

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 30 December 2015 (12 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

United Kingdom

* 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

684821118979-74

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

1) the need for a new definition of 'online platforms' has not been explained. It is very difficult to assess the utility of any definition or propose a new one without knowing its purpose. 2) the definition is overbroad: it adopts a one-size-fits-all approach to a variety of Internet intermediaries providing widely different types of services. Again, it is wholly unclear what purpose this serves. 3) the definition problematically focuses on the medium itself rather than the particular service at issue: collaborative economy platforms have very little in common with app stores or search engines. 4) it is utterly unclear what is meant by certain key terms, such as 'value', which remain undefined: what is the 'value' involved in social network transactions, apart from the advertising revenue gained by the owners of the site? If the Commission is intent on adopting a new definition, it should first explain why the existing definition of 'information society providers' is inadequate.

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 are the gateways to the exercise of freedom of expression in the digital age

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

As a freedom of expression organisation, we have encountered three major problems with Internet intermediaries ('intermediaries'), including social media platforms:

1) the language of Article 14 of the E-Commerce Directive ('ECD') gives an incentive to hosting services, which typically include social media platforms and sometimes search engines, to remove or restrict access to content merely upon notice. In the absence of clarity as to the ways in which intermediaries obtain 'actual knowledge' of 'illegality', companies restrict access to content merely on the say-so of private individuals or law enforcement agencies in the absence of a determination by a court that the material at issue is unlawful. In other words, legitimate content may be removed as a result of the risk-averse approach of companies to liability. This has an unacceptable chilling effect on freedom of expression (see section further below on the liability of Internet intermediaries, see also <https://lumendatabase.org/pages/about> which documents the types of takedown notices, which are sent to hosting services).

2) Intermediaries may remove or restrict access to content on the basis of their Terms of Service. While intermediaries should in principle be free to decide the type of content they are willing to host on their platform, they should not be enlisted by governments to remove content, which is legitimate. In our view, it is highly improper for governments to seek changes to companies' Terms of Service in order to facilitate the removal of content they deem undesirable or harmful rather than unlawful (see para. 67 of the UK's Counter-Extremism Strategy:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf).

3) Intermediaries should allow content, which is legitimate under international human rights law. At the very least, their community standards should be sufficiently clear so as to ensure predictability in the way in which they are applied. Similarly, companies should be far more transparent in the way in which they enforce their Terms of Service. Finally, companies should offer internal complaints mechanisms in order to challenge account closures or content removals, including in circumstances where the content at issue is lawful (see e.g. <https://onlinecensorship.org/>, a project which encourages companies to be more transparent about content taken down on the basis of their Terms of Service).

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

1. A link to their privacy policy
2. A link to their Terms of Service
3. A link to their complaint mechanism or notice-and-notice policy if any

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

Search engines, social media and video-sharing platforms such as Facebook or YouTube often apply their Terms of Service in ways which appear unpredictable or biased to Internet users. For instance, it remains unclear what 'praising' or 'supporting' terrorist groups might mean on Facebook. Platforms allowing users to find or share should therefore strive to adopt community standards which are as narrowly drafted as possible and provide practical examples of the way in which they apply those standards. For instance, the examples provided by Google in relation to 'Right to be forgotten' requests go some way towards explaining how it applies the criteria developed by the Court of Justice of the European Union and its own Advisory Council (<http://www.google.com/transparencyreport/removals/europeprivacy/?hl=en>)

In addition, companies providing social media, video-sharing, search or hosting services should be much more transparent about the way in which they enforce their Terms & Conditions in their Transparency reports. In particular, they should provide data about the number of pieces of content being taken down on the basis of their Terms of Service, especially in circumstances where a government made a request in the first instance.

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

N/A

USE OF INFORMATION BY ONLINE PLATFORMS

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

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

3000 character(s) maximum

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

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

- Yes
- No

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

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

- Yes
- No

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

- Yes
- No

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

- Yes
- No

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

- Yes
- No

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

3000 character(s) maximum

At the outset, we note that the premise of this set of questions is flawed. First, it appears to assume that copyright is generally vested in large private companies, that it can only ever have commercial value and that the use of copyrighted material should always be authorised. In our view, this narrow approach fails to take into account the broader interest in the dissemination of information for its own sake and the fact that an interference with copyright may be justified because it falls under one or more of the exceptions and limitations to copyright.

