



Open letter: Civil society call for a Digital Services Act that benefits people and is compatible with human rights.

Dear Member States of the European Union,

01.03.2022

The undersigned 72 European civil society organisations, represented by European Digital Rights (EDRi), Civil Liberties Union for Europe and Amnesty International, are writing to share our concerns and recommendations for a Digital Services Act (DSA) that benefits people and is compatible with fundamental rights protection across the EU.¹

Unwanted online tracking ads and dark patterns

In order to address the toxic consequences of business models based on tracking and targeting, **we believe that Member States of the European Union should support the proposal of the European Parliament to include Article 13a (“Online interface design and organisation”) and strengthen Article 24 (“online advertising transparency”) of the DSA.**

Dark patterns are manipulative software interfaces designed to trick users into unintentionally consenting to sharing their personal data. Prohibiting the use of dark patterns in Article 13a will empower people to make truly informed choices about how and with whom they wish to share their data online. The exclusion of very sensitive types of personal data for ad targeting purposes (Article 24) will by default raise people’s protection online, prevent abuse and illegal data harvesting practices.

Tracking-based online advertising threatens our human rights, above all the right to privacy, with a series of knock-on effects on other rights including freedom of opinion and expression, freedom of thought, and the right to equality and non-discrimination. These practices rely on mass harvesting of personal data and algorithmic inferences, which can lead to the manipulation of the public debate, discrimination and the amplification of harmful content.² Finally, tracking-based advertising allows the exploitation of people’s vulnerabilities, perpetuating already existing biases and marginalisation, and can lead to the exclusion of certain groups of people, such as women and older people when it comes to job ads.³

The majority of people actually do not want personalised ads⁴ and opt against tracking when given a real choice.⁵ Furthermore, small and medium-sized businesses would like to see large online platforms face stricter regulation on how they use personal data for ad targeting.⁶

The DSA has the potential to change the broken system based on data harvesting and protect the fundamental rights of internet users. The DSA must phase out the pervasive online tracking business

model and prohibit dark patterns that trick users into sharing personal data they would not otherwise want to.

By including Article 13a and by strengthening Article 24 as proposed by the European Parliament, the DSA also paves the way towards more rights-respecting forms of digital advertising, such as advertising based on contextual information, which has proven to be beneficial and effective, both from a user⁷ as well as from an economic perspective.⁸

Promotion of fundamental rights in the DSA

The right to privacy and the protection of personal data are fundamental rights enshrined in the Charter of Fundamental Rights of the European Union. Thus, the DSA must ensure the protection of those rights, including the protection of pseudonymity in online public spaces and the right to communicate and express oneself free of general monitoring.

In order to promote these rights, **Member States should agree to the European Parliament's proposal in Article 7: "No obligation for general and indiscriminate retention of personal data" and "No interference with providers' offering of encrypted services". Both those proposals would immensely improve the protection of fundamental rights and the cybersecurity landscape in the EU by helping to reduce the risk of data leaks, identity theft, online account break-ins, unlawful targeted surveillance of journalists, as well as financial losses and other forms of cyberattacks.**

Ahead of the trilogue negotiations scheduled in the following weeks, we thank you for taking our recommendations into consideration and hope that you will be able to strengthen the DSA's contribution to a rights-respecting online environment for Europe and beyond.

We would also highly appreciate a personal/virtual meeting where we can further discuss our recommendations and other relevant digital policy issues.

Thank you for your consideration.

