

Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

Fields marked with * are mandatory.

Objectives and General Information

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.

You are invited to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

This public consultation will close on 6 January 2016 (13 weeks from the day when all language versions have been made available).

The Commission invites all interested parties to express their views on the questions targeting relations between platform providers and holders of rights in digital content (Question starting with "[A1]"), taking account of the Commission Communication "Towards a modern, more European copyright framework" of 9 December 2015. Technical features of the questionnaire have been adapted accordingly.

Please complete this section of the public consultation before moving to other sections.

- Respondents living with disabilities can request the questionnaire in .docx format and send their replies in email to the following address:
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu.
- If you are an association representing several other organisations and intend to gather the views of your members by circulating the questionnaire to them, please send us a request in email and we will send you the questionnaire in .docx format. However, we ask you to introduce the aggregated answers into EU Survey. In such cases we will not consider answers submitted in other channels than EU Survey.
- If you want to submit position papers or other information in addition to the information you share with the Commission in EU Survey, please send them to
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.
- Given the volume of this consultation, you may wish to download a PDF version before responding to the survey online. The PDF version includes all possible questions. When you fill the survey in online, you will not see all of the questions; only those applicable to your chosen respondent category and to other choices made when you answer previous questions.

* Please indicate your role for the purpose of this consultation

- An individual citizen
- An association or trade organization representing consumers
- An association or trade organization representing businesses
- An association or trade organization representing civil society
- An online platform
- A business, including suppliers using an online platform to provide services
- A public authority
- A research institution or Think tank
- Other

* Please indicate your country of residence

* Please provide your contact information (name, address and e-mail address)

Communia
Troonstraat 55 Rue du Trône
1050 Ixelles
Brussels

- * Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

Note: If you are not answering this questionnaire as an individual, please register in the Transparency Register. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and will publish it as such.

- Yes
 No
 Non-applicable

- * Please indicate your organisation's registration number in the Transparency Register

003277719548-45

If you are an economic operator, please enter the NACE code, which best describes the economic activity you conduct. [You can find here the NACE classification.](#)

Text of 3 to 5 characters will be accepted

The Statistical classification of economic activities in the European Community, abbreviated as NACE, is the classification of economic activities in the European Union (EU).

- * I object the publication of my personal data

- Yes
 No

Online platforms

SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

Do you agree with the definition of "**Online platform**" as provided below?

"Online platform" refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers.

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp.), location-based business directories or some maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audio-visual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video sharing platforms (e.g. YouTube, Dailymotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. AirBnB, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition.

No



* Please explain how you would change the definition

1000 character(s) maximum

As we agree that above definition names everything that is commonly perceived as “online platforms”, we strongly oppose the introduction of a legal definition. The scope of the definition suggested by the Commission is too broad and vague, and therefore cannot meet the requirement of certainty for legal regulations. The definition combines various online platforms operating under different business, technical, and even operational models. Such an approach raises the threat of imposing the same obligations on platforms without sufficient consideration of their type (either commercial or noncommercial), their role in the society (e.g. educational platforms), or other elements (i.e. type of resources used mainly within such a platform). In our opinion, the definition hinders entire consultation as it will never be clear what types of platforms the responses refer to.

What do you consider to be the key advantages of using online platforms?

Online platforms...

- make information more accessible
- make communication and interaction easier
- increase choice of products and services
- create more transparent prices and the possibility to compare offers
- increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.)
- lower prices for products and services
- lower the cost of reaching customers for suppliers
- help with matching supply and demand
- create new markets or business opportunities
- help in complying with obligations in cross-border sales
- help to share resources and improve resource-allocation
- others:

* Please specify:

100 character(s) maximum

Allow users to post content of any form, reach large audience, and empower their creativity.

Have you encountered, or are you aware of problems faced by **consumers** or **suppliers** when dealing with online platforms?

"Consumer" is any natural person using an online platform for purposes outside the person's trade, business, craft or profession.

"Supplier" is any trader or non-professional individual that uses online platforms to provide services to third parties both under their own brand (name) and under the platform's brand.

- Yes
- No
- I don't know

Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible.

3000 character(s) maximum

From an IPR perspective, the most challenging problem faced by consumers when dealing with online platforms is the practice of unjustified requests to take down certain pieces of content . The E-Commerce directive makes the implementation of the notice and take down procedure a defence against secondary liability for online platforms. The impact of this procedure on limiting freedom of expression online (which includes also the right to create) is significant. The authors of publications are in fact deprived of the right to prove that the content should have never been removed in the first place.

There are various examples of legal content being taken down due to allegations of copyright infringement. To name only a few: blocking a ten-year-old's self-authored original video starring his LEGO mini-figures and garbage truck despite the fact that he used royalty-free music; the removal of a home video of a child dancing along to Prince's "Let's Go Crazy," and the official Blender Foundation copy of Sintel on Youtube being blocked because Sony apparently claimed copyright over it (even when the movie was made with open-source tools and licensed under the Creative Commons Attribution 3.0 license).

In addition, allegations of copyright infringement are sometimes used as an excuse to remove content which the rightsholder or publisher doesn't agree with or like. For instance, a short clip from the highly controversial movie, *The Innocence of Muslims*, which sparked violent outbreaks across the Middle East, was blocked by Google in several regions following informal requests by governments, and without a court order.

