

Digital Services Act

**AN EMERGENCY MANUAL
FOR PRIVACY-WORRIED DEVS**

DSA?

Digital Services Act is an EU law regulating online intermediaries.

An intermediary is someone who processes user-provided data from a distance – without interfering with it.

It's important for any app where user content is transmitted, cached or stored. This guide only focuses on a small part of the DSA—the one asking app developers to publicly share their contact information online.

Why the panic?

The DSA asks all online platforms to publish information about ‘traders’ who offer their services via them.

Many developers do not feel comfortable sharing their personal data in app stores, for a good reason. Good news: they might not have to.

Don't get scared by the legalese.

“trader’ means any natural person, or any legal person irrespective of whether it is privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession.”

The definition of a trader is impossible to read, but it boils down to common sense. Are you consistently trying to grow a business or make money, in a professional, organized way, when listing your app? If yes, you are a trader.

Just because someone is selling a \$3 app does not mean they are acting as a trader: they might have made a simple app for fellow hobbyists without plans to earn significant money on it.

On the other hand, if they were advertising it, using it to promote their consulting business, offering a customer support service, and having five other apps on the App Store, they are likely a ‘trader’.

It's the context that matters.

“The mere fact that the sale is intended to generate profit or that a natural person publishes, simultaneously, on an online platform a number of advertisements offering new and second-hand goods for sale cannot suffice, by itself, to classify that person as a ‘trader’.”

EU Court of Justice

You are a trader if you sell stuff in an organized, professional way.

Do you publish apps primarily to make money?

Do you pursue other benefits – like an increased number of customers for your consulting services?

Is the app store a relatively significant source of income on which you rely?

How much does your app cost?

Do you have many apps on the app store?

Do you advertise your apps?

Do you provide regular updates?

Do you offer customer support?

Do you make apps for individual clients?

Do you plan to sell this app to another developer or business?

Do you have a high sales turnover?

Do you pay VAT?

Are you a registered business?

The list was just an illustration.

Do not take it literally.

Look at the big picture:
are you selling like a pro?

Still trying to figure it out?

Take a quick look at some EU legal guidelines.

They are... not horrible, actually.

The references are in this paper.

Made by a trader?

Likely.

A paid app made by a professional developer with a large app portfolio

A heavily advertised free app, made to promote other apps or services

An ad-sponsored app promoting traders

An open-source app made to promote a business, its services or technologies

A subscription-based app with in-app purchases

An expensive app developed for a very specialized audience

Unlikely.

An app put together during a weekend, sold at a relatively low price

An app with a limited user count and support, sold casually

An app made by a group of volunteers, without plans to commercialize

An app published to serve as a portfolio piece

An app made without a plan to make it a proper source of income

If you are a trader, you need to provide some info.

Some will be published.

Name

Address

Phone

Email

Registration number

Your “I will follow the law”-promise

Some won't.

Copy of your ID

Payment account info

Do not rush to conclusions.

“Who cares. I am not a trader.”

You should really think twice.

First, giving off an impression that you are not a trader – when you, in fact, are – is considered to be an unfair, misleading commercial practice under the EU law. It's as bad as offering a paid product as 'free' or lying to consumers that they have purchased something when they didn't. It's serious.

Secondly, you would breach your contract with the platform where your app is being sold. It is never wise to breach a contract.

Thirdly, your customers might get spooked when they see that they won't be protected by EU consumer law when they download your app.

**Platforms must
make their best
effort to verify
the info.**

“Online platforms ... shall, through the use of any freely accessible official online database or online interface ... make best efforts to assess whether information is reliable and complete.”

Sources

Law and case law

DSA Article 30-32

DSA Recital 72-74

CJEU Case C-105/17 (Kamenovna)

CJEU Case C-774/19 (Petruchova)

Important guidelines

Guidance on the interpretation and application of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices

Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights

Say hi!

I wanted to write this short paper because I believe that privacy is important and that everyone should have a chance to get a proper info before they share their personal information.

I am a tech geek working in academia, and the role of an academic is to spread useful information. I try my best to write papers like these just to show that laws are far more flexible – and reasonable – than people might think. Looking at you, GDPR.

I do not have the time to do this too often, but if there is a particular topic you'd like to get a brief overview of, feel free to drop me a line. I cannot, and will not, provide ad-hoc, improvised legal advice – but I will always try my best to help out any struggling devs. I'd be happy to do a write-up on other important stuff as well.

Once again, remember that this paper is not really meant to analyze your particular situation – it's painting in broad strokes.

Best,

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All opinions are entirely my own.

