

Regulatory environment for platforms, online intermediaries,
data and cloud computing and the collaborative economy

Objectives and General Information

* 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

CINEMA EXHIBITORS' TRADE ASSOCIATION

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 briefly explain the nature of your activities, the main services you provide and your relation to the online platform(s) which you use to provide services

3000 character(s) maximum

- **The International Union of Cinemas/ Union Internationale des Cinémas (UNIC) is a trade body representing European cinema associations and major cinema operators across 36 territories.**
- **Cinema theatres are a vital component of the cultural and creative fabric of Europe and make significant economic, cultural and social contributions across all UNIC territories. Global box office revenues reached € 33,5 billion in 2014 and are set to break all-time records across Europe in 2015.**
- **The European cinema landscape is highly interdependent. Diverse stakeholders operating in this ecosystem share the risks of financing, creating and distributing creative works that are expensive to make and promote.**
- **Cinema operators strongly support the emergence of a legitimate online market for films. The entire industry benefits from revenues in the home entertainment segment as they can help contribute to the creation of compelling, competitive and culturally diverse films. A healthy VOD market is needed to compensate for the enormous losses that have occurred in physical home entertainment over the past five to ten years, in part due to rampant levels of piracy.**
- **Platforms and online intermediaries – both legal as well as illegal operations - have an essential role to play when it comes to film theft, which we consider to be the most serious threat to the well-being of cinemas and the wider film sector. We address various issues related to copyright enforcement throughout the submission and there is in our view a strong need for European institutions to address the huge value transfer that has occurred from the creative content industries towards the various businesses, networks and platforms which benefit from freely available copyright infringing content online. It is high time that the EU ensured that the competitiveness and the diversity of European cinema was better promoted and protected.**
- **European cinema operators look to those supporting online platforms and online intermediaries as potential partners. We would expect new and important stakeholders including Google, Netflix, Amazon and iTunes to become contributors to – rather than solely beneficiaries of – the complex cinema eco-system. We also expect them to share some of the significant risks associated with financing and distributing films.**
- **Please note that we only answer to questions in the form that are related to our sector.**

* Please indicate your country of residence

Austria

Belgium

Bulgaria

Czech Republic

Croatia

Cyprus

Germany

Denmark

Estonia

Greece

Spain

Finland

France

Hungary

Ireland

Italy

Lithuania

Luxembourg

Latvia

Malta

The Netherlands

Poland

Portugal

Romania

Slovakia

Slovenia

Sweden

United Kingdom

Non-EU country

* Please specify the Non-EU country

NA

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

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* 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

* Please indicate your organisation's registration number in the Transparency Register

74301917747-65

* I object the publication of my personal data

Yes

No

Please provide a brief justification.

1000 character(s) maximum

NA

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, Taskrabbt, Bla-bla car). Internet access providers fall outside the scope of this definition.

Yes

No

* Please explain how you would change the definition

1000character(s) maximum

- **The various platforms listed are different from one another and operate different business models. Many platforms operating illegally also fall within the scope of the definition. In every category, it is possible to run a business in compliance with the law that also operates services that disregard legal requirements in areas such as consumer protection, taxation and copyright.**
- **Any intervention must make a distinction between legal and illegal operators and create structural disadvantages for those operating illegally.**
- **For UNIC, three platform categories present particular challenges:**
 - **“Traditional” AVMSD covered services: online broadcasting services, their catch-up services, VoD services**
 - **Content aggregators (connected TVs, Apple TV,)**
 - **UGC & video sharing platforms, including social media**

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

Online platforms...

make information more accessible
 make communication and interaction easier
 increase choice of products and services
 create more transparent prices and the possibility to compare offers
 increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.)
 lower prices for products and services
 lower the cost of reaching customers for suppliers
 help with matching supply and demand
 create new markets or business opportunities
 help in complying with obligations in cross-border sales
 help to share resources and improve resource-allocation
 others:

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

"Consumer" is any natural person using an online platform for purposes outside the person's trade, business, craft or profession.

"Supplier" is any trader or non-professional individual that uses online platforms to provide services to third parties both under their own brand (name) and under the platform's brand.

Yes

No

I don't know

Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible.

3000character(s) maximum

- **UNIC suggests the European Commission puts the following issues high on its Digital Single Market agenda:**
 - **No anonymous business online: The Internet offers a high level of anonymity which, combined with weak enforcement rules, limits the liability of those that encourage or participate in film theft. Minimum registration requirements for service providers are addressed by the E-Commerce**

Directive, but are widely disregarded by many platforms. Compliance with this provision must be a prerequisite for benefiting from liability privileges.

- Clarification of the liability regime: some online services make unfounded assertions of eligibility for the liability privileges and/or also use this liability regime as an excuse to not co-operate in the fight against piracy. UNIC therefore considers that clarification is needed regarding the scope of the E-commerce Directive liability regime (see below).
 - Notice and take down procedures: Even when illegal content is taken down, it often remains available because it is instantly re-uploaded or because it is available through a variety of other sources. Files should therefore not only be taken down but deleted and prevented from being uploaded again. Platforms whose businesses are built on hosting illegal content should be closed down completely. We encourage the European Commission to clarify that that takedown includes the concept of “take down and stay down”.
 - Better co-operation between rightsholders and online services in order to take down and prevent infringing contents that those platforms may host.
- Fair competition between stakeholders legally operating in competing markets is also a key issue. UNIC suggests the European Commission address the following points:
- Better transparency: many online platforms have for the most part failed to share any meaningful data about their economic or cultural contribution to Europe. We believe they should be more transparent and make available more data.
 - Financing and promotion of films: Currently, online platforms, in particular non-European services, establish themselves in countries with fewer obligations in the fields of promotion of European works, financial contribution to audiovisual production and develop aggressive tax planning. We therefore strongly call upon the European institutions to help facilitate a solution and create a ‘level playing field’ between stakeholders operating in competing markets and ensure that new players invest in the creation and promotion of films.

How could these problems be best addressed?

market dynamics

regulatory measures

self-regulatory measures

a combination of the above

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the traders that use them, more transparency in relation to:

a) information required by consumer law (e.g. the contact details of the supplier, the main characteristics of products, the total price including delivery charges, and consumers' rights, such as the right of withdrawal)?

"Trader" is any natural or legal person using an online platform for business or professional purposes. Traders are in particular subject to EU consumer law in their relations with consumers.

Yes

No

I don't know

b) information in response to a search query by the user, in particular if the displayed results are sponsored or not?

Yes
 No
 I don't know

) information on who the actual supplier is, offering products or services on the platform

Yes
 No
 I don't know

d) information to discourage misleading marketing by professional suppliers (traders), including fake reviews?

Yes
 No
 I don't know

e) is there any additional information that, in your opinion, online platforms should be obliged to display?

500 character(s) maximum

- **Platforms should identify themselves, as required by article 5 of the E-commerce Directive. Consumers and businesses acting in compliance with the law have a need and right to know with whom they are dealing.**
- **This is essential to ensure respect of IPR and to determine in which Member State the service is based, so as to apply the relevant regulations. Unsanctioned non-compliance with Article 5 creates enforcement issues as it makes the Enforcement Directive's Right of Information remedy void.**

Have you experienced that information displayed by the platform (e.g. advertising) has been adapted to the interest or recognisable characteristics of the user?

Yes
 No
 I don't know

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

Yes
 No

* What type of additional information and in what format would you find useful? Please briefly explain your response and share any best practice you are aware of.

1500 character(s) maximum

NA

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

Yes
 No
 I don't know

* Please explain how the transparency of reputation systems and other trust mechanisms could be improved?

1500 character(s) maximum

What are the main benefits and drawbacks of reputation systems and other trust mechanisms operated by online platforms? Please describe their main benefits and drawbacks.

1500 character(s) maximum

USE OF INFORMATION BY ONLINE PLATFORMS

In your view, do online platforms provide sufficient and accessible information with regard to:

a) the personal and non-personal data they collect?

Yes

No

I don't know

b) what use is made of the personal and non-personal data collected, including trading of the data to other platforms and actors in the Internet economy?

Yes

No

I don't know

c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)?

Yes

No

I don't know

Please explain your choice and share any best practices that you are aware of.

1500 character(s) maximum

- **Most stakeholders in European cinema share information and data on a regular basis to show specifically how the sector performs.**
- **Cinema operators for example share on a weekly basis figures on admissions and box office. UNIC publishes exhaustive figures on the state of the industry and also collects information and evidence on the social, cultural and economic impact of cinema exhibition in Europe.**
- **This is unfortunately not the case with the online world where data – although easily collectible – is often not shared. While all are in favour of the development of a strong legitimate VOD offer, new digital platforms have for the most part failed to share any meaningful data about their economic or cultural contribution to Europe. Most platforms also tend to not invest in film production. European cinema exhibition, on the other hand, has done both for many decades.**
- **The transparency issue has been raised on a number of occasions by the European Audiovisual Observatory who noted “a certain lack of transparent and reliable data” from online providers.**
- **Therefore and given the transparency of other stakeholders in the value chain, new players such as iTunes, YouTube or Netflix, should make available more data regarding the commercial, cultural and**

social value that they bring to Europe, in order to ensure a proper assessment of their impact and help policy-makers to formulate a sound strategy for European film and cinema.

