

Digital Regulation The EU Approach

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1. European Digital Strategy: 2030 Digital Compass

- European way for the Digital Decade COM(2021)118



Digitalisation of public services

Key Public Services: 100% online

e-Health: 100% of citizens having access to medical records

Digital Identity: 80% citizens using digital ID

GOVERNMENT



Digital transformation of businesses

Tech up-take: 75% of EU companies using Cloud/AI/Big Data

Innovators: grow scale ups & finance to double EU Unicorns

Late adopters: more than 90% of SMEs reach at least a basic level of digital intensity

SKILLS



Skills

ICT Specialists: 20 million + Gender convergence

Basic Digital Skills: min 80% of population



BUSINESS

INFRASTRUCTURES



Secure and sustainable digital infrastructures

Connectivity: Gigabit for everyone, 5G everywhere

Cutting edge Semiconductors: double EU share in global production

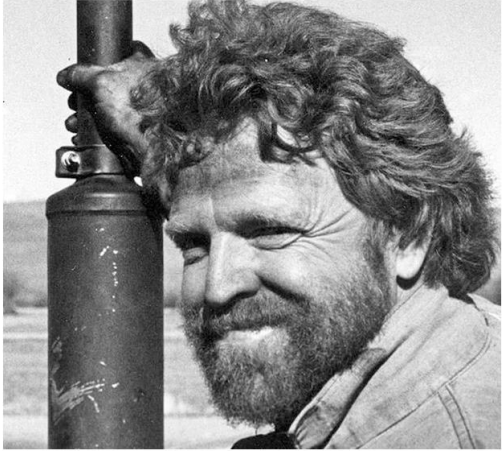
Data - Edge & Cloud: 10,000 climate neutral highly secure edge nodes

Computing: first computer with quantum acceleration

European Commission Strategy of Feb 2020: COM(2020)67

	Regulation	Investment and skills New industrial policy and new money
Digital platforms	<ul style="list-style-type: none"> - Digital Markets Act - Digital Services Act 	<ul style="list-style-type: none"> - Infrastructures for telecom networks, computing power, micro-chips
Data	<ul style="list-style-type: none"> - Data Governance Act - Data Act 	<ul style="list-style-type: none"> - Infrastructures for hosting, processing and using data - Interoperability
AI	<ul style="list-style-type: none"> - AI Act 	<ul style="list-style-type: none"> - Partnership with Member States - Partnership with firms

2. Digital Platforms



**A Declaration of the
Independence of Cyberspace**
By John Perry Barlow



Towards an EU Online Platforms Law

EU Law	Scope
E-Commerce Directive (2000/31)	Information Society Services
Audiovisual Media Services Directive (2010/13 rev 2018)	Video sharing platform
European Electronic Communications Code Directive (2018/1972)	Communications apps
Copyright Digital Single Market Directive (2019/790)	Content-sharing service
Platforms-to-Business Regulation (2019/1150)	Intermediation services such as marketplaces (Amazon) or app stores



Digital Markets Act



Digital Services Act

- Digital Markets **contestability (and innovation)**
- B2B **fairness**
- **Internal market**

- **Safe, predictable and trusted online environment**
- Protection **fundamental rights**
- **Internal market**

Biggest online platforms

All platforms hosting content (social networks) and material (ecommerce)

DMA: Digital Gatekeepers

- Specific **digital intermediation services**:
‘Core Platforms Services’
 - Marketplaces, app stores, search, social networks, video-sharing, communication app, OS, cloud, ad tech
- Specific firms: *Gatekeepers*
 - 3 **criteria**: impact + gateway + durable
 - *Quick*: **Presumption** based on size (financial and users)
 - *Not dirty*: Can be **rebutted** with economic indicators: multi-homing, entry barriers, vertical integration



Tables of the Law 2.0

- **Prohibitions**

- Self-preferencing (Google Search)
- Conflict of interests (Amazon Marketplace)

- **Access**

- Interoperability (Facebook)
- App store (Apple)
- Data (Google Search)

- **Missing pieces?**

- M&A: Start-ups acquisitions (all serial acquirers)
- Structural separation?



