

European Commission public consultation on the Digital Services Act

Mozilla submission annex

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Introduction

Mozilla is the Corporation behind the Firefox web browser, the Pocket “read-it-later” application and other products and services that collectively are used by hundreds of millions of individuals around the world. Mozilla’s parent company is a not-for-profit Foundation that focuses on fuelling the movement for a healthy internet. Mozilla is also a global community of thousands of contributors and developers who work together to keep the internet open and accessible for all.

We support the European Commission’s policy objectives for the Digital Services Act. Our submission includes recommendations and insights that we believe will help ensure the upcoming legislative proposal can address issues in the platform economy while ensuring the digital sector can act as a key lever for Europe’s return to post-pandemic growth.

This annex complements our substantive filing, by outlining its key insights and policy recommendations.

Top line recommendations

- The DSA provides a crucial opportunity to implement an effective and rights-protective framework for content responsibility on the part of platforms.
- Content responsibility should be assessed in terms of platforms' trust & safety efforts and processes, and should scale depending on resources, business practices, and risk.
- To ensure transparency and to facilitate accountability, the DSA should consider a mandate for certain large platforms to disclose all advertising content and accompanying targeting parameters through publicly available ad archive APIs.
- The main principles of the E-Commerce directive remain fit for purpose, and the European Commission should resist the temptation to weaken the directive in the effort to increase content responsibility.
- The European Commission should consider how to best support healthy ecosystems with appropriate regulatory engagement that preserves the robust innovation we've seen to date -- while also allowing for future competitive innovation from small, medium and independent companies without the same power as today's major platforms.
- The advertising ecosystem is a key driver of the digital economy, including for companies like Mozilla. However the ecosystem today is unwell, and a crucial first step towards restoring it to health would be for the DSA to address its present opacity.
- Any new oversight bodies created by the DSA should be truly co-regulatory in nature, and be sufficiently resourced with technical, data science, and policy expertise.

Section I. - Online safety and platform responsibility

Our responses in this section outline our vision for effective content responsibility on the part of online content-sharing platforms. This vision is grounded in our conviction that the EU cannot repeat the mistakes of the past, whereby regulatory interventions aimed at enhancing responsibility on the part of platforms has engendered intolerable interference with individuals' fundamental rights and hastened commercial concentration in the platform economy.

In that context, our responses advance two novel policy proposals that we believe should be incorporated into the content responsibility element of the Digital Services Act - namely our procedural accountability framework and our bulk ad disclosure mandate.

Our **procedural accountability framework** argues that content responsibility should be assessed in terms of the Trust & Safety processes that platforms have in place to address illegal and harmful content on their services. Within a broad regulatory framework, platforms should be obliged to assess the various ways in which their services are at risk of illegal and harmful content, and to put in place commensurate Trust & Safety processes to address that risk. For instance, policy interventions could encourage enhancements to flagging systems or improvements to the means by which content is surfaced to users. This approach ensures interventions happen where they are likely to have the most impact in addressing and mitigating harm, but in a way that does not necessitate companies to aggressively interfere with their users' fundamental rights.

'Responsibility' should be defined in terms of principles whose application adjusts depending on the scale, risk-profile, or function of a service, rather than through one-size-fits-all rules. For example, an algorithmic recommender system that selects, amplifies, and micro-targets user-generated content should be subject to greater risk mitigation and trust & safety processes than a service that merely allows third-parties to share user-generated content.

We believe this is a fairer, more effective, and more rights-protective vision of content responsibility than approaches that increase liability and judge success in terms of arbitrary content takedown metrics.

Improved **ads transparency mechanisms** should be designed to ensure that regulators and the research community have the required insight to study, identify, and ultimately develop policy responses for how disinformation spreads via the online advertising ecosystem. Ads transparency mechanisms are a key prerequisite for proper accountability with respect to platforms' role in the problem of online disinformation.

The DSA should - as part of its broader focus on platform transparency - consider establishing a framework whereby platforms that operate advertising networks publicly disclose all advertisements on their platforms via ad archive APIs.

If pursued, this framework could:

- Apply to all advertising, so as and not to be constrained by any arbitrary or one-off boundary definitions of ‘political’ or ‘issue-based’ advertising;
- Consider disclosure obligations that concern advertisers’ targeting parameters for protected classes as well as aggregate audience demographics, where appropriate given privacy, security and business considerations;
- Disclose details via *publicly*-available APIs, such that access is not restricted to specific privileged stakeholders.

Broad ads disclosures would help address the informational asymmetry that exists between platforms on the one hand, and policymakers and researchers on the other. Good policy solutions depend on meaningful insight, and a bulk ad disclosure approach could enable future policy responses to disinformation that are evidence-based, responsive, and ultimately effective.

