

ROADMAP	
TITLE OF THE INITIATIVE	Initiative on procedures for notifying and acting on illegal online content
TYPE OF INITIATIVE	X CWP • Non-CWP • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG MARKT
EXPECTED DATE OF ADOPTION	Month/Year: Q3 2012
VERSION OF ROADMAP	No: 1 Last modification: Month/Year: October 2011

This indicative roadmap is provided for information purposes only and is subject to change.
It does not prejudge the final decision of the Commission on whether this initiative will be pursued
or on its final content and structure.

A. Context, problem definition
<p>(i) What is the political context of the initiative?</p> <p>(ii) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?</p>
<p>(i) Notice-and-takedown (NTD) procedures are the procedures for removing or disabling access to illegal information or activities on the internet by internet intermediaries (such as video-sharing sites, internet access providers, search engines or social networks), following a notification concerning that illegal content or activity to the intermediary by any natural or legal person (for instance a right holder, a public authority, an NGO or a citizen). Individual businesses apply their own NTD rules and procedures, and in recent years a number of Member States has adopted legislation on such procedures, in particular in the field of copyright infringements, but also as regards child pornography or terrorism related illegal information. These regulatory developments have stimulated debates on the freedom of speech, data protection and the right of internet access, as well as on innovation, security and the dangers of internet in particular for vulnerable groups.</p> <p>(ii) The E-Commerce Directive (Directive 2000/31/EC) contains a scheme for the exemption of liability for certain internet intermediary services (mere conduit, caching and hosting), on the basis that the intermediaries act when notified of (alleged) illegal content. The Directive provides therefore a basis for notice and takedown procedures without regulating them. It also encourages the establishment of European self-regulatory NTD procedures, and it obliges the Commission to assess the functioning of these NTD procedures when evaluating the Directive. NTD procedures can tackle all forms of illegal information and activities and therefore cover many situations: from infringements of intellectual property rights (IPR) and illegal gambling sites to slander, defamation and unlawful sales of medicines. The impact assessment on the revision of the Intellectual Property Rights Enforcement Directive will address the role of all intermediaries including online intermediaries in assisting to inhibit differing forms of IPR infringements. The Commission proposal for a Directive on Child Abuse aims at introducing an obligation for Member States to ensure that child pornography is taken down.</p> <p>(iii) In the second half of 2010 the Commission held a public consultation on electronic commerce and on the E-Commerce Directive (http://ec.europa.eu/internal_market/consultations/2010/e-commerce_en.htm). A vast majority of the 420 respondents to the consultation expressed concerns about the fragmentation of NTD procedures throughout the EU. The Communication on e-commerce and other online services (to be adopted in December 2011) with an accompanying Staff Working Document will explore the issues related to NTD more in detail, and set out a vision on the future of e-commerce and other online services within the EU.</p>
<p>What are the main problems which this initiative will address?</p> <ul style="list-style-type: none"> • A lack of legal certainty and predictability resulting from conflicting jurisprudence and the fragmentation of NTD procedures across the EU, which can hamper innovation and growth. • Alleged too limited or too slow takedown of illegal information. • A lack of transparency on internet intermediaries' individual NTD procedures. • Instances of conflicts with fundamental rights such as the freedom of expression, data protection, protection of privacy and the right of a fair process.
<p>The initiative will have a horizontal scope in the sense that it will cover all types of online services (including entertainment, adult, health, gambling etc.) representing many societal interests. Stakeholders include Member</p>

States, internet intermediaries, right holders, child protection organisations, civil rights organisations and citizens in general.
(i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)
The cross-border nature of the internet, the existing fragmentation of NTD systems, the lack of development of regulatory codes at European level and conflicting jurisprudence within and across Member States justify an analysis of the need for EU action.

