Digital Services Act

New instruments in the EU to combat online IP infringements

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Digital Services Act – General & relevance for IP

Digital Service Act (Regulation (EU) 2022/2065) in a nutshell

- **Fully in force 17.2.2024, new obligations for online platforms:**
  - upgrading of the **eCommerce Directive** 2000 (liability exemption)
  - protecting the **EU values and fundamental rights**
  - complementing **EU IP legislation** (e.g. IP Enforcement Directive)

- **Single set of rules** directly applicable in 27 EU Member States

- Applies in principle to **all online intermediaries** in the EU (see next slide)

- Concept of “illegal content” covers **infringements of all IP rights**

- **Regulation “with teeth”**: investigative and sanction powers for national authorities (Digital Service Coordinators) and European Commission

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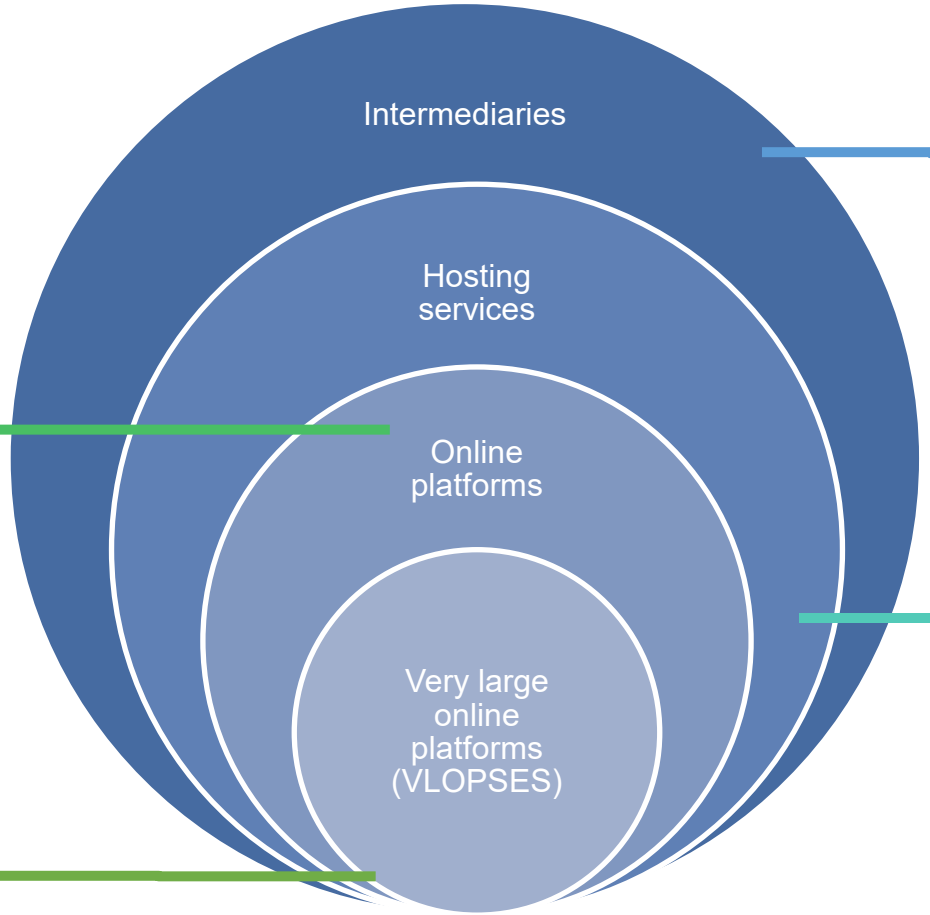
DIGITAL SERVICES PROVIDERS IN SCOPE OF THE DSA – TECH & BUSINESS FUNTIONALITIES

Online marketplaces, app stores, collaborative economy platforms social networks…

