

The impact of online intermediaries on the EU economy

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Executive summary

This report is an update to the 2012 Copenhagen Economics report “Assessing the economic impact of the EU’s online liability regime”. The present study provides an update of the main quantitative assessments, in light of more recent data available, while using the same methodology as in the previous study. This update also reviews the key legal developments and the liability regime.

The 2012 report demonstrated that online intermediaries contributed €310 billion to European GDP. The report also concluded that the liability regime is a crucial part of the legal framework for online intermediaries.

Updating these estimates with new data and using the same methodology, we find that, in total, intermediaries’ activities in the EU contributed around €430 billion to the GDP of the EU27 in 2012. This is comprised of a direct GDP contribution of €220 billion and a long-term indirect GDP contribution due to the productivity impact of intermediaries on other firms of €210 billion.

Online intermediaries increase their contribution to the EU economy.

The 2012 study was based on an analysis of data sources from 2009/2010, which were the latest available at the time. The update of the study with new data shows that:

- There is a marked increase in the total intermediary contribution to the EU economy which now stands at €430 billion.
- Online intermediaries grow at >10% a year, which is faster than general GDP
- Online intermediaries now represent a larger share of the European economy than in the past.

The liability regime has been confirmed by policy makers and courts.

Since the end of 2011, there have been significant legal developments which have confirmed the structure and implementation of the liability framework in the EU.

- Firstly, the European Commission has published its Communication “A coherent framework to build trust in the Digital single market for e-commerce and online services”, which has enshrined the liability framework.
- Secondly, the Court of Justice of the European Union has issued a set of decisions clarifying the interpretation of the liability rules of the Directive 2000/31/EC on electronic commerce in order to preserve the regulatory framework governing online intermediaries in the EU.

The 2012 report highlighted that the intermediaries’ future contribution was expected to increase in coming years, providing vast growth opportunities and incentives for

policy makers to preserve and improve the regulatory framework governing online intermediary activities in the EU.

The analysis in this update confirms that the predicted growth has already taken place. Consistent interpretation of the EU online liability framework by both the European Commission and the Court of Justice of the European Union decisions is an important factor that underpins this growth and, if preserved, is expected to further do so.

Update of the 2012-study

The present study provides an update of the previous assessment, in light of more recent data available, while maintaining the same methodology used to gather the evidence for the 2012 study.

In what follows, we will:

1. briefly review the role of online intermediaries;
2. briefly review the role of the liability regime;
3. summarise the European Commission and Court of Justice of the European Union decisions relative to the liability framework; and
4. explain the updated results on the economic impact of intermediaries.

1 The role of online intermediaries

Every time one conducts a search on the Internet, interacts with one's friends on a social network, or purchases items on an e-commerce platform, one makes use of services provided by online intermediaries.

1.1 Online intermediaries – Who are they?

Online intermediaries provide platforms for the exchange of goods, services or information over the Internet. Online intermediaries perform or provide activities such as search, e-commerce, social networks and cloud computing.

- Search providers such as Google or Yahoo! make information supplied by third parties accessible and searchable for other Internet users.
- Social networks such as Facebook and LinkedIn are also considered online intermediaries. They allow Internet users to find and exchange information in social circles.
- Third party e-commerce platforms such as eBay and Amazon, or European home grown platforms such as Priceminister and Allegro, allow others to set up shops on their platforms in order to make their products and services available to Internet users in the broadest sense.
- Third party hosting and processing, e.g. cloud computing activities, whereby IT users get access to distributed data processing via a common Internet platform.
- Internet Service Providers

1.2 Online intermediaries provide platforms

Common to all these activities is that online intermediaries provide a platform for others to interact on. Online intermediaries provide such a platform for online exchange, without taking title to the items or information exchanged.

Items or information are exchanged between two or more third parties via the platform and the intermediary often has no direct dealings with buyers or sellers on their platform, aside from certain user agreements. In the words of the OECD (2010), online intermediaries “bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties.”¹

Online intermediaries have been at the centre of the Internet’s success as a key driver of economic growth, innovation, creativity, and expression. In the past, if you wanted to reach a large audience, you needed to own a broadcast tower; if you wanted to reach consumers around the world, you needed to set up storefronts everywhere. Today, a variety of online intermediaries have dramatically reduced barriers to entry, creating the conditions for other businesses to develop. Online intermediaries have led to a substantial change in the way that goods, services and information are being distributed.

2 The liability regime

Online intermediaries rely on a liability regime in order to provide these services in an efficient manner. This liability regime is enshrined in Articles 12-15 of the EU’s Directive 2000/31/EC on electronic commerce, protecting online intermediaries from liability for the misuse of their services by users and third parties.²

To provide a parallel example, a telephone network operator is not held legally responsible for illegal activities discussed over its lines, or forced to monitor all calls for any such possible activities. Similarly, the EU’s Directive 2000/31/EC on electronic commerce enables intermediaries to operate open platforms where users and third parties can search and exchange goods, services, and information.

