September 3, 2025

Rep. Jim Jordan
Chairman, Committee on the Judiciary
United States House of Representatives

cc: Rep. Jamie Raskin
Ranking Member, Committee on the Judiciary
United States House of Representatives

Re: Hearing on "Europe's Threat to American Speech and Innovation"

Dear Chairman Jordan:

We are scholars of digital civil liberties and the European Union's Digital Services Act (DSA).[1] We write to correct persistent misconceptions that the DSA is a tool for censorship, particularly those in your staff's recent report on the DSA.[2] In fact, the law was adopted with the purpose of *advancing* the expression rights of users by giving them procedural rights and more control regarding the moderation of their content by online platforms. The law primarily guarantees users the ability to understand and contest content moderation decisions of platforms, and grants them new ways to control their user experience better than in the absence of such regulation.

The DSA both advances and limits the freedom of expression. But as Henna Virkkunen, the European Commissioner responsible for enforcing the DSA, recently explained to your Committee, the law must be applied in a way that is "content-agnostic" because it gives the Commission and EU member state regulators no power to moderate lawful content or its amplification in a content-specific way.[3] This has been called the "DSA's red line."[4]

The DSA facilitates the enforcement of existing law in each Member State, creating tools to suppress the distribution of illegal content or the proliferation of illegal behaviour.[5] Thus, the DSA creates no new rules about what can be said online, nor can it, legally, be considered to legitimise any form of censorship. Within the European Union, the power to decide what speech is lawful remains mostly

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[1] Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC [2022] OJ L277/1 (Digital Services Act or DSA).

[2] H. Comm. on the Judiciary, The Foreign Censorship Threat: How the European Union's Digital Services Act Compels Global Censorship and Infringes on American Free Speech, 188th Cong. (2025) (available at, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2025-07/DSA_Report%26Appendix%2807.25.25%29.pdf.)

[3] Answer to the European Parliament by Commissioner Virkkunen on behalf of the European Commission (Aug. 19. 2025), https://www.europarl.europa.eu/doceo/document/E-10-2025-002633-ASW_EN.pdf; see also HJC Report at 138-40 (Letter from Commissioner Henna Virkkunen to Jim Jordan (Feb. 18, 2025) ("The DSA is content-agnostic…").

[4] Martin Husovec, The Digital Services Act's red line: what the Commission Can and Cannot Do About Disinformation, 16 J. Media L. 47, 47-56 (2024), DOI: 10.1080/17577632.2024.2362483.

[5] These include making platforms' immunity for hosting manifestly unlawful content contingent upon removing such content "expeditiously" once they know about it (Article 6), facilitating notification of illegal content (Article 16), and requiring platforms to assess and mitigate the risk of "the dissemination of illegal content through their services" (Articles 34(1)(a) and 35).

in the hands of the national parliament of each Member State, to be exercised consistent with fundamental rights, including free expression,[6] while online platforms retain the power to decide what lawful speech they will permit.

It is true that EU Member States occasionally enact some rules that might impose excessive and disproportionate restrictions on the right to freedom of expression in violation of both European and international human rights standards. Such attempted violations occur in all advanced democracies, including the United States. What ultimately matters, however, are the institutional checks and balances against such abuse. In Europe, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) both serve as guardians of fundamental rights, including freedom of expression, with the power to correct and condemn violations.

Regulating Lawful Content. Much of the concern about the DSA focuses on Articles 34 and 35, which require Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) to "assess" and "mitigate" certain "systemic risks" *not* limited to unlawful content.[7] While the obligation to *investigate* is very broad, the obligation to *mitigate* is much more targeted. It cannot be used to penalise lawful speech based on its content, and remains confined by the EU law concepts of legality and proportionality. A VLOP or VLOSE may have to assess risks posed by both legal and illegal content, but the nature of its mitigation obligations hinges on the lawfulness of the content. Where *lawful* content is concerned, the Commission might, for example, enforce an obligation to limit the amplification or rapid spread of *all* virally proliferating content. But the regulator would exceed its lawful authority if it directed platforms to de-rank specific lawful content, such as all Kremlin-aligned views or vaccine criticism.

