

Impact of the European Commission's Draft Directive on Contract Rules for the Supply of Digital Content Final Report

August 2016

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Executive summary

Digital content has transformed the lives of European citizens. With the widespread ownership of smart phones and tablets, Europeans can use digital content wherever they are, often for free. The sheer scale of the digital content available enables consumers to access thousands of songs, clips or apps at the click of a button.

On May 6th 2015 the European Commission (EC) launched its Digital Single Market (DSM) strategy to remove barriers to digital cross border trade and boost Europe's digital economy. As part of this package, the EC has published a draft proposal to introduce harmonised rules for the online supply of content (draft Directive).

The proposal extends consumer rights and supplier obligations to the provision of free as well as paid for content. It adopts a broad definition of 'digital content' and 'supplier' and introduces a number of new concepts such as 'data actively provided by consumers' and 'data as counter-performance'.

In this context, EDiMA, a European trade association representing online platforms, has commissioned Deloitte to understand businesses' reactions to the proposal and consumers' experience and expectations in relation to free and paid for content they use.

Currently, there are no harmonised rules for buying or selling digital content across national borders in the European Union (EU), which can impact on the Single Market and lead to uncertainty and cost for businesses and consumers. The proposed legislative package is an opportunity to further consumer confidence when buying digital content and to increase intra-European trade in digital content.

The draft Directive proposes that suppliers of free and paid for content will have the burden of proof to demonstrate the content is not faulty, and that they will repair or replace the faulty digital content for free. Consumers can have a refund if they have paid for faulty content. For faulty digital content that is accessed for free, the EC introduces the concept of 'data as counter-performance', treating data as a form of payment for digital content. The draft Directive proposes that in the case of faulty digital content the consumer can request the supplier to stop using and return their data, seeking to draw a parallel with a refund for paid for content. In cases where the digital content damages the consumer's device, the consumer of free or paid for content can get compensation from the supplier.

This report's findings are based on three components of research conducted for the study:¹

- A **consumer survey** targeting c. 6,000 European consumers. This survey was conducted across four countries: France, Germany, Spain and the UK.² The consumer survey, implemented through the Google Consumer Surveys platform, asked consumers about their experiences and expectations in relation to free and paid digital content.
- A **business survey** targeting c. 1,400 business decision makers whose businesses supply digital content. This survey was conducted across four countries: France, Germany, Spain and the UK. The business survey was implemented online by the

leading market research firm, YouGov. Quotas were imposed on size of businesses, free and paid for content suppliers, and some sectors in order to obtain representation of businesses across key business characteristics of interest for the study. The survey results are not weighted to be representative of the general business population. The population of interest in this case is businesses that supply digital content.

- **Business interviews** conducted with 16 businesses or business associations representing businesses of various sizes and based in different countries across Europe. Interviews were conducted over the phone and explored businesses' reaction to various elements of the proposal in more detail.

The key findings of the research

Free digital content is popular with consumers; it enables access to a wealth of innovative services and lowers barriers to entry for smaller businesses and start-ups

In the digital environment, consumers have shown an appetite for free content. Whether it is looking at videos on YouTube, catching up with friends on Facebook, or playing Candy Crush Saga on the way to work, many consumers want their favourite apps for free. The consumer survey suggests that many consumers access a majority if not all of their digital content for free with around 50% of consumers surveyed only using free digital content. Less than 10% of consumers use more paid for content than free content.

The free model supports a thriving ecosystem of innovative services, ranging from guitar lessons to carpooling services, and lowers barriers to entry for Small and Medium Sized Enterprises (SMEs).

Consumers are generally happy with their digital content

The consumer survey conducted for this study shows that most consumers (86%) of free digital content are happy with the quality of their content. A majority of consumers (74%) are happy with the digital content they pay for.

A majority of consumers have never felt the need to request a repair or replacement for free content that they have accessed, while one in four have done so occasionally. Only a small minority (7%) say that they often have to request a repair or replacement for free digital content.

Consumers have different expectations regarding free and paid for content

Consumers are almost half as likely to expect compensation for damage caused by digital content if they accessed the content for free than if they paid for it.

After purchasing faulty content, 30% of consumers would want to receive a refund, 25% would want to receive a replacement and 20% would want to receive a repair. After accessing free but faulty digital content, a majority of consumers would expect a repair, replacement or nothing from the supplier. Around 19% of consumers say they would expect nothing from the supplier if they accessed the faulty digital content for free.

Businesses welcome the harmonisation of rules across Europe but some businesses also foresee disproportionate costs and other impacts from the current draft of the Directive

Business sentiment towards the draft Directive

Many businesses that supply digital content in Europe are positive about the draft Directive and confident in their ability to comply with it. According to the business survey, many more business respondents see the proposal positively than negatively. These

A large majority - 86% - of consumers of free digital content are happy with the quality of content.

Consumer survey

businesses that supply digital content are present across many sectors of the economy when using the EC's definition of digital content.

In the media sector, fewer businesses think the proposal will have a positive impact and more businesses think they will have a negative impact than in the total sample of businesses. However, the balance of sentiment in the media sector is still positive or neutral across the elements of the draft Directive tested.

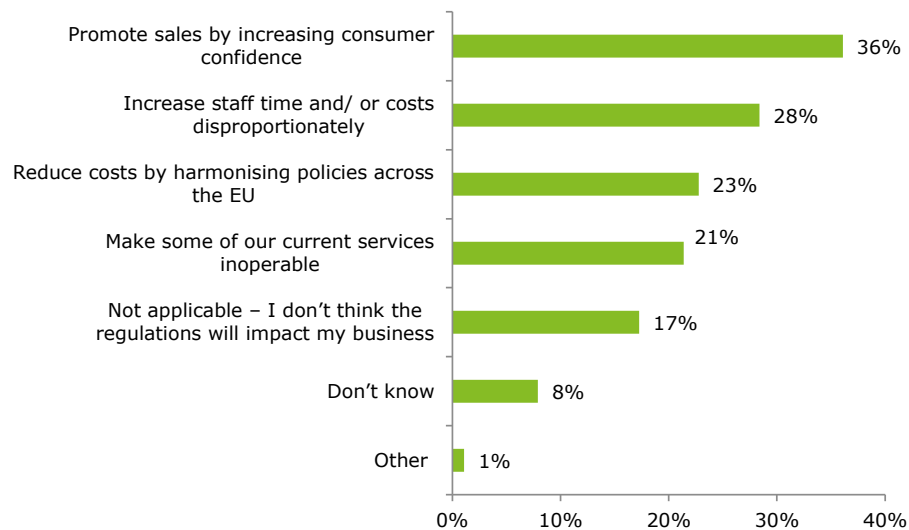
In relation to the requirements to pay the consumer damages and to return the consumer's data, the positive and negative sentiment is equally balanced among media sector businesses. Slightly over one-fourth of respondents in the media sector said these will have a negative impact on their business, with roughly the same proportion saying these will have a positive impact. The remainder said they expect the proposal to have no impact on their business.

Impact on businesses

When asked about the potential impact of the proposal on their business, 36% of respondents thought the proposal would promote sales by increasing consumer confidence, and 23% said harmonisation would reduce costs.

However, over a quarter of businesses (28%) also thought that the draft Directive would increase costs disproportionately, and 21% said some of their services would become inoperable.

Figure 1: In which, if any, of the following ways do you think these regulations will impact your business?



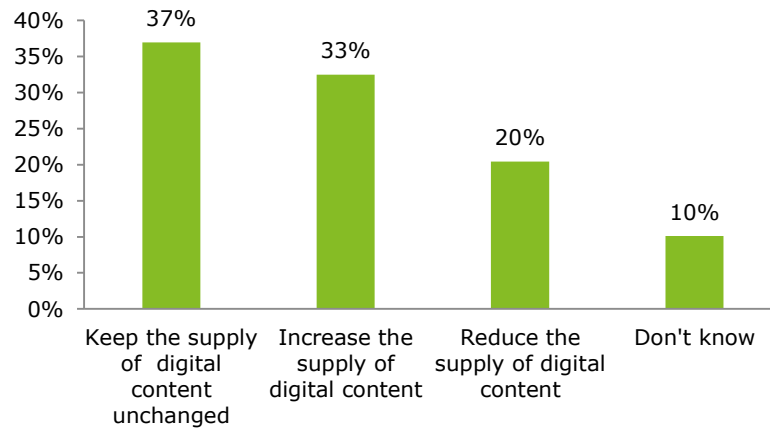
Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Impact on supply of digital content

When asked about the impact of the draft Directive on their supply of digital content, 33% of business respondents said their business would increase supply and 37% said they would keep the supply unchanged. Some business respondents – 20% - said their business would decrease supply.

Figure 2: If the regulations are implemented, do you think your business will increase or decrease the amount of digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

Impact on investment and business activity

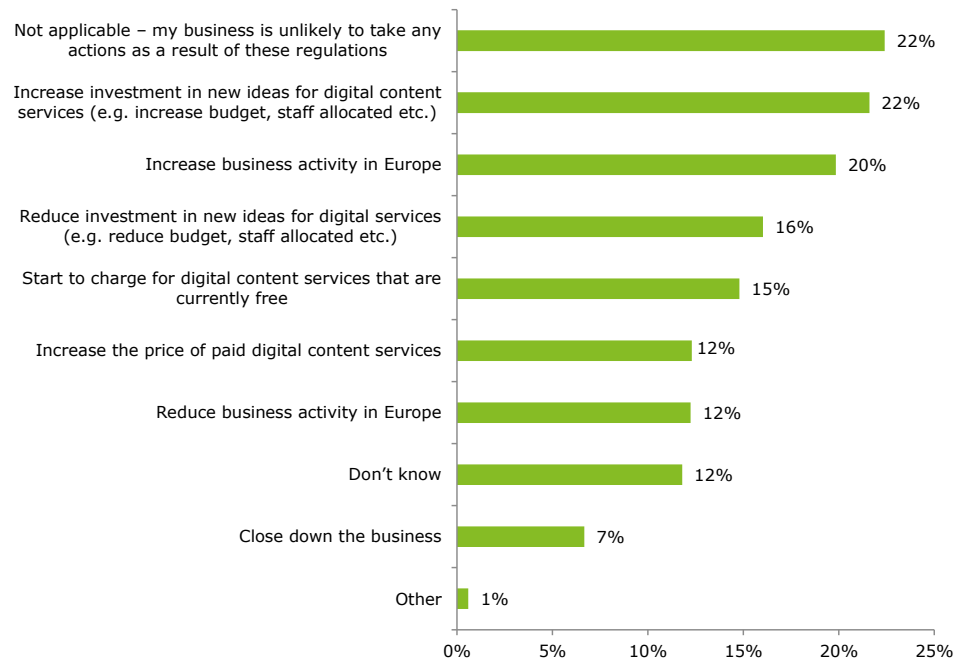
When asked about additional actions that respondents think their businesses would take in response to the proposal, nearly one-quarter of business decision makers (22%) said their business would be unlikely to take any action.

Some business respondents said their business would increase investment and business activity in Europe while others said they would reduce these. Nearly one-quarter (22%) of business decision makers said their business would increase investment in new ideas and 20% said it would increase business activity in Europe. In contrast, 16% of respondents said their business would reduce investment, 12% said they would decrease business activity in Europe and 7% said they would close down their business if the draft Directive was implemented.

Some business respondents said they would respond by seeking to start to charge for free services (15%) or to increase the price of paid digital content services (12%).

Multiple responses were allowed in this question and hence the results are not additive.

Figure 3: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

While a majority of business decision makers see the proposal positively or expect it to have no impact on their business, some decision makers say their business will face disproportionate cost, reduce the supply of digital content, reduce investment or business activity, or attempt to charge for services.

There appears to be scope to focus the Commission’s proposal on consumers’ priorities

Whilst a majority of businesses that supply digital content are confident in their ability to comply with the draft Directive and welcome the positive benefits it can bring, there appears to be scope to streamline elements of the proposal to focus on consumers’ priorities and to provide practical requirements in a number of areas.

Businesses interviewed asked for a clear identification of the consumer issues the draft Directive wishes to address, further exploration of the different sectors potentially impacted and how they might be affected, as well as the Commission working jointly with industry in order to develop a workable proposal that will benefit consumers and businesses.

Consumers do not prioritise the return of their data

The consumer survey suggests that only 12% of consumers prioritise the supplier returning their data and only 15% prioritise the supplier stopping using their data in response to faulty content.

Treating data as ‘counter-performance’ presents practical challenges

Businesses interviewed spoke of the practical difficulties of treating data as counter-performance. These included the fact that, unlike money, data has no standardised value

and its value differs across uses, organisations, people and contexts. Often data in raw form has no value and some investment needs to be made to generate knowledge (or value) from it. Further, data is also not readily exchangeable for other goods and services and cannot be readily returned in the same way that money can be.

Businesses do not always directly monetise data

Many business decision makers say their businesses use data for a variety of commercial purposes which involve indirect rather than direct monetisation. These include using data for product/service improvement (35%), to provide personalised services to consumers (37%), to enable the product to function (23%) or to improve security (22%).

Returning data to the consumer presents challenges to businesses

Businesses interviewed for the study highlighted a number of key challenges from retrieving data and returning it to the user. Particular challenges relate to the EC's extension of obligations to include not only personal data but also *'any other data generated through the user's use of the digital content'*. Some of their concerns included:

- the costs involved in re-designing systems;
- the inconsistency between the requirements to anonymise the consumer data and allow the consumer to ask for their data back;
- the potential disclosure to competitors of the know-how applied to analysing, using and aggregating data; and
- the potential impact on other users' experience.

Some definitions in the proposed Directive are broad and create uncertainty

Businesses interviewed found various definitions and descriptions in the draft Directive unclear. Many businesses interviewed highlighted the broad definition of digital content, the definition of supplier and the definition of data 'actively provided' by the consumer. Some felt that the scope of 'supplier' was too broad and that under the current definition responsibility to the consumer could extend to not just the content developer but also the platform, although the platform may not necessarily have the means to repair the digital content.

Results from the business survey highlight the prevalence of businesses supplying digital content under the definition of digital content proposed by the EC across many sectors of the economy and not just in the Information and Communications Technology (ICT) sector.

Suppliers may find it difficult to prove that their content is not faulty

Businesses interviewed noted that the delivery of digital content is dependent on a number of factors outside of the supplier's control, such as the internet connection and the storage space on the user's hard drive. Because of this, it may be difficult for the supplier to prove that the content is not responsible for the user's poor experience or the damage to the user's device.

Concluding remarks – streamlining the Commission's proposal

Digital content is important for European consumers and for the European economy. The ICT³ sector contributes c. €500 billion to the European economy, and c. 6 million jobs.⁴ Over half of ICT related business decision makers⁵ in the business survey say their business offers digital content, of which more than half say they offer content for free. Europe is a world leader in the app economy, with 5 of the top 10 grossing apps being from European developers, and 35% of their revenues coming from non-European users.⁶

Clarity for consumers about their rights and harmonisation across the EU can help build consumer confidence, which would benefit businesses. However, based on the research in

'It is extremely time consuming for a small business like mine to even figure out how these rules apply to us'.

SME business decision maker

this study, a few areas emerge where the EC's proposal could be streamlined to focus on consumers' priorities and minimise the cost to businesses. In particular, the draft Directive may:

- Take into account consumers' current satisfaction with free digital content, and their different expectations in relation to their rights when using free versus paid for digital content;
- Provide clearer and narrower definitions of certain terms in the draft Directive, such as the definitions of digital content, supplier of digital content and actively provided data, and where applicable use definitions consistent with other Directives;
- Ensure proportionality in the requirements on suppliers to identify, collect and retrieve consumer data, taking into account where it may not be possible or it may be disproportionately costly for businesses to deliver on such requirements;
- Revise elements that may prevent companies from anonymising and minimising the use of consumer data in line with the provisions in the General Data Protection Regulation (GDPR); avoid companies having to collect and hold more data, especially more personalised data, to comply with the draft Directive;
- Allow businesses to preserve their intellectual property as part of data disclosure to consumers; and
- Ensure proportionality in the burden of proof on the supplier, for example by limiting the obligation, to acknowledge that it can be difficult for the supplier to always establish conformity with the contract.

1 The role of the free digital content model

The free digital content model is popular with consumers. It extends consumer choice and supports a myriad of innovative services. It lowers barriers to entry for smaller businesses and start-ups, contributing to European employment and to Europe's position on the global digital stage.

Digital content has transformed the lives of European citizens. With the widespread ownership of smart phones and tablets, Europeans can use digital content wherever they are. There is an app for just about everything. You can use an app to find a lift to a concert, mix music, learn the guitar, or map a run. These apps belong to a digital space where innovation flourishes.

This section discusses the importance of the free digital content model and the benefits it brings to consumers and businesses.

1.1 The free model is popular with consumers



Case study: RogerVoice⁷

RogerVoice is an app that uses voice-recognition technology to capture speech and translate it into readable text. Those with hearing difficulties can use the powerful speech recognition system built into the app to make phone calls on mobiles, landlines and teleconferences. The app has the potential to help millions of hard-of-hearing people make phone calls for the first time.

