

Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

Fields marked with * are mandatory.

Objectives and General Information

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.

You are invited to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

This public consultation will close on 6 January 2016 (13 weeks from the day when all language versions have been made available).

The Commission invites all interested parties to express their views on the questions targeting relations between platform providers and holders of rights in digital content (Question starting with "[A1]"), taking account of the Commission Communication "Towards a modern, more European copyright framework" of 9 December 2015. Technical features of the questionnaire have been adapted accordingly.

Please complete this section of the public consultation before moving to other sections.

- Respondents living with disabilities can request the questionnaire in .docx format and send their replies in email to the following address:
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu.
- If you are an association representing several other organisations and intend to gather the views of your members by circulating the questionnaire to them, please send us a request in email and we will send you the questionnaire in .docx format. However, we ask you to introduce the aggregated answers into EU Survey. In such cases we will not consider answers submitted in other channels than EU Survey.
- If you want to submit position papers or other information in addition to the information you share with the Commission in EU Survey, please send them to
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.
- Given the volume of this consultation, you may wish to download a PDF version before responding to the survey online. The PDF version includes all possible questions. When you fill the survey in online, you will not see all of the questions; only those applicable to your chosen respondent category and to other choices made when you answer previous questions.

* Please indicate your role for the purpose of this consultation

- An individual citizen
- An association or trade organization representing consumers
- An association or trade organization representing businesses
- An association or trade organization representing civil society
- An online platform
- A business, including suppliers using an online platform to provide services
- A public authority
- A research institution or Think tank
- Other

* Please indicate your country of residence

Non-EU country ▼

* Please specify the Non-EU country

United States

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

Internet Infrastructure Coalition - I2Coalition
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Washington, D.C.
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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

129790719968-05

If you are an economic operator, please enter the NACE code, which best describes the economic activity you conduct. [You can find here the NACE classification.](#)

Text of 3 to 5 characters will be accepted

The Statistical classification of economic activities in the European Community, abbreviated as NACE, is the classification of economic activities in the European Union (EU).

* I object the publication of my personal data

- Yes
 No

Online platforms

SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

Do you agree with the definition of "**Online platform**" as provided below?

"Online platform" refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers.

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp.), location-based business directories or some maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audio-visual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video sharing platforms (e.g. YouTube, Dailymotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. AirBnB, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition.

No



* Please explain how you would change the definition

1000 character(s) maximum

The term "platform" is not an appropriate concept for this study. This term is not unique to online commerce. To fully understand the impact of online commerce, and the structures designed to provide that commerce, those considering this matter should adopt a definition that accurately reflects the concept. Rather than basing a definition on the simple connection of buyers and sellers, the I2Coalition recommends a definition that takes into account the complexity of performing transactions on the Internet.

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

Decreasing the costs associated with intermediary trade facilitation, increasing efficiency.

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

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the **traders** that use them, more transparency in relation to:

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

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

500 character(s) maximum

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

- Yes
- No
- I don't know

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

- Yes
- No

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

- Yes
- No
- I don't know

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

1500 character(s) maximum

Reputation systems are a credible, reliable, and viewpoint independent location for online information. Reputation systems offer users the ability to create an environment that reflects their needs and desires. Not only do these systems provide valuable feedback, they create a sense of community among users. This community results in a desire to make both the system, and the Internet itself, a better place. The reviews themselves contain indices of trustworthiness. Those reading the reviews not only know that the reviews are the opinions of the reviewers, but have the ability to dive deeply into the opinions of the reviewers adopting those reviews they find trustworthy, and discarding those they do not. Indeed, the transparency of the review process helps ensure that the systems remain reliable and trustworthy. Only those systems that adopt these hallmarks of online trust can expect to succeed.

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 explain your choice and share any best practices that you are aware of.

1500 character(s) maximum

Internet companies have a particular incentive to disclose and provide access to a significant amount of information. Those companies who have understandable and transparent policies tend to be more attractive to users. In addition, current EU legislation has created an environment in which best practices to develop. Directive 95/46/EC has specific obligations to inform users of collection, processing, identity and processing purpose. The GDPR will build on these obligations. In conjunction with market incentives to disclose information, the addition of further requirements does not seem necessary.

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

3000 character(s) maximum

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

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

	Name of online platform	Dependency (0: not dependent, 1: dependent, 2: highly dependent)	Examples from your business experience
1			
2			
3			
4			
5			

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

The online platform ...

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

	Never	Sometimes	Often	Always
requests me to use exclusively its services	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies "parity clauses" *	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies non-transparent fees	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies fees without corresponding counter-performance	<input checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
limits access to data or provides it in a non-usable format	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
puts significant constraints to presenting your offer	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
presents suppliers/services in a biased way	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
refuses access to its services unless specific restrictions are accepted	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
promotes its own services to the disadvantage of services provided by suppliers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Impact on my business:
The online platform ...

