



Guidelines for the consultation

-Public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy-

Context

Public consultation on platforms

The European Commission is currently consulting the public on the rules surrounding online platforms, UGC services, content aggregators, and many other types of so-called ‘sharing economy’ services.

This consultation gives people a chance to express their views on the subject and have them heard by the Commission. The Commission will then table legislative proposals taking into account the views expressed.

Opponents are already actively contributing

The tech industry is paying a lot of attention to this consultation, specifically the services that provide access to creative works but don’t pay for them. The reason: they currently benefit from the EU legislation’s vagueness on the matter in order to avoid paying creators for the content they provide access to. They’re doing everything to keep things this way.

On matters like these, the public opinion is easily swayed with flawed arguments about “breaking the internet” and copyright being harmful to consumers. The tech industry has already started its media campaign around this.

This is your chance to make your voice heard

As authors’ societies, we actively work towards clarifying and modifying the current EU law to make sure that creators get a fair share for the use of their works online. With services like YouTube, Dailymotion, SoundCloud, TuneIn, etc., using “non-liability” arguments, it is only fair and necessary for authors’ societies to oppose these claims.

The voice of individual authors also needs to be heard, which is why we’ve prepared a quick run-through of the most important and relevant questions of the consultation, so you can easily fill out the bits that matter most to you.

This consultation will be used as a basis for the legislative proposal on copyright.

You can fill out the consultation [here](#).

Step-by-step guide

Once you've clicked on the consultation [link](#), there's a number of lines and multiple choice questions you are required to fill. Here's a step-by-step guide:

Chapter 1: General Information

1. Scroll down a little, and fill out "other" and specify your role. As a creator, you could typically say "I'm an author" or "I've composed X number of works", etc.

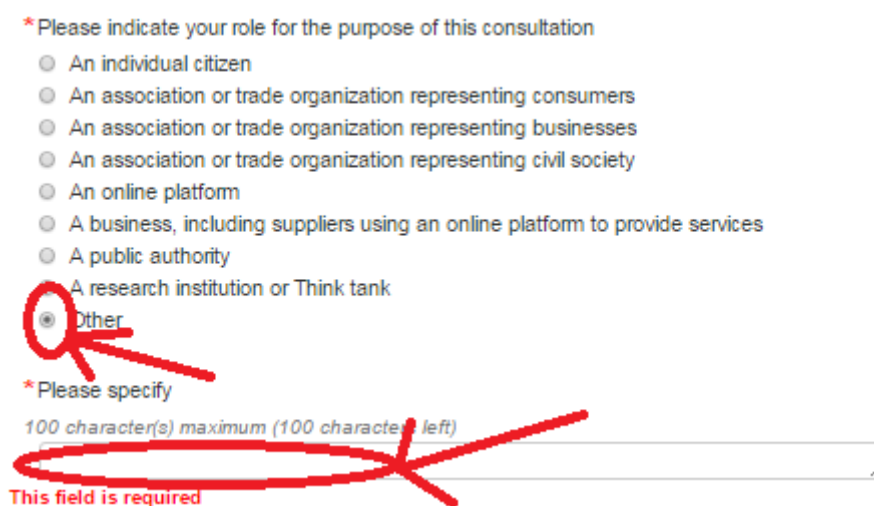
* Please indicate your role for the purpose of this consultation

- An individual citizen
- An association or trade organization representing consumers
- An association or trade organization representing businesses
- An association or trade organization representing civil society
- An online platform
- A business, including suppliers using an online platform to provide services
- A public authority
- A research institution or Think tank
- Other

* Please specify

100 character(s) maximum (100 character(s) left)

This field is required



2. Your country of residence

* Please indicate your country of residence

This field is required

3. Your email address

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

This field is required

4. Whether you're registered in the Transparency register (answer "non-applicable")

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

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

- Yes
- No
- Non-applicable



If you are an economic operator, please enter the NACE code, which best describes the economic activity you conduct. [You can find here the NACE classification.](#)

Text of 3 to 5 characters will be accepted (still 3 more characters expected)

The Statistical classification of economic activities in the European Community, abbreviated as NACE, is the classification (EU).

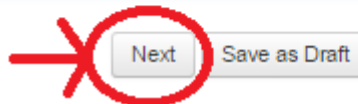
5. Agree or not to the publication of your personal data and click on "Next"

*I object the publication of my personal data

- Yes
- No

Please provide a brief justification.

1000 character(s) maximum (1000 characters left)



Chapter 2: Online Platforms

1. In this part, you are asked whether you agree with the given definition of an “online platform”, for which we suggest you reply “no”:

Online platforms

SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

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

“Online platform” refers to an undertaking operating in two (or multi)-sided markets, which uses the internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as intermediary service providers.

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp.), location-based business directories or some maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audio-visual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video sharing platforms (e.g. YouTube, Dailymotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. Airbnb, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition.

Yes
 No

Why advantages of using online platforms?

Online platforms...

2. You will now be asked to explain your answer:

No

* Please explain how you would change the definition

1000 character(s) maximum (1000 characters left)

Here are some ideas for your answer:

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The definition is too broad while a more targeted approach is needed.

