as a service.

All of these complex processes run smoothly by virtue of electronic transmissions of data. Therefore, data is at the core of ecommerce discussions at every platform. Data issues, however, are multi-faceted and the aim of this paper is to offer a classification to these issues and to explore them from different angles of governments, businesses and consumers.

Before that, it is important to underline that today data is not a means of transfer of information only, it has become a trade object itself: a raw material for new technologies and new business plans through data mining, big data, artificial intelligence etc. Therefore, the ownership of data today equals to ownership of capital.

Keeping in mind that knowledge is power and that you can produce knowledge from data, it may be time to delve into the discussions surrounding data. This paper prefers to divide the issue to two angles. One is about the transfer, processing or storage of data, and the other is about the access to existing data.

## **DATA TRANSFERS**

Free flow of data or unhindered data transfers is an important factor for international businesses. Data transfers is crucial for the smooth operation of many businesses worldwide. For example, a Turkish company with a parent company in Germany will need to transfer the data about its operations and/or information on their personnel. A block on data transfers on such issues would hinder the communication lines between these companies and may disrupt the business.

However, today, data transfers is not limited to communication between branches of a business. The data that is transferred may include personal information of customers, sensitive financial data of companies and even countries.

That is why, governments are moving towards classification of data and towards developing conditions under which data can be transferred. Many countries have laws on protection of personal

data in effect which prohibits the processing, storage and transfer of personal data without proper data security protocols and prior approval of the person the data belongs to.

There are many ways to make use of raw data which may pose risks to owners of that raw data. As such, it may be a way to transfer anonymous data or *processed data* instead of raw data.

From the customer point of view, their data should only be used to allow for the transactions they are willing to do. As such, at every point customers would prefer to be asked for consent.

From the business point of view, data is necessary for the smooth operation of businesses and they would prefer to be free to process, transfer and store data as they wish. All the requirements of security, prior consent and/or requirements of localization etc can be burdensome. Data is also a raw material for research and development, as such, businesses would want to be the owners of that data.

For governments, on the other hand, data is a problem on which they need to produce a balanced solution. While sensitive data should be protected, the transfer of data should not be hindered at a point to disrupt trade and economic balances. For governments, it is also important to promote that data, as a raw material for further development, is used within their territory for technological and business advancement.

## **ACCESS TO DATA**

Access to data is more complex and very much linked to transfer of data. Today’s discussions surrounding data requires us to ask who needs to access data. Most of the time, the answer is the governments.

Governments want to access the data that is accumulated by businesses, for many reasons, from security to prevention of fraud and money laundering to tax inspection. Whatever the rationale, the most common way for governments to ensure access to data is through data localization and retention requirements. Although businesses might find it burdensome and costly, there seems to be few options for governments to ensure access. For businesses and governments that are in favor of a total ban on such localization and retention requirements, it is advisable to find alternatives to such requirements, which will also ease governments’ worries of not being able to access data, which is produced inside their territories.

When governments want access to the data accumulated by businesses, businesses also develop trust issues. Although the data produced is not directly their own, businesses see these data as an edge in their competition with other businesses, which is not false. Due to the duplicable nature of data, access to data might also mean sharing the ownership of that data. Therefore, apart from any extra cost and burden, businesses are wary of sharing the data that is accumulated in their servers through the transactions that they have made. Here, it would be wiser to develop alternatives to provisions on prohibition of data localization, and rather talk about the protection of trade secrets.

There is also the issue of government access to IPR data. Although protected by TRIPS agreement, IPR data protection finds itself a place in source code provisions. Together with technology transfers provisions, it is understood that source code provisions aim to protect the IPR of

businesses. However, many governments have laws and regulations that gives them the right to *access* source code, for many non-trade-related reasons. Therefore, instead of a ban on access to source code, it may be advisable to work more on provisions to ensure that source code is kept confidential even when accessed, and focus on prohibiting unauthorized technology transfers.

Although governments are thought to be the main demanders of access to data, in terms of the discussions surrounding data, businesses have started to ask for access to government data as well. Although new, the open government data provisions may become in some way relevant in ecommerce chapters. Today, many new business models depend heavily on “live” data as well as data on infrastructure of cities. These sort of data are readily available to governments, but are more often not shared with the public. Now, the businesses may need access to these data to improve their services as well as to use these data in their research and development. Due to the novelty of open government data provisions, it is hard to estimate the feasibility of such provisions, taking into account the burden to security and other concerns of governments.

This paper aimed to look at the discussions and re-occurring provisions on data with a view to classify the issues and to evaluate the issues from different point of views of governments, businesses and consumers. This paper is without prejudice to Turkey’s position in ecommerce discussions and does not aim to promote any policy stance. This paper solely aims to evaluate the issues surrounding discussions on data with a cause-oriented point of view because if we can accurately define the causes we may develop better-suited policies to address these causes.

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