With respect to lawful content, the Commission can only enforce content-neutral measures, such as how the design features of the system (*e.g.*, registration mechanisms, interfaces) mitigate systemic risks, or how platforms empower users to block content they do not want to see, or users they do not want to interact with.[8] Conversely, the DSA does not, as your report claims, authorise the Commission to censor "content that EU bureaucrats believe negatively affects elections or civic discourse."[9] While these ambiguous categories of systemic risk may trigger assessment obligations, any obligation to mitigate such risks must be interpreted in content-agnostic ways whenever they concern lawful content. Thus, there is simply no basis for your claims that "the DSA leads to censorship, namely censorship of conservative viewpoints."[10] In other words, while references to "electoral processes" and "civic discourse" may appear vague and open to interpretation, platforms themselves are left to decide what content-based rules they may apply to lawful content. This is not within the

[6] EU Member States must respect freedom of expression protected by both Article 11 of the Charter of Fundamental Rights of the European Union (the EU Charter) and Article 10 of the European Convention on Human Rights (ECHR). The EU Charter is enforced by the Court of Justice of the European Union (CJEU) in Luxembourg while the ECHR is enforced by the European Court of Human Rights (ECtHR) in Strasbourg. The latter is an organ of the Council of Europe, whose 46 Members include not only the 27 Member States of the European Union but also the United Kingdom and other countries.

[7] See DSA Article 34(a).

[8] Martin Husovec, Principles of the Digital Services Act 341 (2024).

[9] HJC Report at 19.

[10] Id. at 18.

Commission's authority, and any attempt by the Commission to regulate in content-specific ways would likely fail judicial scrutiny.

The DSA's Red Line. This limit is a "constitutional" limit, in American terms: it is required by three foundational principles of European law. The first is the *principle of legality*. "Any limitation on the exercise of the rights and freedoms recognised by" the European Charter of Fundamental Rights (the Charter) must, under Article 52 thereof, "be provided for by law…."[11] Such a limitation, the CJEU has said, "must itself define the scope of the limitation on the exercise of the right concerned."[12] This principle was developed, and continues to be enforced, by the ECtHR.[13] The DSA does not explicitly authorise any content-specific interference with the right of free expression. Thus, the DSA cannot authorise any such restriction upon lawful expression.

Second is the *principle of conferral*, akin to American principles of vertical federalism: the European Union may act "only within the limits of the competences conferred upon it by the Member States in the Treaties" that created and govern the EU; likewise, "[c]ompetences not conferred upon the Union in the Treaties remain with the Member States."[14] If the European Commission were allowed to regulate the illegality of content ad hoc, it could encroach on the competencies that the Member States did not consent to be delegated through the Act.

Third is the *principle of institutional balance*, akin to American principles of the horizontal separation of powers: The Commission, which is the Executive branch of the European Union, may not usurp the powers of the Union's legislative bodies, the Parliament and the Council.[15] The European Commission has no conferred authority to legislate on which speech is lawful.

Each principle would be sufficient independent grounds for the courts of EU Member States, and ultimately the Court of Justice, to enforce the DSA's red line; taken together, they doom any attempt to use the DSA as a tool for censorship of lawful but disfavored speech. The DSA itself provides that the Act must "be interpreted and applied in accordance with … the freedom of expression and of information…"[16] While it is true that the DSA fails to explicitly codify the red line, nothing stops the Commission from fully acknowledging it also in its enforcement work.

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[11] Charter of Fundamental Rights of the European Union art. 52, 2012 O.J. (C 326) 391. This principle is analogous to the principle in First Amendment law that restrictions upon speech are "void for vagueness" if they fail to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," so that "laws must provide explicit standards for those who apply them." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).

[12] Republic of Poland v. European Parliament & Council, Case C-401/19, ECLI:EU:C:2022:297, ¶ 64.

[13] See, e.g., Handyside v. the United Kingdom, ¶ 49, 7 December 1976, Application No. 5493/72, European Court of Human Rights ("Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.").

[14] Consolidated Version of the Treaty on European Union art. 5(2), 2012 O.J. (C 326) 13.

[15] Article 13(2) TEU ("Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.").

[16] DSA Recital 1.

Content-agnosticity was emphasised during the process of drafting the DSA. However, it was not fully spelt out in the DSA, which left the door open for various interpretations and potential abuse. In this sense, the actions of the former Commissioner Thierry Breton seriously misrepresented the purpose of the law and attempted to instrumentalise it for purposes not intended by its drafters.