Online platforms and search engines with over 45 million users in the EU



Internet access providers, domain name registries…

Cloud services, webhosting…

	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Transparency reporting	●	●	●	●
T&Cs	●	●	●	●
Cooperation with national authorities	●	●	●	●
Points of contact & legal representatives	●	●	●	●
N&A	●	●	●	
Reporting criminal offences	●	●	●	
Complaint & redress mechanisms, OOC dispute settlement	●	●		
Trusted flaggers	●	●		
Prohibition of Dark Patterns	●	●		
Measures against abusive notices	●	●		
Special obligations for marketplaces (e.g. KYBC, random checks)	●	●		
Bans on targeted ads to children and based on special categories of personal data	●	●		
Accessibility	●	●		
Transparency of recommender systems	●	●		
Advertising transparency	●	●		
Risk management	●			
Independent audits	●			
User can opt out of profiling	●			
Data sharing with authorities & researchers	●			
Codes of conduct	●			
Crisis response cooperation	●			

Different sets of obligations depending on the services:

- **Technical nature (mere conduit, caching, hosting)**
- **Business model (ads, e-commerce)**
- **Scale (VLOPs & VLOSEs)**

N&A procedures

Trusted flagger status

Redress mechanisms for notice providers

Repeat infringer policy

General rules on **transparency**

KYBC obligations

European Commission

Due diligence obligations for VLOPSEs (big platforms)

	VLOPSEs
Risk assessment (Art.34)	✓
Mitigation of risks (Art. 35)	✓
Crisis response mechanism (Art. 36)	✓
Independent audit (Art. 37)	✓
Recommender systems (Art. 38)	✓
Additional online advertising transparency (Art. 39)	✓
Data access and scrutiny (Art. 40)	✓
Compliance function (officer) (Art. 41)	✓
Transparency reporting (Art. 42)	✓

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Supervisory and sanction powers DSA – Framework for cooperation

- **European Commission – VLOPSEs (big platforms)**
  - Monitoring and enforcement of obligations VLOPSEs
  - If suspicion of infringement: may open procedure and use investigative powers
  - May impose interim measures, fines (up to 6% of global annual turnover) or periodic penalty payments
  - In exceptional circumstances: temporary suspension of the online service

- **National level: Digital Services Coordinators (DSCs)**
  - Supervise and enforce compliance of non-VLOPSES platforms in their Member States

- **European Board for Digital Services**
  - Independent advisory group composed of DSCs
  - Monitoring consistent application of the DSA
  - Set up working groups to discuss, for instance, specific IP issues

Commission's main supervision & enforcement activities under the DSA: state of play

Opening of DSA compliance investigations

- 100+ requests for information (RFIs) since October 2023
- RFIs related to risk assessments & mitigation measures for risks linked to illegal content & disinformation, consumer & minor protection, generative AI, etc.

Current assessment exercise to determine VLOPSEs' compliance with DSA obligations

- Risk assessment reports
- Transparency reports
- Audit reports
- Replies to requests for information
- Information received from third parties

Opening of formal proceedings & follow-up

- against X in December 2023
- against TikTok in February 2024, April 2024 & December 2024
- against AliExpress in March 2024
- against Meta (Facebook & Instagram) in April 2024 & May 2024
- against Temu in October 2024, non-compliance decision of 28 May 2026

