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DIGITAL SERVICES ACT (DSA): NEW INSTRUMENTS IN THE EUROPEAN UNION FOR COMBATING ONLINE IP INFRINGEMENTS

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ABSTRACT

The digital transformation has revolutionized how goods and content are distributed, creating unprecedented convenience for consumers and opportunities for innovation. However, it has also enabled a surge in online counterfeiting and piracy. For decades, the growing frequency of intellectual property rights (IPRs) infringements has exposed rights holders, consumers and the general public to severe economic, health and safety risks. Online platforms can play a key role in protecting IP and consumers. In the European Union (EU), the Digital Services Act (DSA) of 2022 regulates digital intermediary services and aims to tackle illegal content. It aims to create a safer, more transparent and accountable online environment. For rights holders across the EU, the DSA is a powerful, game-changing new tool. Its potential to act as a "game changer" in the fight against online IP abuses is, however, still largely unknown in the IP world. This contribution sets out the main changes introduced under the DSA in terms of IP protection and reports on the first actions taken to combat online counterfeiting and piracy under the new legal regime.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

I. BACKGROUND

1. In the European Union (EU), the e-Commerce Directive,¹ adopted in 2000, has been the main legal framework for the provision of digital services within the EU Digital Single Market, with an EU-wide liability exemption framework for online platforms. The Digital Services Act (DSA),² adopted in October 2022 and fully applicable to all online intermediaries since February 17, 2024, upgrades and expands the original framework.

2. To understand the DSA in the context of intellectual property (IP) protection, the following basics are important:

- The DSA adds new obligations for online platforms. It complements more sectoral EU IP legislation, such as the IP Enforcement Directive (IPRED)³ and EU copyright law.⁴ It also complements soft-law measures at the EU level, in particular the European Commission recommendations on live event piracy⁵ (2023) and anti-counterfeiting (2024).⁶
- The DSA replaces national laws with a single set of rules that are directly applicable in the 27 EU Member States. The legal act (EU Regulation) does not require domestic implementing legislation, and national judges must apply the relevant substantive DSA rules directly as a part of domestic law.⁷
- The DSA covers, in principle, all online intermediaries in the EU (“intermediary service providers”). The scope includes a wide spectrum of digital players such as internet access providers, domain name registrars, cloud and web hosting services, online marketplaces including app stores, social media networks, search engines and content-sharing platforms.
- The obligations of different online players match their role, seize and impact in the online ecosystem. The DSA rules apply depending on the qualification of the service

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”), OJ 2000, L 178, p. 1.

² Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ, L277, p. 1.

³ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004, p. 45.

⁴ See, in particular, Directive (EU) 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Copyright Information Society Directive), OJ L 167, p. 10 and Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 9. For a detailed overview of EU copyright law, see European Commission (2023), EU copyright law. Available at <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>.

⁵ Commission Recommendation (EU) 2023/2853 of 4 May 2023 on combating online piracy of sports and other live events (OJ L 136, pp. 83–94). See Harrie Temmink, Combating Online Piracy of Sports and Other Live Events in the European Union (WIPO/ACE/16/12, pp. 8-16).

⁶ Commission Recommendation (EU) 2024/915 of 19 March 2024 on measures to combat counterfeiting and enhance the enforcement of intellectual property rights, OJ L series of 26.3.2026, p. 1. See also Virginie Fossoul, Mette Korsholm and Laszlo Vass, Soft Law Mechanisms as a Means to Enhance IP Enforcement Policies – Sharing of Practices from the European Union (WIPO/ACE/18/16).

⁷ Article 288 of the Treaty on the Functioning of the European Union.

or the online intermediary, and on the size of the online platforms based on their number of users⁸. Small platforms are exempted from some rules. On the other hand, the biggest online platforms with major impact have strict additional obligations (see below, II-B). These are the so-called very large online platforms and search engines (VLOPs and VLOSEs, or "VLOPSES") with over 45 million active monthly users in the EU.⁹

- The DSA does not explicitly mention IP infringements¹⁰. It refers rather to "illegal content", which is defined in other EU and national law, and covers infringements of all IPRs protected at the EU and national levels.¹¹

II. COMBATTING ILLEGAL CONTENT

3. This section provides an overview of DSA measures to promote content moderation and the protection of IPRs.

A. GENERAL OBLIGATIONS FOR ONLINE PLATFORMS

- The DSA obliges all online intermediaries to have a single point of contact for authorities and users (including rights holders and consumers), such as email addresses, instant messages or chatbots. Such contact must be quick and direct and cannot solely rely on automated tools, making it easier for users to reach platforms if they wish to make a complaint¹².
- It also obliges online intermediaries active in the EU market but established outside the EU to have a legal representative in one of the Member States¹³.
- Where users choose to have decisions reviewed, that procedure must be handled free of charge via the platform's internal complaints system. Users are also entitled to turn to a certified out-of-court dispute settlement body¹⁴.