The creator, Olivier Jeannel, grew up with hearing difficulties. He cites the reach of the mobile app market as key to helping as many people as possible. The French start-up is now a truly global app and is available in most countries – it can recognize over 80 languages.⁸

In the initial stages of development, the app made use of Google Play's beta testing programme. Through this, it was possible to invite people across the world to test the app, which ensured that it was just right when the first version was put on public display.

'I don't see how we could break into the competitive app market and gain users quickly without offering a free app. It's just the way it works'.

App developer

In the digital space, consumers have shown an appetite for free services. Whether it is looking at videos on YouTube, catching up with friends on Facebook, or playing Candy Crush Saga on the way to work, consumers want their favourite apps for free.

In fact, around half (49%) of consumers surveyed say that they only use free content, 28% say they use more free than paid for content and 14% say they consume the same amount of free and paid for content.

The three most frequently viewed websites in France, Germany, Spain and the UK - Google, Youtube and Facebook – are all free sites.^{9 10 11 12}

Only a minority of consumers surveyed frequently pay for digital services. Research by the EC found that only 20% of users have paid for an online service and 44% had paid for digital content in the past year.¹³ The same study found that consumers of digital content

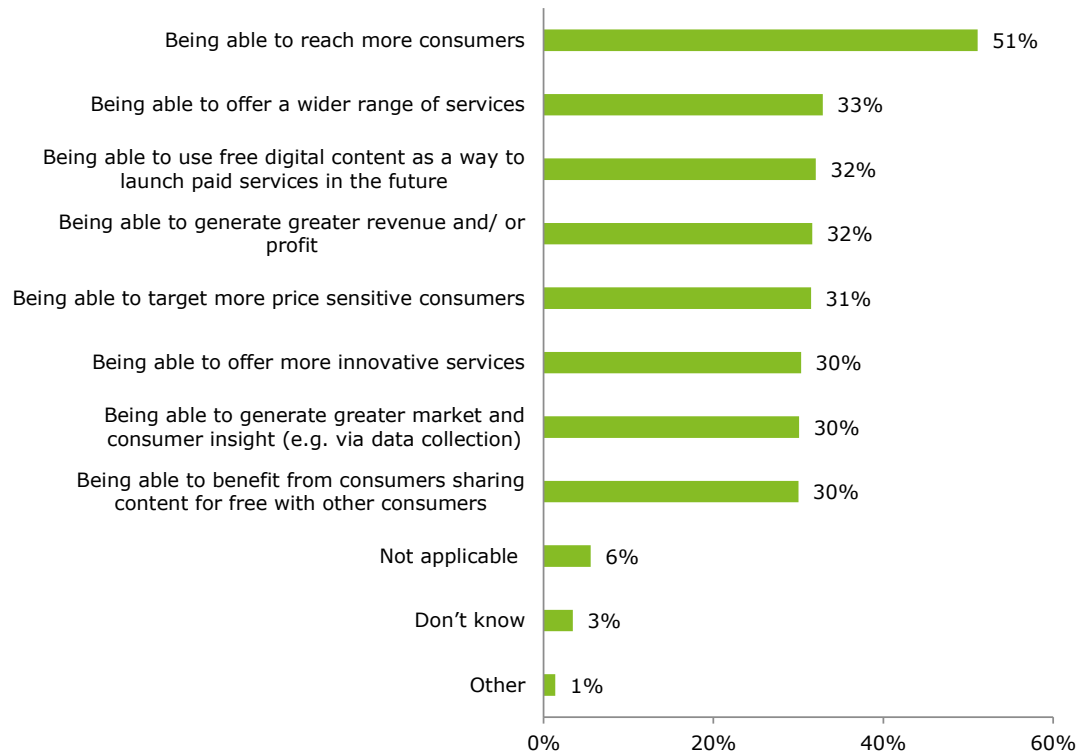
tend to be a young demographic, with over 82% of the youngest age group accessing digital content over the year.

1.2 The free model extends consumer choice

Through the free model, many more consumers access digital content than if they had to pay. A majority of consumers would choose not to pay if suppliers charged for the content. Research for this study asked consumers to recall a particular item of digital content that they have accessed for free, such as social media or the news. When asked whether they would access the content, if they had to pay for it, only 19% said they would pay.¹⁴ This is supported by other studies. For example, research by Forrester estimated that only 5% of consumers will ever pay for digital content.¹⁵

Businesses use the free model to reach a larger pool of consumers than they otherwise could do. Over 50% of respondents in this study's business survey said the ability to reach more consumers is a key advantage of the free model; one-third of business respondents said the model allows them to offer a wider range of services, and one-third said it allows them to target more price sensitive consumers.

Figure 4: In your opinion, which, if any, of the following would you say are advantages of being able to offer free digital content compared to providing digital content that is paid for by users?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

1.3 The free model supports a thriving ecosystem of innovative services

The free model supports a thriving ecosystem of businesses that provide a range of innovative services that is expanding every day.

'Our mission is to delight the fans – we constantly try to think about what makes customers happy'.

Small games developer



Case study: Edjing¹⁶

The free music mixing app, Edjing, launched in 2012 and has since earned the title of the world's number one DJ app.¹⁷

The app has won over aspiring DJ's all over the world with 30 million downloads and growing.¹⁸ The founder and CEO, Jean-Baptiste Hironde, wanted to create an affordable app and make DJing accessible to everyone.¹⁹

'DJ gears were out of price/unaffordable, and DJ software was too complex, as it was mostly designed for professionals. This fact gave birth to Edjing in 2012, the first affordable and easy-to-use digital DJ solution.'²⁰

By listening to user feedback to improve the product, Edjing has developed a number of innovative tools and features. It has even partnered with the global music streaming service, Deezer. Because of these innovations, music enthusiasts can now stream and mix tunes online.

Platforms such as edX and Coursera offer free online courses from the world's top universities. Music streaming platforms such as Spotify offer millions of songs for free; and communication platforms such as Skype let users make once expensive long distance calls for free. Through using apps on their smart phones, users can access free services such as guitar lessons, dog sitting and carpooling services. These particular examples are featured in the case studies throughout this section.

Various monetisation models have also emerged to allow the consumer to access a variety of content without paying. These include offering completely free services, 'freemium' models (offering a core product for free and charging for premium services), metered paywalls (accessing content with a subscription), advertisement-supported free content and licensing of data.



Case study: Forza Football app²¹

Launched in 2012, the Forza Football app provides an online hub of football stats and forums, allowing football fans to follow their favourite team and chat with like-minded individuals. The app boasts two and a half million active users, with users downloading the app for free from the Google Play store.

Highlighting how the company leverages user information, the CEO Patrik Anderson states that 'it makes it easy to track where people are downloading the app, which parts of it they're using, and what we need to focus on.'

'We can find out what they like and dislike, and we're made aware of any program errors immediately so we can fix them.'

Digital businesses use the free model to reach a large number of consumers quickly to test new ideas. Businesses can display their product and allow users to sample content and services.²² With strong communication lines between user and creator, businesses can iterate versions of the content, confirming what works with the user and what does not.

About one-third of respondents in this study's business survey said the free model enabled businesses to offer more innovative services, offer a wider range of services and generate more insight into the market and customers. The usefulness of the model to test the most successful ideas that consumers will be willing to pay for is also noted by respondents.

1.4 The free model allows smaller businesses to scale up

The free model allows smaller businesses to reach a large number of consumers. According to one SME interviewed, the free model is particularly beneficial in the first few years, as it 'allows you to test your product without having to worry about it being perfect'.

This study's business survey finds that one-third of SMEs contacted across different sectors²³ provide digital content. Out of respondents whose businesses provide digital content, nearly two-thirds provide free digital content.

SMEs in the ICT sector contribute 41% to sector wide Gross Value Added (GVA) and 58% to sector wide employment.²⁴ Over half of SMEs contacted in the IT and Media sectors provide digital content, of which almost two-fifths provide free digital content.

In the smartphone apps market, app developers often use the free or 'freemium' model. One study finds that on SlideMe, the second largest Android app & games marketplace, around 75% of app developers offer completely free apps with a further 10% using the 'freemium' model.²⁵

The free model levels the playing field for European SMEs in the digital market by reducing the barriers to entry. By making digital content and services free to download and stream, small businesses do not have to raise large sums of money for marketing and advertising.



Case study: Seriously^{26 27}

Seriously is a mobile games developer that creates free puzzle and adventure games.

The company has a unique strategy - to build entertainment franchises that have games at their core. As one of the co-founders Stalbow puts it: 'We're trying to do Hollywood backwards.'

'If Hollywood starts with the TV show or the movie as the engine driver of its IP and then builds businesses around that,' then *Seriously* wants to 'build a game and then start building it out backwards.'

The theory is that unlike TV shows or movies, games allow a company to directly engage with and understand its audiences. This relationship can then be expanded on through other media and products, such as movies, toys etc.

Seriously is the creator of the well-known Best Friends game. It started off with a small marketing budget with 10 employees. The developer has since grown to 40 employees and is a well-known game developer.



Case study: Peak Games²⁸

Peak Games is a community-based games developer that creates multiplayer games that are free to download.

With creations such as Toy Blast, Lost Bubble and Okey Plus, the developer sees 65,000 installs per day on the Android platform. Erdem Inan, the Director of Marketing, talks about the dynamism of the business model which enables a fast and flexible iteration cycle. The developer can quickly fix problems and bugs with the games and push improvements out to the user.

Due to the reach of the mobile app market, Peak Games have been able to expand into new geographies including the US.

1.5 The free model contributes to European employment and exports

Digital content plays a central role in European ICT industries. This study's business survey finds that nearly six out of 10 ICT businesses provide digital content, and half of those provide free digital content. The EU-28's ICT sector directly contributes c. €517 billion of GVA and 6 million jobs to the European economy, excluding supply chain and ripple effects.²⁹

The free model contributes to the global success of the European games industry. Out of the top ten worldwide grossing apps on the Google Play store, five are apps developed by European businesses.³⁰ Mobile game developers such as Supercell and King currently lead this list, with their mobile game apps ahead of those developed by American developers. In 2014, European mobile game developers generated over 35% of their revenues outside of the EU-28.³¹

The European games industry, responsible for creations such as Angry Birds and Candy Crush Saga, also supports jobs across the value chain. A Deloitte study on mobile games estimated that the freemium model in the games industry supported 21,000 full-time employees throughout the EU 28.³²

Digital content nurtures a wider ecosystem that generates value for the economy. A report by Interactive Advertising Bureau (IAB) Europe estimates that 5.4 million European jobs and c. €500 billion of GVA are supported by online advertising, including supply chain and ripple effects across the economy.³³

Europe is a strong digital performer and yet there remains huge potential in the digital economy to create even more jobs. According to one estimate, only 2% of European enterprises are taking full advantage of digital opportunities; if the EU mirrors more developed markets such as the US, 400,000 to 1.5 million new jobs could be created in the internet economy.³⁴

Out of the top 10 grossing apps worldwide on the Google Play store, five are by European businesses.

2 Focussing the Commission's current proposal

Research conducted for this study suggests that consumers are generally happy with the quality of their digital content, particularly digital content that they access for free. While a majority of businesses welcome the harmonisation of rules across Europe, some businesses also foresee disproportionate costs and other impacts of complying with the proposal.

Businesses interviewed for this study highlighted concerns related to the broad or unclear definitions of key concepts such as 'digital content', 'supplier' or 'data actively provided' by consumers, and to the costs of implementing some elements of the proposal, particularly those associated with the treatment of data as 'counter-performance'.

This section describes the key findings from the research with consumers and businesses, which are summarised as follows:

- Consumers are mostly happy with the quality of digital content they access particularly free digital content;
- Although businesses are generally positive about key elements of the draft Directive, which are expected to promote consumer confidence, some businesses also foresee disproportionate costs of complying with them;
- There appears to be scope to streamline some elements of the proposal in acknowledgement that:
 - Consumers have different expectations about free and paid for digital content;
 - The concept of 'data as counter-performance' and the data retrieval obligations in the draft Directive raise practical concerns for businesses particularly in the media sector;
 - Various definitions in the draft Directive are broad in scope and create uncertainty; and
 - It can be difficult for a supplier to prove that the digital content provided by him or her was not faulty in some circumstances.

Key elements of the draft Directive on the supply of digital content

The draft Directive stipulates the rights that consumers have around the quality of digital content that they receive. It sets out standards to which suppliers of digital content must adhere. The obligations apply to suppliers of both free and paid for content.

The draft Directive uses a broader definition of 'digital content' than that used in existing legislation such as the Consumer Rights Directive (CRD). As well as video, audio, applications, digital games and any other software supplied in digital form, it applies to services that allow the creation, processing or storage of consumer data in digital form, and to services allowing the sharing of and interaction with user data in digital form.

The draft Directive also uses a broad definition of 'supplier', which means that more than one party in the value chain could be responsible for the faulty digital content.

The proposed Directive places the burden of proof to show that digital content is in conformity with the contract on the supplier of free and paid for digital content. There is no time limit on the burden of proof. If faulty digital content is supplied, a number of remedies are available to the consumer.

As a first right, the consumer is entitled to have the digital content brought into conformity with the contract for free. If this is not possible, the consumer is entitled to a reduction in the price of (paid for) digital content. He/she is also entitled to terminate the contract for both free and paid for digital content.

The draft Directive introduces the concept of 'data as counter-performance' in European legislation, by which it suggests that consumers pay for digital content they access for free with their data. The proposal applies to data that is 'actively provided' by the consumer. If a consumer terminates the contract the supplier must stop using all data actively provided or generated by the consumer. The supplier must also help the consumer to retrieve all his/her data if requested.

The proposal also makes suppliers of free and paid for digital content liable for damage caused to the consumer's digital environment due to faulty digital content. The consumer can expect compensation from the supplier in such cases. Additionally, it provides the consumer with a right to terminate the contract if the supplier modifies the digital content in a way that negatively affects him/her and a right to terminate long term contracts of more than 12 months.

2.1 A large majority of consumers are happy with the digital content they access

The consumer survey shows that consumers are satisfied with their digital content experiences. A large majority of consumers of free (86%) and paid for (74%) digital content are happy with the quality of their content. Overall satisfaction for free digital content is greater than paid for content.

Digital businesses interviewed for this study noted that with the intense competition online, there is a strong desire to attract new customers and to maintain or grow their current customer base, and hence businesses are compelled to strive to provide high quality content. Some businesses spoke of the importance of their online reputation, saying that critical online reviews on social media do considerable damage to their reputation and brand.

A majority of consumers (61%) have never felt the need to request a repair or replacement for free content that they have accessed while 24% have done so occasionally. A small minority (7%) say that they request a repair or replacement often.

These results are broadly consistent with the consumer survey conducted to inform the Commission's consultation process. That survey found that across four types of digital content, c. 66% of consumers did not report experiencing a problem with the digital content they used in the 12 months preceding the survey.³⁵

In the digital environment, damage to a consumer's device or hardware when accessing digital content could be caused by various factors. Around half (51%) of consumers surveyed had never had their phone or computer damaged by digital content. For the 25% of users that had experienced damage, not all of it was caused by faulty digital content. Over half of those surveyed said the damage was due to faulty content and the rest said it was due to incompatibility with device.

Businesses interviewed questioned whether they should be responsible if the content is incompatible and the consumer has been provided with the information about the required version of hardware.

Evidence from the consumer survey conducted as part of the Commission's research appears to corroborate this.³⁶ Users in that survey were asked about the problems encountered when purchasing tangible goods, digital content or digital services online.

Some survey respondents (31%) had experienced at least one problem when making or trying to make an online purchase over the past year. However, for a majority of respondents the problem related to the purchase of tangible goods online, as opposed to digital content (although as the Commission report notes this is because digital content and services tend to be free and the volume of purchases tends to be low). Nonetheless, for those experiencing a problem, a majority of respondents complained and the complaint handling by the seller satisfied just under two-thirds of the complainants.³⁷

61% of consumers have never felt the need to request a repair or a replacement for free content.

Consumer survey

2.2 Consumers have different expectations around free and paid for content

Consumers have different expectations when they access digital content for free and when they pay for it.

Consumers are more likely to expect compensation for damage to their digital environment if they paid for content. While 66% of consumers say they expect compensation for damage if they pay for the digital content (in some cases only if the content is faulty), 36% of consumers say they expect it for free content.³⁸

Consumers of paid for content prefer a refund most frequently while a majority of consumers of free content expect a repair, replacement or nothing. Some consumers (11%) say they would expect nothing from the supplier of faulty digital content if they had paid for it, which rises to 19% if the faulty digital content was accessed for free.

Figure 5: Imagine you have recently paid for digital content and have found a fault with it, what would you want from the supplier? Please select one.

