

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

Fields marked with \* are mandatory.

## Objectives and General Information

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**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

▼
Belgium

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

Interactive Advertising Bureau Europe (IAB Europe), Rond-Point Schuman,  
11 - 1040 Brussels, dilinos@iab europe.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

43167137250-27

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

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### 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*

- A. The definition is overly simplistic in that it tries to encompass into one concept a myriad of possible types of players, what's more in an environment that sees constant and rapid evolution driven by digital innovation - meaning that it can difficultly be frozen into a static definition. The concept of "platform" is an economic concept that has existed ever since commerce began. There are, however, platforms of all kind.
- B. The definition is only targeted at the online world, suggesting that the Commission intends to treat such platforms differently to offline platforms. This is justified in no way and can only impede growth, job creation and innovation in Europe.
- C. There seems to be an overlap between the concept of "platform" and the concept of "Information Society Service" as defined by Directive 98/34/EC, which could create legal uncertainty.
- D. Online players that could fall under the definition of "online platform" are already highly regulated under existing EU law.

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*

Providing infrastructure, reduced barriers to entry, increased innovation, leading to growth/jobs.

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*

No. Comment on platforms operating illegally: Article 5 of the Ecommerce Directive embodies the essential principle that service providers should clearly indicate their identity. Unfortunately, illegitimate service providers routinely hide their identities, undermining the rule of law in fields such as consumer protection, privacy, and taxation and enabling online... \*\*\*Due to insufficient number of characters under e), see rest of answer under "What are the main benefits and drawbacks...".\*\*\*

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

Ratings and reviews are revolutionary mechanisms that have given consumers the power to effectively communicate their satisfaction or discontent over a service to the larger public and to be informed about other consumers' experiences. These mechanisms represent a clear improvement for consumers in that they guarantee transparency, which itself generates a market dynamic that is geared towards a constant improvement of services and increased competition. Both users and companies benefit from reputation systems.

\*\*\*Rest of answer to e): "...criminal activity. Such platforms also expose consumers to malware and fraud. This corrodes the consumer experience and consumer trust for online platforms generally; in turn this corrosion inhibits growth and innovation. In view of the economic and rule of law interests harmed by non-compliance with Article 5, including those of customers and their business partners, we would urge that this existing requirement of clear identification of the service provider is better respected and enforced."

## 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*

Existing legislation has enabled widespread best practices to develop across the industry. For instance, Directive 95/46/EC contains obligations to inform data subjects (including users of online platforms) about collection of personal data, including the fact that personal data is being collected, the identity of the controller and the purpose of the processing. These obligations will become even more detailed in the upcoming General Data Protection Regulation (see in particular Chapter III of legal text). These information provision requirements encompass a very broad range of data, practically anything that has the potential of identifying an individual. Given the very detailed existing and upcoming legislation in this field, further requirements do not seem necessary.

The same holds true for price discrimination and dynamic pricing. As the Commission recently explained during its Workshop on the modernisation of Directive 2005/29/EC on Unfair Commercial Practices, price discrimination and dynamic pricing are not unfair commercial practice per se - traders are free to determine the prices that they charge for their products as long as they adequately inform consumers about the prices and how they are calculated (UCPD Art. 6(1)(d) and 7(4)(c)). However, practices could be considered as unfair. For price discrimination for example, when it is based on illicit criteria such as race and religion (UCPD Art. 5).

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

*3000 character(s) maximum*

The collection and use of data should be free, provided that people's privacy is respected. Any processing of sensitive personal data should require explicit consent, but the use of pseudonymised data about observed behaviour in general should be considered legitimate and in the user's interest.

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

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

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

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

The online platform ...

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

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

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

Impact on my business:

The online platform ...

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

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

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

*1000 character(s) maximum*

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

- Yes
- No

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

#### 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*

Data portability is already be regulated in the General Data Protection Regulation.

From a technical standpoint, there are several considerations that need to be taken into account with respect to this issue:

1. Data repositories are structured differently. Translating data sets from one repository to the other therefore entails additional factors.
2. Because each platform structures repositories differently to maximize ad server speed and minimize ad server load, the way in which they structure the repositories is regarded as a competitive advantage and is unlikely to be shared between competitors.
3. There is no particular standard for storing non-personal data. This results in the lack of concrete methodology at industry level describing how data sets could be imported / exported at the request of users.
4. If the user requests the transfer of data from one platform to the other, they will most likely be required to provide authentication credentials. This can be regarded as defeating the purpose of their initial action.

