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INTERNETLAB

**Submission in response to the Public
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access to online platform data for vetted
researchers under the Digital Services Act (DSA)**

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Introduction

The Center for Studies on Freedom of Expression and Access to Information (CELE) is an academic research center affiliated with Universidad de Palermo in Argentina. The Center provides technical and legal analysis on issues affecting this fundamental right and has been studying freedom of expression on the Internet as a specific research area since 2012. The Center is a leading voice in promoting and protecting freedom of expression nationally, regionally, and internationally.

InternetLab is an independent think tank based in São Paulo, Brazil. InternetLab's work is dedicated to advancing the promotion of human rights and democratic values in the development and use of digital technologies, as well as in the policies directed toward them. Since 2014, the think tank delivers evidence-based, and impact-oriented social and legal research to identify and clarify critical issues on the internet environment, thereby contributing to build the intellectual and evidential foundation for public awareness and policymaking.

This submission is dedicated to responding to the [Consultation](#) for the development of guidelines for data access for researchers under Article 40 (13) of the DSA. It aims to contribute to the efforts of the European Commission in implementing these obligations.

Framing the importance of the delegated act

The Digital Services Act is a complex system of rules and obligations ranging from primary norms for digital intermediaries to a multi-layered structure of oversight and enforcement of such norms. Making internet intermediaries accountable for their actions and protecting the rights of end-users while simultaneously maintaining an open, vibrant, online

public sphere is a significant challenge. For the DSA to be up for it, the inter-dependent multi-stakeholder structure it creates must have no weak links.

Within such a structure, researchers are called upon the role of collaborating with the European Commission, the Digital Services Coordinators, the European Board of Digital Services, the Very Large Online Platforms and Search Engines (VLOPS/VLOSEs), the rest of the intermediaries, and society at large in shedding light to the detection, identification, and understanding of systemic risks¹. DSA's starting point is an information asymmetry between the regulator and the regulated subjects, which can only be bridged through a battery of legal devices aimed to obtain information about them: transparency reports², requests for information³, meaningful engagement with civil society⁴, independent audits⁵, investigative powers, and data access for regulators⁶ and researchers⁷.

The due diligence obligations in Section III of the DSA revolve around the concept of systemic risks. Of all the stakeholders that partake in the DSA ecosystem, only researchers are entrusted with the responsibility of carrying out extensive research on this still obscure concept. Therefore, the DSA cannot function if they cannot perform their task accordingly. The more thorough the research on systemic risks, the greater the tools the DSA enforcement mechanisms will have to understand the regulated subjects and apply the law to them.

The draft delegated regulation on data access for researchers will be key in facilitating researchers, platforms, and regulators alike detailed rules and processes on how data must be requested and facilitated for purposes of research under Article 40(4) of the DSA. This submission brings some suggestions to improve the text of the regulation to meet the ambitious ends of the DSA.

Overemphasis on quantitative research

The DSA, in its endeavor to promote research on systemic risks in online platforms, has established mechanisms for approved researchers. However, the conceived approach to data access, coupled with the nature of commonly available data, suggests an overemphasis on

¹ Digital Services Act, article 40.4 and 40.12

² Digital Services Act, articles 15, 24 and 42

³ Digital Services Act, article 10

⁴ Digital Services Act, recital 90

⁵ Digital Services Act, article 37

⁶ Digital Services Act, article 40.1

⁷ Digital Services Act, articles 40.4 and 40.12

quantitative research. This approach presents significant limitations in comprehensively understanding the complex social and fundamental rights implications of digital platforms.⁸

Quantitative data, such as interaction metrics and reach statistics, undoubtedly provide valuable insights into the scale of online phenomena, offering a consistent methodological approach for evaluating digital interactions and tracking temporal trends.⁹ Nevertheless, these metrics alone are insufficient to capture the nuanced user experiences, highly contextual dynamics, and intricate social processes unfolding within digital platforms. It is crucial to recognize that meaningful research extends beyond easily quantifiable metrics, and organizations investigating nuanced or complex social dynamics must be equally empowered to contribute to our understanding of digital platforms. To effectively address systemic risks, a more profound and contextualized understanding is imperative.

Critical research questions such as “How do users perceive platforms’ content moderation policies and how do these policies impact their online behavior?” demand a robust qualitative research approach. To comprehensively evaluate platform governance, researchers must move beyond numerical aggregations and engage in in-depth analytical methodologies.

