DSA discussions w/ Google

Categorisation of intermediary services
Video conference best practices

All perspectives welcome

Ensure everyone is heard

Feel free to ask questions... and we’ll be sticking around afterwards!
Agenda

1. Intermediary service categories under the DSA
2. Cloud services and the DSA
3. Search engines and the DSA
4. Online marketplaces and the DSA
5. Q&A
Intermediary service categories under the DSA
Hosting services vs. online platforms

- Is an online platform under the DSA the same as a hosting service that disseminates to the public under the Terrorist Content Online Regulation?

- Could different service features or functionalities fall under different DSA categories?

- What types of “features” does the caveat under Article 2(h) purport to capture?

- How should the 45 million average monthly active recipients of the service be calculated?

Article 2(f) DSA: a hosting service “consists of the storage of information provided by, and at the request of, a recipient of the service”.

Article 2(h) DSA: online platform means “a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information, unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service, and the integration of the feature into the other service is not a means to circumvent the applicability of this Regulation”.

Article 25 DSA: online platforms which provide their services “to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million”.

Google
Cloud computing technology

- **SaaS**
- **PaaS**
- **IaaS**
Cloud and content moderation constraints

- Regulatory requirements
- Contractual obligations
- Technical limitations
Cloud and the DSA

Cloud services do not operate as traditional UGC-sharing platforms or social networks
- No discoverability
- No recommendations

A “hosting services” classification is more appropriate for cloud services that host content
- Public dissemination functionalities as minor and ancillary

The DSA should ensure legal clarity
- Knock-on effects on innovation
- Possibility for significant sanctions
- Building trust in cloud technology
Search engines and the DSA

“Arguably Google’s search engine does not fall under Article 14 [hosting] of [the E-Commerce] directive, as it does not store information (the natural results) at the request of the sites that provide it. Nevertheless, I believe that those sites can be regarded as the recipients of a (free) service provided by Google, namely of making the information about them accessible to internet users, which means that Google’s search engine may fall under the liability exemption provided in respect of ‘caching’ in Article 13 of that directive.

Adv. Gen. Maduro, European Court of Justice Cases C-236/08, C-237/08 and C-238/08”

“The search service known as Yahoo! Italia Search ... consisting of seeking and listing the websites relevant to the research criteria indicated by the search engine user ... In order to carry out this activity the search engine makes a copy of each website temporarily stored in a cache, which enables it to provide the search results ... Such automatic, intermediate and temporary saving of information - carried out for the sole purpose of making the subsequent forwarding of the request to the recipient therefore characterises the activity in question [as caching].

Italian Supreme Court of Cassation, Reti Televisive Italine S.p.a. v. Yahoo Italia S.r.l., No. 7709-19 (2019)”
Article 2(f) DSA: a ‘caching’ service ... consists of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
Operators of websites on the open Web don’t generally “request” search engines to store their content like a user uploading to a hosting service does.

- The request first comes from the search engine’s crawler
- The site operator can then accept or decline
- Google does not generally enter into a TOS with webmasters as such
- Google has no relationship at all with many sites, other than accessing their content over the Web (just as a user with a web browser does).
- Spam sites have less incentive to sign up for notices (4.3 million actions in 2019)

Article 2(f) DSA: a hosting service “consists of the storage of information provided by, and at the request of, a recipient of the service”.

Article 15(1) DSA: hosting service “shall inform the recipient, at the latest at the time of the removal or disabling of access, of the decision...”

cf. P2B Art. 5(4): “Where a provider of an online search engine has ... delisted a particular website following a third party notification, the provider shall offer the possibility ... to inspect the contents of the notification.”
Definition of online marketplaces

DSA “calls for measures which have consumer protection at their core, by including a detailed section on online marketplaces” (Explanatory Memorandum), but is not aligned with the existing consumer law marketplace definitions.

‘Online marketplace’ means a service provider, as defined in [the e-Commerce Directive], which allows consumers and traders to conclude online sales and service contracts on the online marketplace’s website.

Art. 4 ODR Regulation

Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, ...

Art. 4(5) Omnibus Directive
(Additional specific information requirements for contracts concluded on online marketplaces)

Where an online platform allows consumers to conclude distance contracts with traders...

... on the platform ... (would clarify and bring consistency)

Art. 22 DSA
(Traceability of traders)
Thank you and Q&As
Next topics (May / June)

User redress and user transparency

Transparency towards regulators and data access by authorities

Illegal vs. harmful content