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

Yes

No

As a holder of rights in digital content protected by copyright have you faced any of the following circumstances:

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

Yes

No

An online platform such as a video sharing website or a content aggregator refuses to enter into or negotiate licensing agreements with me.

Yes

No

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.

Yes

No

An online platform uses my protected works but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to refuse to negotiate a license or to do so under their own terms.

Yes

No

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

3000character(s) maximum

- **Cinema operators enter into exclusive licence agreements with film distributors to acquire a theatrical licence for a film in a specific territory. By committing a certain share of their box office income to the film distributor in return, as well as by investing in state-of-the-art theatres, operators make significant investment in a dynamic industry.**
- **Our sector therefore depends on a robust copyright framework that respects exclusive exploitation practices in cinemas. This enables operators to invest in providing state of the art viewing experiences for audiences.**
- **Therefore, any illegal and unlicensed use of films on platforms during such time of theatrical exclusivity hampers our sector and deprives cinema operators of important revenues. Given the risk- and revenue-sharing model of our industry, film distributors, producers and creators suffer in a similar manner from an illegal film offer. Piracy furthermore discourages investment in emerging digital film markets across Europe.**

- **Any platform that makes a work available or performs any other act protected by copyright without the authorization of the rightsholder is operating in violation of EU copyright law and is subject to the remedies provided for by law and should be brought to justice as appropriate.**
- **UNIC members urge EU policy-makers to ensure that ongoing industrial scale copyright infringements are prevented. We in this context support the EC's Follow the Money Initiative. Our members also feel that it is vital to impress on platforms the need to contribute to fighting piracy and to not abuse the liability regime of the E-commerce Directive (see further on). Finally, UNIC calls upon the EU and its Member States to implement and enforce EU rules around copyright equally forceful across all EU countries to ensure that there are no safe havens for those who purposefully break copyright rules in Europe.**

Tackling illegal content online and the liability of online intermediaries

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

Terms used for the purposes of this consultation:

"Illegal content"

Corresponds to the term "illegal activity or information" used in Article 14 of the E-commerce Directive. The directive does not further specify this term. It may be understood in a wide sense so as to include any infringement of applicable EU or national laws and regulations. This could for instance include defamation, terrorism related content, IPR infringements, child abuse content, consumer rights infringements, or incitement to hatred or violence on the basis of race, origin, religion, gender, sexual orientation, malware, illegal online gambling, selling illegal medicines, selling unsafe products.

"Hosting"

According to Article 14 of the E-commerce Directive, hosting is the "storage of (content) that has been provided by the user of an online service". It may for instance be storage of websites on servers. It may also include the services offered by online market places, referencing services and social networks.

"Notice"

Any communication to a hosting service provider that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it. Such an obligation only arises if the notice provides the internet hosting service provider with actual awareness or knowledge of illegal content.

"Notice provider"

Anyone (a natural or legal person) that informs a hosting service provider about illegal content on the internet. It may for instance be an individual citizen, a hotline or a holder of intellectual property rights. In certain cases it may also include public authorities.

"Provider of content"

In the context of a hosting service the content is initially provided by the user of that service. A provider of content is 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

- **In our view, film theft is the most serious threat to the well-being of the wider cinema sector. Key amongst our demands is that those supporting platforms or online intermediaries take more responsibility for protecting the creative content they promote, distribute and profit from. Those that encourage or participate in piracy should be held responsible for the hugely negative impacts of their behaviour. Finally, UNIC strongly supports moves to ensure that films that are illegally available on the Internet are taken down quickly and by all available means.**
- **Piracy has become so common in Europe that it shapes user behaviour, to the point that more and more consumers either do not accept or do not even understand the value of copyright. Therefore, more needs to be done to promote responsible and fair media consumption online. Cinema operators work with their partners in film distribution to tackle this trend. At EU level, the Commission should promote more cooperation between intermediaries and rightsholders to ensure that current levels of piracy are reduced to a minimum.**

