

Principles for Collaboration

Public-Private Partnership - Online content moderation

Background

In combating online child sexual abuse, public-private partnership has proven its added value over the past few years. The realisation has grown that protecting citizens on the Internet is a joint task of the parties from the Dutch internet sector and the Dutch government. By introducing the (Digital Services Act (DSA), the EU has established a legal framework applicable throughout the EU. One objective of the DSA is to prevent the spread of illegal online content through brokering services. Illegal content is any information that, in itself or in connection with an activity, violates Union or national law. For the proper enforcement and implementation of the DSA, and in particular the notice-and-action mechanism for reporting illegal content laid down therein, the parties from the Dutch internet sector and the Dutch government attach great importance to close and constructive dialogue based on mutual trust and equivalence.

To discuss the practical application of the Notice-and-Takedown (NTD) and Notice and Action (NTA) within the framework of the DSA, a public-private partnership for online content moderation has been set up. This document contains the basic principles for this collaboration. By taking part in this public-private partnership, participating parties commit themselves to these principles. Participants are free to discontinue participation in the public-private partnership.

Participating parties in the public-private partnership for online content moderation

The Digital Services Act (DSA) contains rules for online intermediary services. The public-private partnership for online content moderation is therefore relevant at least to:

- online intermediary services, including online platforms, such as online marketplaces, app stores, sharing economy platforms and social media platforms; ¹
- Parties that do not have a direct relationship with end users (consumers) but store data such as (cloud) hosts, CSPs; and
- Parties that operate deeper in the infrastructure chain - or at the very beginning - and are involved only in the neutral transport of data (ISPs, Internet exchanges, DNS providers).

From the public sector perspective, the public-private partnership is relevant to national governments with policy responsibility in the field of online content moderation.

In addition, it is relevant when representatives of (co-)government funded hotlines for issuing requests for the removal of forms of illegal content also join the public-private partnership.

¹ Specific rules have been established for very large online platforms (VLOPs); platforms that reach more than 10% of Europeans (i.e. 45 million users)), with compliance being monitored largely at EU level. Participation in the public-private partnership is open to VLOPs, but with regard to these parties, they cannot be committed to the agreements made at national level on all points.

Participants in the public-private partnership recognise that each category of online intermediaries has its own characteristics and interests, or obligations, and that some services are represented by umbrella and/or branch organisations.

The participants in the public-private partnership are at liberty to invite other parties - in consultation - to join the collaboration on an occasional or structural basis. The coordination of the public-private partnership for online content moderation is entrusted to ECP - Platform for the Information Society.

Ambitions

The public-private partnership for online content moderation has the following ambitions:

- There is a transparent system for online content flagging, reporting, assessing and – in case of illegal content - making it inaccessible or removing it (where the DSA assigns this), in a manner that - in accordance with the objectives of the law - promotes legal certainty, legal equality and the fundamental rights of citizens where possible, taking into account the limitations and the fundamental importance of freedom of expression;
- The (Dutch) parties from the internet sector apply NTD/NTA systems in the same way as much as possible, within the framework of Article 16 of the DSA;
- Intermediary services, hosting services, online platforms and the government remain in dialogue about shared challenges related to online content moderation and NTD/NTA agreements. The various participants feel heard in their needs and interests with regard to online content moderation and therefore show themselves to be willing partners;
- There is clarity about the roles and responsibilities of the different categories of online intermediary services on the one hand and the government on the other with respect to online content moderation and its implementation in practice;
- Participants are aware of and act in accordance with the principles and requirements of the DSA, and take these principles as the basis for their decisions. Participants operate transparently, reliably and predictably, recognizing that the effects of new laws and regulations take time to become apparent; and
- The quality and effectiveness of online content moderation remains at a high level and is improved where possible through a higher collective level of knowledge and clear agreements in a public-private partnership context.

The public-private partnership creates a consultation structure in which the participants can exchange experiences, make agreements and define best practice; all this to optimise collaboration within everyone's responsibility for the law.