B. LIABILITY AND NOTICE-AND-ACTION MECHANISMS

4. The DSA keeps the conditional liability exemptions for online intermediaries from the e-Commerce Directive. Providers of mere conduit, caching and hosting services cannot be held liable for the illegal information they transmit or store, provided that certain conditions are met. For instance, hosting providers storing information at the request of a user (e.g., e-commerce platforms, web/cloud storage services, video-sharing services, and social media)

⁸ See Articles 19 and 33 of the DSA in particular.

⁹ The VLOPSES platforms include the designated services AliExpress, Amazon Store, Apple Store, Google (Search, Play, Maps, Shopping, YouTube), Shein, LinkedIn, Facebook, Instagram, Bing, Pinterest, Snapchat, TikTok, X, Temu, WhatsApp, Zalando. For a full overview, see <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>.

¹⁰ Some recitals do. See, for instance, recital 12 which refers to "the sale of counterfeit products" and "the non-authorised use of copyright protected material".

¹¹ Other examples are non-compliant products, unlawful discrimination, terrorist content, child sexual abuse material and illegal hate speech.

¹² See Articles 11 and 12 of the DSA.

¹³ See Article 13 of the DSA.

¹⁴ See Article 21 of the DSA.

cannot be held liable if they take expeditious action against IP infringements as soon as they become aware of them (when they receive “actual knowledge”).

5. One way to establish actual knowledge is when rights holders or their representatives inform the platforms about IP violations.

6. To that end, hosting providers, including online platforms, must put in place notice-and-action mechanisms.¹⁵ They must allow users such as IP rights holders to report the presence of alleged IP infringements to the hosting service. The novelty here is that the DSA codifies and harmonizes the notice-and-action mechanisms, balancing the fundamental rights of the rights holders with those of the platforms. The following conditions apply:

- Easy and user-friendly reporting: platforms must provide accessible electronic tools to flag illegal content.
- Notice requirement: a valid notice for an alleged IP infringement must include a precise explanation of the location and details of the illegal content.
- Trusted flaggers: providers of online platforms are required to handle the notices submitted by trusted flaggers with priority.¹⁶ The “trusted flagger” status that must be awarded by national authorities is based on specific criteria. Some Member States (including Estonia, Finland, France, Greece, Italy and the Kingdom of the Netherlands) have already given such status to IP associations.¹⁷
- Statement of reasons:¹⁸ platforms must give affected parties a statement of reasons when removing or restricting their content. Affected users should be able to challenge the content removal through an internal complaint-handling system. These statements of reasons should also be reported to the DSA Transparency Database.¹⁹
- Complaint handling:²⁰ online platforms should ensure that complaints against decisions following notices are handled under the supervision of qualified staff, and that the matter is handled in a timely, non-discriminatory manner.
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7. Hosting providers must inform the competent national or judicial authorities if they become aware of suspicions of certain criminal offences that threaten the life or safety of persons. This can include suspicions of dangerous IP infringing goods.

C. ONLINE PLATFORMS AND THEIR RESELLERS

8. The DSA contains further targeted obligations for online platforms in business-to-consumer (B2C) relationships. They include:

- “Know your business customer” (KYBC):²¹ a major hurdle in enforcing IPRs has regularly been the inability of rights holders to identify the seller behind a “shadow”

¹⁵ See in particular Article 16 of the DSA.

¹⁶ Article 22 and recital 61 of the DSA.

¹⁷ For a full list, see <https://digital-strategy.ec.europa.eu/en/policies/trusted-flaggers-under-dsa>

¹⁸ Article 17 of the DSA.

¹⁹ See <https://transparency.dsa.ec.europa.eu/> – with a specific search option for IP infringements.