It is important to differentiate between:

- a) services like Deezer, iTunes or Spotify who get licences for their content and pay copyright royalties (the amounts may not be considered enough, but this is another issue)
- b) services like YouTube, SoundCloud or TuneIn that don't license (or offer take it or leave it deals for) the content they provide access to under false claims.

Those who don't pay for the cultural content they provide access to claim that they are mere technical intermediaries that are not liable for the content on their platforms. They can do this because of a vagueness in current copyright law which needs fixing.

Not taking this into account when defining "online platforms" is harmful to creators.

- 3. Scroll all the way down to the header "Relations between platforms and suppliers/traders/application developers or holders of rights in digital content".

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

Please provide the list of online platforms with which you are in regular business relations and indicate to what extent your business

- 4. Scroll down past the boxes to the question "are you a holder of rights in digital content protected by copyright, which is used on an online platform?"

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

Yes

No

Tick "yes" so that new questions appear on your interaction with platforms. We advise you to answer according to your personal experience:

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

- An online platform such as a video sharing website or a content aggregator refuses to enter into or negotiate licensing agreements with me.
 - An online platform such as a video sharing website or a content aggregator is willing to enter into a licensing agreement on terms that I consider unfair.
 - An online platform uses my protected works but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to refuse to negotiate a licence or to do so under their own terms.
5. Assuming you've answered "yes" to at least one of the questions above, you're requested to explain your situation in more detail in a separate box:

As you answered YES to some of the above questions, please explain your situation in more detail.

3000 character(s) maximum (3000 character(s))



Here are some ideas for your answer:

There is a large number of services that refuse the licensing requests of authors' societies. A few of the aggregation services had a licence before but have since terminated the agreements based on the current vagueness in the legal framework (e.g. radio.at in Austria, nl.fm in the Netherlands, Guardalo in Italy).

Other services have accepted agreements that differ significantly from normal licensing agreements in terms of remuneration levels, transparency and reporting.

For the few who have an agreement with authors' societies, there is a situation of under-licensing (licensing for far less than a fair market context).

Authors do not receive fair remuneration from these services and platforms for the use of their works.

It is important to indicate whether you are able to exercise your rights and choices in a satisfactory manner with these platforms (now and in the past). For example:

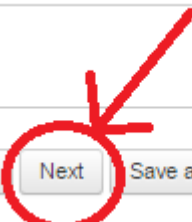
- a) Are you able to negotiate the level of remuneration for the use of your work?
- b) Are you offered a "take it or leave it" conditions?
- c) Are your revenues from such services satisfactory and do they reflect market conditions (compared to other online music services for instance)?

- d) Are you able to identify exactly how and how much advertising revenues are generated from your content
- e) Are you faced with complex legal arguments from the platform, claiming that it is not responsible for copyright?
- f) Are you able to stop that service from using your work when you can't agree on conditions?
- g) Do such services have an impact on your overall revenues online (e.g. does it affect your revenues from other online services; or does it affect your revenues from other sources such as broadcasting, etc.)?

6. Scroll down and click “next”:

3000 character(s) maximum (3000 characters left)

Previous Next Save as Draft



Chapter 3: Tackling illegal content online and the liability of online intermediaries

1. The survey tries to determine what relation you have to platforms. We suggest you select “none of the above”.

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

individual user
 content provider
 notice provider
 intermediary
 none of the above

* Please explain

(A red circle highlights the 'none of the above' option, and a red oval highlights the text box below it.)

In the text box, you can explain that you are a creator.

If you’ve ever tried to give a notice to any service to take down your content, please indicate so.

If you are aware that your authors’ society, your publisher or producer have done so, rather than yourself personally, please indicate so.

2. The next two questions are about the “safe harbour” of the e-Commerce Directive

The survey wants to determine whether you think the articles on which YouTube and other platforms base their claim that they are not copyright liable is **unfit** for purpose or has negatively affected the market.

We suggest you answer “yes”

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

Yes
 No

*Please describe the situation.
3000 character(s) maximum (3000 characters left)

Some ideas to describe the situation:

Certain services like SoundCloud, YouTube, Dailymotion, etc., claim that they are not responsible for the creative works posted on their platforms by users, although they derive economic value from it.

They only take down content if asked to do so, based on the “notice and take down” provision. This is not a fit-for-purpose provision as works that are taken down following a request reappear instantly at the hands of other uploaders.

Although these services are the main access route to creative works (be it music, series, visual arts, audiovisual works), they claim they should not get a license and pay the creators of these works.

Their business model, which attributes little to no value to creative works, is changing the face of the entire online market.

In short:

- a) Creators get no or almost no remuneration from the biggest usage of their works on the Internet
- b) Since platform services are unfairly distorting the market, it is impossible to negotiate fairer terms for the use of works online
- c) Creators’ choices are not respected, because works are available on these platforms, without permission and usually without payment. Any attempt to “notice and take-down” proves inefficient, since the same content is uploaded again immediately by someone else.

Since current provisions like the notice and take-down have proved inefficient, EU law should ensure that services that are actively involved in making creators’ works available to the public should get a license and pay creators.