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

- **Rules around the liability of intermediaries were initially intended to stimulate the development of a legitimate and dynamic online environment and this has been achieved to some degree. However, some intermediaries make unfounded assertions of eligibility for the liability privileges and/or use this liability regime as an excuse to not cooperate in the fight against piracy. In doing so, they contribute to a huge amount of value destruction in the creative economy and skew the 'level playing field' between many stakeholders.**
- **UNIC members strongly believe that online intermediaries should take more responsibility for protecting the creative content they promote, distribute and profit from. Those that encourage or participate in film theft should be held responsible for the impacts of their behaviour and should not be able to hide behind non-liability rules. Online intermediaries, whose services are used in infringing activities, both directly and indirectly, bear responsibility and have the duty to prevent such activities.**
- **The liability regime under the Directive only applies to certain activities carried out by intermediaries that are of "a mere technical, automatic and passive nature" and under the condition that the provider has neither knowledge nor control over the content transmitted or stored. Therefore, if an intermediary is aware of infringements committed on its network or service and does not act, it cannot be allowed to claim liability privileges as granted by the Directive. This provision should be more strongly enforced by national courts: any intermediary taking an active role should not be able to invoke non-liability in case of infringement of intellectual property rights and therefore should be exposed to adequate sanctions. Equally, the liability regime should not apply to intermediaries that monetise and editorialise creative content offers – whether in person or through an algorithm – and be considered responsible for such activity.**
- **UNIC's partners in film distribution often report a lack of cooperation from online intermediaries when it comes to fighting piracy effectively. The disabling of access to and the removal of illegal content by intermediaries can be slow and complicated. Services in our view wrongly assume that implementing narrow, proactive procedures – targeted filtering would be an example – may deprive them of the benefits of non-liability. As a result, rights holders are often forced to initiate costly and sometimes lengthy legal proceedings to obtain injunctive relief. A possible solution lies in Recital 40 and Article 16 of the E-Commerce Directive, which provide for the development of "rapid and reliable procedures for removing and disabling access to illegal information" based on "voluntary agreements between all parties concerned". Member States should in UNIC's view step up efforts to encourage these agreements, complemented by the development and use of effective technological tools.**

Do you think that the concept of a "mere technical, automatic and passive nature" of information transmission by information society service providers provided under recital 42 of the ECD is

sufficiently clear to be interpreted and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

Yes

No

I don't know

Please explain your answer.

1500 character(s) maximum

- **In a rapidly changing environment, with new services appearing on a regular basis and diverging tribunal decisions, we believe that the concept is insufficiently clear and that the legislator should remove market uncertainty regarding the concept of a “mere technical, automatic and passive nature”.**
- **In order to tackle piracy more efficiently and achieve a level playing field between all stakeholders, UNIC believes that it is of the utmost importance to reaffirm the limited application of this concept which should not apply to services which benefit commercially from protected content, no matter if they upload it or not.**

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

However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services e.g. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some diverging case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified?

Yes

No

Please provide examples

1500 character(s) maximum

- **We believe that the three categories defined in Article 12-14 – mere conduit, caching, hosting – still continue to provide a workable standard for all intermediaries.**
- **However, we consider that the non-liability principle should not be available to online intermediaries if they operate anonymously – compliance with article 5 of the E-commerce Directive is a pre requisite to benefit from the liability regime directive – and in case they take an active role.**
- **Furthermore, rather than adding more definitions, the EU legislator should clarify the type of activities that would disqualify an intermediary from being able to invoke one of the liability privileges in the E-commerce Directive, for example when the service in question is inducing infringement or going further than providing services of a merely technical, automatic and passive nature.**

On the “notice”

Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?

Yes

No

Do you think that any of the following categories of illegal content requires a specific approach:

Illegal offer of goods and services (e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc.)

Illegal promotion of goods and services

Content facilitating phishing, pharming or hacking

Infringements of intellectual property rights (e.g. copyright and related rights, trademarks)

Infringement of consumer protection rules, such as fraudulent or misleading offers

Infringement of safety and security requirements

Racist and xenophobic speech

Homophobic and other kinds of hate speech

Child abuse content

Terrorism-related content (e.g. content inciting the commitment of terrorist offences and training material)

Defamation

Other:

* Please specify

Notice and Action procedures are ill-adapted for mass copyright infringement services. Procedures are burdensome and costly as they have to be conducted for each service, work and occurrence with no long-term benefit as the infringing content can reappear almost immediately.

