



Digital Services Act: una oportunidad perdida y un paso atrás

Escribimos en nombre de una coalición de organizaciones que representan al sector cultural en Europa. Representamos a autores musicales, audiovisuales, literarios; artistas intérpretes o ejecutantes; editoriales de libros y productores de música grabada, cine y televisión, entre otros.

Estamos muy preocupados por la dirección que están tomando las discusiones sobre la Digital Services Act (DSA) tanto en el Parlamento Europeo como en el Consejo. En lugar de cumplir con el objetivo original de la DSA de establecer un marco de rendición de cuentas para las plataformas online y la creación de un entorno digital más seguro y confiable, algunos de los cambios propuestos actualmente por ambas instituciones tendrían el efecto contrario.

Si las propuestas, tal como están ahora, se aprueban, la DSA sería una oportunidad perdida y un paso atrás. Debilitaría el actual régimen de responsabilidad y tendría un impacto perjudicial sobre los estándares y buenas prácticas existentes para abordar los contenidos y actividades ilegales, incluidas las infracciones online de los derechos de autor y derechos afines.

Entre otros puntos de preocupación para nuestro sector, hay tres cuestiones específicas sobre las que nos gustaría llamar su atención:

- 1) El objetivo de aumentar la responsabilidad de los motores de búsqueda debe lograrse mediante la introducción de obligaciones efectivas de diligencia debida y no haciéndoles beneficiarios de una inmunidad amplia e injustificada ("puerto seguro"). Esto desactivaría algunas medidas y obligaciones nacionales vigentes en los motores de búsqueda para eliminar de manera efectiva el contenido ilegal. También iría en contra del compromiso político general de la Unión Europea de no modificar ni ampliar las limitaciones de responsabilidad en virtud de la Directiva de comercio electrónico.

También nos preocupan mucho las propuestas para establecer que los servicios de intermediación puedan seguir beneficiándose de los privilegios de "puerto seguro" incluso cuando no cumplan con sus obligaciones de debida diligencia. Debe ser justo al contrario: el comportamiento diligente es y debe seguir siendo un factor para evaluar la elegibilidad para "puertos seguros". Ofrecer los privilegios de "puerto seguro" a los operadores no diligentes eliminaría todos los incentivos reales para el cumplimiento de sus obligaciones en virtud de la DSA.

2) La introducción de límites de tiempo específicos (incluso como límites máximos) para la eliminación de contenido ilegal debilitaría sustancialmente la obligación actual de tomar medidas "rápidas", desincentivando de forma involuntaria que los servicios de alojamiento actúen como operadores diligentes. La DSA debe garantizar que "eliminación rápida" significa "lo más rápido posible" para todo el contenido e incluso "inmediatamente" en el caso del streaming y para el contenido que tiene una sensibilidad temporal particular. Cualquier indicación de límites de tiempo específicos sería una decisión corta de miras y haría obsoleta la DSA muy rápidamente a la luz de los continuos y rápidos desarrollos tecnológicos.

3) La falta de ambición para establecer obligaciones de diligencia debida verdaderamente eficaces no refleja el amplio alcance de la actividad ilegal que tiene lugar online. En particular, es absolutamente necesario ampliar el ámbito de aplicación de las obligaciones para garantizar la trazabilidad de los usuarios comerciales ("Know Your Business Customer") para abordar el grave problema de los operadores ilegales que actúan a escala comercial y se esconden detrás de identidades falsas. También deberían introducirse herramientas más eficaces cuando se trata de abordar a operadores deshonestos, infractores reincidentes y actividades ilegales sistemáticas. Debería establecerse un mecanismo para el cumplimiento de estas obligaciones que garantice que los consumidores de la UE tengan la menor exposición posible a contenidos, servicios y productos ilegales.

La DSA es una gran oportunidad para que Europa cree un entorno online seguro y que funcione bien y permita al sector cultural y creativo crecer en el mercado único digital de la Unión Europea. Es crucial aprovechar al máximo esta oportunidad para preparar la DSA para el futuro y garantizar altos estándares de diligencia y responsabilidad de los operadores online.

Le instamos a que tenga en cuenta nuestras preocupaciones y se asegure de que la DSA logre sus objetivos originales y no obstaculice el crecimiento de nuestro sector. Estamos listos para apoyarlo en este esfuerzo y seguimos disponibles para discutir esto con usted más a fondo.

Cordialmente,

26 de octubre de 2021

AEPO-ARTIS is a non-profit making organisation that represents 36 European performers' collective management organisations from 26 different countries. The number of performers, from the audio and audiovisual sector, represented by our 36 member organisations can be estimated at 650,000. AEPO-ARTIS's mission is to protect, strengthen and develop performers' rights and to advance their collective management. Thereby, AEPO-ARTIS aspires to ensure all performers benefit from the exploitation of all their performances and thus contribute to creativity and cultural diversity.

