

Understanding the liability waiver in the Digital Services Act

Implications for businesses

The Digital Services Act (DSA)*, a landmark regulation of the European Union, is set to strengthen the digital landscape in Europe.



The DSA provides for a liability waiver for intermediary service providers, a concept that has its roots in the eCommerce Directive's Article 14, established in 2000.

This waiver stipulates that providers are not liable for information stored at a recipient's request, provided they swiftly act to remove or disable access to the information once they become aware of its illegal nature. The DSA evolves this principle, offering more detailed guidelines and widening the scope to encompass a broader range of digital services.

Providers of intermediary services, as defined by the DSA, include those offering 'mere conduit', 'caching', and 'hosting' services. This article focuses predominantly on 'hosting' providers that store user-generated content. This category encompasses a wide variety of services, including website hosting services, online marketplaces, booking platforms, search engines, and social media platforms.

These providers face more comprehensive obligations.

The liability waiver under the DSA presents a protective layer for businesses. This means that if your business hosts user-generated content, you are not automatically responsible for illegal content posted by users, on condition that it is removed swiftly upon notification or discovery.

This protection is critical for providers as it enables user interaction, such as reviews, comments and marketplaces, safeguarding businesses from legal actions that could result in severe fines or civil liabilities.

Moreover, the waiver impacts innovation and competition positively. By reducing the legal risks associated with hosting user-generated content, the DSA incentivises providers, particularly start-ups and small enterprises, to innovate without the overshadowing threat of litigation.

This encourages a competitive environment where the focus is on service enhancement.

However, the liability waiver is not an all-encompassing shield. It mandates businesses to establish accessible and straightforward mechanisms for reporting illegal content or behaviours and to provide detailed explanations, referred to as statement of reasons, when deciding to remove or disable content.

These stipulations aim to ensure that while providers are shielded from liability, they also uphold a level of responsibility.

Furthermore, the DSA introduces measures for dispute resolution, fostering a fairer and more transparent process. If users dispute the removal of content, they can avail of the provider's internal complaint-handling system. Should this not resolve the issue, further legal redress is available.

This multi-tiered approach is designed to ensure accountability while preventing unjust penalisation without due process.

With the DSA set to be fully enforced in Malta on 17th February 2024, the Malta Communications Authority is set to be appointed as the Maltese Digital Services Coordinator (DSC).

Before this date, businesses are encouraged to review their practices to ensure compliance with the DSA.

It is advisable to audit existing content moderation procedures, update reporting mechanisms, and review the processes for responding to notifications of illegal content. Preparing ahead will help ensure a smooth transition to the new regulatory environment.

Businesses seeking further information are encouraged to reach out to the Malta Communications Authority via email at info@mca.org.mt. ■



MALTA COMMUNICATIONS AUTHORITY

*Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC.