

The Digital Services Act:

Defending the Digital Single Market and the Open Internet

The Digital Services Act (DSA) represents a unique opportunity to build on the laws that laid a foundation for the flourishing of the Open Internet, which has been an unprecedented catalyst of economic and social development. We believe in a fair and forward-looking approach to regulation that protects what's best about our online environment and promotes the values of innovation, strong competition, and consumer choice that underpin the global, Open Internet.

Before addressing the DSA directly, we note our concern regarding the ongoing fragmentation of Internet rule-making across the EU. Instead of recognising that a borderless utility like the Internet benefits from regional and global agreement of standards, countries are moving ahead with national models of regulation. **This has the fundamental effect of undermining the foundational principle of the Digital Single Market (DSM), namely that its purpose is to create one set of rules for one market.** Each national legislative initiative that overlaps or directly conflicts with the DSA picks at the threads of the DSM, fraying it further and further, making Europe a more challenging business environment for companies of all sizes. This challenge becomes greater for smaller companies that are already facing the formidable task of competing with the very largest players in our industry. **We urge the Commission and the EU institutions to state clearly that the DSM must be preserved by coherent and regional rule-making, and that national measures should be discouraged.** This issue goes to the heart of whether Europe is committed to creating a digital economy that's built on the Open Internet.

Further, we see a worrying trend whereby the EU or a member state will enact legislation with onerous and highly local requirements, or prescribe severe sanctions. The fairness of enforcement is dependent on due process protections embedded in the legal system around the law. Another country may then copy that law, often outside the EU, but its legal and political system places less emphasis on due process. In this way, more repressive regimes can exert pressure on platforms to comply with requests that would restrict certain businesses, freedom of expression, political dissent, journalism, and activism. **The EU and its member states must be careful to build due process protections into legislation that may be exported across borders.** As Access Now has said, "the DSA will set a precedent for content governance beyond the European Union. If not done right, the negative impact of this legislation could be far-reaching for human rights protection in the online ecosystem." **Europe's example here is critical and must be considered in an international context.**

We urge policymakers across Europe to be mindful of their unique role at this time. **The DSA is breaking new ground, largely for the positive, and this process of regional standard-setting should be allowed to play out before further action is taken at member state level.** Done right, the introduction of harmonised standards across the EU will avoid stifling competition and innovation, leading to a more diverse online ecosystem, and they'll set a global benchmark for others to follow.

Put simply, the DSA must defend the ideal of the Digital Single Market as Europe's commitment to the Open Internet.

LEGISLATING FOR THE FUTURE OF THE INTERNET

We welcome the maintenance of a prohibition on general monitoring and the legislative focus on illegal content. We encourage policymakers to further clarify what content is considered illegal across the EU.

However, we believe that focusing excessively on increasingly outmoded models of content moderation stifles competition and undermines freedom of expression. The DSA should encourage judicious and deliberate decision-making on content, rather than impose overreaching notice and takedown requirements that would incentivise risk-averse removal of content. European Digital Rights (EDRI) has noted that “in a world in which people upload millions of hours of video and billions of photos and texts every day, it has become impossible to determine the legality of every single piece with certainty... Most of those instances require an informed legality assessment by a trained professional in order to avoid a large number of wrongful removals.”

We ask the EU to adopt the principle that actual knowledge of illegality is only obtained by intermediaries if it comes through a legally defined judicial process.

We further believe that a more nuanced approach would be in the best interests of the regulator, companies of all sizes, and the user. As we’ve said before, content policy can shape the competitive marketplace, and as such, overly rigid and intensive proposals (such as those set out in Articles 14 to 21) risk setting regulatory barriers that only a handful of companies have the resources to meet.

Stanford’s Daphne Keller says these provisions, as a whole, require that platforms of all sizes and varieties be “deeply regulated, and regulable, or stop existing.” It seems intuitive that the outcome of the system currently proposed will be to the benefit of the largest companies in our industry. Indeed, Keller goes on to say that “the DSA effectively forfeits competition and consumer choice as a way of shaping platform behavior, in favor of having a few heavily regulated entities.”

Therefore, we encourage regulators to include additional flexibility for deliberation, while placing more focus on business structure and incentives. The DSA should enshrine the principle that content moderation should be proportionate to the perceived harm. This will move us towards a more balanced approach to moderation, moving past the leave-up-take-down models of the past. In the long term, the question of how users encounter content may be more important than whether content exists, particularly as swathes of the Internet shift to a more decentralised existence.

Further, an assessment of how platforms offer users meaningful choice and control in their online experience will go to the heart of societal concerns regarding the Internet’s effect on democracies and the health of our information environment. By placing emphasis on these areas, regulators will have taken more holistic measures to counter potential online harms. Such policies will also stand the test of time, enduring beyond technological cycles.

REAL CHOICE AND FAIR COMPETITION

The Open Internet thrives because of its architecture, with consumer choice and open standards between platforms. Open architectures, done properly, do not lock-in dominant business or service models. As several members of the European Parliament recently pointed out, interoperability protects users and competition. **We welcome the European Commission's proposals in this area but also encourage decision-makers to include more robust provisions fostering interoperability in Chapter 3 of the DSA.**

The Internet is **more than a handful of companies**. **We call on policymakers to recognise this by including more precision in the criteria for very large online platforms (VLOPS) in Chapter 3, Section 4.** Although a certain degree of latitude is needed to guarantee the flexibility of legislation, this should not be done at the expense of the online ecosystem by requiring smaller actors to meet requirements that only the largest, wealthiest, and market-dominant companies can shoulder. There is the perception of Internet companies and there is the reality – sometimes the latter starkly differs from the former and the criteria for VLOPs should be grounded in practical reality.

TRANSPARENCY AND ACCOUNTABILITY

There is a need to strike the right balance between technical transparency and things that actually empower consumers with more choice and control. We support simple yet meaningful ways for users to exercise privacy and data choices, for example through greater control of ad targeting, while also requiring companies to set out their Terms of Service in simple, understandable terms.

We commit to continue increasing transparency around policy enforcement and data access to empower research and more disclosures around coordinated efforts to manipulate platforms. It is crucial that transparency requirements outlined in Articles 13 and 23 of the DSA should not undermine these efforts to protect users, or inadvertently expose services to potential harm, for example, exposing enforcement methods or techniques that could be leveraged to undermine those efforts.

Our services are part of a larger information ecosystem that includes companies of all sizes, nonprofit organisations, publishers, academic institutions, and more. **To ensure meaningful transparency, it is necessary that we have flexible and differentiated requirements across all sectors.** These requirements should recognise how each entity approaches transparency in ways that reflect their operations. Horizontal requirements will only create an apples to oranges comparison between organisations large and small, centralised and decentralised.

Signed:

