

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

Belgium

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

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- * 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

12383069253-19

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

The proposed definition is very broad and covers many types of services. This raises 2 issues: 1. Whether a single "all-encompassing" policy to all these services is efficient given these services operate in different markets, with different business models, and what applies to one service might not apply to another. 2. It's clear that what's important is focusing on what the platform does rather than its status. It's clear to us that online services, online platforms, whatever their name, must play by the rules. There needs to be a level playing field between operators providing the same service, whether big or small, offline or online, etc. For example, as we explain in more details in other parts of this survey, we believe one thing which needs to be clarified, in the context of copyright, is that those who distribute or intervene in distribution of creative works are active and responsible for obtaining copyright licences under the copyright directive, regardless of their status.

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:

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

A considerable "power gap" exists between certain online platforms and their suppliers, especially SMEs, as certain platforms have become indispensable trading partners.

The structure of certain online platforms' business model places them in a position of indispensable trading partner, "essential facility" or "gatekeeper", when the number of visitors accessing the platform greatly surpasses that of its competitors, regardless of revenue generated. There's also a "network effect" from which platforms like YouTube benefit: reaching a greater number of users makes the platform more attractive for content providers and advertisers and featuring a greater range of content in turn makes it more attractive for users. This makes it very difficult or impossible for smaller competitors to provide an alternative to YouTube. Assessing market power through revenue-based market share only is therefore not fit for purpose in the case of online platforms.

Excessive market power repeatedly leads to unfair trading practices in the digital market. Independent record labels are often presented with "take it or leave it" terms which do not meet acceptable standards. YouTube and Apple both leveraged their market power to the detriment of suppliers and discriminated between "major" suppliers and SMEs.

IMPALA was even forced to launch a competition complaint regarding YouTube's conduct:

- trying to impose unfair licensing conditions to independents as regards distribution through its new subscription-based platform, including remuneration below market value and a "least-favoured nation" clause ensuring the royalty rate of all independents could be aligned with the lowest rate agreed.

- threatening to remove content and block access to (1) distribution services through its free ad-based platform, and to (2) its content management system used for monetisation of user-generated content on the free ad-based platform, unless non-negotiable licensing conditions were accepted.

- providing discriminatory access to its new subscription platform by applying dissimilar conditions to equivalent transactions, thus putting the independents at a competitive disadvantage vis-à-vis majors.

- engaging in a pattern of aggressive commercial behaviour, ranging from overly stringent NDAs to obtuse contractual language resulting in agreements lacking clarity.

In Apple's case, as it was preparing the launch of its new music service, Apple Music, it attempted to discriminate between independent and major music companies by not paying for the usage of independents' music during the 3 month trial period it offered to potential customers. This was an attempt to have small content suppliers absorb customer-acquisition costs of the new online platform. It took a united stance by independents in Europe and across the world for Apple to address concerns over contractual terms and pay for all usage of Apple Music under the free trials, as well as to modify a number of other terms and issues.

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

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

Please provide the list of online platforms with which you are in regular business relations and indicate to what extent your business depends on them (on a scale of 0 to 3). Please describe the position of your business or the business you represent and provide recent examples from your business experience.

	Name of online platform	Dependency (0: not dependent, 1: dependent, 2: highly dependent)	Examples from your business experience
1	YouTube	2	
2	Spotify	2	
3	Deezer	2	
4	Apple Music	2	
5	Soundcloud	2	

How often do you experience the following business practices in your business relations with platforms?

The online platform ...

* A parity clause is a provision in the terms of use of an online platform or in an individual contract between the online platform and a supplier under which the price, availability and other conditions of a product or service offered by the supplier on the online platform have to maintain parity with the best offer of the supplier on other sales channels.

	Never	Sometimes	Often	Always
requests me to use exclusively its services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies "parity clauses" *	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies non-transparent fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies fees without corresponding counter-performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
limits access to data or provides it in a non-usable format	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
puts significant constraints to presenting your offer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
presents suppliers/services in a biased way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
refuses access to its services unless specific restrictions are accepted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
promotes its own services to the disadvantage of services provided by suppliers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you do experience them, what is their impact on your business activity (on a scale from 0 to 3).

Impact on my business:

The online platform ...

* A parity clause is a provision in the terms of use of an online platform or in an individual contract between the online platform and a supplier under which the price, availability and other conditions of a product or service offered by the supplier on the online platform have to maintain parity with the best offer of the supplier on other sales channels.

