

Digital Services Act package: open public consultation

Fields marked with * are mandatory.

Introduction

The Commission recently [announced](#) a Digital Services Act package with two main pillars:

- first, a proposal of new and revised rules to deepen the Single Market for Digital Services, by increasing and harmonising the responsibilities of online platforms and information service providers and reinforce the oversight over platforms' content policies in the EU;
- second, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants.

T h i s

c o n s u l t a t i o n

The Commission is initiating the present open public consultation as part of its evidence-gathering exercise, in order to identify issues that may require intervention through the Digital Services Act, as well as additional topics related to the environment of digital services and online platforms, which will be further analysed in view of possible upcoming initiatives, should the issues identified require a regulatory intervention.

The consultation contains 6 modules (you can respond to as many as you like):

1. **How to effectively keep users safer online?**
2. **Reviewing the liability regime of digital services acting as intermediaries?**
3. **What issues derive from the gatekeeper power of digital platforms?**
4. **Other emerging issues and opportunities, including online advertising and smart contracts**
5. **How to address challenges around the situation of self-employed individuals offering services through online platforms?**
6. **What governance for reinforcing the Single Market for digital services?**

Digital services and other terms used in the questionnaire

The questionnaire refers to **digital services** (or ‘information society services’, within the meaning of the E-Commerce Directive), as ‘services provided through electronic means, at a distance, at the request of the user’. It also refers more narrowly to a subset of digital services here termed **online intermediary services**. By this we mean services such as internet access providers, cloud services, online platforms, messaging services, etc., i.e. services that generally transport or intermediate content, goods or services made available by third parties. Parts of the questionnaire specifically focus on **online platforms** – such as e-commerce marketplaces, search engines, app stores, online travel and accommodation platforms or mobility platforms and other collaborative economy platforms, etc.

Other terms and other technical concepts are explained in [a glossary](#).

How to respond

Make sure to **save** **your** **draft** regularly as you fill in the questionnaire. You can break off and return to finish it at any time. At the end, you will also be able to upload a document or add other issues not covered in detail in the questionnaire.

Deadline for responses

8 S e p t e m b e r 2 0 2 0 .

L a n g u a g e s

You can submit your response in any official EU language. The questionnaire is available in 23 of the EU's official languages. You can switch languages from the menu at the top of the page.

About you

- * 1 Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish

- ☐ French
- ☐ Gaelic
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* 2 I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

* 3 First name

Mike

* 4 Surname

Holderness

* 5 Email (this won't be published)

mike@holderness.eu

* 7 Organisation name

255 character(s) maximum

Mike Holderness - freelance journalist and consultant

* 8 Organisation size

- ☒ Micro (1 to 9 employees)
- ☐ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

9 What is the annual turnover of your company?

- ☒ <=€2m
- ☐ <=€10m
- ☐ <= €50m
- ☐ Over €50m

10 Are you self-employed and offering services through an online platform?

- ☒ Yes
- ☐ No

11 Would you describe your company as :

- ☐ a startup?
- ☐ a scaleup?
- ☐ a conglomerate offering a wide range of services online?

12 Is your organisation:

- ☐ an online intermediary
- ☐ an association representing the interests of online intermediaries
- ☐ a digital service provider, other than an online intermediary
- ☒ an association representing the interests of such digital services
- ☐ a different type of business than the options above
- ☒ an association representing the interest of such businesses

☐ other

16 Does your organisation play a role in:

- ☐ Flagging illegal activities or information to online intermediaries for removal
- ☐ Fact checking and/or cooperating with online platforms for tackling harmful (but not illegal) behaviours
- ☒ Representing fundamental rights in the digital environment
- ☐ Representing consumer rights in the digital environment
- ☐ Representing rights of victims of illegal activities online
- ☐ Representing interests of providers of services intermediated by online platforms
- ☐ Other

17 Is your organisation a

- ☐ Law enforcement authority, in a Member State of the EU
- ☐ Government, administrative or other public authority, other than law enforcement, in a Member State of the EU
- ☐ Other, independent authority, in a Member State of the EU
- ☐ EU-level authority
- ☐ International level authority, other than at EU level
- ☒ Other

18 Is your business established in the EU?

- ☐ Yes
- ☒ No

20 Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

651282739433-83

* 21 Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|-------------------------------------|--------------------------------|-------------------------------------|---|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |

- | | | | |
|-----------------------|---------------------------------------|--------------------|--|
| ○ Albania | ○ Dominican Republic | ○ Lithuania | ○ Saint Vincent and the Grenadines |
| ○ Algeria | ○ Ecuador | ○ Luxembourg | ○ Samoa |
| ○ American Samoa | ○ Egypt | ○ Macau | ○ San Marino |
| ○ Andorra | ○ El Salvador | ○ Madagascar | ○ São Tomé and Príncipe |
| ○ Angola | ○ Equatorial Guinea | ○ Malawi | ○ Saudi Arabia |
| ○ Anguilla | ○ Eritrea | ○ Malaysia | ○ Senegal |
| ○ Antarctica | ○ Estonia | ○ Maldives | ○ Serbia |
| ○ Antigua and Barbuda | ○ Eswatini | ○ Mali | ○ Seychelles |
| ○ Argentina | ○ Ethiopia | ○ Malta | ○ Sierra Leone |
| ○ Armenia | ○ Falkland Islands | ○ Marshall Islands | ○ Singapore |
| ○ Aruba | ○ Faroe Islands | ○ Martinique | ○ Sint Maarten |
| ○ Australia | ○ Fiji | ○ Mauritania | ○ Slovakia |
| ○ Austria | ○ Finland | ○ Mauritius | ○ Slovenia |
| ○ Azerbaijan | ○ France | ○ Mayotte | ○ Solomon Islands |
| ○ Bahamas | ○ French Guiana | ○ Mexico | ○ Somalia |
| ○ Bahrain | ○ French Polynesia | ○ Micronesia | ○ South Africa |
| ○ Bangladesh | ○ French Southern and Antarctic Lands | ○ Moldova | ○ South Georgia and the South Sandwich Islands |
| ○ Barbados | ○ Gabon | ○ Monaco | ○ South Korea |
| ○ Belarus | ○ Georgia | ○ Mongolia | ○ South Sudan |
| ○ Belgium | ○ Germany | ○ Montenegro | ○ Spain |
| ○ Belize | ○ Ghana | ○ Montserrat | ○ Sri Lanka |
| ○ Benin | ○ Gibraltar | ○ Morocco | ○ Sudan |
| ○ Bermuda | ○ Greece | ○ Mozambique | ○ Suriname |

○ Bhutan	○ Greenland	○ Myanmar /Burma	○ Svalbard and Jan Mayen
○ Bolivia	○ Grenada	○ Namibia	○ Sweden
○ Bonaire Saint Eustatius and Saba	○ Guadeloupe	○ Nauru	○ Switzerland
○ Bosnia and Herzegovina	○ Guam	○ Nepal	○ Syria
○ Botswana	○ Guatemala	○ Netherlands	○ Taiwan
○ Bouvet Island	○ Guernsey	○ New Caledonia	○ Tajikistan
○ Brazil	○ Guinea	○ New Zealand	○ Tanzania
○ British Indian Ocean Territory	○ Guinea-Bissau	○ Nicaragua	○ Thailand
○ British Virgin Islands	○ Guyana	○ Niger	○ The Gambia
○ Brunei	○ Haiti	○ Nigeria	○ Timor-Leste
○ Bulgaria	○ Heard Island and McDonald Islands	○ Niue	○ Togo
○ Burkina Faso	○ Honduras	○ Norfolk Island	○ Tokelau
○ Burundi	○ Hong Kong	○ Northern Mariana Islands	○ Tonga
○ Cambodia	○ Hungary	○ North Korea	○ Trinidad and Tobago
○ Cameroon	○ Iceland	○ North Macedonia	○ Tunisia
○ Canada	○ India	○ Norway	○ Turkey
○ Cape Verde	○ Indonesia	○ Oman	○ Turkmenistan
○ Cayman Islands	○ Iran	○ Pakistan	○ Turks and Caicos Islands
○ Central African Republic	○ Iraq	○ Palau	○ Tuvalu
○ Chad	○ Ireland	○ Palestine	○ Uganda
○ Chile	○ Isle of Man	○ Panama	○ Ukraine

- | | | | |
|--|----------------------------------|---|--|
| <input type="radio"/> China | <input type="radio"/> Israel | <input type="radio"/> Papua New Guinea | <input type="radio"/> United Arab Emirates |
| <input type="radio"/> Christmas Island | <input type="radio"/> Italy | <input type="radio"/> Paraguay | <input checked="" type="radio"/> United Kingdom |
| <input type="radio"/> Clipperton | <input type="radio"/> Jamaica | <input type="radio"/> Peru | <input type="radio"/> United States |
| <input type="radio"/> Cocos (Keeling) Islands | <input type="radio"/> Japan | <input type="radio"/> Philippines | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Pitcairn Islands | <input type="radio"/> Uruguay |
| <input type="radio"/> Comoros | <input type="radio"/> Jordan | <input type="radio"/> Poland | <input type="radio"/> US Virgin Islands |
| <input type="radio"/> Congo | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal | <input type="radio"/> Uzbekistan |
| <input type="radio"/> Cook Islands | <input type="radio"/> Kenya | <input type="radio"/> Puerto Rico | <input type="radio"/> Vanuatu |
| <input type="radio"/> Costa Rica | <input type="radio"/> Kiribati | <input type="radio"/> Qatar | <input type="radio"/> Vatican City |
| <input type="radio"/> Côte d'Ivoire | <input type="radio"/> Kosovo | <input type="radio"/> Réunion | <input type="radio"/> Venezuela |
| <input type="radio"/> Croatia | <input type="radio"/> Kuwait | <input type="radio"/> Romania | <input type="radio"/> Vietnam |
| <input type="radio"/> Cuba | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao | <input type="radio"/> Laos | <input type="radio"/> Rwanda | <input type="radio"/> Western Sahara |
| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* 22 Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

☐ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

☒ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ I agree with the [personal data protection provisions](#)

I. How to effectively keep users safer online?

This module of the questionnaire is structured into several subsections:

First, it seeks evidence, experience, and data from the perspective of different stakeholders regarding illegal activities online, as defined by national and EU law. This includes the availability online of illegal goods (e.g. dangerous products, counterfeit goods, prohibited and restricted goods, protected wildlife, pet trafficking, illegal medicines, misleading offerings of food supplements), content (e.g. illegal hate speech, child sexual abuse material, content that infringes intellectual property rights), and services, or practices that infringe consumer law (such as scams, misleading advertising, exhortation to purchase made to children) online. It covers all types of illegal activities, both as regards criminal law and civil law.

