

Case Id: 52667839-0c80-4c97-8691-455541e4f026

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

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Germany
- Denmark
- Estonia
- Greece
- Spain
- Finland
- France
- Hungary
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Malta
- The Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Sweden
- United Kingdom
- Non-EU country

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

Name: European Cultural and Creative Industries Alliance (ECCIA)
Address: 326 Avenue Louise, box 48, B-1050 Brussels
E-mail address: eccia@eccia.eu

* 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

130166611998-65

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

Please provide a brief justification.

1,000 character(s) maximum

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.

- Yes
- No

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

Online platforms...

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

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

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

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

- Yes
- No
- I don't know

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

3,000 character(s) maximum

(consumers) Recrudescence of counterfeiting on online platforms and decreasing consumer trust online

- The development of e-Commerce has provided counterfeiters with unprecedented opportunities to sell goods. Counterfeiters now have direct access to consumers worldwide, almost instantaneously, and can easily replicate our products, thus increasing the risk of abusing consumers
- Consumers who purchase what they think is an authentic product but re

ceive a counterfeited product are left with an illicit good they have already paid for, but for which they cannot get reimbursed, and which has no value.

- Indeed, online platforms have no obligation to ensure the traceability of the trader who put the counterfeited good on its platform, nor are they liable for the selling of illicit goods on their platform.

- In addition to the consumer being left with no means of redress for the illicit good he has received, the company's brand image will be affected because consumers will hold them accountable for not being able to ensure that they can buy one of their products safely online.

(suppliers) Lack of engagement and collaboration with right holders in the fight against illicit goods online

- Luxury products are very desirable for consumers. Given that the conversion ratio (number of people who visit the store/website vs. the number of people who actually buy something) is lower in the online world compared to the physical, online platforms have an interest in attracting as much traffic as they can. As a consequence, they do not take any proactive measures to prevent the presence of IPR-infringing content on their platforms, since doing so would decrease traffic on the website, thereby decreasing the opportunity to sell.

- This phenomenon has been accentuated by the absence of responsibility of online platforms in the fight against counterfeiting online, since they have been granted a legal exemption at European level (the "host provider" status under the E-commerce Directive).

(suppliers) Unsanctioned misuse of trademarks online

- The unsanctioned misuse of trademarks and copyrighted content online, both on classical websites and social networks, is widespread. Controlling the channelling of traffic and the monetisation of online activities proves difficult for our brands and often impossible.

- The anonymity conferred by the Internet often confers a feeling of impunity, which facilitates the misuse of intellectual property rights through websites, search engines or social media.

- Furthermore, certain online platforms simply choose to ignore the European legal framework relating to trademarks, as they only allow requests for the delisting of URLs directing towards IPR-infringing content on the basis of copyright law. This considerably limits the available remedies, since copyright infringement is more difficult to prove than infringement of a trademark, design or model.

How could these problems be best addressed?

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

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the

traders that use them, more transparency in relation to:

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

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

500 character(s) maximum

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

- Yes
- No
- I don't know

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

- Yes
- No

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

- Yes
- No
- I don't know

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

1,500 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

3,000 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 | Examples |
|--|-------------------------|--------------------|----------|
| | | | |

| | | dependent, 1: dependent, 2: highly dependent) | 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

1,000 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

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

1,500 character(s) maximum

No dispute resolution mechanism or authority will allow for time and cost effective solutions for disputes between right holders and online platforms. Rather, minimum harmonisation needs to take place through the introduction of a duty of care by law to share responsibilities among all actors of the digital value chain. It will then be left to the courts, in case of IPR infringements, to interpret the law and determine whether the online platform, depending on the role it plays, has taken proactive reasonable and appropriate measures to prevent the infringement.

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

3,000 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

3,000 character(s) maximum

Tackling illegal content online and the liability of online intermediaries

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

Terms used for the purposes of this consultation:

"Illegal content"

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

"Hosting"

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

"Notice"

Any communication to a hosting service provider that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it..

Such an obligation only arises if the notice provides the internet hosting service provider with actual awareness or knowledge of illegal content.

"Notice provider"

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

"Provider of content"

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

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

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

- Yes
- No

*** Please describe the situation.**

3,000 character(s) maximum

1) Abuse of the limited liability conferred by the Ecommerce Directive (ECD)

The limited liability regime introduced in Section IV of the ECD has led to years of legal uncertainty and lack of clarity. First of all, it is important to note that several legal exemption were created to different "intermediary service providers" including "hosting providers". Hosting providers, as understood in 2000, were strictly limited to businesses which consisted exclusively in the hosting of third party websites.

Fifteen years after the adoption of ECD, this definition no longer seems to be adapted to all online players in the EU's economic sphere in the same way. A restrictive interpretation of what it means to be a "hosting provider" ignores the fact that today's major online players have evolved to a hybrid business model that goes beyond the exclusive hosting of content, without falling under the definition of content provider (or seller). Therefore there is an unquestionable need to agree on a common definition of the intermediary role played by online platforms to which a duty of care should apply.

