



DINL's response

to the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

Introduction

DINL welcomes the opportunity to contribute to the public consultation on the regulatory environment for parties, companies, markets, functions and roles in the digital economy. We believe that the problems and issues arising from the rapid growth of the digital economy deserve a thorough analysis before rushing into any legislative action, because the implications of non-optimal choices may harm the economic effects and opportunities.

Summary

Our key finding and opinion is that there is a substantial chicken- and egg problem. The consultation appears to be based on views, concepts and models that should at least be subject to more thorough discussion. The consultation / the definition of "platforms" does not appear to be based on a clear taxonomy or structure for the roles and functions in the digital economy as a whole. Is a platform a role, function, business model, market, activity? And how does it relate to other concepts being used in in the digital economy, such as cloud, intermediaries, ecommerce, and many more.

Without this entire context, the concept "platforms" and the rush to regulate bears great risks of disconnected, conflicting or overlapping legislation. And will create additional problems for companies operating multiple roles and functions in the digital economy.

Consequently, DINL encountered many difficulties in trying to respond to the questionnaire built by the European Commission. There is no room for comments for every question of the consultation, in which case there is no possibility to point out the underlying flaws and overlooked issues in the presented options / answers.

In addition, the phrasing of many questions show to our opinion, bias and circular thinking – the answer options assume that the respondent already agrees with the views on what a platform is, who the companies that are running platforms are, and what they do. This may well result in misleading answers from the respondents.

Therefore, we would like to provide some additional comments which we hope the European Commission will find useful.

Taxonomy

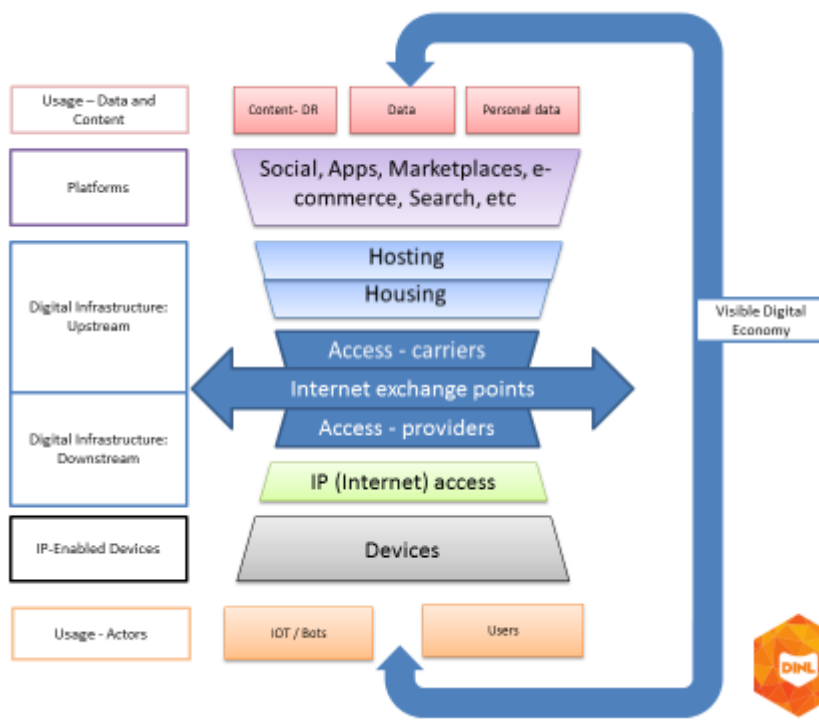
The Commission has not made sufficiently clear what problems they are trying to address with this consultation. It is therefore difficult to answer the questions in this section without the full context in which these questions are raised.

In our opinion, platforms should be defined and described as a role or a function. And definitely not as an industry. A company can operate / provide functionality that can be described as "platform". Which does not make that company part of a market. It is very well possible that a larger company provides multiple functions : such as access, datacenter, hosting, and facilitating the placement, upload of content.