It then asks you about other activities online that are not necessarily illegal but could cause harm to users, such as the spread of online disinformation or harmful content to minors.

It also seeks facts and informed views on the potential risks of erroneous removal of legitimate content. It also asks you about the transparency and accountability of measures taken by digital services and online platforms in particular in intermediating users' access to their content and enabling oversight by third parties. Respondents might also be interested in related questions in the module of the consultation focusing on online advertising.

Second, it explores proportionate and appropriate responsibilities and obligations that could be required from online intermediaries, in particular online platforms, in addressing the set of issues discussed in the first sub-section.

This module does not address the liability regime for online intermediaries, which is further explored in the next module of the consultation.

1. Main issues and experiences

A. Experiences and data on illegal activities online

Illegal goods

1 Have you ever come across illegal goods on online platforms (e.g. a counterfeit product, prohibited and restricted goods, protected wildlife, pet trafficking, illegal medicines, misleading offerings of food supplements)?

- ☐ No, never
- ☐ Yes, once
- ☐ Yes, several times
- ☐ I don't know

3 Please specify.

3000 character(s) maximum

4 How easy was it for you to find information on where you could report the illegal good?

Please rate from 1 star (very difficult) to 5 stars (very easy)



5 How easy was it for you to report the illegal good?

Please rate from 1 star (very difficult) to 5 stars (very easy)



6 How satisfied were you with the procedure following your report?

Please rate from 1 star (very dissatisfied) to 5 stars (very satisfied)



7 Are you aware of the action taken following your report?

- ☐ Yes
- ☐ No

8 Please explain

3000 character(s) maximum

9 In your experience, were such goods more easily accessible online since the outbreak of COVID-19?

- ☐ No, I do not think so
- ☐ Yes, I came across illegal offerings more frequently
- ☐ I don't know

10 What good practices can you point to in handling the availability of illegal goods online since the start of the COVID-19 outbreak?

5000 character(s) maximum

Illegal content

11 Did you ever come across illegal content online (for example illegal incitement to violence, hatred or discrimination on any protected grounds such as race, ethnicity, gender or sexual orientation; child sexual abuse material; terrorist propaganda; defamation; content that infringes intellectual property rights, consumer law infringements)?

- ☐ No, never
- ☐ Yes, once
- ☒ Yes, several times
- ☐ I don't know

12 What measure did you take?

- ☒ I reported it to the platform via its existing reporting procedure
- ☒ I contacted the online platform by other means to report the illegal content
- ☒ I contacted a national authority
- ☐ I contacted a consumer organisation
- ☐ I did not take any action
- ☒ I took a different action. Please specify in the text box below


13 Please specify

3000 character(s) maximum

I advise other journalists on how to take Small Claims Court action where this is available.

14 How easy was it for you to find information on where you could report the illegal content/activity?

Please rate from 1 star (very difficult) to 5 stars (very easy)



15 How easy was it for you to report the illegal content/activity?

Please rate from 1 star (very difficult) to 5 stars (very easy)



16 How satisfied were you with the procedure following your report?

Please rate from 1 star (very dissatisfied) to 5 stars (very satisfied)



17 Are you aware of the action taken following your report?

- ☒ Yes
☐ No

18 How has the dissemination of illegal content changed since the outbreak of COVID-19? Please explain.

3000 character(s) maximum

The COVID-19 crisis has been used in an effort to justify the dissemination of unlicensed content, as demonstrated by the Internet Archive's actions: see my account at www.londonfreelance.org/fl/2006copy.html

19 What good practices can you point to in handling the dissemination of illegal content online since the outbreak of COVID-19?

3000 character(s) maximum

20 What actions do online platforms take to minimise risks for consumers to be exposed to scams and other unfair practices (e.g. misleading advertising, exhortation to purchase made to children)?

3000 character(s) maximum

In the case of infringing photos and text they take almost no action.

21 Do you consider these measures appropriate?

- ☐ Yes
☒ No
☐ I don't know

22 Please explain.

3000 character(s) maximum

A complete lack of action to avoid being an accessory to infringement cannot be appropriate. Note also that commercial publishers are some of the biggest infringers, typically through the imposition of unfair (offline) contracts.

B. Transparency

1 If your content or offering of goods and services was ever removed or blocked from an online platform, were you informed by the platform?

- ☐ Yes, I was informed before the action was taken
- ☐ Yes, I was informed afterwards
- ☐ Yes, but not on every occasion / not by all the platforms
- ☒ No, I was never informed
- ☐ I don't know

3 Please explain.

3000 character(s) maximum

4 If you provided a notice to a digital service asking for the removal or disabling of access to such content or offering of goods or services, were you informed about the follow-up to the request?

- ☐ Yes, I was informed
- ☐ Yes, but not on every occasion / not by all platforms
- ☐ No, I was never informed
- ☐ I don't know

5 When content is recommended to you - such as products to purchase on a platform, or videos to watch, articles to read, users to follow - are you able to obtain enough information on why such content has been recommended to you? Please explain.

3000 character(s) maximum

Not enough information. On the other hand, this runs into the problem that it is likely to turn out to be impossible to explain the inner workings of most machine-learning (or "artificial intelligence") systems.

C. Activities that could cause harm but are not, in themselves, illegal

1 In your experience, are children adequately protected online from harmful behaviour, such as grooming and bullying, or inappropriate content?

3000 character(s) maximum

2 To what extent do you agree with the following statements related to online disinformation?

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	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	I don't know/ No reply
Online platforms can easily be manipulated by foreign governments or other coordinated groups to spread divisive messages	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To protect freedom of expression online, diverse voices should be heard	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disinformation is spread by manipulating algorithmic processes on online platforms	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Online platforms can be trusted that their internal practices sufficiently guarantee democratic integrity, pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

3 Please explain.

3000 character(s) maximum

One of the reasons that online platforms are so effective at spreading misinformation and disinformation is their refusal to license reporting by professional journalists - thus reducing the amount of accurate, professional reporting that is available - alongside the recommendation algorithms that make "controversial takes" more prominent than sober news. They therefore amplify the voices of propagandists and of cultists – the people who are prepared and able to distribute “information” for free – and suppress the voices of those who strive to make a living by independent, professional reporting.

If there were but space and time, we could have an extensive debate over epistemology. We can usefully agree for now that: if a news report has not been sub-edited, it certainly does not count as knowledge. (In US English that would be “copy-edited”.) Traditional newspapers and serious magazines, for all their failings, have extensive experience at preventing publication of things that someone typed off the top of their head.

The current position is as if school texts on nutrition were produced by burger companies and food faddists only. In fact there is a risk of that with the parallel weakening of authors' rights offline.

4 In your personal experience, how has the spread of harmful (but not illegal) activities online changed since the outbreak of COVID-19? Please explain.

3000 character(s) maximum

It has, as far as we are aware, changed only in that COVID-19 provides a new subject for misinformation and disinformation – exploited both by the apparently-unaffiliated fruitloops and by the likes of Russia Today.

5 What good practices can you point to in tackling such harmful activities since the outbreak of COVID-19?

3000 character(s) maximum

D. Experiences and data on erroneous removals

This section covers situation where content, goods or services offered online may be removed erroneously contrary to situations where such a removal may be justified due to for example illegal nature of such content, good or service (see sections of this questionnaire above).

1 Are you aware of evidence on the scale and impact of erroneous removals of content, goods, services, or banning of accounts online? Are there particular experiences you could share?

5000 character(s) maximum

No. We are not aware of any that are due to authors' rights, anyway.

In the case of journalistic work, "erroneous removals" appear to us to be a made-up problem, designed specifically to create the impression that authors' rights and copyright are a form of censorship. They are not: see my final remarks. I am of course deeply concerned about actual censorship, which takes place in the offline world in the form of government action including spurious arrests and assassination, and corporations legal action such as Strategic Lawsuits Against Public Participation (SLAPPs).

The following questions are targeted at organisations.

Individuals responding to the consultation are invited to go to section 2 here below on responsibilities for online platforms and other digital services

3 What is your experience in flagging content, or offerings of goods or services you deemed illegal to online platforms and/or other types of online intermediary services? Please explain in what capacity and through what means you flag content.

3000 character(s) maximum

We find that the process of discovering who is responsible for an infringing use under what jurisdiction is onerous – amounting to digital detective work. See below.

4 If applicable, what costs does your organisation incur in such activities?

3000 character(s) maximum

5 Have you encountered any issues, in particular, as regards illegal content or goods accessible from the EU but intermediated by services established in third countries? If yes, how have you dealt with these?

3000 character(s) maximum

Yes: journalists have difficulty in tracing to whom a DMCA request should be sent, and even greater difficulty discovering where demands for payment should be sent, particularly in the case of US web hosting; We also note the existence of websites that host wholesale ripoffs of magazines: anecdotally, some of these seem to be associated with the People's Republic of China.

The difficulty of enforcing authors' rights across borders is a continuing problem, on and off line.

We refer you to the Freelance Fees Guide from the National Union of Journalists (UK and Ireland) and its section "Tracking down pirates" [www.londonfreelance.org/feesguide/GeTraTxt.html accessed 27 Aug 2020].

This takes 3500 words to give a beginner's introduction to the business of finding infringing copies and seeking payments or takedown as appropriate. It needs to be supplemented with 700 words of additional advice on the special challenges of locating unlicensed copies of news photographs [www.londonfreelance.org/feesguide/PhTraTxt.html accessed 27 Aug 2020].

6 If part of your activity is to send notifications or orders for removing illegal content or goods or services made available through online intermediary services, or taking other actions in relation to content, goods or services, please explain whether you report on your activities and their outcomes:

- ☐ Yes, through regular transparency reports
- ☐ Yes, through reports to a supervising authority
- ☐ Yes, upon requests to public information
- ☐ Yes, through other means. Please explain
- ☒ No, no such reporting is done

8 Does your organisation access any data or information from online platforms?

- ☐ Yes, data regularly reported by the platform, as requested by law
- ☐ Yes, specific data, requested as a competent authority
- ☐ Yes, through bilateral or special partnerships
- ☐ On the basis of a contractual agreement with the platform
- ☐ Yes, generally available transparency reports
- ☐ Yes, through generally available APIs (application programme interfaces)
- ☐ Yes, through web scraping or other independent web data extraction approaches
- ☐ Yes, because users made use of their right to port personal data
- ☐ Yes, other. Please specify in the text box below
- ☒ No

10 What sources do you use to obtain information about users of online platforms and other digital services – such as sellers of products online, service providers, website holders or providers of content online? For what purpose do you seek this information?

