

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)

Public Knowledge
 1818 N Street NW Suite 410
 Washington, DC 20036
 United States
 Tel: +1-202-861-0020
 Email: raza@publicknowledge.org

- * Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

Note: If you are not answering this questionnaire as an individual, please register in the Transparency Register. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and will publish it as such.

- ☒ Yes
☐ No
☐ Non-applicable

- * Please indicate your organisation's registration number in the Transparency Register

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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 proposed definition of "online platform" raises some concerns with respect to limiting principles. For example, it is unclear how to distinguish the examples cited by the question, from websites operated by traditional businesses. It is also unclear what purpose defining "online platform" serves from a regulatory perspective, as the businesses identified in the example are already subject to a variety of regulatory and oversight mechanisms, including consumer protection etc.

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

serve as a platform for enabling free speech and expression

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

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

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

- ☒ Yes
- ☐ No
- ☐ I don't know

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

3000 character(s) maximum

Consumers face a number of issues when dealing with online platforms:

*Consumer expression is subject to abusive takedowns. Recently a consumer was banned from Facebook after being subject to abusive takedown notices with respect to photos the consumer had taken and uploaded of legally purchases Star Wars figurines.

<http://arstechnica.com/tech-policy/2015/12/disney-initially-drops-then-doubles-down-on-dmca-claim-over-star-wars-figure-pic/>

*Consumer expectations as to ownership of digital "goods" are sometimes upended by online platforms. For example, customers who had purchased ebook copies of the George Orwell novel 1984 discovered that the platform from which they had purchased the ebook had remotely wiped all copies of the ebook.

<http://arstechnica.com/gadgets/2009/07/amazon-sold-pirated-books-raided-some-kindles/>

These examples are not exhaustive, but merely indicative of the issues faced by consumers and users of online platforms. It's important to note that many of these issues, including the two examples cited here are driven by copyright law, and not necessarily by the online platform.

How could these problems be best addressed?

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

TRANSPARENCY OF ONLINE PLATFORMS

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

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

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

- ☒ Yes
- ☐ No
- ☐ I don't know

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

- ☒ Yes
☐ No
☐ I don't know

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

- ☐ Yes
☐ No
☒ I don't know

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

- ☒ Yes
☐ No
☐ I don't know

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

500 character(s) maximum

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

- ☒ Yes
☐ No
☐ I don't know

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

- ☐ Yes
☒ No

*What type of additional information and in what format would you find useful? Please briefly explain your response and share any best practice you are aware of.

1500 character(s) maximum

We do not take a position on specific formats or information that should be included, but believe that general principles of consumer protection and informed consent should apply, and that unfair and deceptive practices should be prohibited.

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

- ☐ Yes
☐ No
☒ I don't know

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

1500 character(s) maximum

USE OF INFORMATION BY ONLINE PLATFORMS

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

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

- ☐ Yes
☒ No
☐ I don't know

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

- ☐ Yes
☒ No
☐ I don't know

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

- ☐ Yes
☐ No
☒ I don't know

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

1500 character(s) maximum

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

3000 character(s) maximum

We reiterate our belief that general principles of consumer protection and informed consent should be touchstones in appraising data collection and usage disclosures by online platforms. We note that formalistic fine print disclosures may meet technical requirements of disclosure without sufficiently educating consumers about how their data is collected or used.

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

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

- ☒ Yes
☐ No

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

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

- ☐ Yes
☒ No

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

- ☐ Yes
☒ No

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

- ☐ Yes
☒ No

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

- ☐ Yes
☒ No

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

We are unaware of any dispute mechanisms as described in this question.

However we wish to expand on our answer regarding room for improvement in relations between platforms and users. We note that platforms can better serve their users by providing mechanisms of recourse and due process when users are subject to inappropriate or abusive takedown notices. Given the rise of automated filtering and takedown mechanisms that favor unsupported claims of large rightsholders over the rights of smaller scale users, such as ourselves, we support regulatory regimes that encourage the recognition of the rights of smaller scale users on equal footing with those of large media companies.

We do note that a proper functioning dispute resolution mechanism would give proper recognition to the limitations and exceptions to any rights being asserted by a party against a user of a platform.