	0 – no impact	1 – minor impact	2 – considerable impact	3 – heavy impact
requests me to use exclusively its services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies "parity clauses" *	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies non-transparent fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies fees without corresponding counter-performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
limits access to data or provides it in a non-usable format	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
puts significant constraints to presenting your offer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
presents suppliers/services in a biased way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
refuses access to its services unless specific restrictions are accepted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
promotes its own services to the disadvantage of services provided by suppliers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you are aware of other contractual clauses or experience other potentially problematic practices, please mention them here

1000 character(s) maximum

-Overly stringent non-disclosure agreements;
-Obtuse contractual language resulting in agreements lacking clarity;
-'Least favoured nation' clauses ensuring the royalty rate of all independents could be aligned with the lowest rate agreed with any label worldwide;
-Provisions regarding delivery of content that restricts the freedom labels and their artists to decide how to handle releases and marketing such as exclusives;
-A host of other unfair terms.

* Please briefly describe the situation

3000 character(s) maximum

See previous and following responses.

[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

See also response to earlier question "Please list the problems you encountered...".

As explained above, in 2014 YouTube presented a number of independent music companies with a non-negotiable template agreement and warned them that unless they signed up to the bundled terms of that agreement for distribution through both its existing free ad-based service and its proposed new premium music subscription service, YouTube would terminate their current agreements in relation to its existing free service and thus remove their music video content from its online music video service. Losing the ability to manage content on the world's biggest video sharing platform is catastrophic for labels, as it prevents them from providing what is now considered to be one of the most fundamental services professional labels offer artists - managing content on YouTube and making sure that artists generate revenues from plays of their official videos as well as plays of User-Generated Content (UGC) containing their music. IMPALA understands that the non-negotiable terms on offer were highly unfavourable, and that these bundled new terms, which were being offered across both services, would have given YouTube a package of rights that would undervalue existing rates in the marketplace from existing streaming partners and for this reason, these independent companies did not wish to sign. IMPALA also understands that these terms were not comparable to the terms that had been reached with the majors.

IMPALA filed a complaint with the European Commission, which it later withdrew in September 2015 as it was specific to a set of circumstances from 2014, some of which had changed. In the meantime Merlin, the digital rights agency for independents, had managed to strike with YouTube a more favourable deal for its members. In this regard we would just flag that this agreement reflects the fact that the independents could not afford to not be on the world's biggest music distribution service. It does not mean that the new terms themselves are satisfactory or that they reflect terms upon which other services are licensed. In addition, we observe an apparent pattern of behaviour with recent reports of similar YouTube conduct being repeated over their new service YouTube Red. At the end of September, industry website Music Business Worldwide reported that YouTube had sent out e-mails to content owners, explaining that their videos would no longer be available for public display or monetisation in the US, if they did not sign the terms & conditions for a new subscription service by the 22nd of October.

We believe the current situation highlights a wider issue in the functioning of the digital market and the power of certain players vis-à-vis suppliers. As also seen in other sectors such as book publishing where independent publishers had similar issues with Amazon for example. Competition policy today is inadequate to deliver proper competition. We also lack other tools.

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

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

- Yes
- No

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

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

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

Liability exemptions for online service providers were introduced for technical forms of hosting, not for those effectively operating a content distribution service. Today some services try and argue they should benefit from the exemption, when they clearly go beyond pure technical hosting.

The definition of hosting (Art. 14 e-commerce directive) was initially meant to cover 'hosting-only' providers. We believe only strictly-speaking 'host providers' (i.e. only hosting in a neutral way) should enjoy general exemption from liability.

A closer look at certain platforms however reveals that the business of some of them is based on actively encouraging the upload of as much as attractive (illegal) content as possible and distributing it to as many recipients as possible. Structurally, the business of such services is more that of a publisher/distributor than that that of warehouse keeper. No publisher of copyrighted content is exempted from liability. Consequently, such platforms must bear reasonable responsibility for the content they distribute, especially if they also ensure that the uploaders of illegal content remain anonymous. In combination with the high level of anonymity of uploaders, the general exemption from liability, although it clearly was not intended to apply beyond technical hosting, has resulted in certain platforms arguing they are exempted from liability and/or protected by anonymity. The majority of services unresponsive to notices also argue they operate in full anonymity, in breach of article 5 of the E- Commerce Directive, which obliges service providers to provide the geographic address at which they are established. Rightholders should hence be able to notify them directly at their address. Operating transparently should be a condition to benefit from the liability exemptions foreseen by the E-Commerce Directive.