3000 character(s) maximum

We refer you to the Freelance Fees Guide from the National Union of Journalists (UK and Ireland) and its section "Tracking down pirates" [www.londonfreelance.org/feesguide/GeTraTxt.html accessed 27 Aug 2020].

This takes 3500 words to give a beginner's introduction to the business of finding infringing copies and seeking payments or takedown as appropriate. It needs to be supplemented with 700 words of additional advice on the special challenges of locating unlicensed copies of news photographs [www.londonfreelance.org/feesguide/PhTraTxt.html accessed 27 Aug 2020].

11 Do you use WHOIS information about the registration of domain names and related information?

- ☒ Yes
☐ No
☐ I don't know

12 Please specify for what specific purpose and if the information available to you is sufficient, in your opinion?

3000 character(s) maximum

Locating owners of website names and hosts. The information available is not sufficient because of prevalence of anonymous registration. We recognise, however, the requirement that anonymous registration be possible where justified for, for example, whistleblowing. We would welcome opportunities to work with others on mechanisms that meet this need while making enforcement feasible in practice.

13 How valuable is this information for you?

Please rate from 1 star (not particularly important) to 5 (extremely important)



14 Do you use or are you aware of alternative sources of such data? Please explain.

3000 character(s) maximum

We are constantly seeking alternative sources to WHOIS - for personal use and to update www.londonfreelance.org/feesguide/GeTraTxt.html - but have not found any that seem reliable.

The following questions are targeted at online intermediaries.

A. Measures taken against illegal goods, services and content online shared by users

1 What systems, if any, do you have in place for addressing illegal activities conducted by the users of your service (sale of illegal goods -e.g. a counterfeit product, an unsafe product, prohibited and restricted goods, wildlife and pet trafficking - dissemination of illegal content or illegal provision of services)?

- ☐ A notice-and-action system for users to report illegal activities
- ☐ A dedicated channel through which authorities report illegal activities
- ☐ Cooperation with trusted organisations who report illegal activities, following a fast-track assessment of the notification
- ☐ A system for the identification of professional users ('know your customer')
- ☐ A system for penalising users who are repeat offenders
- ☐ A system for informing consumers that they have purchased an illegal good, once you become aware of this
- ☐ Multi-lingual moderation teams
- ☐ Automated systems for detecting illegal activities. Please specify the detection system and the type of illegal content it is used for
- ☐ Other systems. Please specify in the text box below
- ☐ No system in place

2 Please explain.

5000 character(s) maximum

3 What issues have you encountered in operating these systems?

5000 character(s) maximum

4 On your marketplace (if applicable), do you have specific policies or measures for the identification of sellers established outside the European Union ?

- ☐ Yes
- ☐ No

5 Please quantify, to the extent possible, the costs of the measures related to 'notice-and-action' or other measures for the reporting and removal of different types of illegal goods, services and content, as relevant.

5000 character(s) maximum

6 Please provide information and figures on the amount of different types of illegal content, services and goods notified, detected, removed, reinstated and on the number or complaints received from users. Please explain and/or link to publicly reported information if you publish this in regular transparency reports.

5000 character(s) maximum

7 Do you have in place measures for detecting and reporting the incidence of suspicious behaviour (i.e. behaviour that could lead to criminal acts such as acquiring materials for such acts)?

3000 character(s) maximum

B. Measures against other types of activities that might be harmful but are not, in themselves, illegal

1 Do your terms and conditions and/or terms of service ban activities such as:

- ☐ Spread of political disinformation in election periods?
- ☐ Other types of coordinated disinformation e.g. in health crisis?
- ☐ Harmful content for children?
- ☐ Online grooming, bullying?
- ☐ Harmful content for other vulnerable persons?
- ☐ Content which is harmful to women?
- ☐ Hatred, violence and insults (other than illegal hate speech)?
- ☐ Other activities which are not illegal per se but could be considered harmful?

2 Please explain your policy.

5000 character(s) maximum

3 Do you have a system in place for reporting such activities? What actions do they trigger?

3000 character(s) maximum

4 What other actions do you take? Please explain for each type of behaviour considered.

5000 character(s) maximum

5 Please quantify, to the extent possible, the costs related to such measures.

5000 character(s) maximum

6 Do you have specific policies in place to protect minors from harmful behaviours such as online grooming or bullying?

- ☐ Yes
- ☐ No

7 Please explain.

3000 character(s) maximum

C. Measures for protecting legal content goods and services

1 Does your organisation maintain an internal complaint and redress mechanism to your users for instances where their content might be erroneously removed, or their accounts blocked?

- ☐ Yes
- ☐ No

2 What action do you take when a user disputes the removal of their goods or content or services, or restrictions on their account? Is the content/good reinstated?

5000 character(s) maximum

3 What are the quality standards and control mechanism you have in place for the automated detection or removal tools you are using for e.g. content, goods, services, user accounts or bots?

3000 character(s) maximum

4 Do you have an independent oversight mechanism in place for the enforcement of your content policies?

☐

Yes

☐ No

5 Please explain.

5000 character(s) maximum

D. Transparency and cooperation

1 Do you actively provide the following information:

- ☐ Information to users when their good or content is removed, blocked or demoted
- ☐ Information to notice providers about the follow-up on their report
- ☐ Information to buyers of a product which has then been removed as being illegal

2 Do you publish transparency reports on your content moderation policy?

- ☐ Yes
- ☐ No

3 Do the reports include information on:

- ☐ Number of takedowns and account suspensions following enforcement of your terms of service?
- ☐ Number of takedowns following a legality assessment?
- ☐ Notices received from third parties?
- ☐ Referrals from authorities for violations of your terms of service?
- ☐ Removal requests from authorities for illegal activities?
- ☐ Number of complaints against removal decisions?
- ☐ Number of reinstated content?
- ☐ Other, please specify in the text box below

4 Please explain.

5000 character(s) maximum

5 What information is available on the automated tools you use for identification of illegal content, goods or services and their performance, if applicable? Who has access to this information? In what formats?

5000 character(s) maximum

6 How can third parties access data related to your digital service and under what conditions?

- ☐ Contractual conditions
- ☐ Special partnerships
- ☐ Available APIs (application programming interfaces) for data access
- ☐ Reported, aggregated information through reports
- ☐ Portability at the request of users towards a different service
- ☐ At the direct request of a competent authority
- ☐ Regular reporting to a competent authority
- ☐ Other means. Please specify

7 Please explain or give references for the different cases of data sharing and explain your policy on the different purposes for which data is shared.

5000 character(s) maximum

















































The following questions are open for all respondents.

2. Clarifying responsibilities for online platforms and other digital services

1 What responsibilities (i.e. legal obligations) should be imposed on online platforms and under what conditions?

Should such measures be taken, in your view, by all online platforms, or only by specific ones (e.g. depending on their size, capability, extent of risks of exposure to illegal activities conducted by their users)? If you consider that some measures should only be taken by large online platforms, please identify which would these measures be.

	Yes, by all online platforms, based on the activities	Yes, only by	Yes, only platforms at particular risk of	Such measures should not be
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	they intermediate (e.g. content hosting, selling goods or services)	larger online platforms	exposure to illegal activities by their users	required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content				
Maintain a system for assessing the risk of exposure to illegal goods or content				
Have content moderation teams, appropriately trained and resourced				
Systematically respond to requests from law enforcement authorities				
Cooperate with national authorities and law enforcement, in accordance with clear procedures				
Cooperate with trusted organisations with proven expertise that can report illegal activities for fast analysis ('trusted flaggers')				
Detect illegal content, goods or services				
In particular where they intermediate sales of goods or services, inform their professional users about their obligations under EU law				
Request professional users to identify themselves clearly ('know your customer' policy)				
Provide technical means allowing professional users to comply with their obligations (e.g. enable them to publish on the platform the pre-contractual information consumers need to receive in accordance with applicable consumer law)				
Inform consumers when they become aware of product recalls or sales of illegal goods				
Cooperate with other online platforms for exchanging best practices, sharing information or tools to tackle illegal activities				

Be transparent about their content policies, measures and their effects	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain an effective 'counter-notice' system for users whose goods or content is removed to dispute erroneous decisions	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other. Please specify	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

2 Please elaborate, if you wish to further explain your choices.

5000 character(s) maximum

Platforms should face - in respect of their publisher activity – the same civil and criminal penalties that the same activities would attract offline.

We have thought hard about the question of whether “publisher activity” is a dimmer-switch? Are some platform activities or some platforms' activities less “publishy” than others? We are not convinced, though, that the answer makes any practical difference. In most, if not all, jurisdictions most, if not all, questions of liability will be decided on the facts of each individual case, and the question is just one that will inform courts' decisions on how “flagrant” breaches are.

To the extent that a platform operates as a publisher, it must be subject to all responsibilities that go with being a publisher offline – from defamation to paying compensation for breach of authors' rights.

In fact there is an argument on competition grounds that platforms should be broken up into their publishing and their “pure network” activities – see my final remarks.

3 What information would be, in your view, necessary and sufficient for users and third parties to send to an online platform in order to notify an illegal activity (sales of illegal goods, offering of services or sharing illegal content) conducted by a user of the service?

- ☐ Precise location: e.g. URL
- ☒ Precise reason why the activity is considered illegal
- ☒ Description of the activity
- ☐ Identity of the person or organisation sending the notification. Please explain under what conditions such information is necessary:
- ☐ Other, please specify

4 Please explain

3000 character(s) maximum

* there must be a requirement only to provide /sufficient/ location information: the reason is that it is trivially easy to obfuscate URLs.

* the need for identity information depends on the type of infringement

5 How should the reappearance of illegal content, goods or services be addressed, in your view? What approaches are effective and proportionate?

5000 character(s) maximum

It is important that once works are taken down they stay down. Journalists and other authors should no longer have to play “whack-a-mole” with infringing copies, for example.

Once the availability of an infringing work has been notified it should certainly be the responsibility of the digital service to prevent illegal content from reappearing.

In the case we're dealing with – infringement of authors' rights – an automatic escalation of civil penalties as it is more and more clearly demonstrated that the infringement is egregious would seem appropriate. For every 5 findings, including those in the small claims courts, the award doubles, for example.

Given the cross-border nature of infringements, this implies an EU database of findings against digital services.

6 Where automated tools are used to detect illegal content, goods or services, what opportunities and risks does their use present as regards different types of illegal activities and the particularities of the different types of tools?