B. Objectives of the initiative
What are the main policy objectives?
<ul style="list-style-type: none"> • Contribute to developing trust and therefore growth in (cross-border) online services, thus enhancing the functioning of the Digital Single Market. • Contribute to combating illegality on the internet. • Ensure the transparency, effectiveness, proportionality and fundamental rights compliance of NTD procedures. • Ensure a balanced and workable approach towards NTD procedures, with focus on fundamental rights and the impact on innovation, growth.
Do the objectives imply developing EU policy in new areas?
No.

C. Options
(i) What are the policy options being considered? (ii) What legislative or 'soft law' instruments could be considered? (iii) How do the options respect the proportionality principle?
The impact assessment will address a number of issues including the requirements for a notice; the time for an intermediary to act following a notice; the need to inform or consult the provider of the alleged illegal information; the need for further transparency on NTD procedures; the consequences of submitting wrong notices; the instruments for removing or disabling access to illegal content, etc.
Several options including no EU action, European soft law (such as already piloted in the Memorandum of Understanding on the sale of counterfeited goods) and legislative instruments will be assessed, in particular as regards their proportionality.

D. Initial assessment of impacts
What are the benefits and costs of each of the policy options?
Depending on the outcome of the impact assessment, the initiative could in particular have the following benefits: <ul style="list-style-type: none"> • on the supply-side, faster action against illegal content online, reduction of unfair competition and as a consequence greater growth of licit online businesses; • on the demand-side, improved consumer/citizen trust in online services in general, boosting investment, new entry, growth and job generation within the EU; • decreased business risk for intermediaries that act in compliance with a more unified framework; • better protection of fundamental rights and in particular of the freedom of speech and the right to a fair process. It might also lead to the following costs: <ul style="list-style-type: none"> • an additional burden on notice providers if they would have to provide more detailed notices; • increased costs for certain ISPs if they would have to act quicker and to increase transparency.
Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for

certain Member States?
i) and ii) No additional administrative burdens are foreseen. iii), iv) and v) No transposition problems are anticipated.
(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?
i) Yes. ii) The impact assessment work will start in October 2011. iii) and iv) The IA Steering Group will be set up in Q3 and will include all interested DGs. The frequency of meetings still has to be decided.
(i) Is any of options likely to have impacts on the EU budget above €5m? (ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.
No.

E. Evidence base, planning of further work and consultation
(i) What information and data are already available? Will existing impact assessment and evaluation work be used? (ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when? (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)? (iv) Is any particular communication or information activity foreseen? If so, what, and by when?
The above-mentioned consultation on e-commerce and two main studies on the economic impact of the E-Commerce Directive, and on the liability of Internet intermediaries (see http://ec.europa.eu/internal_market/e-commerce/directive_en.htm#consultation) will be part of the evidence base. Further in-depth consultations with stakeholders on the legal and practical aspects of notice and takedown procedures will be scheduled.
Which stakeholders & experts have been or will be consulted, how, and at what stage?
Stakeholders have already been consulted through the extensive 2010 public consultation on e-commerce. Specific interest groups and businesses have already been consulted through bilateral meetings. Member States are being involved in particular through the expert group on e-commerce (http://ec.europa.eu/internal_market/e-commerce/expert_en.htm). More in-depth consultations for all stakeholders involved, including workshops, will be undertaken.

Europe 2020 <i>Any link to one or more flagship initiatives? Which?</i>	Evaluation <i>Is an evaluation available or planned? If so, provide details (references, etc.). If not, explain why.</i>	Implementation plan <i>Is an IP foreseen for legislative instruments? If so, please provide details. If not, explain why.</i>
The initiative should contribute to a vibrant, innovative and safe Digital Single Market, which is one of the action areas of the Digital Agenda for Europe.	An evaluation of the current framework has been carried out through a public consultation (http://ec.europa.eu/internal_market/e-commerce/directive_en.htm#consultation) and a Staff Working Paper on e-commerce that will be published in December 2011.	To be defined, depending on the outcome of the impact assessment.