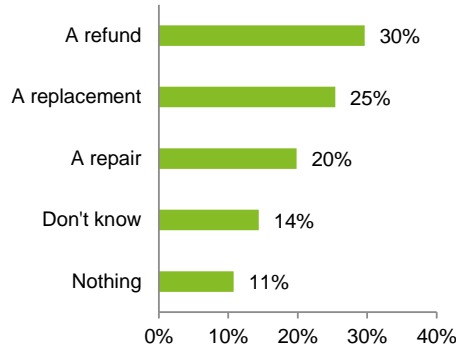
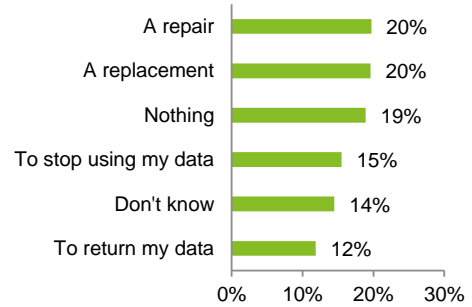


Figure 6: Imagine you have recently received digital content for free and have found a fault with it, what would you want from the supplier? Please select one.



Note: Results are based on c. 6,000 users of digital content, across Spain, France, Germany and the UK.

Source: Consumer survey, implemented by Google Consumer Survey

2.3 Businesses welcome the harmonisation of rules across Europe, but some businesses also foresee some costs associated with implementing the proposal

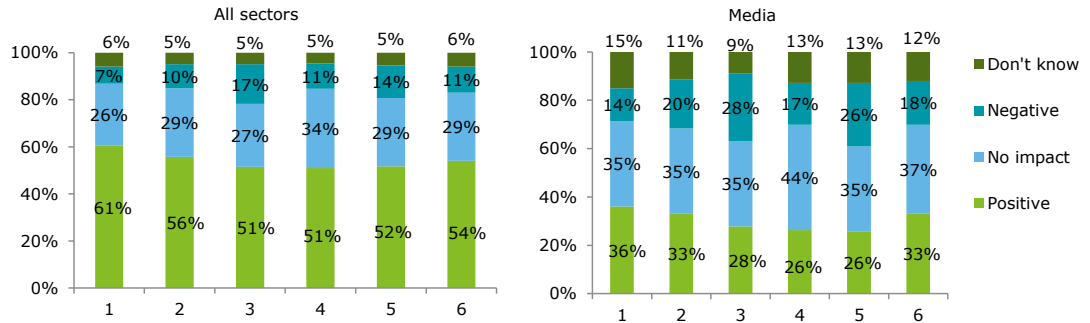
The business survey explored business decision makers' sentiment towards different elements of the draft Directive, their views on how the current proposal may impact their business and the kind of actions their business might take in response. The results are presented in this section.

The business survey included suppliers of digital content from different industry sectors,³⁹ sizes of business, types of customers, free versus paid content supply, proportion of business turnover driven by digital content, and those collecting actively versus inactively provided customer data. Aggregate results are described in this section with full analysis along key dimensions presented in the appendix.

2.3.1 Business sentiment towards the draft Directive

Many businesses surveyed are positive about the draft Directive and confident in their ability to comply with it. According to the business survey conducted for this study, many more business decision makers whose businesses supply digital content see the proposal positively than negatively (Figure 7). Across all sectors, between 17% of business decision makers (in relation to the requirement to pay damages) and 7% of business decision makers (in relation to the burden of proof) think the proposal would impact their business' supply of digital content negatively. The remainder think it will have a positive or no impact on their supply of digital content, or they do not know the impact.

Figure 7: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of digital content?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

Note: Results are based on 133 business decision makers whose businesses provide digital content and fall in the media/PR/advertising sector.

Source: Business survey, YouGov

Decision makers whose businesses supplied free (or free and paid for) digital content were asked to consider the questions in relation to their business' supply of free content; decision makers at suppliers of paid for digital content only were asked to consider the question in relation to their business' supply of paid for content

Questions:

1. The supplier is responsible to prove that any digital content it supplies is not faulty.
2. The supplier must fix faulty digital content for free.
3. The supplier must compensate the consumer for damage caused by faulty digital content. For example, damage caused to a consumer's smartphone, software or network connection by downloading a faulty application.
4. If the consumer terminates the contract, the supplier must not use any of the consumer's data. This includes personal data and any data generated by the consumer through their use of the digital content.
5. The supplier must help the consumer retrieve the data provided or generated by them or by their use of digital content (for example, the consumer's browsing history), if requested.
6. The supplier can seek compensation from their own suppliers, where an error on their behalf led to the supply of faulty digital content.

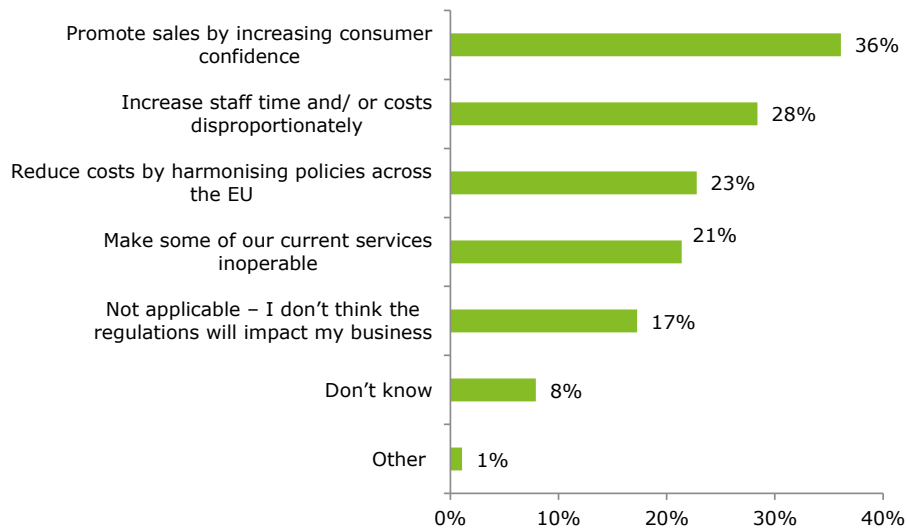
As shown in Figure 7, fewer business decision makers in the media sector⁴⁰ think the proposal will have a positive impact and more of them think it will have a negative impact, compared to respondents from other sectors. However, the balance of sentiment is still positive or neutral across the different elements of the draft Directive. In relation to the requirement to pay the consumer damages or to return the consumer's data, a similar proportion of businesses in the media sector think the proposal will have a positive and negative impact on their business, with slightly over one-fourth of business decision makers taking each view.

2.3.2 Impact on businesses

When asked about the potential impact of the proposal on their business, 36% of respondents felt it would improve sales by increasing consumer confidence, and 23% said harmonisation would reduce costs, as shown in Figure 8.

However, a number of business decision makers (28%) surveyed thought that the draft Directive would increase costs disproportionately for their business, and 21% said some of their services would become inoperable.

Figure 8: In which, if any, of the following ways do you think these regulations will impact your business?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

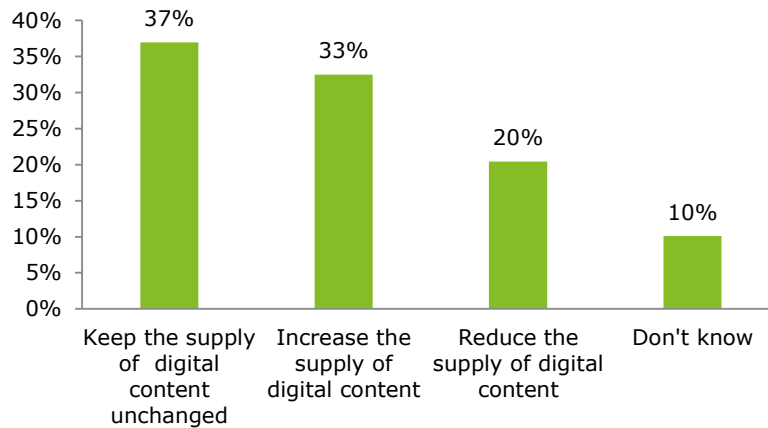
Businesses interviewed discussed various costs associated with complying with the draft Directive, such as staff time to prove the digital content was not faulty or time to redesign systems to trace back all data generated by a user to return it if required. Some businesses interviewed also noted that the requirements could divert attention and resource away from the development of new services and ideas.

Other costs included the cost of handling consumer demands for compensation and/or data and hiring legal teams to establish the business' contractual obligations under the draft Directive. Smaller businesses and start-ups interviewed for this study in particular noted that they did not have the large teams required to deal with such requests.

2.3.3 Impact on businesses' supply of digital content

When asked about the potential impact of the draft Directive on their supply of digital content, 33% business respondents said their business would increase supply and 37% said their business would keep supply unchanged. Some business respondents - 20% - said their business would reduce the supply of digital content.

Figure 9: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?

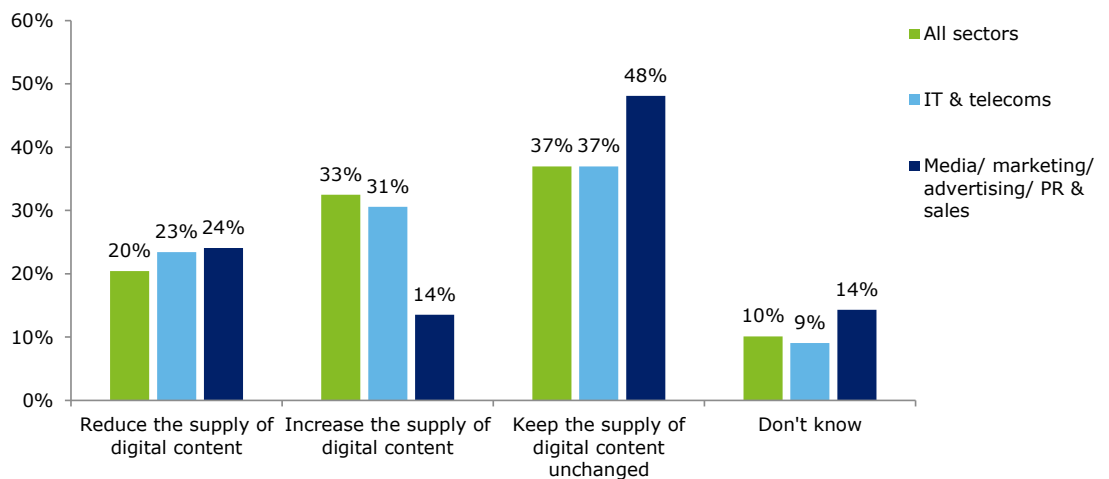


Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

Respondents from the media sector were less likely than the sample average to say their business would increase the supply of digital content (14% in the media sector compared to 33% across all sectors). They were more likely to say their business would keep the supply of digital content constant or that they don't know what their business would do.

Figure 10: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?

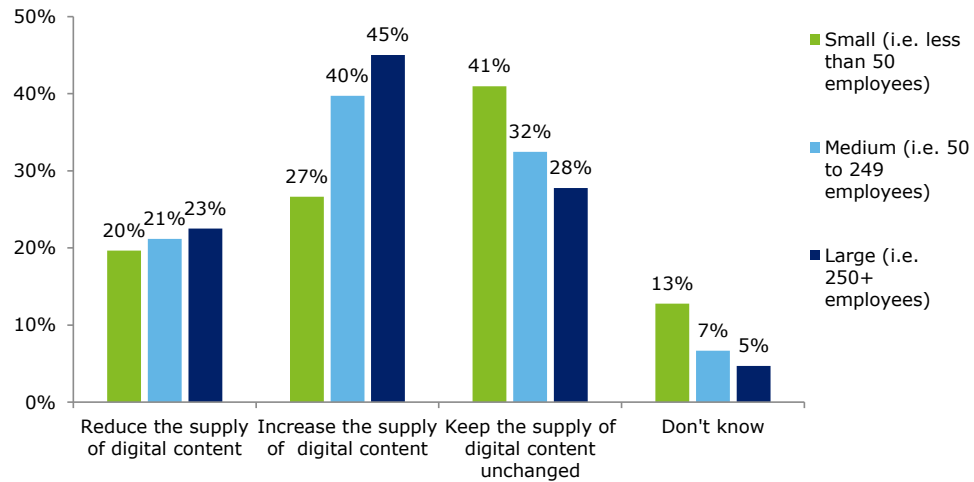


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, 133 in the Media/marketing/advertising/PR & sales sector, 265 in IT & Telecoms sector.

Source: Business survey, YouGov

As shown in Figure 11, decision makers from small businesses were less likely to say that their business would increase the supply of digital content compared to respondents from larger businesses (27% for small businesses and 45% for large businesses). Decision makers from smaller businesses were more likely to say they would keep the supply unchanged or that they do not know how their business would respond compared to the total sample.

Figure 11: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, representing 830 small, 345 medium, and 191 large businesses.

Source: Business survey, YouGov

2.3.4 Impact on investment and business activity

Business decision makers were also asked about the impact of the draft Directive on their investment, business activity in Europe and prices.

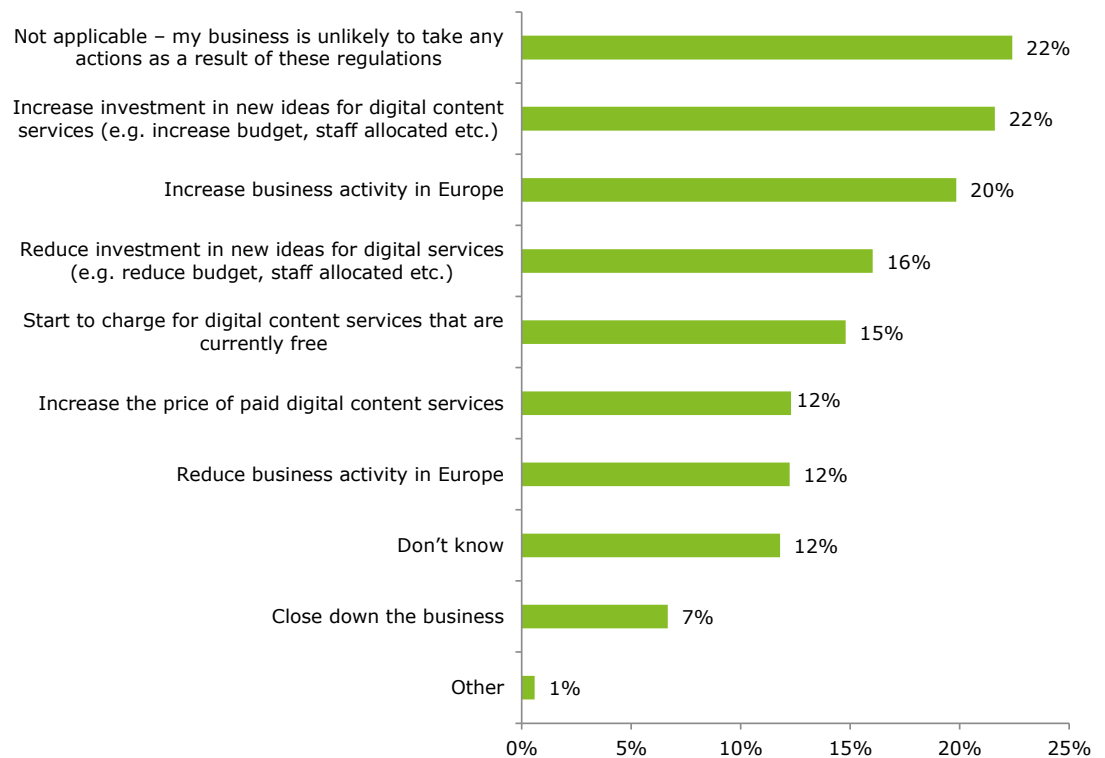
Some business respondents said their business would increase investment and business activity in Europe while others said they would reduce these. Nearly one-quarter (22%) of business decision makers said their business would increase investment in new ideas and 20% said it would increase business activity in Europe. In contrast, 16% of respondents said their business would reduce investment, 12% said they would decrease business activity in Europe and 7% said they would close down their business if the draft Directive was implemented.

Some business respondents said they would respond by seeking to start to charge for free services (15%) or to increase the price of paid digital content services (12%).

Nearly one-quarter of business decision makers (22%) said their business would be unlikely to take any action.

Multiple responses were allowed in this question and hence the results are not additive.

Figure 12: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

While a majority of business decision makers see the proposal positively or expect it to have no impact on their business, some decision makers say their business will face disproportionate cost, reduce the supply of digital content or reduce activity in some other way.

