



## GNI SUBMISSION ON DIGITAL SERVICES ACT TRANSPARENCY REPORTS CONSULTATION

### 1. Introduction

The Global Network Initiative (GNI) appreciates the opportunity to provide feedback on the proposed qualitative and quantitative reporting templates for intermediary services, hosting services, online platforms, and search engines covered by the European Union's Digital Services Act (DSA).

GNI has been encouraging technology companies to enhance transparency around actions that impact user privacy and freedom of expression for over fifteen years. GNI's member companies have consistently been at the forefront of pushing forward innovative approaches to transparency reporting, starting with the very first tech company transparency report issued by Google in 2010. Subsequent innovations have included detailed reporting categories and formats, including the use of [Country Legal Framework Reports](#) as a way to share contextual information that can help users and researchers understand relevant surveillance and censorship laws that apply to ICT companies in different jurisdictions. GNI, in collaboration with BrainBox Institute, has also spearheaded the [Action Coalition on Meaningful Transparency](#), a project launched under the Danish Tech for Democracy initiative that aims to bring together a wide range of academics, civil society organizations, companies, governments, and international organizations to work collaboratively on digital transparency. At the end of last year, the ACT published the [Transparency Initiatives Portal](#), a community-driven resource for tracking work on tech transparency around the world, which was also used to share information about this consultation.

We applaud the European Union on the multiple transparency-related elements of the DSA and appreciate the attention to detail that went into the drafting of this reporting template, which we believe will help raise the bar for transparency reporting across the sector, improve comparability across time and covered services (so long as services are given the flexibility and opportunity to contextualize the data and their content moderation practices through more qualitative information), and generally improve understandings of the decisions that covered services are making with respect to content and user data. While transparency reporting serves a crucial purpose in promoting accountability and understanding of how platforms operate, it is essential to recognize that these mandates represent a form of

compelled speech, albeit a legitimate one. Therefore, any transparency requirements must be carefully crafted to ensure that they are clear, unambiguous, necessary, and proportionate to the public interest they seek to serve.

In this submission, we detail a number of concerns and related suggestions which we believe can strengthen and clarify the proposed templates and guidance in order to mitigate against unintended consequences from this otherwise praise-worthy aspect of the DSA. In summary, GNI recommends the Commission ensure the transparency requirements: a) do not create a significant burden for medium intermediaries and emerging services, b) allow a degree of flexibility in reporting categories of illegal content, c) clarify the scope for member state orders, and d) create room for nuanced reporting on companies' compliance with government requests.

## 2. Burden on smaller services

Chapter III of the DSA creates a tiered approach to due diligence obligations, including transparency measures, for providers of intermediary services proportional to their societal impact. As such, providers of intermediary services with a number of average monthly active users in the Union equal to or higher than 45 million, and which are designated as Very Large Online Platforms (VLOPs) or Very Large Online Search Engines (VLOSEs), are required to meet the full suite of transparency reporting obligations, including detailed reporting and researcher access to data requirements. Meanwhile, Article 15 exempts micro or small enterprises (those with fewer than 50 persons or with an annual turnover and/or annual balance sheet total not exceeding €10 million, as defined in Recommendation 2003/361/EC) from having to observe its transparency reporting obligations. In the middle, this leaves a very significant number of medium-sized providers of intermediary services, hosts, and platforms that are required to meet the at least yearly reporting requirements set out in Article 15 and detailed in the annexes to the Draft Implementing Regulation, with some variation depending on the category of services they provide (in this submission we refer to all those entities that will be required to comply with some aspects of Article 15 as “covered services,” or simply “intermediaries”). While GNI has advocated for and supports this tailored approach, we remain concerned that a substantial number of the services in this middle category, including and especially emerging services, may find it very difficult to meet the level of detail and granularity that the transparency templates demand, which in turn could, over time, impact the diversity of services available in the EU.