In 2023, Commissioner Thierry Breton made comments on French television, threatening to shut down social media during unrest for failing to remove "hateful content."[17] But the DSA does not authorise the Commission to decide what content is "hateful": each Member State makes its own laws about hate speech, sometimes together through EU legislation, but the DSA merely provides mechanisms for enforcing those laws.[18] Moreover, the DSA authorises only temporary blockage of specific services in only the most extreme cases, subject to judicial review and to safeguards far more onerous and robust than in the US.[19] Breton's threats were widely condemned, with dozens of European civil society groups warning that these threats "could reinforce the weaponisation of internet shutdowns," and legitimise "arbitrary blocking of online platforms by governments around the world."[20]

Yet Breton continued to overstate his authority. In 2024, he threatened Elon Musk with action under the DSA merely for hosting a conversation with Donald Trump, claiming that the then-presidential candidate might "incite violence, hate and racism."[21] Breton asserted that Article 35 imposed duties "regarding the amplification of *harmful content* in connection with relevant events, including live streaming, which, if unaddressed, might increase the risk profile of X and generate detrimental effects on civic discourse and public security."[22] The DSA does not recognise any special category of "harmful content."[23] The term only has legal relevance in the narrow context of audiovisual media law,

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[17] Clothilde Goujard & Nicolas Camut, Social Media Riot Shutdowns Possible Under EU Content Law, Breton Says, POLITICO (July 10, 2023), https://www.politico.eu/article/social-media-riot-shutdowns-possible-under-eu-content-law-breton-says/.

[18] HJC Report at 16.

[19] Where a "Digital Services Coordinator considers that a provider of intermediary services has not sufficiently complied with the requirements referred to in [Article 51(3)], that the infringement has not been remedied or is continuing and is *causing serious harm*, and that that infringement entails a *criminal offence involving a threat to the life or safety of persons*, to *request that the competent judicial authority of its Member State order the temporary restriction of access of recipients to the service* concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place." Article 51(3). Compare Four Rounds of ICE Domain Name Seizures and Related Controversies and Opposition, Berkeley Tech. L.J. Blog (Feb. 23, 2011), https://btlj.org/2011/02/four-rounds-of-ice-domain-name-seizures-and-related-controversies-and-opposition/

[20] Access Now, Civil society statement: Commissioner Breton needs to clarify comments about the DSA allowing for platform blocking (July 26, 2023) https://www.accessnow.org/press-release/dsa-internet-blocking-statement/

[21] Thierry Breton (@ThierryBreton), X (Aug. 2, 2025, 9:14 AM), https://x.com/ThierryBreton/status/1823033048109367549.

[22] Id. (emphasis added).

[23] The term is used only once in the DSA, in passing, in a recital referring to the risks of online advertising. DSA Recital 68.

where—much as in the US under laws administered by the Federal Communications Commission[24]—it defines what content minors should not be able to see, often including content that is perfectly lawful but should not be shown to minors on some platforms.[25]

Under the DSA, either there is a legal basis for a content-specific restriction because it constitutes 'illegal content',[26] or there is not; there is nothing in between.[27] Breton confused this essential distinction, thus ignoring the DSA's red line.

As in 2023, Breton's threats were quickly condemned by civil society groups.[28] Breton conceded, in a letter to your committee, that he had crossed the DSA's red line, admitting that the "[t]he DSA does not regulate content."[29] Breton's fellow Commissioners distanced themselves from his threats.[30] Within two weeks, Breton resigned to preempt being dismissed by the President of the Commission Ursula von der Leyen.[31] After elections to the EU Parliament, President von der Leyen selected Commissioner Virkkunen to fill this vacancy; she clearly affirmed her commitment to respecting the DSA's red line against censorship.[32] *Politically*, the EU's checks and balances worked.

Yet *legally*, more could and should be done to avoid confusion and prevent what Commissioner Breton had attempted. The DSA casts a long shadow: with potentially enormous fines of up to 6% of a company's global turnover for violations of the DSA, including Articles 34 and 35's broad risk assessment and mitigation provisions, companies face strong incentives to comply. This makes them

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[24] See, e.g., FCC v. Pacifica Found., 438 U.S. 726 (1978) (upholding indecency regulation of broadcast media to protect children); FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009) (upholding FCC policy banning "fleeting expletives" from broadcast media).

[25] Directive (EU) 2018/1808, art. 6a, 2018 O.J. (L 303) 69.

