



Very large porn platforms must be designated as VLOPs now!

30th of October 2023

To the EU Directorate-General for Communications Networks, Content and Technology,

and

to the Head of Unit “Digital Services and Platforms”, Mr. Prabhat Agarwal,

We, the undersigned 30 civil society organisations and digital rights experts, are writing to you to require that the ongoing designation process of Very Large Online Platforms (VLOPs) pursuant to Article 33 of the Digital Services Act (DSA) will include very large platforms hosting pornographic content. It is essential for effective fundamental rights protection that, upon their designation, these online porn platforms will be subject to due diligence obligations under the DSA, such as the risk assessment and independent audit provisions.

According to the DSA, all online platforms that meet the threshold of 45 million monthly active users in the EU qualify as VLOPs. However, existing analysis indicates that several online platforms were absent from the first round of designations, despite being very likely to have met the required threshold. We believe that this disparity can be attributed to a lack of transparency in the designation process, as well as the absence of recommendations for an appropriate methodology in determining monthly average users. Given the extensive evidence gathered, the lack of inclusion of platforms that reach the relevant threshold would undermine the aim of the DSA.

Platforms that host pornographic content are a clear example of that. Data from reliable

estimations reveals that many platforms which host pornographic content rank among the most visited websites in the world (counting on billions of monthly global users) and we believe that this is similarly the case within the European Union. When asked to disclose the total of their monthly users, however, some big porn platforms have presented surprisingly small numbers that have allowed them to temporarily elude the designation as VLOPs. These numbers seem to be a misrepresentation of their monthly average users in the EU, therefore indicating that these platforms are actively attempting to dodge their responsibilities and not be held accountable for the systemic risks existing on their platforms.

One crucial systemic risk is online gender-based violence, and in particular image-based sexual abuse such as the non-consensual sharing of intimate material, which is a prevalent online harm predominantly impacting persons who identify as women and girls. A study of 51 countries (including many EU countries) reported that 57% of women have been victims of image-based sexual abuse which can be disseminated through different types of online platforms, including porn platforms. Another crucial systemic risk is deep-fake pornography that can now be generated more easily than ever and be disseminated rapidly online; an estimated 96% of deepfakes are today of pornographic nature.

Such issues can have a particularly disproportionate impact on people with intersecting identities or who are marginalised, and this in turn has an impact on their mental well-being and the enjoyment of their right to free expression and participation in the digital ecosystem, which are risks additionally singled out in Article 34. Similarly, more transparency on content moderation practices, data protection rules and information on redress mechanisms, would be highly beneficial for users and content creators engaging with these platforms, to ensure adequate safeguards are in place for the protection of their fundamental rights.

Therefore, we strongly recommend that the European Commission:

- expeditiously designates online porn platforms that clearly meet the threshold as VLOPs;
- provides clearer guidance on the requirements of Article 33 to ensure **all** VLOPs are held to the same standards regarding additional due diligence obligations;
- adopts a comprehensive approach for the next round of designation under the DSA, including more transparency and consultation with relevant experts and civil society organisations.

If designated as VLOPs, big porn platforms will have to identify, analyse and assess all systemic risks deriving from the design or functioning of their service and related systems, including algorithmic content moderation systems. They will have to disclose information about their content moderation practices and the human resources dedicated to such moderation, including the qualifications and linguistic expertise of the persons carrying out these activities.

They will have to allow independent auditing from vetted researchers and subjects capable of assessing their compliance with the DSA and other relevant pieces of legislation. They will have to make publicly available a repository pertaining the functioning of their recommender systems and the online advertisement present on their websites. Only through these solutions, and more, the online porn platforms will adequately comply with the safeguard of fundamental rights for all.

We urge the European Commission to designate the major platforms hosting pornographic content as VLOPs pursuant to Article 33 of the Digital Services Act.

Thank you for considering this important issue. We remain at your disposal for any questions you may have.

Yours sincerely,

1. [Access Now](#)
2. [AiForensics](#)
3. [AlgorithmWatch](#)
4. [Association PALOMA](#)
5. [Association for Support of Marginalized Workers STAR-STAR Skopje](#)
6. [Avaaz Foundation](#)
7. [Center for Democracy and Technology \(CDT\)](#)
8. [Civil Liberties Union For Europe](#)
9. [Comitato per i Diritti Civili delle Prostitute APS](#)
10. [Cyber Rights Organization](#)
11. [digiQ](#)
12. [European Digital Rights \(EDRi\)](#)
13. [European Center for Not-for-Profit Law \(ECNL\)](#)
14. [European Sex Workers' Rights Alliance \(ESWA\)](#)
15. [FemAi](#)
16. [Henrietta.ai](#)
17. [Homo Digitalis](#)
18. [LODelle](#)
19. [National Ugly Mugs](#)
20. [Panoptikon Foundation](#)
21. [PION](#)
22. [Right Side Human Rights Defender NGO](#)
23. [Red Edition](#)
24. [Red Umbrella Athens](#)

25. [Sex Workers' Empowerment Network](#)
26. [Sex Work Polska](#)
27. [Stop Data Porn](#)
28. [Superbloom](#)
29. [TAMPEP- European Network for the Promotion of Rights and Health among Migrant Sex Workers](#)
30. [Virgin&Martyr](#)