Secondly, the questions seem to assume that 'online platforms' unfairly rely on the conditional immunity afforded to them under the ECD. However, this ignores the purpose of safe harbour provisions (however flawed), including their vital importance for the protection of freedom of expression online. This also fails to recognise the well-documented abuses by copyright holders of the notice and takedown regime under the ECD and the Digital Millennium Copyright Act ('DMCA').

Finally, we note that as a freedom of expression organisation, we make our content available under a creative commons licence. This means that anyone is free to copy, distribute and display our work and to make derivative works, provided they give credit to our organisation, do not use our work for commercial purposes and distribute any works derived from this publication under a licence identical to this one. We also request those who use our content to tell us when they have been using it. As such, we never ask or expect others to seek our authorisation for the use of the content.

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

Please share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms

1500 character(s) maximum

No. From a CSO perspective, we believe that, in principle, content should only be taken down after it has been determined unlawful by a court or independent adjudicatory body. At a minimum, dispute resolution mechanisms dealing with copyright complaints should include (i) a counter-notice; and (ii) sanctions for abusive copyright claims. Where possible, a legal assistance programme should also be provided (see eg YouTube).

The drawbacks of the complaint mechanisms provided by online platforms are well-known. For most US companies, this means implementing the takedown provisions of the DMCA. Since content is immediately taken down as soon as a valid notice is given, there is only very limited scope for the material to be put back since it would imply that the content producer is willing and able to challenge a copyright notice with all the legal costs that might be incurred. This is unlikely in the vast majority of cases.

We note that some companies e.g. YouTube enable copyright holders to use content ID in order to resolve disputes unilaterally. This is a significant problem in circumstances where the material is used lawfully under one of the exceptions and limitations to copyright: it undermines both the creativity of internet users and the sharing of culture in general. Whilst YouTube also provides a mechanism whereby content ID claims can be challenged, which is welcome, it is unclear how it is reconciled with the above unilateral remedy.

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

As a civil society organisation, we produce content, but we also host third-party comments on our blog. We also use social media to promote our content.

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

- Yes
 No

*Please describe the situation.

3000 character(s) maximum

In our view, the liability regime and distinctions introduced by Articles 12-15 ECD are broadly fit for purpose. In particular, it is vital that Article 15 which prohibits Member States from imposing a general obligation to monitor on provider is maintained. However, Article 14 ECD dealing with liability for hosting could significantly be improved. First, Article 14 fails to clarify the circumstances in which 'actual knowledge' of 'illegality' is obtained. As a matter of due process of law, whether or not content is illegal can only ever be decided by a court or independent adjudicatory body. Accordingly, actual knowledge should in principle only be obtained by a court order. However, in the absence of greater clarity as to the definitions of those terms, intermediaries tend to remove content on the basis of the flimsiest of notices lest they face liability for that content. This has an unacceptable chilling effect on freedom of expression. Secondly, insofar as Article 14 constitutes the legal basis for 'notice-and-takedown' procedures, it does not require intermediaries to notify the content producer that a complaint has been made about his or her content. Content producers are therefore rarely given an opportunity to challenge the assertions made about the lawfulness of their content. More generally, they are not given a remedy to challenge the removal of lawful content by third-parties.

In our view, intermediaries should benefit from broad immunity from third party content, i.e. they should only be held liable for failing to remove content following a court order. Alternatively, 'notice-and-takedown' procedures should be replaced with 'notice-and-notice' mechanisms where appropriate. More generally, internet users should be given a remedy for wrongful removal of legitimate content.

