

December 21, 2015

European Commission  
DG Communication Networks, Content & Technology  
Unit F1 – Digital Single Market  
Avenue du Beaulieu 25  
B-1049 Brussels - Belgium

### **TechNet Comments - EU Consultation on Digital Single Market**

TechNet is the bipartisan network of technology CEOs and senior executives representing America's most dynamic and innovative companies. We are writing to submit comments to the EU consultation regarding the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy in the Digital Single Market (DSM).

We appreciate the tremendous potential the DSM strategy has to eliminate barriers within the EU for digital goods and services. The initiative includes positive ideas, including simplifying rules for online purchases and boosting digital skills. We applaud the EU for its commitment to opening the entire European market to open competition for digital goods and services.

However, TechNet has concerns about certain efforts that could expand intermediate liability, increase regulation of online platforms, and adversely affect data flows. Many of these efforts do not serve the best interests of technology innovation or the consumers and businesses that benefit from online platforms.

#### **Intermediary Liability**

Online platforms underpin how the Internet works and create significant value by allowing anyone, anywhere, to connect with billions of people to access and share information. In the U.S. and EU, current laws have been crucial in allowing online platforms to operate at the scale necessary to achieve these benefits. Strong intermediary liability protections promote innovation, empower users and small businesses to use platforms to reach a global audience, and encourage free expression and the democratization of access to information.

The e-commerce Directive's current liability regime is balanced, effective and proportionate and has promoted dynamic, competitive services in a technologically neutral way. The consultation could disrupt this balance by expanding the liability of online platforms for illegal third party content, including rewriting, and potentially weakening, existing protections.

We have several concerns with the consultation’s proposal to expand liability, in particular:

- It suggests a new “duty of care” requirement, which could burden intermediaries with the obligation to police their services for content that might be infringing or illicit. Related to this, the consultation also proposes proactive monitoring requirements even after content has already been removed. Such a system would be completely inconsistent with the e-Commerce Directive, and adversely impact important user rights, including the right of freedom of expression and access to information and privacy. In addition, there are significant technical challenges to these requirements, and their effectiveness is highly questionable; content taken down may quickly become available elsewhere on a non-EU site where users would still be able to access it.
- It considers imposing different regulatory requirements on different categories of content -- ranging from gambling to trademark infringement to terrorism to xenophobia -- creating a complex web of rules for content hosts. Many of these rules would require intermediaries to make subjective judgments. On-line platforms are not equipped to make these judgments, and likely would have to remove significant amounts of legitimate content in order to ensure compliance. In addition, there are currently many voluntary, proactive measures adopted by intermediaries and a number of existing agreements between intermediaries, rights holders, and enforcement authorities.

We believe that any future proposals to implement the DSM should not expand the liability as outlined above. These changes could disrupt the balance achieved by the EU’s existing e-Commerce Directive, which represents a broad consensus among content creators, brand owners, intermediaries, other businesses and users and is broadly in line with the U.S. approach to liability. They also have the potential to negatively impact the growth of the European digital economy, chilling innovation and dramatically increasing barriers to entry.

## **2. Online Platforms**

Online platforms are a growth engine for European small businesses, enabling them to build national and global businesses at scale, with consumers ultimately benefiting from the local innovation platforms support. The ICT sector, including online platforms, accounts for 30% of GDP growth in the EU.<sup>1</sup> The app economy employs 1 million people in the EU (projected to grow to 2.7 million people by 2018) and is worth nearly €20 billion in revenue.<sup>2</sup> This growth, in both the EU and U.S., has been enabled by an open, bottom-up, multi-stakeholder approach to Internet regulation, which has also ensured the continued security, stability, resiliency, interoperability, and openness of the Internet.

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<sup>1</sup> [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd_en.pdf)

<sup>2</sup> [http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=4485](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=4485)

The existing U.S.-EU legal framework and ecosystem protects businesses and consumers while enabling innovation. However, the consultation contemplates new rules that could slow the evolution of the Internet ecosystem and interfere with the ability of Internet services to operate without seeking regulatory permission. Rather than facilitating competition, these rules could create new barriers to entry.

Specifically, in addition to the concerns raised in our discussion of Intermediary Liability (Section 1 of our letter, above), TechNet is concerned that the consultation relies on a very broad definition of “platform”. We believe that it is difficult to link diverse businesses models as online marketplaces, collaborative or ‘sharing’ economy businesses, communication companies, social networks, search engines and specialized search tools, maps, news aggregators, music providers, video sharing sites, payment systems and app stores. Bringing all such businesses under a single heading could impede innovation, reducing benefits to consumers and to society.

### **3. Data Flows**

Cross border data flows are crucial to both the viability of the Internet and international trade. The consultation is supportive of data flows within the EU, but the proposals of new regulatory requirements for Internet platforms and cloud services operating in the EU creates a new regulatory environment for these products and services even though existing laws already address them. In particular, current law already covers the proposals for new liability rules for Internet of Things and data driven services.

We request that the consultation review our comments and take them into account when considering the next steps. We believe they are essential to promote continued European technology innovation and viability.

Thank you for your consideration.

Sincerely,



Linda Moore  
President & CEO  
TechNet