2.3.5 Impacts in sub-groups of the sample

Responses to business views on the draft Directive were also analysed by key respondent characteristics. Headline findings are:

- Decision makers from the media/marketing/advertising/sales industry were generally less positive in their views than the total sample. They were more likely to say 'not applicable' and 'do not know' to questions regarding the impact on their business or their likely actions, and less likely to select all other answers, particularly those relating to increase in investment or business activity in Europe;
- Decision makers from small businesses, defined as businesses with 1 – 49 employees, were generally less positive in their views compared to respondents from medium and large sized businesses. They were more likely to say 'not applicable' and 'do not know' to questions regarding the impact on their business or their likely actions, and less likely to select all other answers, particularly those relating to increase in investment or business activity in Europe;
- There were no material differences in the views of decision makers who said the majority of their business turnover was driven by digital content and those that said half or less of their turnover was driven by digital content;

- There were no material differences in the views of decision makers whose businesses collected data 'actively provided' by users and those whose businesses collected data not actively provided by the user. Decision makers whose businesses collected neither of these were more likely to say the proposal did not apply to their business;
- There were no material differences in the views of decision makers whose businesses provided free digital content and those who provided paid for digital content; and
- There were no material differences in the views of decision makers from business-to-business and business-to-consumer enterprises, while decision makers from business-to-government enterprises were slightly more positive than the rest in their views.⁴¹

The full analysis along the various dimensions is presented in the appendix.

2.4 Delivering the key consumer benefits at a lower cost

The research for this study suggests there may be scope to streamline elements of the proposed draft Directive to focus on consumer priorities at a lower cost for businesses.

2.4.1 The concept of 'data as counter-performance' and the data retrieval obligations

The interviews conducted highlighted various practical concerns around the obligations concerning data in the draft Directive.

The draft Directive introduces the concept of 'data as counter-performance', which means that data is treated as a form of payment for digital content. The consumer can request the supplier for all personal data or other data generated by him or her to be returned.⁴²

The consumer survey results show that consumers do not appear to prioritise the retrieval of data when consuming free content. At the same time, businesses use data for a variety of commercial purposes that do not involve direct monetisation. Businesses interviewed say they face additional costs of returning data back to the consumer and for some business models, for example in the games industry, returning data would negatively affect the experience of all other consumers of the service.

Most consumers do not prioritise retrieval of their data if faulty digital content is supplied

The survey results indicate that most consumers do not prioritise getting their data back if they access free digital content that is faulty. Many consumers (58%) expect a repair, a replacement or nothing, while only 12% expect to retrieve their data from the supplier. 15% of consumers expect the supplier to stop using the data they had provided.

Businesses interviewed questioned the use of non-personal consumer data to the consumer. This was especially so for aggregated data. They noted this may often simply be a series of digits that could not possibly be of much use to the consumer.

The concept of 'data as a counter-performance' presents practical challenges

The draft Directive suggests that digital content can often be accessed in exchange for counter-performance other than money, such as a consumer's data. It suggests that treating data differently to money would discriminate between different business models unfairly.

However, businesses interviewed spoke of various practical challenges of treating data as counter-performance. They suggested that, unlike money, data has no standardised

18% of consumers expect nothing from the supplier if they find a fault with free digital content.

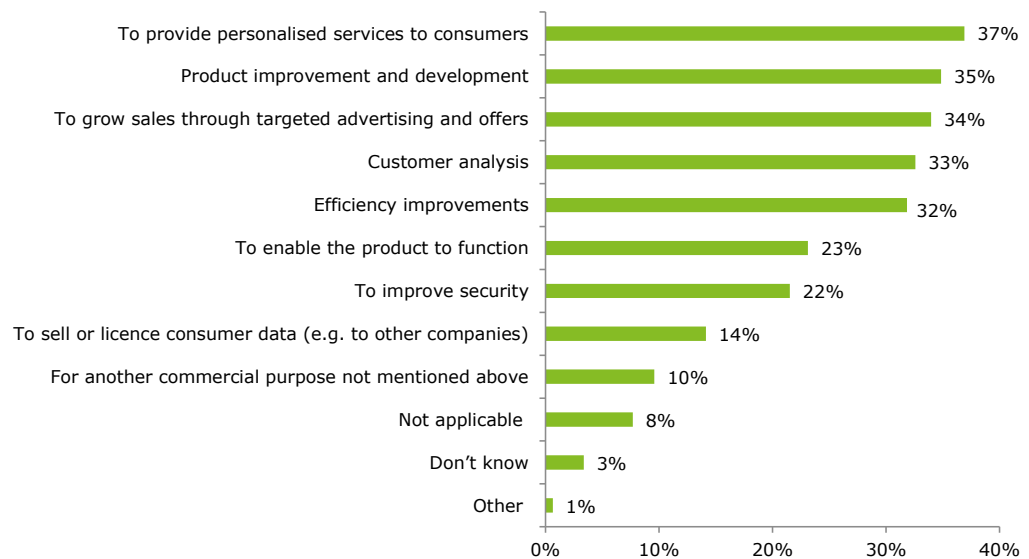
Consumer survey

value. The value of data can vary across uses, organisations, people and contexts. Often data in raw form has no value and some investment needs to be made to generate knowledge (or value) from it. Further, data is not readily exchangeable for other goods and services and cannot readily be returned in the same way that money can be.

Businesses use data for a variety of commercial purposes and do not always directly monetise it

The draft Directive states that information about individuals is often and increasingly seen by market participants as having a value comparable to money. The business survey shows that businesses use consumer data for a variety of purposes other than direct monetisation.

Figure 13: In which, if any, of the following ways does your business use data provided or generated by those accessing your digital content?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

14% of business decision makers surveyed directly sell or licence consumer data and 34% use it to grow sales through targeted advertising and offers.

In contrast, 35% say their business uses data for product improvement, 32% say for efficiency improvement, 37% say to provide personalised services to consumers, 23% say to enable the product to function and 22% say to improve security.

Several businesses interviewed noted that data was often used to understand what features of an application were working or to see patterns in game play.

Data retrieval obligations can be costly and difficult to implement practically

Costs for businesses

Businesses interviewed discussed various costs associated with retrieving consumer data. A number of businesses pointed out that they would need to redesign their data systems to trace data back to each user, representing a significant cost to their business and in some cases, they said, may be impossible to implement. Businesses said they would have to invest in new systems that collect more consumer data than is currently collected to comply with the draft Directive, which they suggested was counterproductive.

Businesses interviewed were also concerned with the requirement to return the data in a 'common usable format'. They noted that in most industries businesses store and process data in multiple formats and there is no conventional format agreed across businesses.

Inconsistency in the principles of data retrieval and data anonymisation

A recurring theme in the business interviews was the apparent inconsistency between the principles of data retrieval and data anonymisation. As one business put it, 'if data is anonymised, how could it possibly be returned to the user'.

Several businesses noted that data anonymization was encouraged by existing legislation (such as the GDPR), whereas the new proposed Directive appears to be encouraging the opposite. For instance, the GDPR introduced the concept of pseudonymisation to help protect the privacy of individuals while still enabling the use of data for other purposes. Pseudonymisation is the processing of personal data so that it is no longer attributable to a specific individual. Such processing could make it impossible for a business to return a user's data back to him/her without collecting additional data.

Unintended consequences for certain business models

A number of businesses interviewed commented that the draft Directive might have various unintended adverse impacts on their business.

Game developers commented that in their industry data could be generated every time a player moves their avatar and tracing all this data back to a user would be extremely challenging. Moreover, deleting one player's data could affect the experience of all players who play together in online games.

This obligation could expose other industries to similar issues. For example, under the draft Directive, a travel website may have to delete particular reviews users have uploaded, as well as delete data around the visits or bookings made by some users, to comply with the data retrieval obligations. This would affect the rankings of say, hotels, and alter the experience of other users of the website.

Disclosure of expertise and intellectual property

A related concern raised by some businesses interviewed was that the way in which the data is analysed and used reflects businesses' expertise and that sharing data would externalise their intellectual property rights.

One interviewee provided the example of Minecraft, a video game that enables players to build constructions out of textured cubes. As these cubes contain source codes, returning the data for the cubes would release the developer's intellectual property and potentially disclose confidential information to competitors.

2.4.2 Certain definitions in the proposed Directive are fairly broad and create uncertainty about their application

Most businesses interviewed highlighted their concern around the scope of the Directive. They felt that several key definitions in the draft Directive were not clear and were likely to create legal uncertainty for their business.

Definition of digital content

A repeated concern was that the definition of digital content in the draft Directive is much broader than that in previous legislation, such as the CRD and GDPR, which businesses said creates legal uncertainty.

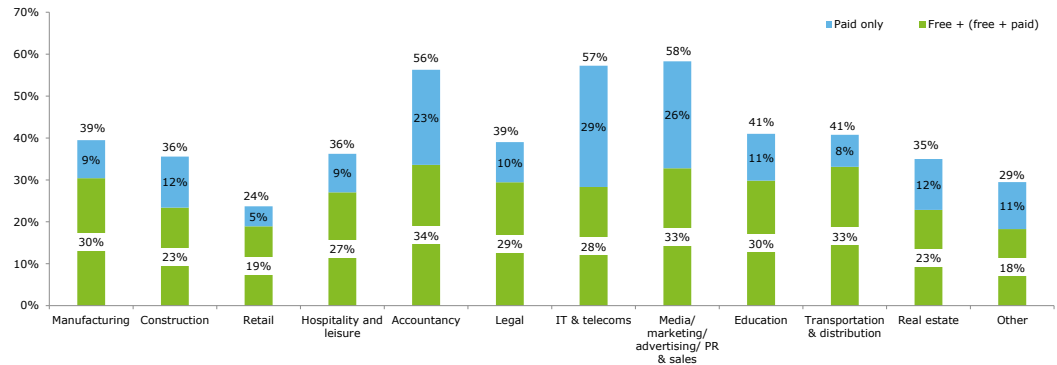
'Having parallel legislation for tangible goods and digital content only creates more uncertainty'.

Digital content supplier

For example, one business mentioned that the extension of the definition to include 'a service allowing the sharing of and any other interaction with data in digital form provided by other users' meant their business was covered by the draft Directive, while they were not suppliers of digital content under the CRD, for example.

Results from the business survey also highlight the prevalence of businesses supplying digital content under the definition proposed by the EC across all sectors of the economy and not just in the ICT sector.

Figure 14: Which of the following apply to your business?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Definition of supplier

Many businesses interviewed thought the definition of 'supplier' of digital content was too broad.

Businesses noted that under the current draft Directive's definition different players in the value chain could be considered the supplier, such as the online shop, the publisher and the developer.

Some businesses interviewed were concerned that the draft Directive may make distributors and platforms responsible for faulty content, which they say could be problematic as they do not necessarily have the means to repair the content.

Another issue raised was around user generated content. Providers of digital content often have material generated by users on their websites or apps, such as reviews. Over a quarter of business respondents in the business survey provide digital content that is a service allowing the sharing of data. Interviewees were concerned that if the proposal was implemented, it may make businesses responsible for such content.

Definition of actively provided data

Businesses interviewed were unsure what the scope of 'actively provided' data entailed. They questioned whether this was the same as obtaining user consent to collect data, as outlined in previous legislation, or if it went beyond that.

Businesses interviewed said they understood the IP address or information collected via cookies was not within the scope of actively provided data. However, they were unclear around other aspects. For example, one business from the games industry questioned whether a house that someone builds in a game is data actively provided or not.

2.4.3 It can sometimes be difficult for the supplier to prove the adverse experience was not due to faulty content

Under the draft Directive, the burden of proof for faulty digital content is on the supplier rather than the consumer. Although intended to reduce the burden placed on consumers when pursuing damages or remedies, a number of businesses, both small and large, spoke of the complications that may arise with this element of the proposal.

Business interviewees noted that it is not straightforward to prove that an app is not responsible for damage to the phone on which the app is installed. Providing the evidence, as one android app developer mentioned, would require the replication of the consumer's digital environment. Start-ups interviewed were concerned with the time and resources this could take.

Businesses also commented that the delivery of the content is dependent on a number of factors outside of the supplier's control, such as the internet connection and storage space on the user's hard drive.

Some interviewees also suggested a time limit on the burden of proof on the supplier.

2.5 Concluding remarks – streamlining the Commission's proposal

Digital content is important for European consumers and for the European economy. Across all sectors, 4 in 10 business decision makers say their business offers digital content.

Consumer confidence and harmonisation in digital content are good for European businesses. Businesses are generally positive about those potential benefits and willing to embrace cross-border rules.

However, based on the research in this study, a few areas emerge where the EC's proposal could be streamlined to focus on consumers' priorities and minimise the cost to businesses. In particular, the draft Directive may:

- Take into account consumers' current satisfaction with free digital content, and their different expectations in relation to their rights when using free versus paid for digital content;
- Provide clearer and narrower definitions of certain terms in the draft Directive, such as the definitions of digital content, supplier of digital content and actively provided data, and where applicable use definitions consistent with other Directives;
- Ensure proportionality in the requirements on suppliers to identify, collect and retrieve consumer data, taking into account where it may not be possible or it may be disproportionately costly for businesses to deliver on such requirements;
- Revise elements that may prevent companies from anonymising and minimising the use of consumer data in line with the provisions in the GDPR; avoid companies having to collect and hold more data, especially more personalised data, to comply with the draft Directive;
- Allow businesses to preserve their intellectual property as part of data disclosure to consumers; and
- Ensure proportionality in the burden of proof on the supplier, for example by limiting the obligation, to acknowledge that it can be difficult for the supplier to always establish conformity with the contract.

3 Appendix: Methodology & survey results

3.1 Business Survey

The study surveyed approximately 1,400 business decision makers across four European countries whose businesses supply digital content. The survey aimed to gauge the perceptions of European businesses about a number of key elements contained within the proposal and their potential impact on businesses.

The survey data was collected by YouGov plc on behalf of Deloitte, with the fieldwork undertaken between the 25th April – 12th May 2016. The questionnaire was designed by Deloitte. The survey was conducted and administered online to YouGov's panel of 800,000+ individuals

who have agreed to take part in surveys. Through YouGov's Business Omnibus service, this study specifically targeted business decision makers whose

UK	France	Spain	Germany	Total
411	290	323	312	1,366

businesses provide digital content.⁴³ Decision makers are defined as those who held management or other senior positions at an organisation and digital content defined with the same wording as used by the EC in the draft Directive. The questionnaire screened decision makers who did not provide digital content out of the 3,827 decision makers that started the survey, 1,366 were businesses decision makers whose business provided digital content and completed the survey in full.

The business survey targeted respondents across any sectors where businesses supply digital content according to the EC's definition, using the YouGov panel sector breakdown as the starting point. YouGov sampled business decision makers to have the following characteristics:

- At least 200 SME and 50 large business decision makers whose businesses provide free digital content in each country;
- 40-100 business decision makers whose businesses provide paid for digital content in each country;
- At least 100 respondents from each of the following sectors in the UK: media/marketing/advertising/PR and IT & Telecoms.⁴⁴

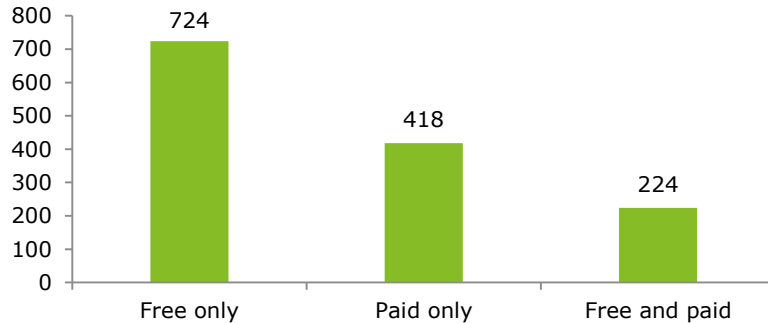
At the request of this study, YouGov removed respondents from the 'Medical & health services' and 'Financial services' sectors, which the EC excludes from the scope of the proposal. All the figures reported in this study exclude such respondents.

The sample included business decision makers from France, Spain, Germany and the UK, representing organizations of different sizes, of varying turnover, across different sectors and providing free and/or paid for content.

The sample of business respondents in the media and IT/Telecoms sector was boosted as these sectors are expected to be core suppliers of digital content. Quotas were also imposed on the number of SME business decision makers and on suppliers of free digital content as the survey wished to understand specifically the impact of the proposal on those segments.

The survey results are not weighted to be representative of the general business population. The population of interest in this case is businesses that supply digital content. The breakdown of the results according to key respondent characteristics are presented in this appendix.

