



The impact of DSA on the audiovisual industry: tools and challenges in the fight against illegal content

Digital Services Act and Copyright - A new balance in Digital Services
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Elli Filippopoulou & Associates
Law Firm

DSM (Article 17) & DSA

Scope of art.17: online content-sharing service provider'

- enabling storage and sharing of a large amount of uploaded copyright protected content
- profit making
- active character vis-à-vis the content – organising it and promoting it in order to attract a larger audience;
- including by categorising it and using targeted promotion within it
- Excluded: not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open-source software-developing and-sharing platforms
- providers of electronic communications services
- online marketplaces
- business-to-business cloud services
- cloud services that allow users to upload content for their own use.

Scope of DSA:

- intermediary services
- Hosting services
- online platforms including VLOPs-VLOSEs
- Online marketplaces

DSA & E-Commerce Directive

- DSA replaces E COM DIRECTIVE
- Clear horizontal nature
- Directive # Regulation
- Same liability privileges for intermediary services that qualify as “mere conduit”, “caching” or “hosting services”
- Active/passive criterion to escape is pushed to that of “neutral” (Recital 18).
- ECJ CASE LAW is brought in provisions

RIGHTSHOLDERS: “What is illegal off-line is also illegal on-line”

“ Creativity Works” Coalition

AEPO-ARTIS (performers)
ANIMATION in EUROPE (Animation Producers)
CEPI(independent producers)
CEPIC (picture agencies and photo libraries)
ECSA (Composers and Songwriters)
EUROKINEMA (film and TV producers)
FEP (European Publishers)
FERA (Screen Directors)
FIA (Actors-performers)
FIAD (Film Distributors’ and Publishers’)
FIAPF (Film Producers)
FIM (Musicians)
FSE (Screenwriters)
GESAC (Authors and Composers)
IAO (Featured Artists in the music industry)
ICMP (music publishers)
IFPI (Phonographic Industry)
IFTA (independent film and TV)
IMPALA)
IMPF (independent music publishers)
IVF (distribution of A/V)
MPA (film, television and streaming industry)
SROC(Sports Rights Owners)
STM (academic and professional publishers)

AV SECTOR COALITION

- **ACT** - Association of Commercial Television and VoD Services in Europe
- **ANICA** - Associazione Nazionale Industrie Cinematografiche Audiovisive e Digitali
- **CICAE** - International Confederation of Art Cinemas
- **CEPI** - European Audiovisual Production Association
- **Eurocinema** - Association de producteurs de cinéma et de télévision
- **European VOD Coalition**
- **Fedicine** - Federación de Distribuidores Cinematográficos
- **FIAD** - International Federation of Film Distributors’ and Publishers’ Associations
- **FIAPF** - International Federation of Film Producers Associations
- **IFTA** – Independent Film & Television Alliance
- **IVF** – International Video Federation
- **Mediapro**
- **MPA** – Motion Picture Association
- **SPIO** – Spitzenorganisation der Filmwirtschaft e.V.
- **SROC** - Sports Rights Owners Coalition
- **UNIC** - International Union of Cinemas
- **VAUNET** – Verband Privater Medien e.V.

1- DSA: New due diligence obligations for all intermediary service providers

- **Points of contact for MS authorities, the Board and Commission** (Article 11)

Designate a single point of contact “enabling them to communicate directly by electronic means”.

Information to be made public, easily accessible and kept up to date.

- **Points of contact for recipients of service** (Article 12)

Designate a single point of contact “enabling the recipient of the service to communicate directly and rapidly with them, by electronic means and in a user-friendly manner”.

Should be possible for recipients of the service to choose the means of communications

Cannot rely solely on automated tools.

- **Legal representatives**(Article 13)

Non-EU established providers that offer services in the EU should designate a legal representative in one of the MS where they offer their services.

Legal representative can be held liable for non-compliance with DSA obligations.

Providers should notify their name, postal address, email address and telephone number.

- **Transparency obligations** (Article 15)

- **Terms and conditions** of dealing with infringements (Article 14)

DSA remains silent on what happens if there is no point of contact or legal representative.

2-Know Your Business Customer (KYBC)

progress:

- E-Commerce Directive contained an obligation on businesses to identify themselves online, but no sanctions were provided (it was unenforceable).
- DSA introduces **Know Your Business Customer (KYBC)** provisions

challenge:

- **narrow scope:** for “online platforms allowing consumers to conclude distance contracts with traders” under Article 24c.”

