Rules for Electronic Platforms:  
the role of platforms and intermediaries in digital economy  
A Case for Harmonization  

Teresa Rodríguez-de-las-Heras Ballell  
Associate Professor of Commercial Law  
Universidad Carlos III de Madrid  
teresa.rodriguezdelasheras@uc3m.es

Abstract

UNCITRAL texts on electronic commerce successfully addressed and effectively tackled the challenges posed by the use of electronic communications in the formation and the performance of contracts. These are essentially ‘transaction-oriented’ rules and represent the first generation of e-commerce law. The accelerated evolution of digital economy has shown that technology is not only transforming contractual process but primarily reshaping structures and organizations and even creating new social environments. The most visible manifestation of such a transformative power is the pervasive expansion of electronic platforms. The irruption of sharing-economy models, the popularity of crowdfunding and the expansion of platforms for commercial purposes and social networking prove that today digital economy is shaped and driven by platforms. Digital economy is indeed a platform economy. Legislative attention to e-platforms is, however, fragmentary, partial and tangential, and, non-uniform. Harmonization is imperative. Local, fragmented and diverging rules raise obstacles to international trade, increase risks in e-commerce, and asphyxiate innovation. Firstly, this second generation of e-commerce requires a shift from a ‘transaction-oriented’ approach to a ‘platform-oriented’ one. Secondly, the formulation of uniform rules on platforms is strategic for a global digital economy. Thirdly, platform operators and intermediaries play a crucial role in creating and preserving digital trust.

I.- From Transaction-Oriented Rules to Platform-Focused Regulation: A Case for a Change of Approach

In its infancy, the irruption of digital technology did clearly start impacting on the contracting process and transforming transaction components (writing, signature, original, message, methods for the manifestation of consent, sending and reception of electronic communications). The real challenge posed by digital technology at its early stage was to assess which adaptations of existing legal concepts were needed and/or which new rules were required by the use of electronic communications and digital medium in the negotiation, the formation and the performance of contracts. The pioneering UNCITRAL texts on electronic commerce did perfectly understand such needs and flawlessly address them first in the Model Laws – UNCITRAL Model Law on Electronic Commerce, 1996; UNCITRAL Model Law on Electronic Signatures,
2001 - and subsequently in the Convention – United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 -. Within the framework demarcated mainly by the principles of functional equivalence and technological neutrality, these international texts set out the legal equivalences for paper-based institutions and provide for the basic rules to ensure the legal recognition of the use of electronic communications in (international) contracts.

UNCITRAL Model Laws first and UN Convention afterwards enshrined the fundamental principles of electronic commerce law and inspired regional initiatives and a number of domestic legislations. Today, it can be firmly affirmed that a legal framework for electronic contracting has been consolidated.

Nevertheless, the accelerated evolution of digital economy has shown that digital technology is not only transforming contractual process and transaction components – as the use of electronic commerce in the formation and the performance of contracts reveals – but it is also reshaping structures and organizations and even creating new environments for business activities, social relationships, education, entertainment, public services or cultural initiatives. The most conspicuous manifestation of such a transformative power is the pervasive expansion of electronic platforms. Certainly, digital economy is today a platform economy. Electronic platforms are the dominant organizational model\(^1\) for business activities, social networks, emerging businesses, public environments or educational systems in today digital society.\(^2\) Remarkably, the emergence and increasing popularity of disruptive models, such as sharing-based economy, crowdfunding or fintech variants, have not only been made possible but greatly stimulated by the platform-based organizational solution.

Rules adopted by UNCITRAL instruments, and their adaptations in domestic and regional texts, did successfully deal with and resolve digital challenges related to the use of electronic means and digital medium (electronic communications) in the formation and the performance of contracts. These existing rules are clearly transaction-oriented. They conceive the transaction as the relevant unit for regulation purposes and they build up the rules on the electronic communication as the minimum denominator of electronic contracting situations. Such problems, rules and solutions represent the first generation of electronic commerce. Legal concerns aroused by electronic platforms usher into the second generation of electronic commerce.