Figure 15: The number of business decision makers whose business offers free, paid, and free and paid for digital content



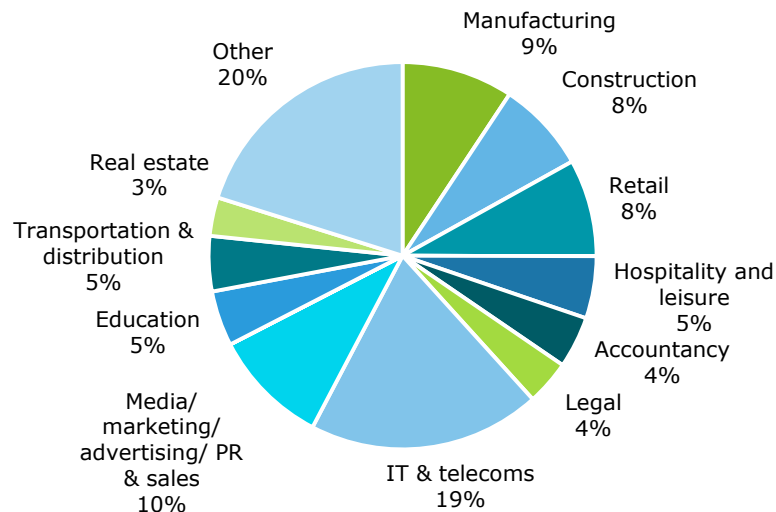
Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

Businesses that provided free only or free and paid digital content were asked to consider the impact of the EC proposal in relation to their business' supply of free digital content as this was a key area of interest for the study. Businesses that provide paid for digital content only responded in relation to their business' supply of paid for digital content.

Decision makers whose businesses provide digital content were present across most sectors of the economy.

Figure 16: The sectoral distribution of business decision makers whose businesses provide digital content

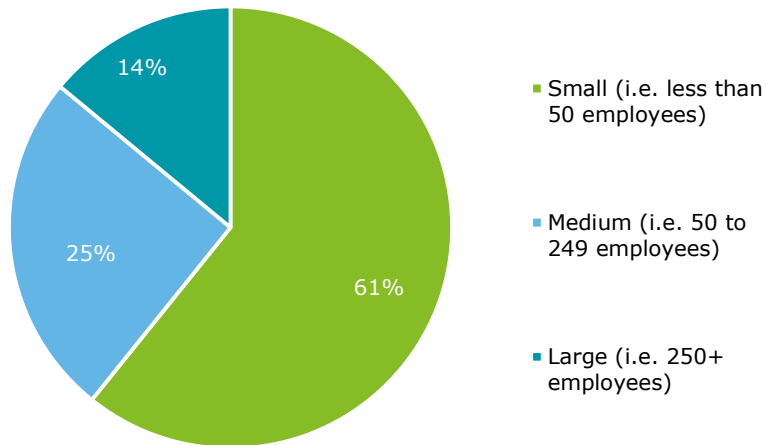


Note: Results are based on 1,366 business decision makers whose businesses provide digital content

Source: Business survey, YouGov

The decision makers represent organizations of different sizes. Business decision makers from SMEs, defined as those with fewer than 250 employees, represent approximately 86% of the sample.

Figure 17: The proportion of business decision makers in small, medium and large businesses in the sample

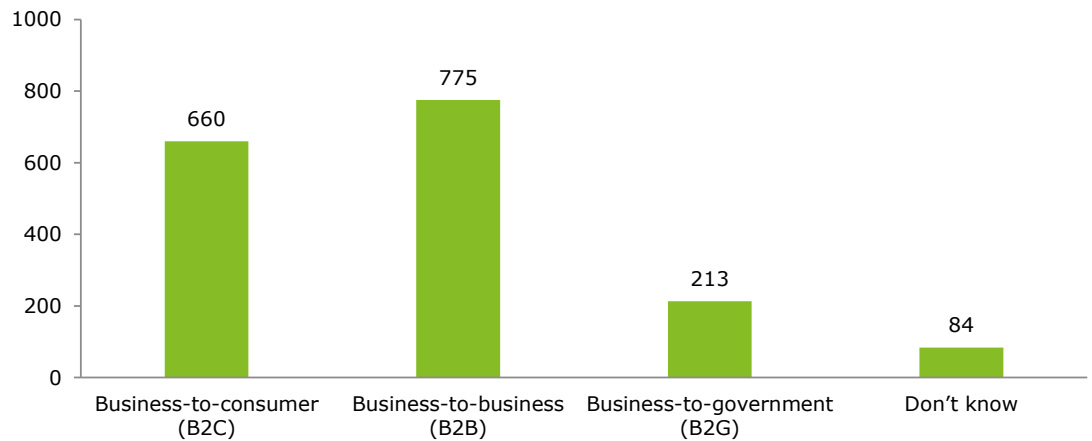


Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

The survey included decision makers from business-to-consumer (B2C), business-to-business (B2B) and business-to-government (B2G) businesses. The draft Directive has a provision whereby providers can seek redress from other suppliers in the supply chain. The study did not exclude business decision makers whose businesses were not B2C to understand the broader impacts of the draft Directive on businesses.

Figure 18: The proportions of business decision makers in B2C, B2B and B2G businesses

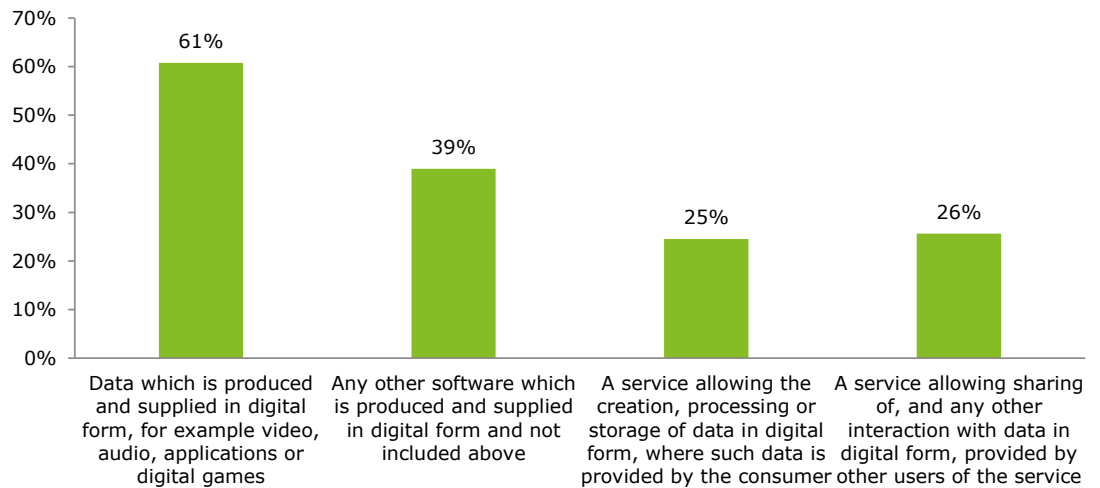


Note: Results are based on 1,366 business decision makers whose businesses provide digital content. More than one answer was allowed in this question.

Source: Business survey, YouGov

The sample included business decision makers whose businesses supply all types of digital content in the scope of the draft Directive. The different components of the definition of 'digital content' were put to respondents and they were asked to select the types of content their business supplies.

Figure 19: Types of digital content supplied by the businesses of business decision makers

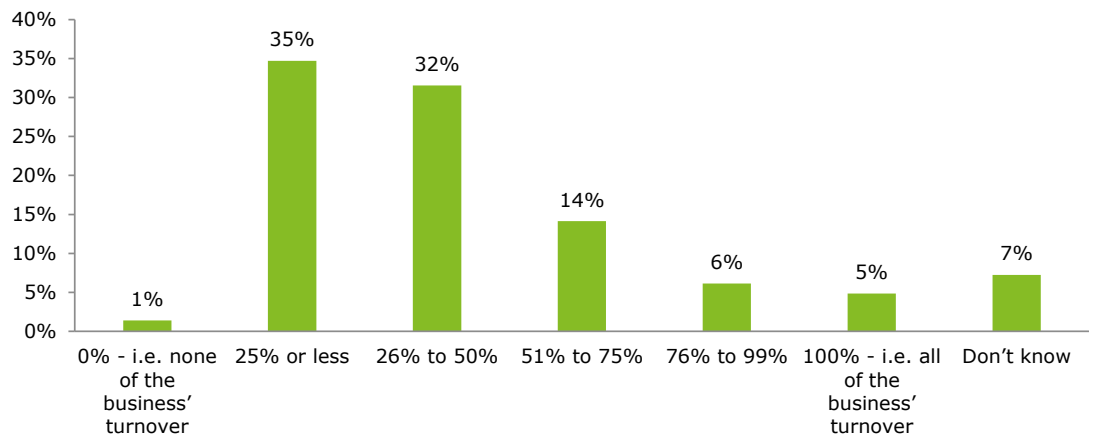


Note: Results are based on 1,366 business decision makers whose businesses provide digital content. More than one answer was allowed in this question.

Source: Business survey, YouGov

Since any decision maker whose business supplied digital content was eligible for the survey, the questionnaire also asked respondents to provide the proportion of their turnover that was driven by digital content (or provide their best estimate). A majority of respondents had less than 50% of their business' turnover driven by digital content.

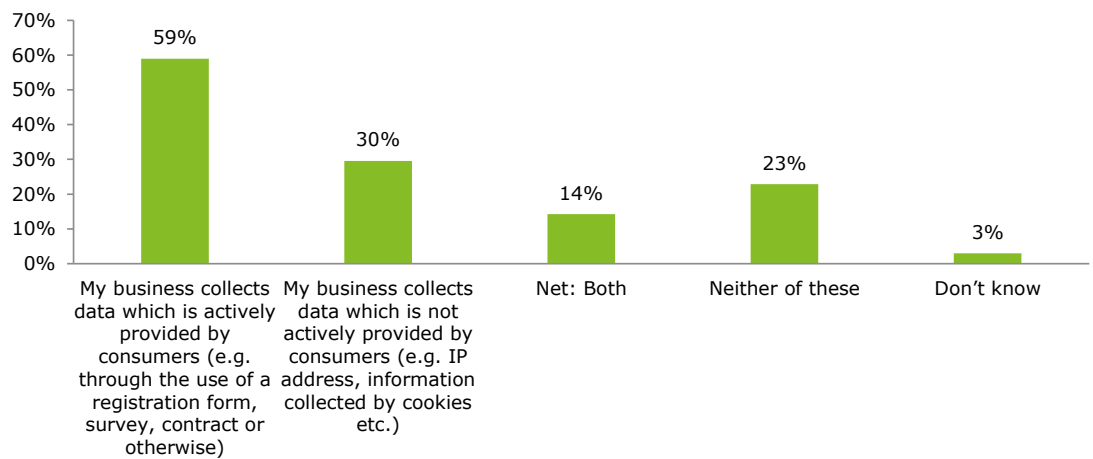
Figure 20: The proportion of turnover driven by digital content for businesses of business decision makers



Note: Results are based on 1,366 business decision makers whose businesses provide digital content.

Source: Business survey, YouGov

The draft Directive only applies to contracts where 'the supplier requests and the consumer actively provides data'.⁴⁵ Respondents were asked whether their business collects data that is actively supplied by consumers or data that is not actively supplied by consumers. They could select more than one option. They could also choose to say their business collects neither of these or that they do not know. A majority of respondents said their business collects actively provided data.

Figure 21: The proportion of business decision makers whose businesses collect data that is 'actively provided' by the user

Note: Results are based on 1,366 business decision makers whose businesses provide digital content. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

3.1.1 Survey results

The responses to questions on the impact of the draft Directive were analysed by key respondent characteristics, such as industry sector, size of business, the proportion of turnover driven by digital content, type of customer, free versus paid content supply, and whether the business collects data 'actively provided' by the user. The main conclusions presented do not change in light of this additional analysis.

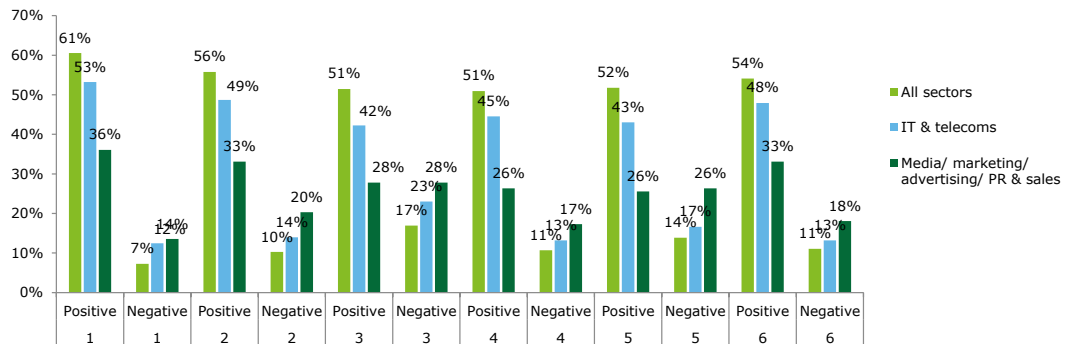
Sector

There is some variation in how respondents feel the regulations will impact their business, depending on the industry sector the business is in.

Respondents whose businesses operate in the media sector were of particular interest for this study. Decision makers from businesses in the media sector were generally less positive about the different elements of the Directive than decision makers in the total sample. On the provisions around damages and returning consumer data (see Figure 22) the positive and negative sentiment was equally balanced among respondents in the media sector.

Respondents from IT & Telecoms were marginally less positive about the different elements of the proposal than decision makers from other sectors.

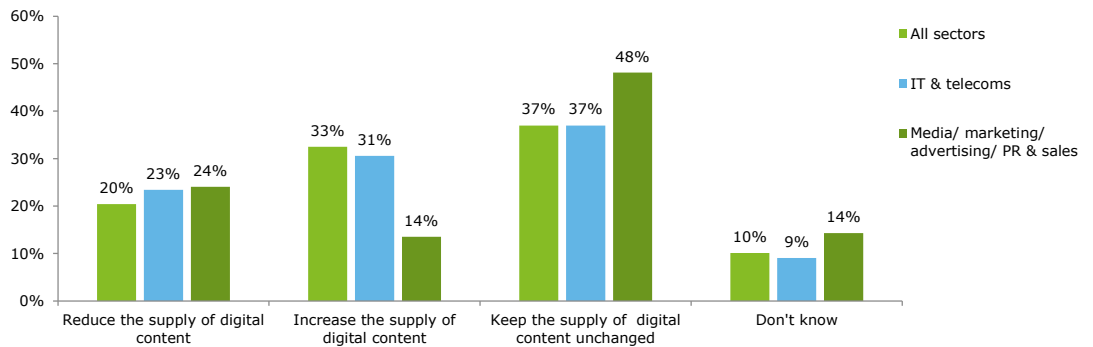
Figure 22: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, 133 in the Media/marketing/advertising/PR & sales sector, 265 in IT & Telecoms sector. Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1. Source: Business survey, YouGov

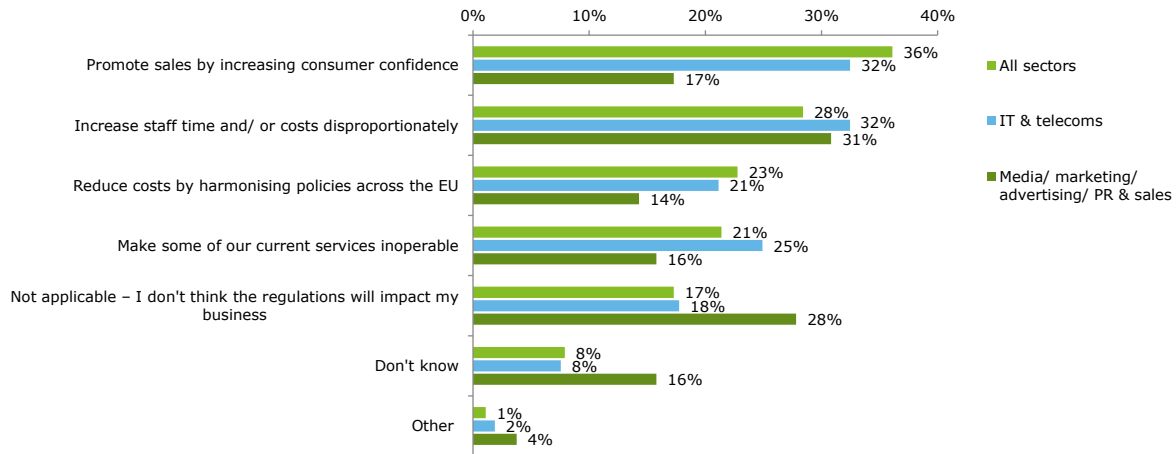
Respondents from the media sector were less likely to say their business would increase the supply of digital content or that the proposal will promote sales. They were equally likely to say their business would reduce the supply of digital content. They were more likely to say their business would keep the supply of digital content constant, that they don't know how the proposal will impact their business or that the proposal will not impact their business.

Figure 23: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, 133 in the Media/marketing/advertising/PR & sales sector, 265 in IT & Telecoms sector. Source: Business survey, YouGov

Figure 24: In which, if any, of the following ways do you think these regulations will impact your business?