The emerging research landscape surrounding systemic risks demonstrates a significant methodological evolution. Contemporary studies are increasingly characterized by qualitative and interdisciplinary approaches, particularly from social sciences—a notable departure from traditional economic and legal research paradigms.¹⁰ This trend underscores the complexity of systemic risks in digital environments, which cannot be adequately captured through constrained, discipline-specific, or purely quantitative frameworks. The fact that “systemic risks” have historically been confined to financial markets research further emphasizes the need for a more nuanced, comprehensive analytical approach when examining digital platform governance.

⁸ Oliver Marsh, *Researching Systemic Risks under the Digital Services Act*, Algorithm Watch, June 26, 2024. Available at:

https://algorithmwatch.org/en/wp-content/uploads/2024/08/AlgorithmWatch-Researching-Systemic-Risks-under-the-DSA-240726_v2.pdf

⁹ Tech Policy Press, "Understanding Systemic Risks under the Digital Services Act," Tech Policy Press, accessed December 6, 2024,

<https://www.techpolicy.press/understanding-systemic-risks-under-the-digital-services-act/>

¹⁰ See, for instance, Palmieri, Alice and Kollnig, Konrad and Tamò-Larrieux, Aurelia, Systemic risks of dominant online platforms: A scoping review (October 23, 2024). Available at SSRN:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5002743

For instance, a purely quantitative study focusing solely on the number of posts removed for “disinformation” would be insufficient to determine the fairness, accuracy, or consistency of moderation decisions. Conversely, qualitative analysis enables a comprehensive assessment of whether platform policies are inappropriately censoring legitimate content. Access to data such as the posts’ content, user interactions, comments, and content moderation strategies would let researchers analyze online discourse, identify behavioral patterns, understand user perceptions, and—ultimately—evaluate platform policies’ real-world implications.

Expanding the scope of data available (see Recital 12 of the Delegated Regulation) to include a more diverse range of qualitative data would not only facilitate more nuanced and contextualized systemic risk research but also strengthen researchers’ capacity to contribute to more effective, human rights-abiding policy formulations.

A process granting excessive discretion to Data Providers and Digital Services Coordinators

The Act introduces various requirements for submitting a data access application. Some of these are appropriate, considering that researchers must demonstrate the purpose, modality, and methodology of their projects, as well as safeguards related to confidentiality and data protection¹¹. Some others could be further clarified.

For instance, the need to show a formal relationship between the applicant researcher and the research organization should make sure that the absence of a formal employment contract (which is not the usual modality of contracting in academia or civil society) is not used as a pretext to reject data access applications.

The regulation provides for communications between the Digital Services Coordinator and the applicant researchers, in case additional information is needed to complete the requests. However, the criteria for approving data access applications are still vague, underexplored, and largely subject to the discretion of the intervening Digital Services Coordinators and the Data Providers. The grounds for amendment under Article 40.5 of the DSA and the obligations of platforms under Article 40.6 to provide alternative methods ought to be further elaborated. Moreover, when an application is rejected, researchers should have

¹¹ Article 8

the right to a dispute settlement procedure such as the one platforms can resort to under Article 13 of the Act.

The DSA is not clear about the process for vetting researchers and this obscurity persists in the Delegated Regulation¹². It stands out as an aspect to be strengthened to avoid giving them *carte blanche* for Digital Services Coordinators and Data Providers to reject data access proposals based on the identity of the applicant researcher.

A greater degree of flexibility is required in the data access process and at later research stages. Principal researchers should be able to amend applications based on changes in the body of associate researchers involved in the project. Additionally, privacy safeguards might need to be adjusted once researchers receive the data and understand the privacy measures needed to safeguard it.

Ensuring all those who research are considered researchers

In line with Recital 97 of the Digital Services Act (DSA), Civil Society Organizations (CSOs) must be granted the same access to data as researchers affiliated with universities. It is important that the delegated act is explicit about this and evacuates any doubts that the wording of Article 40 of the DSA could generate.

Not all research on the risks posed by the design and operation of platforms is conducted by academics. A significant portion of it is carried out by think tanks, non-governmental organizations (NGOs), and civil society at large. CSOs are often deeply engaged with the practicalities of regulatory implementation and involved in day-to-day dialogues with different (state and non-state) stakeholders. They frequently possess specialized expertise in specific issues—sometimes surpassing that of the regulators themselves. As a result, CSOs can bring an innovative perspective to research, posing practice-oriented research questions pointing at addressing the most pressing needs of the DSA implementation.

