

# A clean and open Internet: Public consultation on procedures for notifying and acting on illegal content hosted by online intermediaries

## I. Background information

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| 1. Please indicate your role for the purpose of this consultation: -multiple choices reply-(compulsory)   | Intellectual property rights holder - Business federation |
| 2. Please indicate your place of residence or establishment: -single choice reply-(compulsory)  | Belgium   |
| 3. Please provide your contact information (name, address and e-mail address): -open reply-(compulsory)   |   |
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| 4. Is your organisation registered in the Interest Representative Register? -single choice reply-(compulsory)   | Yes   |
| 5. What is /are the category /ies of illegal content of greatest relevance to you in the context of N&A procedures? -multiple choices reply-(compulsory)  | Infringements of trademarks                               |

## II Notice and Action procedures in Europe

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| Action against illegal content is often ineffective -single choice reply-(compulsory)  | No opinion |
| Action against illegal content is often too slow -single choice reply-(compulsory)   | No opinion |
| Hosting service providers often take action against <i>legal</i> content -single choice reply-(compulsory)                                 | No opinion |
| There is too much legal fragmentation and uncertainty for hosting service providers and notice providers -single choice reply-(compulsory) | No opinion |
| The exact scope of 'hosting' is sufficiently clear -single choice reply-(compulsory)   | No opinion |
| The terms "actual knowledge" and "awareness" are sufficiently clear -single choice reply-(compulsory)                                      | No opinion |
| The term "expeditiously" is sufficiently clear -single choice reply-(compulsory)   | No opinion |

The public consultation on e-commerce of 2010 has demonstrated that most stakeholders consider hosting of *websites* to be hosting, but that there is less unanimity on other services that could be hosting. The CJEU has stated that hosting may in principle be the services of online market places, referencing services and social networks.

No opinion

8. In your opinion, what activities should be considered as 'hosting'? -multiple choices reply-(compulsory)

### III. Notifying illegal content to hosting service providers

It is easy to find pages or tools to notify illegal content -single choice reply-(compulsory)

No opinion

It is easy to use pages or tools to notify illegal content -single choice reply-(compulsory)

No opinion

10. Should all hosting service providers have a procedure in place which allows them to be easily notified of illegal content that they may be hosting? -single choice reply-(compulsory)

Yes

Some hosting service providers have voluntarily put in place mechanisms to receive notifications of illegal content. Some of these providers have complained that their mechanisms are not always used and that concerns about content are not notified in a manner that would be easy to process (e.g. by fax, without sufficient information to assess the alleged illegal character of content etc.). Providers also claim that this creates delays in taking action against illegal content, because the hosting service provider would for instance have to contact the notice provider to ask for additional information.

No opinion

11. If a hosting service provider has a procedure for notifying illegal content (such as a web form designed for that purpose) that is easy to find and easy to use, should illegal content exclusively be notified by means of that procedure? -single choice reply-(compulsory)

A notice should be submitted by electronic

Yes.

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| means -single choice reply-(compulsory)  |            |
| A notice should contain contact details of the sender -single choice reply-(compulsory)  | Yes.       |
| A notice should make it easy to identify the alleged illegal content (for instance by providing a URL) -single choice reply-(compulsory)   | Yes.       |
| A notice should contain a detailed description of the alleged illegal nature of the content -single choice reply-(compulsory)  | Yes.       |
| A notice should contain evidence that the content provider could not be contacted before contacting the hosting service provider or that the content provider was contacted first but did not act -single choice reply-(compulsory)          | Yes.       |
| Both civil rights organisations and hosting service providers have complained about a significant proportion of unjustified or even abusive notices. Some stakeholders have proposed more effective sanctions and remedies for this purpose. | No opinion |
| 13. Should there be rules to avoid unjustified notifications? -single choice reply-(compulsory)  |            |
| 14. How can unjustified notifications be best prevented? -multiple choices reply-(compulsory)  | No opinion |

## IV. Action against illegal content by hosting service providers

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|---|---|
| 15. Should hosting service providers provide feedback to notice providers about the status of their notice? -single choice reply-(compulsory)                               | Yes   |
| <i>Multiple choice</i> -multiple choices reply-(compulsory)   | The hosting service provider should send a confirmation of receipt. - The hosting service provider should inform the notice provider of any action that is taken. |
| 16. Should hosting service providers consult the providers of alleged illegal content? -single choice reply-(compulsory)  | No opinion  |
| According to the E-commerce Directive, the hosting provider should act "to remove or to disable access to the information"<br>- One may interpret "removing" as permanently | No opinion.   |

