

A Digital Legislation that Works for Science?

Science Europe Concerns on the Digital Services Act

Brussels, 30 June 2022

Ahead of the discussions that will take place on Monday 4 July during the Plenary Session of the European Parliament, Science Europe would like to highlight its concerns regarding the potential impact of the Digital Services Act (DSA) on the research and education sectors and the legal uncertainty that it is likely to create.

Context

Over the past years, the European Commission's reflections on digital policies and legislation have focused on their potential benefits for citizens and businesses in Europe. Science Europe has consistently explained, in statements published in [June 2021](#) and [April 2022](#), the intended and unintended impact of such policies and legislation on the research sector.

A thriving research sector contributes, according to the [2030 Digital Compass Communication](#), to "the uptake of digital solutions and the use of data [that] will help in the transition to a climate-neutral, circular, and more resilient economy." It also benefits economic growth and society at large.

The education and research sectors rely on thousands of repositories, digital archives, and libraries to secure access to up-to-date results and knowledge. Therefore, legislative frameworks that promote scientific advancement and knowledge dissemination are critical to the progress and effectiveness of the education and scientific research sectors.

The DSA is likely to cause legal uncertainty and fragmentation for the research sector

Not-for-profit scientific and educational repositories, digital archives, and libraries are critical in this environment: they allow students, researchers, and third parties access to content such as research publications and data, texts, films, and sound recordings. We believe these entities are not the intended targets of the Digital Services Act. Instead, the [Regulation](#) that was provisionally agreed on by the Council and European Parliament on 22 April, is targeted at commercial platforms. Regulating commercial online platforms and protecting consumers is essential to a well-functioning Single Market.

However, the needs of the research sector must be appropriately considered in legislation to avoid unintentional negative consequences, as highlighted in the points below.

- The definitions and organisational obligations in the DSA are likely to create legal uncertainty on the applicability of the Act to non-profit educational and scientific repositories, digital archives, and libraries. We consider that these entities do not fall under the obligations provided by the DSA. Article 2 (f) stipulates that a “hosting service” consists of the storage of information provided by, and at the request of, a recipient of the service. However, the definition of “recipient of the service,” provided in Article 2 (b) is vague: “any natural or legal person who uses the relevant intermediary service.” As a result, the applicability of the notion of “hosting service” to the entities mentioned above will depend on the existence of a “recipient of the service,” which has no clear and harmonised definition in the research sector.
- The storage of scientific and education information in dedicated infrastructures follows widely different structures and procedures. In many instances, information is stored through a central body without an intermediate user and would therefore not fit the definition of hosting services provided in Article 2 of the DSA. However, as the text does not explicitly exclude these infrastructures, the applicability of the DSA to research organisations and universities (including the obligations they would be subject to) would mostly be left to legal and judicial interpretation at the national level. This will likely result in legal uncertainty and fragmentation between Member States, and possibly impair scientific and educational data sharing and access across national borders.
- The DSA does not clarify what constitutes illegal content, which is defined both at the EU level (regarding terrorist content, for instance) and at national level. It follows that there is no harmonised understanding of which obligations would apply to educational and scientific repositories, digital archives, and libraries as regards countering illegal content, and which content would be covered. Research on illegal content, including illegal goods, should never be considered “illegal content.” However, this would be left to national legislation or judicial interpretation, risking more fragmentation, and diverging liability rules.
- It must also be noted that non-profit research repositories are excluded from the Copyright Directive but not from the DSA, and that it is essential to ensure legal consistency across EU legislation.

These points illustrate that the needs and particularities of the research and education sectors should always be considered in policy and legislative developments in the digital field. To that end, Science Europe is ready to contribute to all relevant discussions related to data legislation and to bring forward the perspectives of the research sector and the collective views of its members.

About Science Europe

Science Europe is the association representing major public organisations that fund and perform excellent research in Europe. It brings together the expertise of 40 national organisations to jointly push the frontiers of how scientific research is produced and delivers benefits to society. They collectively invest over €22.4 billion each year on research in 30 European countries.

Science Europe advocates science and the scientific community to help build the European Research Area (ERA) building upon the national research policies that its members develop and implement to create the best possible conditions for research.