Section II - Intermediary liability

We believe that the main principles of the EU E-Commerce directive have stood the test of time and need not be reformed. We nonetheless encourage the Commission to use the Digital Services Act as an opportunity to clarify problematic concepts and interpretations of the E-Commerce directive that have emerged in recent years, particularly with respect to the ‘active-versus-passive’ distinction and the ‘no-general-monitoring’ provision.

As a matter of policy, the Commission should refrain from weakening the E-Commerce directive’s intermediary liability provisions in its endeavour to enhance content responsibility. This approach was pursued in the last EU mandate with disastrous consequences for fundamental rights and online competition, with little to show in terms of enhanced content responsibility. Instead, we encourage the Commission to pursue the approach we outline in our response to section I.II, whereby the DSA would be built around procedural accountability and transparency.

Section III - Market Power

Intermediary platforms in the digital ecosystem bring important consumer and commercial benefits in European markets, but also hold tremendous power. Many small, medium, and independent companies, including Mozilla, are vulnerable to ‘upstream’ actions at the platform level that can have an impact on ‘downstream’ innovation and consumer choice. We encourage the Commission’s efforts to gather insight into these

issues and its exploration of potential solutions to ensure that Europeans reap the benefits of contestable digital markets.

“Downstream” impact can occur where an upstream platform fails to adequately take into account the impact on small, medium, or independent players in an ecosystem, which could be the result of lack of awareness, lack of prioritisation of downstream players, or competing corporate interests not intending to cause competitive harm. This could also occur in situations where the platform has a product that competes directly, and undertakes intentional or unintentional actions that have negative consequences for new or smaller organisations’ ability to compete.

In these instances, consumers are often the ones who ultimately lose out - either because they lose the opportunity to try an alternative solution, or because the upstream decisions limit the ability of small or independent players to provide a competitive offering in the market and enable users to have a competitive choice for services.

We encourage the Commission to take these insights into consideration, and to ensure any Market Power initiative is underpinned by a solid evidence base; an appreciation of consumer interests and freedom of expression; and is responsive to the fast-paced nature of digital markets.

Section IV - Online advertising

Advertising is the predominant business model of the internet today, and it has contributed to the development of a range of quality products and services that many of us rely on. Yet the ecosystem underpinning these models and practices is unwell. Today the online advertising ecosystem is too often associated with pervasive cross-site tracking, ad fraud, and data leakage.

As a mission-driven tech company Mozilla is deeply invested in this debate. Like many other companies we benefit from advertising revenue, and we recognise that advertising-based business models are a necessary component of the open and sustainable web that we care about. Yet we’re equally committed to realising a web defined by privacy, security, and individual autonomy.

We believe the first step in addressing the complex problems in the advertising ecosystem is transparency. We need greater transparency into the online advertising value chain, the logic of ad placement, and the operation of the Real Time Bidding mechanism. In the longer-run, EU policy should incentivise a structural shift towards contextual advertising,

where a body of evidence points to the possibility of it posing less public interest risk while maintaining returns for advertisers and ad hosts. The DSA, in conjunction with the GDPR and other regulatory and market-based initiatives, can set the course for that structural shift.

Section VI - Single Market and enforcement

The legal certainty and harmonisation that defines the EU Single Market is key for companies like Mozilla to grow our business and offer credible market choice to European consumers. We encourage the Commission to remain diligent in ensuring regulatory harmonisation across the market, and the ability for smaller firms to operate in a predictable and workable regulatory environment.

Our response in section VI also provides recommendations on the structure of any new regulatory oversight under the DSA. As a primary consideration, regulatory bodies must be equipped with sufficient resources to reflect the breadth and complexity of their work, and they should be appropriately staffed with suitable expertise from engineering, legal, data science, and social science backgrounds, amongst others. With regard to the governance model for regulatory authorities, multi-stakeholderism is essential. Companies themselves are likely to be best placed to understand the technological and operational solutions that can bring about a meaningful reduction in the relevant illegal or harmful content on their services.

The governance model of regulatory authorities should acknowledge this reality, and ensure there are formal structures in place to allow meaningful co-regulation and dialogue between companies and the regulator. Moreover, the governance structure should ensure that civil society representatives are meaningfully included in the DSA's practical implementation. Civil society organisations should not merely be 'consulted' when the regulator develops policy or undertakes oversight actions. Rather, they should be integral to the process.

Finally, regulators should focus their oversight on companies' practices – the steps they are taking to address illegal and harmful content on their service. Regulators should not have a role in assessing the legality or harm of individual pieces of content, and should not be empowered to issue takedown notices to companies. Such a role calls into play a number of critical legal and constitutional considerations, and exposes a real and significant risk of rights abuses. As such, when assessing companies' efforts under the DSA, the regulator should focus exclusively on practices and efforts, not content.

We would like to close by commending the European Commission on the depth and rigour of its consultation process. We look forward to engaging in the next stages of the DSA policy development, and to capitalise on our shared interest in developing a modern regulatory framework. For further information on our consultation response and the positions expressed therein, please feel free to contact us at brussels@mozilla.com.