

January 6, 2016

European Commission
DG Communication Networks, Content & Technology
Unit F1 - Digital Single Market
Avenue de Beaulieu 25
B-1049 Brussels - Belgium



Re: EU Digital Single Market Platform Consultation

The Wikimedia Foundation greatly appreciates this invitation to provide comments on the role of neutral platforms and online intermediaries in the context of the European Digital Single Market.

The Wikimedia Foundation is the nonprofit organization that hosts and supports [Wikipedia](#), the world's largest encyclopedia that is free for anyone to edit, and other projects that allow people around the world to produce, share, and access free educational content. The Wikimedia projects also include a repository of free media files and images ([Wikimedia Commons](#)), a knowledge base for freely usable datasets ([Wikidata](#)), and free learning resources ([Wikiversity](#)).

All of the Wikimedia projects are free, collaboratively created, and updated by contributors from a global community of thousands of volunteers. Through this collaborative process, Wikipedia has grown to include over 36 million articles in approximately 291 languages, and the Wikimedia projects are viewed by over 430 million people each month. Many Wikimedia contributors are in Europe, and Europeans use Wikipedia and its sister websites on a daily basis.

We would like to use this opportunity to discuss the crucial protections from intermediary liability that allow projects like Wikipedia to operate as a free and neutral platform. As the Wikimedia projects represent an online global collaboration, European regulation of digital platforms and intermediaries raises issues relevant to our type of work.

Nuanced Regulation

Having reviewed the questionnaire of the consultation, we find it important to emphasize that there are multiple and different types of platforms that are essential for the digital ecosystem. Imposing new regulations or legal duties, following a one-size-fits-all approach, is problematic—the law should treat different types of platforms appropriately. We suggest a typology of platforms based on the following questions: 1) Does the platform facilitate collaborative creation among users without financial transactions? 2) Is the platform's operator primarily neutral and non-editorial?

A new typology for platforms is important for the digital environment, where there is no longer a clear and useful distinction between content creators and consumers. In today's world, for example, users of a site are often the creators of content on that site.

Wikipedia's users create and expand the content on the site, as well as consume and share it. Allowing users to collaborate openly on an online platform is crucial for projects like Wikipedia.

Due to diminishing costs of storage, access, and distribution of information, Internet users are able to produce content and promote innovation at very little cost. Platforms that empower users to participate in this process of production of information should not be regulated in the same, often burdensome ways as platforms that establish multi-sided markets for traditional rightsholders and publishers on one side and passive consumers on the other side, e.g., digital music or video stores.

1. Financial Nature of Transactions.

The first one of the two criteria that we suggest for a typology of platforms builds on the Commission's "follow-the-money" approach for copyright reform: it is important that platforms which do not facilitate any financial transactions between users, either direct or indirect (via advertisement) and, therefore, are independent from commercial interests, not be subject to the same rules that govern online marketplaces for content, goods, or services, where rightsholders and consumers may benefit from different forms of protection.¹ Imposing additional regulations or a duty of care on intermediaries that do not facilitate financial transactions will interfere with the collaborative processes that currently generates valuable content. Additionally, rules such as ancillary copyright will add legal uncertainty for both users and platforms. Making platforms increasingly responsible for users' contributions, especially where there are no financial transactions, will limit online platforms' ability to serve as neutral spaces for free speech.

Content that is created without financial transactions may still add a significant value to the digital market. A great example for a collaborative project that is of tremendous importance for a whole value-chain of the open-information economy is [OpenStreetMap](#) (OSM), an online map of the world that is created by volunteers and can be used for free by anyone. OSM's free maps enrich Wikipedia articles, and they are used widely in other mobile apps. EU policymakers need to make sure that new intermediary rules and duties do not create a great burden on valuable free projects like Wikipedia and OpenStreetMap so they can continue to thrive.

2. Decentralized Control.

The second criterion concerns the deliberate decisions of platforms to not exert editorial control over user-generated content on their website in favor of neutrality. There is substantial public interest in the availability of democratically governed platforms, which allow for the publication of information that does not serve a commercial interest or a certain political agenda. The collaborative production of free knowledge to a certain extent depends on broad exemptions from intermediary liability, so that users can speak freely without interference by platform operators.

¹ Such other forms of protection are found in contract law and in consumer protection measures.

Safe harbors, as provided by the Electronic Commerce Directive especially, allow a host to remain a neutral facilitator and to keep projects open to governance by users. Because of legal safe harbors, the Wikimedia Foundation is able to rely on the effective oversight of Wikimedia contributors to ensure Wikipedia and its sister projects contain legal and appropriate content, and are of high quality and up-to-date.

This process of community-powered monitoring has not only proven to be more democratic, but is also very effective. The Wikimedia Foundation responds to valid takedown notices, and publishes an annual [transparency report](#) to provide contributors insight into when content is removed. Mandatory monitoring—which we believe to be represented by the Commission’s idea of a “take down and stay down” principle—would be a great burden on the current effective process on Wikipedia, as well as smaller platforms that serve important niches of the collaborative economy.

Towards a more productive copyright.

Finally, we wish to briefly comment on the Commission’s plans for the harmonization of copyright exceptions in the European Union. Collaborative platforms like OpenStreetMap and Wikipedia that are maintained and driven by volunteers from many different European countries depend on clear guidance and legal certainty with regard to what is acceptable use of content. Therefore, we commend the Commission for its vision to introduce clear EU-wide rules regarding copyright limitations and exceptions.

Harmonization will enable users to better collaborate across borders. Notably, the clear protection of Freedom of Panorama² will allow volunteers to build innovative and free projects, such as Wikimedia Commons, a repository of photos that anyone may use. Because the collaborative economy contributes to access to knowledge and Europe’s digital value chain, we urge the Commission to not only protect but also promote this motor of education and innovation through a modernized copyright regime with a vibrant public domain that gives Wikipedia and other projects room to expand and flourish.

Conclusion

We urge the Commission to consider the value of collaboratively created content to the Digital Single Market, and the role of neutral intermediaries in facilitating how this content is produced, shared, and accessed. We encourage the Commission to consider the diversity of online platforms and their needs, and preserve the Internet's open spaces for innovative new ways to learn and share knowledge.

Thank you again for this opportunity to submit our thoughts in the context of this consultation.

Sincerely,
Wikimedia Foundation

² Freedom of Panorama, i.e. the “panorama exception” in copyright law, includes the freedom to take photographs of buildings and art permanently in public spaces.