



Closing the Gap: Indian Online Intermediaries and a Liability System Not Yet Fit for Purpose

Executive summary

Online intermediaries provide significant economic benefits: this is why major economies across the world have a safe harbour regime to limit liability for online intermediaries when there is unlawful behaviour by intermediary users. We conclude that in India, provided that the existing safe harbour regime is improved, online intermediaries can become a significant part of the economy and their GDP contribution may increase to more than 1.3 per cent by 2015. This potential corresponds to \$41 billion by 2015; we expect this to be a conservative estimate, with the true potential being even larger.

However, the current legal regime results in higher costs to run an intermediary business in India, which we see as a growth-dampening factor – with virtually no benefits associated. Additional growth is possible in India due to online intermediaries, yet the potential \$41 billion GDP contribution could be lost if the safe harbour regime for online intermediaries' liability is not improved.

Simply put, online intermediaries are companies providing a platform for exchange of goods, services, or information between third parties on the Internet. For instance, when purchasing an item on quikr.in or snapdeal.com, when 'liking' the wedding picture a cousin posted on Facebook, or when doing a search on the Internet, one makes use of online intermediary services.

Online intermediaries play a crucial role for Internet users, because they organise information by making it accessible and understandable to users. Take, for instance, the simple task of looking for a specific consumer good – e.g. a new DVD player, a vacuum cleaner, or fancy sunglasses: it is a much more complicated and time-consuming task without the aid of an e-commerce platform or a search engine.

India's Internet economy is in its initial stages as compared to other countries with respect to share of GDP - indicating its significant growth



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potential. Broadband access, digital readiness, regulatory regimes, and several other factors can explain discrepancies between national levels of Internet use. However, as important as Internet access can be, another necessary brick is relevant content - for instance, the content made available thanks to online intermediaries.

Online intermediaries enhance economic activity, reduce costs, and enable market entry for SMEs, thus inducing competition, which at the end of the day leads to lower consumer prices and more economic activity. However, protection against legal responsibility for third-party content is a crucial framework condition for these benefits to materialise and prosper. The liability regime for Indian online intermediaries is defined by the Information Technology Act and the Copyright Act; however, the legal framework has been criticised for being unclear and open to interpretation, leading to legal uncertainty for online intermediaries.

It is costly for intermediaries to have the legal resources to determine the legality of takedown notices and handle legal risk. Uncertainty creates excessive costs for online intermediaries and new start-ups, which could otherwise contribute more to the economy and give greater benefits to firms and consumers. This uncertainty implies that these firms will not have viable business cases at the outset and consequently India misses out on economic growth.

We conclude that online intermediaries can become an important part of India's Internet economy and their GDP contribution may increase to more than 1.3 per cent by 2015, provided that the liability regime is improved. In addition, an increase in the use of online intermediaries will have positive productivity effects and generate consumer surplus from free services. Indirect productivity gains to the economy may in fact be higher in India than in other countries.