

June 30, 2021

We welcome ongoing efforts by the EU institutions to update rules for digital services operating in the EU through the Digital Services Act (DSA). As providers of online search services in the EU (directly or via syndication contracts), we share the DSA objectives to contribute to the proper functioning of the internal market for digital services and set out common rules for a safe, predictable and trusted online environment. We are committed to protecting our users by constantly improving the quality of our services, updating and enforcing our policies at scale and providing meaningful transparency.

We were pleased to see that the European Commission proposal acknowledges relevant differences between digital services, by introducing a regulatory framework with obligations of a graduated nature. We were also pleased to see the European Parliament and the Member State governments largely supporting a graduated regulatory framework through their proposed amendments to the European Commission proposal. A one-size-fits-all approach would not only be disproportionate, but also undermine innovation in the EU.

For the DSA to effectively achieve its objectives, it is important that digital services falling within its scope have legal certainty as to their responsibilities under the graduated regulatory framework. We are however concerned by recent developments advocating for a classification of online search engines under the DSA that evidences a deep misconception about how online search engines and search syndication work and what is technically feasible.

In particular, the draft report from Internal Market Committee (IMCO) rapporteur, MEP Christel Schaldemose classifies (in Recital 13) online search engines as online platforms. Under the DSA's structure, that means online search engines are defined as hosting the content that appears in their results.

Such a classification disregards the fact that online search engines do not store information other than in a temporary and transient way, in order to make the transmission of the information more efficient – very much like a caching service¹. It also disregards the fact that online search engines do not have the same ability as hosting services (including online platforms) to remove content from the web. Even if an online search engine removes links to web pages from its index or results, those web pages will still exist and users will still be able to visit them on the web.

¹ A caching service classification would reflect case-law in several Member States, as well as the position of Advocate General Maduro before the Court of Justice of the EU.

We would also note that the proposed classification of online search engines as online platforms would result in the application of due diligence obligations that online search engines simply cannot comply with. For example, online search engines often have no idea who the corporate website user is or how to contact it, because (contrary to hosting services and online platforms) they do not have a contractual relationship with it. In those situations, online search engines would be incapable of providing corporate website users with statements of reasons as to their content moderation actions.

We urge policymakers to consider the special nature of online search engines, especially compared to other digital services such as hosting services and online platforms. The recently adopted Platform to Business Regulation explicitly acknowledges this special nature and, for this reason, regulates online search engines differently than online intermediation services.

It should be recalled that online search engines play a crucial role in the rights of individuals around the world to receive and impart information, which are pillars of a democratic society. Their classification under the DSA, and the due diligence obligations to which they may be subject as a result of this, should be carefully tailored to ensure that information quality in Europe is not upended and fundamental rights are effectively protected.

We all take our responsibility as providers of online search engines seriously and we remain open to discussing requirements that are technically neutral, scalable and reflect specifics of relevant products and services. We wish to play an active role in defining how different online search providers can help address the spread of illegal content and improve transparency and accountability towards users and regulators, while at the same time safeguarding freedom of expression online.