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

If you can, please provide the description of some best practices (max. 5)

	Name of the online platform	Description of the best practice (max. 1500 characters)
1.		
2.		
3.		
4.		
5.		

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

As a general matter, platform portability is a positive feature for consumers and competition. However, in two-sided markets where barriers to multi-homing is low, platform portability is less of a concern. In general, transparency as to what data consumers may export, and in what formats, is helpful in allowing consumers to reach an informed decision whether to use the platform.

In markets where dominance is high and the barriers to portability reinforce that dominance, competition law provides an appropriate framework of analysis.

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

It is unclear how an independent rating agency would help. As it stands, many civil society and public interest organizations already monitor and report on various benchmarks of consumer friendliness or hostility of a range of platforms. For example, the Electronic Frontier Foundation has a number of scorecards rating companies and platforms on their privacy and disclosure practices (e.g. <https://www.eff.org/who-has-your-back-government-data-requests-2015>).

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

3000 character(s) maximum

As an organization we have not directly experienced the problems discussed above. Nevertheless, we are aware of instances where consumers and others have experienced issues, such as the sudden loss of access to data when governments have seized servers or websites, and being left with little or no recourse (see e.g. <http://www.wired.com/2012/06/feds-megaupload-data/>, <http://arstechnica.com/tech-policy/2012/05/waiting-on-the-riaa-feds-held-seized-dajaz1-domain-for-months/>).

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

We believe that this is clear concept. We note though that we believe that it is clear that there is no tension between simultaneously being an "online intermediary" and engaging in "content distribution", and that this should be reflected in any regulations. Unless an intermediary is actively creating content, in which case it may be treated as a speaker, it is critical to shield intermediaries from liability for the speech of others that transits or resides on that platforms. Any reduction in the limitations of liability merely because the data transiting or residing on the platform is "content", video or otherwise, would stifle innovation, and chill speech, by discouraging platforms from hosting or transiting speech acts. The existence of strong and clear limitations on liability for platforms has been critical to the flourishing of online platforms for user expression and speech.

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

Do you think that any of the following categories of illegal content requires a specific approach:

- ☐ Illegal offer of goods and services (e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc.)
- ☐ Illegal promotion of goods and services
- ☐ Content facilitating phishing, pharming or hacking
- ☒ Infringements of intellectual property rights (e.g. copyright and related rights, trademarks)
- ☐ Infringement of consumer protection rules, such as fraudulent or misleading offers
- ☐ Infringement of safety and security requirements
- ☐ Racist and xenophobic speech
- ☐ Homophobic and other kinds of hate speech
- ☐ Child abuse content
- ☐ Terrorism-related content (e.g. content inciting the commitment of terrorist offences and training material)
- ☒ Defamation
- ☐ Other:

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

1000 character(s) maximum

It is important to distinguish between those categories of content that are categorically illegal by the nature of their content (child abuse content, promotion of illegal goods or services, etc.), and those whose legality hinges on authorization or nature of use. This is particularly true in the case of intellectual property rights, which limited to certain categories of use. An automated filter cannot tell apart a use of a trademark that is not confusing, or not a use in commerce, nor can it tell apart uses of an expressive work that fall afoul of an exclusive copyright, and those that are either authorized or do not require authorization. This kind of subjective analysis should not be conducted at mass scale, and should be subject to mechanisms that treat the claims and rightsholders and the rights of users and consumers on equal footing, rather than presuming rightsholder claims as sufficient.

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 rights of content providers are as important and valid as the claims of rightsholders. Online platforms are critical conduits of speech and expression, and any attempt to have speech and expression removed from them should be subject to a balanced review, especially if the review is occurring outside of courts, where due process rights are better protected.

This is especially true in the case of intellectual property rights and defamation, as these claims have a history of being wielded without appropriate consideration of the content providers rights (e.g. <http://www.npr.org/sections/thetwo-way/2015/09/14/440363919/dancing-baby-wins-copyright-case>) and to suppress criticism (see e.g. <http://blog.ericgoldman.org/archives/2015/09/big-fee-shift-in-unsuccessful-copyright-lawsuit-to-suppress-unflattering-photo-katz-v-chevaldina.htm>).

