Guide to European Commission Digital Single Market Consultation on Online Platforms

The European Commission is conducting a [public consultation](http://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud) on “the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy”, as part of its Digital Single Market strategy. The consultation covers a range of topics, including content regulation, intermediary liability, and individual privacy. Responses to the consultation are due by 30 December 2015.

The consultation takes the form of an online questionnaire (available [here](https://ec.europa.eu/eusurvey/runner/Platforms/); background information and a PDF of the full consultation is available [here](http://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud)). The consultation form includes a mix of radio-button and checkbox multiple-choice questions, as well as open text fields. Text answers are limited to specified character counts and may only become available in the webform if you select particular radio/checkbox choices. Character counts **include spaces**. Respondents may also submit position papers and additional information to the Commission by sending them to [CNECT-PLATFORMS-CONSULTATION@ec.europa.eu](mailto:CNECT-PLATFORMS-CONSULTATION@ec.europa.eu); the Commission asks that respondents include the "Case Id" for their questionnaire response that is displayed after they have concluded the online questionnaire.

Below, we provide some basic information about the structure of the questionnaire, including the relationship between radio button/checkbox answers and the availability of text fields. For questions, comments, or further information about this guide, please contact Emma Llansó at the Center for Democracy & Technology (ellanso@cdt.org).

**I. General information**

This section requests background information on the respondent. All questions in this section are mandatory.

*Please indicate your role for the purpose of this consultation.*

If you indicate that you are anything other than an individual, the Commission asks that you **register your organization** in the [Transparency Register of the European Commission and the European Parliament](http://ec.europa.eu/transparencyregister/public/homePage.do). If your organization fails to do this, your answers will be recorded/published as a response from an individual.

*I object to the publication of my personal data.*

If you indicate “yes”, you will have a 1000 character limit to “provide a brief justification.”

**II. Online platforms**

This section presents the Commission’s working definition of “online platform” and seeks information about various aspects of personal and commercial use of platforms. For each of the sub-sections on “use of information by online platforms,” “relations between platforms and suppliers/traders/application developers or holders of rights in digital content”, and “access to data”, respondents have **3000 characters to provide general comments**.

*Do you agree with the definition of “online platform” as provided below?*

If you indicate “no”, you will have a 1000 character limit to “explain how you would change the definition.”

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

If you select “other”, you will have 100 characters to specify what you mean.

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

If you select “yes”, you will have 3000 characters to “list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible.”

Transparency of online platforms

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

If you select “no”, you will have 1500 characters to describe “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.” No space is provided to explain a response of “yes”.

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

If you select “no”, you will have 1500 characters to “explain how the transparency of reputation systems and other trust mechanisms could be improved.” No space is provided to explain a response of “yes”.

Use of information by online platforms

For the first set of questions (*In your view, do online platforms provide sufficient and accessible information with regard to:* parts (a)-(c)), if you select anything other than “I don’t know” for at least one of the 3 sub-questions, you will have 1500 characters to “explain your choice and share any best practices that you are aware of.”

Relations between platforms and suppliers/traders/application developers or holders of rights in digital content

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

If you select “yes”, you will have access to the following yes/no radio-button questions:

*As a holder of rights in digital content, 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 authorization.*
* *An online platform such as a video-sharing website or content aggregator refuses to enter into or negotiate licensing agreements with me.*
* *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.*
* *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 license or to do so under their own terms.*

There are no text boxes available to explain a yes/no answer to these questions.

*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?*

If you select “yes”, you will have 1500 characters to “share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms.”

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, messaged, search and order history, or customer reviews)?*

If you select “yes”, you will have access to a chart in which you can provide up to five online platforms and describe a best practice of this platform.

*Should there by a mandatory requirement allowing non-personal data to be easily extracted and moved between comparable online services?*

If you select “yes”, you will have 1500 characters to “explain your choice and share any best practices that you are aware of.” No space is provided to explain a response of “no.”

Access to data

*Would a rating scheme, issued by an independent agency on certain aspects of the platforms’ activities, improve the situation?*

If you select either “yes” or “no”, you will have 1500 characters to explain your answer.

**III. Tackling illegal content online and the liability of online intermediaries**

This section includes questions about intermediary liability policy and invites comment on the function and relevance of the E-Commerce Directive. It requests comment on the creation of “duties of care” for online intermediaries and other potential regulatory approaches to restricting content online, including the existing notice-and-action framework.

All respondents will have **3000 characters** to comment on the definition of passive/technical intermediaries in the E-Commerce Directive. At the end of the section, **all respondents have 5000 characters to share their general comments on the liability of online intermediaries**.

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

If you select “other”, you will have a text box (with no specified character limit) in which to explain your selection.

*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?*

If you select “yes”, you will have 3000 characters to “describe the situation”. No space is provided to explain a response of “no.”

*Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. . . . 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?*

If you select “yes”, you will have 1500 characters to “provide examples.” No space is provided to explain a response of “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?*

If you select “yes”, you will be asked to select (tick-box) from among 11 different categories of content. If you select at least one tick-box, you will have 1000 characters to “explain what approach you would see fit for the category”; selecting multiple tick-boxes does not increase your character count. If you select “other” from the list of content categories, you will also have 500 characters to specify this other type of content.

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?*

If you select either “yes” or “no”, you will have 1500 characters to explain your answer.

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

If you select either “yes” or “no”, you will have a text box (no posted character limit) in which to explain your answer.

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

If you select “yes”, you will have 1500 characters to describe these measures and an additional 1500 characters to “estimate the financial costs of your undertaking of putting in place and running this system.”

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

If you select “yes”, you will have 1500 characters with which to “specify for which categories of content you would establish such an obligation.” You will have an additional 1500 characters with which to “specify for which categories of intermediary you would establish such an obligation”, and you will have a further 1500 characters with which to “specify what types of actions could be covered by such an obligation.” No space is provided to explain a response of “no.”

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

If you select “yes”, you will be asked to answer “yes” or “no” to *Should this obligation be limited to those hosting service providers, which receive a sizeable amount of notices per year (e.g. more than 1000)?*

*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?*

If you select “yes”, you will be asked to answer “yes” or “no” to *Do you think a minimum size threshold would be appropriate if there was such an obligation?*

**IV. Data and cloud in digital ecosystems**

This section includes questions related to data localization, individual privacy/data protection, and access to open data, including scientific data. It also includes questions on the Internet of Things, the European cloud initiative, and personal data management systems.

All respondents will have **3000 characters** in which to explain their position on whether contract law frameworks are sufficient to facilitate a free flow of data while safeguarding privacy. All respondents will have **5000 characters** to provide their general comments to the topics of “data access, ownership, and use” as well as to provide “general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire.”

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?*

If you select “no”, you will have a text box (no character limit specified) to explain why not.

*Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable?*

If you select “yes”, you will be asked *What kind(s) of ground(s) do you think are justifiable?*, followed by a tick-box list of “national security”, “public security”, and “other reasons”. If you select “other reasons”, you will be given a text box (no character limit specified) to explain.

On data access and transfer

*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?*

If you select “yes”, you will be asked *Which of the following aspects would merit measures?* and given four tick-box choices, the last of which is “Other aspects.” If you select “Other aspects”, you will be asked to specify in a text box (no character limit given).

On data markets

*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)?*

If you select the tick-box for “Other aspects?”, you will have a text box (no character limit specified) in which to specify these 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?*

If you select “yes”, you will be asked *Under what conditions?* and will be provided three tick-box responses. If you select the third, “other conditions”, you will have 3000 characters in which to explain your response.

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

If you select “no”, you will have 3000 characters to explain “why not? What do you think could be done to make data generated by research more effectively re-usable?”.

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

If you select “no”, you will have 3000 characters in which to explain why not. No space is provided to explain a response of “yes.”

On liability in relation to the free flow of data and the Internet of things

*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?*

If you select “yes”, you will have 3000 characters to discuss whether “the legal framework [is] future proof.”

If you select “yes” or “no”, you will have 3000 characters to “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?”

Personal data management systems

*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?*

If you select “yes”, you will be asked to respond “yes” or “no” to *Would you be in favour of supporting an initiative considering and promoting the development of personal data management systems at EU Level?*

European cloud initiative

*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?*

If you select “no”, you will have a text box (no character limit specified) to respond to *What information relevant to the security and protection of users’ data do you think cloud service providers should provide?*

*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?*

If you select “no”, you will have a text box (no character limit specified) to explain.

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

If you select “Others”, you will have 3000 characters to specify which others.

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

If you select “Others”, you will have 3000 characters to specify which others.

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

If you select “Others”, you will have 3000 characters to specify which others.

*Would your answer* [to the question “Would model contracts for cloud service providers be a useful tool for building trust in cloud services?”] *differ for consumer and commercial (i.e. business to business) cloud contracts?*

If you select “no”, you will be asked *What approach would you prefer?*

**V. The collaborative economy**

This section provides the Commission’s working definition of “collaborative economy” and seeks data on the function and use of “collaborative economy platforms” in the EU economy.

*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?*

The final sub-question in this section is an open text box (no character limit specified) that allows respondents to explain any other risk or challenge.

*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?*

If you select “other”, you will have a text box (no character limit specified) in which to explain.

*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?*

If you select “yes”, you will have a text box (no character limit specified) in which to explain.

*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?*

If you select “yes”, you will have a text box (no character limit specified) in which to “indicate the sector/action”.

*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?*

If you select “New rules for the collaborative economy are required” or “More guidance and better information on the application of the existing rules is required”, you will have a text box (no character limit specified) in which to “indicate the sectors and the rules concerned.”