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

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

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

1000 character(s) maximum

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

- Yes
- No

Platforms (including hosting service providers and content aggregators) or any other interested party are invited to express their positions with regard to relations of platforms with holders of rights in digital 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

The Internet Infrastructure Coalition strongly supports the Uniform Domain Name Dispute Resolution Policy, or UDRP. The UDRP was been adopted by ICANN in 1999 and has successfully resolved many disputes in a time efficient, cost effective, manner. Rather than relying on one resolution provider, the UDRP process uses many providers. The ability to choose providers has led to a process that continues to ensure efficiency and trustworthiness in its results. The trusted nature of this process can be seen in its global reach and acceptance.

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

Internet infrastructure providers have a vested interest in the ability of customers to move from one platform to another. In a highly fragmented market with intense competition and multiple programming languages, customers demand the ability to move their data at their request. Further, creating an environment where a customer was locked in would likely result in a business that while possibly initially successful, would alienate potential customers. More importantly, failure to adopt common platforms limits the addressable market since a significant part of an infrastructure provider's new growth comes from currently existing programming languages. These aspects of portability have evolved, robustly, without regulatory guidance. Rather than facilitating customer choice, regulatory guidance would create "lock-in" by favoring one platform, programming language or set of features over others. It may also deter investment in the Internet by requiring disclosure of proprietary information or trade secrets, or by requiring companies to share information they have developed about the use of their services with competitors.

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 explain your answer

1500 character(s) maximum

The experience of our members is that of transparency, innovation and portability. Contract review, understanding of company goals and options, and have led to a stable, understandable, portable infrastructure marketplace.

Please share your general comments or ideas regarding access to data on online platforms

3000 character(s) maximum

The ability to access data has been assured by competitive needs, programming requirements and market forces. The speed of innovation in the Internet economy does not favor the creation of proprietary or unique Internet platforms. Rather, it favors those interoperable open systems that embrace the desire of customers to innovate and require Internet companies to compete on features, price and reputation.

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

Do you think that the concept of a "mere technical, automatic and passive nature" of information transmission by information society service providers provided under recital 42 of the ECD is sufficiently clear to be interpreted and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

- Yes
- No
- I don't know

Please explain your answer.

1500 character(s) maximum

The term used in the recital is quite clear. Evidence of this clarity can be seen in many cases in which the concept has been interpreted and found to be persuasive (see below). The term does not depend on a particular type of content distribution, or intermediary involvement for this clarity. Intermediaries who distribute video content have in fact used both the term itself and court opinions to fashion effective and collaborative systems to address issues that arise during the transmission of content. For example, some video sharing sites have worked with rights holders to develop systems in which rights holders provide information to prevent uploading of content. Further, the concept has been adopted, or reflects, standards used in other countries. A similar provision in Section 230 of the U.S. Communications Decency Act as well as the Digital Millennium Copyright Act, has been interpreted in similar ways, and provides grounding for the argument that this definition is sufficiently clear.

Citations: C-236/08, Google; C-360/10, SABAM.

Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services e.g. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some diverging case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified?

- Yes
- No

On the "notice"

Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?

- Yes
 No

On the "action"

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

- Yes
 No

* Please explain your answer

1500 character(s) maximum

The entity best placed to make a judgement on content is a court or other judicial body. Internet intermediaries do not generally have the ability or resources to make determinations about nuanced issues such as intellectual property. Importantly, Internet intermediaries do not have the resources to make these determinations. In a highly competitive and fragmented business, such a requirement would pose not only a significant barrier to entry, but also a cost unrelated to the intermediary's core business. It would also result in highly disparate, and possibly contradictory interpretations of intellectual property and other concepts. A uniform understanding, and interpretation, of these concepts is not only important for Internet intermediaries, but also for content providers. The Internet Infrastructure Coalition recommends that those taking issue with content work first with the entity responsible for placing the content with the intermediary. Doing so is the most efficient and effective manner of addressing further dissemination.

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

1500 character(s) maximum

Clear case law requires Internet intermediaries to take immediate action. This case law differs significantly from parsing the advocacy that those intermediaries might be required to interpret should they be required to take into consideration the views of a content provider, or other entity. The E-Commerce Directive currently provides a manner for distinguishing between content that requires immediate action, and that which is concisely defined as illegal.

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

- Yes
- No

Please explain

Proactive monitoring obligations are inconsistent with recent ECJ decisions interpreting the E-Commerce directive (citations below). Most Internet intermediaries also lack the technical capacity to implement such an action. Doing so would require design and implementation of systems that could capture and identify content that rights holders themselves often have difficulty identifying.

