

**Intermediary services should “earn their liability exemptions”**

**In order for the Digital Services Act (DSA) to achieve a safe and more trustworthy online environment, companies that do not comply with the DSA’s due diligence obligations should not be entitled to the DSA’s liability exemptions.**

As both the European Parliament and Council are working towards the adoption of their respective positions on the DSA, recent revelations by Facebook whistle blower Frances Haugen have shown that online platforms constantly make editorial decisions about the type of content that should be shown or sold to European citizens. When making those decisions, it has become apparent that profit often takes precedence over the legality of the content.

When making those decisions, online platforms’ sense of impunity is empowered by the liability exemption they benefit from. The due diligence obligations introduced in the DSA unfortunately fall short of what is needed in order to ensure consumer safety and the protection of legitimate companies.

While the Commission’s proposal maintains the E-Commerce Directive’s liability privileges for intermediary services that qualify as “mere conduit”, “caching” or “hosting services”, we would urge the European Parliament and Council to link these liability exemptions with companies’ compliance with the baseline due diligence obligations set out in the DSA.

Experience shows that too many intermediaries make little or no effort to comply with regulatory obligations, including in the fields of consumer and data protection, when the risk of noncompliance is limited to regulatory fines, apparently factoring the risk of fines in as a cost of doing business. Making compliance with the DSA’s due diligence obligations a pre-condition of liability privilege eligibility would create a real, impactful incentive for compliance and have a dissuasive effect on such intermediaries.

**It would also ensure that only diligent, trustworthy and reliable intermediaries benefit from the DSA liability privileges, thus contributing to a higher level of safety and trust in the online environment to the benefit of all stakeholders.**

The idea of making the exemption from liability conditional on compliance with due diligence obligations has already been put on the table by a number of MEPs in the amendments to Ms Schaldemose’s draft report and by the CULT Committee (see the amendments copied below). In addition, Ms Schaldemose herself also included this principle in her draft report, but was however limited to online marketplaces, which we believe is too restrictive.

**We remain convinced that the DSA offers a unique opportunity to achieve the goals of creating a safe, trustworthy and diverse online environment and to ensure that what is illegal offline, is illegal online. Making compliance with the due diligence obligations a pre-condition for eligibility to benefit from the liability exemptions would bring a coherence to the DSA that is currently lacking. It would positively impact compliance with the DSA and guarantee that only responsible and trustworthy intermediaries are able to benefit from its liability exemptions.**

To this end we would encourage decision makers to introduce the following amendments into their respective positions.

We thank you for your attention and would welcome the opportunity to discuss this issue with you further.

Kind regards,

Suggested amendments

**IMCO Amendment 264**

Andrea Caroppo, Salvatore De Meo, Carlo Fianza

**Proposal for a regulation**

**Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

**(18a) Those exemptions from liability should also not be available to providers of intermediary services that do not comply with the due diligence obligations in this Regulation. The conditionality should further ensure that the standards to qualify for those exemptions contribute to a high level of safety and trust in the online environment in a manner that promotes a fair balance of the rights of all stakeholders.**

**IMCO Amendment 265**

Geoffroy Didier, Sabine Verheyen, Brice Hortefeux, Nathalie Colin-Oesterlé

**Proposal for a regulation**

**Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

**(18a) The exemptions from liability established in this Regulation should not be available to providers of intermediary services that do not comply with the due diligence obligations in this Regulation. The conditionality should further ensure that the standards to qualify for such exemptions contribute to a high-level of safety and trust in the online environment.**

**IMCO Amendment 747**

Andrea Caroppo, Salvatore De Meo, Carlo Fianza

**Proposal for a regulation**

**Article 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 2a**

**Conditionality to the compliance with due diligence obligations**

**Providers of intermediary services shall be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 when they do not comply with the due diligence obligations set out in Chapter III of this Regulation.**

**CULT Amendment 73**

**Proposal for a regulation  
Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 5a**

***Providers of intermediary services shall be deemed ineligible for the exemptions from liability as referred to in Articles 3, 4 and 5 and liable to pay penalties in accordance with Article 42, where they do not comply with the due diligence obligations set out in this Regulation.***

**Signatories:**

ABAC-BAAN

Aktionskreis gegen Produkt- und Markenpiraterie e. V. (APM)

Alliance for Intellectual Property

Alliance for Safe Online Pharmacy (ASOP EU)

Anti-Counterfeiting Group (ACG)

Asociación para la defensa de la Marca (Andema)

Association de Producteurs de Cinéma et de Télévision (Eurocinema)

Association of Commercial Television and Video on Demand Services in Europe (ACT)

Associazione Nazionale Industrie Cinematografiche Audiovisive Digitali (ANICA)

British Association for Screen Entertainment (BASE)

BBC Studios

Comité Colbert

Copyright Information and Anti-Piracy Centre (TTVK)

Digital Entertainment Group (DEGI)

European Audiovisual Production (CEPI)

European Grouping of Societies of Authors and Composers (GESAC)

European and International Booksellers Federation (EIBF)

European Brands Association (AIM)

European Cultural and Creative Industries Alliance (ECCIA)

European VOD Coalition

Face-value European Alliance for Ticketing (FEAT)

FDV -Danish Video Association (FDV)

Federation of Screenwriters in Europe (FSE)

Federation of the European Sporting Goods Industry (FESI)

Federazione per la Tutela dei Contenuti Audiovisivi e Multimediali (FAPAV)

Fédération Internationale des Associations de Producteurs de Films (FIAPF)

Federación de Distribuidores Cinematograficos (FEDICINE)

Federation of European Screen Directors (FERA)

Film and Music Austria (FAMA)

Filmdistributeurs Nederland (FDN)

Independent Film & Television Alliance (IFTA)

Independent Music Companies Association (IMPALA)

INDICAM

International Confederation of Music Publishers (ICMP)

International Federation of Actors (FIA)

International Federation of Film Distributors' Associations (FIAD)

International Video Federation (IVF)

International Union of Cinemas (UNIC)

Lionsgate

Markenverband

Mærkevareleverandørerne (MLDK)

Motion Picture Association (MPA)

Produzenten Allianz (Germany)

Rattighetsalliansen (Sweden)

RettighedsAlliancen

SF Studios

Sky

Slovak Audiovisual Producers' Association (SAPA)

Spitzenorganisation der Filmwirtschaft e.V. (SPIO)

Sports Rights Owners Coalition (SROC)

Swedish Anti-Counterfeiting Group (SACG)

Together Against Counterfeiting Alliance (TAC)

Toy Industries of Europe (TIE)

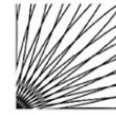
UNI Global Union – media, entertainment & arts (UNI MEI)

Union des Fabricants (UNIFAB)

Unione Italiana Editoria Audiovisiva Media Digitali e Online (Univideo)

VAUNET Verband Privater Medien e.V. (VAUNET)

Verein für Anti-Piraterie der Film- und Videobranche (VAP)



ALLIANCE FOR INTELLECTUAL PROPERTY