Looking at the notice and takedown procedure from a broader rule of law context forces us to question this system that deprives the Internet user of rights and guarantees under law. Online platforms make decisions only on the basis of the notification of infringement, and the user cannot present counterarguments on the issue, which could result in the infringement of his rights without due process. For us it seems preferable to create the space for adversarial debate before removing online content. Therefore, we call for adopting a "counter notice" mechanism, which will allow authors and users to voice their opinion on the use of a particular piece of contested content.

It is highly encouraging, but certainly not sufficient, that certain platform operators are attempting to defend the rights of their users (we note that Google plans to defend certain type of fair uses of works on YouTube). Platforms should be incentivized for undertaking such actions that defend the rights of their users and promote freedom of creation.

How could these problems be best addressed?

- market dynamics
- regulatory measures
- self-regulatory measures
- a combination of the above

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the **traders** that use them, more transparency in relation to:

a) information required by consumer law (e.g. the contact details of the supplier, the main characteristics of products, the total price including delivery charges, and consumers' rights, such as the right of withdrawal)?

"Trader" is any natural or legal person using an online platform for business or professional purposes. Traders are in particular subject to EU consumer law in their relations with consumers.

- Yes
- No
- I don't know

b) information in response to a search query by the user, in particular if the displayed results are sponsored or not?

- Yes
- No
- I don't know

c) information on who the actual supplier is, offering products or services on the platform

- Yes
- No
- I don't know

d) information to discourage misleading marketing by professional suppliers (traders), including fake reviews?

- Yes
- No
- I don't know

e) is there any additional information that, in your opinion, online platforms should be obliged to display?

500 character(s) maximum

Have you experienced that information displayed by the platform (e.g. advertising) has been adapted to the interest or recognisable characteristics of the user?

- Yes
- No
- I don't know

Do you find the information provided by online platforms on their terms of use sufficient and easy-to-understand?

- Yes
- No

* What type of additional information and in what format would you find useful? Please briefly explain your response and share any best practice you are aware of.

1500 character(s) maximum

It's difficult to understand highly specialistic legalese presented in many terms and conditions. In our opinion, this does not arise from lack of regulations, but from poor enforcement of the existing laws—especially of the consumer-protection regulations. There are several legal regulations forcing entrepreneurs to formulate terms and conditions in clear, comprehensive, and easily accessible form. However their enforcement is still insufficient. We call for more efficient fulfilment of existing obligations by platforms instead of creating new ones.

Also, various types of terms of use are often not comprehensible to typical users, and these users are not aware why a particular action was taken (e.g., their content was blocked). It's also very common that users accept such terms even without reading them. Finally, in many cases the terms of use tend to be vague and ambiguous.

Platforms should be required to display the information relating to their operational aspects using standardized templates (that all users can be expect to be able to read and understand). Summaries of these terms should be standardized so users can compare terms of use across different services and platforms. The templates could either be an outcome of a joint industry activity, or could be proposed by consumer protection authorities.

Do you find reputation systems (e.g. ratings, reviews, certifications, trustmarks) and other trust mechanisms operated by online platforms are generally reliable?

- Yes
- No
- I don't know

What are the main benefits and drawbacks of reputation systems and other trust mechanisms operated by online platforms? Please describe their main benefits and drawbacks.

1500 character(s) maximum

USE OF INFORMATION BY ONLINE PLATFORMS

In your view, do online platforms provide sufficient and accessible information with regard to:

a) the personal and non-personal data they collect?

- Yes
- No
- I don't know

b) what use is made of the personal and non-personal data collected, including trading of the data to other platforms and actors in the Internet economy?

- Yes
- No
- I don't know

c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)?

- Yes
- No
- I don't know

Please share your general comments or ideas regarding the use of information by online platforms

3000 character(s) maximum

RELATIONS BETWEEN PLATFORMS AND SUPPLIERS/TRADERS/APPLICATION DEVELOPERS OR HOLDERS OF RIGHTS IN DIGITAL CONTENT

[A1] Are you a holder of rights in digital content protected by copyright, which is used on an online platform?

- Yes
- No

As a holder of rights in digital content protected by copyright have you faced any of the following circumstances:

An online platform such as a video sharing website or an online content aggregator uses my protected works online without having asked for my authorisation.

- Yes
- No

An online platform such as a video sharing website or a content aggregator refuses to enter into or negotiate licensing agreements with me.

- Yes
- No

An online platform such as a video sharing website or a content aggregator is willing to enter into a licensing agreement on terms that I consider unfair.

- Yes
- No

An online platform uses my protected works but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to refuse to negotiate a licence or to do so under their own terms.

- Yes
- No

As you answered YES to some of the above questions, please explain your situation in more detail.

3000 character(s) maximum

As a civil society organization dealing with public domain and copyright reform issues, not only are we the holders of IP rights, we also work closely with researchers, cultural heritage institutions, museums, and libraries. These organizations often face the challenge of not being able to negotiate conditions required by scientific publishers, collecting societies, book publishers, etc. In the opinion of these groups, some of the arrangements they are compelled to work with are unfair.