So as existing rules are essentially transaction-oriented, a platform economy claims an organization-oriented legal approach. As further explained below, the entering the

---


digital scene of electronic platforms poses questions, from a legal perspective, on two fascinating angles: how platforms work and which role platforms, or more precisely platform operators, do or should perform in digital economy. This shift from a transaction-oriented approach to an organization-oriented one is not a mere change of scale or focus. The emergence of platforms in digital economy arouses a number of appealing issues that are new and different and go beyond the effect of using electronic communication in the formation and the performance of contracts. First, a category of legal issues associated with the fact that platforms become self-regulated environment on contractual basis, the extent of such a regulatory autonomy and its implications. Second, another category of legal issues arising from the trust-generating capacity of platforms (providing mechanisms to control access, supervision systems to monitor compliance, infringements and penalties policies, feedback reputational systems, rating techniques, dispute resolution models). Third, a category of relevant legal issues regarding the role of platform operators as regulators, supervisors, ‘first-line’ enforcers, and service providers, that lead to the debate whether platform operators act as genuine intermediaries and to which extent intermediary liability rules are then applicable.

Electronic platforms, however, have not received at all an all-embracing attention from a legislative point of view. Therefore, a legal framework for electronic platforms has not been developed. On the contrary, attention to electronic platforms has been, and is still, fragmented, partial and tangential. On the one hand, some jurisdictions have addressed liability exposure of electronic intermediaries and devised a specific legal liability regime in form of ‘safe-harbour’ scheme – remarkably, US Section 512 Digital Millennium Copyright Act, EU Directive on Electronic Commerce and its incorporation in domestic legal system by Member States - . But it is questionable whether platform operators are genuine intermediaries for the purposes of the specific liability regime. Therefore, rules on intermediaries do not fully cover all legal angles of platforms. On the other hand, some specific rules have been adopted in relation to sectorial platforms such as regulations on crowdfunding platforms⁴ or Alternative Trading

---


Systems\textsuperscript{5}/Multilateral Negotiating Systems or Facilities.\textsuperscript{6} Given their sectorial scope, these rules do not embrace platforms as a whole either. The legislative response to platforms is still partial and limited to certain jurisdictions, fragmentary in an international context, and to that extent non-uniform.

The convenience of adopting specific rules on platforms at a general level is at present being considered by the European Union,\textsuperscript{7} China, and other domestic jurisdictions to update, modernize or simply expand the scope of their electronic commerce laws. Such a multiplicity of regulatory initiatives, likely to lead to diverging outcomes, is not consistent with the natural transnationality, or more precisely a-nationality, of activities within electronic platforms. More importantly, a multi-jurisdiction regulatory approach is frontally colliding with the rationale behind the emergence of electronic platforms: to create self-regulated environments, to the maximum possible extent, self-sufficient and disassociated from domestic jurisdictions.

As global digital economy is growing on the basis of platform-based models, disparities in approach, or in regulation raise obstacles to international trade, arouse uncertainties, increase risks in electronic commerce transactions conducted, indeed, through electronic platforms, and asphyxiate the flourishing of innovative and disruptive business models. In absence of a harmonized framework for electronic platforms, case law and legal rules at domestic/regional level differ. As a consequence, not only cross-border activity and electronic transactions are discouraged, but, above all, efficiencies deriving from and opportunities associated to the resort to electronic platforms are missed and the trust-creating potential of electronic platforms is seriously undermined.

The aim of this Paper is first to explain how the digital economy, as a platform economy, needs the refocusing of rules on electronic commerce from a transaction-oriented approach to a platform-focused regulation, and advocate that such rules on electronic platforms should be uniform, international and the result of a harmonizing process. Electronic platforms are a key element in the trust-creating policies for digital economy. A common legal framework for platforms would infuse more predictability in digital activities, reduce the likeliness of jurisdiction arbitrage, catalyse the development of emerging models, and better prepare international legal system for the coming of new disruptive technologies (block chain, distributed ledger). The second aim of this Paper is to briefly venture possible issues that should most likely be covered within a future uniform legal framework for electronic platforms.

