

GLOBAL SPORTS ORGANISATIONS AND THE EU DIGITAL SERVICES ACT

HOW CAN IT AFFECT YOUR
SPORTS ORGANISATION?



UNITED AGAINST ONLINE ABUSE
COALITION TO STOP HATE SPEECH IN SPORT



Clark Hill

1. WHAT IS THE DIGITAL SERVICES ACT?

The Digital Services Act (the short title for Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC) overhauls the previous data governance regime in the EU, and sets out legal obligations around data transfer, storage, and/or distribution on online platforms.

Why is this important?

The Digital Services Act will make online platforms and social media companies and others responsible for any offensive, defamatory or copyright-breaching content shown on their platforms in the EU. This means that any platform which displays, hosts, or caches user generated content in the EU now faces a significant legal responsibility.

2. DOES THE DSA APPLY TO YOUR ORGANISATION?

The rules in the DSA apply also to anyone who offers intermediary services in the EU. Intermediary services include:

- Conduits – which transmit information or allow users to access transmitted information – such as email account providers, internet browsers, and broadband providers
- Web-hosting providers (e.g. GoDaddy, Google Cloud Platform, Bluehost) and cloud storage providers (e.g. Dropbox).
- Any site which caches information (temporarily storing data on browsers, websites or apps to help make them more efficient to use)

They also apply to:

- Very large online platforms (VLOPs) like Facebook, TikTok, Amazon and Ebay
- Online platforms, where people can buy or sell items

To be clear: DSA legislation only applies to those who own or operate the network infrastructure for these activities – not those who simply use it.

For most sports organisations, that means they will have limited obligations under the DSA. These obligations are set out in more detail below.

3. WHAT ARE YOUR OBLIGATIONS UNDER THE DSA?

The DSA creates various levels of obligations. These vary based on the precise nature of the service. Those providing intermediary services will have the fewest obligations, while very large online platforms (VLOPs) have the most. Most sports organisations will only provide intermediary services (like caching), however, each organisation should conduct its own analysis.

The following table sets out a brief summary of what those obligations are and to whom they apply:

RELEVANT OBLIGATION	INTERMEDIARY SERVICES	HOSTING SERVICES	ONLINE PLATFORMS	VERY LARGE ONLINE PLATFORMS
Transparency reporting (annual reports in relation to content moderation policies pursuant to Article 15)	✓	✓	✓	✓
Terms of service to take account of fundamental rights (Article 14)	✓	✓	✓	✓
Cooperation with national authorities following orders (Articles 9 and 10)	✓	✓	✓	✓
Points of contact and, where necessary, legal representative (Chapter 3, section 1)	✓	✓	✓	✓
Notice and action and obligation to provide information to users in relation to reasons for decisions (Chapter 3, section 2)	✗	✓	✓	✓
Reporting criminal offences (Article 18)	✗	✓	✓	✓

RELEVANT OBLIGATION	INTERMEDIARY SERVICES	HOSTING SERVICES	ONLINE PLATFORMS	VERY LARGE ONLINE PLATFORMS
Complaint and redress mechanism and out of court dispute settlement (Article 20)				
Cooperation with trusted flaggers (these are essentially entities which are identified by national authorities as having expertise in identifying and flagging illegal content per Article 22)				
Measures against abusive notices and counter-notices (Article 23)				
Special obligations for marketplaces, e.g. vetting credentials of third party suppliers and ensuring that third party traders are able to comply with their legal obligations under applicable EU law (Articles 30 and 31)				
Bans on targeted adverts to children and those based on special characteristics of users (Articles 26 and 28)				
Transparency of recommender systems (Article 27)				
User-facing transparency of online advertising (Article 39)				

RELEVANT OBLIGATION	INTERMEDIARY SERVICES	HOSTING SERVICES	ONLINE PLATFORMS	VERY LARGE ONLINE PLATFORMS
Risk management obligations and crisis response (Articles 35 and 36)	✗	✗	✗	✓
External & independent auditing, internal compliance function and public accountability (Article 37)	✗	✗	✗	✓
User choice not to have recommendations based on profiling (Article 38)	✗	✗	✗	✓
Data sharing with authorities and researchers (Article 40)	✗	✗	✗	✓
Codes of conduct (Articles 45 to 47)	✗	✗	✗	✓
Crisis response cooperation (Article 48)	✗	✗	✗	✓


4. CAN THE DIGITAL SERVICES ACT AFFECT THE DAY-TO-DAY ONLINE ACTIVITY OF A SPORTS ORGANISATION?

The short answer to this question is **"possibly"**.

The most obvious potential challenge arising for a sports organisation affected by the DSA is a significant review and revision of commercial licenses and terms of service. Under the DSA, non-compliant sports organisations need to be aware that they may face:

- a. Having social media accounts or websites frozen or shut down, if they fail to police abusive or offensive content.
- b. An obligation to provide warranties and indemnities showing their compliance with national and EU laws and regulations on incitement to hatred laws, laws designed to curb the spread of misinformation, harassment, incitement, breaches of privacy, criminal laws or intellectual property laws etc.
- c. Increasingly onerous contractual requirements being imposed on their social media accounts.

- d. The imposition on sports organisations and business users of active policing of their own social media postings and pages.
- e. Stricter compliance requirements on sports organisations and on matters such as hate speech and harassment.
- f. A requirement to assist very large online platform providers (VLOPs) on their DSA obligations such as transparency reporting.

If you have any questions about how the DSA might affect you – and how you can meet your obligations – please do feel free to contact us at  **Clark Hill** or speak to your in-house legal team

5. AN ONLINE CASE STUDY:

Take the example of a leading global sports organisation. It has a website, which contains mission statements, organisational structure charts, press releases, news articles, publications and policy documents.

