

# 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 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 of America

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

Mike Godwin, General Counsel, R Street Institute, 1050 17th Street NW,

\* 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

564912920023-25

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*

The definition of online platforms presented by the EU is overbroad -- it would include any commercial or non-commercial enterprise that uses the internet. Such a broad definition is problematic, particularly when it comes to regulation and governance, because any regulations of "online platforms" will extend to an impossibly large set of actors. The broad definition of "online platforms" will make it extremely difficult, if not impossible, to enforce regulations of platforms. Regulations under this definition will lead to unforeseen consequences. Note also that "internet society services" as such are already regulated under a number of EU directives, including the E-Commerce Directive, InfoSec and ePrivacy Directives. The definition for online platforms is so similar to the definition of "internet society services" as defined in Directive 98/34/EC. How will internet services be able to know whether or not they count as online platforms?

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

Online platforms...

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

\* Please specify:

*100 character(s) maximum*

Online platforms allowing individuals to participate directly in the global economy.

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 may be unaware that online platforms have been compelled to remove historical, lawfully published data. It is important that consumers be made aware of the full reach of online platforms' implementation of "right to be forgotten" or "right to be de-indexed," since over broad compliance with such regulations, especially by smaller, less economically advantaged platform providers, may diminish or erase the historical record by modifying the records of publicly reported news and events.

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*

NO.

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*

Graphic representations of rights frameworks, modeled on Creative Commons graphic licensing codes, could be helpful as a replacement for lengthy, unwieldy waivers or contract terms.

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

- Yes
- No
- I don't know

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

*1500 character(s) maximum*

Reputation systems have dramatically democratized the way that we consume. By indexing a huge variety of services, from service providers large and small and geographically diverse, online platforms flatten the barrier of entry for competition in an already global economy. By allowing products to be discoverable based on customer reviews, platforms let people discover services based on what other people actually liked and found useful (long tail of the internet). This decreases the role and importance of expensive corporate advertising and allows smaller businesses and individuals to compete based on the quality of their services rather than their advertising budget. Reviews are inherently subjective, but by generating large samples of reviews in a way that only large online platforms are able to do, the reviews attain a level of accuracy akin to statistical sampling. In addition, the free-form descriptions that most online platforms encourage in their review section, people are able to get more detailed views of what goods and services will provide, which allows consumers to find more specialized services that suit their needs. The review section, which many platforms take very seriously as a quality-control mechanism for the goods and services that travel across them, allow for a mechanism of responsiveness to customer satisfaction that compensates for the lack of competition among certain platforms.

## 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, such as Directive 95/46/EC, already provide extensive obligations for online platforms to inform data subjects about collection of personal data, the fact that personal data is being collected, the parties who will be managing the data, and the purpose of data collection. These obligations encompass a wide range of data that could be categorized as personally identifying an individual, which means there are some mechanisms in place to ensure that platform users realize how their data is being collected and used. However, most people do not know what data brokerage companies are, where they get they data from, or who they are selling it to. Yet these companies exist. This demonstrates a lack of adequate information sharing on the part of services collecting data online. The revelation that companies were sharing data with United States intelligence services as part of surveillance programs also sowed justifiable distrust among platform users that online platforms are sharing sufficient trustworthy information about personal data collection. There is sufficient reason to believe that these issues will be remedied by the impending EU GDPR without the need for additional regulations for online services that qualify as "platforms."

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

*3000 character(s) maximum*

Provided that the proper consent and contract frameworks are in place when users engage in using online platforms, online platforms should be free to use lawfully disclosed information to empower users, to share knowledge, and enable democratic empowerment of all individuals "to seek and to impart information" as broadly allowed by international human-right instruments. Regulators should be aware that efforts to engage in post-hoc erasure of publicly shared information may in fact infringe on citizens rights to seek, receive, and impart information of all kinds as provided for, e.g., by the International Covenant on Civil and Political Rights.

**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*

Yes. The Uniform Domain Name Dispute Resolution Policy.

#### 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*

The principle of consumer choice is a core concept in the competitive functioning of digital markets. It is important that customers have the ability to switch services without becoming “locked in” to any one service. The current discussion around data portability centers around whether people, despite having the legal freedom to move between online services, become practically “locked in” to services due to the networks attached to specific online platforms and a lack of straightforward means to move between different services. The ability to move between social networks with the same, interoperable, industry-standard formats for personal data, for example, has been compared to the implementation of number portability in Europe. In the early 2000s, the European Union mandated that consumers switching mobile telephone providers had the right to transfer the same mobile telephone number between services based on the argument that switching numbers was a prohibitive barrier to switching services, thereby threatening competition.