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

There is a "value gap" caused by online music distributors who try to claim to be mere passive hosts in order to avoid having to be properly licensed. We believe that Recital 42 is quite clear. What needs to be clarified, in the context of copyright, is that these online services which distribute music do not qualify as "passive, neutral" hosts. This value gap needs to be closed by clarifying that those who distribute or intervene in the distribution of creative works are active and responsible for obtaining copyright licences under the copyright directive, and are not neutral carriers who can benefit from the so-called 'safe harbour', as some of them continue to claim. These platforms either remunerate rights holders below market value or do not pay at all. This is detrimental to the music sector as a whole, all along the value chain and of course to consumers whose thirst for new music has never been higher. Artists and their partners such as labels need proper revenues to innovate and take risks in making new music. YouTube for example is now the world's biggest music service, yet one which is clearly "underlicensing". The current situation is detrimental to the music eco-system as a whole, from authors and performers all the way to properly licensed music services such as world leaders in streaming Spotify & Deezer - both European. By attempting to hide behind the 'safe harbour', YouTube and others are putting downward pressure on rates and effectively devaluing music.

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

As regards notice and action procedures for copyright infringing content, they do not work for SMEs, which do not have the resources to continuously monitor hundreds of platforms hosting infringing content and thousands of "sharing point" containing links to these files. The volume makes efficient notice and action procedures impossible to perform manually, while software-based automated solutions are far too expensive for SMEs. And the content notified usually goes straight back up. Our view is that i) notice and takedown should become 'notice and stay down' (i.e. a host provider should prevent a flagged content from reappearing on its platform), and new rules should require online intermediaries to remove the notified file, identical copies of the file, and prevent re-uploading of the same file; and ii) cyberlockers should remove the file notified, not just the link, as in the case of cyberlockers thousands of links point to one file.

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

Content providers should be consulted only once any action against the content is taken. Speediness is essential for the notice and action system to be effective. If it appears that the content was actually legal, it should be re-uploaded.

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

1500 character(s) maximum

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

- Yes
 No

Please explain

As mentioned above, our view is that i) notice and takedown (or "action", as it is now called by the European Commission) should become 'notice and stay down' (i.e. A host provider should prevent a flagged content from reappearing on its platform, which would prevent future infringement of the same work), and new rules should require online intermediaries to remove the notified file, identical copies of the file, and to prevent re-uploading of the same file; and ii) cyberlockers should remove the file notified, and not just the link, as in the case of cyberlockers thousands of links point to one single file. Removing only one link to the illegal file is useless.

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

It needs to be recognised that intermediaries have a duty of care - indeed, all intermediaries have responsibilities and should exercise all due diligence to stop their customers from carrying out and/or aiding large-scale infringement. (Due diligence should be better defined, as well as commercial scale.)

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

Liability exemptions for online host providers were initially introduced through the E-Commerce Directive.

However, the general exemptions enable commercially motivated services to try and profit from disseminating vast amounts of illegal content. They try and argue they benefit from the protection granted by adhering to inefficient notice and action procedures (more on this above under 'notice and action').

The general exemption of host providers from liability for infringing third party content is being abused by operators who claim they benefit but are clearly going beyond neutral hosting. The result is some operators with commercial intent are disseminating masses of illegal content and generate profits for themselves, without properly remunerating rightholders.

The liability exemptions are abused by services such as YouTube. The fact that they try to claim they can rely on the host exemption amounts to unfair competition for other competing music services which build their business around properly negotiated licensing agreements. YouTube is in a position to get music companies to agree to terms that are completely out of step with the marketplace for streaming. YouTube thinks that when it cannot come to an agreement with rightholders it can say it relies on the host exemption. It is effectively "having it both ways".

The definition of hosting (Art. 14 E-Commerce Directive) is intended to cover 'hosting-only' providers. We believe only strictly-speaking 'host providers' (i.e. only hosting in a neutral way) should enjoy general exemption from liability.

The business of certain host providers is like publishers rather than that of warehouse keepers.

No publisher or distributor of copyrighted content is exempted from liability.

Consequently, the Copyright directive must confirm the need for platforms who provide that role to have a licence for the content they distribute, especially if they also ensure that the uploaders of illegal content remain anonymous. In combination with the high level of anonymity of uploaders, the general exemption from liability has created a legal vacuum whereby all parties involved in copyright infringement are either exempted from liability or protected by anonymity.

The majority of services unresponsive to notices also argue they can operate in full anonymity, in breach of article 5 of the E-Commerce

Directive, which obliges service providers to provide the geographic address at which they are established. Right holders should be able to notify them directly at their address. Operating transparently should be a condition to benefit from the liability exemptions foreseen by the E-Commerce Directive.

We also believe the balance between anonymity and liability must be reviewed more generally.

But for now, there is a copyright question and this should be dealt with, leaving time to look at the wider issues around platforms.

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?

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

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

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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