Please explain what approach you would see fit for the relevant category.

On the "action"

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

Yes

No

* Please explain your answer

1500 character(s) maximum

- **Notice and Action procedures should include fair counter-notice mechanisms, such that the provider of content is given the opportunity to share their views. However, this counter-notice procedure cannot be exploited to frustrate the legitimate take down process, especially in cases of obvious infringement (e.g well known titles still playing in cinemas) or in cases where the hosting provider has been notified of the following: the title; contact details of the sender; a confirmation (in the notice) that the sender has the right to ask for the takedown of the particular title; the action to be undertaken by the platform; the term in which to take that action.**
- **Moreover, the required standards of evidence on the part of rightsholders need to be fair and not overly burdensome (Article 5 of the Enforcement Directive). Platforms should in case of obvious infringement immediately remove the content to prevent further infringements from occurring and cannot argue that the illegality of the content should be verified with the content provider before taking it down. It can indeed happen that take down requests are made erroneously but such unfortunate cases are extremely rare, quickly resolved and should not drive policy-making.**

If you consider that this should only apply for some kinds of illegal content, please indicate which one(s)

1500 character(s) maximum

- **Notice and action procedures should include fair counter-notice mechanisms but this should not delay the take down process in any way, particularly in cases of obvious infringements or in cases where the hosting provider has been notified of the infringement as indicated above.**
- **If a person decides to upload a content file under a popular film title then he or she assumes the risk that a rights holder may request to have it taken down. Moreover, they can appeal to the take down notice and will be able to upload their content if lawfully acquired.**

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

Yes

No

Please explain

- **Considering the dramatic consequences of piracy on cinema operators, a quick and lasting action is necessary in order to limit damages. Even when illegal content is taken down after a short response time, it often remains available either because it is instantly re-uploaded or because it is available via a variety of other sources.**
- **Therefore, in particular in cases of manifestly illegal content, files should not only be taken down but deleted and prevented from being uploaded again. What is needed is a requirement to take down not just an individual link or file, but once the rightsholder identifies a piece of audiovisual content like a film, the site should be obligated to remove that content, all other identical copies of that content, and prevent users from re-uploading the same content. This can be done easily through the use of basic content recognition technology.**
- **We therefore encourage the European Commission to take action in order to clarify that that takedown includes the concept of a permanent take down, i.e. "take down and stay down".**
- **We also believe that further measures taken at national level should be applied on a larger scale, such as closing accounts of repeat infringers, verification of contact details of repeat infringers, title re-upload prevention by content recognition technology, closing down infringement-inducing categories on websites (CAM, Screener, Blu-Ray) and ultimately the closing down of structurally infringing sites.**

On duties of care for online intermediaries:

Recital 48 of the Ecommerce Directive establishes that "[t]his Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities". Moreover, Article 16 of the same Directive calls on Member States and the Commission to encourage the "drawing up of codes of conduct at Community level by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15". At the same time, however, Article 15 sets out a prohibition to impose "a general obligation to monitor".

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

Yes

No

I don't know

Please specify for which categories of content you would establish such an obligation.

1500 character(s) maximum

- **There is often a certain degree of unwillingness by some online intermediaries to take meaningful action to address illegal websites or illegal content online. In the event of new legislation, imposing a more specific duty of care in case of obvious copyright infringements would therefore be beneficial.**
- **All forms of illegal content should be removed as quickly as possible but in particular there needs to be faster action in case of manifestly illegal content such as newly-released films. Factors that help identify such cases include:**
 - **the title is well known and protected by copyright,**
 - **the rightsholders and distributors can easily be identified online at a variety of sources (including content owners sites, services like findanyfilm.com or IMDB.com) or by checking on publicly available sources such as national copyright registers,**
 - **both the uploader and the website operators are anonymous and clearly neither party has any form of license to upload or publish the film or TV show,**
 - **the website or hosting provider do not have a license to distribute the title.**

Please specify for which categories of intermediary you would establish such an obligation

1500 character(s) maximum

Any information society service providers “who host information provided by recipients of their service” as stated in Recital 48 of the E-Commerce Directive and who “are best placed to bring such infringing activities to an end” as per Recital 59 of the Copyright Directive; which include, for example: search engines, video sharing websites, cyberlockers, registrars, registries, hosting providers, advertisement networks, payment processors, etc.