GNI encourages the Commission to consider how the Implementing Regulation can be refined and simplified to ensure that these obligations align appropriately with the ability of different intermediaries to adequately address the targeted underlying risks, while ensuring meaningful transparency and empowering users and external stakeholders to better understand the platforms' services and actions. This can be done by providing additional reporting guidance for service providers based on their size, scale, risk profile, and available resources. For instance, certain reporting obligations under the DSA apply equally to search engines that index and display entire web pages, and cloud services that do not have visibility of or control over content stored within their services. They will also apply equally to a private ISP that services a single city or province and a much larger, publicly listed ISP operating across various member states. In addition to the uneven burden this can create, it may lead to significant differences in the quality and reliability of reporting across smaller providers.

### 3. Categories of Illegal Content

GNI appreciates the Commission's attempt to develop streamlined categories for illegal content. However, it is important to recognize that this list does not comprehensively capture the full diversity of legal definitions across the 27 EU Member States or the diverse ways in which covered services may define prohibited content in their Terms of Service (ToS). Indeed, there are even differences between this list and the categories in the DSA transparency (statement of reasons) database. The structure of the draft reporting template does not always create a clear delineation between the illegal content or content not illegal under EU or member state law, but in violation of ToS.

Of particular concern is the potential for these categories to exert influence on companies' definitions of their ToS, which in the long term could have a significant normative impact not just in the EU but globally. While this framework is specific to Europe, this will not be the only or primary market for some covered services. Furthermore, it is not clear how the Commission or covered services will distinguish content moderation that is affiliated with content identified as coming from Europe from content that has an uncertain origin. To address this uncertainty, the EU should clarify that the proposed categories are general and that covered services are not obligated to reflect all of them in their ToS. This would emphasize the flexibility inherent in content moderation practices and allow companies to tailor their approaches to specific legal

requirements and user expectations within their respective jurisdictions, in a manner consistent with international human rights law.

Overall, the proposed list of categories represents a step towards greater standardization in addressing illegal content. However, it is crucial to strike a balance between harmonization and flexibility, allowing for tailored approaches to illegal content - both in the law and in platform rules - while minimizing the risk of overly prescriptive regulations. GNI recommends that the templates acknowledge the need for affording flexibility by allowing services to explain how their ToS align with the categories provided, and to account for instances where a given category may have zeros due to the lack of a corresponding prohibition in their ToS or because the service categorizes their ToS in a different manner. This would also provide room for services to address categories that fall outside the European Commission's list but have been identified as problematic by the intermediary.

#### 4. Quantitative Template

##### a. Member State Orders

Transparency on information requests to intermediaries from member states is crucial for upholding democratic accountability and ensuring platforms exercise their gatekeeping power responsibly. According to the quantitative template sections on Member State orders to act against illegal content and provide data, companies are required to report on requests received as categorized using the Commission's 14-part taxonomy, whether they were complied with, and their response time.

This approach lacks sufficient nuance. The scope of member orders, for instance, should be clearly defined to allow accurate reporting in situations where multiple member states issue orders regarding the same content or where orders originate from Europol. This clarification should seek to prevent duplicate counting, permit the scope to account for requests related to the same content that come from multiple authorities and/or jurisdictions, and acknowledge the potential for different jurisdictions to make inconsistent requests regarding the same content.

Additionally, while the number of member state orders provides a basic measure of government intervention, it fails to capture the full impact of these requests. The template currently does



not account for the number of accounts, pieces of content, or other items included in each order. This granular data will provide a more nuanced understanding of the scale and nature of government requests. However, if such fields are added, care should be taken to ensure that the fields are flexible, proportionate, and clear enough for intermediary services to action.

GNI is also concerned with the binary nature of compliance reporting, which only allows for a demand to be labeled as complied with or not, failing to account for potential nuances in compliance. The GNI Principles on Freedom of Expression and Privacy and their accompanying Implementation Guidelines, which guide our company members and is used as a reference by many other intermediaries, set forth a framework that encourages them to consider a broad range of responses to government demands ranging from full compliance to legal challenges. To better capture the extent of intermediaries' response to orders, we recommend introducing an additional category of "partial compliance" and providing space in the qualitative template for intermediaries to share more details on the principles and methods used to review and respond to government orders, including any limitations and/or concerns they may wish to publicly share around specific instances that have come up during the reporting period. Given the particularly wide range of actions that intermediaries can take in response to content, the Commission may also wish to provide additional space for VLOPs and VLOSEs to shed further light on how they respond to orders to act against illegal content, such as whether the content has been fully removed, labeled, geoblocked, etc.