Scope

Within the public-private partnership for online content moderation, the focus is on setting up the process of flagging, reporting, reviewing and disabling access to forms of online content that are criminal or manifestly unlawful. In the European context, these forms of online content are often referred to as "illegal content". While an internet intermediary often adopts a broader definition of illegal content, the focus in this public-private partnership will be on the illegal and manifestly unlawful content as described in the table below.

Within the public-private partnership, it is also possible to discuss how to deal with content that is not illegal, but that can lead to undesirable social consequences ("lawful but awful"). This is not about removing or making this material inaccessible (which is problematic in the context of freedom

of expression), but about related measures that can be taken to counteract the negative social consequences. New online phenomena can also be identified within the public-private partnership. In the case of forms of content that are not explicitly labelled “illegal” by the government, the final assessment always remains with the Internet intermediary itself.

The public-private partnership will not impose any new legal obligations on participants other than the obligations that already follow from the law. Private parties emphasise that they will treat requests differently from formal, legal claims to have content removed.

Form	Legal basis to act	Reporting method
Criminal content	DSA in conjunction with Dutch criminal law	Removal order from an authorised government body or a removal request from a trusted flagger or individual user
Indisputably Unlawful Content	DSA in conjunction with Dutch civil and/or public law	Removal order from an authorised government body or a removal request from a trusted flagger or individual user
Unwanted content	General terms and conditions of use of the Internet intermediary	No removal orders from the government or requests from government-subsidised reporting centres (there may be agreements on related measures)

Illegal content

The following themes fall outside the scope of the public-private partnership:

- moderating content on the dark web or in private chat groups;
- laying down in law and regulations the punishable or manifestly unlawful nature of specific online expressions; and
- moderating online behaviours, such as phishing or ransomware distribution.

Working method and communication

The KBG is the body within which the participants consult each other and make agreements. Specific topics can be explored in depth in expert working groups, which feed back their advice and recommendations to the sounding board group. A core group is responsible for the practical support of the public-private partnership by agendaizing topics for both the sounding board group and working groups, taking minutes, monitoring progress and monitoring the progress of the action points formulated by the sounding board group.

Communication about the public-private partnership should always be consistent with its objectives. The premise is openness and transparency. At the same time, participants must feel free and safe to present questions, bottlenecks and personal objections to the various forums within the public-

private partnership on a confidential basis. It has therefore been agreed that participants, if they communicate to the outside world, will do so only from within their own organisation and not on behalf of the public-private partnership, and will express only their own points of view.

Participation and responsibilities

Participation in the public-private partnership is voluntary but not free from obligation. Participants actively participate in the sounding board group and make capacity and/or resources available to further work out bottlenecks in the working groups. ECP - Platform for the Information Society provides project secretaries to schedule meetings, guide them, work out input from participants and coordinate the process internally with the core team.

Participants in the public-private partnership positively distinguish themselves by taking responsibility and cannot be held accountable for the actions of parties that do not participate in the public-private partnership.

Appendix I

Currently (31/05/2023), the following parties are participants in the public-private partnership for online content moderation:

- Amsterdam Internet Exchange (AMS-IX)
- The police
- Dutch Cloud Community (DCC)
- The Dutch Online Child Abuse Expertise Centre (EOKM)
- Google/YouTube
- The Dutch Ministry of the Interior
- The Dutch Ministry of Economic Affairs and Climate Policy
- The Dutch Ministry of Justice and Security
- The Dutch Security Reporting Centre/Abuse IO
- KPN
- Meta
- NL Confidential/Report Online Discrimination
- The Dutch National Management Organisation Internet Providers (NBIP)
- The Public Prosecution Service
- Snap
- SIDN
- TikTok
- VodafoneZiggo
- The Dutch Association of Registrars (VVR)
- WeTransfer

Observers

- Netherlands Authority for Consumers & Markets (ACM)²

² ACM is not a participant in the public-private partnership and (insofar as participants do not object to this) participates in the discussions only as an observer in order to gain knowledge about the practice.