Publishers offer online platforms where researchers and writers can publish their content. Licensing is their preferred method of interaction, although one can hardly refer to these types of interactions as 'negotiations'. In the case of scientific publishing for example, it is a well-known fact that research results published in A-listed journals help secure future funding and tenure. This puts researchers in a suboptimal negotiation position, wherein they have to sign away their publication rights to scientific publishers in return for career advancement and ongoing funding. The outcome is that universities must continue to spend (mostly public funds) on yearly journal subscriptions. These subscription prices keep rising year after year. Moreover, the conditions offered licensees often ignore limitations & exceptions granted by law, which tends to result in private contractual provisions bypassing publicly-applicable legislation.

Is there a room for improvement in the relation between platforms and suppliers using the services of platforms?

- No, the present situation is satisfactory.
- Yes, through market dynamics.
- Yes, through self-regulatory measures (codes of conducts / promotion of best practices).
- Yes, through regulatory measures.
- Yes, through the combination of the above.

Are you aware of any dispute resolution mechanisms operated by online platforms, or independent third parties on the business-to-business level mediating between platforms and their suppliers?

- Yes
- No

CONSTRAINTS ON THE ABILITY OF CONSUMERS AND TRADERS TO MOVE FROM ONE PLATFORM TO ANOTHER

Do you see a need to strengthen the technical capacity of online platforms and address possible other constraints on switching freely and easily from one platform to another and move user data (e.g. emails, messages, search and order history, or customer reviews)?

- Yes
- No

If you can, please provide the description of some best practices (max. 5)

	Name of the online platform	Description of the best practice (max. 1500 characters)
1.		
2.		
3.		
4.		
5.		

Should there be a mandatory requirement allowing non-personal data to be easily extracted and moved between comparable online services?

- Yes
 No

Please explain your choice and share any best practices that you are aware of.

1500 character(s) maximum

Please share your general comments or ideas regarding the ability of consumers and traders to move from one platform to another

3000 character(s) maximum

Allowing non-personal data to be easily extracted and moved between comparable online services needs to be fostered both by strengthening technical capacity and adjusting legal frameworks. Enacting new obligations on online platforms will constrain platform owners and make it challenging for them to develop new services. In our opinion the freedom for users to choose between online platforms should be prioritized. Without a functioning system for transferring non-personal data, users are deprived of the freedom of choice. What is more, the status of some platforms (especially social media) means that it is often impractical to choose a different service provider. In such circumstances, there is a particular need for transferability of non-personal data to enhance competition in the online environment.

ACCESS TO DATA

As a trader or a consumer using the services of online platforms did you experience any of the following problems related to the access of data?

a) unexpectedly changing conditions of accessing the services of the platforms

- Yes
 No

b) unexpectedly changing conditions of accessing the Application Programming Interface of the platform

- Yes
 No

c) unexpectedly changing conditions of accessing the data you shared with or stored on the platform

- Yes
- No

d) discriminatory treatment in accessing data on the platform

- Yes
- No

Would a rating scheme, issued by an independent agency on certain aspects of the platforms' activities, improve the situation?

- Yes
- No

Please share your general comments or ideas regarding access to data on online platforms

3000 character(s) maximum

Tackling illegal content online and the liability of online intermediaries

Please indicate your role in the context of this set of questions

Terms used for the purposes of this consultation:

"Illegal content"

Corresponds to the term "illegal activity or information" used in Article 14 of the E-commerce Directive. The directive does not further specify this term. It may be understood in a wide sense so as to include any infringement of applicable EU or national laws and regulations. This could for instance include defamation, terrorism related content, IPR infringements, child abuse content, consumer rights infringements, or incitement to hatred or violence on the basis of race, origin, religion, gender, sexual orientation, malware, illegal online gambling, selling illegal medicines, selling unsafe products.

"Hosting"

According to Article 14 of the E-commerce Directive, hosting is the "storage of (content) that has been provided by the user of an online service". It may for instance be storage of websites on servers. It may also include the services offered by online market places, referencing services and social networks.

"Notice"

Any communication to a hosting service provider that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it.. Such an obligation only arises if the notice provides the internet hosting service provider with actual awareness or knowledge of illegal content.

"Notice provider"

Anyone (a natural or legal person) that informs a hosting service provider about illegal content on the internet. It may for instance be an individual citizen, a hotline or a holder of intellectual property rights. In certain cases it may also include public authorities.

"Provider of content"

In the context of a hosting service the content is initially provided by the user of that service. A provider of content is for instance someone who posts a comment on a social network site or uploads a video on a video sharing site.

- individual user
- content provider
- notice provider
- intermediary
- none of the above

* Please explain

In today's online environment, user generated creativity is as prominent and important as content created by traditional media companies and publishers. Inexpensive digital technologies and the pervasive web allow us to be both consumers and creators. As an expert organization dealing with the promotion and expansion of the digital public domain, we too see ourselves as both users and creators of content. What is more, in some cases we can also be named an intermediary, since we run our own website.

Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12-15) has proven not fit for purpose or has negatively affected market level playing field?

- Yes
 No

*Please describe the situation.

3000 character(s) maximum

In our opinion, the problem is not the interpretation of recital 42, but the enforcement and securing rights of all parties involved (e.g. by introducing a counter notice mechanism). The limitation of intermediaries' liability is a cornerstone of the functioning of the Internet. Middlemen should not be liable for the content posted by users (safe harbour refers to service providers, not content providers). Moreover, privatised enforcement (where companies act under their own volitions without a court order) is not the optimal solution. The same was stated several times by CJEU, ig. in the case of Louis Vuitton v. Google France (joined cases C-236/08 to C-238/08). The court decided that Google cannot be held liable since Google Adwords is an automatic system. Any service provider (even referencing) cannot be held liable if its role is passive "in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores".