Exclusionary Model for Researchers Without Necessary Resources

Article 40 (8) of the DSA lists a series of conditions with which researchers must comply in their substantiated application to gain access to the data of platform providers. This

¹² See Recital 11 onwards

measure is vital for establishing guidelines, standards, and commitments from researchers who will access platform information to conduct their studies.

However, the realities faced by researchers worldwide are diverse and complex. The conditions outlined in Article 40 of the DSA may impose significant challenges for researchers in the Global South, adding another layer of barriers to data access for those who already face more significant difficulties in researching digital platforms. It is essential to consider that an underlying factor that differentiates researchers from the Global North and the Global South is their access to infrastructure and funding, fundamental parts of data collection and processing.

Considering the Latin American context specifically, it is crucial to acknowledge that the production of academic and scientific knowledge in the region faces unique challenges, including economic inequalities, bureaucratic hurdles, and limited access to data, among others. Despite most Latin American countries being classified as upper-middle-income economies, research investment remains low. Only Brazil invests more than 1% of its GDP in research. Argentina and Chile, the second and third most prominent investors in research in the region, allocate only 0.65% and 0.36% of their GDP, respectively.¹³

Low investment has various repercussions: Latin American researchers have less capacity to publish their research findings; their essential research tools—such as computers and data analysis software, for example—are often of low quality and unable to support the type of research being conducted; they cannot afford a sufficient research team to carry out planned activities; or they lack funding for long-term cloud data storage, for instance. In a study conducted by InternetLab, supported by the Action Coalition on Meaningful Transparency (ACT), the Global Network Initiative (GNI), and the Omidyar Network, on the challenges to academic freedom and transparency in Latin America,¹⁴ interviewed researchers pointed out that the lack of funding or university infrastructure led them to use their personal resources to pay for cloud storage or other services necessary for their research.

As can be noted, the scenario of inequality between researchers from different regions of the world becomes evident. The ability of Latin American researchers and others from the

¹³ Estensoro, E., Friedman, G. & Hernández, G. Research in Latin America: opportunities and challenges. *Intensive Care Med* 42, 1045–1047 (2016). <https://doi.org/10.1007/s00134-016-4342-3>.

¹⁴ InternetLab. Acceso a datos para pesquisadores (2024). Available at: <https://internetlab.org.br/pt/noticias/acesso-a-dados-para-pesquisadorases-e-tema-de-novo-projeto-de-pesquisa-do-internetlab/>

Global South to meet the criteria outlined in Article 40 (8) of the DSA and Article 8 (7) of the proposed Delegated Regulation is significantly lower compared to that of researchers from the Global North. In this regard, it is recommended that the conditions established for researchers to access the data take into account the resource scarcity faced by non-European researchers. Therefore, under such circumstances, the possibility of north-south and south-south collaboration between researchers would be key for Global South researchers to achieve impactful research. The delegated act should explicitly include provisions accepting joint applications by teams of researchers affiliated with different institutions, even based in different countries.

Conclusions

In a highly globalized internet, risks acquire a global nature. According to the European Commission, expression that occurs outside the borders of the European Union, as well as speech related to phenomena taking place elsewhere -independently from its source location- can amount to systemic risks within the union as per Article 34 (1) of the DSA. In this context, the data access provisions for researchers under the DSA represent a critical mechanism for understanding systemic risks in digital platforms, and the global nature of such risks demands a truly global research approach. Researchers from diverse geographical, cultural, and even linguistic backgrounds are crucial in comprehensively understanding and anticipating systemic risks that extend beyond European borders.

This contribution aimed to highlight two aspects of the delegated act that raised major concerns to the organizations that subscribe to it. Firstly, the fact that the regulation places an excessive emphasis on quantitative research, neglecting qualitative research methodologies, which are just as important for understanding the regulatory ecosystem and the extent of systemic risks as the former. Interdisciplinary research that seeks to understand the social, political, and cultural nuances that define digital environments can be just as enlightening as quantitative analyses of internet usage and should be taken into account by the regulation.

Secondly, the fact that the model proposed gives too much discretion to the Digital Services Coordinator, as well to the data providers, in the vetting process of researchers and in granting access to data. The criteria for approving or rejecting the applications are not as clear as they should be, giving too much room for people in charge to discretionally decide whether to release the data or not.



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The European Union is leading a new effort that will arguably set a new paradigm in platform regulation, standardizing obligations for data access for researchers. When Europe seeks to play a leadership role in the global landscape of tech regulation, the inputs of Global Majority researchers must necessarily be part of the discussion.

Thank you,

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