



30 June, 2020

CCIA's feedback on the European Commission's roadmap on the Digital Services Act aiming at deepening the internal market and clarifying responsibilities for digital services.

The Computer & Communications Industry Association (CCIA) welcomes this opportunity to provide comments.

Digital services are transforming Europe's economy and businesses across sectors, improving their competitiveness and facilitating their scale up across the Union. Equally, digital services empower European by enabling them to engage in commerce and express themselves online.

In accordance with the **EU 'better regulation' principles**, we encourage the European Commission to consult stakeholders, conduct robust impact assessments, and then act based on clear evidence. The EU has already adopted frameworks to deal with problematic content, goods or conduct online. Before adding another layer, and potentially creating confusion, we would urge legislators to evaluate their impact, assess potential gaps and propose proportionate responses.

The **e-Commerce Directive should remain a cornerstone of Europe's internet economy** and key provisions (limited liability regime, ban on general monitoring and the country-of-origin principle) must be kept intact to facilitate the functioning of the Single Market.

To be as effective as the e-Commerce Directive, the new Digital Services Act (DSA) should be a **horizontal, principle-based legislative initiative focused on the fight against illegal content, goods and conduct**. Complementary and targeted measures (legislative and non-legislative) tackling specific concerns could be considered in a second phase. It is essential to acknowledge, identify commonalities where possible and differentiate between the various types of intermediation services.

CCIA suggests treating **'illegal' and 'lawful but harmful' content under different instruments**. 'Lawful but harmful' content cannot be treated as 'illegal content' without risking infringement of important rights, such as freedom of expression and access to information. Harmful content is complicated to assess, as the definitions are vague and norms often vary considerably, even within EU Member States. A targeted regulatory approach adapted to the type of content will be more effective and limit the risk of unintended consequences.

In order to strengthen trust online, intermediaries should be incentivised to act responsibly in tackling illegal content, products or conduct. Digital services should have the opportunity to take **voluntary measures tackling problematic content, products or conduct without being penalised for their good faith efforts**. It is critical not to limit this approach to content moderation practices but unlock the opportunity to do more on the social and safety front.

CCIA supports the proportionate and targeted approach suggested by the European Commission. We wouldn't be opposed in principle to creating specific categories for different platforms, in order to prevent judicialization and decrease fragmentation between the Member States. However, we strongly **oppose defining a category of responsibility based on the size of market power**. The risk of such an approach could be to incentivise successful European players to stay small to avoid regulation. Another unintended consequence would be the migration of illegal content, goods or conduct to smaller, less regulated platforms and fragmentation. We strongly support the Commission's notion of removing "disincentives for their voluntary actions to address illegal content, goods or services they intermediate."



The tech industry would be open to discuss **transparency requirements for (automated) content moderation and recommender systems**. Many CCIA members already regularly publish transparency reports on their content moderation practices and outcomes. When calling for more transparency, it is important to aim for meaningful transparency pursuing a fair purpose. We do not want to overwhelm consumers, businesses or authorities. CCIA supports proportionate transparency requirements that strike a balance between the need for transparency, the protection against rogue players' attempts to game the system, and the protection of operators' trade secrets. Furthermore, any transparency and reporting obligation must adhere to existing EU legislation and fundamental rights. The alleged asymmetries in information, as mentioned in the inception impact assessment, should be assessed taking into account the EU data protection rules, the need for better enforcement of existing tools (GDPR) and the upcoming initiatives such as the data strategy.

The digital economy has improved the **advertising** experience. Thanks to ad-supported business models, consumers enjoy goods and services at a lower price, oftentimes at no cost. Thanks to investments in technology, consumers usually receive relevant advertising to them. Sometimes to provide a more personalised online experience, digital platforms use information that is drawn from users' profiles and/or online activities. This use of information does not necessarily have a negative impact on users' privacy provided that operators empower consumers by allowing them to control their personal data (right of access, erasure, rectification, and objection to the processing) and by implementing transparency measures. Following GDPR, platforms and intermediaries have undertaken efforts to address these concerns and better empower consumers by developing new privacy controls and practices. CCIA acknowledges policy-makers' interest in increasing online advertising transparency. We welcome this discussion on how to improve consumers' experience.

When it comes to the proposed '**know your customer scheme**', the verification process shouldn't be a barrier preventing access to digital services for small businesses. The European Commission should take note that digital service providers do not have any means to verify business users' information, unless all corporate registries are made electronic, uniform and have the capacity for high-frequency real-time information requests.

Enforcing existing rules is also essential. The tech industry would welcome **further cooperation with regional, national or European authorities**, based on the country-of-origin, on how to counteract unlawful or harmful content, fake or dangerous products, and bad conduct, while safeguarding users' fundamental rights and preserving the economic growth and opportunity that digital services have provided for Europe.

The DSA should be a horizontal principle-based legislative initiative, which could be complemented by targeted measures (legislative, non-legislative, and co-regulatory) tackling specific concerns. Obligations should be achievable and proportionate to known risks. This should also reflect the need for sufficient protections for users' rights of freedom to do business and freedom of speech, and to prevent over-blocking as the default response to obligations and any regulatory oversight. CCIA would be pleased to provide additional information and to meet with your services if useful.

Respectfully submitted,

Victoria de Posson

Senior Manager, Public Policy for CCIA