

SUMMARY: DIGITAL SERVICES ACT AND DIGITAL PLATFORMS

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Digital platforms have become an enormous part of our everyday lives. Nowadays, users are more empowered than ever to create and share their own content, exchange ideas, and stay connected across countries. Whether through social media, marketplaces, or search engines, these platforms have undoubtedly become part of how we interact with the rest of the world.

But what happens when the use of digital platforms implicates intellectual property (IP) issues? Consider a user uploading copyrighted material—like a popular movie or a song—to a platform like YouTube. Such actions, while sometimes done without harmful intention or for simple entertainment, can give rise to legal challenges over how intellectual property rights are protected in the digital age.

As part of its efforts to address these digital challenges, the EU Commission established the Digital Services Act (DSA) to govern online platforms. Under this Act, platforms are required to fulfill certain obligations to create a safer online space for consumers.

Some of these key provisions relate to strengthening of IP rights through transparency obligations and the prompt removal of infringing content. As a result of these obligations, the DSA has reshaped how IP rights are enforced online through stricter content-related duties for platforms and clearly defined user rights. We discuss some of these IP-related obligations below.

1.1 Types of platforms covered by the DSA

The DSA covers all digital service platforms operating in the EU. This includes social media platforms, e-commerce sites, and content-sharing platforms, regardless of size.

Special rules apply to **Very Large Online Platforms (VLOPs)** (ex. Facebook and Amazon) and **Very Large Online Search Engines (VLOSEs)** (ex. Google Search and Bing) due to their reach. [A list of designated VLOPs and VLOSEs can be found on the EC website.](#)

1.2 Obligations of online platforms for IP enforcement

Digital platforms are generally subject to content moderation and transparency obligations, such as:

- **Illegal content removal:** Platforms are obligated to act swiftly to remove illegal content once notified, such as copyright infringing content or counterfeit goods. (Article 16) They must also implement measures to prevent the reappearance of previously removed infringing content. (Article 20)

- **Transparency obligations:** Platforms' terms and conditions must clearly state how they handle content moderation relating to IP infringement claims. In addition, they must provide transparency about their policies and practices for IP rights enforcement. (Article 42)
- **Notice and Takedown actions:** Platforms must provide users with tools to report illegal content and ensure these are user-friendly. (Article 16)

These provisions provide for stronger IP rights protection by ensuring that platforms respond quickly to infringement reports and take preventative action.

Failure to comply can result in fines of up to 6% of a platform's global annual turnover, depending on the applicable Member State's laws (Article 52).

1.3 Obligations in case of IP-infringing content

While platforms are not required to monitor all content proactively, they must remove infringing content promptly upon notification under Articles 8 and 16.

Additionally, platforms must provide mechanisms for users to report such content easily, such as an in-site reporting form. Examples of this can be found in YouTube's reporting button and Facebook's copyright and trademark infringement reporting form.

Trusted flaggers, which are typically IP enforcement bodies or industry groups, are given priority in these content removal processes under Article 19. This ensures more efficient enforcement and reduces the time that infringing content remains accessible.

Platforms must also mitigate risks related to harmful or illegal activities and prevent previously removed content from reappearing. This may include the blocking of repeated uploads of identical counterfeit goods or copyright infringing files.

Moreover, users posting or selling goods on digital platforms are required to comply with stricter verification requirements. In this regard, platforms must collect and verify the business details of traders to ensure traceability (Article 30). This reduces the risk of anonymous sellers distributing counterfeit or unauthorized products online.

1.3 User's rights in case of content removal

Users have the right to transparency regarding content moderation decisions and can appeal if their content is removed unfairly. On the other hand, platforms are required to clearly inform users of the reasoning behind their decision as part of their transparency efforts. (Article 17)

This means that if a platform removes or restricts user-uploaded content for any reason, the user can challenge the removal under Article 20 if they believe it is unfounded. This should be done

through an internal complaint-handling system that enables users to lodge complaints against content moderation decisions. To further facilitate the prompt resolution of these cases, affected users and rights holders can also seek redress through out-of-court dispute settlement bodies under Article 21.

1.4 Special obligations for Very Large Online Platforms (VLOPS)

VLOPS and VLOSEs are subject to additional responsibilities considering their extensive userbase. To counteract large-scale IP infringement on these platforms, the DSA imposes stricter oversight measures such as risk assessment obligations and independent auditing.

Transparency is a major requirement for these large platforms. VLOPs and VLOSEs must disclose details on how they moderate content, remove infringing material, and handle disputes in publicly available transparency reports (Article 42). These reports provide systematic accountability and help assess the effectiveness of anti-infringement strategies. Article 37 also ensures that VLOPs and VLOSEs are subject to independent auditing regarding their obligations under the DSA.

Lastly, under Articles 34 and 35, VLOPs and VLOSEs must conduct risk assessments to evaluate systemic risks related to IP infringement and the exercise of fundamental rights. To enhance enforcement, they are required to establish internal compliance functions and cooperate with regulatory authorities such as by providing access to relevant data and periodic reports on IP infringement.