Considering the above-mentioned aims, the Paper is structured as follows. Part II describes how platforms operate and separates platforms into their personal and relational components to construct a legal concept. Part III focuses on the role of platform operators and the implications in terms of liability exposure. Part IV summarizes possible angles of a regulation on electronic platforms.

II.- Inside a Platform: A Legal Look

Electronic platforms, in all their variants (e-marketplaces, sharing-based platforms, business communities, social networks, crowdfunding platforms) are and operate as closed electronic environments. The closure of an environment does not depend on a specific technology, the use of certain communication technique or the level of security that may indeed be high as well in opened environment. The difference between an open environment and a closed one is essentially based on a legal factor. As further explained below, the closing of an environment is achieved by the use of a contractual infrastructure that create a contract-based trustworthy context for the users, self-contained, self-regulated, and, to the maximum possible extent, independent from domestic jurisdictions. Hence, an electronic platform, as a closed environment, is built by a set of agreements between the operator and the users’ community. In absence of specific legal rules, obligations and rights of platform operators are laid down by the contract terms between the operator and every user, and, consequently, the role to be actually performed by operators is devised by the set of contracts supporting the platform.

The ultimate aim of a closed environment is in fact to generate trust in an uncertain playing field. Trust means predictability, reduction of uncertainties, and minimization of risks. Electronic platforms have pervaded the digital economy on the grounds of an efficiency hypothesis - “Electronic Markets Hypothesis” (MALONES, YATES &
BENJAMIN) —: cost reduction, transparency enhancement, integration and syndication opportunities⁸ and trust generation.


Platforms are multi-party organizational models organized in two layers. On the one hand, the platform operator who manages the platform. On the other hand, the community of users. These are indeed the two vectors explaining why the existing transaction-oriented approach is neither sufficient nor adequate. Precisely, platform-oriented rules should acknowledge and duly deal with the complexity of the structure, the plurality of users, the sense of community, and the relevant roles of the operator in regulating, supervising, enforcing and generating trust within the platform.

II.1.A) The Platform Operator

Electronic platforms are self-regulated communities managed by a platform operator. Despite that some functions can be designed and implemented to operate on a decentralized basis, as further explained below, electronic platforms are essentially centralized structures. The role of the platform operator is crucial to create and maintain a predictable, reliable and trustworthy playing field. The scope and the extent of operator’s functions are determined in each case by the membership agreement. When joining the platform, every user enters into an agreement with the operator. It is the membership agreement. Subsequently, registered users negotiate and conclude contracts among them according to the internal policies (platform rules).

Rarely, the operator is an individual (sole trader) or natural person. More usually, the operator adopts any of the organizational forms, available in the jurisdiction where it is located, to run a business (corporations, incorporate joint-ventures, private companies, but also associations, cooperatives or partnerships). Interestingly, those organizational forms entailing a distinct and separate legal personality are preferred. Likewise, commercial companies and corporations are the most widespread option.

Platform’s users can anyhow participate in the operator as members or managers. There is no legal reason questioning that. Nevertheless, some concerns on the neutrality of the operator and its ability to perform its functions on an independent basis may arise. As a matter of fact, should some (or all) users become members of the operator (partners or shareholders), the neutrality of its decisions as a regulator or as a supervisor in relation to the same users may be questioned and its attractiveness in the market may be

---

debilitated accordingly. Therefore, the composition of the operator has to be very carefully considered.

In managing the platform, the operator provides added-value services, adopts rules, monitors compliance and penalizes infringements of internal rules by users. In sum, the operator acts as a service provider, a (contractual) regulator, and a (contractual) supervisor. Whereas the provision of services (payment management, insurance, inspection, rating, marketing) has a visible commercial impact, increasing the appeal of the offer in the market, fostering loyalty of users, and providing additional financial support; the tasks of regulating and supervising are key for the creation and preservation of trust.

