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Public consultation on measures to further improve the effectiveness of the fight against illegal content online

> Fields marked with * are mandatory.

Introduction

The availability and proliferation of illegal content online remains an important public policy and security concern in the EU, notably with regards to the dissemination of terrorist content, as well as of illegal hate speech, child sexual abuse material, or illegal commercial practices and infringements of intellectual property rights, selling of illicit drugs, counterfeits or other illicit goods.
The Commission adopted on 28 September 2017 a Communication with guidance on the responsibilities of online service providers in respect of illegal content online and a Recommendation on measures to effectively tackle illegal content online on 1 March 2018.
The Commission is collecting evidence on the effectiveness of measures and the scale of the problem, and will explore, by the end of 2018, further measures to improve the effectiveness of combating illegal content online.
In particular, through the present public consultation the Commission seeks to gather views from all relevant stakeholders. The questionnaire is targeted to the general public, hosting service providers such as online platforms, organisations reporting the presence of illegal content online, competent authorities and law enforcement bodies, and academia, civil societies and other organisations.

About you

* Please indicate the capacity in which you are replying to this public consultation. Please note that the option you select will personalise the subsequent questions.
at most 1 choice(s)

- ☐ a) as an individual, in my personal capacity
- ☐ b) representing an online hosting service provider
- ☐ c) representing a business associations replying on behalf of online hosting providers
- ☐ d) representing a non-for-profit organisation identifying and reporting allegedly illegal content online
- ☐ e) representing a for-profit organisation identifying and reporting allegedly illegal content online
- ☐ f) representing a competent authority, including law enforcement authorities, internet referral unit, ministries or consumer protection authorities
- ☐ g) representing an organisation or business representing victims
- ☐ h) representing civil society organisation representing civil rights interests
- ☐ i) representing other industry association
- ☐ j) representing a research or academic organisation
- ☑ k) other

Other

50 character(s) minimum

> Mozilla is a mission-driven technology company, and maker of the Firefox web browser.

Section for other organisations, civil society, academia or other businesses and associations

Replying to the questionnaire is estimated to take 20 to 30 minutes and may require documenting answers with specific data.

General information about your organisation

* Name of the organisation

50 character(s) maximum

> Mozilla Corporation

If your organisation is included in the Transparency Register, please indicate your ID number.

If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation.

Why a transparency register?

40 character(s) maximum

> 174457719063-67

* Should the European Commission need further details in relation to your answers, would you agree to be contacted by the Commission?

◉ Yes   ◯ No

* Email address:

> obennett@mozilla.com

* In what country does your organisation have its headquarters?

> United States of America

* Is your organisation established in a/several EU Member State(s)?

◉ a) Yes
◯ b) No

* Which one(s)?

☐ Austria
☐ Belgium

- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☑ Denmark
- ☐ Estonia
- ☐ Finland
- ☑ France
- ☑ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☑ United Kingdom

* Please briefly describe your organisation and/or provide a public URL.

500 character(s) maximum

> Mozilla is a technology company and non-profit foundation promoting openness, innovation, and opportunity on the web. Our primary product is the Firefox web browser, and we also empower internet users to be the web's makers, not just consumers. We are the steward of a global community of technologists, thinkers and builders, working together to keep the Internet alive and accessible.
>
> Learn more at mozilla.com

The European Commission uses the following parameters to differentiate types of companies in terms of size. (EU recommendation 2003/361)

Company category	Staff headcount	Turnover	or	Balance sheet total
Micro	< 10	≤ € 2 m		≤ € 2 m
Small	< 50	≤ € 10 m		≤ € 10 m
Medium-sized	< 250	≤ € 50 m		≤ € 43 m

* Following this definition, your company is:

☐ a) A micro-enterprise

☐ b) A small enterprise

☐ c) A medium-sized enterprise

☑ d) Other

Please indicate if you are a user of the following types of online hosting services.