3000 character(s) maximum

Let's not get diverted into discussion of what automated tools can and cannot do. They must operate under human supervision and their outputs must be corrected by humans. The interests of the oligopolist digital services are served by deliberately confusing the removal of infringing and harmful content with “censorship”. Let's not.

7 How should the spread of illegal goods, services or content across multiple platforms and services be addressed? Are there specific provisions necessary for addressing risks brought by:

- a. Digital services established outside of the Union?
- b. Sellers established outside of the Union, who reach EU consumers through online platforms?

3000 character(s) maximum

Such provisions are necessary; but it seems that a solution to this depends on all countries, including the US, participating fully in multilateral co-operation.

8 What would be appropriate and proportionate measures for digital services acting as online intermediaries, other than online platforms, to take – e.g. other types of hosting services, such as web hosts, or services deeper in the internet stack, like cloud infrastructure services, content distribution services, DNS services, etc.?

5000 character(s) maximum

We need them to provide transparent information on infringers... while allowing for anonymous publication in the public interest, as above.

9 What should be the rights and responsibilities of other entities, such as authorities, or interested third-parties such as civil society organisations or equality bodies in contributing to tackle illegal activities online?

5000 character(s) maximum

As far as we can see this is not applicable to authors' rights infringements. Member unions of the EFJ may well have an interest in participating in measures against dangerous disinformation: we will have to ask them.

10 What would be, in your view, appropriate and proportionate measures for online platforms to take in relation to activities or content which might cause harm but are not necessarily illegal?

5000 character(s) maximum

11 In particular, are there specific measures you would find appropriate and proportionate for online platforms to take in relation to potentially harmful activities or content concerning minors? Please explain.

5000 character(s) maximum

12 Please rate the necessity of the following measures for addressing the spread of disinformation online. Please rate from 1 (not at all necessary) to 5 (essential) each option below.

	1 (not at all necessary)	2	3 (neutral)	4	5 (essential)	I don't know / No answer
Transparently inform consumers about political advertising and sponsored content, in particular during election periods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide users with tools to flag disinformation online and establishing transparent procedures for dealing with user complaints	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Tackle the use of fake-accounts, fake engagements, bots and inauthentic users behaviour aimed at amplifying false or misleading narratives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Transparency tools and secure access to platform data for trusted						

researchers in order to monitor inappropriate behaviour and better understand the impact of disinformation and the policies designed to counter it	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Transparency tools and secure access to platform data for authorities in order to monitor inappropriate behaviour and better understand the impact of disinformation and the policies designed to counter it	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Adapted risk assessments and mitigation strategies undertaken by online platforms	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensure effective access and visibility of a variety of authentic and professional journalistic sources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Auditing systems for platform actions and risk assessments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Regulatory oversight and auditing competence over platforms' actions and risk assessments, including on sufficient resources and staff, and responsible examination of metrics and capacities related to fake accounts and their impact on the manipulation and amplification of disinformation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

13 Please specify

3000 character(s) maximum

Ensure that professional, independent journalists can get fairly paid for their work. Please see our final remarks.

14 In special cases, where crises emerge and involve systemic threats to society, such as a health pandemic, and fast-spread of illegal and harmful activities online, what are, in your view, the appropriate cooperation mechanisms between digital services and authorities?

3000 character(s) maximum

15 What would be effective measures service providers should take, in your view, for protecting the freedom of expression of their users? Please rate from 1 (not at all necessary) to 5 (essential).

	1 (not at all necessary)	2	3 (neutral)	4	5 (essential)	I don't know / No answer
High standards of transparency on their terms of service and removal decisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Diligence in assessing the content notified to them for removal or blocking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Maintaining an effective complaint and redress mechanism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Diligence in informing users whose content/goods/services was removed or blocked or whose accounts are threatened to be suspended	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
High accuracy and diligent control mechanisms, including human oversight, when automated tools are deployed for detecting, removing or demoting content or suspending users' accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Enabling third party insight – e.g. by academics – of main content moderation systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other. Please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

16 Please explain.

3000 character(s) maximum

OTHER:

- * Ensure that those users can – if they wish – receive a fair share of income derived from publication of their expression
- * Increase prominence of professional, independent journalism over that of public relations and special interest users
- * Institute more effective procedures for reporting and blocking those who harass and threaten journalists and other users
- * Institute more effective procedures for reporting and blocking robots

* Institute more effective procedures for reporting and blocking bad-faith human contributors (comment farms and so forth)

Freedom of expression does not extend to robots, and it is deeply questionable whether it should extend to “bad-faith” expression. Freedom of genuine expression can only be served by ensuring that professional, independent work is presented prominently, safely and with equitable remuneration.

In any case the European Court of Human Rights has established that even if copyright infringement could be regarded as interference with the right of freedom of expression under Article 10 of the European Convention on Human Rights, this is subject to formalities, conditions, restrictions or penalties which are prescribed by law such as copyright law.

17 Are there other concerns and mechanisms to address risks to other fundamental rights such as freedom of assembly, non-discrimination, gender equality, freedom to conduct a business, or rights of the child? How could these be addressed?

5000 character(s) maximum

18 In your view, what information should online platforms make available in relation to their policy and measures taken with regard to content and goods offered by their users? Please elaborate, with regard to the identification of illegal content and goods, removal, blocking or demotion of content or goods offered, complaints mechanisms and reinstatement, the format and frequency of such information, and who can access the information.

5000 character(s) maximum

We do not believe that more requirements for policy statements on websites that merely summarise the law in force achieve much, and they may be a barrier to entry by new digital services. Digital services should, however, outline the required content of a notice for a stay down and for a counter notice to assist users.

19 What type of information should be shared with users and/or competent authorities and other third parties such as trusted researchers with regard to the use of automated systems used by online platforms to detect, remove and/or block illegal content, goods, or user accounts?

5000 character(s) maximum

Trusted researchers need complete access to such automated systems and complete freedom to publish research on and evaluations of them

20 In your view, what measures are necessary with regard to algorithmic recommender systems used by online platforms?

5000 character(s) maximum

There needs to be transparency about the operation of such systems. Perhaps the mandatory review of the impact of decision-making AI systems introduced by the GDPR could be adapted and extended. No recommender system should recommend illegal or unauthorised material to users.

More work is required on the role of recommender systems in propagating disinformation and other harmful content. Prioritising the work of professional, independent journalists for recommendation would be a very sensible immediate step.

21 In your view, is there a need for enhanced data sharing between online platforms and authorities, within the boundaries set by the General Data Protection Regulation? Please select the appropriate situations, in your view:

- ☐ For supervisory purposes concerning professional users of the platform - e.g. in the context of platform intermediated services such as accommodation or ride-hailing services, for the purpose of labour inspection, for the purpose of collecting tax or social security contributions
- ☐ For supervisory purposes of the platforms' own obligations – e.g. with regard to content moderation obligations, transparency requirements, actions taken in electoral contexts and against inauthentic behaviour and foreign interference
- ☒ Specific request of law enforcement authority or the judiciary
- ☐ On a voluntary and/or contractual basis in the public interest or for other purposes

22 Please explain. What would be the benefits? What would be concerns for companies, consumers or other third parties?

5000 character(s) maximum

There is no alternative – within the political and social framework of the EU – to data sharing at the behest of the courts.

23 What types of sanctions would be effective, dissuasive and proportionate for online platforms which systematically fail to comply with their obligations (See also the last module of the consultation)?

5000 character(s) maximum

We have suggested above that repeated dissemination of unauthorised works, for example, should attract steadily-increasing civil penalties for “flagrant” breach of authors' rights. Criminal penalties under competition law will be appropriate in some circumstances and, as with the Data Protection legislation, maximum penalties should be pegged to platforms' turnover.

24 Are there other points you would like to raise?

3000 character(s) maximum

II. Reviewing the liability regime of digital services acting as intermediaries?

The liability of online intermediaries is a particularly important area of internet law in Europe and worldwide. The E-Commerce Directive harmonises the liability exemptions applicable to online intermediaries in the single market, with specific provisions for different services according to their role: from Internet access providers and messaging services to hosting service providers.

The previous section of the consultation explored obligations and responsibilities which online platforms and other services can be expected to take – i.e. processes they should put in place to address illegal activities which might be conducted by users abusing their service. In this section, the focus is on the legal architecture for the liability regime for service providers when it comes to illegal activities conducted by their users. The Commission seeks informed views on how the current liability exemption regime is working and the areas where an update might be necessary.

2 The liability regime for online intermediaries is primarily established in the E-Commerce Directive, which distinguishes between different types of services: so called ‘mere conduits’, ‘caching services’, and ‘hosting services’.

In your understanding, are these categories sufficiently clear and complete for characterising and regulating today’s digital intermediary services? Please explain.

5000 character(s) maximum

The liability regime operates to prevent journalists getting fair remuneration for the use of their work.

It is past time to make a distinction between the providers of “pipes” and publishers. See my final remarks.

For hosting services, the liability exemption for third parties’ content or activities is conditioned by a knowledge standard (i.e. when they get ‘actual knowledge’ of the illegal activities, they must ‘act expeditiously’ to remove it, otherwise they could be found liable).

3 Are there aspects that require further legal clarification?

5000 character(s) maximum

Yes: the definition of digital-service-acting-as-a-publisher. See my final remarks.

4 Does the current legal framework dis-incentivize service providers to take proactive measures against illegal activities? If yes, please provide your view on how disincentives could be corrected.

5000 character(s) maximum

Of course a liability exemption disincentivises companies from acting against the unauthorised exploitation of journalists’ work – particularly where doing this is central to their business model. See my final remarks. It is past time to make a distinction between the providers of “pipes” and publishers.

It is already apparent that the provisions of Directive 2019/790 on the Digital Single Market that are intended to encourage licensing as the solution to this will not be effective unless the question of liability and of havens from liability is more thoroughly addressed, as we hope the present Act will do.

In addition, measures to encourage the adoption of extended collective licensing may well be

necessary to enable Article 17 of the directive on the Digital Single Market to produce an actual narrowing of the value gap.

5 Do you think that the concept characterising intermediary service providers as playing a role of a 'mere technical, automatic and passive nature' in the transmission of information ([recital 42 of the E-Commerce Directive](#)) is sufficiently clear and still valid? Please explain.

5000 character(s) maximum

It is not clear enough. The exemption in the e-commerce Directive needs to be reviewed.

6 The E-commerce Directive also prohibits Member States from imposing on intermediary service providers general monitoring obligations or obligations to seek facts or circumstances of illegal activities conducted on their service by their users. In your view, is this approach, balancing risks to different rights and policy objectives, still appropriate today? Is there further clarity needed as to the parameters for 'general monitoring obligations'? Please explain.