[26] "'Illegal content' means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law." DSA Article 3(h).

[27] "Regulated content harmful to minors might be seen as information that is not in compliance with audio-visual media laws if they are shown to minors. It depends on how these categories are operationalised in the national law. Alternatively, it can be seen as a self-standing obligation of some providers. In any case, there is no comparable category for adults in the same audio-visual media laws. Plus, the category does not apply to all online platforms." Martin Husovec, General report: topic II - EU Digital Economy: general framework (DSA/DMA) and specialised regimes, in XXXI Fide Congress: EU Digital Economy: general framework (DSA/DMA) and specialised regimes, 59 (Krzysztof Pacuła ed., 2025) (*FIDE Report*), https://www.fide-europe.org/xms/files/Katowice2025/REPORTS/T2/T2._EU_Digital_Economy._General_Report.pdf.

[28] Access Now, ARTICLE 19 & Electronic Frontier Foundation, Joint Statement by Access Now, Article 19 and EFF Regarding Breton Letter (Aug. 21, 2024), https://www.eff.org/document/joint-statement-access-now-article-19-and-eff-regarding-breton-letter.

[29] House Report at 16.

[30] Brussels Slaps Down Thierry Breton Over 'Harmful Content' Letter to Elon Musk, FIN. TIMES (Aug. 13, 2024), https://www.ft.com/content/09cf4713-7199-4e47-a373-ed5de61c2afa.

[31] Lorne Cooke, A French member of the European Commission resigns and criticizes President von der Leyen (Sept. 16, 2024), https://apnews.com/article/eu-commission-breton-france-resign-musk-b32e1897535592d4f4bffd7d9358f0af

[32] European Commission, Answer Given by Executive Vice-President Virkkunen to Parliamentary Question E-002633/2025 (Aug. 19, 2025), https://www.europarl.europa.eu/doceo/document/E-10-2025-002633-ASW_EN.pdf.

vulnerable to the kind of jawboning Commissioner Breton attempted to engage in. The DSA already includes certain valuable safeguards. Only the Commission, not the Digital Services Coordinators of each Member State, have the power to enforce the systemic risk provisions with respect to VLOPs and VLOSEs.[33] Further, when the Commission issues preliminary findings of a violation, it must "explain the measures that it considers taking, or that it considers that [the VLOP or VLOSE] concerned should take, in order to effectively address the preliminary findings."[34] In other words, the Commission bears the burden of defining any remedy and defending it as proportionate.[35] By contrast, the US Federal Trade Commission bears no such burden, which makes it easier for the agency to "jawbone" companies into making concessions that it doesn't have to defend.

We would support codifying the red line of content-neutrality in the text of the DSA itself, just as the DSA codifies another longstanding red line—against requiring online platforms to monitor user communications.[36] In the literature, some of us have argued that the Commission should formalise Commissioner Virkkunen's affirmation of the DSA's content-neutrality, including a commitment to explain how each enforcement action on the basis of Articles 14(4) (fundamental rights compliance) and 35 (risk mitigation) complies with this red line.[37] Such guidance would protect the free expression rights of users while also avoiding misconceptions that the DSA could be used as a tool for censorship.

Other parts of the DSA. Accusations of censorship have been wrongly levelled against other parts of the DSA, especially the trusted flagger and out-of-court dispute settlement systems.[38] These features of the law actually protect freedom of expression by avoiding that lawful speech is silenced by illegal behaviour of others, and ensuring that users get a chance to obtain a second opinion on content moderation decisions of platforms.

Your report claims the "trusted flagger system has been uniformly pro-censorship," arguing that, because many trusted flaggers "are government-funded, …. [they] are incentivized to censor speech critical of politicians or the current regime."[39] The trusted flaggers are state-certified organisations, often NGOs, who have a good track record of reporting illegal content with a low error rate. The DSA rewards such a track record and expertise with the ability to obtain faster decisions from platforms. However, the DSA neither requires such removals by platforms to be automatic nor empowers trusted flaggers to remove content directly. Removal decisions still remain fully in platforms' discretion. If trusted flaggers make repeated mistakes, the platform must suspend working with them, and the DSA obliges Digital Services Coordinators to suspend their certification.[40] Thus, if

[33] DSA Article 56(2).
[34] DSA Article 73(2).
[35] See supra [cross reference to footnote about proportionality].
[36] "Providers of intermediary services should not be, neither de jure, nor de facto, subject to a monitoring obligation with respect to obligations of a general nature." DSA Recital 30. The Electronic Commerce Directive of 2000 contains the same principle. Directive 2000/31, art. 15, 2000 O.J. (L 178) 1.
[37] FIDE Report, supra note__, at 59–60.
[38] DSA Articles 21 and 22.
[39] HJC Report at 3.
[40] DSA Article 23.

anything, the DSA creates a framework for oversight of such actors and discourages incorrect notifications of illegal content.

