

The digital economy has moved on, it is time we caught up

The EU Commission's [Digital Services Act](#) will replace or amend the e-Commerce Directive, which laid the foundations for the regulation of the internet over twenty years ago. In those twenty years technology and connectivity have moved on significantly. In particular, online platforms have become important drivers of innovation and growth in the digital economy, and also the main access point for people using the internet today – be it through search engines, social media or other content sharing platforms. The EU, like others, is updating its regulatory framework to catch-up to our increasingly digitalised world.

The EU Commission took initial steps to update its regulatory framework by issuing [non-binding guidelines](#) in 2017 and 2018. These require online platforms to take greater responsibility for the content they process, including putting measures in place to automatically detect and either delete or license illegal content. The EU acknowledges that these guidelines do not go far enough and there is a need for broader reform – hence the Commission's subsequent [Shaping Europe's Digital Future](#) proposals, which include the Digital Services Act. The BCC welcomes the proposals for the Digital Services Act as the first international-level initiative of its kind, to address the responsibilities of online platforms.

The Digital Value Chain

Digital services increasingly facilitate cross-border trading across the EU and the rest of the world, opening entirely new business opportunities to the creative industries by facilitating their expansion and access to new markets. However, under the current liability regime, certain digital services have enjoyed a significant increase in revenue from new markets for creative works, whilst artists' and performers' income has not kept pace.

This imbalance is caused by:

- certain digital service providers' relative power in the digital value chain, which means the income generated by digital services is often much greater than the income derived for the original creator; and
- responsibility for the prevention of piracy on digital services' platforms falls to individual rightholders, rather than the platforms having responsibility for preventing illegal content on their platforms.

The BCC responded to the Digital Services Act consultation stating that "Digital services should obtain licences from rightholders for the creative content they use, regardless of whether the content is uploaded and / or shared directly by the platform or indirectly by users of digital platforms." Such licences are already available. Yet some digital services have avoided obtaining these licences, instead relying on their interpretation of the limitations of their responsibilities and European legislation. This is detrimental to creators and artists, and to those digital services that do the right thing and obtain a licence from rightholders. The Digital Services Act is an opportunity to create a level playing field by ensuring that any digital services which do not obtain licences face effective and persuasive sanctions.

Piracy

Digital services that provide a platform for exchanging content and services play a pivotal role in preventing the availability of, and dealing with, illegal works. Our view is that within the digital ecology

these digital services are best placed to deal with illegal material efficiently by removing illegal content from their platforms and ensuring that it stays down. Digital services that do not play their part in preventing piracy need to face effective and persuasive sanctions to ensure that there is a legitimate marketplace for rightholders.

Defined responsibilities for digital services should be supervised by a competent authority. This authority should have responsibility for a notice and stay down provision as this would incentivise digital services to obtain a licence, as well as to prevent piracy on the platforms. The supervisory authority would also be a useful mechanism for incentivising the development of codes of practice and the adoption of new initiatives to respond to technological uses or potentially abusive business models.

Freedom of Expression

A concern often expressed in response to moves towards measures that prevent illegal content from being uploaded, shared and downloaded is that it could impinge freedom of expression. Our view is that copyright and freedom of expression are not exclusive, in fact they go hand-in-hand. Measures that reinforce the oversight of platforms' content policies, such as increased transparency, reporting and independent audit obligations concerning algorithmic systems for automated content moderation can be implemented for users of digital services without interfering with freedom of expression. Improving transparency protects creativity and innovation, as well as the fundamental democratic value of freedom of expression.