ROADMAP ON AI TECHNOLOGIES & APPLICATIONS FOR THE MEDIA INDUSTRY

SECTION: "FUTURE LEGISLATION AND REGULATION"

Authors	**Noémie Krack** (KU Leuven Centre for IT & IP Law)
	Lidia Dutkiewicz (KU Leuven Centre for IT & IP Law)
	Emine Ozge Yildirim (KU Leuven Centre for IT & IP Law)

This report is part of the deliverable D2.3 - "*AI technologies and applications in media: State of Play, Foresight, and Research Directions*" of the AI4Media project.

You can site this report as follows:

The information and views set out in this report are those of the author(s) and do not necessarily reflect the official opinion of the European Union. Neither the European Union institutions and bodies nor any person acting on their behalf.
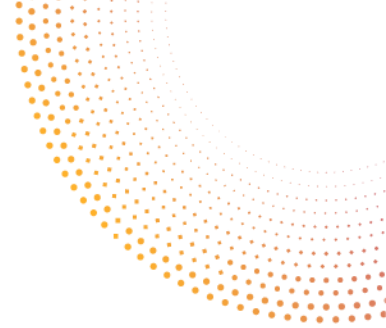
1 Future legislation and regulation

The EU legislative agenda on technology-oriented proposals is busy and, as outlined in the section on "*EU policy & regulatory initiatives and their impact on future AI research for the Media*" of this Roadmap, it will impact AI media applications and frame their future use. The EU legislative proposals are at different stages of the EU democratic process. AI media applications will become more and more regulated following the trend we saw in the past years. However, the regulation efforts are only in their beginning, and therefore, more will probably come into the picture in the years to come.

1.1 The DSA negotiations

The **DSA proposal** is the most advanced technology-oriented proposal of our analysis outlined in section "*EU policy & regulatory initiatives and their impact on future AI research for the Media*" of this Roadmap.

Council of the European Union position

On 25th November 2021, the Council of the European Union officially adopted its general approach (meaning its official position) on the DSA proposal.[1] While expanding the scope of the proposal and clarifying certain aspects in the recitals, the Council did not drastically change the provisions related to AI media applications set in the EC proposal. In brief, their main amendments in relation to AI media systems are the following:

- The text now explicitly includes **online search engines**. They became a new category of intermediary services. Very Large Online Search Engines with more than 45 million of active users will become subject to the provisions applicable to VLOPS.

- Recital 50 a) provides that "*common and legitimate **advertising practices** that are in compliance with Union law should not in themselves be regarded as constituting dark patterns*".

- New article 24 b provides that "*Providers of **online marketplaces** shall not design, structure, or organise their online interface in a way that either purposefully or in effect deceives or manipulates recipients of the service, by subverting or impairing their autonomy, decision-making or choice*".

- Recital 60 specifies that for auditing purposes, the auditor should ***get access to data related to algorithmic systems of VLOPs***. Rec 64 then further adds that the access request for monitoring compliance purposes can also include where appropriate training data and algorithms. Algorithms, which can be further investigated on during on-site inspections (article. 54§1a, d).

---

[1] Council of the European Union, 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 - General approach, 18 November 2021, 13203/21, https://data.consilium.europa.eu/doc/document/ST-13203-2021-INIT/en/pdf

- The *transparency reporting* for hosting services now includes the number of notices processed exclusively by automated means.
- Recital 54 clarifies that the DSA does not require providers of online platforms or of online search engines to perform specific *tracking* of individuals online, nor to discount automated users such as *bots*.

European Parliament position

The Internal Market and Consumer Protection (IMCO) Committee was the responsible committee for the Digital Services Act proposal but other Committees (ECON, FEMM, ITRE, TRAN, CULT, JURI, LIBE) could provide their opinion between September and October 2021. The IMCO Committee adopted on 13 December 2021 its position on the DSA proposal by 36 votes in favor, 7 against and 2 abstentions. The EP debated and voted on the IMCO's report during the January 2022 plenary session.[2] The European Parliament finally adopted, on **20 January 2022**, its position on the DSA proposal. Last-minute amendments in the plenary vote introduced significant changes to the EC proposal. A selection of amendments will be presented below and their impact on the use of AI in media applications.

AI and Advertising

The EP provided more attention to advertising, the data and the transparency of advertisement than the initial proposal. Targeting or amplification techniques involving the data of minors for the purpose of displaying ads will be prohibited, as well as targeting individuals on the basis of sensitive data which allow for targeting vulnerable groups. Recital 52 insists that recipients of the service can refuse or withdraw their consent for targeted advertising purposes, in a way that is not more difficult nor time-consuming than to give their consent. Furthermore, the amendment specifies that online platforms should also not use personal data for commercial purposes related to direct marketing, profiling and behaviourally targeted advertising of minors. The amendment requires also that more detailed information on advertisement be mentioned in the advertisement repositories.