For more details about the flaws of Article 14 ECD, see <https://www.article19.org/data/files/medialibrary/3670/Amicus-brief-Jezi-or-v-Poland-A19-submissions.pdf>

For the proper approach to Intermediary liability, see: https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf

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

In our view, the premise of this question is flawed: 1) it seems to assume that certain actors - as opposed to their services - should be subject to one particular set of regulation, in this case the ECD, rather than many. In our view, however, this would be a mistake. For instance, video-sharing sites such as YouTube may both allow internet users to upload videos on their site, in which case they should not in principle be held liable for that content, or promote their own content, much in the same way as traditional TV channels, in which case it may be appropriate for those services to be subject to the AVMS Directive. In general, however, platforms should not be held liable for content produced by others. The simple fact that they may technically be able to remove access to content upon notice should not be a sufficient reason to establish that they have 'control' over that content. 2) insofar as other intermediaries are concerned, it is difficult to answer the question without the Commission first defining what it understands by 'content distribution' and how it might be different, e.g. from the production of search results. 3) in any event, we believe that the concept of 'mere technical, automatic and passive' transmission of information is a sufficiently established yardstick against which to assess the liability of Internet intermediaries. To the extent that further clarification might be needed, it is for the CJEU to determine how this term should be interpreted.

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

Please provide examples

1500 character(s) maximum

No. To begin with, we note that the Commission seems to conflate the services provided by search engines, i.e. the production of search results in response to a search query, with linking, which is merely a technique allowing users to find content. Secondly, although we are aware that the services provided by search engines have sometimes been considered to be akin to hosting and sometimes akin to 'mere conduit', no strong case has been made that a further category of activity should be provided for under the ECD. To the extent that this distinction is relevant and should be clarified, it should be the subject of a referral to the CJEU. In any event, we believe it would be entirely inappropriate to seek to regulate 'linking' as the content being linked to is entirely under the control of another party and may vary over time. For more information on linking liability, see e.g. ARTICLE 19's amicus brief, page 5 ff., available from here: <https://www.article19.org/data/files/medialibrary/2843/11-11-14-AMICUS-switzerland.pdf>

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 specify.

500 character(s) maximum

E.g. genuine threats of violence, criminal harassment, privacy violations

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

1000 character(s) maximum

We believe that a notice-and-notice system as described in our Internet intermediaries: Dilemma of Liability policy would work well for disputes between private parties such as defamation, privacy and copyright claims. In our view, such a system would at least give content providers an opportunity to respond to allegations of unlawfulness before any action is taken.

By contrast, in cases involving 'criminal' content, such as incitement to terrorism, child pornography and 'hate speech', we believe that content should only be removed following a court order determining that the content at issue is unlawful. If however the situation is urgent, e.g. someone's life is at risk, law enforcement should be given statutory powers to order the immediate removal or blocking of access to the content at issue. However, any such order should be confirmed by a court within a specified period e.g. 48 hours.

For more details, see:

https://www.article19.org/data/files/Intermediaries_ENGLISH

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

As a matter of due process, we believe that individuals should be given an opportunity to give their views on the alleged illegality of the content at issue. This is especially the case in cases involving defamatory or copyright infringing content in circumstances where defences to defamation or exceptions or limitations to copyright might be applicable. Similarly, individuals should be given an opportunity to challenge allegations that content amounts to incitement to terrorism or hate speech. This is particularly important given that more often than not, 'hate speech' and terrorism laws are unduly broad and may criminalise legitimate expression (see e.g <https://www.article19.org/resources.php/resource/37822/en/france:-social-media-investigations-and-arrests-violate-the-right-to-freedom-of-expression>)

We recognise, however, that in limited circumstances, such as child pornography or threats of violence, it may be impractical or indeed counterproductive to give notice. In such cases, it may therefore be permissible for applications to be made before a court on an ex parte basis.

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

1500 character(s) maximum

See above. We are not in a position to comment with any degree of specificity on e.g. illegal offer of goods and services, infringement of consumer rules etc. However, as a general rule, we note that only a court would be qualified to determine whether the content at issue is unlawful. This necessarily implies that the party accused of committing a crime or a wrong should be given a say as to the illegality of his or her conduct.