A). Provision of services. Beyond basic services supporting the electronic trading infrastructure (software, security measures, information exchange), the operator may enhance the commercial appeal of the platform by providing a varied range of added-value services: payment services, rating, insurance, certification, inspection, or logistic services. The provision of added-value services tends to increase users’ loyalty (raising switching costs), impede full substitutability with competing offer, and favour integration.⁹

B). Adoption of Platform Rules (Rulesbook). Electronic platform are self-regulated environments. As per the membership agreement, the operator is entitled to adopt rules in form of eligibility requirements to access the platform, codes of conduct, negotiation standards, model contracts, performance conditions, infringements and penalties policies. By accepting the membership agreement, each user takes the commitment to comply with in-force market rules and internal policies. Accordingly, whether the user fails to act in accordance to market rules and policies, the operator is entitled to claim default remedies.

C). Supervision and monitoring: Infringement and Penalties Policy. As per the membership agreement, the operator is entitled (has the right not the obligation) to monitor and supervise the compliance of rules and policies by users and take reasonable measures accordingly. In practice, supervision model is frequently based on a decentralized report system where users notify the operator any infringements committed by other users (report systems and notice and takedown systems in line with the mechanisms implemented to articulate ‘actual knowledge’ under the ‘safe-harbour’ regime for intermediaries).

II.1.B). The Users: Building a Community

The broad term of “users” describes all registered members of the platform irrespective of their position (buyer/seller, lessor/lessee, licensor/licensee, investor/promoter, driver/passenger) they may hold in the subsequent transactions to be concluded or the relations or interactions of any nature entered into within the platform.

From a legal viewpoint, every user is the counterpart of the platform operator in the membership agreement and, at the same time, a prospective contracting party in future market transactions in relation to other users. From a technical perspective, upon registration, users are entitled to access the platform, use the functionalities and be beneficiary of services in conformity with their user profile. In practice, by logging with the activated key (password, username, electronic signature), the user is enabled to exercise rights and enjoy services in accordance to the contractual framework (membership agreement and service provision agreements). User account keys serve as contract-based electronic signatures for the purposes of any action to carry out within the electronic platform. It is commonplace that the own platform operator acts to that end as a certification agency issuing the keys, monitoring the use and managing cancellation, expiration and any further circumstances likely to affect the validity of the contractual electronic signature. Nevertheless, the issuance and the monitoring of the electronic signature could also be entrusted to a third certification agency. In the latter case, the function of controlling user access would be, at least partially, outsourced.

Upon admission, registered users join the business community, strongly agglomerated and compacted by the common compliance of platform policies (internal protocols, rulesbook, codes of conduct, market rules).

Depending on the structure of the market, users can be admitted in the platform to operate solely in one of the prospective contracting position (as the vendor, as the licensor, as the lessor) or in both of them (either vendor or buyer, licensor or licensee, lessor or lessee). In some sectors, should the scope of the platform only cover one stage of the production/distribution chain, users are normally expected to operate in the same contracting position in all transactions – i.e. providers of spare parts, on the one hand, and manufacturers, on the other -. Accordingly, two different membership agreements should be drafted to sign in accordance to the expected contracting position (i.e. a membership agreement model for sellers and a membership agreement model for buyers).

As regards the relationship between the operator and the users, it might be well worth discussing the possibility for users to be members of the operator or to anyhow participate in the operator’s decision-making and the legal consequences likely to derive

In detail, RODRÍGUEZ DE LAS HERAS BALLELL, Teresa, *El régimen jurídico de los Mercados Electrónicos...*, op.cit.
therefrom. The market of markets offers a wide variety of models\(^\text{11}\) as regards the ownership structure: independent markets, non-independent markets and mixed markets. Interestingly, ownership structure is not only an element contributory to the design of the business strategy, but also represents one of the decisive factors in the assessment of competitive concerns and in the devising of effective and reliable regulatory/supervisory models.