AI and algorithmic recommender systems

The amendments set that not only **VLOPS** (see recital 67) but also **online platforms** (see new recital 52, a) and new article 24, a)) should ensure that recipients can understand how recommender systems impact the way information is displayed and can influence how information is presented to them. **VLOPS** should ensure that at least one option of the recommender system is not based on profiling and that recipients can influence the information presented to them through making active choices (see art. 29§1 and recital 62). In addition, **VLOPS** should implement appropriate technical and organisational measures for ensuring that

---

[2] The final amendments adopted by the EP are in the European Parliament Amendments adopted by the European Parliament on 20 January 2022 on the 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, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0014_EN.html
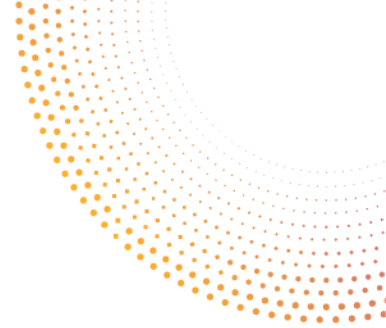
recommender systems are designed in a consumer-friendly manner and do not influence end users' behaviour through dark patterns.

AI and content moderation

The definition has been clarified and now article 2§1, p) provides that content moderation includes automated or not automated moderation of online content. In terms of liability of intermediaries, article 7 §1 a) now explicitly states that **providers of intermediary services** shall not be obliged to use automated tools for content moderation or for monitoring the behaviour of natural persons. Recital 25 now provides that **they** should make best efforts to ensure that where automated tools are used for content moderation, the technology is sufficiently reliable to limit to the maximum extent possible the rate of errors where information is wrongly considered as illegal content. In addition, **their** terms and conditions must include information on algorithmic decision-making and human review including a qualitative description of whether and how automated tools for content moderation are used in each official language (article 12§1 a). An interesting provision aims to limit the spread of illegal content. For frequent uploaders of illegal content or frequent unsubstantiated complainants, the suspension of the services by **online platforms** shall be ordered taking into account if an automated content recognition system was used to file the repetitive complaints (article 20 §3 da). Suspension can be declared permanent, if the items removed were components of high-volume campaigns to deceive users or manipulate platform content moderation efforts (article 20 §3a).

AI and systemic risks assessment

Article 26§1 specifically indicates that the systemic risks assessment by **VLOPS** is not only stemming from the functioning and use made of their services but also stemming from the design, algorithmic systems, intrinsic characteristics of the services. Therefore the advertising model and their algorithmic systems shall be taken into account for the assessment and for the appropriate mitigation measures (article 26§2 and article 27 §1 a) of the EP amendments. Recital 52 also includes behavioural advertisements in the systemic risks to assess by the online platforms.

AI and access request

VLOPs shall also explain the design, logic and functioning of algorithms if requested to do so for oversight and enforcement purposes (article 31§1 a, recital 64). They also broadened the scope of access for research purposes to non-for-profit organisations or associations (article 31).

AI and deepfakes

A new article (30 a) is introduced and provides that where **VLOPS** become aware that a certain piece of content on their services is a deepfake (video, audio or other file), they shall label the content in a way that informs that the content is inauthentic and that is clearly visible for the recipient of the services.
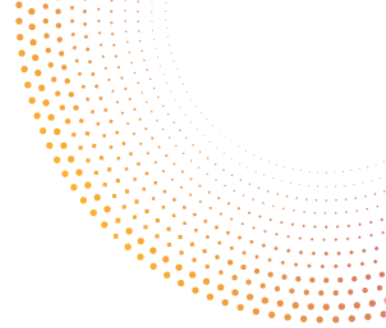
AI and free decision making

Online platforms should be prohibited from using deceiving or nudging techniques to influence users' behaviour through dark patterns. Indeed, the importance for services recipients to make free, autonomous and informed decisions was underlined and new §1 a) of article 24 and recital 39 a) stated that *"providers of intermediary services should be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof ('dark patterns')".* This includes the interface design, the visual prominence, the consent option, and so forth.