Citations SABAM v Scarlet; SABAM v. Netlog.

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

Could you outline the considerations that have prevented you from putting in place voluntary measures?

1500 character(s) maximum

Screening for content often involves subjective determinations that are best left to courts and law enforcement agencies.

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

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

1500 character(s) maximum

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

1500 character(s) maximum

Do you see a need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received as well as their main content and the results of the actions taken following the notices)?

- Yes
- No

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

- Yes
- No

Do you think that online intermediaries should have a specific service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism?

- Yes
- No

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

- Yes
- No

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

5000 character(s) maximum

Online intermediaries play a unique place in the Internet ecosystem.

They provide the addresses, transmission, dissemination points, postal services, and facilities for interaction for the Internet. In essence, they are the roadways, interchanges, petrol stations and rest stops facilitating data transmission and online commerce. This analogy aptly describes the scope and breadth of what online intermediaries do. What they all have in common is that they provide a mechanism for one person, or entity, to interact in some way with another. That interaction could be as simple as sending an email, or as complex as trading securities.

"Liability of online intermediaries" is a concept that would hold those who facilitate data transmission and online commerce liable for objectionable content created by users. While this concept is useful as a rubric for parsing policy issues it is not an effective or useful tool for addressing responsibility for Internet transactions. While Intermediaries may be at a convenient pressure point, it is difficult to find another industry where similar liability has been laid. For example, postal services are not liable for the content of letters they deliver, nor are commercial parcel carriers. Proposed models of liability for Internet intermediaries would require monitoring of each piece of transmitted data. Putting aside the technical feasibility of such a scheme, content monitoring raises serious speech and privacy issues.

It is important to keep in mind the vast nature of the Internet intermediary, or infrastructure, world. In most cases, one intermediary provides only a small piece of a complicated transmission structure. Creating a "one size fits all" or even a "one size fits many" liability will capture infrastructure providers unrelated to the target of the liability regime.

These regimes will also likely chill business development. The vast majority of Internet infrastructure providers are small to medium sized businesses. Imposing liability for data that they have no hand in creating creates a significant impediment to new business. While this rationale is often raised in many liability discussions, it is particularly important for Internet intermediaries since the cost of entering business is actually quite low. This allows businesses to operate from cafes, basements and other non-traditional sites. A broad liability regime would create significant barriers to entry. The likely complex nature of such a regime would also favor large incumbents.

Many liability proposals would also place intermediaries in the position of making judgements on very technical legal issues. These decisions are best left to tribunals who have the knowledge, expertise, and funding to make them. Those Internet intermediaries who do choose to make these judgements are likely to make them in the most conservative, risk averse manner. Doing so will not enhance protections. Rather they will lead to the narrowest interpretations of the law or regulation making it difficult for even established industries to create new business models.

While this issue is a complex issue, many countries have addressed in an elegant, and workable fashion: pushing responsibility for data to the creators and consumers of the data. Examples include laws in Canada, Japan, Australia and the United States. These laws have resulted in a firm, dependable, and understandable liability framework that facilitates business. European companies will be at a competitive disadvantage should the European Union choose a different liability model.

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

* Please explain your position

3000 character(s) maximum

Contract law in the European Union, and in its member states, provides a solid ground for Internet businesses. In particular, European contract laws create a predictable framework for the relationship between businesses and consumers.

Consumer laws provide a clear, understandable, and fair basis for facilitating access to data by consumers, and businesses who are creating new business models. In particular, the Consumer Rights Directive gives consumers significant protections.

However, there is a distinction between the user of services, and the provider of those services. It is necessary to focus on the "data relationship" between the service provider and the user when discussing issues related to "fair access" and privacy. Laws and regulations including the Consumer Rights Directive and the Data Protection Directive are sufficient to provide protections to consumers who seek access to their data, and personal data protection.

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

Internet infrastructure providers facilitate the transmission of data. Those whose data is transmitted by an infrastructure provider, or who place data on an infrastructure provider's services as part of a specific services should be, and are, given access to this data under current European law.

It is important, however, to distinguish between information provided to an infrastructure provider by an user, and that which is generated incident to the transmission of this data, or which is based on the creation of value from this information. Under current EU law, users are given information about how and in what cases their information may be manipulated or otherwise transformed. To the extent the data acquires different indices of ownership, or mixed ownership, it is important for policy makers to be thoughtful about their actions.

For Internet infrastructure providers who provide a facility for new businesses, it will be important for their customers to have clear, unambiguous, guidance on how users rights may be parsed. This will allow for creation of new businesses, and also for providing guidance to entities who place personal data in an infrastructure provider's facility. Further study on this issue is warranted, and specific interaction with Internet infrastructure providers would be helpful to policy makers.

