

## Digital Services Act Position paper

### **Key messages**

- Schibsted welcomes the proposal and the overall objective of clarifying and strengthening the liability framework, especially for very large platforms (VLOPs).
- We agree that the Regulation should only apply to illegal content, which is deemed illegal under national law.
- We welcome the possibility for national judicial or administrative authorities to issue orders to act against a specific item of illegal content, based on national law. Such orders should include a stay-down element and be extended to “equivalent or similar illegal content” to ensure the continued safety of online platform users.
- Similarly the notice and action mechanism needs to be strengthened by a stay-down element.
- Certain aspects of the proposal would benefit from further consideration, for example balancing the obligations placed on lower risk platforms such as online classified marketplaces. Classified marketplaces based on consumer to consumer trading or trading between micro, small and medium-sized businesses and consumers do not present the same risk profile to users as social networks.
- We welcome the additional transparency and reporting requirements for very large platforms; such requirements are vital for the safety of the online environment.

### **Background**

[Schibsted](#) is a family of digital consumer brands based in the Nordics with world-class Scandinavian media houses, leading classified marketplaces and tech start-ups in the field of personal finance and collaborative economies.

We have actively contributed to the discussion leading up to the proposal for a Digital Services Act by calling for a balanced regulation of platform liability that protects democracy against the worst effects of manipulation and hate, whilst ensuring that this is done in a way that does not unacceptably restrict freedom of expression.

As we also operate classified marketplaces that vary from consumer to consumer platforms selling second-hand goods to facilitate the trade in cars and other vehicles, real estate and job recruiting, we also contribute to the Digital Services Act proposal from the perspective of online classified marketplaces. These marketplaces contribute to the circular economy in Europe through the second-hand effect of selling and buying used goods in local communities.

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We note that the Commission's proposal on clearer liability obligations is divided into four categories: all intermediary services, hosting services, online platforms and very large online platforms. We agree with levelling the liability obligations based on level of activity and size, however, we see that there are certain obligations that are more suited for social networks that spread user-generated content such as expressions, pictures, videos etc, than online marketplaces that predominantly offer products and services. We therefore comment on the proposal from these two perspectives; obligations that are especially important for social networks and that need some additional elements in order to increase the safety of users on these networks, and obligations that will apply to our classifieds marketplaces and what challenges these obligations will have for our businesses.

We also need to ensure that the Regulation does not apply to online publishers that are already regulated by national constitutions and other sector-specific regulations.

## **Liability obligations for social networks**

We welcome the effort by the EU Commission to clarify and strengthen the liability of online platforms and very large online platforms. We see that especially very large social networks that have an enormous impact on our society and democratic discussion are not doing enough to protect their users from illegal content. The networks contain a lot of illegal hate speech and other illegal content that can harm its users, but also the democratic institutions in our countries. According to us, the current limited liability scheme has led to the fact that these networks only take limited measures to remove illegal content and do so based on their own terms and conditions, rather than on the law. This leads to fragmented systems that are unclear to the users and the fact that a lot of illegal content can continue to flourish on these networks.

It is also important to note that social networks are not publishers. They do not have a defined editorial role, they have no editor-in-chief, are not bound by media ethics rules and do not see themselves as publishers. However, they have a clear and active role in spreading the content uploaded by their users and cannot therefore be regarded as mere conduits of content. It is important that legislation acknowledges the networks' role as spreaders of user-generated content, but without having any editorial responsibility linked to that content.

## **Removal of illegal content (Articles 8 and 14)**

We welcome the proposal in Article 8 to allow national judicial and administrative authorities to issue national orders for intermediaries to act on illegal content. It is important that defining

illegal content has a basis in national criminal law, as these laws may differ between Member States that have different cultures and traditions.