At the same time, for certain types of activities, in order to obtain the benefits of this limitation, the intermediary must act expeditiously to remove or disable access to illegal information upon receiving actual knowledge of it.³

¹ However, it should be noted that we omit online payments systems, because they feature some services, which are not covered by the liability regime. See further explanation in the 2012 report, pp. 10.

² The ECD provides for limitations to liability of intermediaries based on their inherent activities: mere conduit (Art. 12), caching (Art. 13), and hosting (Art. 14).

³ By way of a further parallel, online marketplaces can in some respects be compared to that of a traditional market-place. The city mayor makes a square available to merchants, but the city is not held liable for the items traded on that marketplace. However, if the city mayor is made aware of illegal trad-

The Copenhagen Economics 2012 report argued that the limited liability regime is not only necessary for the functioning and growth of online intermediaries, but it is also beneficial to the European economy. The intermediaries' contributions to the economy would not be possible at the current level without the liability regime as it is currently designed.

Preserving and improving the regulatory framework governing online intermediaries in the EU will underpin the economic growth we see being generated by online intermediaries. Conversely, any adverse changes to the liability regime – such as increased legal obligations on intermediaries – could have a chilling effect on innovation and the economic activity of online intermediaries, putting this value at risk.

3 Summary of the European Commission Communication and the Court of Justice of the European Union judgments

In response to the request from the European Council to submit a roadmap for the completion of the Digital Single Market, in 2012 the Commission has adopted a Communication presenting 16 targeted initiatives aimed at doubling the share of e-commerce in retail sales.⁴

3.1 The European Commission Communication confirms the liability regime

Under the Single Market Act and the Digital Agenda, the 2012 Communication put forward an action plan aiming to facilitate cross-border access to online products and content, ultimately solve the problems of payment and delivery, ensure consumer protection and assist dispute resolution and the removal of illegal content.

The Communication thus aimed to develop a more secure Internet with greater respect of fundamental rights and freedoms. In particular, the Communication identified and tackled the issue of the management of illegal content within the Digital Single Market. It specifically states that *“intermediary internet service providers struggle with the legal uncertainty linked to fragmentation within the European Union of the applicable rules”* (p.13). In order to address this, the Communication set up a horizontal European framework for notice and action procedures.

Furthermore, the Commission initiated actions aiming at strengthening the effectiveness of law enforcement in general and, in particular, facilitating the settlement of online disputes (via alternative dispute resolution). All of the above policies are ex-

ers on the city square, he/she is obliged to ensure that they are removed and their trading is discontinued.

⁴ Commission Communication “A coherent framework to build trust in the Digital single market for e-commerce and online services”. COM(2011) 942. Available at: http://ec.europa.eu/internal_market/e-commerce/communications/2012/index_en.htm.

pected to contribute to combat abuse and resolve disputes more effectively, which in turn can empower intermediaries to bring greater benefits to the EU economy.

3.2 The Court of Justice of the European Union reinforced the interpretation

Moreover, in the recent past, the Court of Justice of the European Union issued some important decisions reinforcing the principle that intermediary should never be subjected to proactive monitoring obligations e.g., to search for similar content to that at a specific URL, or to search for similar content that might appear in the future.

This was confirmed by the Court of Justice of the European Union decisions *SABAM v. Scarlet* and *SABAM v. Netlog NV*, such general monitoring obligations are both inconsistent with the letter of the Directive 2000/31/EC on electronic commerce and with important underlying fundamental rights of users, including the rights of freedom of speech and access to information (art. 10 of the EU Convention on Human Rights). Equally, instructing intermediaries to block entire websites (as opposed to specific URLs within those sites) would raise the same inconsistencies with users' rights to freedom of speech and access to information, and would not meet proportionality tests.

The *SABAM* cases also involved trademarks, which are source identifiers of goods and services in the marketplace so that consumers know what they are purchasing. It is certainly possible to conceive of many legitimate reasons for a company or individual to refer to a third party's trademark.⁵ Therefore monitoring obligations would raise further specific implementation concerns in the area of trademark claims, since they may likely result in removal of content that is legitimate. This is reflected in the Court of Justice of the European Union rulings, which stated that a monitoring system would see the rights and freedoms of users of the intermediary services undermined as well – not just the intermediary's rights.

In summary, a well-functioning liability regime is essential for a vibrant digital economy and the properly functioning EU Digital Single Market. In the recent past, by reducing the scope for legal uncertainty, both the EC and the Court of Justice of the European Union have arguably contributed to making the EU an even more attractive marketplace for businesses to invest and develop Internet-based business models relying on the online intermediary liability regime.

4 Updated results on the economic impact of intermediaries

The 2012 study found that, in total, intermediaries' activities in the EU contributed €310 billion to the EU economy based on 2009 data, which included the direct GDP

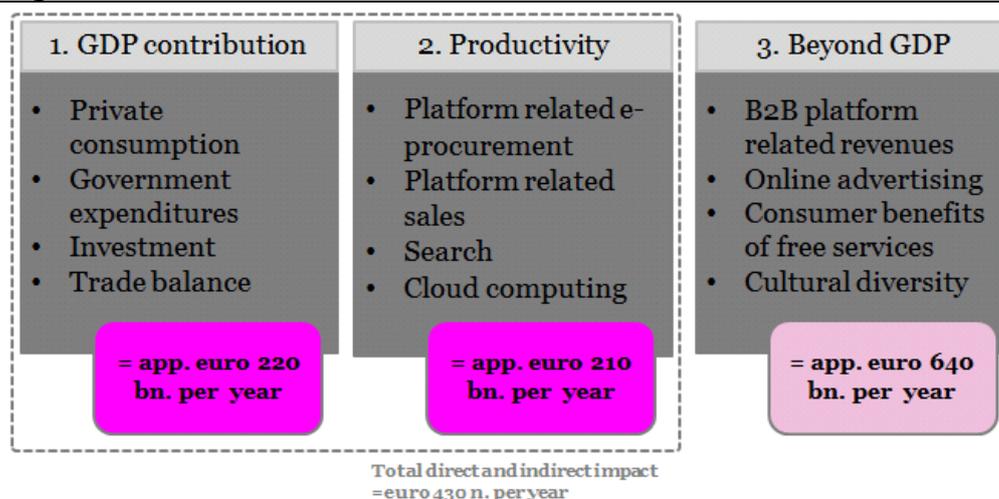
⁵ For example, inter alia, trademarks may be referred to, while: i) selling the brand which the trademark relates to; ii) offering compatible goods or services; iii) offering an alternative product; iv) providing a review of a product of the trade marked brand; or v) conveying criticism of business practices (and other protected forms of speech).

contribution of €160 billion as well as a long-term indirect GDP contribution due to the productivity impact of intermediaries on other firms of €150 billion.

Updating these estimates with new data and using the same methodology, we find that, in total, intermediaries activities in the EU contributed around €430 billion to the GDP of the EU27 in 2012. This is comprised of a direct GDP contribution of €220 billion and a long-term indirect GDP contribution due to the productivity impact of intermediaries on other firms of €210 billion.

Like in the original report, we point out that there are impacts beyond what is captured by our GDP impact estimate (business-to-business, free service, diversity).

Figure 1 The contribution of online intermediaries



Note: The three numbers in the figure should not be added together to one single total. Each number provides a particular angle on the value created and is important in its own right.

Source: Copenhagen Economics based on calculations on data from EUROSTAT, BCG, McKinsey and Hal Varian

In order to estimate the direct impact, we treat online intermediary activities as a sector, using a narrow definition of online intermediaries comprising online search, e-commerce platforms, social networks and cloud computing services.

The other part of the GDP impact is an indirect productivity effect. This is an estimate of the additional growth in all other sectors of the economy. Firms in all kinds of industries become more productive by using online intermediaries (e.g. e-sales or e-procurement) and consequently contribute more to GDP than they would in the absence of online intermediaries. The methodology is further explained in the 2012 report.

When updating the numbers to assess the impact growth in the period from 2009 to 2012, we have used additional and revised data, which have been published in the meantime. This allowed us to assess the impact more precisely.

4.1 What factors drive the changes in the results, compared to the previous study?

There are three main components of our direct GDP estimate. First, the activity of online intermediaries will increase as a result of general GDP growth and increasing consumption. Therefore part of the increase can be explained by general GDP growth, but this part is small because of the relatively modest underlying growth of the European economy between 2009 and 2012. Second, online intermediaries are a part of the broader Internet economy, which is growing much faster than the rest of the economy. More Internet users and more e-commerce spending is a significant source of growth for online intermediaries, and consequently their GDP contribution increases accordingly.

5 Conclusion

The 2012 report highlighted that the intermediaries' future contribution was expected to increase in coming years. This update has proven that this has been the case: intermediaries' contribution to the EU GDP has grown by €120 billion since the last study. This constitutes a growth of more than 10% per annum which is considerably higher than the growth in economy-wide GDP over the same period.

The confirmation of both the structure and the implementation of the liability framework in the EU have contributed to this growth. This is the result of the efforts of the European Commission to maintain the liability regime as well as through the Court of Justice of the European Union development of case law clarifying the implementation of the existing liability rules within the framework. It goes without saying that, in order to preserve this important contribution to the EU GDP, it is essential that the current state of the liability regime is maintained.

It must be noted, however, that for the sector to continue to see such growth in the EU, a Digital Single Market is key.⁶ This is a key pillar of the current Digital Agenda for the EU, yet considerable barriers still block the free flow of online services and entertainment across national borders within the EU. Any forthcoming EU-wide legislation ought to be careful not to further entrench these barriers.⁷

⁶ See the study by Copenhagen Economics (2010), "The Economic Impact of a European Digital Single Market" conducted for the European Policy Centre, EPC.

⁷ See study by Copenhagen Economics (2012), "The EU Single Market: A work in progress" commissioned by AmChamEU.

An enhanced Digital Single Market is key to further growth in the EU. In order to obtain this, it is pivotal that the EU continues to foster growth in areas, such as the online intermediary sector, which have a strong, proven track record to be a major contributor to the EU economy.