DMA: Oversight and enforcement

- Centralised at the **European Commission**
- In bi-lateral (adversarial) dialogue with platforms
- Little role for **national regulators**
- No clear role for **other stakeholders**: business and end-users, complementor and substitutors, civil society



DSA: Liability exemption

- Two **cornerstones of the E-Commerce Directive** are maintained
 - **Liability exemption** for intermediary services is maintained
 - Prohibition of **general monitoring**
- But **complemented**
 - **Good Samaritan clause**
 - **Due diligence obligations**



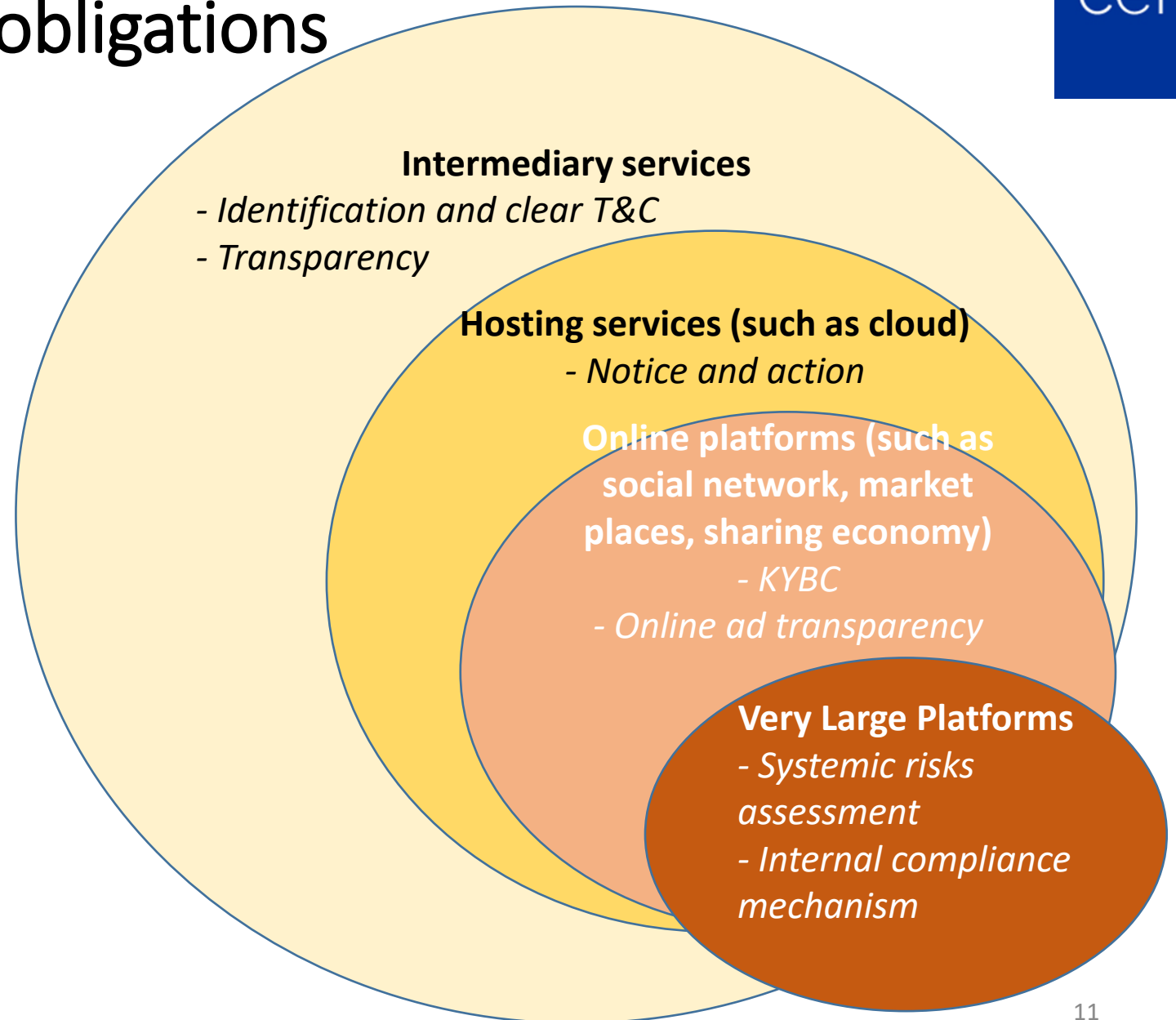
Donald J. Trump ✓
@realDonaldTrump

REPEAL SECTION 230!!!