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

- Yes
 No

Please explain

If the 'action' involves the blocking of an entire site (which would likely be disproportionate), it should not remain effective over time since the content of a website is not static. Moreover, the lawfulness of a particular piece of content is likely to depend on the particular context of its publication. For instance, a photograph published in breach of privacy may nonetheless be lawful if there is a higher public interest in its publication. A rigid 'takedown and stay down' principle would prevent an analysis of the particular circumstances of each case and would therefore likely be a disproportionate restriction on the right to freedom of expression.

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

ARTICLE 19 strongly opposes any duty of care being imposed on Internet intermediaries. There is no principled reason why certain types of content should benefit from such a duty any more than others. In *SABAM v Scarlet Extended*, for instance, the CJEU held that there was “nothing whatsoever in the wording of that provision [of the EU Charter of Fundamental Rights] or in the Court’s case-law to suggest that that right [to intellectual property] is inviolable and must for that reason be absolutely protected” (see CJEU, Case C-70/10, *SABAM v Scarlet Extended*, 24 November 2011, para. 43).

More generally, a duty of care would inevitably require service providers to constantly monitor their networks, which would be both in breach of Article 15 ECD and violate the rights to freedom of expression and privacy (see CJEU, Case C-70/10, *SABAM v Scarlet Extended*, 24 November 2011 and C-360/10, *SABAM v Netlog*, 16 February 2012). The Commission should therefore not assume that should such an obligation be imposed in relation to certain types of content rather than all information going through ISPs’ networks or online platforms, it would for this reason alone be compatible with Article 15 ECD.

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

1500 character(s) maximum

As a matter of principle, ARTICLE 19 rejects the idea that certain categories of intermediaries are more amenable to ‘duties of care’ than others under the ECD. Any decision to the contrary could only serve to give a competitive advantage to certain industries over others. It would also demonstrate complete disregard to the duty of Member States to ensure that the rights to freedom of expression and privacy are protected. Moreover, this would be inconsistent with the approach of the CJEU, which held that EU law precluded filtering obligations for the purposes of protecting intellectual property rights both in relation to ISPs (*Scarlet extended*) and social media networks (*Netlog*).

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

1500 character(s) maximum

We note that any requirement to take steps to remove ‘manifestly illegal content’ without delay after publication would be practically indistinguishable from monitoring and preventing the publication of third-party content in the absence of a court determination that the content at issue is indeed unlawful. This would have a profound chilling effect on freedom of expression. In this regard, ARTICLE 19 would warn against the temptation to treat filters and algorithms as a magic bullet that can determine whether content is illegal or not (see SABAM cases cited above at para. 52). Filters cannot determine meaning or take into account the overall context in which a publication has been made. For this reason, the decision whether content is lawful should rest with a court.

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

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

In ARTICLE 19's opinion, the question about 'specific services' to facilitate contact with national authorities in terrorism or public security cases is unclear. In particular, it is unclear what such 'specific service' might entail. In any event, we note that the question appears to assume that content in such cases is in fact illegal. In our experience, however, 'glorification of terrorism' cases are rarely clear cut, particularly online where individuals might simply 'like' a comment on Facebook without giving much thought as to its content.

Nonetheless, we accept that in exceptional or urgent cases, i.e. someone's life being genuinely at risk, it may be appropriate for law enforcement agencies to be given statutory powers to order the removal or blocking of access to the content at issue. However, any such order should be confirmed by a court within a specified period of time, e.g. 48 hours.

Finally, we would like to draw the Commission's attention to the Manila Principles on Intermediary Liability (<https://www.manilaprinciples.org>), which were recently adopted by a group of civil society organisations, including ARTICLE 19. They provide a set of high level principles on intermediary liability that have been endorsed by approximately 100 organisations and scores of individuals from around the world. These principles are:

1. Intermediaries should be shielded from liability for third-party content
2. Content must not be required to be restricted without an order by a judicial authority
3. Requests for restrictions of content must be clear, be unambiguous, and follow due process
4. Laws and content restriction orders and practices must comply with the tests of necessity and proportionality
5. Laws and content restriction policies and practices must respect due process
6. Transparency and accountability must be built into laws and content restriction policies and practices

More information is available in the full version of the Manila Principles, as well as in the background paper and jurisdictional analysis documents that are also made available from the URL mentioned above.

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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