i). Independent or neutral markets (\textit{neutromediaries}). Under an independent model in terms of ownership, the management role in the platform is played by a company (or entity) independent from market participants. Accordingly, platform users cannot participate or have any interest in the operator (i.e. as shareholders). Overall, such a neutrality feature alleviates competition concerns and seemingly fortifies the reliability of a centralized regulatory/supervisory model.

ii). Non-independent markets (\textit{consortium} or \textit{coalition markets}). Under this category, market participants (users) are members of the operating company, participate in the decision-making process, carry out management tasks or anyhow control the operator. Users may hold majority of the operator or simply represent a minority group. Likewise, all users or solely a few of them meeting certain conditions might be eligible to participate in the operator. As a consequence, non-independent markets can be further classified as supply-biased markets, demand-biased markets or hybrid markets depending on the commercial position held by the users who are entitled to participate.

From a business point of view, the economic rationale behind non-independent markets is rather patent. Non-independent models are industry-sponsored marketplaces. Hence, industry features and specific market interests are widely considered in the design of the platform and effectively internalized in market policies.

From an economic perspective, according to the scientific literature\(^\text{12}\) it can be argued that electronic marketplaces favour buyers to the extent that reduce vendors’ market power.\(^\text{13}\) As a matter of fact, electronic markets would enhance information distribution and increase price competition. As a consequence, market equilibrium would be rebalanced in favour to buyers. As per such an economic rationale, buyers should arguably be more inclined to promote the creation of electronic platforms. Contrarily, a quick market observation reveals that there are platforms promoted by sellers (offer-

\(^{11}\) A wider classification according to a selection of criteria in RODRÍGUEZ DE LAS HERAS BALLELL, Teresa, \textit{El régimen jurídico de los Mercados Electrónicos...}, op.cit, Chapter 2.


biased markets). Very simply, expected profits earned as a platform operator could compensate the loss in purchase price as sellers.

Nevertheless, and despite the above-mentioned strategic reasons, non-independent markets arouse several legal concerns though. Remarkably, competition issues are likely to arise in the creation of non-independent markets involving leading companies in the relevant sector.\textsuperscript{14}

iii). Mixed markets. In these markets, both sector participants and independent players are members of the platform operator. Synergies between, on the one hand, the neutrality perception favoured by independent markets and, on the other hand, the closeness to the market and the sensitivity to sector interests permitted by non-independent markets are triggered. Independent players are usually investors or technology suppliers.\textsuperscript{15}

**II.1.C. The Membership Agreement**

The membership agreement is concluded between the platform operator and each of the users meeting the eligibility requirements and successfully admitted in the platform.\textsuperscript{16}

Schematically, the membership agreement has the following features:

i). It is concluded electronically.

ii). It may be a B2B or a B2C contract that is then subject to consumer law.

iii). Although it is not fitting into a typified contractual model, it reasonable qualifies for being deemed a service provision contract with mixed obligations.

iv). It is a standard term contract. Terms are pre-drafted by the operator and apply to all membership agreements of the same category (vendors, buyers, licensors, licensees). In general, the user is unable to negotiate, does not participate in the drafting and has to adhere to the contract on a “take-it-or-leave-it” basis.

Even if the membership agreement aims to regulate the relationship between the platform operator and each user, its performance casts over the whole community, its terms deal with interaction among users and it contains obligations on the user and the operator to be exerted in relation to other users. In sum, the membership agreement is

\textsuperscript{14} Covisint case (IP/01/1155) (38.064) or Volbroker case (IP/00/896) (38.866) –.