The out-of-court dispute settlement (ODS) bodies give users the ability to seek a second opinion, mostly at the cost of platforms. ODS bodies are certified organisations that must have the necessary expertise. Users can submit complaints and seek a decision. However, ODS decisions are not binding. Platforms only have an obligation to engage in good faith, but not to implement every single decision that they make. This feature of the DSA enhances the ability of users to fight back against over-removal by platforms. Based on the existing experience of DSA implementation, the platforms often admit mistakes when they receive a notification about their case. Thus, as with the ability to file an appeal, this external opinion to obtain a second opinion protects users against illegitimate moderation of content on platforms. Platforms remain in charge of formulating their own terms and conditions, which ODS bodies only interpret along with the DSA.

Codes of Conduct under the DSA are another topic of your report. Such codes are intended as co-regulatory tools to help codify the best practices in the industry. They are not legally binding, and they are fully transparent. As long as these codes mirror the authority of the Commission in the DSA, they serve to codify more detailed expectations for the market players. Such codes cannot be the basis for finding violations and thus imposition of fines. Thus, even if a code states something outside of the scope of the DSA, it cannot be legally enforced under the DSA or by the Commission.

Human Rights Law. Some degree of trans-Atlantic disagreement over free expression is inevitable. But the global outlier is the US, not the EU: the First Amendment protects "the freedom to express 'the thought that we hate,'" including "[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground."[41] Like democratic and human-rights-abiding countries around the world, EU Member States have long made different decisions about restricting speech. Adopted by the United Nations General Assembly in 1966, the International Covenant on Civil and Political Rights (ICCPR) governs the scope and protection of universal human rights. Article 20 obliges States to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The United States Senate ratified the Covenant in 1992 but made a reservation to Article 20 because of its First Amendment.[42] Nonetheless, Article 20 remains binding international law for all States.

Like the ICCPR, EU Framework Decision 2008/913/JHA requires Member States to criminalise hate crimes and speech, though Member States vary in their implementation and interpretation of this framework.[43] Likewise, the European Convention on Human Rights, in line with international human rights standards mentioned above, expects European countries to outlaw expressions that would be

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[41] Matal v. Tam, 582 U.S. 218, ___ (2017).

[42] "Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States."
Resolution of Advice and Consent to Ratification, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781 (daily ed. Apr. 2, 1992), https://www.congress.gov/treaty-document/95th-congress/20/resolution-text.

[43] Council Framework Decision 2008/913/JHA, 2008 O.J. (L 328) 55.

lawful under the First Amendment, including many forms of hate speech.[44] While some EU national laws have been criticised and questioned due to their excessive broadness and vagueness (*e.g.*, Hungary), they cannot be categorically dismissed as "censorship" merely because they do not align with US Supreme Court doctrine. Europe has its own tradition of freedom of expression, in alignment with international human rights standards, which recognises that some forms of expression can incite acts of discrimination, hostility or violence, and jeopardise both the physical safety and free expression rights of those targeted by such speech.

Extraterritorial Effect. Such divergent stances on international human rights standards significantly limit potential trans-Atlantic consensus on which speech should be unlawful. But what *is* possible is clarifying the extra-territorial scope of US and EU law. Both should act with mutual comity.

The DSA itself does not require extraterritorial application of laws. Compliance with the DSA's obligations, such as requirements for the design of services, can be, and is being, localised by platforms.[45] The DSA is an extra regulatory layer that grants the state authorities, individuals and civil society new paths to enforcement of what parliaments establish to be illegal. States thus remain in charge of authoritatively regulating content and the behaviour of users, but the platforms now have a clearer list of expectations through which such content laws are enforced.