The discussions triggered around the proposed SOPA/PIPA legislation in the US have shown that there is no support for privatised enforcement actions among citizens. The EC should hence not promote or encourage 'cooperation' of intermediaries, as this tends to negatively affect EU citizens' free speech rights. In addition, it can chill innovation and creativity, and would be in breach of Article 52 of the CFR.

Do you think that the concept of a "mere technical, automatic and passive nature" of information transmission by information society service providers provided under recital 42 of the ECD is sufficiently clear to be interpreted and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

- Yes
 No
 I don't know

Please explain your answer.

1500 character(s) maximum

Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services e.g. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some diverging case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified?

- Yes
- No

On the "notice"

Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?

- Yes
- No

Do you think that any of the following categories of illegal content requires a specific approach:

- Illegal offer of goods and services (e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc.)
- Illegal promotion of goods and services
- Content facilitating phishing, pharming or hacking
- Infringements of intellectual property rights (e.g. copyright and related rights, trademarks)
- Infringement of consumer protection rules, such as fraudulent or misleading offers
- Infringement of safety and security requirements
- Racist and xenophobic speech
- Homophobic and other kinds of hate speech
- Child abuse content
- Terrorism-related content (e.g. content inciting the commitment of terrorist offences and training material)
- Defamation
- Other:

Please explain what approach you would see fit for the relevant category.

1000 character(s) maximum

Infringement of intellectual property rights need to be considered differently since the copyrighted content is not necessarily per se illegal. The infringement might be due to making the content available to the public and/or obtaining economic benefit. Furthermore, there are many examples in which copyright enforcement measures have led to disproportionate consequences to the fundamental rights of the public, particularly to freedom of expression.

Generally, content providers, hosting services, and any other business offering content (or access to content) should not be empowered to enforce laws without a specific mandate to do so prescribed by law. Due to the specific nature of IP infringements, users must be presented a way to voice complaints when the legal content they uploaded is taken down without their knowledge, and without them being able to have an adequate remedy to the situation.

On the "action"

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

- Yes
- No

*** Please explain your answer**

1500 character(s) maximum

If notice-and-action policies imply a takedown, then there should be some sort of mechanism through which users can appeal this decision to 'put back up' the content if they believe the notice was served wrongfully or deceptively. This approach is called 'counter-notice', but currently it seems to be functioning only in the US, probably due to 1) its complexity, and 2) the lack of requirements for ISPs to inform their users of its existence. Nevertheless, taking into account fundamental rights protection in the EU, in our opinion implementing a counter-notice system is likely the only fair way of shaping safe harbour regulations.

The 'Chilling Effects' website notes that while Google has taken hundreds of websites out of its index due to DMCA takedown notices, majority of people didn't file a counter-notice nor did it receive a counter-notice from any other platform. In the US, the lack of success of this counter-notice approach could hence result from an inherent imbalance in prerequisites for the original notice and the counter-notice. In order to get online content removed, copyright holders are only required to claim a good-faith belief that neither they nor the law have authorized the content's use, and by doing so does not risk penalties for perjury. In comparison, in order to get content reinstated, the poster must claim a good-faith belief under penalty of perjury that the content was wrongfully removed.

If you consider that this should only apply for some kinds of illegal content, please indicate which one(s)

1500 character(s) maximum

The mechanism for counter-notice shall be a general rule, no matter which content was taken down, with only some exceptions permitted. The exceptions should be considered clear and imminent threats to human life. Of course, exceptions need to be prescribed by law in a detailed fashion to avoid abusing the requirement to provide the adequate counter-notice option immediately.

Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)?

- Yes
- No

Please explain

The procedure of take down and stay down implies that the online platform, after taking down such content, is obliged to monitor whether the content is at some point re-posted by the same user. Such approach does not take into account the fact that content that may be illegal or infringing in one context may be innocuous in another. Moreover, the time at which content is published online can also be of importance. There is no substitute for treating removals on a case by case basis. What is more, the content is usually taken down upon notice, whether infringing or not, without anyone noticing it. The “stay down” system will ensure that the content is further suppressed, again, without a human decision-making and legal interpretation of infringement. The effects of private censorship made possible under the take-down policy are likely to intensify. The ultimate scenario everyone would be that platforms leverage unique content identification (fingerprinting) and that this identification protocol is implemented and shared across platforms to pervasively block allegedly-infringing online content. This is problematic because content can be used in different contexts based on the rules and norms of the platform. “Take down and stay down” only strengthens the system where private platforms have gained control over individual freedoms, although they may still not necessarily be held accountable for violations.

On duties of care for online intermediaries:

Recital 48 of the Ecommerce Directive establishes that “[t]his Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities”. Moreover, Article 16 of the same Directive calls on Member States and the Commission to encourage the “drawing up of codes of conduct at Community level by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15”. At the same time, however, Article 15 sets out a prohibition to impose “a general obligation to monitor”.

(For online intermediaries): Have you put in place voluntary or proactive measures to remove certain categories of illegal content from your system?

- Yes
- No

Do you see a need to impose specific duties of care for certain categories of illegal content?

- Yes
- No
- I don't know

Please specify for which categories of content you would establish such an obligation.