Know Your Business Customer Coalition

ABAC-BAAN -Aktionskreis gegen Produkt- und Markenpiraterie e. V. (APM)-Alliance for Intellectual Property - Alliance for Safe Online Pharmacy (ASOP EU)-Anti-Counterfeiting Group (ACG)-Asociación para la defensa de la Marca (Andema)-Association de Lutte Contre La Piraterie Audiovisuelle (ALPA)-Association de Producteurs de Cinéma et de Télévision (Eurocinema)-Association of Commercial Television and Video on Demand Services in Europe (ACT)-Associazione Nazionale Industrie Cinematografiche Audiovisive Digitali (ANICA)-Audiovisual Producers Finland (APFI)-BBC Studios-BREIN-British Association for Screen Entertainment (BASE) – British Phonographic Industry (BPI)-Coalition for Online Accountability (COA)-Comité Colbert-Copyright Information and Anti-Piracy Centre (TTVK)-Cosmetics Europe – The Personal Care Association - Digital Entertainment Group (DEGI)-European Association of lighting WEEE compliance schemes (EucoLight) European Audiovisual Production (CEPI)-European and International Booksellers Federation (EIBF)-European Brands Association (AIM)-European Broadcasting Union (EBU)-European Cultural and Creative Industries Alliance (ECCIA)-European Federation of Pharmaceutical Industries and Associations (EFPIA)-European Grouping of Societies of Authors and Composers (GESAC)-European Network of Independent Film Publishers and Distributors (Europa Distribution)-European VOD Coalition-EUROVOD – The Association of European VoD Platforms -FDV -Danish Video Association (FDV)-Fédération Internationale des Associations de Producteurs de Films (FIAPF)-Federación de Distribuidores Cinematograficos (FEDICINE)-Federation of European Screen Directors (FERA)-Federation of European Publishers (FEP-FEE)-Federation of Screenwriters in Europe (FSE) Federation of the European Sporting Goods Industry (FESI)-Federazione per la Tutela dei Contenuti Audiovisivi e Multimediali (FAPAV)-Film and Music Austria (FAMA)- Filmdistributeurs Nederland (FDN)-Finnish Anti-Counterfeiting Group (FACG)-HEINEKEN-Independent Film & Television Alliance (IFTA)-Independent Music Companies Association (IMPALA)-INDICAM-Interactive Software Federation of Europe (ISFE)-International Association of Scientific, Technical and Medical Publishers (STM)-International Confederation of Music Publishers (ICMP)-International Federation of Actors (FIA)-International Federation of Film Distributors'-associations (FIAD)-International Union of Cinemas (UNIC)-International Video Federation (IVF) - Kuvasto ry (Finnish visual artists' copyright society)-LightingEuropeLionsgate-Markenverband-Mærkevareleverandørerne (MLDK)-Mediapro-Motion Picture Association (MPA)-Nordic Content Protection-NVPI (Trade association of the Dutch Entertainment Industry)-PHILIPS-Produzenten Allianz (Germany)-Rattighetsalliansen (Sweden)-RELX (UK) - RettighedsAlliancen-Sky-Spitzenorganisation der Filmwirtschaft e.V. (SPIO) -Sports Rights Owners Coalition (SROC)-Suomen Musiikintekijät ry (Finnish Music Creators' Association – FMC)-Suomen Musiikkikustantajat ry (Finnish Music Publishers Association)-Swedish Anti-Counterfeiting Group (SACG)-Syndicat de l'Édition Vidéo Numérique (SEVN)-Together Against Counterfeiting Alliance (TAC)-Toy Industries of Europe (TIE)-Transnational Alliance to Combat Illicit Trade (TACIT)-UK Film Distributors' Association (FDA)-UNI Global Union – media, entertainment & arts (UNI MEI)-Union des Fabricants (UNIFAB) - Univideo-VAUNET Verband Privater Medien e.V. (VAUNET)-Verein für Anti-Piraterie der Film- und Videobranche (VAP)- World Federation of Advertisers (WFA)

3- DSA: Trusted flaggers

Benefits

- Notices from a “trusted flagger” should be “processed and decided on **with priority and without undue delay**”.
- Digital Services Coordinators award (and can revoke) trusted flagger status.
- Criteria for obtaining trusted flagger status:
 - Particular expertise and competence*
 - Independent from any online platform provider*
 - Carries out activities in a “diligent, accurate and objective manner*
- TF status applies EU-wide.
- Reporting requirements could highlight non-compliant platforms

Responsibilities

- Possibility for DSCs to revoke status.
- Applies to larger online platforms only (not *all* hosting providers, not micro/small online platforms)
- TFs obliged to publish detailed annual reports.

4- DSA: Notice and action mechanisms

Article 16: **PROS**

Hosting service providers are **obliged** to put in place notice and action mechanisms.

The elements that a notice should include:

- a sufficiently substantiated explanation of the reasons why content is illegal, a clear indication of - - the exact electronic location, **such as** the exact URL, the name and email of the notice sender,
- a statement confirming good faith

Par. 3 Clarification: a notice shall be considered to give rise to actual notice for the purposes of Article 6 (hosting exemption) where they allow hosting services to identify the illegality **without a detailed legal examination**

Article 16: **CONS**

- It does not include an obligation to act upon receipt of a notice (take down)
- It does not establish an obligation to prevent the reappearance of notified illegal content (stay down)

Increased burdens on notice senders

5- DSA: Measures for repeat infringers

Article 20 provides measures against misuse:

It mandates the introduction of a repeat infringer mechanism by providing that “online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide manifestly illegal content”.

This is a very important provision when it comes to ensuring online safety and tackling illegal content but **unfortunately the scope remains limited to online platforms.**

6 - DSCs

Article 53

The DSA grants certain **investigatory and enforcement powers** to Digital Services Coordinators, including the power to impose **fin**es (up to 6% of annual worldwide turnover) and **periodic penalties** (up to 5% of average worldwide turnover/income), and to **adopt interim measures** (under strict conditions and restricting access for maximum 4 weeks-renewable).

7- Compensation

Article 54

Compensation

Recipients of the service shall have the right to seek, in accordance with Union and national law, compensation from providers of intermediary services, against **any damage or loss suffered due to an infringement** by those providers of their obligations under this Regulation.

- Concerns damages/losses resulting from infringements of DSA obligations (e.g., failure to implement trusted flagger provisions, failure to take measures against repeat infringers, etc.)



All good BUT:

it is important to bear in mind that the DSA contains few tools for tackling rogue players. IPRED and the 2001 Copyright Directive remain potentially more relevant for copyright enforcement.

Thank you for your attention!

Elli Filippopoulou & Associates
Law Firm



Voulis 38, 10557, Athens-Greece
T. +30210-3214999
M. info@filippopoulou.gr

www.filippopoulou.gr