It is also important that Member States revise national legislation to clarify the responsibility of intermediaries for illegal content and that the judiciary have the tools needed to compel social networks to take responsibility for and take down illegal content. In 2020 in Sweden, a key market for Schibsted, there were nearly 100 legal proceedings pursued on the grounds of incitement to hatred where the individual posting content online has been found guilty of an illegal act. However, in none of the cases has the liability of the social network distributing and amplifying the content been evaluated. Article 8 is a useful step to clarify this anomaly.

We also support the notice and action mechanism in Article 14 and are of the opinion that it is important that social networks have clear flagging options for users and that the networks, on the basis of the flagging, swiftly remove illegal content from the platform.

To strengthen the safety of users **national orders must include the possibility for judicial and administrative authorities to require not only the specific item of illegal content be removed but also similar or equivalent items too.** Experience from Germany's NetzDG suggests that those spreading illegal content, such as incitement to violence, take advantage of the current notice and action system by posting the same content from different sources. According to the current e-Commerce Directive, the networks must receive notification of each individual illegal posting in order to intervene. This risks leaving a lot of illegal content on the platform as the same or similar content may be spread from a number of different addresses. The European Court of Justice has ruled<sup>1</sup> that the provision can be interpreted so that notification of one illegal post means that the network must also remove other similar postings – i.e. staydown.

***We propose to add “similar and equivalent content” to Article 8 to strengthen the provision with a stay-down element. Similarly Article 14 needs to be complemented with a stay-down element in order to keep users safe and social networks free from all illegal content.***

### Terms and conditions (Article 12)

We agree with the proposal that intermediary services should be able to include further restrictions in their terms and conditions (Article 12). It is however important to determine how intermediaries such as social networks can use their terms and conditions to the

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<sup>1</sup> Glawischnig-Piesczek vs Facebook Ireland (C-18/18)

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possible detriment of freedom of expression. Important safeguards are needed to ensure that social networks do not use these rules to alter or remove content that has been published under the editorial control of a content provider such as a newspaper. This would lead to double scrutiny and could override the editorial decision by the publisher.

Publishers have a clear editorial responsibility and are already regulated by law, often the national constitution. They also adhere to national press-ethical codes. If social networks can override the decision by the editor-in-chief it could hamper the free press to the detriment of independent journalism. Diversity of opinions and scrutiny by the media is important for a democratic society and must be preserved.

***We therefore call for an exemption of editorial content from a platforms' terms and conditions as set out in Article 12.***

## Online advertising transparency (article 24)

Advertising is usually the main financial resource for online services. Additional transparency for online advertising is of particular importance on social networks, but should not hamper the possibility for any online platform to finance its services. It is important to ensure that the requirement of enclosing the main parameters for profiling in Article 24 (c) does not inflict on users' privacy.

***In particular it is important to ensure that this article does not apply to online news publishers that are totally dependent on online advertising and any additional burden may have a negative impact on the possibility to attract advertisers.***

## Liability obligations for online marketplaces

There are different kinds of online marketplaces, such as online retail platforms that are responsible for the presentation and spreading of the products and services on offer and classified marketplaces that allow users to draft the advertisement of the products and services they offer.

Schibsted's classified marketplaces are all based in the EU and follow relevant consumer law, product safety, taxation and intellectual property laws as applicable. Our marketplaces allow consumers to sell used goods to each other and enable small and micro-sized companies, often one-person companies to reach their customers through these platforms. Classified marketplaces are also used by private and professional car dealers to sell used cars, by job recruiters to find suitable candidates and by real estate operators to list their properties on these platforms. These platforms contribute to the circular economy by facilitating circular consumption, which through its second-hand effect lowers Co2 emissions and use of water and decreases over-production. Classified marketplaces also have a strong

local foothold, allowing consumers in local communities to interact by selling used goods to each other.

All our classified marketplaces apply the current e-Commerce Directive and its notice and takedown regime, which we believe is still valid and works well for our platforms. As trusted platforms, they have all taken proactive, voluntary measures against illegal activities, such as pre-moderation of advertisements and outright prohibitions from selling certain goods that can be deemed illegal etc. All of this has been done as a self-regulatory measure to protect the users of our services.