☐ a) E-commerce market place

☐ b) Collaborative economy

☐ c) Social networking

☐ d) Video or audio streaming

☐ e) File sharing

☐ f) News and media

☐ g) App distribution

☐ h) Rating and reviews

☑ g) Other

Please specify

100 character(s) maximum

> Mozilla Firefox is a web broswer, and does not fall into the meaning of hosting service as such.

Your experience: encountering illegal content online

While using the services mentioned here-above, did you come across the following types of content?

	Never	Once	Between 2 and 5 times	More than 5 times	I don't know
Child sexual abuse material	○	○	○	○	○
Terrorist content	○	○	○	○	○
Pirated content (e.g. music, films, books) or other audiovisual content	○	○	○	○	○

Counterfeit goods (e.g. fake perfume, fake designer brands) or other types of intellectual property infringements	○	○	○	○	○
Illegal hate speech (public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin)	○	○	○	○	○
Scams, frauds, subscription traps or other illegal commercial practices)	○	○	○	○	○
Content I deemed illegal for other reasons than the above.	○	○	○	○	○

If you have encountered content you deemed illegal for other reasons than the above, please specify

300 character(s) maximum

Your experience: removal of content online

* Have you tried to upload or post online content which was blocked or removed by a hosting service provider?
- ○ a) No, never
- ○ b) Yes, once
- ○ c) Yes, several times
- ● d) I don't know

Illegal content online

Please describe the challenges, obstacles and risks you are facing in tackling illegal content.

1000 character(s) maximum

Browsers act as windows to the web, and for that reason Mozilla Firefox is often requested to block user access to certain websites, or to otherwise implement technical solutions at the browser level to address the issue of illegal and harmful content on the web. Notwithstanding the obvious technical challenges, this creates serious issues for the open web and online competition.

More generally, recent regulatory action on illegal content has increased fragmentation in enforcement for different types of content and different types of OSPs. Moreover, internet users' freedom of expression and due process rights have, in many cases, been relegated to a peripheral concern, causing great damage to social and political cohesion in the EU.

The emphasis on automated solutions is particularly concerning. As the steward of a community of internet builders, we urge the EC not to fall for the fallacy that such solutions are a panacea to fight against illegal and harmful content online.

Further measures for detecting, removing and preventing reappearance of illegal content

What features of notice systems and further measures do you consider to be most effective for enabling hosting service providers to make diligent decisions on the content notified? Please score the features on a scale from 1 (very effective) to 5 (not effective).

	1	2	3	4	5	I don't know
Standardised, accessible and user-friendly online interface for reporting content	●	○	○	○	○	○
Identification of content with unique identifiers (e.g. URLs)	●	○	○	○	○	○
Possibility to file multiple notices	○	○	○	○	○	○
Explanation of reasons and grounds of illegality	●	○	○	○	○	○
Allowing for anonymous notices	○	○	○	○	○	○
Standardised, binding notice and action procedures	○	○	○	○	○	○
Other	○	○	○	○	○	○

Please score the effectiveness of the following measures to support the cooperation between platforms and competent authorities/law enforcement bodies. Please use a scale from 1 (very effective) to 5 (not effective).

	1	2	3	4	5	I don't know
Enhanced cooperation and exchanges between hosting service providers and competent authorities	○	○	○	○	○	○
Enhanced capabilities and training for national authorities and courts	○	○	○	○	○	○
Appointment of points of contact amongst hosting service providers within EU Member States for cooperation with competent authorities	○	○	○	○	○	○
Appointment of points of contact amongst law enforcement or other competent authorities for cooperating with hosting service providers	○	○	○	○	○	○
Technical interfaces between platforms and law enforcement or other competent authorities	○	○	○	○	○	○
Obligation to report illegal content to competent authorities for analysis and investigation	○	○	○	○	○	○

Setting time-limits to processing referrals and notifications from law enforcement or other competent authorities (such as internet referral units)	○	○	○	○	○	○
Other	○	○	○	○	○	○

What further mechanisms would best support the cooperation between hosting services and trusted flaggers? Please score the mechanisms below on a scale from 1 (very effective) to 5 (not effective).