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

* Why not? What do you think could be done to make data generated by research more effectively re-usable?

3000 character(s) maximum

Data that is generated by research institutions should be generally available to the public at large, without restriction. That means that researchers, policy makers, the public and commercial entities may make use of it for all purposes. These purposes could include transformative uses ranging from academic criticism to commercial uses. No restrictions, including copyright restrictions on such a use, should be imposed.

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

Is the legal framework future proof? Please explain, using examples.

3000 character(s) maximum

Please explain what, in your view, should be the liability regime for these services and connected tangible goods to increase your trust and confidence in them?

3000 character(s) maximum

We believe that there are sufficient regimes in place to ensure trust and confidence in the Internet of Things.

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

We are not aware of any initiatives that would help accelerate these platforms. Indeed, given the quickly developing nature of them, we believe that any action may have the consequence of harming a developing market.

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[on])	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	Y				
Limitations as regards the possibility to switch between different cloud service providers	Y				
Possibility for the supplier to unilaterally modify the cloud service	Y				
Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)	Y				
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

* What approach would you prefer?

European law provides a robust standard for both commercial contracts and consumer level contracts. These laws have led to commercial and business stability, and created a contract structure that businesses can use to ensure balanced and fair transactions. Model contracts for both businesses and consumers favor established businesses, do not reflect cultural and legal differences, and are less effective than guidance from a regulatory perspective.

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

EU directives, and the laws of most EU member states, provide significant protections for consumers. Most member state laws, and the Directive, include provisions requiring "good faith." Cloud provider contracts, and the negotiation of those contracts, take into consideration this concept. Even if a particular contract, or term, does not take into account this provision, terms that have been determined to be outside the standard are not enforceable.

It is also in a cloud provider's best interest to use contract terms that are drafted in plain language. Not only does plain language provide a competitive advantage, it lowers service costs by allowing the parties to determine restrictions and policies. As with consumer contracts, the laws of most EU member states, and the Directive, require plain language contracts and provide for ambiguous terms to be interpreted in favor of a particular party.

Privacy protections are strictly guided by the Directive, and the upcoming GDPR, which both contain significant protections for consumer information. The EU has invested significant resources in creating clarity around the issue of control, dissemination, and processing of personal data. Cloud companies can create reasonable contracts and processes around current laws and regulations.

The competitive nature of the cloud market has created an ecosystem in which data is transmittable between cloud providers and imminently configurable. Cloud companies compete not only on price, but on the security of their networks. Indeed, cloud computing only succeeds to the extent end users trust the security and reliability of the facilities on which their data is stored and transmitted. This creates a business need to ensure robust security and transparency.

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

How many people work for you?

- I am an individual provider
- 1
- 2-10
- 11-50
- 51-100
- 101-250
- More
- I do not wish to reveal this information

What percentage of your revenues/turnover is earned via collaborative platforms in the last twelve months?

- 0-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%
- I do not wish to reveal this information

What has been your revenue/turnover growth in the last twelve months earned via collaborative platforms?

- 0-5%
- 6-15%
- 16-35%
- 36-50%
- More than 50%
- I do not wish to reveal this information

What sector of the economy do you operate in?

- Transport
- Tourism
- Accommodation
- Professional services
- Other

Please specify

Trade association

As a provider active in the collaborative economy, are you aware if the following requirements have to be fulfilled in order to offer/share your assets, resources, time, skills, and/or capital on a platform?

- Specific authorisation or licence

- Yes
- No
- I don't know

- Registration in a business registry

- Yes
- No
- I don't know

- Specific qualifications

- Yes
- No
- I don't know

- Insurance coverage

- Yes
- No
- I don't know

- Membership in a professional chamber

- Yes
- No
- I don't know

- Compliance with health and safety requirements

- Yes
- No
- I don't know

- Compliance with planning permission or fire safety requirements

- Yes
- No
- I don't know

- Compliance with fixed-tariffs

- Yes
- No
- I don't know

- Compliance with consumer protection requirements

- Yes
- No
- I don't know

- Other, please specify

In case you need to comply with at least one of the above requirements, does this represent a burden for the exercise of your services via collaborative business models?

- A significant burden
- A minor burden
- No burden
- N/A (no requirements apply to my activities)

Do you think that lighter rules should be applied to smaller providers?

- Yes
- No

Is the online platform imposing specific requirements on providers?

- Yes
- No

Are providers using platforms able to find the right insurance to protect themselves against risks when providing services and assets in the collaborative economy?

- Yes
- No

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_Vyhlasenie 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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