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ASOCIACIÓN ESPAÑOLA DE LA ECONOMÍA DIGITAL

-Additional comments on Digital Single Market: Digital platforms

Industry should welcome the fulfilment of a Digital Single Market, as it surely will imply positive consequences in terms of social and business development and, of course, in terms of employment. Removing obstacles to build a Digital Single Market that allows European companies to compete in equal conditions in the digital economy is essential for European growth. Successfully achieving the Digital Single Market's goals depends on setting up a climate of entrepreneurship –a prerequisite for returning jobs, growth and investment for Europe. This requires to stimulate the digital economy, which has long been a powerful driver for growth and economic development in the European Union. If updating EU Law follows the goal of achieving an efficient Digital Single Market, obstacles and legal restrictions that hamper competitiveness of agents should be avoided, having under consideration the needed flexibility that demands future technological advances and freedom of innovation of all agents of the value chain.

On the other hand, the Digital Single Market should enable a flexible and easy access to digital legal content at a good price, while boosting diversity and creativity, enhancing customer experience and generating more revenues for creators. For instance, today, music authors and labels got 66% of revenues from a digital download and only 32% for a CD sale.

Nevertheless, we cannot say that the Digital Single Market is something new, and as for this, we should not reject all that we have learned and built till the moment. The European Union already has a wide experience in the digital market and should learn from it, also when considering future services options and its free concurrence to market. Morevoer, fulfilling a single market can't just mean harmonizing concepts which are different, as for example, the role of an intermediary agent and the one of a direct service provider in the market.

Different business models and the growing offer of services in the digital world evidence that it is a sector which is competitive and at the same time shows the accessibility of this market for new players and the capacity for existing players to adapt, fitting in the dynamic of the provision of the service, also when considering traditional systems.

The modifications that are brought up, should guarantee flexibility to access the free digital market that already exists, creating legal certainty in the commercial traffic of the sector, which implies focusing on services that are being provided, existing technology and, at any stage, independently of the business structure of the agents or the way business models that want to be developed are conceived.

Geoblocking practices should be carefully considered: while they may limit the cross-border availability of content, they respond to business considerations that cannot be disregarded.

The EU should support the discussion around competition antitrust tools as sufficiently fit for purpose tools compared to for example, an intrusive ex ante regulatory framework applied to the telecom sector. The latter is not fit for the digital sector (including telco services competing with Internet services) and would remove incentives for investment. The fast growing and dynamic nature of the digital sector suggest that a stringent and constraining ex ante regulation would not be advisable**.**

One unanimous observation is that there is no clear definition of online platforms. Nevertheless, platforms could be defined as products or services through which end users can interact with a wide variety of applications, including for instance devices, operating systems, search engines, social networks, ecommerce sites, etc. Anyway**,** it is not a consensual legal definition.

The existing definition of Internet society services included in the Directive 2000/31/EC (Ecommerce Directive) must be taken into consideration when addressing any issue regarding platforms. In the mentioned rule, "the definition covers any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data and at the individual request of a recipient of the service". We urge decision makers to recognize and reiterate the importance of the Ecommerce Directive and its intermediary liability protections as enshrined in Articles 12-15, which have long provided the backbone to Europe's thriving digital economy. In relation with intermediary liabilities, supporting initiatives to develop a co-operational framework between the intermediaries and the judicial authorities within the European Union is the better way for the prevention and persecution of copyright infringements provided that such collaboration remains within the scope of the exceptions from liability established in the Ecommerce Directive and of the legal restrictions established in the national legislations, including but not limited to privacy and data protection legislation . Nevertheless, these intermediary liability protections enshrined in Ecommerce Directive does not mean that intermediaries have no obligations**,** as they must act with diligence removing illegal content when they have acquired effective knowledge about its existence.

This been said, anyway, we should analyze if the answer to certain requests should necessarily be more regulation or, considering the speed in which the digital ecosystem develops, other mechanisms, such as self regulation, or even deregulation for all agents of the value chain including telecommunications operators, must be taken into account. At the end, our main goal is to achieve a truly Digital Single Market that safeguards European consumers interests and allows business development and innovation in all the layers of the value chain.