

ACM Consultation Version of DSA Guidelines

Feedback from Mozilla

We have reviewed ACM's January 18, 2024 Consultation Version of DSA Guidelines. We appreciate the work that has gone into reviewing the DSA language, and clarifying various rules and processes for providers of online services. That said, there remain a number of outstanding questions on which we need clarification, as well as some concerns about the draft guidelines themselves.

Our submission offers constructive suggestions for how the guidelines can be refined to increase clarity, and allow proportional and effective compliance by companies in the Netherlands. We would welcome the opportunity to discuss these comments in more detail and to clarify any of our questions and recommendations.

1. Summary

Mozilla is a mid-size company: large enough overall to be subject to DSA, but small enough so that most of its covered products are either experimental, or are staffed by no more than a dozen people. This raises particular challenges in scaled content moderation.

In light of those challenges, Mozilla's feedback is aimed at ensuring that companies with similarly limited resources can meet their obligations, while responding efficiently to problems on their platforms.

Mozilla therefore recommends a few key modifications of the ACM guidance. Specifically:

1. Clarifying (a) the incidental and ancillary services that are not subject to DSA requirements; and (b) the definition of "trader" in B2C marketplace regulations.
2. Refining the definition of "deceptive, high-volume commercial content" to show that the spam exception covers common disruptive activities beyond the use of bots, fake accounts, or definitively "deceptive" practices.
3. Illustrating what a Statement of Reasons should entail, and allowing flexibility in how users are notified about legal violations.
4. Ensuring that platforms are able to suspend users for serious Terms of Service violations as well as illegal activity, and modifying the warning requirement to allow platforms to remove users who commit serious abuses (such as sharing child sexual abuse materials) promptly and without impediment.

2. Recommendations

a. Covered products & activities

Many small and mid-size companies have secondary products or services that involve some degree of user-generated content, but which receive minimal internal resources and are ill-equipped to fully comply with the DSA. The guidelines acknowledge this in paragraph 29, noting that the DSA does not apply in cases where “[t]he possibility of posting comments, which are disseminated by the provider at the request of the writers, is only an incidental characteristic of the main service.” This possibility exists not only on news publishers’ websites, but also in customer support systems, user feedback platforms, and message boards that exist to allow discussion or facilitate use of a platform’s other products. While they are critical to user engagement and companies’ ability to develop their products, these platforms are, by definition, incidental, because they only exist as an accompaniment to other products (which may not be subject to the DSA). Such services are often only staffed by a handful of employees, and rarely involve the same level of moderation or types of content as those services that exist primarily to facilitate online discussion or debate. For example, Mozilla hosts a community forum at <https://connect.mozilla.org/>, where users can share ideas, feedback, and comments to help shape future Mozilla products. Similarly, Mozilla hosts a forum at <https://bugzilla.mozilla.org/home>, where users can share bugs or other problems that affect their use of the Firefox browser, and can request technical support from Mozilla or from other users. These fora are incidental to Mozilla’s other products, primarily the Firefox browser, because they exist only to accompany and support those products. ACM should clarify that exempt “incidental” activities go beyond user comments on a news platform, and extend to any secondary discussion platform that exists solely to facilitate the development or operation of a primary product or service not subject to the DSA.

The DSA imposes substantial additional requirements on providers of B2C Online Marketplaces, which it defines as “online marketplace[s] that offer[] consumers the possibility of concluding distance contracts with traders.” Paragraph 33 of the ACM guidance defines a “trader” as “any natural person or any legal entity [acting] in the exercise of their trade, business, craft, or professional activity.” This definition should be modified to clarify that it applies where such contracts involve financial remuneration. Simply enabling users to agree to exchange information, without direct financial benefit to one of the parties, is not sufficient to render one of those users a “trader” as anticipated by the DSA. The guidelines on B2C Online Marketplaces and “traceability of traders” should be modified to clarify that a “trader” is one who seeks or receives direct financial benefits from the exchange in question. Users who share open-source tooling, software, or other items through an online platform, but do not sell those items or receive financial compensation in the exchange, are not “traders” under the statute.

b. Spam

The DSA does not require a Statement of Reasons for actions related to deceptive, high-volume commercial content. Article 17(2) DSA. Paragraph 97 of the ACM guidance notes that this applies

where someone has intentionally manipulated the service through the use of bots, fake accounts, or deceptive practices. On public platforms, “dissemination” may be caused by a user simply sharing or publicly posting an item, which then appears on news feeds, home pages, or bulletin boards for numerous other users. While a platform may be able to determine that these items are likely to be unwanted by other users or disruptive to the platform, it may not be equipped to determine whether they are misleading or deceptive. It is also often very difficult, particularly for companies with limited resources, to determine whether an account is operated by a bot or is otherwise “fake.” These challenges make it hard to determine where the exception (as currently described) applies. Under the current ACM guidance, for example, it is not clear whether links to a third-party website offering weight loss supplements would be exempt from the Statement of Reasons requirement—even if those links were posted repeatedly.

