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scope

**From:** [REDACTED] <[REDACTED]@ccianet.org>  
**Sent:** Wednesday, April 22, 2020 1:48 PM  
**To:** [REDACTED] (CNECT)  
**Cc:** [REDACTED] (CNECT); [REDACTED] CNECT F2 <CNECT-F2@ec.europa.eu>; [REDACTED] (CNECT)  
**Subject:** Thank you

Dear [REDACTED],

Thank you very much for taking the time to speak with our members on Monday.

We had +40 participants on the call which is a new record for us, but surely not for you.

I will discuss with our members the possibility to organise a workshop with industry experts to discuss the technicalities of the DSA. In the meantime, please let us know if there is ever anything we can be of assistance with.

In case of interest, I have attached our discussion paper, and below you can read a [blog post on the DSA](#) that we published this morning.

All the best,

[REDACTED]

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## **Key issues for policymakers to consider in the forthcoming Digital Services Act**

[REDACTED] · APRIL 21, 2020

The European Commission is expected to propose a “Digital Services Act” (DSA) which could review the fundamentals for how digital services operate in Europe. The President of the European Commission, Ursula Von Der Leyen mentioned in her [political guidelines](#) her intention to upgrade, through the DSA, the EU’s “liability and safety rules for digital platforms, services and products”. This could be an opportunity to clarify EU law, strengthen online rights and promote innovation. Given the importance, and obvious sensitivities involved, it is worth asking some essential questions about what needs to be achieved and how to do so.

### **1. How will the Digital Services Act enable digital services in Europe?**

Recent weeks have proven how valuable digital services are for Europeans’ wellbeing. Children study through online tools, social networks keep families connected, people work remotely and consumers stream newly released content like movies.

Online intermediaries should be incentivised to act responsibly and play their part in tackling illegal content, products or conduct. Where relevant and technically feasible, a *stewardship provision* could

be introduced to create legal clarity and encourage intermediaries to take voluntary measures tackling problematic content, products or conduct without being penalised for their good faith efforts. Regulatory proposals should be assessed to avoid any harm to (i) users' fundamental rights, (ii) opportunities provided by digital services to Europe, as well as (iii) the digitisation of the European economy. Any obligations need to be achievable, and proportionate to known risks.

## 2. What legal approach should be pursued?

Over the past two decades, digital services have evolved and so have everyone's expectations. The new DSA should maintain the existing horizontal, principle-based approach (as per the existing [EU e-Commerce Directive](#)), which could be complemented by targeted measures (legislative and non-legislative) tackling specific concerns.

To safeguard the freedom of expression and access to information, any approach must also differentiate 'illegal' from 'harmful but legal' content. It is also essential to acknowledge and differentiate between the various types of intermediation services. A cloud or technical infrastructure provider does not provide the same services as a content hosting service, and the extent to which they can be said to have control over information may be very different.

## 3. Is a more collaborative approach required?

The speed of change also reminds us that truly 'future-proof' regulation must be evidence-based and flexible. Otherwise, it is very likely to hinder Europe's innovation and growth potential.

As the Internal Market Commissioner Thierry Breton [said](#), "Regulators need to work with hard law, but also with soft law, by appealing to those companies' sense of responsibility to be able to act quickly."

Digital service providers are committed to being responsible players and contributing to building trust and safety online. That, however, is only one piece of the puzzle. There are also roles for law enforcement, rights owners and users.

EU-wide 'notice and takedown' procedures and clarification of the concepts of 'illegal content' and 'actual knowledge' would encourage businesses to roll out new services and improve citizens' trust. A harmonised EU framework would support the growth of European micro-businesses, startups, SMEs, and digital service providers. Furthermore, national authorities should implement the existing laws as unenforced laws simply create burdens on the compliant while leaving problems unaddressed elsewhere. Finally, to build a healthy and safe environment, users and right holders should share their feedback and report problematic content, goods or conduct. Successful policy will ultimately depend on finding the appropriate balance between the rights and obligations of all relevant stakeholders. The tech industry is committed to this community effort.

Online intermediaries should additionally be encouraged to work with all sectors – industry, civil society and government – in order to fight various types of illegal content. The idea of a deeply collaborative approach is not new and has proven successful before. A combination of soft law and hard law, as suggested by Commissioner Breton, is the most effective solution.

To conclude, the tech industry shares European policymakers' ambition to build a strong, human-centric Digital Single Market that allows European citizens and businesses to fully benefit from new technologies. Tech companies take their corporate social responsibility seriously and are committed to supporting European decision-makers in building an efficient and sustainable regulatory framework aligned with European values.

[Redacted]  
[Redacted]  
Computer & Communications Industry Association (CCIA Europe)  
Rue de la Loi 227, 1st floor, 1040 Brussels, Belgium  
[Redacted]  
[Redacted]  
[Redacted]