1500 character(s) maximum

The European Commission, in a letter to Ms Charlotte Cederschiöld http://www.asktheeu.org/en/request/document_following_the_adoption#incoming-7914, was quite clear that the "duty of care" referred to in recital 47 was not an additional duty, but a codification of the rules in Articles 12-15. Consequently, it is clear that recital 47 was not meant to create new duties and such a meaning should not be tied to it. Moreover, introducing such a vague term as "duty of care" in legal provisions will result in further legal uncertainty. Therefore we oppose the establishment of such obligations.

Please specify for which categories of intermediary you would establish such an obligation

1500 character(s) maximum

Please specify what types of actions could be covered by such an obligation

1500 character(s) maximum

Do you see a need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received as well as their main content and the results of the actions taken following the notices)?

- Yes
- No

Do you think that online intermediaries should have a specific service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism?

- Yes
- No

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

5000 character(s) maximum

To sum up our above statement, online platforms such as search engines or aggregators should not be required to monitor content submitted on their platforms. Even more importantly, they should not be held responsible for blocking links to websites accused of hosting illegal content or of providing access to content made available illegally.

On the one hand, looking specifically at links, hyperlinking is one of the most fundamental and basic activities of Internet use (by sharing a link on social media, making comments, writing a blog, etc.). On the other, such accusations should be proven in a court of law before any censorship occurs.

The most important aspect to be highlighted is the role of online platforms in building a knowledge-based economy. Both the wording of the questions in the questionnaire—as well as their general tone aimed at increasing the scope of legal regulations—ignores positive aspects of business platforms in empowering creativity and freedom of expression online.

Regardless of the outcome of the ongoing consultation and the further work of the European Commission to regulate online platforms, we would like to see a continued and deliberate effort to consider approaches that support the growth of the e-economy (which is now substantially faster than the growth rate of the traditional economy).

In our opinion, each additional obligation (as indicated duty of care) creates risk of reducing the legal certainty for the participants of the electronic market. For this reason, we believe that any further changes in regulation of platforms should meet the requirements of transparency and clarity. If the regulations of Internet economy are ambiguous, it will negatively impact the range and attractiveness of offerings available to end users.

In the online environment the rights of all stakeholders need to be balanced. We oppose the introduction of additional regulation imposing obligations on platforms that will only increase the rights of rights holders at the expense of users. Instead, law and policy should adequately support user rights, such as by increasing the scope of copyright limitations and exceptions in the online environment, expanding the public domain, and/or limiting the monopoly resulting from exclusive rights under copyright.

A change in the rules governing safe harbor online must be done in a thoughtful and balanced fashion. First, changes cannot be justified only by the responses communicated via the ongoing consultations, but with objective, data-driven socio-economic research. Therefore, we are counting on the European Commission to conduct appropriate and necessary socio-economic analysis in this field.

We would also like to draw attention to the fact that in many member states, a mechanism of counter-notice is practically non-existent. In our opinion, an adjustment to rectify this situation is the only guarantee to protect the rights of users.

The provision of a link pointing to a work or other subject matter protected by copyright should under no circumstances be subject to the authorisation of the rightholder, nor should it induce liability, as the content to which a link points can be changed at any time. Even the European Commission is confronted with this issue (as exemplified here: <http://berlaymonster.blogspot.be/2015/11/porn-blog-found-on-official-eu-website.html>). Initiatives to extend the copyright regime—by granting additional copyright-like protection to news snippets (the so-called ‘ancillary copyright’)—should not be pursued by the European Commission. If such a rule were implemented, it could create additional

legal uncertainty for end-users, digital innovators, and publishers alike.

Any legal amendments should be implemented carefully, according to the best regulatory and legislative standards, with preceding research and analysis. We believe that EU member states so far have not used the full potential of existing safe harbor regulations, and the proper implementation and enforcement of this protocol is the key issue to be addressed. In our opinion, mechanisms of self-regulation and the free market are the foundations that should guide the European Union in building a knowledge-based economy.

Data and cloud in digital ecosystems

FREE FLOW OF DATA

ON DATA LOCATION RESTRICTIONS

In the context of the free flow of data in the Union, do you in practice take measures to make a clear distinction between personal and non-personal data?

- Yes
- No
- Not applicable

Have restrictions on the location of data affected your strategy in doing business (e.g. limiting your choice regarding the use of certain digital technologies and services?)

- Yes
- No

Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable?

- Yes
- No

ON DATA ACCESS AND TRANSFER

Do you think that the existing contract law framework and current contractual practices are fit for purpose to facilitate a free flow of data including sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved?

- Yes
- No

In order to ensure the free flow of data within the European Union, in your opinion, regulating access to, transfer and the use of non-personal data at European level is:

- Necessary
- Not necessary

When non-personal data is generated by a device in an automated manner, do you think that it should be subject to specific measures (binding or non-binding) at EU level?

- Yes
- No

Please share your general comments or ideas regarding data access, ownership and use

5000 character(s) maximum

ON DATA MARKETS

What regulatory constraints hold back the development of data markets in Europe and how could the EU encourage the development of such markets?

3000 character(s) maximum

ON ACCESS TO OPEN DATA

Do you think more could be done to open up public sector data for re-use in addition to the recently revised EU legislation (Directive 2013/37/EU)?