Consumers have the ability to vote with their finger and move from one online platform to another. Nothing prevents them from starting to use another platform for the same or a different service concurrently with the first platform, or leaving the first platform moving to other platforms altogether. Online platforms compete on the merits and it is not unprecedented for a dominant player to lose significant ground to an upstart competitor, i.e. Facebook replacing MySpace as the dominant social network or Reddit replacing Digg as the dominant social link aggregator. In the digital advertising world, the usage of several advertising platforms simultaneously is -commonplace and there isn't any "lock in". Depending on their merit, the platform players can win a certain share of the market share when competing with other platforms.

## 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*

Market dynamics and self-regulation are sufficient in this respect.

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

*3000 character(s) maximum*

Access to data is already regulated in the existing data protection framework and will also be regulated by the future GDPR. The way consumers should be able to access their data has to be decided on a case-by-case basis. The way consumers can access their data is also a way to differentiate oneself from the competition. General and prescriptive regulatory requirements on how to offer access to data would not be useful.

Market dynamics, self-regulation and existing regulation are sufficient with respect to access to data on online platforms.

## Tackling illegal content online and the liability of online intermediaries

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

Terms used for the purposes of this consultation:

"Illegal content"

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

"Hosting"

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

"Notice"

Any communication to a hosting service provider that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it.. Such an obligation only arises if the notice provides the internet hosting service provider with actual awareness or knowledge of illegal content.

"Notice provider"

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

"Provider of content"

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

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

\* Please explain

IAB Europe represents over 5,500 organisations including both content providers and intermediaries.

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*

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

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

*1500 character(s) maximum*

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

- Yes
- No

**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

**\* Please describe them.**

*1500 character(s) maximum*

The past five years have seen the emergence of a series of successful industry initiatives to tackle advertising misplacement on undesired sites.

According to data collected by IAB Europe, advertising misplacement initiatives originate in the US Quality Assurance Guidelines (QAG) of 2010. The US launched a second initiative, the Core Criteria for Effective Digital Advertising Assurance (DAAPs), in 2015.

In Europe, initiatives on ad misplacement have thus far been initiated in 9 different countries: the UK, Poland, France, Denmark, Slovakia, Italy, the Netherlands, Austria and Spain. The first European advertising misplacement initiative originated in the UK with the publication, in 2013, of good practice principles by the Digital Trading Standards Group (DTSG). The DTSG also provides a platform for the advertising industry to use an Infringing Website List (IWL), created and hosted by the Police IP Crime Unit (PIPCU), part of the City of London Police. The initiative has been successful in collecting more than 40 signatories, many of whom have had their compliance with the principles independently verified. The introduction of the IWL has led to a decrease in brand advertising on sites infringing copyright. In 2014 and 2015 respectively, Poland and France successfully launched similar initiatives. In other EU countries, initiatives, which emerged in the course of 2014 and 2015, are still in an early development stage.

**\* Could you estimate the financial costs to your undertaking of putting in place and running this system?**

*1500 character(s) maximum*

The creation of blacklists and/or whitelists of IPR infringing sites has, in some Member States, been left to the sole responsibility of government, either because the practice is considered to entail a definition of IPR infringement (eg. UK) or due to competition concerns (eg. Germany).

Do you see a need to impose specific duties of care for certain categories of illegal content?

- Yes
- No
- I don't know

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

- Yes
- No

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

- Yes
- No

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

*5000 character(s) maximum*

As is the case under current law, there should be no liability on the intermediary where it acts in good faith to restrict allegedly illegal or otherwise actionable content. The adoption of pro-active measures such as ad-misplacement initiatives should not be used as the basis for denying the intermediary the benefit of the limitation of liability set out in the E-Commerce Directive, as this does not incentivise the development of good practice.

As explained above, given the complexities of the digital advertising world and the pace of innovation in this sector, ad misplacement initiatives must remain industry-driven.

Existing national initiatives on advertising misplacement are the result of fruitful collaborations and often long negotiations between governments, rights holders as well as advertising industry players and, as such, currently represent workable solutions for the parties involved.

Existing national initiatives on advertising misplacement usually encourage their signatories to take appropriate steps to tackle ad misplacement. They have notably embraced the following avenues:

- Encouraging advertisers and agencies to expressly state, in their contractual agreements, their willingness to restrict the display of advertisements on undesired sites.
- Encouraging the use of advertising misplacement tools such as black lists, white lists and Content Verification tools.
- Encouraging data sharing on URLs of IPR infringing sites and countermeasures used to evade blocking.
- Appointing a key contact to handle claims.

Industry is working towards making such initiatives converge at a European level to evangelise this best practice and avoid market fragmentation. Given the digital advertising ecosystem's complexity and the pace of its development, it is fundamental that such initiatives remain industry-driven, voluntary and flexible.