5000 character(s) maximum

General monitoring may be incompatible with freedom of expression; but /specific/ monitoring is necessary. See my final remarks.

7 Do you see any other points where an upgrade may be needed for the liability regime of digital services acting as intermediaries?

5000 character(s) maximum

See my final remarks.

III. What issues derive from the gatekeeper power of digital platforms?

There is wide consensus concerning the benefits for consumers and innovation, and a wide-range of efficiencies, brought about by online platforms in the European Union's Single Market. Online platforms facilitate cross-border trading within and outside the EU and open entirely new business opportunities to a variety of European businesses and traders by facilitating their expansion and access to new markets. At the same time, regulators and experts around the world consider that large online platforms are able to control increasingly important online platform ecosystems in the digital economy. Such large online platforms connect many businesses and consumers. In turn, this enables them to leverage their advantages – economies of scale, network effects and important data assets- in one area of their activity to improve or develop new services in adjacent areas. The concentration of economic power in then platform economy creates a small number of 'winner-takes it all/most' online platforms. The winner online platforms can also readily take over (potential) competitors and it is very difficult for an existing competitor or potential new entrant to overcome the winner's competitive edge.

The Commission [announced](#) that it 'will further explore, in the context of the Digital Services Act package, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting

as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants'. This module of the consultation seeks informed views from all stakeholders on this framing, on the scope, the specific perceived problems, and the implications, definition and parameters for addressing possible issues deriving from the economic power of large, gatekeeper platforms.

[The Communication 'Shaping Europe's Digital Future'](#) also flagged that 'competition policy alone cannot address all the systemic problems that may arise in the platform economy'. Stakeholders are invited to provide their views on potential new competition instruments through a separate, dedicated open public consultation that will be launched soon.

In parallel, the Commission is also engaged in a process of reviewing EU competition rules and ensuring they are fit for the modern economy and the digital age. As part of that process, the Commission has launched a consultation on the proposal for a New Competition Tool aimed at addressing the gaps identified in enforcing competition rules. The initiative intends to address as specific objectives the structural competition problems that prevent markets from functioning properly and that can tilt the level playing field in favour of only a few market players. This could cover certain digital or digitally-enabled markets, as identified in the report by the Special Advisers and other recent reports on the role of competition policy, and/or other sectors. As such, the work on a proposed new competition tool and the initiative at stake complement each other. The work on the two impact assessments will be conducted in parallel in order to ensure a coherent outcome. In this context, the Commission will take into consideration the feedback received from both consultations. We would therefore invite you, in preparing your responses to the questions below, to also consider your response to [the parallel consultation on a new competition tool](#).

1 To what extent do you agree with the following statements?











	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	I don't know/ No reply
Consumers have sufficient choices and alternatives to the offerings from online platforms.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It is easy for consumers to switch between services provided by online platform companies and use same or similar services provider by other online platform companies ("multi-home").	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It is easy for individuals to port their data in a useful manner to alternative service providers outside of an online platform.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

There is sufficient level of interoperability between services of different online platform companies.						
There is an asymmetry of information between the knowledge of online platforms about consumers, which enables them to target them with commercial offers, and the knowledge of consumers about market conditions.						
It is easy for innovative SME online platforms to expand or enter the market.						
Traditional businesses are increasingly dependent on a limited number of very large online platforms.						
There are imbalances in the bargaining power between these online platforms and their business users.						
Businesses and consumers interacting with these online platforms are often asked to accept unfavourable conditions and clauses in the terms of use/contract with the online platforms.						
Certain large online platform companies create barriers to entry and expansion in the Single Market (gatekeepers).						
Large online platforms often leverage their assets from their primary activities (customer base, data, technological solutions, skills, financial capital) to expand into other activities.						
When large online platform companies expand into such new activities, this often poses a risk of						

reducing innovation and deterring competition from smaller innovative market operators.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Main features of gatekeeper online platform companies and the main criteria for assessing their economic power

1 Which characteristics are relevant in determining the gatekeeper role of large online platform companies? Please rate each criterion identified below from 1 (not relevant) to 5 (very relevant):

Large user base	
Wide geographic coverage in the EU	
They capture a large share of total revenue of the market you are active/of a sector	
Impact on a certain sector	
They build on and exploit strong network effects	
They leverage their assets for entering new areas of activity	
They raise barriers to entry for competitors	
They accumulate valuable and diverse data and information	
There are very few, if any, alternative services available on the market	
Lock-in of users/consumers	

Other



2 If you replied "other", please list

3000 character(s) maximum

* The large online platform companies entrench their position through overt – and, much more importantly – covert lobbying. See, for example, the way that debate on the need for them to license content that they use under Article 17 of the Directive 2019/790 on copyright in the Digital Single Market was almost entirely diverted into a discussion of technical filtering – serving the platforms' purpose of confusing licensing, and perhaps regulation in general, with “censorship”.

* Regulatory capture is an important mechanism of building and maintaining a gatekeeper role. Many of the provisions of the e-commerce directive – such as the importation of a version of “safe harbour” rules – turn out, with the benefit of hindsight, to be results of such regulatory capture.

3 Please explain your answer. How could different criteria be combined to accurately identify large online platform companies with gatekeeper role?

3000 character(s) maximum

Do we really want a discussion of Metcalfe's law¹ – that the power of a network rises as the square of the number of participants? Probably, we do.

4 Do you believe that the integration of any or all of the following activities within a single company can strengthen the gatekeeper role of large online platform companies ('conglomerate effect')? Please select the activities you consider to strengthen the gatekeeper role:

- ☒ online intermediation services (i.e. consumer-facing online platforms such as e-commerce marketplaces, social media, mobile app stores, etc., as per [Regulation \(EU\) 2019/1150](#) - see glossary)
- ☒ search engines
- ☒ operating systems for smart devices
- ☒ consumer reviews on large online platforms
- ☒ network and/or data infrastructure/cloud services
- ☒ digital identity services
- ☒ payment services (or other financial services)
- ☒ physical logistics such as product fulfilment services
- ☒ data management platforms
- ☒ online advertising intermediation services
- ☒ other. Please specify in the text box below.

5 Other - please list

1000 character(s) maximum

- * mapping services with advertising tie-in
- * capture of users' geographical location, not least for convenience in mapping services
- * use of control of the operating system to “nudge” users to allow maximum capture of their behaviour, from location to use of messaging services
- * gathering data from use of translation services
- * monopolisation of an extremely large corpus of scanned books to train said translation services, “natural language” search queries and other future uses of machine learning

Emerging issues

The following questions are targeted particularly at businesses and business users of large online platform companies.

2 As a business user of large online platforms, do you encounter issues concerning trading conditions on large online platform companies?

- ☒ Yes
- ☐ No

3 Please specify which issues you encounter and please explain to what types of platform these are related to (e.g. e-commerce marketplaces, app stores, search engines, operating systems, social networks).

5000 character(s) maximum

- * For example, authors' – perhaps particularly photographers' – ability to gain fair remuneration for their work is undermined by the terms and conditions of photo-sharing and similar platforms – see for example:
 - Daniel Morel -v- AFP et al [www.londonfreelance.org/fl/1507afp.html]
 - Stephanie Sinclair -v- Mashable [www.londonfreelance.org/fl/2004inst.html]
 - Elliot McGucken -v- Newsweek [www.londonfreelance.org/fl/2006inst.html]
- * In general, the ability of monopoly, oligopoly or monopsony platforms to change their conditions of use unilaterally leads to enormous business uncertainty – and expense in enforcement, as evidenced in the Morel case. Are they able to obtain retroactive licences to use words and images protected by authors' rights without negotiation? Can any journalist or author afford the legal fees that would have to be spent up front to answer this?

* We must also consider platforms that are near-monopolies in their own markets: Getty Images comes to mind.

4 Have you been affected by unfair contractual terms or unfair practices of very large online platform companies? Please explain your answer in detail, pointing to the effects on your business, your consumers and possibly other stakeholders in the short, medium and long-term?

5000 character(s) maximum

◆ See answer to previous question.

The following questions are targeted particularly at consumers who are users of large online platform companies.

6 Do you encounter issues concerning commercial terms and conditions when accessing services provided by large online platform companies? Please specify which issues you encounter and please explain to what types of platform these are related to (e.g. e-commerce marketplaces, app stores, search engines, operating systems, social networks).

5000 character(s) maximum

7 Have you considered any of the practices by large online platform companies as unfair? Please explain.

3000 character(s) maximum

The following questions are open to all respondents.

9 Are there specific issues and unfair practices you perceive on large online platform companies?

5000 character(s) maximum

* Everything that goes with being a monopoly or monopsony; especially the unilateral setting and alteration of contract terms that we note above, is an issue in this context.

* Two platforms have what is effectively a duopoly of the advertising market, again allowing them to set terms and to wipe out the forms of advertising that have largely sustained journalism for two centuries.

* Of particular concern to journalism is the manner in which platforms have evaded paying for the use they make of journalists' texts and images from newspapers and magazines.

- * The story of, for example, Google's ultimatum to German publishers that if they did not grant free licences to use their products, these would no longer be findable is well known.
- * More egregious is the straightforward closure of news.google.es after the Spanish legislature passed legislation that did not allow it this way out.
- * Instead, one platform in particular has handed out grants – of very modest size compared to its turnover – entirely at its discretion and largely for training that emphasises use of its services. It has of course recently announced that it will make payments to news publishers of its choice, in what is clearly an attempt to evade the obligations that it faces under Directive 2019/790 on Copyright in the Digital Single Market.
- * Though it may be outside the scope of the actions envisaged in this context, we would also note the platforms' evasive approach to tax.

10 In your view, what practices related to the use and sharing of data in the platforms' environment are raising particular challenges?

5000 character(s) maximum

We leave specialists in data privacy to provide more comprehensive treatments of this question. We note the role of such data use in:

- * The establishment of a duopoly in advertising, which we describe above;
- * The promotion of political messages that seek to undermine the very existence European Union and of the rights and responsibilities of citizens enshrined in its treaties and in the European Convention on Human Rights;
- * The promotion of political messages that seek, to those ends, to undermine the very concept of communicating truth to the public.

11 What impact would the identified unfair practices can have on innovation, competition and consumer choice in the single market?

3000 character(s) maximum

The destruction of the previous advertising market has been accompanied, at least, by unfair practices. It has already decimated journalistic publications in print – or worse than decimated.