EUIPO Observatory and DSA

Working arrangement EUIPO – European Commission 2026-2030

EUIPO Observatory goals

Build trust and respect for IP

Support EU policies

01 Goal

-

Facts & evidence

02 Goal

-

Tools & resources for enforcement

03 Goal

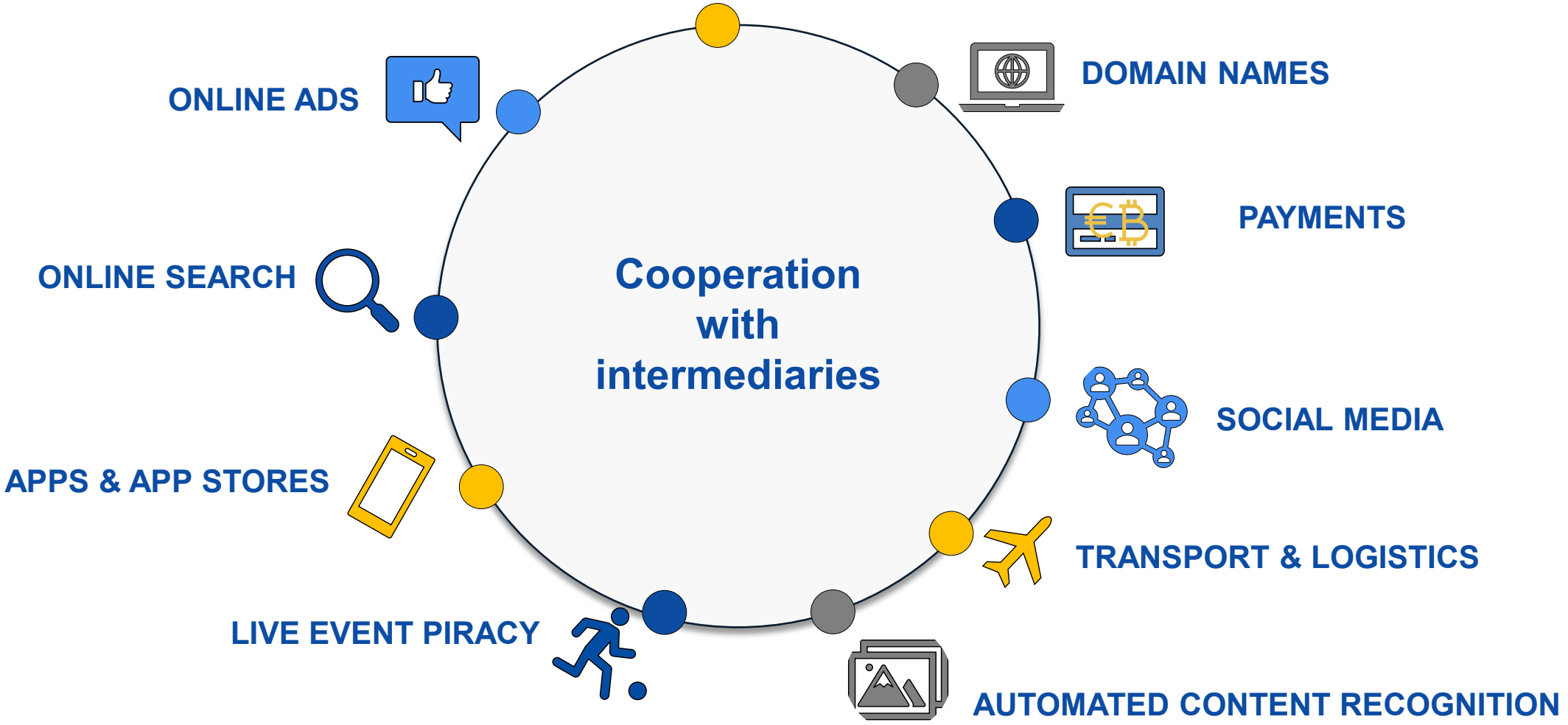
-

Awareness

Strengthening the network

International cooperation

EUIPO Observatory *discussion papers*
2021-2026



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EUIPO activities specific to VLOPSEs (big platforms)

Expert support to the Commission on IP-related matters linked to the activities of VLOPSEs

Dedicated trainings and capacity building for the DSA Board and the Commissions DSA enforcement team

Dedicated meetings, workshops and conferences related to activities carried out by the Commission under the DSA

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EUIPO activities non-specific to VLOPSEs (big platforms)

Guidelines and templates for public authorities to use new orders under the DSA. List of online intermediaries. Points of Contact. Analysis of reports from trusted flaggers.

Repositories on existing practices by online intermediaries to prevent misuse of their services.

Yearly conference with online intermediaries and relevant stakeholders to exchange on practices and measures that support IP enforcement.

Concluding remarks

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