Where an act of speech or expression is challenged via a takedown mechanism, it is appropriate and necessary that the content provider be given an opportunity to address the challenge before their speech is suppressed. At a minimum, content providers should be notified of challenged, and be given the opportunity to counter-challenge and have their content reinstated.

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

1500 character(s) maximum

Again we note that some acts must be judged in the appropriate factual context to determine whether violations have occurred. These acts are also generally tortious, and give rise to civil harms, e.g. in the case of copyrights, and therefore suppression of expression and speech on the basis of an asserted violation is not appropriate, as damages can be recovered at a later date by the claimant.

In other cases, where the activity rises to the level of criminal acts, criminal due process considerations apply.

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

- ☐ Yes
☒ No

Please explain

It is unclear what "remain effective over time" means in a practical sense. A protected work may be used in many different ways, some which violate a right, and many which don't.

A stay down principle cannot be applied at a content level, as a hosting provider is not in a position by itself to determine whether any one instance of a piece of content's use is a violation of a right or not.

Applying a stay down principle at the user level already exists in the form of repeat infringer policies that bar repeat violators of rights from platforms.

Furthermore, notwithstanding the above concerns, a stay down principle is effectively an duty to actively monitor, which contradicts Article 15 of the E-Commerce Directive.

On duties of care for online intermediaries:

Recital 48 of the Ecommerce Directive establishes that "[t]his Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities". Moreover, Article 16 of the same Directive calls on Member States and the Commission to encourage the "drawing up of codes of conduct at Community level by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15". At the same time, however, Article 15 sets out a prohibition to impose "a general obligation to monitor".

(For online intermediaries): Have you put in place voluntary or proactive measures to remove certain categories of illegal content from your system?

- ☐ Yes
☐ No

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

- ☐ Yes
☒ No
☐ I don't know

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

1500 character(s) maximum

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

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

Strong limitations of liability on intermediaries, such as those found in 17 U.S.C. §512 of the US copyright law, and §230 of the Communications Decency Act, are pillars of the modern internet.

Intermediary liability protections are fundamental to protecting and promoting freedom of speech and expression online. Intermediaries are the modes of communication and expression that convey the public's communication and expression. Limitations on liability ensure that platforms give individual speakers the broadest freedom to speak. Removing liability protections from platforms would convert them to gatekeepers with the power (and duty) to choose who may speak. This would be a fundamental departure from the practices that have led to the flourishing and growth of myriad platforms. It is also worth noting that removing liability protections would not necessarily just have a limited affect. Liability is a strong incentive to adopt default practices that harm the free flow of speech and expression.

We urge the Commission to take caution and not deputize platforms to act as one-sided courts and pronounce judgment on the speech acts of the public without appropriate due process protections and safeguards.

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

* What kind(s) of ground(s) do you think are justifiable?

- ☐ National security
☐ Public security
☒ Other reasons:

* Please explain

While there may be reasons for restricting the availability of certain forms of information (including personally identifiable information), as a general matter, data localization requirements, especially for commercial data, are inconsistent with the fundamental nature and operation of placeless Internet.

ON DATA ACCESS AND TRANSFER

Do you think that the existing contract law framework and current contractual practices are fit for purpose to facilitate a free flow of data including sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved?

- ☐ Yes
☐ No

In order to ensure the free flow of data within the European Union, in your opinion, regulating access to, transfer and the use of non-personal data at European level is:

- ☐ Necessary
☐ Not necessary

When non-personal data is generated by a device in an automated manner, do you think that it should be subject to specific measures (binding or non-binding) at EU level?

- ☐ Yes
☐ No

Please share your general comments or ideas regarding data access, ownership and use

5000 character(s) maximum

With respect to data access and use, we encourage the Commission to consider what it means for consumers to have more and more of their data stored "in the cloud" - either directly (e.g. cloud backups, lockers, or storage), or seamlessly (e.g. through syncing services like Dropbox). As noted previously regarding the Megaupload case, the service was shuttered and its servers seized, cutting off users from their own stored data because it resided physically on the same disks as data that allegedly infringed copyright.