The best way to ensure that businesses and individuals retain the right to choose among competitive online services is to maintain an open environment in which it is easy for services to launch and operate online. With multiple services to choose between, users have the opportunity to demand and exercise data portability options, with services that allow for easy data portability becoming more attractive. Heavy government-imposed data portability standards would restrict such an environment. Online services have a strong incentive to comply with industry standards for data formats and allow for data portability because it makes them more attractive than other services that lock consumers in. Services such as Google and Facebook have already given their users the option to export and download their data in industry-standard formats. Stricter government-mandated standards would create an inflexible environment for new market competitors. Consumers already have the “to transfer data from one electronic processing system to and into another” and “the right to obtain from the controller those data in a structured and commonly used electronic format” under Article 18 of the General Data Protection Regulation. There is also already a legal mechanism in the EU for taking action against services that refuse to facilitate data portability functions as an abuse of dominance under Article 102 of the Treaty on the Functioning of the European Union (TFEU). It is unnecessary to strengthen data portability regulations with given the strength of the current regulations, which are the strongest in the world. It is also important to note that there need to be certain restraints on data portability regulations that protect the freedom of expression and privacy rights of other users. People should not be allowed to extract or erase the sensitive information or creative expression of other users under data portability laws.

## ACCESS TO DATA

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

*3000 character(s) maximum*

Content-agnostic zero-rating, and zero-rating provided by Internet companies being available on all services, will ensure barriers to market entry are minimized and that competition can be preserved among platform providers and content providers seek to zero-rate their services in order to promote and serve increasing access.

## 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

We are a research think tank based out of Washington, D.C. with considerable expertise and interest in European technology and innovation policy.

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

- Yes
- No

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

- Yes
- No
- I don't know

Please explain your answer.

*1500 character(s) maximum*

The example of how copyright take down works (or does not work) on YouTube is sufficiently demonstrative that the burden of assessing illegality of content should not be left to online platforms. This results in excessive take downs because platforms would rather be safe than sorry when it comes to breaking the law or facing large lawsuits. This will hamper freedom of expression online. Automated take down systems have been shown to be faulty and incorrect. The other option left to online platforms, which is to professionally mediate cases and act as a third-party judge, is expensive because it requires hiring an expensive legal team. Such an action would only serve to entrench the current platforms, which are large and wealthy enough to hire such a legal team, and prohibit new platforms from being developed and becoming successful. This would ensure that the large tech giants remain U.S.-centric and prohibit the rise of start-ups out of Europe who would not only need to launch a successful technological innovation and business idea, but also contend with increasingly complicated and burdensome legal responsibilities.

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

- Yes
- No

**On the "notice"**

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

- Yes  
 No

### On the "action"

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

- Yes  
 No

\* Please explain your answer

*1500 character(s) maximum*

Under the E-commerce directive, intermediaries are already required to take down materials that are obviously illegal. This is a broad enough stipulation to cover the take downs of illegal materials ranging from pornography to terrorism-related content, but does not put the burden on intermediaries to act as arbiters in cases in which legality is questionable, which would require a more professional and specialized legal team to analyze. The responsibility to determine legality should rest, as it always has in both online and offline environments, with legal professionals who are trained and equipped to interpret the laws made by governments. The enforcement should rest with the governments who create the laws. It is undesirable to conflate governance and business. This would fundamentally threaten the functioning of democracy. It is unrealistic to assume that companies' success in creating services in a digital environment would somehow make them more qualified to act as arbiters in controversial legal decisions. Rather than showing a lack of corporate responsibility, this is simply the continuation of a long-standing democratic practice.

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

*1500 character(s) maximum*

An attempt to categorize types of illegal content would be more burdensome for online platforms and less effective than the current classification in the E-commerce directive, which requires online platforms to remove content that is obviously illegal. Applying different standards for some kinds of illegal content would be more complicated and unnecessary.

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

- Yes  
 No

Please explain

Take down and stay down policies are both a bad idea and impossible to enforce. Considering that these policies would only be applicable under EU jurisdiction, materials that find their way online in the first place have shown a tendency to stay online even after the original intermediary takes it down. This is clearly demonstrated by repositories of take down requests, such as the Guardian's repository of all links de-indexed by Google in accordance with the "Right to be Forgotten / removal / whatever" and the Clearinghouse database of content removed under DMCA copyright law. Therefore, it would be incredibly difficult, if not impossible, to enforce that content ordered to be removed under EU jurisdictions would not become easily accessible online through non-EU domains.