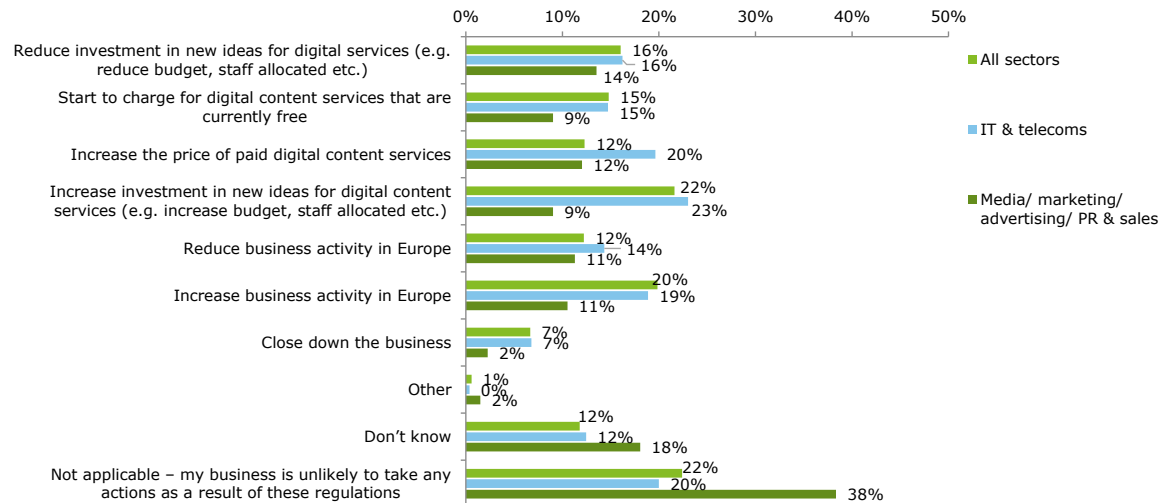


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, 133 in the Media/marketing/advertising/PR & sales sector, 265 in IT & Telecoms sector. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Respondents from the media sector were more likely to say that they were unlikely to take additional actions and less likely to select the other answers (in particular increase investment and close down the business). There were only small differences between respondents from the IT & Telecoms sector and those from all sectors, except that IT & Telecoms were more likely to say that they would increase the price of paid services.

Figure 25: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



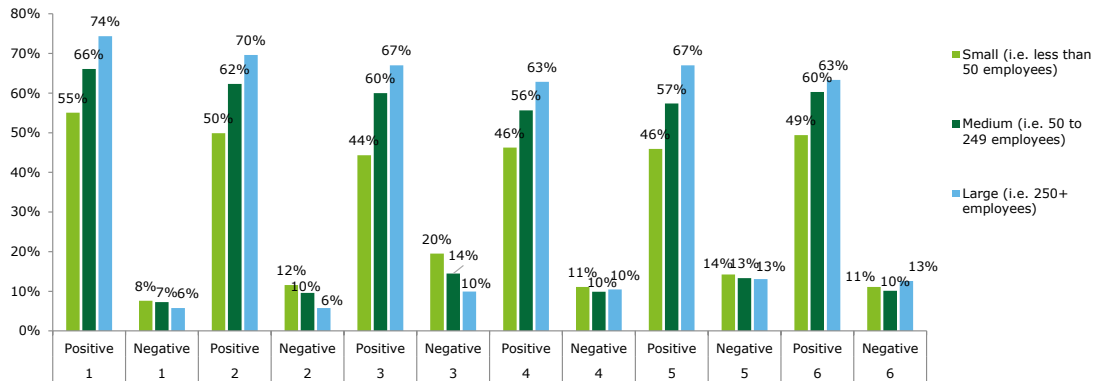
Note: Results are based on 1,366 business decision makers whose businesses provide digital content, 133 in the Media/marketing/advertising/PR & sales sector, 265 in IT & Telecoms sector. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Size of business

Decision makers in larger businesses were slightly more positive about the proposal than decision makers in small and medium sized businesses.

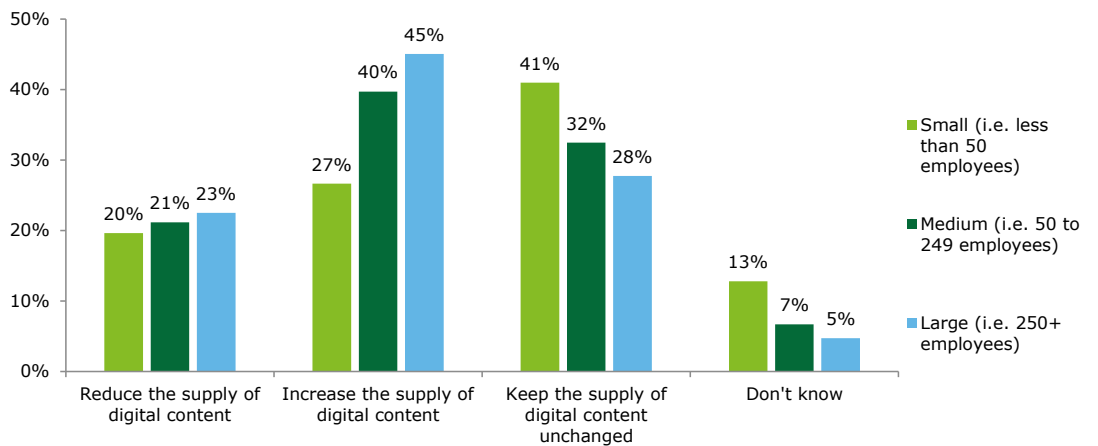
Figure 26: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?



Note: Results are based on 1,514 business decision makers whose businesses provide digital content, representing 830 small, 345 medium, and 191 large businesses. Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1. Source: Business survey, YouGov

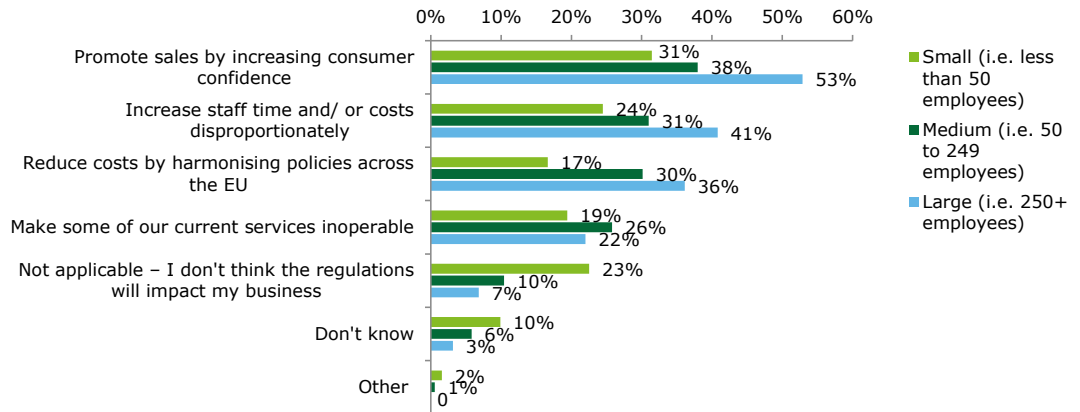
Decision makers from large firms (53%) were more likely to say the draft Directive will promote sales by increasing consumer confidence than decision makers from small (31%) and medium (38%) firms. They were also more likely to say their business would increase the supply of digital content. Decision makers at small and medium sized businesses were more likely to say they don't think the regulations will impact their business or that they don't know if they will, than those at large businesses.

Figure 27: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, representing 830 small, 345 medium, and 191 large businesses. Source: Business survey, YouGov

Figure 28: In which, if any, of the following ways do you think these regulations will impact your business?

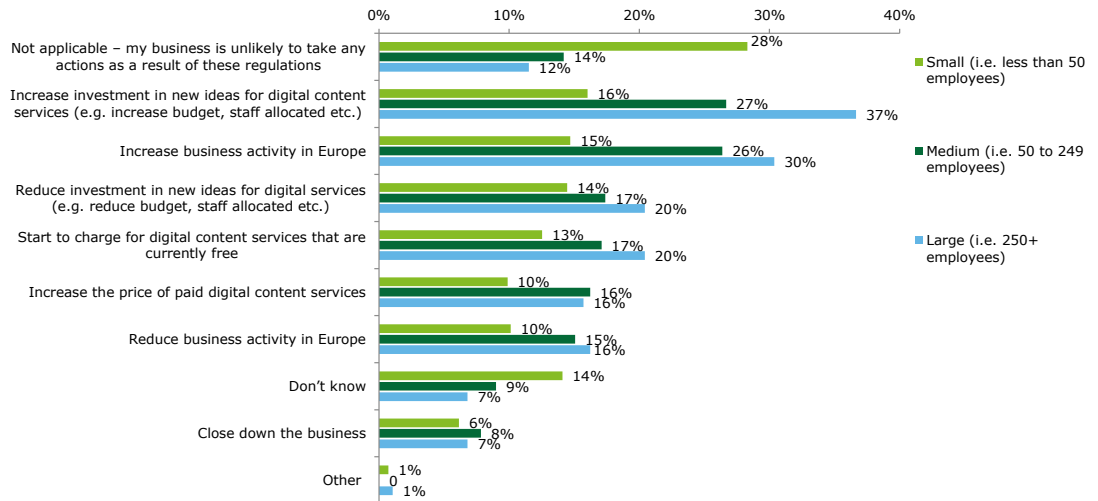


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, representing 830 small, 345 medium, and 191 large businesses. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Respondents from small businesses were more likely to say that they were unlikely to take additional actions and less likely to select the other answers (in particular increase investment or business activity in Europe). Those from large businesses were more likely to say that they would increase investment and business activity.

Figure 29: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



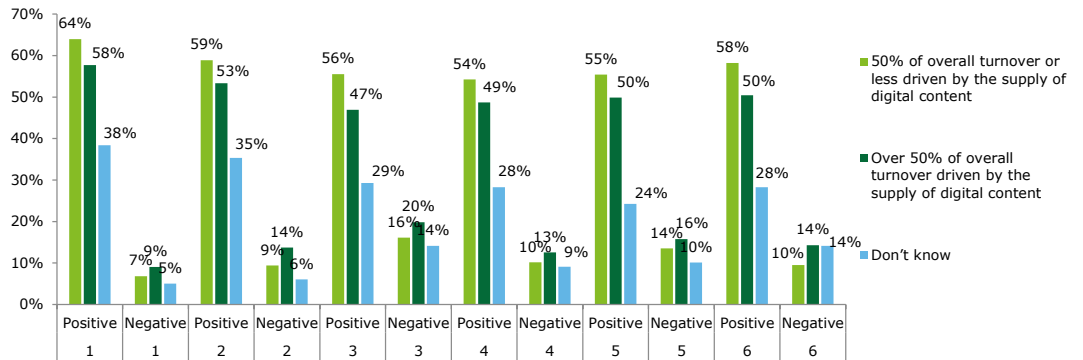
Note: Results are based on 1,366 business decision makers whose businesses provide digital content, representing 830 small, 345 medium, and 191 large businesses. Multiple answers per respondent were allowed.

Source: Business survey, YouGov

Digital content as a driver of turnover

There was no material variation in the balance of sentiment towards the proposal depending on whether the overall turnover of the respondents' business was mostly driven by digital content. Those decision makers who responded 'Don't know' to the question about the proportion of turnover driven by digital content were more likely to say the proposal would not have an impact on their business.

Figure 30: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?

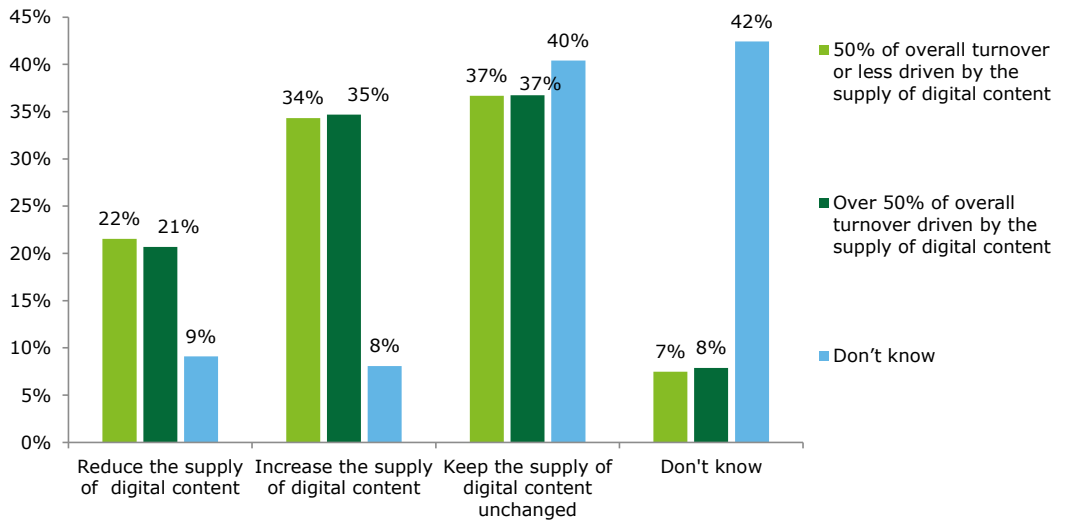


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers with 50% of overall turnover or less driven by digital content (n = 924), with over 50% of overall turnover driven by the supply of digital content (n = 343), don't know (n = 99). Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1).

Source: Business survey, YouGov

There is little variation in the responses of decision makers to other questions depending on whether their businesses' turnover was mostly driven by digital content.

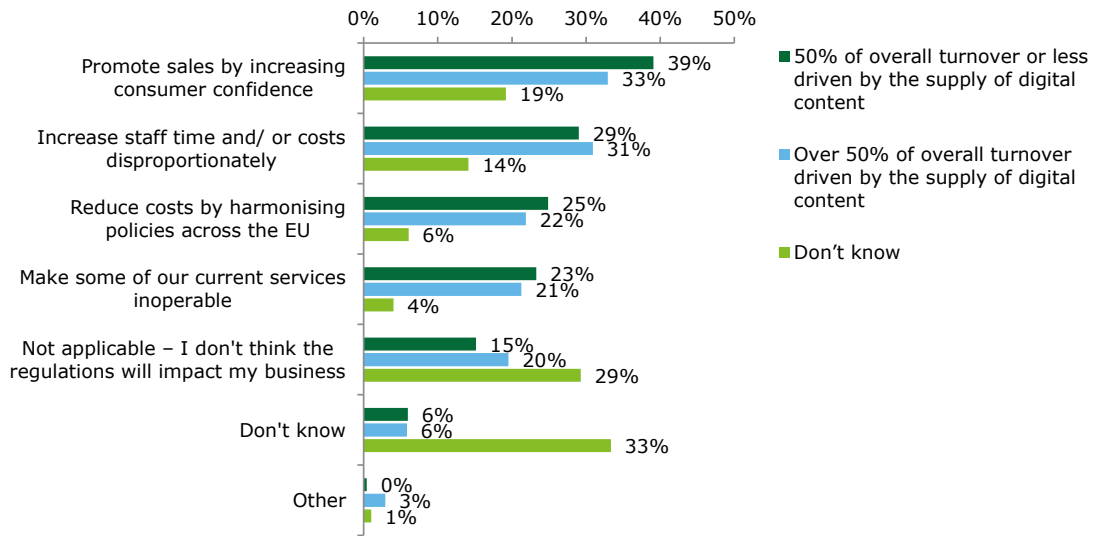
Figure 31: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers with 50% of overall turnover or less driven by digital content (n = 924), with over 50% of overall turnover driven by the supply of digital content (n = 343), don't know (n = 99).

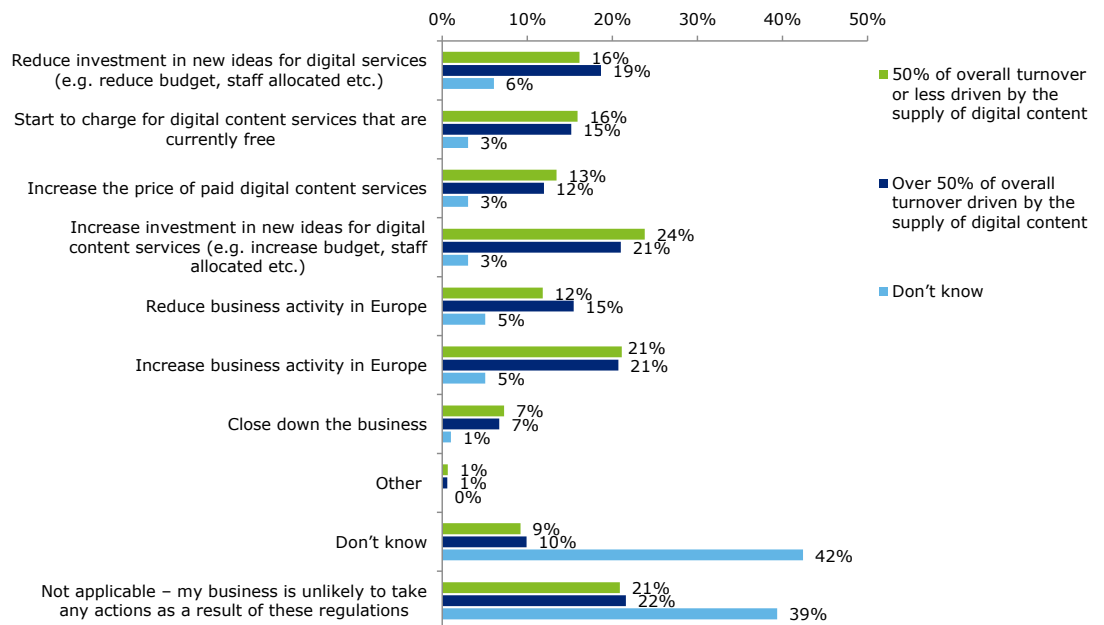
Source: Business survey, YouGov

Figure 32: In which, if any, of the following ways do you think these regulations will impact your business?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers with 50% of overall turnover or less driven by digital content (n = 924), with over 50% of overall turnover driven by the supply of digital content (n = 343), don't know (n = 99). Multiple answers per respondent were allowed.
Source: Business survey, YouGov

Figure 33: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?