With regard to data ownership, we also encourage the Commission to examine and consider issues of owning digital content. As more and more content is "sold" only in name, subject to terms and conditions that specify that the transaction is a "license" and not a "sale", with the result that consumer expectations with respect to their rights in their content may not match reality.

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 clearest steps that the EU could take to encourage the development of data markets, which we interpret to mean businesses based on cloud computing and storage services, would be to adopt strong limitations on liability that apply to providers of such services. The U.S. model as embodied in §230 of the Communications Decency Act is instructive, as it ensures that intermediaries are not held responsible for the contents of the data that transits or is hosted on their systems.

Uniform treatment of services across the EU will also encourage services from offering their services across the continent rather than only those jurisdictions where appropriate limitations on liability are already in place.

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

* Under what conditions?

- ☒ in case it is in the public interest
- ☐ for non-commercial purposes (e.g. research)
- ☒ other conditions

* Please explain

3000 character(s) maximum

We support the application of open data/licensing requirements on publicly funded works, including published research, educational sources, and other works, where the rights in the work are subsequently held by a private entity.

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

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

- ☐ Yes
- ☐ No

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

- ☒ Yes
- ☐ No

ON LIABILITY IN RELATION TO THE FREE FLOW OF DATA AND THE INTERNET OF THINGS

As a provider/user of Internet of Things (IoT) and/or data driven services and connected tangible devices, have you ever encountered or do you anticipate problems stemming from either an unclear liability regime/non –existence of a clear-cut liability regime?

The "Internet of Things" is an ecosystem of physical objects that contain embedded technology to sense their internal statuses and communicate or interact with the external environment. Basically, Internet of things is the rapidly growing network of everyday objects—eyeglasses, cars, thermostats—made smart with sensors and internet addresses that create a network of everyday objects that communicate with one another, with the eventual capability to take actions on behalf of users.

- ☒ Yes
- ☐ No
- ☐ I don't know

If you did not find the legal framework satisfactory, does this affect in any way your use of these services and tangible goods or your trust in them?

- ☐ Yes
- ☐ No
- ☒ I don't know

Do you think that the existing legal framework (laws, or guidelines or contractual practices) is fit for purpose in addressing liability issues of IoT or / and Data driven services and connected tangible goods?

- ☐ Yes
- ☐ No
- ☒ I don't know

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

- ☐ Yes
- ☐ No
- ☒ I don't know

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

- ☐ Yes
- ☐ No
- ☒ I don't know

ON OPEN SERVICE PLATFORMS

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

3000 character(s) maximum

PERSONAL DATA MANAGEMENT SYSTEMS

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

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

- ☐ Yes
- ☒ No
- ☐ I don't know

EUROPEAN CLOUD INITIATIVE

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

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

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

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

- ☐ Yes
- ☒ No
- ☐ Not applicable

*What information relevant to the security and protection of users' data do you think cloud service providers should provide?

Accountability and transparency about a number of practices is key. These include data collection and usage, data security practices, and privacy protections. Again, principles of consumer protection, informed consent, and unfair and deceptive practices should be the guide to determining what information is relevant in order to ensure educated decision making by consumers.

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

- ☐ Yes
☐ No
☒ Not applicable

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

- ☒ Yes
☐ No

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

- ☒ Economic benefits
☒ Improved trust
☐ Others:

What would be the benefit of guaranteeing the portability of data, including at European level, between different providers of cloud services

- ☐ Economic benefits
☐ Improved trust
☐ Others:

Have you encountered any of the following contractual practices in relation to cloud based services? In your view, to what extent could those practices hamper the uptake of cloud based services? Please explain your reasoning.

	Never (Y[es] or N[no])	Sometimes (Y / N)	Often (Y / N)	Always (Y / N)	Why (1500 characters max.)?
Difficulties with negotiating contractual terms and conditions for cloud services stemming from uneven bargaining power of the parties and/or undefined standards					
Limitations as regards the possibility to switch between different cloud service providers					
Possibility for the supplier to unilaterally modify the cloud service					
Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)					
Other (please explain)					

What are the main benefits of a specific European Open Science Cloud which would facilitate access and make publicly funded research data re-useable?

