

ROADMAP	
TITLE OF THE INITIATIVE	Initiative on a clean and open Internet: procedures for notifying and acting on illegal content hosted by online intermediaries.
TYPE OF INITIATIVE	X CWP • Non-CWP • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG MARKT
EXPECTED DATE OF ADOPTION	Month/Year: Q4 2012
VERSION OF ROADMAP	No: 2 Last modification: Month/Year: June 2012

This indicative roadmap is provided for information purposes only and is subject to change.
It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition	
(i) What is the political context of the initiative? (ii) How does it relate to past and possible future initiatives, and to other EU policies? (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?	
<p>(i) Notice-and-action' (N&A) procedures begin when someone notifies a hosting service provider – for instance a social network, an e-commerce platform or a company that hosts websites – about illegal content on the internet. Such content could be, for example, racist content, child abuse content or spam. The procedures are concluded when a hosting service provider acts against the alleged illegal content. 'Action', in accordance with Article 14 of the E-commerce Directive, can consist of removing or disabling access to illegal content by a hosting service provider. Individual businesses apply their own N&A rules and procedures and some Member States have legislation on N&A procedures in place. N&A procedures are at the heart of debates on the freedom of speech, innovation, security and the dangers of the internet in particular for vulnerable groups.</p> <p>(ii) The E-Commerce Directive (Directive 2000/31/EC) contains a scheme for the exemption, from liability, for certain internet intermediary services (mere conduit, caching and hosting) on the basis of which hosting service providers may have to act when notified of (alleged) illegal content. The Directive provides therefore a basis for notice-and-action procedures without regulating them. It also encourages the establishment of European self-regulatory N&A procedures, and it obliges the Commission to assess the functioning of these N&A procedures when evaluating the Directive. N&A procedures can tackle all forms of illegal information and activities and therefore cover many situations: from infringements of intellectual property rights (IPR) and illegal gambling sites to slander, defamation and unlawful sales of medicines. The impact assessment on the revision of the Intellectual Property Rights Enforcement Directive will address the role of all intermediaries including online intermediaries in assisting in efforts to inhibit differing forms of IPR infringements. The Directive on combatting the sexual abuse and sexual exploitation of children and child pornography contains an obligation for Member States to ensure that child pornography is taken down.</p> <p>(iii) The Commission held a public consultation on electronic commerce and on the E-Commerce Directive in the second half of 2010. A vast majority of the 420 respondents to the consultation expressed concerns about the fragmentation of N&A procedures throughout the EU. A Staff Working Paper on "online services, including e-commerce, in the Single Market analysed this issue in more detail. In January 2012 the Commission announced an initiative on notice-and-action procedures in its Communication on "A coherent framework to build trust in the Digital single market for e-commerce and online services".</p>	
What are the main problems which this initiative will address?	
<ul style="list-style-type: none"> • A lack of legal certainty and predictability resulting from conflicting jurisprudence and the fragmentation of N&A procedures across the EU, which can hamper innovation and growth. • Alleged too limited or too slow takedown of illegal information. • A lack of transparency on hosting service providers' individual N&A procedures and practices. • Instances of conflicts with fundamental rights such as the freedom of expression, data protection, protection of privacy and the right of due process. 	
Who will be affected by it?	
The initiative will have a horizontal scope in the sense that it will cover all types of online services (including entertainment, adult, health, gambling etc.) representing many societal interests. Stakeholders include hosting	

<p>service providers, organisations that notify different types of illegal content to hosting service providers (for instance, child abuse hotlines, law enforcement bodies or IPR holders), civil rights organisations, Member States and citizens in general.</p>
<p>(i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)</p>
<p>The cross-border nature of the internet, the existing fragmentation of N&A systems, the lack of development of regulatory codes at European level and conflicting jurisprudence within and across Member States justify an analysis of the need for EU action.</p>

B. Objectives of the initiative
<p>What are the main policy objectives?</p>
<ul style="list-style-type: none"> • Contribute to developing trust and therefore growth in (cross-border) online services, thus enhancing the functioning of the Digital Single Market. • Contribute to combating illegality on the internet. • Ensure the transparency, effectiveness, proportionality and fundamental rights compliance of N&A procedures. • Ensure a balanced and workable approach towards N&A procedures, with a focus on fundamental rights and the impact on innovation, growth.
<p>Do the objectives imply developing EU policy in new areas?</p>
<p>No.</p>

C. Options
<p>(i) What are the policy options being considered? (ii) What legislative or 'soft law' instruments could be considered? (iii) How do the options respect the proportionality principle?</p>
<p>The impact assessment will address a number of issues including the requirements for a notice; accessibility and user-friendliness of means to notify illegal content; possibilities for hosting service providers to provide feedback to notice providers; means to address abusive notices and abusive actions against legal content; the time frame for a hosting service provider to act following a notice; the need to inform or consult the provider of the alleged illegal information.</p> <p>Several options including no EU action, European soft law (such as already piloted in the Memorandum of Understanding on the sale of counterfeited goods) and legislative instruments will be assessed, in particular as regards their proportionality.</p>

D. Initial assessment of impacts
<p>What are the benefits and costs of each of the policy options?</p>
<p>Depending on the outcome of the impact assessment, the initiative could in particular have the following benefits:</p> <ul style="list-style-type: none"> • decreased business risk for intermediaries that would act in compliance with a more unified framework; • better protection of fundamental rights and in particular of the freedom of speech and the right to fair process. • on the supply-side, faster action against illegal content online, a reduction of unfair competition and as a consequence greater growth of licit online businesses; • on the demand-side, improved consumer/citizen trust in online services in general, boosting investment, new entry, growth and job generation within the EU; <p>It might also lead to the following costs:</p> <ul style="list-style-type: none"> • an additional burden on notice providers if they would have to provide more detailed notices; • increased costs for certain online intermediary service providers if there would be additional obligations as regards for instance feedback to notice providers or consultation of content providers.

<p>Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?</p>
<p>i) and ii) No additional administrative burdens are foreseen. iii), iv) and v) No transposition problems are anticipated.</p>
<p>(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?</p>
<p>i) Yes. ii) The impact assessment work started in October 2011. iii) and iv) The IA Steering Group was set up in October 2011 and includes all interested DGs.</p>
<p>(i) Are any of the options likely to have impacts on the EU budget above €5m? (ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>No.</p>

E. Evidence base, planning of further work and consultation
<p>(i) What information and data are already available? Will existing impact assessment and evaluation work be used? (ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when? (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)? (iv) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>The above-mentioned consultation on e-commerce, two main studies on the economic impact of the E-Commerce Directive, and on the liability of Internet intermediaries (see http://ec.europa.eu/internal_market/e-commerce/directive_en.htm#consultation), a study on the transposition of the liability exemptions regime in all Member States, targeted stakeholder consultations and a public consultation are part of the evidence base.</p>
<p>Which stakeholders & experts have been or will be consulted, how, and at what stage?</p>
<p>Stakeholders have already been consulted through the extensive 2010 public consultation on e-commerce. Specific interest groups and businesses have already been consulted through bilateral meetings. Member States are being involved in particular through the expert group on e-commerce (http://ec.europa.eu/internal_market/e-commerce/expert_en.htm).</p> <p>A specific public consultation on N&A procedures is planned for 4 June 2012. In parallel an expert group on notice and action procedures has been set up.</p>