	1	2	3	4	5	I don't know
Agreement between the platform and the trusted flaggers	○	○	○	○	○	○
Trusted status agreed by a group of platforms	○	○	○	○	○	○
Certification of the trusted flaggers by national authorities	○	○	○	○	○	○
Certification of trusted flaggers at EU level	○	○	○	○	○	○
Possibility to submit data feeding the hosting service provider's automated moderation tools	○	○	○	○	○	○
Financial support to trusted flaggers by public authorities	○	○	○	○	○	○
Financial support to trusted flaggers by private entities on a voluntary basis	○	○	○	○	○	○
Setting time-limits to processing referrals and notifications from trusted flaggers	○	○	○	○	○	○
Other	○	○	○	○	○	○

What criteria should organisations fulfil to gain a privileged status ('trusted flaggers') when reporting content for removal?

1000 character(s) maximum

Most importantly, a 'trusted flagger' must have demonstrated expertise with respect to the content in question. Once this expertise has been established through objective and transparent metrics, it is crucial that an entity which secures 'trusted flagger' status with respect to one form of harmful or illegal content does not benefit from any arising privileges with respect to other forms of content.

This requirement is linked to the broader issue that 'trusted flaggers' are a useful policy response with respect to some, but not all, types of illegal and harmful content. For instance, the 'trusted flagger' approach has worked well with respect to CSAM (where the illegality of the content is easy to ascertain), but is completely inappropriate for other types of content, such as copyright infringement, where there is no objective metric for establishing illegality and where the 'trusted flagger' will likely have a commercial interest in the content under investigation.

What are the specific privileges (e.g. fast-track/immediate removal of content notified), and responsibilities such trusted flaggers should have, in your opinion, when flagging the different types of illegal content?

> It should be clarified that while trusted flaggers may have practical expertise in assessing specific types of content and their nature as harmful, they do not have legal authority to assess whether a certain piece of content is illegal. That assessment should be the sole purview of judicial authorities.
> 'Trusted flagger' status should not provide an entity with the privilege of mandating immediate content suppression without prior engagement with the service provider, the content provider, or a judicial authority, as appropriate. Rather, in light of their practical expertise with respect to a certain type of content and their dedicated resources, 'trusted flagger' status should allow qualifying entities to send notices through a fast track procedure – meaning review of the notice is prioritised by the service provider. This reflects the fact that such a notice is more likely to be of high quality and more likely to refer to content that is actionable.

Please score the following measures to support the uptake and deployment of automated tools for removal of illegal content. Please score the measures below on a scale from 1 (very useful) to 5 (not useful).

	1	2	3	4	5	I don't know
Sharing of best practices between industry players	○	○	○	○	○	○
Industry-governed sharing of software solutions	○	○	○	○	○	○
Industry shared governance of databases supporting filtering technology	○	○	○	○	○	○
Industry shared governance of databases of training data for detection algorithms	○	○	○	○	○	○
Publicly supported databases for filtering content, training data, and/or technical tools	○	○	○	○	○	○
Public investment in research and development	○	○	○	○	○	○
Private investment in research and development	○	○	○	○	○	○
Requirements to deploy automated tools for detecting and/or blocking content	○	○	○	○	○	○
Requirements to use shared databases for blocking content	○	○	○	○	○	○
Other	○	○	○	○	○	○

What safeguards should be put in place when using automated tools for the detection and removal of illegal content online? Please score the measures below on a scale from 1 (very useful) to 5 (not useful).

	1	2	3	4	5	I don't know
Transparency, in simple, clear language, of the general principles for the algorithmic decision-making	○	○	●	○	○	○
Transparent reporting on the accuracy indicators for the automated tools used	●	○	○	○	○	○

	1	2	3	4	5	
Audits and error-detection tests for algorithmic filtering and algorithmic detection of illegal content	●	○	○	○	○	○
'Human in the loop' principle: include human review in the processes leading to removal of content	●	○	○	○	○	○
Counter-notice procedures also when content removal /blocking is decided through automated means	●	○	○	○	○	○
Other	○	○	○	○	○	○

What are the most effective safeguards to counter erroneous removal of legal content? Please score the measures below on a scale from 1 (very effective) to 5 (not effective).