- ☒ Making Science more reliable by better quality assurance of the data
- ☒ Making Science more efficient by better sharing of resources at national and international level
- ☒ Making Science more efficient by leading faster to scientific discoveries and insights
- ☒ Creating economic benefits through better access to data by economic operators
- ☒ Making Science more responsive to quickly tackle societal challenges
- ☐ Others

Would model contracts for cloud service providers be a useful tool for building trust in cloud services?

- ☐ Yes
- ☒ No

Would your answer differ for consumer and commercial (i.e. business to business) cloud contracts?

- ☒ Yes
- ☐ No

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

5000 character(s) maximum

The collaborative economy

The following questions focus on certain issues raised by the collaborative economy and seek to improve the Commission's understanding by collecting the views of stakeholders on the regulatory environment, the effects of collaborative economy platforms on existing suppliers, innovation, and consumer choice. More broadly, they aim also at assessing the impact of the development of the collaborative economy on the rest of the economy and of the opportunities as well as the challenges it raises. They should help devising a European agenda for the collaborative economy to be considered in the context of the forthcoming Internal Market Strategy. The main question is whether EU law is fit to support this new phenomenon and whether existing policy is sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives that may have already been identified.

Terms used for the purposes of this consultation:

"Collaborative economy"

For the purposes of this consultation the collaborative economy links individuals and/or legal persons through online platforms (collaborative economy platforms) allowing them to provide services and/or exchange assets, resources, time, skills, or capital, sometimes for a temporary period and without transferring ownership rights. Typical examples are transport services including the use of domestic vehicles for passenger transport and ride-sharing, accommodation or professional services.

"Traditional provider"

Individuals or legal persons who provide their services mainly through other channels, without an extensive involvement of online platforms.

"Provider in the collaborative economy"

Individuals or legal persons who provide the service by offering assets, resources, time, skills or capital through an online platform.

"User in the collaborative economy"

Individuals or legal persons who access and use the transacted assets, resources, time, skills and capital.

Please indicate your role in the collaborative economy

- ☐ Provider or association representing providers
- ☐ Traditional provider or association representing traditional providers
- ☐ Platform or association representing platforms
- ☐ Public authority
- ☐ User or consumer association

Which are the main risks and challenges associated with the growth of the collaborative economy and what are the obstacles which could hamper its growth and accessibility? Please rate from 1 to 5 according to their importance (1 – not important; 5 – very important).

- Not sufficiently adapted regulatory framework

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Uncertainty for providers on their rights and obligations

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Uncertainty for users about their rights and obligations

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Weakening of employment and social rights for employees/workers

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Non-compliance with health and safety standards and regulations

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Rise in undeclared work and the black economy

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Opposition from traditional providers

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Uncertainty related to the protection of personal data

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Insufficient funding for start-ups

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

- Other, please explain

How do you consider the surge of the collaborative economy will impact on the different forms of employment (self-employment, free lancers, shared workers, economically dependent workers, tele-workers etc) and the creation of jobs?

- ☐ Positively across sectors
- ☐ Varies depending on the sector
- ☐ Varies depending on each case
- ☐ Varies according to the national employment laws
- ☐ Negatively across sectors
- ☐ Other

Do you see any obstacle to the development and scaling-up of collaborative economy across borders in Europe and/or to the emergence of European market leaders?

- ☐ Yes
- ☐ No

Do you see a need for action at European Union level specifically to promote the collaborative economy, and to foster innovation and entrepreneurship in its context?

- ☐ Yes
- ☐ No

What action is necessary regarding the current regulatory environment at the level of the EU, including the Services Directive, the E-commerce Directive and the EU legislation on consumer protection law?