You might be again thinking of the actions of the former Commissioner Breton. He invoked "potential spillovers in the EU" because Musk's interview with Trump was "accessible to EU users" and was "being amplified also in our jurisdiction." Breton was vague about what exactly X should do: "I therefore urge you to promptly ensure the effectiveness of your systems and to report measures taken to my team."[46]

Providers established outside the Union are subject to the DSA to the extent they "offer services in the Union."[47] The Commission has clarified that "[w]here a content is illegal only in a given Member State, as a general rule it should only be removed in the territory where it is illegal."[48] Takedown orders, thus, can *sometimes* have extraterritorial effect, as the DSA itself admits.[49] As noted above, such an extraterritorial effect would follow from other laws, not from the DSA. If national law is not

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[44] Article 10 of the ECHR guarantees freedom of expression but Article 10(2) permits restrictions on expression "necessary in a democratic society" which also respect the principles of legality and proportionality (i.e., any restriction must represent the lesser necessary degree of intervention vis-a-vis the right to freedom of expression). Article 17 (the "abuse clause") has often been interpreted by the ECtHR to exclude certain types of expression—especially racist or Holocaust-denying speech—from the protection of Article 10 altogether.

[45] Martin Husovec & Jennifer Urban, Will the DSA Have the Brussels Effect?, VERFASSUNGSBLOG (Feb. 21, 2024), https://verfassungsblog.de/will-the-dsa-have-the-brussels-effect/.

[46] Supra note __.

[47] "Rules should apply to providers of intermediary services irrespective of their place of establishment or their location, in so far as they offer services in the Union, as evidenced by a substantial connection to the Union." DSA Recital 7.

[48] Press Release, European Comm'n, Questions and Answers: The Digital Services Act (DSA) (Dec. 15, 2020), https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2348

[49] "The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives." DSA Recital 1.

designed in this way, the DSA does not expect extraterritorial application. Moreover, the provisions of the DSA governing lawful content, especially regarding risk assessment and mitigation, cannot properly be understood to have an extraterritorial effect, as the law does not express these intentions.[50] In *Google v. CNIL* (2019), the CJEU ruled that the EU General Data Protection Regulation's so-called "right to be forgotten" did *not* require Google to block search results related to the plaintiff worldwide, only within the EU, noting that countries will strike different balances between privacy and free expression.[51] Thus, the CJEU, the EU's top court, is fully aware of the challenges. The ideal solution from our perspective would be for the US and the EU to conclude a political agreement outlining that neither will attempt extra-territorial application of its speech rules at the expense of the rights of either's citizens.

Ultimately, it is up to tech companies to set their own contractual rules and then comply with local laws regarding illegal content. Unless a law of a specific EU Member State seeks extraterritorial effect, which is in itself controversial, EU hate speech rules do not limit the speech of Americans in the US. If they do, that is usually the choice of tech companies, who may or may not decide to extend bans on such content to other countries.

Finally, some US tech companies might be complaining about being unfairly targeted by European rules. European companies that are subject to enforcement are complaining, too. Some of the European adult sites recently publicly complained that the Commission's actions are "[a] textbook case of double standards: one for politically untouchable [US] platforms, and another for us. Judging by this level of hostility, it's clear the EU is eager to harm the few European VLOPs that exist."[52] Thus, there is little evidence that US companies are treated worse than their European or Chinese counterparts.

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We encourage you to consider how the DSA might offer a model for how to address your own concerns about supposed censorship of conservatives—indeed, *all* users—through actionable transparency and procedural safeguards in favour of users. We are also transmitting this letter to the European Commission. We are available to answer any questions you may have and can be reached at <M.Husovec@lse.ac.uk>.

Sincerely,

Prof. Martin Husovec, Associate Professor of Law, LSE Law School, London School of Economics and Political Science (LSE), and Founder of Platform Regulation Academy

Joan Barata, Visiting Professor, Catholic University Porto (Católica-Porto) and Senior Expert at Platform Regulation Academy

Berin Szóka, President, TechFreedom and Ph.D. candidate, Dublin City University

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[50] HJC Report at 139 (quoting Letter from Commissioner Virkkunen, supra note 3 ("The DSA … does not apply in the U.S. or other third countries.")).

[51] Google LLC v. Comm'n Nationale de l'Informatique et des Libertés (CNIL), Case C-507/17, ECLI:EU:C:2019:772, 2019 O.J. (C 399) 3.

[52] The Scam of Age Verification (June 30, 2025), https://pornbiz.com/post/17/the_scam_of_age_verification.

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