12 Do startups or scaleups depend on large online platform companies to access or expand? Do you observe any trend as regards the level of dependency in the last five years (i.e. increases; remains the same; decreases)? Which difficulties in your view do start-ups or scale-ups face when they depend on large online platform companies to access or expand on the markets?

3000 character(s) maximum

Yes. A particularly clear example is provided by the near-monopoly of search.

13 Which are possible positive and negative societal (e.g. on freedom of expression, consumer protection, media plurality) and economic (e.g. on market contestability, innovation) effects, if any, of the gatekeeper role that large online platform companies exercise over whole platform ecosystem?

3000 character(s) maximum

Positive: we can't think of any.

Negative: everything that comes with monopolies and monopsonies not only abusing dominant market positions but also having control over the greater part of the cultural and informational resources available to citizens.

14 Which issues specific to the media sector (if any) would, in your view, need to be addressed in light of the gatekeeper role of large online platforms? If available, please provide additional references, data and facts.

3000 character(s) maximum

◆ See my final remarks.

Regulation of large online platform companies acting as gatekeepers

1 Do you believe that in order to address any negative societal and economic effects of the gatekeeper role that large online platform companies exercise over whole platform ecosystems, there is a need to consider dedicated regulatory rules?

- ☒ I fully agree
- ☐ I agree to a certain extent
- ☐ I disagree to a certain extent
- ☐ I disagree
- ☐ I don't know

2 Please explain

3000 character(s) maximum

Our previous responses establish, we believe, the need for dedicated regulatory rules.

Of most immediate concern to the European Federation of Journalists are:

* Rules – and the enforcement of rules – that ensure that a fair share of the income that platforms make on the back of journalists' work is returned to those journalists, respecting their authors' rights; and

* Rules that aim to deal with the role of platforms in misinformation and disinformation.

Of more general concern to journalists as citizens and consumers is the need for rules that address the monopolization of channels for transmitting culture and information and the damaging role of disinformation.

3 Do you believe that such dedicated rules should prohibit certain practices by large online platform companies with gatekeeper role that are considered particularly harmful for users and consumers of these large online platforms?

- ☒ Yes
- ☐ No
- ☐ I don't know

4 Please explain your reply and, if possible, detail the types of prohibitions that should in your view be part of the regulatory toolbox.

3000 character(s) maximum

Apart from the more technical aspects of a possible New Competition Tool, the most important measures will be those that prevent large online platforms from imposing unfair contract terms on users and on suppliers, particularly on those suppliers that are individuals or small enterprises.

5 Do you believe that such dedicated rules should include obligations on large online platform companies with gatekeeper role?

- ☒ Yes
- ☐ No
- ☐ I don't know

6 Please explain your reply and, if possible, detail the types of obligations that should in your view be part of the regulatory toolbox.

3000 character(s) maximum

See my final remarks.

7 If you consider that there is a need for such dedicated rules setting prohibitions and obligations, as those referred to in your replies to questions 3 and 5 above, do you think there is a need for a specific regulatory authority to enforce these rules?

- ☒ Yes
- ☐ No
- ☐ I don't know

8 Please explain your reply.

3000 character(s) maximum

Experience shows how platforms owned by companies that are larger, in financial terms, than most states will play national regulatory authorities off against one another and will divert the attention of authorities that have other missions. A dedicated EU-wide body is required.

9 Do you believe that such dedicated rules should enable regulatory intervention against specific large online platform companies, when necessary, with a case by case adapted remedies?

- ☒ Yes
- ☐ No
- ☐ I don't know

10 If yes, please explain your reply and, if possible, detail the types of case by case remedies.

3000 character(s) maximum

Among the most important remedies will be provision for direct compensation to those on whom large online platforms have imposed unfair contract terms – whether they be users or suppliers.

11 If you consider that there is a need for such dedicated rules, as referred to in question 9 above, do you think there is a need for a specific regulatory authority to enforce these rules?

- ☒ Yes
- ☐ No

12 Please explain your reply

3000 character(s) maximum

13 If you consider that there is a need for a specific regulatory authority to enforce dedicated rules referred to questions 3, 5 and 9 respectively, would in your view these rules need to be enforced by the same regulatory authority or could they be enforced by different regulatory authorities? Please explain your reply.

3000 character(s) maximum

14 At what level should the regulatory oversight of platforms be organised?

- ☐ At national level
- ☒ At EU level
- ☐ Both at EU and national level.
- ☐ I don't know

15 If you consider such dedicated rules necessary, what should in your view be the relationship of such rules with the existing sector specific rules and/or any future sector specific rules?

3000 character(s) maximum

16 Should such rules have an objective to tackle both negative societal and negative economic effects deriving from the gatekeeper role of these very large online platforms? Please explain your reply.

3000 character(s) maximum

Yes, both. This seems self-evident from the nature of the European Union.

17 Specifically, what could be effective measures related to data held by very large online platform companies with a gatekeeper role beyond those laid down in the General Data Protection Regulation in order to promote competition and innovation as well as a high standard of personal data protection and consumer welfare?

3000 character(s) maximum

We'll be sure to get back to you if we have an idea on this.

18 What could be effective measures concerning large online platform companies with a gatekeeper role in order to promote media pluralism, while respecting the subsidiarity principle?

3000 character(s) maximum

All the measures referred to elsewhere to ensure that independent journalists can make a professional living from our journalism will promote media pluralism. So will regulation of recommendation algorithms.

19 Which, if any, of the following characteristics are relevant when considering the requirements for a potential regulatory authority overseeing the large online platform companies with the gatekeeper role:

- ☒ Institutional cooperation with other authorities addressing related sectors – e. g. competition authorities, data protection authorities, financial services authorities, consumer protection authorities, cyber security, etc.
- ☒ Pan-EU scope
- ☒ Swift and effective cross-border cooperation and assistance across Member States
- ☐ Capacity building within Member States
- ☒

High level of technical capabilities including data processing, auditing capacities

- ☒ Cooperation with extra-EU jurisdictions
- ☐ Other

21 Please explain if these characteristics would need to be different depending on the type of ex ante rules (see questions 3, 5, 9 above) that the regulatory authority would be enforcing?

3000 character(s) maximum

22 Which, if any, of the following requirements and tools could facilitate regulatory oversight over very large online platform companies (multiple answers possible):

- ☒ Reporting obligation on gatekeeping platforms to send a notification to a public authority announcing its intention to expand activities
- ☒ Monitoring powers for the public authority (such as regular reporting)
- ☒ Investigative powers for the public authority
- ☐ Other

24 Please explain if these requirements would need to be different depending on the type of ex ante rules (see questions 3, 5, 9 above) that the regulatory authority would be enforcing?

3000 character(s) maximum

25 Taking into consideration [the parallel consultation on a proposal for a New Competition Tool](#) focusing on addressing structural competition problems that prevent markets from functioning properly and tilt the level playing field in favour of only a few market players. Please rate the suitability of each option below to address market issues arising in online platforms ecosystems. Please rate the policy options below from 1 (not effective) to 5 (most effective).

	1 (not effective)	2 (somewhat effective)	3 (sufficiently effective)	4 (very effective)	5 (most effective)	Not applicable /No relevant experience or knowledge
1. Current competition rules are enough to address issues raised in digital markets	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all large online platforms with gatekeeper power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3. There is a need for an additional regulatory framework allowing for the possibility to impose tailored remedies on individual large online platforms with gatekeeper power, on a case-by-case basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4. There is a need for a New Competition Tool allowing to address structural risks and lack of competition in (digital) markets on a case-by-case basis.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

26 Please explain which of the options, or combination of these, would be, in your view, suitable and sufficient to address the market issues arising in the online platforms ecosystems.

3000 character(s) maximum

27 Are there other points you would like to raise?

3000 character(s) maximum

IV. Other emerging issues and opportunities, including online advertising and smart contracts

Online advertising has substantially evolved over the recent years and represents a major revenue source for many digital services, as well as other businesses present online, and opens unprecedented opportunities for content creators, publishers, etc. To a large extent, maximising revenue streams and optimising online advertising are major business incentives for the business users of the online platforms and for shaping the data policy of the platforms. At the same time, revenues from online advertising as well as increased visibility and audience reach are also a major incentive for potentially harmful intentions, e.g. in online disinformation campaigns.

Another emerging issue is linked to the conclusion of 'smart contracts' which represent an important innovation for digital and other services, but face some legal uncertainties.

This section of the open public consultation seeks to collect data, information on current practices, and informed views on potential issues emerging in the area of online advertising and smart contracts.

Respondents are invited to reflect on other areas where further measures may be needed to facilitate innovation in the single market. This module does not address privacy and data protection concerns; all aspects related to data sharing and data collection are to be afforded the highest standard of personal data protection.

Online advertising

1 When you see an online ad, is it clear to you who has placed it online?

- ☐ Yes, always
- ☒ Sometimes: but I can find the information when this is not immediately clear
- ☐ Sometimes: but I cannot always find this information
- ☐ I don't know
- ☐ No

2 As a publisher online (e.g. owner of a website where ads are displayed), what types of advertising systems do you use for covering your advertising space? What is their relative importance?

	% of ad space	% of ad revenue
Intermediated programmatic advertising though real-time bidding		
Private marketplace auctions		
Programmatic advertising with guaranteed impressions (non-auction based)		
Behavioural advertising (micro-targeting)		
Contextual advertising		
Other		

3 What information is publicly available about ads displayed on an online platform that you use?

3000 character(s) maximum

4 As a publisher, what type of information do you have about the advertisement placed next to your content/on your website?

3000 character(s) maximum

5 To what extent do you find the quality and reliability of this information satisfactory for your purposes?

Please rate your level of satisfaction



6 As an advertiser or an agency acting on behalf of the advertiser (if applicable), what types of programmatic advertising do you use to place your ads? What is their relative importance in your ad inventory?

	% of ad inventory	% of ad expenditure
Intermediated programmatic advertising through real-time bidding		
Private marketplace auctions		
Programmatic advertising with guaranteed impressions (non-auction based)		
Behavioural advertising (micro-targeting)		
Contextual advertising		
Other		

7 As an advertiser or an agency acting on behalf of the advertiser (if applicable), what type of information do you have about the ads placed online on your behalf?

3000 character(s) maximum

8 To what extent do you find the quality and reliability of this information satisfactory for your purposes?

Please rate your level of satisfaction



The following questions are targeted specifically at online platforms.

10 As an online platform, what options do your users have with regards to the advertisements they are served and the grounds on which the ads are being served to them? Can users access your service through other conditions than viewing advertisements? Please explain.