But, aside from the question of enforceability, requiring that content which is taken down must stay down would require proactive monitoring on the part of intermediaries in a way that inhibits individual rights to access information and freedom of expression. This opinion was confirmed and upheld by the ECJ in both SABAM v. Scarlet and SABAM v. Netlog.

**On duties of care for online intermediaries:**

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

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

- Yes  
 No



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

*1500 character(s) maximum*

Inapplicable to R Street Institute. In general, however, the costs of ongoing monitoring and compliance with a popular new media platform will be prohibitive to market entrants. Such costs will leave incumbent market leaders like Google and Facebook with an impossible advantage against new competitors.

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*

Thus far, the internet has been treated as a global phenomenon. We have grown accustomed to a situation in which anyone with an internet connection can type a URL name into a search engine, from anywhere at any time, and see the same content as someone doing the same thing halfway around the world. Such a scenario allows for a marketplace of online services that enjoy an unprecedented diversity of interconnected consumers and providers. But this does not always have to be the case. For the internet to function as it does, it requires legal frameworks that guarantee freedom of expression. For example, in countries with high levels of government censorship, such as China, it is impossible for services that rely on the free and open access to information, such as search engines, to function. Therefore, residents in China do not have access to the same "global" internet without using illegal work-arounds. There is no Google in China – it was forced to pull out in (~2010).

Even in countries with the basic legal guarantees of freedom of expression that enables the free flow of information online, excessive or asymmetrical regulatory regimes regarding business conducted online (or e-commerce) will lead to asymmetry of online platform providers and online platform users. As things currently stand, the largest and most powerful platforms have been developed by companies based in the United States. These tech giants, the usual suspects known affectionately in France by the acronym "les GAFAs," enjoy large user populations in Europe. (highest percentage of Google users in Europe). Yet, there has been growing concern among Europeans that such U.S.-based platforms are not bound to European legal jurisdictions, leading to a situation in which, at best, U.S. online platforms do not adequately understand and act according to European values, or, at worst, share sensitive personal information from European users with the NSA. Past and ongoing actions among the EU governing bodies, and particularly the European Commission, suggest that they intend to solve the problem by introducing regulations that ensure that powerful platforms adhere to specific rules, set in Europe. The problem with this tactic is that extensive regulations will be by necessity designed to govern the platform economy model as it currently stands. It will freeze the current model, leaving U.S.-based companies dominant. Only the largest companies will have the legal resources necessary to comply with regulations and stay in the game. Regulations that make it more difficult to operate in Europe than in other countries around the world, such as the US, Canada, Japan, or Australia, will simply push tech start-ups out of Europe. It would be a disservice to European residents for the EU to enforce regulations that prohibit a European company that accords to European values of privacy, data protection, and anonymity to be prevented by regulatory burdens from reaching Google's success.

## 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*

As things currently stand, the EU allows for the sufficient free flow and fair access to and use of data through three specific mechanisms: contract law, consumer protection laws, and data protection laws, as governed by increasingly harmonized EU contract law, the Consumer Rights Directive (2011/83/EC), and the Data Protection Directive (95/46/EC), respectively. With the soon-to-be-finalized EU General Data Protection Regulations poised to be the strictest legal data protection regulations in the world, Europe stands to benefit from its reputation as a digital marketplace that safeguards the interests of both companies and individuals when it comes to the fair use of data. Additional regulations on online platforms would only serve to hinder the free flow of data between Europe and the rest of the world.

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 concept of ownership as an exclusive right is difficult to apply when it comes to data because oftentimes there are multiple parties involved in the generation of data, including individuals, companies, and software platforms. These different parties all have different levels of rights to the data, some of which are difficult to define and vary based on jurisdiction. Therefore, it is more productive to deal with concepts of data access and management. Some of the most interesting work regarding dynamic data management that allows for secondary reuse of data is the creation of open standards from the Kantara Initiative related to user-management access and consent receipt software, which allows for more transparent and dynamic consents from the parties involved on how data is used.