Open by default means: Establish an expectation that all government data be published and made openly re-usable by default, while recognising that there are legitimate reasons why some data cannot be released.

- Introducing the principle of 'open by default'[1]
- Licensing of 'Open Data': help persons/ organisations wishing to re-use public sector information (e.g., Standard European License)
- Further expanding the scope of the Directive (e.g. to include public service broadcasters, public undertakings);
- Improving interoperability (e.g., common data formats);
- Further limiting the possibility to charge for re-use of public sector information
- Remedies available to potential re-users against unfavourable decisions
- Other aspects?

* Please specify

There are further steps to be done in order to open up public sector data for re-use:
removing ability of charging for using public sector data,
abandoning the idea of introducing new licenses for use of public sector information;
considering the CC0 Public Domain Dedication as the recommended standard for publishing public sector information in Europe.

Do you think that there is a case for the opening up of data held by private entities to promote its re-use by public and/or private sector, while respecting the existing provisions on data protection?

- Yes
 No

* Under what conditions?

- in case it is in the public interest
 for non-commercial purposes (e.g. research)
 other conditions

* Please explain

3000 character(s) maximum

If the data is used in the public interest then it shall be allowed to be used even for commercial purposes, with an option for private entities to apply for an exemption under strict conditions (like high investment outlay). Moreover, we advocate for opening all data financed by public money.

ON ACCESS AND REUSE OF (NON-PERSONAL) SCIENTIFIC DATA

Do you think that data generated by research is sufficiently, findable, accessible identifiable, and re-usable enough?

- Yes
 No

- * Why not? What do you think could be done to make data generated by research more effectively re-usable?

3000 character(s) maximum

Copyright rules create hurdles to fully using research data

1) The research exception

The problems with accessing and using scientific materials are primarily practical. The exception for research is not fully adopted across national laws, and typically allows for their use only for research purposes. In addition, research outputs are oftentimes protected by restrictive licenses or DRM (Digital Rights Management) systems, or simply only published in hard copies and therefore not accessible online. For example, some licenses require that works can be made available only using certain networks or software programs.

2) Text and data mining

Text and data mining (TDM) is often explicitly prohibited through private licenses, or allowed only to a limited extent. We think that TDM should not fall under copyright protection in the first place. But to the extent it does, there should be a specific exception allowing for the use of content for the purpose of TDM. This exception should not distinguish between commercial and non-commercial purposes, or apply only to research institutions, as these limitations would prevent knowledge transfer and not support the public interest.

The law should also ensure that technical protection measures (TPMs) and contracts cannot override such this exception, or any other exceptions.

Do you agree with a default policy which would make data generated by publicly funded research available through open access?

- Yes
- No

ON LIABILITY IN RELATION TO THE FREE FLOW OF DATA AND THE INTERNET OF THINGS

As a provider/user of Internet of Things (IoT) and/or data driven services and connected tangible devices, have you ever encountered or do you anticipate problems stemming from either an unclear liability regime/non –existence of a clear-cut liability regime?

The "Internet of Things" is an ecosystem of physical objects that contain embedded technology to sense their internal statuses and communicate or interact with the external environment. Basically, Internet of things is the rapidly growing network of everyday objects—eyeglasses, cars, thermostats—made smart with sensors and internet addresses that create a network of everyday objects that communicate with one another, with the eventual capability to take actions on behalf of users.

- Yes
- No
- I don't know

If you did not find the legal framework satisfactory, does this affect in any way your use of these services and tangible goods or your trust in them?

- Yes
- No
- I don't know

Do you think that the existing legal framework (laws, or guidelines or contractual practices) is fit for purpose in addressing liability issues of IoT or / and Data driven services and connected tangible goods?

- Yes
- No
- I don't know

As a user of IoT and/or data driven services and connected tangible devices, does the present legal framework for liability of providers impact your confidence and trust in those services and connected tangible goods?

- Yes
- No
- I don't know

In order to ensure the roll-out of IoT and the free flow of data, should liability issues of these services and connected tangible goods be addressed at EU level?

- Yes
- No
- I don't know

ON OPEN SERVICE PLATFORMS

What are in your opinion the socio-economic and innovation advantages of open versus closed service platforms and what regulatory or other policy initiatives do you propose to accelerate the emergence and take-up of open service platforms?

3000 character(s) maximum

PERSONAL DATA MANAGEMENT SYSTEMS

The following questions address the issue whether technical innovations should be promoted and further developed in order to improve transparency and implement efficiently the requirements for lawful processing of personal data, in compliance with the current and future EU data protection legal framework. Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'.

Do you think that technical innovations, such as personal data spaces, should be promoted to improve transparency in compliance with the current and future EU data protection legal framework? Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'?

- Yes
- No
- I don't know

EUROPEAN CLOUD INITIATIVE

What are the key elements for ensuring trust in the use of cloud computing services by European businesses and citizens

"Cloud computing" is a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand. Examples of such resources include: servers, operating systems, networks, software, applications, and storage equipment.

- Reducing regulatory differences between Member States
- Standards, certification schemes, quality labels or seals
- Use of the cloud by public institutions
- Investment by the European private sector in secure, reliable and high-quality cloud infrastructures

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you agree that existing contractual practices ensure a fair and balanced allocation of legal and technical risks between cloud users and cloud service providers?

