

European Commission provides non-binding guidance within the scope of the Digital Services Act for online platforms on publication of user numbers in the European Union

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On 1 February 2023, the European Commission (EC) published non-binding guidance on the requirements to publish user numbers in accordance with the Digital Services Act (DSA) provisions: “Questions and Answers on identification and counting of active recipients of the service under the Digital Services Act” (DSA).

The DSA is of importance for the audiovisual industry since it will catch some of the video-sharing platforms present in the European territory, either as online platforms or as “very large online platforms” (VLOPs) (the latter categorisation leading to the application of different obligations).

The DSA entered into force on 16 November 2022, and will apply from 17 February 2024. The non-binding guidance aims to help with the calculation of active users, which is required by two of the DSA Articles:

- Article 24(2) requires online platforms to publish on their website, by 17 February 2023, information on the average monthly active recipients of their services in the Union, and at least once every six months thereafter.
- Article 33 sets criteria to define VLOPs and “very large online search engines” (VLOSEs). VLOPs and VLOSEs shall comply with additional obligations, when they have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million. According to the EU, they pose a great risk in the dissemination of illegal content and societal harms.

The Q&A document lists different questions the EC has received in the last few months dealing with the above-mentioned Articles, and gives non-binding answers. Most of the questions and answers deal with the understanding of “active recipient”, for which Recital 77 of the DSA already provides for some guidance:

- When does a recipient of an online platform service need to be considered “an active recipient”?

- Do users that click on a link by mistake or that make superfluous visits to the platforms need to be counted as “active recipients” of the service?

Regarding the first question, recipients engaging with the online platform in the previous six months are active recipients. Engagement means the recipient is exposed to content disseminated on the online platform (i.e., by viewing or listening to content), that being said, it can include different types of recipients: consumers, business users and traders.

For the second question, Recital 77 of the DSA provides an answer: "the concept of active recipient of the service should not include incidental use of the service by recipients of other providers of intermediary services that indirectly make available information hosted by the provider of online platforms through linking or indexing by a provider of online search engine".

More detailed information dealing with the methodology for calculating the number of average monthly active recipients of the VLOPs and VLOSEs may be provided in the future by the EC thanks to delegated acts (Article 33(3) of the DSA).

European Commission, Question and Answers on identification and counting of active recipients of the service under the DSA

<https://ec.europa.eu/newsroom/dae/redirection/document/93451>

Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services (Digital Services Act)

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065&qid=1675759669913>