3000 character(s) maximum

11 Do you publish or share with researchers, authorities or other third parties detailed data on ads published, their sponsors and viewership rates? Please explain.

3000 character(s) maximum

12 What systems do you have in place for detecting illicit offerings in the ads you intermediate?

3000 character(s) maximum

The following questions are open to all respondents.

14 Based on your experience, what actions and good practices can tackle the placement of ads next to illegal content or goods, and/or on websites that disseminate such illegal content or goods, and to remove such illegal content or goods when detected?

3000 character(s) maximum

The placement of adverts next to material that infringes authors' rights should further increase civil liability for infringement.

15 From your perspective, what measures would lead to meaningful transparency in the ad placement process?

3000 character(s) maximum

16 What information about online ads should be made publicly available?

3000 character(s) maximum

17 Based on your expertise, which effective and proportionate auditing systems could bring meaningful accountability in the ad placement system?

3000 character(s) maximum

18 What is, from your perspective, a functional definition of 'political advertising'? Are you aware of any specific obligations attached to 'political advertising' at national level ?

3000 character(s) maximum

19 What information disclosure would meaningfully inform consumers in relation to political advertising? Are there other transparency standards and actions needed, in your opinion, for an accountable use of political advertising and political messaging?

3000 character(s) maximum

* All such advertising should bear a prominent indication everywhere it is displayed of who has paid for it – the ultimate beneficiary, not just some made-up Political Action Committee.

* Registers of ads, payment information as above, the audience selection criteria used and the audience reached must be freely and permanently available.

20 What impact would have, in your view, enhanced transparency and accountability in the online advertising value chain, on the gatekeeper power of major online platforms and other potential consequences such as media pluralism?

3000 character(s) maximum

21 Are there other emerging issues in the space of online advertising you would like to flag?

3000 character(s) maximum

Simply, for the moment, that addressing the monopoly or oligopoly power of platforms is essential.

Smart contracts

1 Is there sufficient legal clarity in the EU for the provision and use of “smart contracts” – e.g. with regard to validity, applicable law and jurisdiction?

Please rate from 1 (lack of clarity) to 5 (sufficient clarity)



2 Please explain the difficulties you perceive.

3000 character(s) maximum

3 In which of the following areas do you find necessary further regulatory clarity?

- ☐ Mutual recognition of the validity of smart contracts in the EU as concluded in accordance with the national law
- ☒ Minimum standards for the validity of “smart contracts” in the EU
- ☐ Measures to ensure that legal obligations and rights flowing from a smart contract and the functioning of the smart contract are clear and unambiguous, in particular for consumers
- ☒ Allowing interruption of smart contracts
- ☐ Clarity on liability for damage caused in the operation of a smart contract
- ☐ Further clarity for payment and currency-related smart contracts.

4 Please explain.

3000 character(s) maximum

Any legislation will have the effect of providing that smart contracts are /contracts/.

Smart contracts are likely to be offered on a "take it or leave it" basis and it is hard to see that negotiation will be provided for, even if it is technically possible.

Freelance journalists, in particular, are familiar with the practice of imposing contracts. These frequently oblige us to waive rights to remuneration that EU legislation intended to grant us; to accept liability for the legal repercussions of our work; to indemnify publishers against costs arising from the way they *change* our work; and where possible in national legislation to waive the right to object to such changes as being contrary to our "moral rights".

Any legislation on smart contracts must therefore be accompanied by rules on what contracts of any kind are unfair or unfairly imposed. Contracts exhibiting certain features should be automatically void. We intend to make further direct submissions on this.

5 Are there other points you would like to raise?

3000 character(s) maximum

V. How to address challenges around the situation of self-employed individuals offering services through online platforms?

Individuals providing services through platforms may have different legal status (workers or self-employed). This section aims at gathering first information and views on the situation of self-employed individuals offering services through platforms (such as ride-hailing, food delivery, domestic work, design work, micro-tasks etc.). Furthermore, it seeks to gather first views on whether any detected problems are specific to the platform economy and what would be the perceived obstacles to the improvement of the situation of individuals providing services through platforms. This consultation is not intended to address the criteria by which persons providing services on such platforms are deemed to have one or the other legal status. The issues explored here do not refer to the selling of goods (e.g. online marketplaces) or the sharing of assets (e.g. sub-renting houses) through platforms.

The following questions are targeting self-employed individuals offering services through online platforms.

Relationship with the platform and the final customer

1 What type of service do you offer through platforms?

- ☐ Food-delivery
- ☐ Ride-hailing
- ☐ Online translations, design, software development or micro-tasks
- ☐ On-demand cleaning, plumbing or DIY services
- ☒ Other, please specify

2 Please explain.

Freelance journalism - articles and editing of articles

3 Which requirements were you asked to fulfill in order to be accepted by the platform(s) you offer services through, if any?

4 Do you have a contractual relationship with the final customer?

- ☐ Yes
☐ No

5 Do you receive any guidelines or directions by the platform on how to offer your services?

- ☐ Yes
☐ No

7 Under what conditions can you stop using the platform to provide your services, or can the platform ask you to stop doing so?

8 What is your role in setting the price paid by the customer and how is your remuneration established for the services you provide through the platform(s)?

9 What are the risks and responsibilities you bear in case of non-performance of the service or unsatisfactory performance of the service?

Situation of self-employed individuals providing services through platforms

10 What are the main advantages for you when providing services through platforms?

3000 character(s) maximum

11 What are the main issues or challenges you are facing when providing services through platforms? Is the platform taking any measures to improve these?

3000 character(s) maximum

Here we can only repeat and re-stress the importance of measures to prevent powerful platforms imposing unfair contracts on us, and of them being liable for unauthorised use of our works with accessible and affordable paths to seek remedies open to us.

12 Do you ever have problems getting paid for your service? Does/do the platform have any measures to support you in such situations?

3000 character(s) maximum

13 Do you consider yourself in a vulnerable or dependent situation in your work (economically or otherwise), and if yes, why?

Precarious workers are by definition vulnerable – and more so when their client is a monopsony.

14 Can you collectively negotiate vis-à-vis the platform(s) your remuneration or other contractual conditions?

- ☐ Yes
- ☒ No

15 Please explain.

* Competition authorities in many member states still take the view that collective bargaining by freelances (self-employed workers) is a cartel practice

* We note the fairly recent change in Irish law - <http://www.londonfreelance.org/fl/1610prez.html> - but we are not aware that any of the collective bargaining that is now permitted there has in fact taken place: since the publishers are not /required/ to enter into such bargaining they may choose not to.

* This is another example of the power of a monopsony and an oligopsony. Some measure equivalent to formal trade union recognition to represent employees is required. The path to such a measure actually taking effect will, experience suggests, be a long and winding one through the courts. Precarious workers and their unions must be supported financially along this path if such legislation is to stand a chance of being effective.

The following questions are targeting online platforms.

Role of platforms

17 What is the role of your platform in the provision of the service and the conclusion of the contract with the customer?

18 What are the risks and responsibilities borne by your platform for the non-performance of the service or unsatisfactory provision of the service?

19 What happens when the service is not paid for by the customer/client?

20 Does your platform own any of the assets used by the individual offering the services?

- ☐ Yes
- ☐ No

22 Out of the total number of service providers offering services through your platform, what is the percentage of self-employed individuals?

- ☐ Over 75%
- ☐ Between 50% and 75%
- ☐ Between 25% and 50%
- ☐ Less than 25%

Rights and obligations

23 What is the contractual relationship between the platform and individuals offering services through it?

3000 character(s) maximum

24 Who sets the price paid by the customer for the service offered?

- ☐ The platform
- ☐ The individual offering services through the platform
- ☐ Others, please specify

25 Please explain.

3000 character(s) maximum

26 How is the price paid by the customer shared between the platform and the individual offering the services through the platform?

3000 character(s) maximum

27 On average, how many hours per week do individuals spend offering services through your platform?

3000 character(s) maximum

28 Do you have measures in place to enable individuals providing services through your platform to contact each other and organise themselves collectively?

- ☐ Yes
☐ No

29 Please describe the means through which the individuals who provide services on your platform contact each other.

3000 character(s) maximum

30 What measures do you have in place for ensuring that individuals offering services through your platform work legally - e.g. comply with applicable rules on minimum working age, hold a work permit, where applicable - if any?

(If you replied to this question in your answers in the first module of the consultation, there is no need to repeat your answer here.)

3000 character(s) maximum

The following questions are open to all respondents

Situation of self-employed individuals providing services through platforms

32 Are there areas in the situation of individuals providing services through platforms which would need further improvements? Please rate the following issues from 1 (no improvements needed) to 5 (substantial issues need to be addressed).

	1 (no improvements needed)	2	3	4	5 (substantial improvements needed)	I don't know / No answer
Earnings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Flexibility of choosing when and /or where to provide services	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency on remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Measures to tackle non-payment of remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Transparency in online ratings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Ensuring that individuals providing services through platforms can contact each other and organise themselves for collective purposes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Tackling the issue of work carried out by individuals lacking legal permits	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prevention of discrimination of individuals providing services through platforms, for instance based on gender, racial or ethnic origin	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Allocation of liability in case of damage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

33 Please explain the issues that you encounter or perceive.

3000 character(s) maximum

Other issues include:

* Tackling the imposition of unfair contracts - see above

* Specifically, contracts that unfairly impose transfers of authors' rights and of legal liability

(Legal permits may be a more important issue for kinds of work other than journalism - for which they must never be required.)

34 Do you think individuals providing services in the 'offline/traditional' economy face similar issues as individuals offering services through platforms?

- ☒ Yes
- ☐ No
- ☐ I don't know

35 Please explain and provide examples.

3000 character(s) maximum

As noted above, the imposition of unfair contracts is the single most important issue.

36 In your view, what are the obstacles for improving the situation of individuals providing services



1. through platforms?
2. in the offline/traditional economy?

3000 character(s) maximum

Monopoly/monopsony power leads to imposed contracts – as above.

Freelance journalists throughout Europe face the same problem: the competition authorities regard them as undertakings and not workers falling under employment legislation and collective bargaining. Such restrictive interpretation of competition rules impact on the possibility for unions to collectively bargain on their behalf or even recommend minimum rates. This deprives them of labour protections which are normally achieved through collective bargaining, raising quality of work and income/fees from their (mostly dependent) labour. In a sector which increasingly becomes freelance, this of course weakens trade unions in organising freelance workers.

37 To what extent could the possibility to negotiate collectively help improve the situation of individuals offering services:

through online platforms?	
in the offline/traditional economy?	