1. European Digital Rights
2. Civil Liberties for Europe
3. Amnesty International
4. Amnesty Germany
5. Amnesty Spain
6. Amnesty France
7. Amnesty Italy
8. Amnesty Luxembourg
9. Amnesty Denmark
10. Amnesty Netherlands
11. PLATAFORMA POR LA LIBERTAD DE INFORMACIÓN (PLI)
12. Global Forum for Media Development
13. Sum of Us
14. Homo Digitalis
15. Access Now
16. Centre for Democracy & Technology, Europe Office
17. Equipo Implementación Decenio Afrodescendiente
18. Vrijschrift.org
19. European Youth Forum
20. Iuridicum Remedium (IuRe)
21. Gong
22. Elektronisk Forpost Norge
23. Rights International Spain
24. Controle Alt Delete
25. Digitale Gesellschaft e.V.
26. Maruf Foundation
27. ASOCIACIÓN USUARIOS FINANCIEROS - ASUFIN
28. COGAM, Colectivo LGTB+ de Madrid
29. Ranking Digital Rights
30. Committee to Protect Journalists
31. Global Witness
32. Peter Tatchell Foundation
33. Je Suis Là
34. Verbraucherzentrale Bundesverband (vzbv)
35. European Roma Grassroots Organisations Network
36. Associazione Antigone
37. Peace Institute
38. Digitas Institute
39. Alliance4Europe
40. Democracy and Human Rights Education in Europe
41. Fair Vote
42. UNBLACK THE BOX
43. The Signals Network
44. Irish Council for Civil Liberties
45. Global Action Plan
46. Alianza por la Solidaridad-ActionAid
47. IT-Pol
48. Reframe Health and Justice
49. Human Rights Monitoring Institute
50. Bulgarian Helsinki Committee
51. Racism and Technology Center
52. Avaaz Foundation
53. EUROPEAN FEDERATION OF PUBLIC SERVICE UNIONS
54. Health Action International
55. epicenter.works - for digital rights
56. LobbyControl
57. Bits of Freedom
58. Estonian Human Rights Centre
59. Lie Detectors
60. Center for Economic Justice
61. Defend Democracy
62. Ligue des droits humains
63. Global Voices
64. Waag
65. Wikimedia Deutschland e. V.
66. Panoptykon Foundation
67. European Center For Not-For-Profit Law (ECNL)
68. Institute for Strategic Dialogue (ISD)
69. DataEthics.eu
70. Centre for Research on Multinational Corporations (SOMO)
71. Fitug e.V.
72. Državljan D / Citizen D

Endnotes

- 1 You can learn more about our recommendations in: EDRI, “DSA trilogue recommendations EDRI 2022”, available on: <https://cloud.edri.org/index.php/s/iTi8D9fbwexcob4>, EDRI, February, 2022.
- 2 Amnesty International, *Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights*, 2019, available on: <https://www.amnesty.org/en/documents/pol30/1404/2019/en/>; Discrimination through optimization: How Facebook’s ad delivery can lead to skewed outcomes, arXiv:1904.02095, April 2019, available on: <https://arxiv.org/abs/1904.02095>; Time To Ban Surveillance-Based Advertising The case against commercial surveillance online, Forbrukerradet, June 2021, available on: <https://www.forbrukerradet.no/wp-content/uploads/2021/06/20210622-final-report-time-to-ban-surveillance-based-advertising.pdf>; Galaski, Simon, Solutions for Targeted Political Advertising on Online Platforms, Civil Liberties Union for Europe, November 2, 2021, available on: https://dq4n3btxmr8c9.cloudfront.net/files/MM-Oxv/Solutions_for_Regulating_Targeted_Political_Advertising_on_Online_Platforms.pdf.
- 3 Algorithms of trauma: new case study shows that Facebook doesn’t give users real control over disturbing surveillance ads, Panoptykon Foundation, September 2021, <https://en.panoptykon.org/algorithms-of-trauma>; How Facebook’s ad targeting may be in breach of UK equality and data protection laws, Global Witness, September 2021, available in: <https://www.globalwitness.org/en/campaigns/digital-threats/how-facebooks-ad-targeting-may-be-in-breach-of-uk-equality-and-data-protection-laws/>.
- 4 Do people really want personalised ads online? Global Witness, April 2021, available on: <https://www.globalwitness.org/en/blog/do-people-really-want-personalised-ads-online/>.
- 5 96% of US users opt out of app tracking in iOS 14.5, analytics find, ars Technica, May 2021, available on: <https://arstechnica.com/gadgets/2021/05/96-of-us-users-opt-out-of-app-tracking-in-ios-14-5-analytics-find/>.
- 6 France/Germany: Small businesses want EU to get tough on Google and Facebook’s invasive advertising – new research, Amnesty International, January 2022, available on: <https://www.amnesty.org/en/latest/news/2022/01/france-germany-small-businesses-want-eu-to-get-tough-on-google-and-facebooks-invasive-advertising-new-research/>.
- 7 The IAB Europe Guide to contextual advertising, IAB Europe, July 2021, available on: <https://iabeurope.eu/wp-content/uploads/2021/07/IAB-Europe-Guide-to-Contextual-Advertising-July-2021.pdf>.
- 8 Sustainable without surveillance, ICCL review of sustainable publishing and tracking-based advertising, Irish Council for Civil Liberties, October 2021, available on: <https://www.iccl.ie/wp-content/uploads/2021/10/Sustainable-without-surveillance.pdf>.