	1	2	3	4	5	I don't know
Availability of counter-notice procedures	●	○	○	○	○	○
Information to the content provider on grounds for removal	●	○	○	○	○	○
Transparency on the process for removal	●	○	○	○	○	○
Transparent information on time from detection/notice to removal of the different types of content	○	○	●	○	○	○
Transparent process for restoring content when counter-notices have provided reasonable grounds to reject the allegations of illegality	●	○	○	○	○	○
Encourage the use of out-of-court dispute settlement	○	○	○	○	○	○
Cooperation with third-parties such as self-regulatory bodies or competent authorities, for consultation in difficult cases	○	○	○	○	○	○
Other	○	○	○	○	○	○

Please describe the challenges, obstacles and risks you are facing in tackling illegal content.

1000 character(s) maximum

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The emphasis on automated solutions is particularly concerning. As the steward of a community of internet builders, we urge the EC not to fall for the fallacy that such solutions are a panacea to fight against illegal and harmful content online.

Your opinion

In your opinion, who has an important role to play in tackling illegal content online?

	Main role	Important role	Marginal role	I don't know	No answer
Internet users	○	○	○	○	○
Hosting service providers	○	○	○	○	○
Public and other competent authorities and law enforcement bodies	○	○	○	○	○
Private entities affected by the spread of illegal content (e.g. rights holders)	○	○	○	○	○
Individual victims affected by illegal content	○	○	○	○	○
Civil society and other organisations with expertise who flag illegal content	○	○	○	○	○
Other	○	○	○	○	○

To what extent do you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know	No answer
* The Internet is safe for its users.	○	○	○	○	○	○	◉
* It is important that there are arrangements in place so that no illegal content is spread on the Internet.	○	○	○	○	○	○	◉
* It is important that freedom of expression is protected online.	◉	○	○	○	○	○	○
* Hosting service providers should process all notifications they receive and assess the legality of the content notified.	○	○	○	◉	○	○	○
* When content is flagged as illegal by private organisations with proven expertise , hosting services should speed up the process for removing the content.	○	○	◉	○	○	○	○
* When content is flagged as illegal by competent authorities or law enforcement bodies, platforms should speed up the process for removing the content	○	○	○	◉	○	○	○
* When online hosting services remove content, users should be able to contest this decision by contacting the service (counter-notice).	◉	○	○	○	○	○	○
* The regulatory framework is effective against illegal content.	○	◉	○	○	○	○	○
* Hosting service providers are effective in tackling illegal content.	○	◉	○	○	○	○	○

In your opinion, is there a need for further measures to tackle illegal content online?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know	No answer
Through proactive measures taken by hosting service providers and other relevant actors.	○	○	○	○	○	○	○
Via legislative measures.	○	○	○	○	○	○	○
Actions should be taken at EU level to put appropriate measures in place.	○	○	○	○	○	○	○
Different types of illegal content should be dealt with in different legal frameworks, to take into account specificities.	○	○	○	○	○	○	○

Are there additional comments you would like to make? Please detail, in particular, if your answers refer to different experiences, different types of illegal content, etc.

500 character(s) maximum

Regrettably, the chosen format for the public consultation makes it extremely difficult for respondents to capture the many nuances at play with respect to illegal content on the web and policy responses to it. Moreover, many of the questions are framed in such a way as to infer a certain outcome, making it more difficult for respondents to provide objective and reasoned feedback. In an attempt to address this, Mozilla has opted to submit additional comment in the form of an annex.

Please feel free to upload a concise document, such as a position paper of relevance to this public consultation. *Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation.*

The maximum file size is 1 MB

Your contribution

Note that, whatever option chosen, your answers may be subject to a request for public access to documents under Regulation (EC) N°1049/2001

- ⦿ **can be published with your organisation's information** (I consent the publication of all information in my contribution in whole or in part including the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication)
- ◯ **can be published provided that your organisation remains anonymous** (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Contact

cnect-consultation-illegal-content@ec.europa.eu

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