

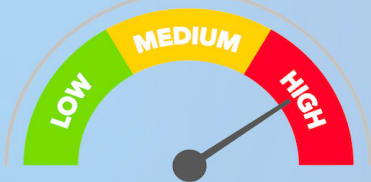


The European Commission Approves the Digital Services Act (DSA)

This is an important milestone for the EU in their race against the UK to set the global standard on how the internet should be regulated

Regulator: Member States' Digital Service Coordinators and the Commission

RISK BAROMETER:



JURISDICTION RELEVANCE:

European Union

TIMELINE:

Once adopted, Member States will need to apply the rules within fifteen months or from January 1st, 2024, whichever is later

WHAT YOU SHOULD KNOW:

- As of April 23rd, the EU has approved the DSA. The aim is to set clear obligations for platforms that are designed to be proportionate to size, impact and risk.
- The full and final text has not been published yet, but we do know that it will apply to all online intermediaries providing services in the EU – here are some key areas of concern for **mobile games**:

Targeted ads

- » Providers of online platforms should not pursue profile-based advertising 'when they are aware with reasonable certainty that the recipient of the service is a minor.'
- » This looks like a softening of stance on a recent iteration, which imposed a prohibition by default unless the platform can be 'certain' the user is 'not a minor' - and, an outright prohibition, which was originally contemplated.
- » Targeted advertising based on an individual's religion, sexual orientation, or ethnicity is also prohibited.

Dark Patterns

- » Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives, manipulates or otherwise materially distorts or impairs the ability of recipients of their service to make free and informed decisions.

Recommender systems

- » Large platforms that use algorithms to determine what content users see will have to provide at least one option that is not based on profiling.

Enforcement

- » Penalties for breaches can scale up to 6% of global annual turnover.
- » Each Member State (MS) will need to appoint a Digital Services Coordinator, an independent authority which will be responsible for supervising the intermediary services established in their MS and/or for coordinating with specialist sectoral authorities.

MOST TELLING:

'Online platforms and marketplaces should not nudge people into using their services, for example by giving more prominence to a particular choice or urging the recipient to change their choice via interfering pop-ups. Moreover, cancelling a subscription for a service should become as easy as subscribing to it.'

DELANY & CO HOT TAKE:

Working with European partners and platforms, MGIF campaigned against an outright prohibition on targeted advertisements. Emphasis seems to have shifted from a new obligation to check the age of users, to whether the company has acted negligently based on its existing knowledge. Nevertheless, until the full and final text is published, we will not know the full detail. The DSA is yet another instance of regulation that is primarily aimed at big tech squarely impacting mobile games.