DINL promotes a layered, integral view on the online economy. We believe that the structure of the digital economy is completely and fundamentally different from the traditional, vertically integrated Telecommunication industry. The digital economy consists of a mashup of roles and functions – some of who need to operate in a net-



neutral way, some have responsibilities towards content. The graph below outlines the layered, functional approach towards such structure.



With respect to Platforms: the closer a function operates to the data / content, the more detailed its involvement and potential responsibility towards content, digital rights and personal) data. Roles and functions lower in the value stack operate net-neutral. They roles carry no responsibilities towards content and IP other than providing secure and reliable connections and transport of bits or signal.

liability of online intermediaries

The Articles 12 to 15 of the eCommerce Directive have been essential for the development of online services in Europe, these Articles served as a catalyst for the development of a prosperous European Internet Ecosystem, a fact the Digital Single Market Communications recognises.

As the current liability regime strikes precisely the right balance between the interest of right holders, consumers and online intermediaries, we see no need to reopen the Directive and amend these Articles. The Directive specifies three main activities: mere conduit, caching and hosting. These correspond precisely with the Digital infrastructure roles outlined in above graph.

Assigning a new service to an activity under the eCommerce Directive has been done by the courts. Currently there is a great body of jurisprudence and for the main actors their position, in the current legal environment, is very clear. A change of the Directive will introduce legal uncertainty until the newly introduced amendments have been legally tested and defined by the courts. Aside from the cost factor, this also hampers innovation.

In addition, DINL strongly promotes and endorses the Manilla Principles <https://www.manilaprinciples.org/> . These principles on intermediary responsibilities are increasingly being adopted world-wide as the leading model for the interaction of governments and stakeholders with these roles. They are a good match with the current eCommerce directive and definitions, and pose another reason why amendments of the



current directive would create conflicts and inconsistencies with the way intermediary responsibilities and liabilities are seen – and will continue to develop in general.

And last but not least, DINL would like to point out that we strongly promote the Notice and Action policy which is widely used in the Netherlands, and which appears to be very effective in fighting illegal content and other types of abuse. We do not see why other mechanism are needed. We would like to see that the commission would actively promote the Notice and action approach for all parties involved.

Data and cloud in digital ecosystems

DINL strongly promotes a free, open digital market and the free flow of bits across borders. European, or any data localisation policies will prevent the emergence of a true Digital Single Market and will hamper the development of the Digital economy. DINL considers the open online market of significant importance for the economic future of Europe.

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About DINL

The Digital Infrastructure Association Netherlands, (DINL, www.dinl.nl) is an umbrella organization of 9 leading associations and foundations active in the NL online economy. DINL is the voice of hundreds of online companies, and represents the interests of leading parties in the Netherlands that provide underlying technical facilities and services for the digital society.

The members of DINL are the DDA (Dutch Datacenter association), the DHPA and ISPconnect (representing the hosting and cloud sector), the NLNet foundation, SURFnet (the NL academic network), AMS-IX (the world's largest Internet Exchange point), SIDN (the ccTld registry for .nl), the VVR (Dutch domain registrars association) and NL ICT - The NL IT sector organisation.

DINL's activities include information sharing and advocacy, promoting the innovation of IT-education, building trust and transparency. DINL aims to create structure in complex themes and educates stakeholders about developments that affect the Dutch digital ecosystem. As such DINL works closely with government, politics, industry, NGO's and press.

DINL emphasizes the importance and benefits of an open, reliable and safe Internet and digital infrastructure for the economy and society, and multi-stakeholder cooperation as an essential mechanism for the governance of the Internet and fighting abuse and cybercrime .

In 2015 the Dutch Parliament appointed the Dutch Digital Infrastructure sector as Holland's third mainport. Following Amsterdam Schiphol airport and the Rotterdam Harbor it is now considered as a prerequisite for economic growth and the future of Netherland's digital economy. Consequently DINL promotes the Netherlands as the Digital gateway to Europe.