²⁰ Article 20 of the DSA.

²¹ Article 32 and recital 72 (with a specific reference to IP) of the DSA.

profile. The DSA obliges online marketplaces to collect and verify essential information about third-party traders using their services to offer goods, including name, address, contact details and bank account information. Where sellers fail to provide complete information, the platform must suspend their service.

- Repeat infringers:²² online platforms must suspend users who misuse their services by frequently providing manifestly illegal content, including frequent IP infringements.
- Compliance by design:²³ online platforms are required to make “reasonable efforts” to randomly check whether products or services offered on their platform have been identified as illegal in official online databases. This encourages the platforms to detect counterfeits and pirated content before they are reported²⁴.
- Consumer information:²⁵ if a product is found to be illegal, including a counterfeit, the online platform must inform consumers who purchased it, ensuring that they are aware of the product’s illegal nature and providing them with information on means of redress.
- Recommender systems:²⁶ these automated systems facilitate and optimize access to information for consumers that may, for instance, prioritize counterfeits or pirated content. The DSA contains transparency rules on recommender systems used by online platforms and VLOSES.
- Advertising:²⁷ online platforms have a transparency obligation on the origin of the advertising and the parameters used to determine the recipient of the advertising. VLOSES should also have a publicly available repository on advertising information for the purposes of supervision and research.
- Dark patterns:²⁸ the DSA bans the use of so-called dark patterns by online platforms. Dark patterns are meant to manipulate users to make unintentional, harmful decisions. Online platforms must design their services in a way that does not deceive, manipulate or otherwise materially distort the ability of users to make free and informed decisions. This can have an impact on the misuse of IP (misleading use of logos, brand names or layouts to create false associations, unauthorized use of copyright images or content to deceive users e.g. in fake comparison websites, etc.).
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D. VERY LARGE ONLINE PLATFORMS AND SEARCH ENGINES (“VLOSES”)

9. Very large online platforms and very large online search engines have additional “due diligence” obligations to ensure that their services do not pose an unacceptable risk of harm to society. Requirements include:

²² Article 23 of the DSA.

²³ Article 31 of the DSA.

²⁴ However, the DSA provides that no general monitoring obligation to seek illegal activities can be imposed on providers of intermediary services. See Article 8 of the DSA.

²⁵ Article 32 of the DSA

²⁶ Article 27 of the DSA. For VLOSES, see also Article 38.

²⁷ Article 26 of the DSA.

²⁸ Article 25 and recital 67 of the DSA.

- Proactive risk management: the very large platforms and search engines must identify and analyze widespread risks stemming from the design or functioning of their services.²⁹ Risks include the spreading of illegal content such as IP infringements. VLOPSES are also required to mitigate systemic risks linked to their services with concrete measures. Potential measures include adapting the features or their services, adapting terms and conditions and their enforcement, adapting the algorithmic system including their recommender systems, adapting the advertising systems, reinforcing internal resources, adjusting cooperation with other online platforms, and more.³⁰
- Transparency reports:³¹ VLOPSES are required to issue regular public reports on content moderation (see II-B) and risk management.
- Independent audits:³² VLOPSES must also be subject to annual independent audits to assess compliance with DSA obligations.

10. For major platforms, these important new commitments extend their responsibilities from putting in place a traditional “reactive” model on repairing the harm of IP violations, to a “proactive” risk-based approach based on prevention. It is in line with developing practices of major platforms to use AI-driven automated systems that continuously scan for alleged IP infringements, based notably on information from authorities, right holders and public sources. Some online platforms claim that proactive controls block more than 99 per cent of suspected infringing listings before right holders ever had to find and report them.

11. The new transparency requirements imposed by the DSA also create new ways of monitoring the activities of the VLOPSES. Major platforms are obliged, for instance, to provide data access to vetted researchers.³³

III. GOVERNANCE

A. SUPERVISION AND SANCTIONS

12. To ensure efficient enforcement, the DSA provides a framework for cooperation between the EU and national authorities and a full set of investigative and sanctioning measures to ensure that platforms and other intermediaries meet their obligations.³⁴

13. At national level, Digital Services Coordinators (DSCs) supervise and enforce compliance of non-VLOPSES platforms with the DSA in their Member States.

