

## EU Updates Digital Laws

### ***Work Required to Realise Political Maxim: ‘What Is Illegal Offline Must Be Illegal Online’***

**15 December 2020:** The European Commission has published its flagship Digital Services Act (DSA) and Digital Markets Act (DMA) draft regulations.

The laws are of critical importance to the millions of creators, businesses and audiences in Europe’s digital and streamed music sector and will have ramifications for tech regulation geo-politically.

The twin laws have promised to tackle a range of malpractices by digital streaming services, platforms, search engines, pirate sites and online marketplaces e.g. lack of commercial practice transparency, piracy and/or abuse of longstanding ‘Safe Harbour’ laws<sup>1</sup> to avoid licenses and unduly profit from digital music, often at enormous scale.

#### **ICMP Director General John Phelan commented:**

“For too long there have been two rulebooks for the same game. We firmly support the EU’s goal of ‘*what is illegal offline, must be illegal online*’. However, work remains to realise this maxim. The DSA imposes a ream of welcome responsibilities on online services. It also extends some concerning paths to liability exemptions.

The DSA is propelled by the political goal of ‘preventing harmful behaviour before it takes place’. Detecting and preventing illegal digital music can be easy thanks to existing technologies, but it is often problematic in practice as many services believe they are beyond laws. As things stand, the DSA lets some services off the hook. Some amendments to the final law will be needed so that Europe’s digital music industry will not be devalued nor creators continue to be ripped off by certain platforms.”

**‘Notice & Stay Down’:** “Platforms providing unlicensed music continue to cause direct, serious scale commercial harm. This simultaneously devalues Europe’s legal market. The core law online needs to be ‘*what should not go up, must stay down*’. The DSA has yet to make this its cornerstone concept.”

**‘Safe Harbours’:** “Any extension of liability exemptions only opens a legal back door for digital services and a commercial trap door for all in Europe’s creative industries. We have seen over the years how services such as Twitch, TikTok, YouTube and Facebook misuse ‘Safe Harbour’ exemptions to avoid taking a fair license and devalue the work of millions of creators. Platforms, App Stores, P2P, cyberlockers...any service engaged with digital music should not have access to get-out clauses on full responsibility.”

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<sup>1</sup> e-Commerce Directive (2000) Article 14 gives liability exemptions for “technical, automatic and passive” digital services. Designed for the internet’s ‘infrastructure’ (e.g. cloud computing services and telcos) these have since been misused by platforms such as YouTube, Facebook, TikTok, Snap, Twitch so that millions of illegal uses of work are online, music devalued to negligible royalty rates and normal business-to-business transparency avoided.

Similar laws were issued in the US, Canada and Australia and are being revisited as part of tech policy reviews globally.

**Transparency:** “Too many digital services continue to conceal crucial business info. Thankfully the EU is pushing platforms to up their game on this. It’s a huge issue, particularly for our ‘Indie’ companies.”

**Scope:** “These laws sometimes place too strong an emphasis on online marketplaces or the giants of Google, Facebook and Amazon. When a road speed limit is broken we rightly do not ask the make of the car. The EU toolbox to tackle illegal content should be widened to all platforms who misuse digital music.”

### ICMP Board Chairman Mr. Chris Butler stated:

“The music industry has been an early and eager architect of Europe’s Digital Single Market. That more than 70 million works are available at the touch of button remains remarkable. However harsh realities persist. Our sector’s daily investment in digital music and ensuring return to songwriters and composers is being obstructed - drastically so - by online services who either operate entirely unlicensed or who abuse liability exemptions to devalue millions of works.

Through our work at ICMP we have seen the big geo-political players agree that ‘enough is enough’. Platforms need to play by clear rules. In the end this legislation must deliver those clear rules.

Europe’s Digital Single Market is still a fragile construction. Streaming revenue rates continue to be low. To make digital viable for European business and creators, the key trio is legal clarity, business-to-business transparency and effective tools to tackle piracy. Today’s draft laws are the basis to achieve on each front.

As the legislation proceeds, ICMP will encourage EU decision makers to realise the stated ambition of setting global best standards in copyright and content protection. We must level the playing field between offline and online respect for copyright, after years of sustained and indeed ongoing challenges.”

## ABOUT

ICMP is the music publishing industry’s global trade body, representing more than 90% of the world’s published music. Our members include the ‘Majors’, more than 1,000 ‘Indies’ (mostly SMEs or start-ups) and 54 national industry associations across Europe, the Americas, Asia, Africa and Australasia.

Our industry is the nexus between music creation and markets – investing in songwriters and composers of all genres worldwide, then bringing music to audiences via:

- **Digital** (>80 million works across almost 800 streaming, app and download services worldwide)
- **Broadcast** (TV, radio, movie etc.)
- **Live**
- **Print**
- **Physical** (Vinyl, CD etc.)

## INFO/COMMENT/INTERVIEW LOGISTICS

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