\textsuperscript{15} In some deals notified to the European Commission for competition scrutiny, platform operators responded to such hybrid ownership schemes: MyAircraft.com. COMP/M.1969 UTC/Honeywell/2/MyAircraft.com, 4.8.2000, IP/00/912; Chemplorer COMP/M.2096 BAYER/Deutsche Telekom/InfraerJ/V, 6.10.2000, IP/00/1131; ec4ec COMP/M.2172 Babcock Borsig/MG Technologies/SAP Markets/J/V, 7.11.2000, IP/00/1266; Governet COMP/M.2138, SAP/Siemens/J/V, 2.10.2000, IP/00/1102; Date AS by Telenor Bedrift AS, Den Norske Bank ASA, ErgoGroup As and Accenture Technologies Venture BV (IP/01/638).

the main building material to pile up and flatten the community ground. Interestingly, by virtue of the agreement, each user commits to comply with in-force internal policies and market rules not only in interacting and dealing with other users. Therefore, in case of breach of rules, the operator is entitled to resort to available remedies on grounds of breach of contract and, likewise, injured users can ask the operator to adopt agreed measures against the infringing user (according to infringements and penalties policy) or claim compensation from the operator on grounds of its default.

II.1.D). Self-Regulation in Practice: Internal Policies, Rulesbook and Codes of Conduct

In exercising the role of regulator, the platform operator adopts rules of varied nature to govern the access, the use of services, the negotiation, conclusion and performance of transactions and the exchange information within the platform (internal policies, rulesbook, code of conducts). As per the membership agreement, users are to abide by the market (platform) rules in force. The most widely adopted model is the centralized regulatory one. Under such a model, the operator is empowered by users to freely adopt, modify or amend rules to be in force in the platform. More exceptionally, however, users’ involvement in the regulatory process may be anyhow encouraged. Should community spirit want to be stimulated, a more participatory model should be designed. If so, users would be informed, consulted or even called to vote in reform projects, amendments or enactment of new policies.

III. The Platform Operator as an Intermediary: The Theory of Reintermediation Cycle

As far as the legal framework for the provision of online services is concerned, electronic platform operators can be deemed intermediary service providers (ISP) in relation to contents, activities and behaviours published, transmitted or performed by their users.


‘Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”) must be interpreted as applying to the operator of an online marketplace where that operator has not played an active role allowing it to have knowledge or control of the data stored’.

However, case law is not consolidated, decisions are not consistent, and, more importantly, concepts and rules are not uniform. When the operator is playing an active role?

Besides, electronic platforms are contract-based buildings. Such a contractual infrastructure designs the liability regime and indeed allocates duties and liabilities between operators and platform's members. Since ‘safe harbour’ regime is based on lack of knowledge and lack of control, operators manage to preserve their position with a right (but not an obligation) to monitor and supervise so as to enhance confidence without exposing themselves to liability risks. To which extent are platform operators entitled to define their obligations (or rights) and delimit their liability exposure? Should their obligations be provided for by the law? Or should a specific liability regime be established instead?

According to economic theories on intermediation, electronic platforms' operators clearly perform intermediaries' typical functions. Traditionally, intermediaries aim to solve market failures. Information asymmetries aggravate failures in digital markets. Therefore, intermediaries take on the challenges to facilitate interaction, enable matching, reduce cost, diminish the number and the complexity of relationships (‘Baligh-Richartz effect’), and enhance confidence exploiting reputational factors to minimize opportunist behaviours and externalities.

The economic theory of intermediation contributes a functional perspective to the most formalist legal concept of intermediary service provider. From a harmonious combination, it is my belief\(^\text{18}\) that a new understanding of electronic intermediation can be advocated. Far from the initial contention that digital technology would trigger an intense and definitive disintermediation process, a growing reintermediation process is actually explaining the state and the evolution of digital society instead. The intermediation cycle turns then from a disintermediation phase to an appealing reintermediation phase.\(^\text{19}\)


Whereas disintermediation describes the removal of middlemen from processes, chains
and markets, reintermediation entails not only the reversion of such a trend but also the
emergence of new areas where intermediation creates value. The reintermediation
process is then a complex and multi-faced phenomenon intended to mitigate failures,
create value and satisfy social and business needs as presented in the digital
environment. As far as electronic relationships are becoming more closely woven and
products and services more sophisticated, intermediation needs have been evolving in
the digital environment and intermediation profiles have redesigned and devised
accordingly. Changes in the management and the structure of the distribution chain are
probably rather evident and easily perceptible. Digital technology forces manufactureres
and retailers to make innovations in distribution, such as shortening the channel,
removing intermediate and unnecessary phases, approaching to clients, customizing
strategies. Intermediaries have achieved to recover their roles in the chain, moving
backwards and forwards along the distribution channel and learning to provide added-
value services to users (recommender systems\textsuperscript{20}, botshops, comparison tools).
Notwithstanding the foregoing, it is our contention that the reintermediation wave
overflows the case of electronic intermediation in the distribution channel to provide
intermediation services in a range of significative areas, in an appealing process less
perceptible but crucial for the functioning of the digital world.