12:08 PM · Oct 6, 2020 · Twitter for iPhone

2.3K Retweets 228 Quote Tweets 7.3K Likes

DSA: Due diligence obligations

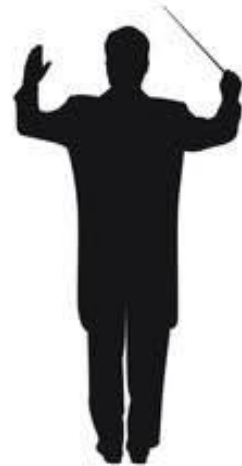
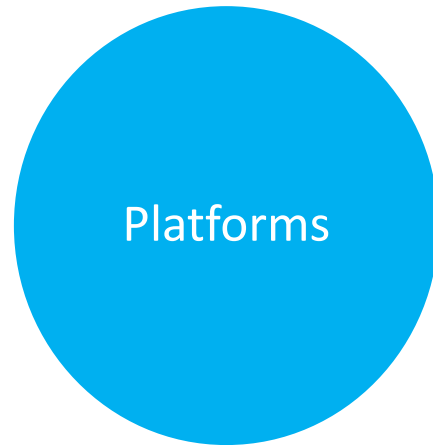


DSA: Oversight and enforcement

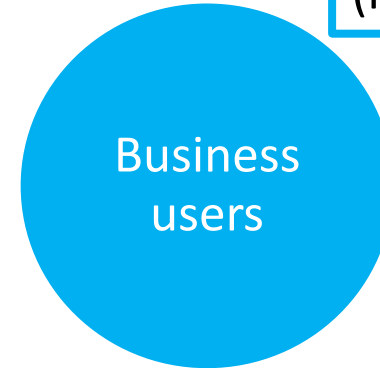
- **Semi-centralised** institutional design
 - National **Digital Service Coordinator**
 - Member State where the platform is established
 - **European Board** for Digital Services (EBDS)
 - Mutual learning and consistency application of EU law
 - **European Commission**
 - For Very Large Online Platforms

DSA: Ecosystem of enforcement

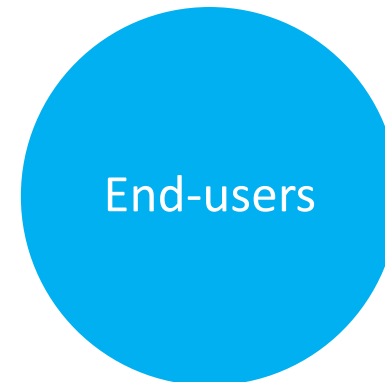
Internal tools of platforms (risk assessments and compliance officers)



Delegated oversight
(independent auditors/trustees)



Empowered and proactive users, civil society, trusted flaggers



General /individual guidance
Codes of conduct

3. Data

- *European Commission Data Strategy of Feb 2020, COM(2020)66*
- Regulation to stimulate more data sharing
 - Cross-sectoral **governance framework** for data access and use
 - Common **European data spaces** in strategic sectors and of public interest
- **Investments** to strengthen Europe's capabilities
 - **Infrastructures** for hosting, processing and using data
 - Interoperability
 - **Skills:** Empowering individuals and SMEs

4. Artificial Intelligence

- *Commission AI White Paper of Feb 2020, COM(2020)65*
- *Commission AI European Approach of April 2021, COM(2021)205*
- Ecosystem of trust: **Regulation**
 - AI Act
 - 3 prong risks-based approach: prohibition (such as social scoring), regulated high risks (such as credit scoring), others
 - Transparency
 - Innovation
- Ecosystem of excellence: **Investment & skills**
 - Partnership with Member States
 - Partnership with firms

5. Will the EU Strategy delivers?

- Which will be the **conditions of success** and will they be achieved?
- Will European be able to develop an successful **industrial policy**?
- Will the regulators be able to **change their culture**?
- Will the lawmakers and regulators **learn from their** (inevitable) **mistakes**?

- How the different emerging regional digital laws could be **coordinated at the global** level