Although we already take responsibility for the content being sold through our platforms, some of the obligations in the proposed Regulation will be quite onerous on our business model and could add additional costs and require resources that may be difficult for our classified marketplaces to sustain. This kind of additional burden could hamper the possibility of classified marketplaces to grow and continue to contribute to the circular consumption in our markets.

Our classified marketplaces have a notice-and-action system as an integrated part of the marketplace. Users may use the report-function which is available next to each classified ad that is published on our platform to report illegal activities. Once we get a report of illegal activity, our Customer Security team makes a review of the report and a reply is sent to the reporting user.

Our marketplaces also have dedicated channels through which authorities may report illegal activities. We cooperate closely with national authorities such as the police, the tax authorities and customs and provide these authorities with information upon request regarding users who are under investigation for unlawful activities conducted with the help of our platform. We also cooperate with trusted organisations such as organisations with animal or brand protection programs. These organisations may report illegal activities to our marketplaces, for example the sale of counterfeit goods, and such reports are channeled to and handled swiftly by our Customer Security team in dialogue with the reporting organisations.

### Statement of reasons (Article 15)

We agree with the transparency obligation to inform users when their content has been removed and provide a statement of reasons for this action. There are however, certain risks linked to the obligations in the Article for classified marketplaces, such as disclosing business critical information regarding the process by which we keep the marketplace free from illegal/fraudulent content.

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If an ad is removed or stopped because it is regarded as fraudulent, the user behind the ad is not given notice before the ad is taken down. The reason for this is that we want to avoid giving the fraudulent user a heads up, and hence give him/her an opportunity to continue or even conclude the fraud with a third party on e-mail or on phone, and thereby moving the fraud out of our platform's control.

It is important to see that there could be cases where a detailed statement of reasons could actually be beneficial to the fraudulent users and it should be emphasized that such a statement should not be required to be issued before the ad is taken down.

**We also think that the obligation in Article 15.4 on publishing the decision in a publicly accessible database managed by the Commission is disproportionate and needs to be looked at from a risk assessment perspective.**

## Traceability of traders (Article 22)

We understand the reason behind this requirement and agree that it is important for especially large retail platforms to be transparent about the traders on their platforms. However, this obligation risks an overly prescriptive "one-size-fits-all" approach that poses constraints for classified marketplaces that enable trade of used goods between consumers and allow small professional sellers to reach their customers.

Firstly, it is important to ensure that the obligation does not apply to private sellers as it would be far too onerous for our marketplaces to collect and display all the required details about all the individuals selling used goods on the platforms.

Secondly, our classified marketplaces are valued among smaller professional sellers for the ease of use of the platform. All additional administrative burdens and technical challenges that the requirements in Article 22 pose, risk alienating sellers from our marketplaces.

**In order to decrease the administrative burden, we propose to keep the requirements limited to the necessary information needed in order to know your business customer and to what is absolutely necessary to identify the trader.** For our classified marketplaces it is reasonable to ask for the following information:

- a) Name, address, telephone number and email address
- e) Trade registration number
- f) self-certification on products and services complying with Union law.

The other requirements, such as bank account number, are not information our marketplaces can easily collect from traders and it is not information of use to the marketplace.

**In addition we are of the opinion that Article 22.6 should set a minimum requirement for what information is necessary to display and how it is displayed.**

## Reporting requirements (Article 23)

We are of the opinion that the reporting requirements in this article are far-reaching and will be hard for our classified marketplaces to adhere to. We caution against some of these obligations such as the requirement to report the amount of suspensions and use of automatic means for content moderation as such information is business critical and should not be required to be exposed.

**We call on a risk assessment to be made in this regard and are of the opinion that such reporting requirements should only be obligatory for very large platforms.**