38 Which are the areas you would consider most important for you to enable such collective negotiations?

3000 character(s) maximum

We adopt the position of the ETUC:

The social policy objectives pursued by collective agreements risk being undermined if management and labour are subject to competition rules when seeking jointly to adopt measures to improve working conditions. Therefore, it is not for DG Competition of the European Commission or National Competition Authorities to define who is allowed to bargain collectively and who is not, what constitutes a collective agreement and what not, including what it may contain and not contain, etc.

Self-employed workers and other non-standard workers, including those working in the platform economy, and represented by a trade union in bargaining collective agreements, must not be considered undertakings under competition law when acting as economic units within an undertaking rather than as undertakings in themselves. Trade unions are not cartels. Wage-setting does not constitute price fixing.

Collective agreements derive from social dialogue and collective bargaining and are the result of negotiations between trade union organisations and employers' associations/single employers for the purpose of improving working conditions through minimum standards. Consequently, collective agreements are by their very nature inherently different from illegal horizontal agreements between undertakings resulting from anti-competitive business practices.

Collective bargaining is the exclusive competence of social partners. In this respect, genuine social dialogue and collective bargaining should be understood as negotiations between organised, representative and recognised social partners in accordance with national laws and traditions, in order not to legitimise "company unions" under the influence of employers, wage fixing practices between employers or so called

“charters for good work” one-sidedly drawn up by some online-platforms.

What is key here, is to find clear solutions which do not invite different interpretations or "definitions" of workers for example but very clear extended rights to all self-employed workers in line with ILO standards. Everything else leads to a chilling effect on unions' right to bargaining on behalf of their members or workers in their sector.

In fact, industrial relations in Europe must be reformed to better deal with changing working patterns taking into account the unprecedented rise of (precarious) freelance work and of course platform (gig) workers.

Social partners must be empowered by establishing legal certainty for all workers and employers; competition law should not be falsely used to circumvent collective bargaining in sectors, where it is most needed to create some fairness and in the end compatibility. The pandemic has increased the need for more protection of freelancers and the need that trade unions can better negotiate (framework) agreements to this important but least protected status of workers.

39 In this regard, do you see any obstacles to such negotiations?

3000 character(s) maximum

As noted above, it is likely that those engaging precarious workers will negotiate only if compelled to do so, and to do so in good faith.

40 Are there other points you would like to raise?

3000 character(s) maximum

Collective bargaining will become especially important to journalists as member states implement Article 15 of Directive 2019/790 on the Digital Single Market, which mandates "that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers." Collective bargaining appears to be the only way to determine what is "appropriate". The same will apply more generally to revenues arising from Article 17 of the same Directive, and the importance of collectively-managed - and bargained - revenue can only increase in the future.



VI. What governance for reinforcing the Single Market for digital services?

The EU's Single Market offers a rich potential for digital services to scale up, including for innovative European companies. Today there is a certain degree of legal fragmentation in the Single Market . One of the main objectives for the Digital Services Act will be to improve opportunities for innovation and '[deepen the Single Market for Digital Services](#)'.

This section of the consultation seeks to collect evidence and views on the current state of the single market and steps for further improvements for a competitive and vibrant Single market for digital services. This module also inquires about the relative impact of the COVID-19 crisis on digital services in the Union. It then focuses on the appropriate governance and oversight over digital services across the EU and means to enhance the cooperation across authorities for an effective supervision of services and for the equal protection of all citizens across the single market. It also inquires about specific cooperation arrangements such as in the case of consumer protection authorities across the Single Market, or the regulatory oversight and cooperation mechanisms among media regulators. This section is not intended to focus on the enforcement of EU data protection rules (GDPR).

Main issues

1 How important are - in your daily life or for your professional transactions - digital services such as accessing websites, social networks, downloading apps, reading news online, shopping online, selling products online?

Overall	
Those offered from outside of your Member State of establishment	

The following questions are targeted at digital service providers

3 Approximately, what share of your EU turnover is generated by the provision of your service outside of your main country of establishment in the EU?

- ☐ Less than 10%
- ☐ Between 10% and 50%
- ☐ Over 50%
- ☐ I cannot compute this information

4 To what extent are the following obligations a burden for your company in providing its digital services, when expanding to one or more EU Member State(s)? Please rate the following obligations from 1 (not at all burdensome) to 5 (very burdensome).

	1 (not at all burdensome)	2	3 (neutral)	4	5 (very burdensome)	I don't know / No answer
Different processes and obligations imposed by Member States for notifying, detecting and removing illegal content/goods/services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Requirements to have a legal representative or an establishment in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Different procedures and points of contact for obligations to cooperate with authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other types of legal requirements. Please specify below	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5 Please specify

3000 character(s) maximum

6 Have your services been subject to enforcement measures by an EU Member State other than your country of establishment?

- ☐ Yes
- ☐ No
- ☐ I don't know

8 Were you requested to comply with any 'prior authorisation' or equivalent requirement for providing your digital service in an EU Member State?

- ☐ Yes
- ☐ No
- ☐ I don't know

10 Are there other issues you would consider necessary to facilitate the provision of cross-border digital services in the European Union?

3000 character(s) maximum

11 What has been the impact of COVID-19 outbreak and crisis management measures on your business' turnover

- ☐ Significant reduction of turnover
- ☐ Limited reduction of turnover
- ☐ No significant change
- ☐ Modest increase in turnover
- ☐ Significant increase of turnover
- ☐ Other

13 Do you consider that deepening of the Single Market for digital services could help the economic recovery of your business?

- ☐ Yes
- ☐ No
- ☐ I don't know

14 Please explain

3000 character(s) maximum

The following questions are targeted at all respondents.

Governance of digital services and aspects of enforcement

The 'country of origin' principle is the cornerstone of the Single Market for digital services. It ensures that digital innovators, including start-ups and SMEs, have a single set of rules to follow (that of their home country), rather than 27 different rules.

This is an important precondition for services to be able to scale up quickly and offer their services across borders. In the aftermath of the COVID-19 outbreak and effective recovery strategy, more than ever, a strong Single Market is needed to boost the European economy and to restart economic activity in the EU.

At the same time, enforcement of rules is key; the protection of all EU citizens regardless of their place of residence, will be in the centre of the Digital Services Act.

The current system of cooperation between Member States foresees that the Member State where a provider of a digital service is established has the duty to supervise the services provided and to ensure that all EU citizens are protected. A cooperation mechanism for cross-border cases is established in the E-Commerce Directive.

1 Based on your experience, how would you assess the cooperation in the Single Market between authorities entrusted to supervise digital services?

5000 character(s) maximum

2 What governance arrangements would lead to an effective system for supervising and enforcing rules on online platforms in the EU in particular as regards the intermediation of third party goods, services and content (See also Chapter 1 of the consultation)?

Please rate each of the following aspects, on a scale of 1 (not at all important) to 5 (very important).

	1 (not at all important)	2	3 (neutral)	4	5 (very important)	I don't know / No answer

Clearly assigned competent national authorities or bodies as established by Member States for supervising the systems put in place by online platforms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Cooperation mechanism within Member States across different competent authorities responsible for the systematic supervision of online platforms and sectorial issues (e.g. consumer protection, market surveillance, data protection, media regulators, anti-discrimination agencies, equality bodies, law enforcement authorities etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation mechanism with swift procedures and assistance across national competent authorities across Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordination and technical assistance at EU level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
An EU-level authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Cooperation schemes with third parties such as civil society organisations and academics for specific inquiries and oversight	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other: please specify in the text box below	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

3 Please explain

5000 character(s) maximum

4 What information should competent authorities make publicly available about their supervisory and enforcement activity?

3000 character(s) maximum

5 What capabilities – type of internal expertise, resources etc. - are needed within competent authorities, in order to effectively supervise online platforms?

3000 character(s) maximum

6 In your view, is there a need to ensure similar supervision of digital services established outside of the EU that provide their services to EU users?

- ☐ Yes, if they intermediate a certain volume of content, goods and services provided in the EU
- ☒ Yes, if they have a significant number of users in the EU
- ☐ No
- ☐ Other
- ☐ I don't know

7 Please explain

3000 character(s) maximum

8 How should the supervision of services established outside of the EU be set up in an efficient and coherent manner, in your view?

3000 character(s) maximum

9 In your view, what governance structure could ensure that multiple national authorities, in their respective areas of competence, supervise digital services coherently and consistently across borders?

3000 character(s) maximum

10 As regards specific areas of competence, such as on consumer protection or product safety, please share your experience related to the cross-border cooperation of the competent authorities in the different Member States.

3000 character(s) maximum






11 In the specific field of audiovisual, the Audiovisual Media Services Directive established a regulatory oversight and cooperation mechanism in cross border cases between media regulators, coordinated at EU level within European Regulators' Group for Audiovisual Media Services (ERGA). In your view is this sufficient to ensure that users remain protected against illegal and harmful

audiovisual content (for instance if services are offered to users from a different Member State)? Please explain your answer and provide practical examples if you consider the arrangements may not suffice.

3000 character(s) maximum

12 Would the current system need to be strengthened? If yes, which additional tasks be useful to ensure a more effective enforcement of audiovisual content rules?

Please assess from 1 (least beneficial) – 5 (most beneficial). You can assign the same number to the same actions should you consider them as being equally important.

Coordinating the handling of cross-border cases, including jurisdiction matters	
Agreeing on guidance for consistent implementation of rules under the AVMSD	
Ensuring consistency in cross-border application of the rules on the promotion of European works	
Facilitating coordination in the area of disinformation	
Other areas of cooperation	

13 Other areas of cooperation - (please, indicate which ones)

3000 character(s) maximum

14 Are there other points you would like to raise?

3000 character(s) maximum

Final remarks

If you wish to upload a position paper, article, report, or other evidence and data for the attention of the European Commission, please do so.

1 Upload file

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

2 Other final comments

3000 character(s) maximum

Useful links

Digital Services Act package (<https://ec.europa.eu/digital-single-market/en/digital-services-act-package>)

Background Documents

(BG) Речник на термините

(CS) Glosř

(DA) Ordliste

(DE) Glossar

(EL) á

(EN) Glossary

(ES) Glosario

(ET) Snastik

(FI) Sanasto

(FR) Glossaire

(HR) Pojmovnik

(HU) Glosszrium

(IT) Glossario

(LT) Žodynėlis

(LV) Glosārijs

(MT) Glossarju

(NL) Verklarende woordenlijst

(PL) Słowniczek

(PT) Glossrio

(RO) Glosar

(SK) Slovnk

(SL) Glosar

(SV) Ordlista

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