It must also be understood that while advertising misplacement can be significantly diminished, it cannot be completely eradicated. The online advertising ecosystem's limitations should be understood: billions of advertisements are delivered online every day, and particularly with the advent of technologies and business models like programmatic buying, it is not always straightforward for players to know in advance on what web property their ads will be displayed.

Finally, it should also be noted that since the publication of the Commission's Communication on an Action Plan 'Towards a renewed consensus on the enforcement of Intellectual Property Rights', IAB Europe has been providing both the Commission and the Observatory with intelligence on existing industry initiatives to combat IPR infringement.

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## Data and cloud in digital ecosystems

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### 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*

IAB Europe is part of the Stakeholder Working Group on Contract rules and has had the opportunity to share a detailed technical briefing with the Commission on the difficulties associated with treating data as a counter-performance under contract law.

Digital advertising and data are the lifeblood of the open internet, innovation and entrepreneurship: enabling consumers all over the world to access content often free of charge while allowing publishers to monetize their content, thereby helping them in what often proves to be a difficult transition to the online environment. With technological innovation taking place at an unprecedented speed whilst creating jobs and growth in Europe, any initiative aiming to subject data, as counter-performances, to stricter contractual and consumer rules could stifle innovation, economic & jobs growth and possibly override long-established concepts such as the freedom of contract and the grounds of processing personal data. It could also fundamentally, challenge how the free and global Internet ecosystem works, while not providing any additional consumer protection.

Currently, freedom of contract gives parties to a contract the ability to define the terms of their agreement, including what is to be considered as a counter-performance. This recognised general principle of EU law is fundamental for the establishment of a functional and predictable European Digital Single Market. Because the pace of technological developments warrants innovative contractual solutions and flexibility, we believe that parties' freedom to define whether data ought to be considered as counter-performances should not be restricted in the digital world. Any such restriction could seriously impede companies' ability to innovate and hinder the growth of digital innovation in Europe.

In addition, user data are, by their very nature, different from money and ought to be treated differently. It is relatively straightforward to revert a contract where the counter-performance is money – one can refund the money. However, it is not so straightforward if the user wants to exercise his consumer right regarding a 'defective' digital content product, which is purchased by means of the other two. Data is neither exclusive, nor finite, making restitution uneasy. Furthermore, requiring some remedies, such as compensation would be highly disproportionate given that the services are essentially charge-free.

Finally and importantly, the use of data is currently very precisely regulated by the Data Protection and the ePrivacy Directives. Given that data currently drives the European digital economy, we believe that it is of utmost importance that its regulation be well circumscribed within its existing legal frameworks. Unnecessarily fragmenting this already complex body of law would create legal uncertainty and impede growth in the European Digital Single Market without providing meaningful additional protection to European consumers.

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*

The collection and use of data should be free, provided people's privacy is respected. Any processing of sensitive personal data should require explicit consent, but the use of pseudonymised data about observed behaviour in general should be considered legitimate.

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*

The two biggest regulatory constraints for the development of data markets in Europe are (1) legal fragmentation in the area of personal data protection and (2) legal uncertainty created through the draft General Data Protection Regulation.

Member states take vastly different approaches to data protection and it has become apparent in several recent judgments of the CJEU (e.g. in Google Spain, Weltimmo) that undertakings must comply with each member states individual regulatory regime irrespective of the location of their European headquarters. Such a compliance network bears significant cost for undertakings, a meaningful one-stop-shop solution is needed.

The draft General Data Protection Regulation was originally intended to address the problem outlined above, but it is questionable that the Regulation will effectively reduce legal fragmentation. What it will do is create new regulatory constraints by widening the scope of the definition of personal data to such a degree that there are virtually no data that fall outside of the scope of the Regulation. At the same time the Regulation takes a more restrictive approach on rules governing the processing of personal data. These two problems are further exacerbated by the fact that the Regulation is drafted in such vague terms that it is often not clear how undertakings can comply with the Regulation – many issues may need to be decided by courts.

For more information on this, see IAB Europe's positions on the General Data Protection Regulation.

## ON ACCESS TO OPEN DATA

Do you think more could be done to open up public sector data for re-use in addition to the recently revised EU legislation (Directive 2013/37/EU)?

Open by default means: Establish an expectation that all government data be published and made openly re-usable by default, while recognising that there are legitimate reasons why some data cannot be released.