Following steps

The amendments presented above showed how the European Parliament levelled up the ambition of the text to handle a selection of AI media applications. It added the provisions on deepfakes, on algorithmic accountability and transparency as well as elements in relation to recommender systems and advertising. On the other hand, it is said that for the French Presidency, which presides over the EU Council in the first half of 2022, the governance framework for VLOPs and the inclusion of very large search engines in the scope of the DSA proposal, are two critical issues in the negotiations.[3] The respective positions of the two institutions will be discussed in trilogues reuniting the EC, the EP and the Council in order to find a common voice among the different positions. There are currently five political trilogues scheduled starting already on 31st January 2022.[4]

1.2 The AI Act negotiations

The AI Act proposal is still being discussed in the European Parliament and the Council[5]. In November 2021, the Slovenian presidency presented a progress report (draft compromise) on discussions held so far within the Council on the AI draft proposal. In Parliament, the discussions will be led by the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) under a joint committee procedure. Since its publication (April 2021), considerable time was taken to allocate the responsibilities within the European Parliament, therefore discussion are about to start within the Committees.

1.3 Regulation proposal on transparency and targeting of political advertising

---

[3] Euractiv, DSA: MEPs gear up for negotiations ahead of kick-off trilogue, 26 January 2022: https://www.euractiv.com/section/digital/news/dsa-meps-gear-up-for-negotiations-ahead-of-kick-off-trilogue/
[4] For more information on the progress: https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/0361(COD), https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-digital-services-act, https://eur-lex.europa.eu/legal-content/en/HIS/?uri=COM:2020:825:FIN
[5] For more information on the procedure progress: https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52021PC0206 and https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-regulation-on-artificial-intelligence

This proposal has recently been released. Therefore, it will first go through the European Parliament and the Council of the European Union in the following months. Both will need to adopt their positions before entering in discussion.[6]

1.4 Council of Europe Framework

In terms of regulation, we should not forget the international legal framework. The Council of Europe (CoE) is an active actor on AI related initiatives under the angle of fundamental rights. Recommendations on the human rights impacts of algorithmic systems[7], a declaration on the manipulative capabilities of algorithmic processes[8], and guidelines on facial recognition[9] were adopted in the past few years. The CoE hosted a conference[10] on artificial intelligence and the challenges and opportunities for media and democracy, where they published a background paper about the impacts of AI-powered technologies on freedom of expression[11], and adopted a Declaration and Resolutions on AI tools used for the creation, moderation and distribution of online content[12]. An ad-hoc Committee on Artificial Intelligence (CAHAI) was created in relation to the Council of Europe's effort on human rights. In December 2021, the CAHAI adopted the "Possible elements of a legal framework on artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law", which closes the mandate of the group for the Council of Europe.[13] The document contains an outline of the legal and other elements, which in the view of the Committee could be included in legally binding or non-legally binding instruments in the Council of Europe framework.

An eye will be kept on the Council of Europe activities, as there will be a need to ensure co-existence between the EU and Council of Europe frameworks as they will complement each other. It remains to be seen what recommendations from the CAHAI will be followed and what will be adopted under a legislative and non-legislative format.

---

[6] For more information on the procedure progress: https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52021PC0731

[7] Council of Europe, Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, 8 April 2020: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809e1154

[8] Council of Europe, Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes, 13 February 2019: https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4b

[9] Council of Europe, Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data, Convention 108, Guidelines on Facial Recognition;, 28 January 2021: https://rm.coe.int/guidelines-on-facial-recognition/1680a134f3
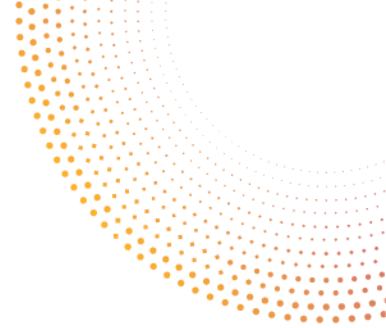
[10] Council of Europe, Conference of Ministers responsible for Media and Information Society, Artificial intelligence – Intelligent politics, Challenges and opportunities for media and democracy, 10-11 June 2021: https://www.coe.int/en/web/freedom-expression/media2021nicosia

[11] N. Helberger, S. Eskens, M. van Drunen, M. Bastian, J. Moeller for the Council of Europe, Background Paper, Artificial Intelligence – Intelligent Politics Challenges and opportunities for media and democracy, February 2020: https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82

[12] Council of Europe, Final Declaration, Resolution on freedom of expression and digital technologies, Resolution on the safety of journalists, Resolution on the changing media and information environment, Resolution on the impacts of the COVID-19 pandemic on freedom of expression, 11 June 2021: https://rm.coe.int/final-declaration-and-resolutions/1680a2c9ce

[13] Council of Europe, CAHAI held its 6th and final plenary meeting, December 2021, https://www.coe.int/en/web/human-rights-rule-of-law/-/the-cahai-held-its-6th-and-final-plenary-meeting

As presented in this section, the regulation on AI media application is only in its infancy, and more will materialise in legally binding provisions in a near future.

AI4media

ARTIFICIAL INTELLIGENCE FOR
THE MEDIA AND SOCIETY

info@ai4media.eu   www.ai4media.eu