ANIMATION in EUROPE federates 17 Animation Producers Associations from 15 countries of the European Union to stand for the development of the animation industry in Europe and defend the interests of independent producers and distributors of series and films.

CEPI, the European Audiovisual production Association, is the voice of independent production in Europe since 1990. CEPI represents 19 national film and audiovisual Production associations from 17 European countries, as well as other organisations such as the Pan-European Association of Animation. CEPI role is to represent the interests of independent producers and foster a strong, independent film and television production sector.

CEPIC, the Center of the Picture Industry, federates 600 picture agencies and photo libraries in 20 countries across Europe, both within and outside the European Union. CEPIC's membership includes large and smaller stock photo libraries, major photo news agencies, art galleries and museums, video companies.

ECSA, the European Composer and Songwriter Alliance, represents 57 member organisations and over 30,000 professional composers and songwriters in 27 European countries. ECSA's core mission is to defend and promote the rights and interests of composers and songwriters with the aim of improving their social and economic conditions, as well as enhancing their artistic freedom.

EIBF is an umbrella organisation representing national booksellers' associations in the EU and beyond. Through its members, it speaks on behalf of more than 25,000 booksellers of all kinds, including brick and mortar retailers, chains and independent shops.

EUROCINEMA represents the interests of film and television producers to the European Union bodies concerning all the issues directly or indirectly affecting film production.

FEP, the Federation of European Publishers, represents 29 national books and learned journals publishers' associations of the European Union and the European Economic Area.

FERA, the Federation of European Screen Directors, was founded in 1980 and represents film and TV directors at European level, with 48 directors' associations as members from 35 countries. It represents more than 20,000 European screen directors, representing their cultural, creative and economic interests.

FIA, the International Federation of Actors represents performers' trade unions, guilds and professional associations in about 60 countries. In a connected world of content and entertainment, it stands for fair social, economic and moral rights for audiovisual performers working in all recorded media and live theatre.

FIAD, the International Federation of Film Distributors' and Publishers' Associations, represents national associations of film distribution companies. FIAD's members operate in 14 countries where they cover 90 to 100% of the theatrical market.

FIAPF is the International Federation of Film Producers' Associations. Its members are 36 film and TV producer organizations from 29 countries, including 15 in the EU/EEA. Their activities include the development and production of films and audiovisual content which are distributed offline and online via all forms of authorised and legal online distribution channels.

FIM, the International Federation of Musicians, founded in 1948, is the only organisation representing musicians' unions globally, with members in 65 countries covering all regions of the world. FIM is recognised as an NGO by diverse international authorities such as WIPO, the ILO, UNESCO, the European Commission, the European Parliament or the Council of Europe.

FSE, the Federation of Screenwriters in Europe, is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 27 members from 22 countries, representing more than 7,500 screenwriters in Europe.

GESAC, the European Grouping of Societies of Authors and Composers, comprises 32 authors' societies from across the European Union, Norway, and Switzerland. As such, it represents over one million creators and rights holders in the areas of musical, audio-visual, visual, and literary and dramatic works.

IAO, the International Artist Organisation, is the umbrella association for 10 National coalitions advocating for the rights and interests of the Featured Artists in the music industry. It was established to represent featured artists and lobby both for fair and balanced rights, and also for a fair share of all value stemming from the artists' works.

ICMP is the world trade association for music publishers and companies. It represents more than 90% of the world's published music. Its membership comprises 61 national associations, including each of the 27 EU Member States.

IFPI, the International Federation of the Phonographic Industry, is the organisation that promotes the interests of the international recording industry worldwide. IFPI's mission is to promote the value of recorded music, safeguard the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate.

IFTA is the global trade association for independent film and television production, finance, distribution, and sales companies. The organization represents the independent sector before governments and international bodies and provides significant entertainment industry services to more than 135 member companies from 23 countries.

IMPALA is the European association of independent music companies, representing over 5,000 music SMEs. Its mission is to grow the independent music sector sustainably, return more value to artists, promote diversity and entrepreneurship, improve political access, inspire change and increase access to finance.

IMPF is the global network for independent music publishers. It represents the interests of indie music publishers internationally, shares experiences and best practices, exchanges information on the copyright and legal framework in different territories and jurisdictions, and helps stimulate a more favourable environment for artistic, cultural and commercial diversity for songwriters, composers and publishers everywhere.

IVF, the International Video Federation. Its members are associations representing businesses active in all segments of the film and audiovisual sector in Europe. Their activities include the development, production, and distribution of films and audiovisual content as well as their publication on digital physical carriers and via all forms of authorised and legal online distribution channels (TVOD, SVOD, AVOD).

MPA, the Motion Picture Association, is the leading advocate of the film, television, and streaming industry around the world.

SROC, the Sports Rights Owners Coalition, is a forum of over 50 international and national sports bodies and competition organisers, with a particular focus on rights issues.

STM is the leading global trade association for academic and professional publishers. The membership is composed of over 140 organisations who are based globally and include academic and professional publishers, learned societies, university presses, start-ups and established players.