

Grégoire Polad
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16 mai 2024

Dear Members of the European Board for Digital Services,

RE: Commercial Television and VoD Services on trusted flagger qualification for individual entities

As we approach the meeting of the Digital Services Coordinators scheduled for May 28, 2024, I wish to highlight ACT's ongoing emphasis on the importance of the trusted flagger status and its granting to our members.

For context, this is a point we have repeatedly underlined in our contacts with the Institutions throughout the negotiation process of the Digital Services Act (DSA); diligently providing insights and rationale as to why the status should be cover more than collective interests. We were therefore pleased and reassured that the co-legislators unanimously approved in their final agreement to increase the scope for qualifying entities under the trusted flagger regime.

As such we are surprised and concerned to see that many Member States may currently be taking dispositions that may result in a restrictive interpretation of Recital 61. As you are aware, Recital 61 encourages industry associations representing members' interests to apply for the trusted flagger status yet also clarifies that entities representing private interests are eligible for this status.

It is imperative that DSCs align with both the spirit and letter of the law. The criteria outlined in Article 22.2 are the only mandatory requirements within the Regulation. Any deviation from these standards would contradict the clear intention of the co-legislators to allow private entities to be eligible for the trusted flagger status.

ACT remains a staunch advocate for the recognition of IP rights holders and their partners as trusted flaggers. We appreciate the co-legislators' proposal to formalise the attribution of this status through the involvement of an independent third party, namely the Digital Services Coordinators. Equally, as recognised in the 2023 European Commission Recommendation on combating online piracy of sports and other live events, this type of contents economic value is exhausted at the end of the live broadcast. This is why immediate take down is essential and where trusted flagger status for private entities can deliver results in tackling piracy.

I thank you for your kind consideration of the above and remain at your disposal should you wish to discuss this in further detail.

Yours sincerely,



Grégoire Polad

Director General | Association of Commercial Television and Video on Demand Services in Europe



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- **European Commission, DG CNCT Office of Director General & relevant services**
- **Council of Ministers, Internal Market attachés**