Like many other consumer-facing platforms, user-generated material, social media posts and comments are absent from their main website.

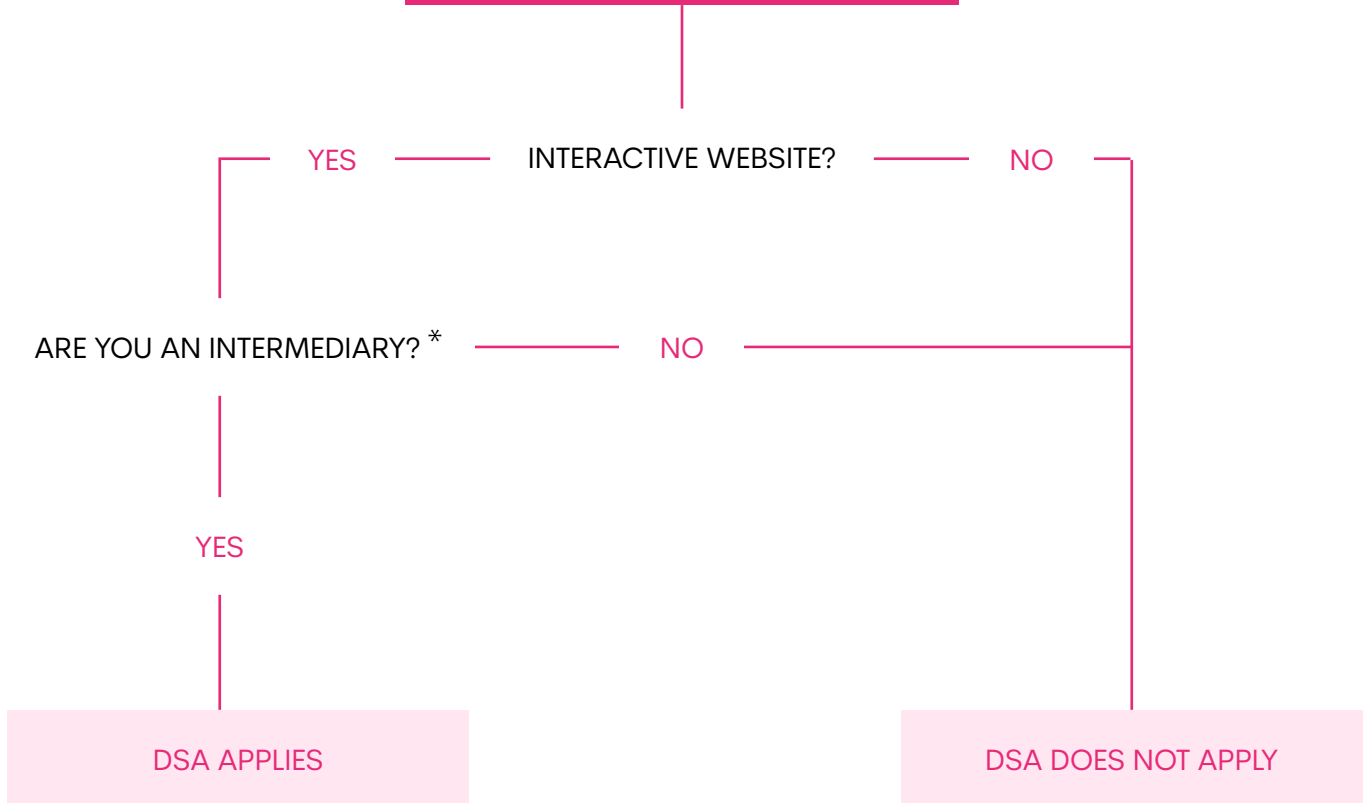
The same cannot be said of their social media presence, which is considerable.

On their LinkedIn, Twitter/X, Facebook, Instagram, Youtube and TikTok pages, users can interact with the published from the example sports organisation material by sharing, commenting or posting links or likes below it.

Once the example sports organisation publishes (or allows to be published) information on any social media platform accessible through their own channels, they lose a substantial measure of the control that they had over the original material published.

- Once a tweet/post is created, a user comment may be added which contains incorrect, hostile or potentially illegal material.
- When discussions develop in the comments section of a tweet/post, those discussions can become abusive without any intention on the part of the sports organisation.
- It can be the case for different reasons that no effective human or other suitable interventions are used by the social media platform(s) to prevent users uploading material of an abusive, unlawful, inappropriate or sexual nature onto their social media feeds. If it is not policed properly, liability under the DSA and at law generally can fall on the sports organisation.

SPORTS ORGANISATION



See relevant obligations at section 3.

Online posting on a website + related social media can create legal liability in the online case study

* Do you store or cache consumer information on your own browser, website, app?

* Are you also an internet broadband provider?

* Are you also a web-hosting or cloud storage provider?

DISCLAIMER: This Information is not intended to be considered as either legal advice generally or as legal advice to be relied upon in your country.

No information, whether oral or written, obtained by you from FIA or Clark Hill , or through or from their digital platforms, shall create any warranty or other obligation on them and they disclaim all liability and responsibility arising from any reliance placed upon such materials by you or any visitor to their digital platforms or by anyone who may be informed of any of its services or content.



UNITED AGAINST ONLINE ABUSE
COALITION TO STOP HATE SPEECH IN SPORT



unitedagainstonlineabuse.com



ebourke-consultant@fia.com



Clark Hill



clarkhill.com



[@clarkhilllaw](https://www.instagram.com/clarkhilllaw)



[/company/clark-hill-law/](https://www.linkedin.com/company/clark-hill-law/)



[clarkhilllaw](https://www.facebook.com/clarkhilllaw)



aeames@ClarkHill.com



+353 1661 3960