

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)

International Video Federation, 83 rue Ducale, B-1000 Bruxelles,
Belgium, info@ivf-video.org

* 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

7013477846-25

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

Significant differences exist between the various platforms falling under the definition above. One critical, cross-cutting difference is that many platforms falling within this definition operate illegally. Thus, lawful platform operators and the right holders working with them are forced to compete with illegal operators that disregard legal requirements in multiple areas (e.g. copyright, consumer protection, taxation, and data privacy). The presence of illegal platforms in a specific market greatly harms the ability to raise financing and attract risk capital for the purposes of producing and distribution content, thus impeding innovation and development, or even the sustainability of doing business in the said market. Any regulatory intervention related to platforms must therefore aim to improve distinctions between legal and illegal operators, and to disadvantage those who attempt to or operate illegally.

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

Online platforms provide an additional distribution channel for film and television content.

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

Consumers face considerable risk as the result of:

- the prevalence and prominence of illegal platforms that disregard legal requirements with regard to consumer protection, taxation, data privacy and copyright,
- the fact that search engines give high visibility to illegal platforms and relatively less visibility to the many legal offerings that are available around Europe.

In addition, consumers are exposed to malware and fraud as the result of platforms operating illegally, thus corroding the consumer experience and consumer trust for online platforms generally and, as a result, inhibiting growth and innovation. For example, the UK-based Industry Trust for Intellectual Property Awareness has published a survey that questioned over 4,000 people in the UK who had visited pirate sites. 77% said that they had downloaded some kind of malware because of pirate websites.

The prevalence of malware and fraud associated with illegal platforms and sites further confirms that these sites operate contrary to the goals of the Digital Single Market Strategy. Rather than fostering innovation and the internal market, they erode consumer trust and the application of the rule of law. Thus, they impede the very innovation that the DSMS seeks to promote.

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

It is elementary that service providers should identify themselves. Art 5 of the E-Commerce Directive (ECD) embodies this principle. Unfortunately, illegitimate service providers routinely hide their identities with impunity, despite Member States' obligation to ensure that such requirements are respected. We propose that the Commission explore how to more meaningfully apply this already existing requirement.

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

Some, but not all, platforms have sufficient terms of use. But too often even sufficient terms of use are ineffective because intermediaries often decline to take action against illegal activity, even though such action may be permitted by their terms of use and/or EU law.

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			
2			
3			
4			
5			

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 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 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 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 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

[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

The IVF is a trade association and does not engage in commercial licensing negotiations or other commercial activities. However, the members of our national member associations do engage in such activities. Any platform making a copyright work available or performs any other act protected by copyright without the authorization of the right holder(s) is operating in violation of EU and national copyright laws and is subject to the remedies provided for by law. In negotiations related to the licensing of film or television works, it is not unusual that right holders and platforms may disagree about terms. Both sides may choose to refer to the legislation defining their rights and potential liabilities in order to support their respective negotiating positions. If no agreement is reached, the platform has no authorization to make the work available or perform any other act protected by copyright. If it persists without authorization, for whatever reason, it violates the law and can be brought to justice by civil or criminal means, as appropriate.

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

*Please explain

The IVF is a trade association, the members of which are associations representing businesses active in all segments of the film and audiovisual sector in Europe. Their activities include the development, production, and distribution of films and audiovisual content as well as their publication on digital media and in online channels.

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

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

The CJEU has provided sufficient guidance on this concept (L'Oreal, Sabam) but there is a general unwillingness on the part of platforms to accept the application of the concept on a national level in specific cases. There is no need to make changes to the ECD, and we believe that the CRD, as interpreted by the CJEU, already embodies the relevant principles. The Commission may wish to explore alternative means to clarify (via a recommendation, communication or separate legislative instrument) that sites which are actively involved in content distribution cannot avail themselves of the liability privileges.

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

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

Notice and Action procedures should include efficient and result-oriented counter-notice mechanisms, so that the provider of content is given the opportunity to give views. It is important that a counter-notice procedure cannot be exploited to frustrate the legitimate take down process. In particular, any counter-notice mechanism must not delay the take down process in cases of obvious infringement (e.g well know titles playing in cinemas, popular TV shows, etc.)

The required standards of evidence on the part of rightholders need to be fair and not overly burdensome. We refer to the copyright presumption (Art 5 ECD). In the case of obvious copyright infringement (e.g. films in theatrical release), platforms should immediately remove the content to prevent further and ongoing infringement from occurring.

Some platforms and hosting providers argue that the illegality of the content should be verified with the content provider before taking it down. National courts have denied this argument where it concerns obviously infringing content on a balance of probabilities basis. It is an argument often used in the media but in practice this is a fringe issue.

In our experience, cases of erroneous takedown requests are extremely rare.

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

Notice and action should go beyond taking down links/content. Notice and action should as a minimum include the concept of a permanent take down of the hosted content and the prevention of re-uploading of the same title (i.e., "takedown and staydown"). Criteria developed by national caselaw include closing accounts of repeat infringers (by the platforms), verification of contact details of repeat infringers, title re-upload prevention by content recognition technology, closing down infringement-inducing categories on websites (CAM, Screener, Blu-Ray) and ultimately closing down of structurally infringing sites. Short response times (24 hours or less) are also vitally important for the film and television sectors.