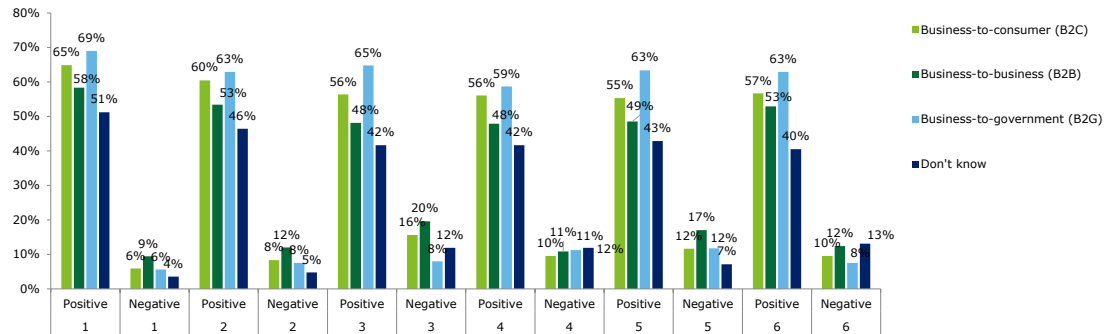


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers with 50% of overall turnover or less driven by digital content (n = 924), with over 50% of overall turnover driven by the supply of digital content (n = 343), don't know (n = 99). Multiple answers per respondent were allowed.
Source: Business survey, YouGov

Type of customer

There is little difference in the balance of sentiment towards the proposal across customer type. Decision makers from B2B businesses are on balance slightly less positive than those from B2C and B2G.

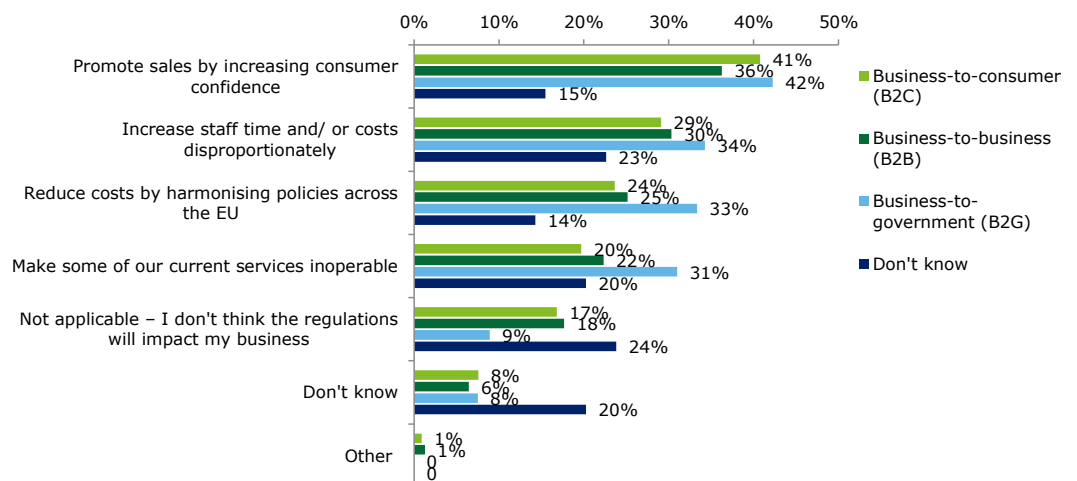
Figure 34: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, B2C (n = 660), B2B (n = 775), B2G (n = 213), Don't know (n = 84). Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1. Source: Business survey, YouGov

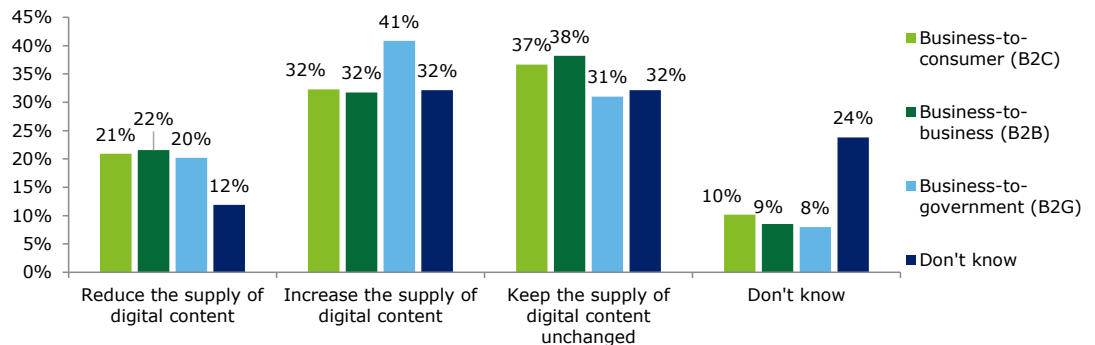
There is little variation in the responses of decision makers depending on whether their business is B2C or B2B. B2G business decision makers are less likely to say that their business will not be impacted and more likely to say they would increase supply or business activity in Europe.

Figure 35: In which, if any, of the following ways do you think these regulations will impact your business?



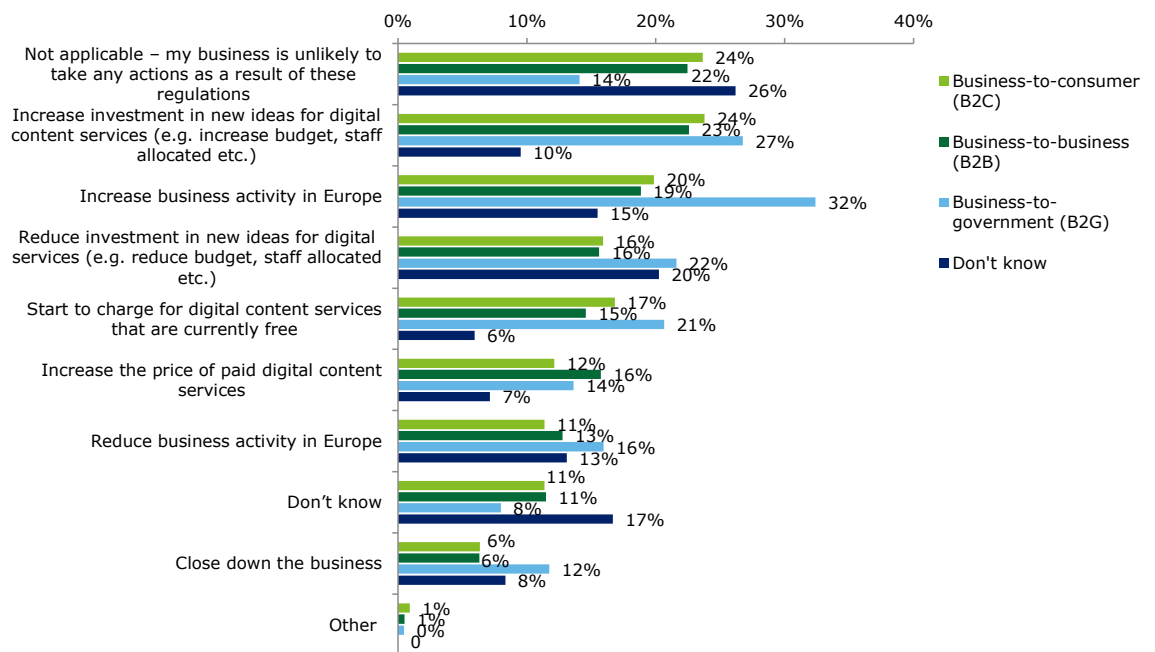
Note: Results are based on 1,366 business decision makers whose businesses provide digital content, B2C (n = 660), B2B (n = 775), B2G (n = 213), Don't know (n = 84). Multiple answers per respondent were allowed. Source: Business survey, YouGov

Figure 36: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, B2C (n = 660), B2B (n = 775), B2G (n = 213), Don't know (n = 84).
 Source: Business survey, YouGov

Figure 37: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?

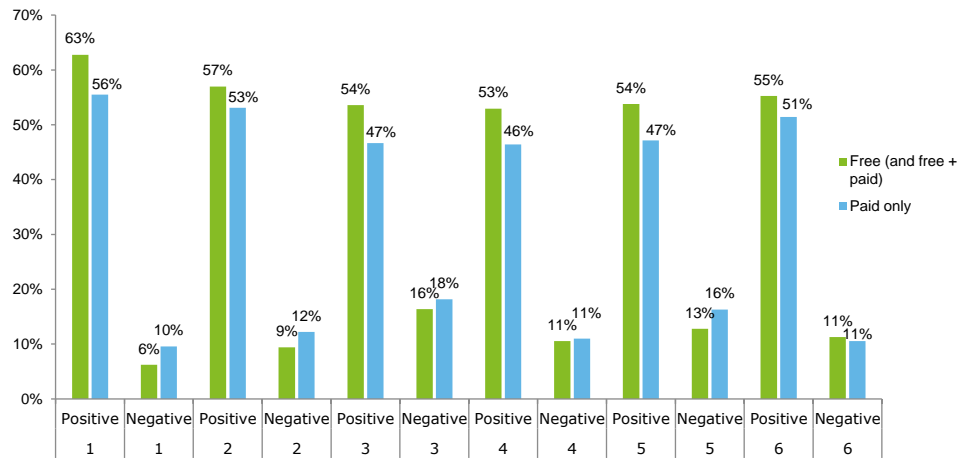


Note: Results are based on 1,366 business decision makers whose businesses provide digital content, B2C (n = 660), B2B (n = 775), B2G (n = 213), Don't know (n = 84). Multiple answers per respondent were allowed.
 Source: Business survey, YouGov

Free versus paid for digital content providers

There was no material variation in the balance of sentiment towards the proposal depending on whether decision makers' businesses supplied free or pay for digital content.

Figure 38: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?

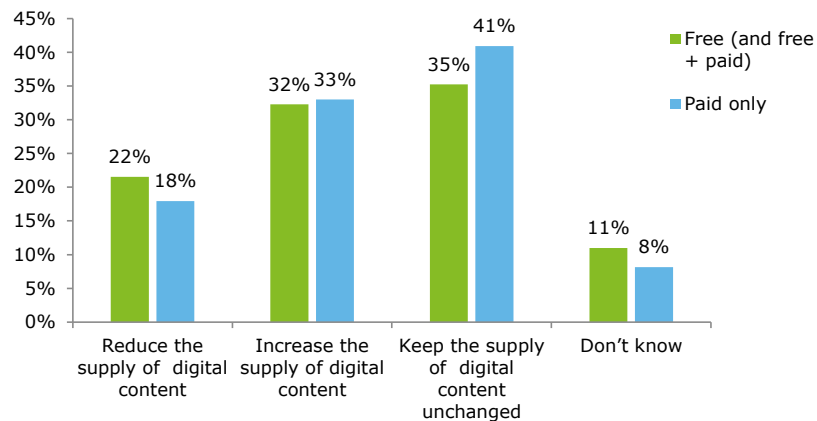


Note: Results are based on 1366 business decision makers whose businesses provide digital content: respondents whose business provides free digital content (n = 948; this includes 224 respondents whose business provides free and paid for content but who answered in relation to free only), and respondents whose business only provides paid for digital content (n = 418). Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1.

Source: Business survey, YouGov

There is little variation in the views of decision makers whose businesses supply free or paid for content in relation to the potential impact of the draft Directive on their business.

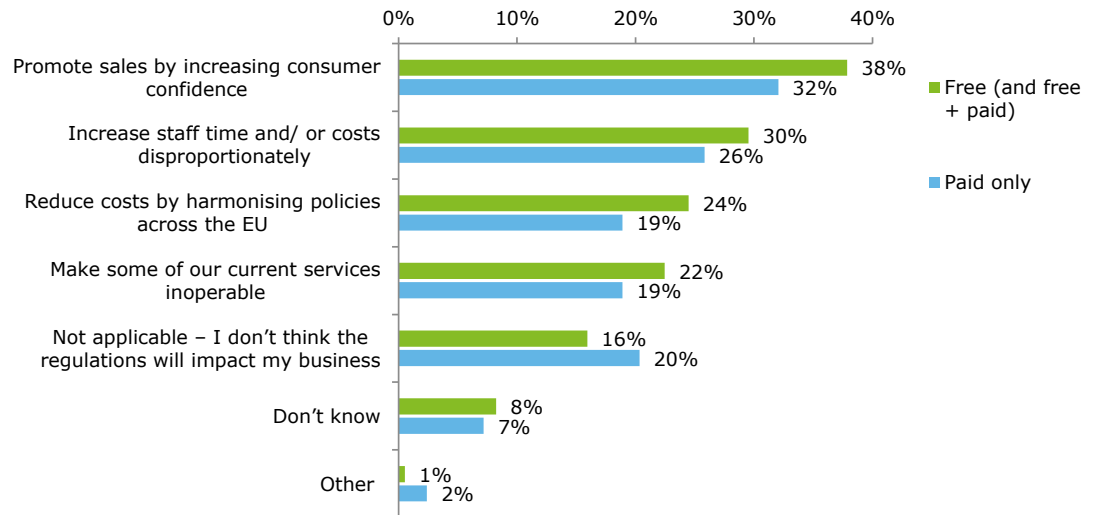
Figure 39: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?



Note: Results are based on 1366 business decision makers whose businesses provide digital content: respondents whose business provides free digital content (n = 948; this includes 224 respondents whose business provides free and paid for content but who answered in relation to free only), and respondents whose business only provides paid for digital content (n = 418)

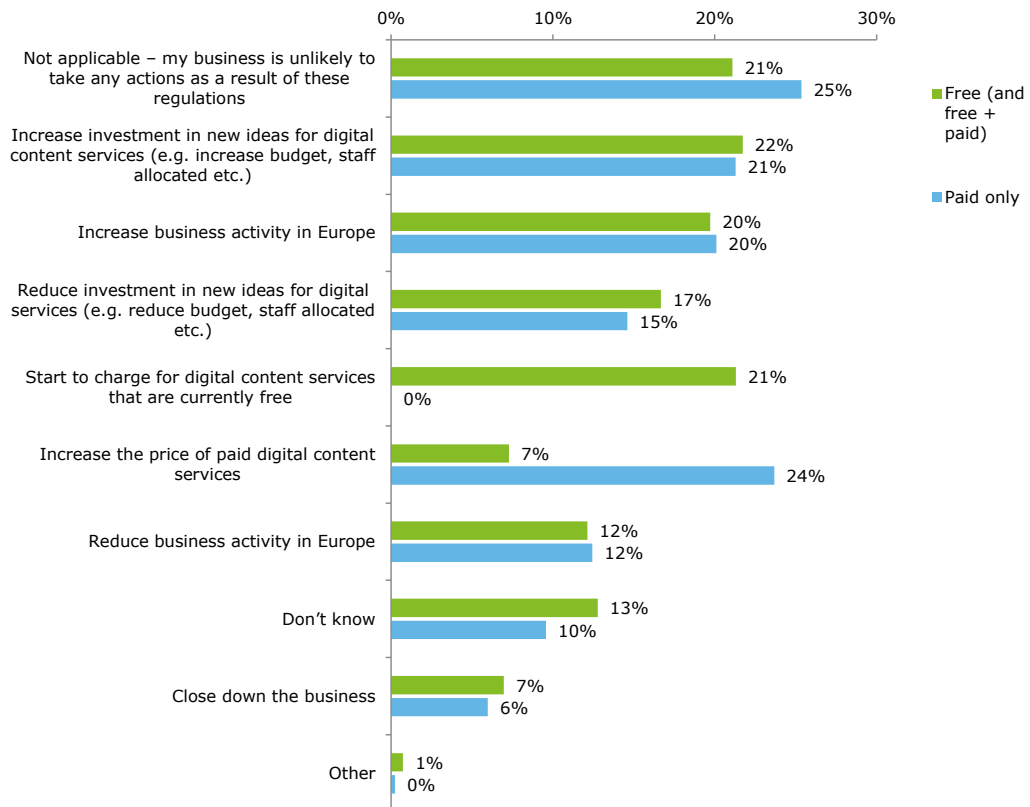
Source: Business survey, YouGov

Figure 40: In which, if any, of the following ways do you think these regulations will impact your business?