Spam and inauthentic use are constantly evolving, and the flexibility to respond to new abuses and threats is critical. The exception exists to make it possible for platforms to better stem the tide of spam and unwanted content. In order to be effective, the exception must be allowed to adapt alongside the producers of that content. The guidance should therefore be revised to clarify that the reference to bots and fake accounts is not meant to further constrain the spam exemption, and to permit platforms to easily remove irrelevant, misleading, or non sequitur third-party content that is shared for commercial gain. ACM should also consider updating this portion of the guidance periodically, in consultation with platforms, to keep up with the ways that deceptive actors on the Internet are evolving.

c. Statements of reasons

Paragraph 93 of the ACM guidance indicates that when a moderation decision is based on information that violates a platform’s terms and conditions, the platform must state which contractual provision that information violates and why. However, paragraph 95 indicates that “[a] simple reference to the applicable legal provision or clause in your terms and conditions” is inadequate. The ACM should provide additional detail, or examples about what type of information and level of specificity is required. This will better facilitate compliance, increase uniformity from one platform to another, and allow the development of scalable notice processes. We would note, too, that while it may be feasible to provide detailed explanations of what specific categories of content are prohibited under a platform’s terms of service — and to specify which prohibitions apply in a given scenario — it is likely not feasible at scale to explain what specific elements of an item of content led a moderator to conclude that a policy was violated.

DSA Article 17(3)(d) and paragraph 93 of the ACM guidance indicate that a Statement of Reasons related to illegal content must indicate which legal provision was relied upon, and why the information is considered to be illegal. Requiring platforms to cite specific statutes for every Statement of Reasons regarding illegal content may prevent platforms from processing such cases in a timely manner. ACM should issue guidance clarifying that these statutes can be referenced generally (for example, noting that something violates “laws against the sexual exploitation of

minors”), rather than citing every specific legal provision that applies, in every relevant jurisdiction.

d. Suspensions

Paragraph 111 of the ACM guidance indicates that a platform can permanently suspend abusive users, but the distinction between “manifestly illegal content related to serious crimes” and other violations makes it unclear whether they can do so in all cases, or solely in cases of “serious” illegal content. Suspensions play an important role in enforcement in a range of cases, including those that do not involve serious illegality. Small platforms simply do not have the resources to address the same behaviors repeatedly, and serious harassment or other abuse by one user can have a significant effect on platform safety and on other users’ online experience, regardless of its legality. ACM should clarify that platforms can choose to issue permanent suspensions for serious violations of their Terms of Service, just as they can for serious criminal offenses, as long as they comply with the notice rules related to suspension. It should further clarify that the Article 17 exception for deceptive, high-volume commercial content applies not only to removal of specific content, but also to user suspensions.

Paragraph 109 of the ACM guidance indicates that before a platform can suspend a user, it must “in all cases” warn that user of the impending suspension, and explain the user’s options for redress. This is impracticable for two reasons. First, the guidelines do not indicate what intermediate steps are required between warning and suspension, so it is not clear how long a platform must delay before acting, or what steps are required beyond sending a notice (for example, what “redress” of a still-pending, potential action would entail). Regardless of what those specific steps are, any warning requirement will involve additional tracking, record-keeping, and follow-up in each potential suspension case, necessitating significant additional resources. Second, requiring advance warning before a platform can suspend users who commit serious offenses—such as the promotion of terrorism or the exchange of child sexual abuse materials—will slow platforms’ responses to serious offenses, increasing the presence of such materials on all platforms and hindering law enforcement. Assuming that a platform’s Terms of Service warn users of the possibility of suspension, platforms should not have to warn users a second time in all cases where they determine that a suspension is warranted. This is particularly true given that users can still appeal a suspension after the fact, and so have the opportunity to address true errors. The warning requirement should therefore be eliminated or replaced with a real-time notice requirement in certain, high-stakes cases.

About Mozilla

Mozilla is the non-profit-backed technology company that champions privacy, human dignity, and an open internet. Our mission is to ensure the internet is a global public resource, open and accessible to all. Founded as a community open source project in 1998, Mozilla currently consists of the Mozilla Foundation, which leads our movement building work; and its wholly owned

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subsidiary, the Mozilla Corporation, which leads our consumer product based work (including several products which will be subject to DSA, such as the [Mozilla Add-On Marketplace](#), and [Mozilla.social](#)). Other entities include [Mozilla Ventures](#) (a tech-for-good investment fund); [Mozilla.ai](#) (an AI R&D lab); and MZLA.