- Introducing the principle of 'open by default'[1]
- Licensing of 'Open Data': help persons/ organisations wishing to re-use public sector information (e.g., Standard European License)
- Further expanding the scope of the Directive (e.g. to include public service broadcasters, public undertakings);
- Improving interoperability (e.g., common data formats);
- Further limiting the possibility to charge for re-use of public sector information
- Remedies available to potential re-users against unfavourable decisions
- Other aspects?

Do you think that there is a case for the opening up of data held by private entities to promote its re-use by public and/or private sector, while respecting the existing provisions on data protection?

- Yes
- No

#### ON ACCESS AND REUSE OF (NON-PERSONAL) SCIENTIFIC DATA

Do you think that data generated by research is sufficiently, findable, accessible identifiable, and re-usable enough?

- Yes
- No

Do you agree with a default policy which would make data generated by publicly funded research available through open access?

- Yes
- No

\* Why not?

*3000 character(s) maximum*

The fact that data might be publicly funded by a country does not mean that it is always in the country's interest that the data be available to the rest of the world.

#### 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

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*

The collection and use of data should be free, provided that people's privacy is respected. Any processing of sensitive personal data should require explicit consent, but the use of pseudonymised data about observed behaviour in general should be considered legitimate.

As a user of IoT and/or data driven services and connected tangible devices, does the present legal framework for liability of providers impact your confidence and trust in those services and connected tangible goods?

- Yes
- No
- I don't know

In order to ensure the roll-out of IoT and the free flow of data, should liability issues of these services and connected tangible goods be addressed at EU level?

- Yes
- No
- I don't know

#### ON OPEN SERVICE PLATFORMS

What are in your opinion the socio-economic and innovation advantages of open versus closed service platforms and what regulatory or other policy initiatives do you propose to accelerate the emergence and take-up of open service platforms?

*3000 character(s) maximum*

#### PERSONAL DATA MANAGEMENT SYSTEMS

The following questions address the issue whether technical innovations should be promoted and further developed in order to improve transparency and implement efficiently the requirements for lawful processing of personal data, in compliance with the current and future EU data protection legal framework. Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'.

Do you think that technical innovations, such as personal data spaces, should be promoted to improve transparency in compliance with the current and future EU data protection legal framework? Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'?

- Yes
- No
- I don't know

## EUROPEAN CLOUD INITIATIVE

What are the key elements for ensuring trust in the use of cloud computing services by European businesses and citizens

"Cloud computing" is a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand. Examples of such resources include: servers, operating systems, networks, software, applications, and storage equipment.

- Reducing regulatory differences between Member States
- Standards, certification schemes, quality labels or seals
- Use of the cloud by public institutions
- Investment by the European private sector in secure, reliable and high-quality cloud infrastructures

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you agree that existing contractual practices ensure a fair and balanced allocation of legal and technical risks between cloud users and cloud service providers?

- Yes
- No

What would be the benefit of cloud computing services interacting with each other (ensuring interoperability)

- Economic benefits
- Improved trust
- Others:

\* Please specify

*3000 character(s) maximum*

None. The requirement of interoperability only makes services more expensive for users and are not practically possible in most cases.

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:

\* Please specify

*3000 character(s) maximum*

None. The requirement of portability of data only makes services more expensive for users and are not practically possible in most cases.

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

\* What approach would you prefer?

For market organisations to create their own model contracts.

Please share your general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire

*5000 character(s) maximum*

## The collaborative economy

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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

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End of public consultation

## Background Documents

BG\_ Въведение (/eusurvey/files/17798068-07b6-4cfb-8c80-a8e6a4f75e29)

BG\_ Декларация за поверителност (/eusurvey/files/0b5a7e6a-5c26-47ca-b263-9ece4aa566ca)

CS\_Prohlášení o ochraně osobních údajů (/eusurvey/files/a93fa8dd-757e-421e-81f9-e1c9bca745af)

CS\_ Úvod (/eusurvey/files/af54c429-c5bf-482f-8525-c156be285051)

DA\_Databeskyttelseserklæring (/eusurvey/files/5dd2c272-17fa-47f4-b0c7-2c207a86235f)

DA\_Introduktion (/eusurvey/files/05c0d888-2d35-4e19-a314-65e8092597d6)

DE\_Datenschutzerklärung (/eusurvey/files/b5e037cf-0350-40c3-b803-04f6357f9603)

DE\_Einleitung (/eusurvey/files/300a2e87-e030-422a-b678-33fe2c7520a6)

EL\_ Δήλωση περί απορρήτου (/eusurvey/files/b408fd27-c292-4fc0-9c2d-fd70c74062c4)

EL\_ Εισαγωγή (/eusurvey/files/0be38358-a600-4568-bfd0-fd9697b1810f)