## 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 main constraints to the development of data markets in Europe revolve around the difficulties in operating across 28 member states with different languages and regulations. Variations between national copyright laws in particular make it difficult for services to operate in Europe, which led to the issues with geo-blocking and data portability facing Europeans who are trying to use the opportunities for mobility that they enjoy as citizens of Europe. Unfortunately, physical borders remain easier to cross than digital ones in certain circumstances, such as trying to access content on Netflix which an individual has already paid for. It remains economically disadvantageous for online platforms that rely on the fluid exchange of data to navigate the legal complexities necessary to provide services for populations which can be small and linguistically isolated. The Digital Single Market agenda should improve the situation by creating harmonized copyright laws and data protection regulations.

## 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?

\* Please specify

There are many cases studies showing how open data can improve transparency, governance, innovation, education, and online services across sectors (Open Data Institute, 2015). Significantly, a recent study conducted by the Open Data Institute of how 270 companies use open data in the UK showed out of these companies, which have an annual turnover of 92 billion pounds, 70% use open data published by the government. But, despite the acknowledge value of public sector open data and the commitment from many governments to make government data "open by default," barriers remain. Many countries that implemented open government data initiatives in 2013 have not been enforced and lack legislative backing. Ensuring the right to data mining without requiring an additional license remains an area of improvement.

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

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

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

- Yes
- No

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

*3000 character(s) maximum*

While there has been an increased push to make publicly funded research openly accessible, marked by laudable efforts such as the European Commission's recommendations on access to and preservation of scientific information (2012/417/EU) and the conditions the Horizon 2020 funded projects must be openly disseminated, the most significant barrier to making data generated by research sufficiently findable is licensing that prevents content mining. Content mining, also known as "text and data mining" (TDM), should be covered under licenses to access research data. There are rightsholders who are insisting, however, that European copyright law should require two separate licenses, one for "reading" data and another for "mining" is, which usually involves automated analytical techniques. Such restrictions limit the potential of open data, big data analysis, and automated tools to improve research.

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

- Yes
- No

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

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

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

- Yes
- No
- I don't know

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

*3000 character(s) maximum*

It is very difficult to preempt technological innovations before they occur. This leads to difficulties and complexities in applying regulations designed for old new technologies to current and future technological scenarios, such as the International Trade Commission's application of the Tariff Act of 1930 a case regarding a case dealing with trans-border data transactions last April. Therefore it is unreasonable to design legal frameworks that are "future proof." Regulatory frameworks should protect legal rights while remaining lightweight and flexible enough that they do not freeze technological innovation or prove impossible to change in response to future circumstances.

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 current liability regime, as outlined in the E-commerce Directive and the upcoming General Data Protection Regulation, sufficiently establish a liability regime by dividing the liability between data controllers and data processors.

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*

The advantage of open service platforms is that they more easily allow for interoperability, they can be openly vetted for security weaknesses and bugs, they do not lock users into proprietary formats, and they give start-up enterprises access to the building blocks they need to build new services. The benefits of closed service platforms is that they create a vehicle for making a profit off of online services, which is a driver for innovation.

## 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

Would you be in favour of supporting an initiative considering and promoting the development of personal data management systems at EU Level?

- Yes
- No

## EUROPEAN CLOUD INITIATIVE

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

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

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

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

- Yes
- No
- Not applicable

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

- Yes
- No
- Not applicable

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

- Yes
- No

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

- Economic benefits
- Improved trust
- Others:

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

- Economic benefits
- Improved trust
- Others:

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

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

Market determinations of appropriate contract standards should be adequate for this purpose.

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*

Data localization, presented as a solution to fears regarding data security and a lack of national control over data practices, will create many negative side effects without achieving the desired results. Far from improving data security, data localization weakens both data privacy and data security by preventing companies from storing data in state-of-the-art data centers have already been built to be highly secure. It also prevents companies from using the current practice of distributing data storage in multiple data centers and online to ensure that one point of failure will not result in data loss. In regards to concerns about data hosted on U.S. territory as being more prone to U.S. surveillance, localization practices would ultimately degrade data security by making it easier for the NSA to obtain data by direct intrusion, which is illegal in the United States under U.S. law but allowed under the pretext of national security in foreign countries. Enforcing data localization would require companies to collect large amounts of metadata about the content of datapackets, where they came from, and where they are going, which decreases privacy and increases costs of operation. Data localization laws would also drive up inefficiencies, increase Internet costs for users, leave users with a slower Internet experience, and limit connectivity. The negative consequences greatly outweigh the perceived benefits, which are only that: perceived. The issue of applying geographically-defined laws to activities on the internet remains a challenge, but should be enforced as it is currently.

## 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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