- Yes
- No

What would be the benefit of cloud computing services interacting with each other (ensuring interoperability)

- Economic benefits
- Improved trust
- Others:

What would be the benefit of guaranteeing the portability of data, including at European level, between different providers of cloud services

- Economic benefits
- Improved trust
- Others:

Have you encountered any of the following contractual practices in relation to cloud based services? In your view, to what extent could those practices hamper the uptake of cloud based services? Please explain your reasoning.

	Never (Y[es] or N[no])	Sometimes (Y / N)	Often (Y / N)	Always (Y / N)	Why (1500 characters max.)?
Difficulties with negotiating contractual terms and conditions for cloud services stemming from uneven bargaining power of the parties and/or undefined standards					
Limitations as regards the possibility to switch between different cloud service providers					
Possibility for the supplier to unilaterally modify the cloud service					
Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)					
Other (please explain)					

What are the main benefits of a specific European Open Science Cloud which would facilitate access and make publicly funded research data re-useable?

- Making Science more reliable by better quality assurance of the data
- Making Science more efficient by better sharing of resources at national and international level
- Making Science more efficient by leading faster to scientific discoveries and insights
- Creating economic benefits through better access to data by economic operators
- Making Science more responsive to quickly tackle societal challenges
- Others

Would model contracts for cloud service providers be a useful tool for building trust in cloud services?

- Yes
- No

Would your answer differ for consumer and commercial (i.e. business to business) cloud contracts?

- Yes
- No

Please share your general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire

5000 character(s) maximum

The collaborative economy

The following questions focus on certain issues raised by the collaborative economy and seek to improve the Commission's understanding by collecting the views of stakeholders on the regulatory environment, the effects of collaborative economy platforms on existing suppliers, innovation, and consumer choice. More broadly, they aim also at assessing the impact of the development of the collaborative economy on the rest of the economy and of the opportunities as well as the challenges it raises. They should help devising a European agenda for the collaborative economy to be considered in the context of the forthcoming Internal Market Strategy. The main question is whether EU law is fit to support this new phenomenon and whether existing policy is sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives that may have already been identified.

Terms used for the purposes of this consultation:

"Collaborative economy"

For the purposes of this consultation the collaborative economy links individuals and/or legal persons through online platforms (collaborative economy platforms) allowing them to provide services and/or exchange assets, resources, time, skills, or capital, sometimes for a temporary period and without transferring ownership rights. Typical examples are transport services including the use of domestic vehicles for passenger transport and ride-sharing, accommodation or professional services.

"Traditional provider"

Individuals or legal persons who provide their services mainly through other channels, without an extensive involvement of online platforms.

"Provider in the collaborative economy"

Individuals or legal persons who provide the service by offering assets, resources, time, skills or capital through an online platform.

"User in the collaborative economy"

Individuals or legal persons who access and use the transacted assets, resources, time, skills and capital.

Please indicate your role in the collaborative economy

- Provider or association representing providers
- Traditional provider or association representing traditional providers
- Platform or association representing platforms
- Public authority
- User or consumer association

Which are the main risks and challenges associated with the growth of the collaborative economy and what are the obstacles which could hamper its growth and accessibility? Please rate from 1 to 5 according to their importance (1 – not important; 5 – very important).

- Not sufficiently adapted regulatory framework

- 1
- 2
- 3
- 4
- 5

- Uncertainty for providers on their rights and obligations

- 1
- 2
- 3
- 4
- 5

- Uncertainty for users about their rights and obligations

- 1
- 2
- 3
- 4
- 5

- Weakening of employment and social rights for employees/workers

- 1
- 2
- 3
- 4
- 5

- Non-compliance with health and safety standards and regulations

- 1
- 2
- 3
- 4
- 5

- Rise in undeclared work and the black economy

- 1
- 2
- 3
- 4
- 5

- Opposition from traditional providers

- 1
- 2
- 3
- 4
- 5

- Uncertainty related to the protection of personal data

- 1
- 2
- 3
- 4
- 5

- Insufficient funding for start-ups

- 1
- 2
- 3
- 4
- 5

- Other, please explain

How do you consider the surge of the collaborative economy will impact on the different forms of employment (self-employment, free lancers, shared workers, economically dependent workers, tele-workers etc) and the creation of jobs?

- Positively across sectors
- Varies depending on the sector
- Varies depending on each case
- Varies according to the national employment laws
- Negatively across sectors
- Other

Do you see any obstacle to the development and scaling-up of collaborative economy across borders in Europe and/or to the emergence of European market leaders?

- Yes
- No

Do you see a need for action at European Union level specifically to promote the collaborative economy, and to foster innovation and entrepreneurship in its context?

- Yes
- No

What action is necessary regarding the current regulatory environment at the level of the EU, including the Services Directive, the E-commerce Directive and the EU legislation on consumer protection law?