Finally, while the DSA requires reporting on the median time taken by intermediary services to give effect to an order, this metric has limited value for public understanding. The time required for compliance may vary due to factors such as the complexity, appropriateness, or clarity of the order, the service's resources, and its willingness to defer generally to orders. The inclusion of response time metrics might also incentivize companies to respond too quickly or be overly deferential, which is not always the appropriate approach for dealing with complex, unclear, or inappropriate government orders. The requirement that intermediaries measure and report compliance in seconds only exacerbates the likelihood of such impacts. The Commission should ensure that Digital Service Coordinators, auditors, and the public understand the limitations of this metric going forward. In addition, instead of requiring these times to be reported in seconds, GNI recommends the Commission use alternative metrics such as days or hours.

b. *Trusted flaggers*

Under Article 16 of the DSA, “trusted flaggers” play a crucial role in the notice and action process for online platforms. Within the DSA ecosystem, the “Digital Service Coordinators” can award trusted flaggers status to entities (not individuals), including public authorities such as law enforcement agencies, as well as non-governmental organizations, and private or semi-private bodies. While the DSA outlines certain criteria for obtaining trusted flagger status, concerns remain about the ability of governments to use trusted flagger mechanisms to inappropriately and disproportionately seek content moderation, in lieu of legal mechanisms that may be more transparent and afford greater accountability. To address accountability and transparency concerns, GNI recommends the Commission amend the template and related guidance to require separate reporting of content moderation requests that come from trusted flaggers affiliated with a government, such as so-called Internal Referral Units.

5. Qualitative Template

Qualitative reporting can provide an important complement to quantitative transparency. Specifically, qualitative reports can provide an opportunity to identify trends, explain anomalies, raise issues of public concern, and share lessons learned. The Qualitative Template included in the annex is overly narrow, focused exclusively on content moderation that results from notice and action mechanisms or own initiatives.

To ensure that quantitative reporting is well understood and avoid opportunities for misunderstanding, the template and guidance should create space for and clarify the ways in which qualitative reporting can be used to provide relevant context and explanation for particular data fields, highlight trends that quantitative reporting might not otherwise clearly reveal, and explain nuances. Importantly, the templates should require more granular reporting on the relevant policies and governance structures a company has in place, including an indication of teams that might be involved and decision chains. Both the quantitative and qualitative templates include labeling as a category “visibility restriction”, even though labeling does not impact the ability of users to view labeled content. This is an example of a category that may lead to some confusion and have disproportionate impacts on smaller online platforms. In addition, the template and guidance should be amended to recommend qualitative reporting on member state orders received, principles and approaches that guide responses to such orders, and any related challenges that these may have presented. Finally,



guidance should clarify that the Qualitative Template should serve as the space for covered services to shed light on the “confidence/accuracy/success rates of automated processes including changes over time and differences between languages and content categories.”<sup>1</sup>

## 6. Conclusion

GNI reiterates its appreciation for the opportunity to provide feedback on the proposed reporting templates for intermediaries. The transparency mandates, which are leading to the standardization of reporting and creating insights into company practice, will be crucial for ensuring the implementation of the DSA. As the templates serve as a baseline for future transparency reporting in different markets, it is essential to recognize this process is an evolving experiment, and that its effectiveness will depend on continuous feedback and improvement. To this end, GN calls on the Commission to ensure that there are ample and regular opportunities for feedback from diverse stakeholders involved in the process, including companies, civil society, researchers, and the public about how these templates are working and being used in practice. GNI remains committed to continuing to engage with the Commission and other stakeholders on these and other aspects of DSA implementation going forward.

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<sup>1</sup> The Santa Clara Principles, <https://santaclaraprinciples.org/>.