2) Consequences of limited liability: proliferation of online counterfeiting

Most online platforms, whatever their role, have benefitted from this liability exemption, ending up in a system where they are not encouraged to proactively take any type of measures aiming at protecting consumers and intellectual property right holders against the promotion, marketing and distribution of c

counterfeit products.

Between 2008 and 2015, the global value of counterfeited and pirated goods grew from \$650 billion in 2008 to \$1.7 trillion in 2015.

Given the exponential proliferation of counterfeiting in the digital sphere, right holders can no longer be alone in the fight against counterfeiting. Therefore, we believe there should be a minimum level of harmonisation to rebalance responsibilities among all actors of the digital value chain.

3) The need to complete and modernise the existing framework

Consequently, it is granted that the limited liability regime introduced by the Ecommerce Directive must be completed and modernised in order to involve all the actors of the digital economy in the fight against counterfeiting online and to take into account the evolving nature of the online platforms' activities (from hosting activities to playing an active role in the content published on their platform).

We believe that a rebalancing of responsibilities should take place through the adoption of binding legislative measures introducing a duty of care applicable to all actors of the digital value chain. Duty of care could be defined as an obligation to act with diligence by taking any proactive reasonable and appropriate measures in order to protect consumers and intellectual property right holders against the promotion, marketing and distribution of counterfeit products.

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.

1,500 character(s) maximum

This concept of "mere technical, automatic and passive nature" has been artificially stretched over time to make it fit to almost all service providers and exempt them from liability.

It is no longer adapted to the current nature of the activities of Internet platforms which, as said earlier, have evolved from being intermediaries to economic actors. Such economic actors can no longer be exempted from liability thanks to a remote interpretation of this concept.

This can be corrected through the introduction of an obligation, for all Internet platforms, to apply the duty of care that can be reasonably expected from them, depending on their degree of involvement in content distribution.

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

1,500 character(s) maximum

The content provider should have the opportunity to provide such views within a reasonable time period. In addition, until the content provider has sent the additional required information to determine whether the content/good is genuine, the host service provider should take any proactive reasonable and appropriate measures to prevent consumers from being harmed (which means that the good should be taken down until proved to be legal).

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

1,500 character(s) maximum

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

- Yes
 No

Please explain

At present, online platforms do not proactively put in place measures to ensure that counterfeited goods that have been taken down "stay down" because it would impose upon them an obligation to monitor their platforms to prevent repeating infringements.

In line with the introduction of a duty of care principle to all online platforms, we believe that this obligation should remain even after the counterfeited good has been taken down. Namely, online platforms should, without prejudice to more restrictive national provisions, take any proactive reasonable and appropriate measures to prevent repeating infringements of intellectual property rights online.

It has to be noted that online platforms, in their negotiations with right holders, benefit from a lack of legal certainty around the concept of "repeating infringement". Indeed, the lack of a legal definition makes it hard to enforce our rights, given the uncertainty around the legal meaning of the term (for example: after how many infringements do we consider it to be "repeated"? Does "repeating infringement" cover the same goods, or the content provider, or the same type of products?).

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.

1,500 character(s) maximum

The fight against counterfeiting cannot be fragmented, or else it will be ineffective. The duty of care should be a horizontal principle applicable to all categories of content and to all actors of the digital value chain. Consumers

should enjoy the same level of protection online and offline. In the physical world, any operator is bound to act with due care and to deploy any reasonable means in order to avoid the creation of prejudicial situations. Therefore, such an obligation should also apply to online platforms whose role is no longer limited to that of a mere "host provider".

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

1,500 character(s) maximum

All online platforms.

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

1,500 character(s) maximum

The obligation for online platforms to apply a duty of care should be future-proof and "technologically neutral" to take into account the following elements:

- 1) Evolution of online platforms' role and activities
 - 2) Technological evolution of the tools to fight against counterfeiting
- As a result, online platforms can determine which kind of "reasonable and appropriate measures" they need to put in place to comply with the obligation. In case of litigation, it would then be left to the appreciation of the courts (both the national courts and the CJEU) to determine, based on ad hoc analyses, whether the measures taken are sufficient.

It should be noted that "reasonable and appropriate" measures include:

- a) Preventive measures to prevent the counterfeited product from reaching the platform's website. At the current stage of technology, such measures could include:
 - o The creation of upstream filters;
 - o Identity verification of users and tracking of re-offenders.
- b) In case of infringement, reactive measures to ensure the swift removal of the illicit content or good. At the current stage of technology.
- c) After the infringement, follow-up measures to prevent the same infringement from happening again, which could include:
 - o The suspension of accounts and collaboration with all actors of the digital value chain, including carriers and payment organisations.

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.

5,000 character(s) maximum

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
5,000 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?

3,000 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 reusable 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?

3,000 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

5,000 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_ 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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