

## Piste de compromis sur les dispositions relatives aux moteurs de recherche

### Article 4

#### *'Caching' and online search engines*

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, **or of an online search engine**, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, **or for the search results locating the information related to the content requested by the recipient of the service**, on condition that:
  - (a) the provider does not modify the information;
  - (b) the provider complies with conditions on access to the information;
  - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
  - (e) the provider acts expeditiously to remove or to disable access to the information it has stored, **indexed or located** upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

#### Addition to Recital 27 of the General Approach

(27) [...] Intermediary services may be provided in isolation, as a part of another type of intermediary service, or simultaneously with other intermediary services. ~~Whether a specific service constitutes a mere conduit, caching, hosting or online search engine service depends solely on its technical functionalities, that might evolve in time, and should be assessed on a case-by-case basis.~~ **Whether the rules for exemptions from liability should apply to a specific service or a part of a service should be assessed on a case-by-case basis. For example, as recognised in the case law of the Court of Justice of the European Union, a provider of search engine services may act as a hosting service regarding the *online advertisements displayed alongside search results* that it has stored at the request of an advertiser. As far as search results are concerned, the present Regulation establishes that search engines are exempted from liability under the same conditions as *caching services* for elements that are strictly limited to locating the information related to the *query* made by the recipient of the service.**

### Article 33a

#### *Very large online search engines*

1. **This Section, with the exception of Article 33(1a) and (1b), shall apply to online search engines which reach a number of average monthly active recipients of the service in the**

**Union equal to or higher than 45 million, and which are designated as very large online search engines in accordance with Article 25(4).**

- 2. For the purpose of determining the number of average monthly active recipients of the service, Article 23(2), (3) and (3a) shall apply to all online search engines which do not qualify as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC, with the exception of those which are very large online search engine in accordance with the paragraph 1 of this Article.**