Note: Results are based on 1366 business decision makers whose businesses provide digital content, respondents whose business provides free digital content (n = 948; this includes 224 respondents whose business provides free and paid for content but who answered in relation to free only), respondents whose business only provides paid for digital content (n = 418). Multiple answers per respondent were allowed.
Source: Business survey, YouGov.

Figure 41: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



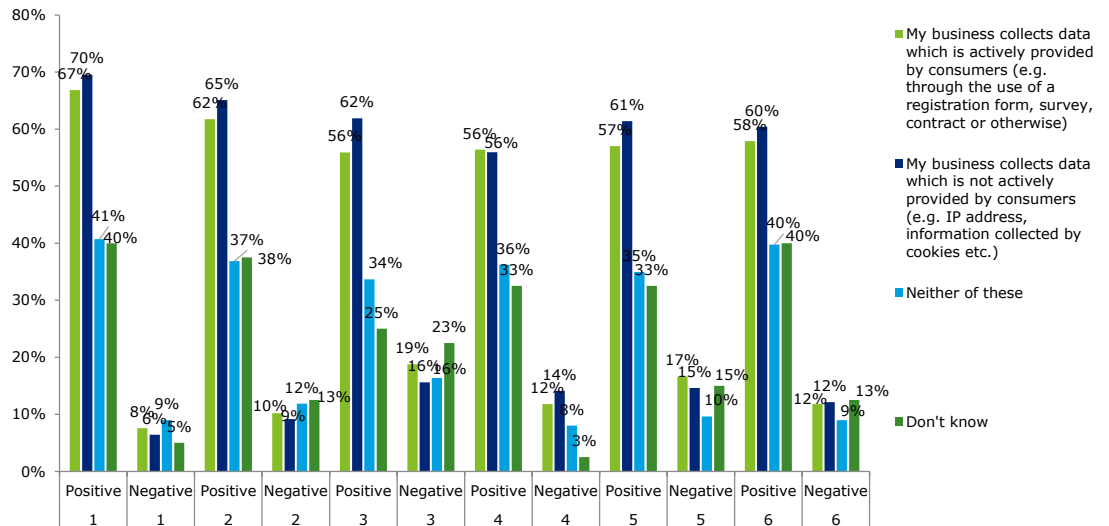
Note: Results are based on 1366 business decision makers whose businesses provide digital content: respondents whose business provides free digital content (n = 948; this includes 224 respondents whose business provides free and paid for content but who answered in relation to

free only), and respondents whose business only provides paid for digital content (n = 418). Multiple answers per respondent were allowed.
Source: Business survey, YouGov

Businesses collecting data 'actively provided' by the consumer

There is no material variation in responses across decision makers whose businesses collect data actively provided or not actively provided by consumers.

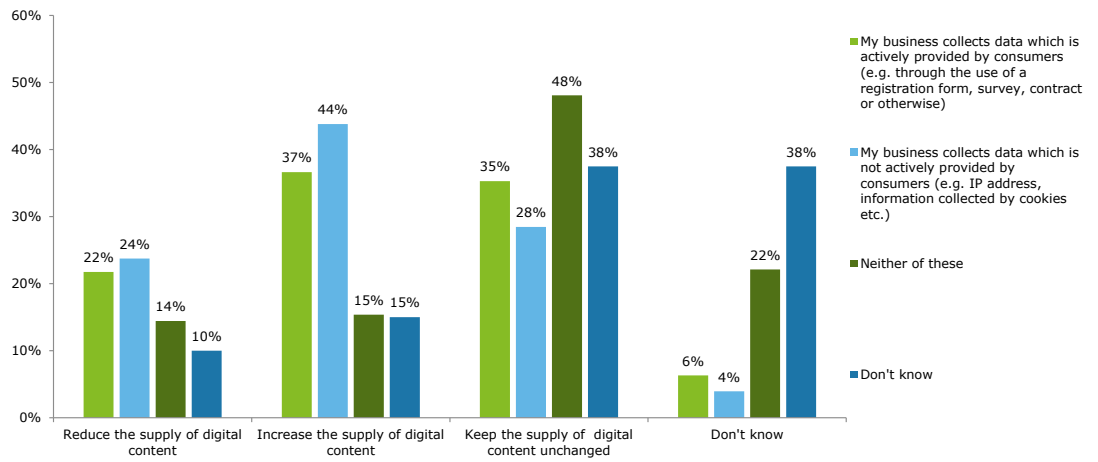
Figure 42: To what extent, if at all, do you think that the following regulation, contained in the proposed Directive will have a positive or negative impact on your business' supply of free digital content/digital content?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers who collect actively provided data (n = 805), collect data not actively provide (n = 404), neither (n = 312), don't know (n = 40). Different elements of the Directive (1- 6) are described in Figure 7 in section 2.3.1.
Source: Business survey, YouGov

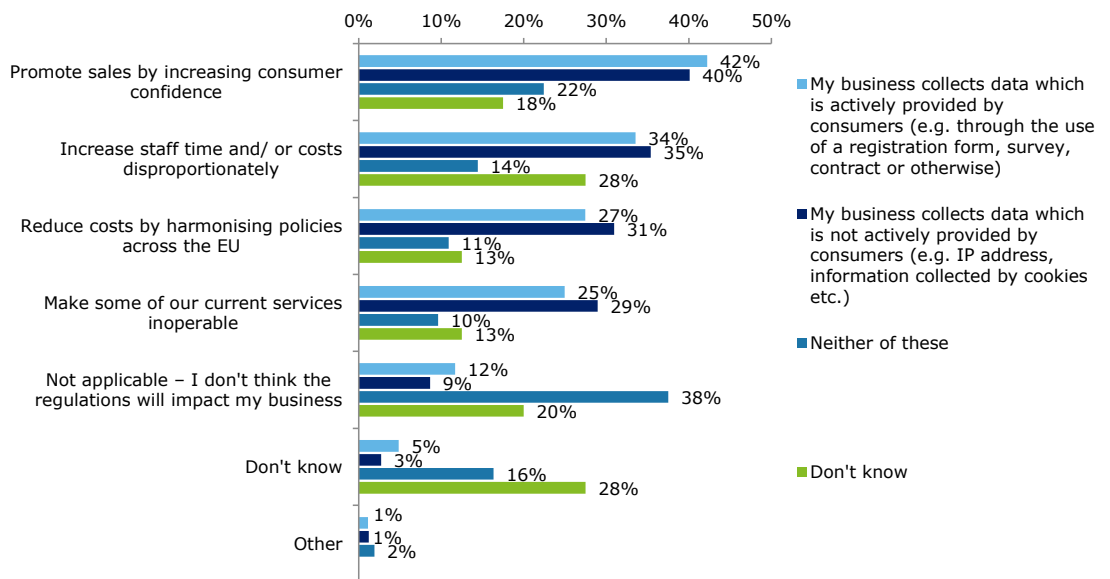
Respondents whose businesses do not collect data are more likely to say they will keep the supply of digital content unchanged or that the draft Directive will not affect their business.

Figure 43: If the regulations contained in the proposed Directive in relation to the supply of digital content are implemented, do you think your business will increase or decrease the amount of free digital content/digital content it supplies, or will it remain unchanged?



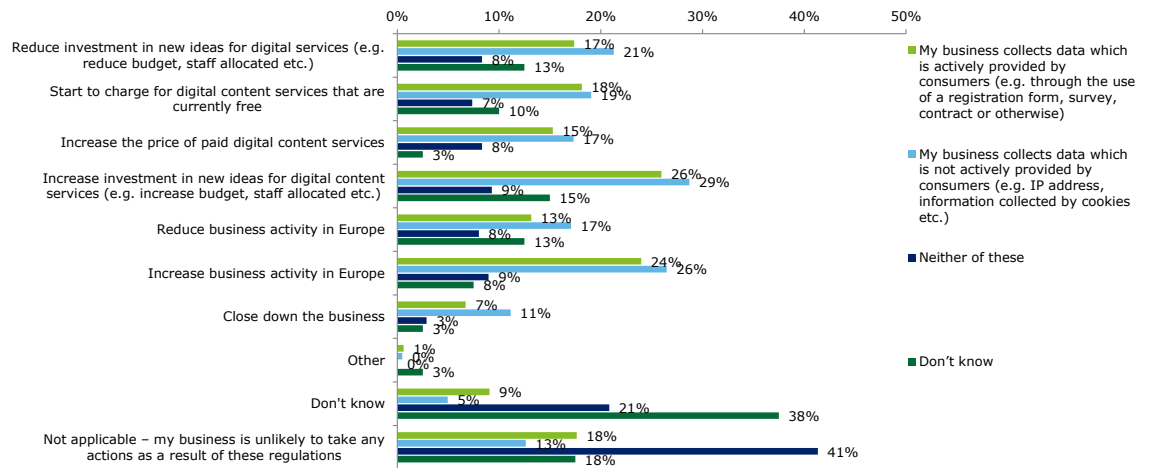
Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers who collect actively provided data (n = 805), collect data not actively provide (n = 404), neither (n = 312), don't know (n = 40).
 Source: Business survey, YouGov

Figure 44: In which, if any, of the following ways do you think these regulations will impact your business?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers who collect actively provided data (n = 805), collect data not actively provide (n = 404), neither (n = 312), don't know (n = 40). Multiple answers per respondent were allowed.
 Source: Business survey, YouGov

Figure 45: What other actions, if any, do you think your business is likely to take if the regulations contained in the proposed directive in relation to the supply of digital content are implemented?



Note: Results are based on 1,366 business decision makers whose businesses provide digital content, business makers who collect actively provided data (n = 805), collect data not actively provide (n = 404), neither (n = 312), don't know (n = 40). Multiple answers per respondent were allowed.

Source: Business survey, YouGov

3.2 Consumer survey

The study surveyed around 6,000 consumers from four European countries: Spain, Germany, France and the UK. Across these countries, the survey aimed to assess how ordinary citizens felt about the digital content that they consume and their relative expectations for remedies and damages should any of their digital content be faulty.

The questionnaire was designed by Deloitte and implemented online by Google Consumer Surveys on behalf of Deloitte. The platform sources respondents

UK	France	Spain	Germany	Total
1,544	1,522	1,502	1,513	6,081

online, with users completing survey questions in exchange for accessing high quality content.⁴⁶ This is across a network of premium online news, reference and entertainment cites as well as through the mobile app, Google Opinion Rewards.⁴⁷

The consumer survey results reported in this study are unweighted results.

4 Endnotes

¹ It is not a legal commentary and does not consider the legal implications of any view point.

² The research for this report was conducted prior to the UK referendum on membership of the EU.

³ The Information and Communication service is defined in Information and communication service statistics – NACE Rev.1 (2015). The sector consists of six separate NACE divisions. It does not cover printing or the mass reproduction of recorded media.

⁴ Ec.europa.eu. (2016). Information and communication service statistics - NACE Rev. 2 - Statistics Explained. Online Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Information_and_communication_service_statistics_-_NACE_Rev._2#Size_class_analysis Accessed 24 May 2016.

⁵ Defined as business decision makers from the media and IT & Telecoms sectors.

⁶ Play.google.com. (2016). Online Available at: https://play.google.com/store/apps/collection/topgrossing?hl=en_GB Accessed 20 May 2016.

⁷ Growthengine.withgoogle.com. (2016). Google is a Growth Engine for Europe. Online Available at: <https://growthengine.withgoogle.com/intl/en-eu/voices#card-story/5350406385303552> Accessed 15 Jun. 2016.

⁸ RogerVoice. (2016). RogerVoice. [Online] Available at: <https://rogervoice.com/> Accessed 20 Jun. 2016.

⁹ Alexa.com. (2016). Alexa - Top Sites in United Kingdom. Online Available at: <http://www.alexa.com/topsites/countries/GB> Accessed 20 May 2016.

¹⁰ Alexa.com. (2016). Alexa - Top Sites in Spain. Online Available at: <http://www.alexa.com/topsites/countries/ES> Accessed 26 May 2016.

¹¹ Alexa.com. (2016). Alexa - Top Sites in France. Online Available at: <http://www.alexa.com/topsites/countries/FR> Accessed 26 May 2016.

¹² Alexa.com. (2016). Alexa - Top Sites in Germany. Online Available at: <http://www.alexa.com/topsites/countries/DE> Accessed 26 May 2016.

¹³ European Commission (2015). Provision of two Online consumer surveys as support and evidence base to a commission study: identifying the main cross-border obstacles to the Digital Single Market and where they matter most. Online Available at: http://ec.europa.eu/consumers/consumer_evidence/market_studies/obstacles_dsm/docs/21.09_dsm_final_report.pdf Accessed 26 May 2016.

¹⁴ 42% said they would not pay for the content and 39% said they don't know.

¹⁵ Forrester (2011). Can't Pay, Won't Pay: Why Paid Digital Content Isn't Working. Online Available at: <https://www.forrester.com/report/Cant+Pay+Wont+Pay+Why+Paid+Digital+Content+Isnt+Working/-/E-RES58011> Accessed 20 May 2016.

¹⁶ Growthengine.withgoogle.com. (2016). Google is a Growth Engine for Europe. Online Available at: <https://growthengine.withgoogle.com/intl/en-eu/voices#card-story/5432459453792256> Accessed 26 May 2016.

¹⁷ iTunes, (2016). Online Available at: <https://itunes.apple.com/gb/app/edjing-5-dj-turntable-to-mix/id493226494?mt=8> Accessed 24 May 2016.

¹⁸ Play.google.com. (2016). Online Available at: <https://play.google.com/store/apps/details?id=com.edjing.edjingdjturntable> Accessed 26 May 2016.

- ¹⁹ Mobile Phones Direct. (2014). App of the Week: Edjing, the world's first DJ app. | Mobile Phones Direct. Online Mobilephonesdirect.co.uk. Available at: <http://www.mobilephonesdirect.co.uk/blog/post/app-of-the-week-edjing-the-worlds-first-dj-app> Accessed 24 May 2016.
- ²⁰ Mobile Phones Direct. (2014). App of the Week: Edjing, the world's first DJ app. | Mobile Phones Direct. Online Mobilephonesdirect.co.uk. Available at: <http://www.mobilephonesdirect.co.uk/blog/post/app-of-the-week-edjing-the-worlds-first-dj-app> Accessed 24 May 2016.
- ²¹ Growthengine.withgoogle.com. (2016). Google is a Growth Engine for Europe. Online Available at: <https://growthengine.withgoogle.com/intl/en-eu/voices#card-story/4665176565481472> Accessed 26 May 2016.
- ²² Forrester (2016). Customer-Obsessed Businesses Need Digital Ecosystems. The CIO Digital Business Transformation Playbook For 2016. Online Available at: <https://www.forrester.com/report/CustomerObsessed+Businesses+Need+Digital+Ecosystems/-/E-RES127761> Accessed 20 May 2016.
- ²³ The business survey contacted 3,563 SMEs across different sectors.
- ²⁴ European Commission (2015). Annual Report on European SMEs 2014-15: SMEs start hiring again.
- ²⁵ Petsas et al. (2013). Rise of the Planet of the Apps: A Systematic Study of the Mobile App Ecosystem.
- ²⁶ Fast Company. (2015). How Mobile Game Company Seriously Aims To Reverse-Engineer Hollywood. Online Available at: <http://www.fastcompany.com/3048380/how-mobile-game-company-seriously-aims-to-reverse-engineer-hollywood> Accessed 23 May 2016.
- ²⁷ <https://growthengine.withgoogle.com/intl/en-eu/voices#card-story/5356495440969728>
- ²⁸ Growthengine.withgoogle.com. (2016). Google is a Growth Engine for Europe. Online Available at: <https://growthengine.withgoogle.com/intl/en-eu/voices#card-story/5411679730925568> Accessed 15 Jun. 2016.
- ²⁹ Ec.europa.eu. (2016). Information and communication service statistics - NACE Rev. 2 - Statistics Explained. Online Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Information_and_communication_service_statistics_-_NACE_Rev._2#Size_class_analysis Accessed 24 May 2016.
- ³⁰ Play.google.com. (2016). Online Available at: https://play.google.com/store/apps/collection/topgrossing?hl=en_GB Accessed 20 May 2016.
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³⁸ Based on respondents from Spain, Germany and the UK. The question was misquoted in the survey for France so those respondents are excluded from this result.

³⁹ The full list of sectors is presented in the appendix. Respondents whose businesses were in the finance (88 respondents) and medical and health services sector (60 respondents) were removed from the results presented in this study, since the draft Directive does not apply to these industries.

⁴⁰ The Media sector is defined as media/ marketing/ advertising/ PR&sales.

⁴¹ The survey included decision makers from B2C, B2B and B2G businesses. The draft Directive has a provision whereby providers can seek redress from other suppliers in the supply chain. The study did not exclude business decision makers whose businesses were not B2C to understand the broader impacts of the draft Directive on businesses.

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