EN\_Background Information (/eusurvey/files/0873ffeb-56b2-40d7-bf56-5aadbd176c3c)

EN\_Privacy Statement (/eusurvey/files/8861750d-baa1-4113-a832-f8a5454501b5)

ES\_Declaración de confidencialidad (/eusurvey/files/edd31f1e-fe9d-493a-af5e-7a7c793295a9)

ES\_Introducción (/eusurvey/files/600be540-eef2-4bde-bd3a-436360015845)

ET\_Privaatsusteave (/eusurvey/files/294d2e58-3a3d-4e32-905f-74e8b376c5e6)

ET\_Sissejuhatus (/eusurvey/files/4bc0f8b9-febc-478a-b828-b1032dc0117f)

FI\_Johdanto (/eusurvey/files/a971b6fb-94d1-442c-8ad7-41a8e973f2d5)

FI\_Tietosuojaseloste (/eusurvey/files/28a1f27e-3a8e-41f3-ae27-201e29134555)

FR\_Déclaration relative à la protection de la vie privée (/eusurvey/files/1341b7cb-38e5-4b81-b3bc-bd0d5893d298)

FR\_Introduction (/eusurvey/files/308a1cf7-5e78-469c-996a-372b33a1992b)

HR\_Izjava o zaštiti osobnih podataka (/eusurvey/files/618120e1-286a-45d4-bbbd-2493d71617fb)

HR\_Uvod (/eusurvey/files/6bfc9d48-cd5c-4603-9c68-5c45989ce864)

HU\_Adatvédelmi nyilatkozat (/eusurvey/files/76f442e6-3e2d-4af3-acce-5efe8f74932b)

HU\_Bevezetés (/eusurvey/files/3ea8491d-429d-4c8f-be30-82db40fa59c5)

IT\_Informativa sulla privacy (/eusurvey/files/e2eb5a94-9e5e-4391-a8e3-35f9e151310b)

IT\_Introduzione (/eusurvey/files/aa3bf020-9060-43ac-b92b-2ab2b6e41ba8)

LT\_Pareiškimas apie privatumo apsaugą (/eusurvey/files/ab30fabd-4c4e-42bc-85c5-5ee75f45805d)

LT\_Ivadas (/eusurvey/files/d5a34e68-4710-488a-8aa1-d3b39765f624)

LV\_Ievads (/eusurvey/files/3a9bd2b1-7828-4f0e-97f1-d87cf87b7af1)

LV\_Konfidencialitātes paziņojums (/eusurvey/files/7156fdc0-b876-4f73-a670-d97c92e6f464)

MT\_Dikjarazzjoni ta' Privatezza (/eusurvey/files/03139a3f-7b5f-42c0-9d2f-53837c6df306)

MT\_Introduzzjoni (/eusurvey/files/ceb27908-207c-40cf-828a-6cf193731cdf)

NL\_Inleiding (/eusurvey/files/ca756d80-8c02-43e1-9704-3148a13c8503)

NL\_Privacyverklaring (/eusurvey/files/83d9394e-b179-442f-8a1b-41514ad072df)

PL\_Oświadczenie o ochronie prywatności (/eusurvey/files/15612e0b-807d-4c6e-af1c-d65fe4ec9ddb)

PL\_Wprowadzenie (/eusurvey/files/df9e1828-bbd0-4e4a-90bb-ec45a8bf46da)

PT\_Declaração de privacidade (/eusurvey/files/50a6e820-91bc-4531-9a0f-47b3685753d7)

PT\_Introdução (/eusurvey/files/003979c0-5277-41e9-8092-2de66d57ca00)

RO\_Declarație de confidențialitate (/eusurvey/files/25c135c6-ce01-4081-a83e-53e86086797e)

RO\_Introducere (/eusurvey/files/4334379b-e465-43a5-a944-8602090b0bf5)

SK\_Vyhlásenie o ochrane osobných údajov (/eusurvey/files/7fab071c-85f9-47eb-aaa9-949f2239701d)

SK\_Úvod (/eusurvey/files/e45df825-5e71-4172-b2ec-e07789cc3966)

SL\_Izjava o varstvu osebnih podatkov (/eusurvey/files/498ec1f0-3405-4454-9aa6-40607efe118f)

SL\_Uvod (/eusurvey/files/1b0b239a-630d-4d36-a92f-d4b758d41ddc)

SV\_Inledning (/eusurvey/files/e9111c5b-4637-4ea1-b235-ece85ef8fe1a)

SV\_Regler för skydd av personuppgifter (/eusurvey/files/0d8275b2-8344-4895-8c09-51d075671061)

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