- ☐ No change is required
- ☐ New rules for the collaborative economy are required
- ☐ More guidance and better information on the application of the existing rules is required
- ☐ I don't know what is the current regulatory environment

Submission of questionnaire

End of public consultation

Background Documents

BG_Въведение (/eusurvey/files/17798068-07b6-4cfb-8c80-a8e6a4f75e29)

BG_Декларация за поверителност (/eusurvey/files/0b5a7e6a-5c26-47ca-b263-9ece4aa566ca)

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

CS_Úvod (/eusurvey/files/af54c429-c5bf-482f-8525-c156be285051)

DA_Databeskyttelseserklæring (/eusurvey/files/5dd2c272-17fa-47f4-b0c7-2c207a86235f)

DA_Introduktion (/eusurvey/files/05c0d888-2d35-4e19-a314-65e8092597d6)

DE_Datenschutzerklärung (/eusurvey/files/b5e037cf-0350-40c3-b803-04f6357f9603)

DE_Einleitung (/eusurvey/files/300a2e87-e030-422a-b678-33fe2c7520a6)

EL_Δήλωση περί απορρήτου (/eusurvey/files/b408fd27-c292-4fc0-9c2d-fd70c74062c4)

EL_Εισαγωγή (/eusurvey/files/0be38358-a600-4568-bfd0-fd9697b1810f)

EN_Background Information (/eusurvey/files/0873ffeb-56b2-40d7-bf56-5aadb176c3c)

EN_Privacy Statement (/eusurvey/files/8861750d-baa1-4113-a832-f8a5454501b5)

ES_Declaración de confidencialidad (/eusurvey/files/edd31f1e-fe9d-493a-af5e-7a7c793295a9)

ES_Introducción (/eusurvey/files/600be540-eef2-4bde-bd3a-436360015845)

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

ET_Sissejuhatus (/eusurvey/files/4bc0f8b9-febc-478a-b828-b1032dc0117f)

FI_Johdanto (/eusurvey/files/a971b6fb-94d1-442c-8ad7-41a8e973f2d5)

FI_Tietosuojaseloste (/eusurvey/files/28a1f27e-3a8e-41f3-ae27-201e29134555)

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

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

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

HR_Uvod (/eusurvey/files/6bfc9d48-cd5c-4603-9c68-5c45989ce864)

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

HU_Bevezetés (/eusurvey/files/3ea8491d-429d-4c8f-be30-82db40fa59c5)

IT_Informativa sulla privacy (/eusurvey/files/e2eb5a94-9e5e-4391-a8e3-35f9e151310b)

IT_Introduzione (/eusurvey/files/aa3bf020-9060-43ac-b92b-2ab2b6e41ba8)

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

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

LV_Īevads (/eusurvey/files/3a9bd2b1-7828-4f0e-97f1-d87cf87b7af1)

LV_Konfidencialitātes paziņojums (/eusurvey/files/7156fdc0-b876-4f73-a670-d97c92e6f464)

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

MT_Introduzzjoni (/eusurvey/files/ceb27908-207c-40cf-828a-6cf193731cdf)

NL_Inleiding (/eusurvey/files/ca756d80-8c02-43e1-9704-3148a13c8503)

NL_Privacyverklaring (/eusurvey/files/83d9394e-b179-442f-8a1b-41514ad072df)

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

PL_Wprowadzenie (/eusurvey/files/df9e1828-bbd0-4e4a-90bb-ec45a8bf46da)

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

PT_Introdução (/eusurvey/files/003979c0-5277-41e9-8092-2de66d57ca00)

RO_Declarație de confidențialitate (/eusurvey/files/25c135c6-ce01-4081-a83e-53e86086797e)
RO_Introducere (/eusurvey/files/4334379b-e465-43a5-a944-8602090b0bf5)
SK_Vyhlásenie o ochrane osobných údajov (/eusurvey/files/7fab071c-85f9-47eb-aaa9-949f2239701d)
SK_Úvod (/eusurvey/files/e45df825-5e71-4172-b2ec-e07789cc3966)
SL_Izjava o varstvu osebnih podatkov (/eusurvey/files/498ec1f0-3405-4454-9aa6-40607efe118f)
SL_Uvod (/eusurvey/files/1b0b239a-630d-4d36-a92f-d4b758d41ddc)
SV_Inledning (/eusurvey/files/e9111c5b-4637-4ea1-b235-ece85ef8fe1a)
SV_Regler för skydd av personuppgifter (/eusurvey/files/0d8275b2-8344-4895-8c09-51d075671061)

Contact

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