14. The European Commission is primarily responsible for monitoring and enforcement of the obligations applying to VLOPSES. If the Commission suspects an infringement of the DSA rules, it may open a proceeding and use its investigative powers to request information, order access to VLOPSES’ data and algorithms, conduct inspections, and so on. This can

²⁹ Article 34 of the DSA.

³⁰ Article 35 of the DSA.

³¹ Article 42 of the DSA.

³² Article 37 of the DSA.

³³ Article 40 of the DSA.

³⁴ See Chapter IV of the DSA (Implementation, Cooperation, Penalties and Enforcement).

lead to a decision imposing interim measures, fines (up to 6 per cent of the intermediary's global annual turnover) or periodic penalty payments. In exceptional circumstances involving criminal offences and threats to public health, the Commission can request the DSC of the country of establishment to seek the temporary suspension of the online service.

15. The European Board for Digital Services (Board), an independent advisory group composed of the DSCs and chaired by the European Commission, has been established to monitor consistent application of the DSA. The Board has set up working groups on specific aspects of the Act. Two of them (on "content moderation and data access" and "consumers and online marketplaces") are particularly relevant for IP-related issues. In November 2025, the Board held its first in-depth discussion on IP in the context of the enforcement of the Act.³⁵

B. EUROPEAN COMMISSION PARTNERSHIP WITH THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

16. The European Commission has partnered with the European Union Intellectual Property Office (EUIPO) to strengthen IP enforcement under the Act. A five-year working arrangement came into force on April 1, 2026.³⁶

17. EUIPO, through its European Observatory on Infringements of Intellectual Property Rights, has already gained expertise in identifying IP abuses online and reporting on "good practices" to combat digital IP infringements. In the context of its Expert Group "Cooperation with Intermediaries, it has prepared discussion papers on topics such as online advertising, apps and app stores, payments services, transport and logistics, social media, live event piracy and domain name abuses.³⁷

18. EUIPO will now provide technical support and expertise in IP-related matters to help address IP rights infringements online under the DSA. A key part of the EUIPO's work will be to assist the Commission's experts in the oversight of VLOPSES. In this context, the EUIPO will help analyze internal reports submitted by such platforms and thereby to assess how effectively they are tackling IP infringements. It will also organize training for national authorities responsible for enforcing the DSA and contribute to Board working group discussions on IP.

19. Under the agreement, EUIPO will help to build knowledge and expertise among judicial authorities, IP rights holders and smaller online intermediaries. Lastly, the EUIPO will develop a shared collection of best practices and tools to help online platforms to prevent the misuse of their services and ensure the reliability of traders' information.

20. Administrative decisions under the DSA will be under the exclusive responsibility of the European Commission and, where appropriate, the national authorities.

³⁵ See <https://digital-strategy.ec.europa.eu/en/news/press-statement-european-board-digital-services-following-its-16th-meeting>.

³⁶ See <https://www.euipo.europa.eu/es/news/the-euipo-and-the-european-commission-join-forces-to-fight-counterfeiting-and-piracy-online>.

³⁷ See, for instance, Antoine Aubert, Challenges and Good Practices to Prevent the use of Apps and Apps Stores for IP Infringement Activities by EUIPO (WIPO/ACE/17/12, pp. 1-6). For the full list of discussion papers, see <https://www.euipo.europa.eu/en/observatory/publications>.

IV. CONCLUSION

21. The DSA is an advanced regulatory framework that, among other objectives can support the protection of IP on online platforms and other online intermediaries. It is a unique mechanism with a mixture of requirements for repressive action, preventive and proactive measures, transparency rules, a comprehensive governance structure with close coordination between the EU and national authorities, and clear supervisory powers.

22. Since February 2024, the European Commission has opened investigations against specific major online platforms.³⁸ DSA enforcement has included actions to address deficiencies in the use of recommender systems, designs stimulating behavioral addiction, lack of transparency and dissemination of illegal content, including the sale of illegal products. They led certain online platforms to make concrete changes. There are several investigations still ongoing.

23. The practical implications of the DSA for IP protection in the EU will become more apparent in the next years when platforms, right holders and public authorities become better acquainted with its rules. The EUIPO stands ready to support the European Commission, the Member States and the private sector in the joined objective of tackling online infringements of IPRs.

[End of contribution]

³⁸ For an overview, see <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-slops>.