

Brussels, 29 September 2021

Time limits for dealing with notices in the Digital Services Act (DSA): a lose-lose proposal that is not future-proof

We write to you as a broad coalition of stakeholders who regularly notify intermediaries of illegal content on their services.

We are very concerned about the potential inclusion of specific time limits for assessing notices and removing or disabling access to illegal content.

The E-Commerce Directive and Article 5 of the DSA proposal clearly states that, in order to benefit from the exemption from liability for hosting services, providers should, upon obtaining actual knowledge or awareness of illegal content, act expeditiously to remove or to disable access to that content.

What constitutes “expeditiously” is a case-by-case assessment and should remain so. As concluded in the Commission’s Impact Assessment, national courts ultimately interpret “expeditiously” on a case-by-case basis taking into account a number of factors including the complexity of the notice, its specific subject matter, the content provider and the notifier.

A big step backwards

This implies that “expeditious removal” means as fast as possible under the given circumstances and thus sometimes even immediately (e.g., during live broadcasts and with content that is particularly time-sensitive), while taking into account the legitimate interests of the content provider. This is confirmed by current practice. Many hosting services will remove or disable access to illegal content within seconds, or minutes, depending on these tailored parameters. Specific time limits (*however well-intended, we see proposals in both Council and EP ranging from 24 hours to 7 days*) will therefore fail to take into account the manner in which illegal content spreads online, which can happen virally at explosive speed, causing immediate, substantial and irreversible damage.

Arbitrary and not future-proof

The proposed time limits (24 hours to 7 days) appear to be arbitrary and are not substantiated by any impact assessment looking at what is currently possible and is often common practice – let alone what will be possible in the future. They also do not take into account the wide variety of illegal content online and the wide variety of notifiers and content providers.

Most strikingly, some time limits are manifestly not future-proof. Technology is rapidly evolving and time limits that may seem appropriate in 2021 might even already be obsolete by the time the DSA enters into force.

Retaining the current requirement to “act expeditiously” is therefore a much more effective approach, which better fits the horizontal and long-term nature of the DSA.

Signatories:

Association of Commercial Television & Video on Demand Services in Europe (ACT)

Association de Lutte Contre La Piraterie Audiovisuelle (ALPA)

Aktionskreis gegen Produkt- und Markenpiraterie e. V. (APM)

Associazione Nazionale Industrie Cinematografiche Audiovisive Multimediali (ANICA)

Alliance for Safe Online Pharmacy (ASOP EU)

BREIN

Centre of the Picture Industry (CEPIC)

Comité Colbert

Copyright Information and Anti-Piracy Centre (TTVK)

Eurocinema

European Audiovisual Production (CEPI)

European and International Booksellers Federation (EIBF)

European Brands Association (AIM)

European Publishers Council (EPC)

European VOD Coalition

Fédération Internationale des Associations de Producteurs de Films (FIAPF)

Federación de Distribuidores Cinematográficos (FEDICINE)

Federation of European Publishers (FEP-FEE)

Federation of the European Sporting Goods Industry (FESI)

Federazione per la Tutela dei Contenuti Audiovisivi e Multimediali (FAPAV)

International Association of Scientific, Technical and Medical Publishers (STM)

International Confederation of Music Publishers (ICMP)

Independent Music Companies Association (IMPALA)

INDICAM

Interactive Software Federation of Europe (ISFE)

International Federation of Film Distributors' and Publishers' Associations (FIAD)

International Federation of the Phonographic Industry (IFPI)

International Video Federation (IVF)

Motion Picture Association (MPA)

Philips Intellectual Property & Standards

Rattighetsalliansen (Sweden)

RELX (UK)

Spitzenorganisation der Filmwirtschaft e.V. (SPIO)

Signify

Sports Rights Owners Coalition (SROC)

Swedish Anti-Counterfeiting Group (SACG)

The Danish Rights Alliance (Rettigheds Alliancen)

Together Against Counterfeiting Alliance (TAC)

Toy Industries of Europe (TIE)

Union Internationale des Cinémas (UNIC)

UNI Global Union – media, entertainment & arts (UNI MEI)

Union des Fabricants (UNIFAB)

Univideo

Verein für Anti-Piraterie der Film- und Videobranche (VAP)