- No change is required
- New rules for the collaborative economy are required
- More guidance and better information on the application of the existing rules is required
- I don't know what is the current regulatory environment

Submission of questionnaire

End of public consultation

Background Documents

BG_ Въведение (/eusurvey/files/17798068-07b6-4cfb-8c80-a8e6a4f75e29)

BG_ Декларация за поверителност (/eusurvey/files/0b5a7e6a-5c26-47ca-b263-9ece4aa566ca)

CS_Prohlášení o ochraně osobních údajů (/eusurvey/files/a93fa8dd-757e-421e-81f9-e1c9bca745af)

CS_ Úvod (/eusurvey/files/af54c429-c5bf-482f-8525-c156be285051)

DA_Databeskyttelseserklæring (/eusurvey/files/5dd2c272-17fa-47f4-b0c7-2c207a86235f)

DA_Introduktion (/eusurvey/files/05c0d888-2d35-4e19-a314-65e8092597d6)

DE_Datenschutzerklärung (/eusurvey/files/b5e037cf-0350-40c3-b803-04f6357f9603)

DE_Einleitung (/eusurvey/files/300a2e87-e030-422a-b678-33fe2c7520a6)

EL_ Δήλωση περί απορρήτου (/eusurvey/files/b408fd27-c292-4fc0-9c2d-fd70c74062c4)

EL_ Εισαγωγή (/eusurvey/files/0be38358-a600-4568-bfd0-fd9697b1810f)

EN_Background Information (/eusurvey/files/0873ffeb-56b2-40d7-bf56-5aadbd176c3c)

EN_Privacy Statement (/eusurvey/files/8861750d-baa1-4113-a832-f8a5454501b5)

ES_Declaración de confidencialidad (/eusurvey/files/edd31f1e-fe9d-493a-af5e-7a7c793295a9)

ES_Introducción (/eusurvey/files/600be540-eef2-4bde-bd3a-436360015845)

ET_Privaatsusteave (/eusurvey/files/294d2e58-3a3d-4e32-905f-74e8b376c5e6)

ET_Sissejuhatus (/eusurvey/files/4bc0f8b9-febc-478a-b828-b1032dc0117f)

FI_Johdanto (/eusurvey/files/a971b6fb-94d1-442c-8ad7-41a8e973f2d5)

FI_Tietosuojaseloste (/eusurvey/files/28a1f27e-3a8e-41f3-ae27-201e29134555)

FR_Déclaration relative à la protection de la vie privée (/eusurvey/files/1341b7cb-38e5-4b81-b3bc-bd0d5893d298)

FR_Introduction (/eusurvey/files/308a1cf7-5e78-469c-996a-372b33a1992b)

HR_Izjava o zaštiti osobnih podataka (/eusurvey/files/618120e1-286a-45d4-bbbd-2493d71617fb)

HR_Uvod (/eusurvey/files/6bfc9d48-cd5c-4603-9c68-5c45989ce864)

HU_Adatvédelmi nyilatkozat (/eusurvey/files/76f442e6-3e2d-4af3-acce-5efe8f74932b)

HU_Bevezetés (/eusurvey/files/3ea8491d-429d-4c8f-be30-82db40fa59c5)

IT_Informativa sulla privacy (/eusurvey/files/e2eb5a94-9e5e-4391-a8e3-35f9e151310b)

IT_Introduzione (/eusurvey/files/aa3bf020-9060-43ac-b92b-2ab2b6e41ba8)

LT_Pareiškimas apie privatumo apsaugą (/eusurvey/files/ab30fabd-4c4e-42bc-85c5-5ee75f45805d)

LT_Ivadas (/eusurvey/files/d5a34e68-4710-488a-8aa1-d3b39765f624)

LV_Ievads (/eusurvey/files/3a9bd2b1-7828-4f0e-97f1-d87cf87b7af1)

LV_Konfidencialitātes paziņojums (/eusurvey/files/7156fdc0-b876-4f73-a670-d97c92e6f464)

MT_Dikjarazzjoni ta' Privatezza (/eusurvey/files/03139a3f-7b5f-42c0-9d2f-53837c6df306)

MT_Introduzzjoni (/eusurvey/files/ceb27908-207c-40cf-828a-6cf193731cdf)

NL_Inleiding (/eusurvey/files/ca756d80-8c02-43e1-9704-3148a13c8503)

NL_Privacyverklaring (/eusurvey/files/83d9394e-b179-442f-8a1b-41514ad072df)

PL_Oświadczenie o ochronie prywatności (/eusurvey/files/15612e0b-807d-4c6e-af1c-d65fe4ec9ddb)

PL_Wprowadzenie (/eusurvey/files/df9e1828-bbd0-4e4a-90bb-ec45a8bf46da)

PT_Declaração de privacidade (/eusurvey/files/50a6e820-91bc-4531-9a0f-47b3685753d7)

PT_Introdução (/eusurvey/files/003979c0-5277-41e9-8092-2de66d57ca00)

RO_Declarație de confidențialitate (/eusurvey/files/25c135c6-ce01-4081-a83e-53e86086797e)

RO_Introducere (/eusurvey/files/4334379b-e465-43a5-a944-8602090b0bf5)

SK_Vyhlásenie o ochrane osobných údajov (/eusurvey/files/7fab071c-85f9-47eb-aaa9-949f2239701d)

SK_Úvod (/eusurvey/files/e45df825-5e71-4172-b2ec-e07789cc3966)

SL_Izjava o varstvu osebnih podatkov (/eusurvey/files/498ec1f0-3405-4454-9aa6-40607efe118f)

SL_Uvod (/eusurvey/files/1b0b239a-630d-4d36-a92f-d4b758d41ddc)

SV_Inledning (/eusurvey/files/e9111c5b-4637-4ea1-b235-ece85ef8fe1a)

SV_Regler för skydd av personuppgifter (/eusurvey/files/0d8275b2-8344-4895-8c09-51d075671061)

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