Please specify what types of actions could be covered by such an obligation

1500 character(s) maximum

- **Online intermediaries are under a general obligation to act as a diligent economic operator, which, at a minimum, involves understanding their business models, evaluating the risks and implementing procedures addressing such risks.**
- **In the context of copyrighted protected content, the objective of duty of care is to focus on detecting and preventing piracy. Codes of conduct discussed with payment and advertising intermediaries, such as in the context of the “Follow the Money” approach to enforcement, are certainly an interesting option.**
- **Specific actions (as often recognised by the Courts) also include:**
 - **keyword content recognition on the basis of popular film & TV titles and/or infringement-inducing website categories names such as “CAM”, “Screener” and “Blu-Ray”.**
 - **visual and audiovisual content recognition filter**
 - **prevention of re-uploads of infringing content**
 - **a repeat infringer policy such as for instance closing down accounts of repeat infringers.**
 - **verification of contact details of repeat infringers.**
 - **verification of contact details of websites by hosting providers.**
- **These measures – also confirmed by national courts - are not contrary to the prohibition to impose "a general obligation to monitor" of Article 15 of E-Commerce Directive.**

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

Yes

No

Should this obligation be limited to those hosting service providers, which receive a sizeable amount of notices per year (e.g. more than 1000)?

Yes

No

Do you think that online intermediaries should have a specific service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism?

Yes

No

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

5000 character(s) maximum

- **Online intermediaries are key gatekeepers of the Internet and indispensable to prevent intellectual property rights infringements. This is why UNIC believes that stakeholders whose services are used in infringing activities both directly and indirectly bear responsibility and have the obligation to prevent such infringements.**
- **In this regard, UNIC suggests the European Commission focus on the following key issues:**
- **No anonymous business online: No business should be able to operate anonymously online. Article 5 of the E-commerce Directive embodies this principle and compliance should be a prerequisite to benefit from the liability regime. Intermediaries should also be subject to a ‘know your customer’ obligations, i.e record and be able to provide accurate data concerning the customers, while of course complying to European and national privacy laws. Anonymous businesses prevent the legal system from working in a fair and balanced manner and make notice and takedown procedures meaningless and ineffective. It is reasonable and appropriate to expect intermediaries, as lawful businesses, to support the prevention of abuse of their services for illegal purposes. The Commission should therefore explore how to make this requirement more meaningful by attaching proactive measures and consequences for failure to comply, either at European level or by asking Member States to create new sanctions.**
- **Clarification of the liability regime: Some intermediaries make unfounded assertions of eligibility for the liability privileges and/or also use this liability regime as an excuse to not cooperate in the fight against intellectual property rights infringements. UNIC therefore considers that clarifications are needed regarding the type of activities that would disqualify an intermediary from being able to invoke one of the liability privileges in the E-commerce Directive. It should also be clear that intermediaries that cooperate to prevent illegal activities are not deprived of the benefit of the limitations on liability.**
- **Take down and stay down: Even when illegal content is taken down after a short response time, it often remains available either because it is instantly re-uploaded or because it is available via a variety of other sources. What is needed is a requirement to take down not just an individual link or file, but once the rights holder identifies a film, the site should be obligated to remove that content, all other identical copies and prevent users from re-uploading the same content. This can be done easily through the use of basic content recognition technology. We encourage the European Commission to take action to clarify that that takedown includes the concept of a permanent take down, i.e. “take down and stay down”.**
- **Specific duty of care: A fast response should be the norm for obvious copyright infringements, such as promoting, distributing online unlicensed versions of new film releases that are still in the cinemas and can be easily identified through content recognition technologies. For that type of content, we would require a specific duty of care from intermediaries, as outlined in our submission.**
- **Altogether, a better cooperation from online intermediaries is needed, especially considering their crucial role as Internet gatekeepers. We would like to point out the specific responsibility of video sharing websites and search engines as they guide consumers towards content. There is a vibrant digital high street in the EU that is findable and full of legitimate options to buy and stream films. Those options can and should appear prominently when internet users enter search terms indicating that they are trying to find such content. In practice, search engines and video sharing platforms not only often do a poor job of helping users find legal options in response to many types of search queries, but in some cases actively**

direct them to illegal options. UNIC believes that intermediaries such as YouTube or Google should further adjust their algorithms more effectively to demote infringing sites and redress the disadvantages that render lawful ones less visible, delist from search results any sites that have been found to be illegal and stop providing suggestions that direct users toward illegal sites.

- UNIC also encourages the European Commission to step up its efforts to track down those who benefit financially from websites hosting infringing content through the Follow the Money approach.