IV.- Key Issues to Consider for a Platform-Oriented Regulation

The above analysis of the structure and the operation of electronic platforms reveal
three new legal angles to consider in a platform-oriented regulation, that are not
sufficiently dealt with by transaction-oriented rules.

First, the two-layer structure of a platform (user layer and operator layer) requires to
address the question of which obligations the operator may assume in relation to the
users, the transactions conducted within the platform and/or other aspects related to the
activity within the platform or of the platform itself in the platforms market (privacy\textsuperscript{21},
IP rights, consumer rights protection, money laundering, misrepresentation,
authentication, etc).

Such obligations can be accepted and configured by the terms of membership
agreement between the operator and the users in exercise of and within the limits of the
private autonomy; or they could be provided for by legal provisions that might prevent

\textsuperscript{20} RODRÍGUEZ DE LAS HERAS BALLELL, Teresa, “Legal Aspects of Recommender Systems in the
Web 2.0: Trust, Liability and Social Networking”, en PAZOS ARIAS, Jose; FERNANDEZ VIJAS, Ana;
DÍAZ REDONDO, Rebeca P. (Eds.), Recommender Systems for the Social Web, Series “Intelligent

\textsuperscript{21} RODRÍGUEZ DE LAS HERAS BALLELL, Teresa, “Legal framework for personalization-based
business models”, in PAZOS-ARIAS, José J.; DELGADO KLOOS, Carlos; LÓPEZ NORES, Martín (Eds.),
Personalization of Interactive Multimedia Services: A Research and Development Perspective,
the parties from excluding or limiting such duties. To the extent that legal rules impose obligations on the operators, they do also define their possible roles in the digital economy as regulators, supervisors, ‘first-line enforcers’, gatekeepers in different ways, and certainly trust creators.

Those jurisdictions that are exploring the formulation of rules on platforms tend to prescribe duties on platform operators regarding the control of users’ identification, transparency duties, compliance monitoring, duty to verify information, or even obligations concerning the performance. Local, fragmented, and differing domestic rules are deeply inconsistent with the global nature of digital economy and, besides, happen to be highly inadequate (even inoperative in many cases).

Second, liability rules for platform operators should be very carefully discussed. Whether operators are deemed as digital intermediaries, specific ‘safe harbour’ provisions would apply; but whether platform operators may configure their role by agreement, liability exposure is varied and depends upon the accepted degree of involvement and endorsement, if any.

At present, liability rules for intermediaries are not uniform and, more importantly, the debate about the falling of platform operators under the concept of intermediary for the purposes of the ‘safe harbour’ regime is opened and lacking of a consensus view. Even more, the implementation of mechanisms proving or presuming actual knowledge and the setting of factors revealing diligent/expeditious adoption of adequate measures by the intermediary upon awareness.

Thus, the formulation of a uniform concept of electronic intermediary, the adoption of a set of uniform criteria under which the platform operator might be deemed as an intermediary, and the devising of a common liability regime for intermediaries (actual knowledge, notice and takedown systems, adequate measures, supervision duties, etc) would be relevant areas to focus harmonizing attention.

Third, as the community-based architecture of platforms enable the articulation of decentralized trust-generating mechanisms (reputational feedback systems, recommender systems, rating and listing), it might be pertinent to consider the elaboration of uniform concepts regarding those decentralized reputational systems, reflect on possible common criteria in design and operation (good practices, standards), and clarify eventual liability scenarios.