Take down of individual incidents of infringement is not by itself effective and does not attain the goal of stopping the ongoing infringement. When only the particular link or file is removed (after some degree of infringement has occurred), the infringement will simply continue unabated because the removed file will be replaced by any number of new infringing files, typically before the original file is even removed. What is needed is a requirement to take down not just the individual link or file, but once the rightholder identifies audiovisual content such as a film title or TV programme, the site should be obligated to remove that content, all other identical copies of that content, and prevent users from re-uploading the same content. Experience has long since shown that this is relatively uncomplicated to achieve to do (see e.g., BREIN v. Mininova, District Court Utrecht 26 August 2009).

While right holders have invested considerable time and effort in pursuing the current notice processes, sending millions of notices, their effectiveness is thwarted by certain practices specifically intended to frustrate the process described above. These practices include failure promptly to delete the stored files (actually taking down the infringing content); failure to delete identical copies of that content on the notice recipient's servers; and failure to prevent the re-upload of the same content. By deliberately frustrating the process, such platforms have become involved in the content and are therefore no longer able to avail themselves of the liability privileges in the ECD. By not deleting the infringing content itself, the file hosting service exposes itself to liability for direct copyright infringement.

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

All forms of illegal content should be removed as quickly as possible especially when it concerns cases of manifestly illegal content such as newly-released films and current TV shows. Current law imposes a duty of care on online intermediaries to take action expeditiously in the face of manifest infringement occurring on their platforms. We encourage the Commission to include this matter in its future enforcement agenda by way of facilitating voluntary agreement or in the context of the IPRED review.

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

1500 character(s) maximum

Such an obligation could be considered for any information society service providers "who host information provided by recipients of their service" as stated in Recital 48 of the ECD and who "are best placed to bring such infringing activities to an end" as per Recital 59 of the CRD; which include, for example: search engines, registrars, registries, hosting providers, advertisement networks, payment processors, whois privacy protection services, etc.

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

1500 character(s) maximum

Online intermediaries are under a general obligation to act as a diligent economic operator, and are thus beyond the liability privileges.

Specific actions of diligent operators (as often recognised by the Courts) include, but should not be limited to:

- policing linking sites which have already published links for the relevant work, but also a general market observation duty for all problematic linking sites.
- keyword content recognition on the basis of popular film & TV titles and/or infringement-inducing website categories names such as "CAM", "Screener" and "Blu-Ray".
- visual and audiovisual content recognition filters, like Youtube's "ContentID" audiovisual filtering system or photo detection software as imposed on Google by the District Court of Hamburg in the Mosley case.
- prevention of re-uploads of infringing content by infohash blocking or similar technology.
- a repeat infringer policy such as for instance closing down accounts of repeat infringers (on platforms).
- verification of contact details of repeat infringers.
- verification of contact details of websites by hosting providers.

These measures are not contrary to the prohibition to impose "a general obligation to monitor" of Art 15 ECD. By way of example, word filtering has been validated by the German Federal Supreme Court and was declared as being in line with the SABAM caselaw of the CJEU. (Rapidshare cases).

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

Should this obligation be limited to those hosting service providers, which receive a sizeable amount of notices per year (e.g. more than 1000)?

- 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

Do you think a minimum size threshold would be appropriate if there was such an obligation?

- 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

A significant part of the enforcement strategy pursued by the members of the IVF's national member associations is to lessen the impact of copyright infringement by reaching out to the platforms/websites that make available unauthorized copyright content. In case of incidental infringement, right holders seek to remove infringing files by way of individual takedown notices (takedown) and in cases of structural infringement, efforts are made to agree on taking preventive steps to filter out infringing content (takedown/staydown). Following the setting of the legal precedent by civil and criminal courts that such platforms often directly infringe copyright and that they can be ordered to take such measures, many of the platforms with a business model focussed on infringement have moved offshore, operate anonymously, and are entirely unresponsive to notices.

We take the view that all online intermediaries have a role to play in preventing these sites from using their services (anonymously) to infringe copyright. As has been established in CJEU and Member State case law, hosting providers, access providers, domain name providers and ad-brokers/payment providers can be required to block or stop the provision of services to illegal sites (Art 8.3 CRD / Art 14 ECD).

Research has shown that this is an effective way of addressing the issue (without the need to start legal actions against individual consumers). See also the Carnegie Mellon University study which found a direct link between siteblocking and a substantial increase in the consumption of legal content online.

Search: In our view, there is a need for further efforts by search engines, preferably on a voluntary basis, to (a) further adjust their algorithms more effectively to demote infringing sites and redress the disadvantages that render lawful sites and services less visible; (b) delist from search results entirely any site that has been found illegal and which is subject to injunctive relief; and (c) stop providing autocomplete suggestions that direct users toward illegal sites.

Illegal platforms: The prominence of platforms that violate civil and criminal laws, their high visibility via search, and their ability to operate in flagrant violation of applicable laws (like Art 5 ECD) undermine the rule of law and impose social costs over and above the harm to creators and their business partners of the infringement itself. One example among many is the tendency of illegal sites to ignore national laws e.g. for the protection of minors, in contrast to legitimate sites that abide by those laws. Similarly, the prevalence of malware and fraud associated with illegal sites (discussed above) further confirms that the operation of these sites is contrary to the goals of the DSM Strategy. Rather than fostering innovation and the internal market, they erode consumer trust and the application of the rule of law and thus impede the very innovation that the DSMS seeks to promote.

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

LV_Īevads (/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)

Contact

✉ CNECT-PLATFORMS-CONSULTATION@ec.europa.eu
