

# The Digital Services Act: Making the Internet Fair Again

**Prof. Dr. Christoph Busch**

European Legal Studies Institute, University of Osnabrück  
Information Society Project, Yale Law School

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Brussels, 15.12.2020  
COM(2020) 825 final  
2020/0361 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on a Single Market For Digital Services (Digital Services Act) and amending Directive**  
**2000/31/EC**

(Text with EEA relevance)

{SEC(2020) 432 final} - {SWD(2020) 348 final} - {SWD(2020) 349 final}

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# Due diligence obligations for platforms

## Liability of platforms

## Personalised advertising



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## Liability of platforms

## Personalised advertising

*Article 22*  
*Traceability of traders*

1. Where an online platform allows consumers to conclude distance contracts with traders, it shall ensure that traders can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the online platform has obtained the following information:
  - (a) the name, address, telephone number and electronic mail address of the trader;
  - (b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>50</sup>;
  - (c) the bank account details of the trader, where the trader is a natural person;
  - (d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council<sup>51</sup> or any relevant act of Union law;
  - (e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
  - (f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.

116TH CONGRESS  
2D SESSION

# H. R. 6058

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2020

Mr. NADLER (for himself, Mr. COLLINS of Georgia, Mr. JOHNSON of Georgia, and Mrs. ROBY) introduced the following bill; which was referred to the Committee on the Judiciary

SHOP SAFE Act

117TH CONGRESS  
1ST SESSION

# S. 936

To require online marketplaces to collect, verify, and disclose certain information regarding high-volume third party sellers of consumer products to inform consumers.

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IN THE SENATE OF THE UNITED STATES

MARCH 23, 2021

Mr. DURBIN (for himself, Mr. CASSIDY, Mr. GRASSLEY, Ms. HIRONO, Mr. COONS, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

INFORM Consumers Act

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## Changing concept of marketplace

- Online marketplaces, app stores
- Social commerce:  
social media + e-commerce
- Conversational shopping:  
messenger, smart speaker
- Livestream shopping:  
streamed e-commerce

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## Scope of due diligence obligations?

### Traders:

- Verify identity of traders
- Verify registration requirements (e.g. short-term rentals)

Automated verification:  
Regulation by API

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Platforms as “regulatory intermediaries”

## Scope of due diligence obligations?

### Traders:

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### Products:

- Consult EU rapid alert system for dangerous products (Safety Gate)
- Inform buyers of illegal products and in case of product recalls



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Product Safety Pledge (2018)



Proposed Amendment to Korean  
E-Commerce Act (March 2021)



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Filed 4/26/21

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

KISHA LOOMIS,

Plaintiff and Appellant,

v.

AMAZON.COM LLC,

Defendant and Respondent.

B297995

(Los Angeles County  
Super. Ct. No.  
BC632830)

Loomis v. Amazon, 2021 WL 1608878  
(Cal. App. Ct. April 26, 2021)

CALIFORNIA LEGISLATURE—2021—22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1182**

**Introduced by Assembly Member Stone  
(Coauthors: Assembly Members Cunningham, Lorena Gonzalez,  
and Wicks)**

February 18, 2021

An act to add Section 1714.46 to the Civil Code, relating to civil liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 1182, as introduced, Stone. Product liability: products purchased online.

California AB 1182: Product liability  
(Products purchased online)

*Article 5  
Hosting*

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:
  - (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or
  - (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.
2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.
3. Paragraph 1 shall not apply with respect to liability under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control.
4. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

## Broad liability shield for platforms with some exceptions:

- Actual knowledge of illegal activity or illegal content
- Failure to act expeditiously upon obtaining such knowledge
- Impression that the offer is provided by the platform itself or under its control (“apparent control”)

*Article 5  
Hosting*

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:
  - (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or
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2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.
3. Paragraph 1 shall not apply with respect to liability under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control.
4. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

How to assess “apparent control”?

## Broad liability shield for platforms with some exceptions:

- Actual knowledge of illegal activity or illegal content
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**3. For the assessment of whether the online platform has that control or authority or decisive influence over the trader, relevant criteria shall include:**

- a) the trader-consumer contract is concluded exclusively through facilities provided on the platform;**
- b) the online platform operator withholds the identity of the trader or contact details until after the conclusion of the trader-consumer contract;**
- c) the online platform operator exclusively uses payment systems which enable the platform operator to withhold payments made by the consumer to the trader;**
- d) the terms of the trader-consumer contract are essentially determined by the online platform operator;**
- e) the price to be paid by the consumer is set by the online platform operator;**
- f) the online platform is marketing the product or service in its own name rather than using the name of the trader who will supply it;**

**Draft IMCO Report, 28 May 2021  
Amendment 73**

## **Broad liability shield for platforms with some exceptions:**

- Actual knowledge of illegal activity or illegal content
- Failure to act expeditiously upon obtaining such knowledge
- Impression that the offer is provided by the platform itself or under its control (“apparent control”)

*Article 5a*

*Liability of online platform allowing consumers to conclude distance contracts with traders*

*1. In addition to Article 5(1), an online platform allowing consumers to conclude distance contracts with traders shall not benefit from the liability exemption provided for in Article 5 if it does not comply with the obligations referred to in Articles 11, 13b, 13c, 14, 22 or 24a.*

*Such liability exemption shall also not benefit the online platform if it does not comply with specific information requirements for contracts concluded on online marketplaces, in line with Article 6a(1) of the Directive 2011/83/EU of the European Parliament and of the Council.*

## Further exclusions from the liability privilege?

- Failure to comply with due diligence obligations
- Failure to provide consumers with key information items

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Amendment 73

*Article 5a*

*Liability of online platform allowing consumers to conclude distance contracts with traders*

*1. In addition to Article 5(1), an online platform allowing consumers to conclude distance contracts with traders shall not benefit from the liability exemption provided for in Article 5 if it does not comply with the obligations referred to in Articles 11, 13b, 13c, 14, 22 or 24a.*

*Such liability exemption shall also not benefit the online platform if it does not comply with specific information requirements for contracts concluded on online marketplaces, in line with Article 6a(1) of the Directive 2011/83/EU of the European Parliament and of the Council.*

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- Failure to comply with due diligence obligations
- Failure to provide consumers with key information items

### Korean Act on Consumer Protection in Electronic Commerce (No. 6687)

- Duty to inform about the identity of the trader (Art. 20(1))
- Joint liability of platform if information is incorrect, unless platform has observed due diligence (Art. 20-2)



공정거래위원회



## Further reading

- C. Busch et al., The ELI Model Rules on Online Platforms [2020] Journal of European Consumer and Market Law 61-70. [https://www.elsi.uni-osnabrueck.de/research\\_paper\\_series.html](https://www.elsi.uni-osnabrueck.de/research_paper_series.html)
- C. Busch, Rethinking Product Liability Rules for Online Marketplaces: A Comparative Overview, ELSI Osnabrück Working Paper 1/2021, <http://ssrn.com/abstract=3784466>
- C. Busch, Regulation of Digital Platforms as Infrastructures for Services of General Interest, WISO-Diskurs 04/2021, <https://library.fes.de/pdf-files/wiso/17836.pdf>
- C. Busch & V. Mak, Putting the Digital Services Act in Context, [2021] Journal of European Consumer and Market Law 109-115.

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University of Osnabrück, European Legal Studies Institute  
Yale Law School , Information Society Project

Twitter: @christophbusch