

/ Feedback from AlgorithmWatch and AI Forensics

The DSA's Delegated Acts should strengthen a diverse auditing ecosystem for algorithmic risks

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AlgorithmWatch is a non-profit research and advocacy organization that is committed to watch, unpack and analyze automated decision-making (ADM) systems and their impact on society. Alongside our policy, advocacy, and journalistic work, we have developed tools to successfully conduct crowd-sourced audits of ADM systems using data donations since 2017, from the German SCHUFA credit-scoring system to major online platforms including Google, YouTube, Instagram, and TikTok. Our project work includes developing an impact assessment tool for ADM systems in the public sector and a sustainability index for artificial intelligence.

AI Forensics (formerly Tracking Exposed) is a European non-profit organization that conducts independent technical audits to uncover and expose the harms caused by major technology platforms. We have been developing our own auditing tools since 2016, which we release as free software to empower the research community, and strengthen the AI audit ecosystem. Over the past seven years, we have supported numerous research and audit projects across various platforms, including Facebook, YouTube, TikTok, Pornhub and Amazon.

Summary

AlgorithmWatch and AI Forensics welcome the opportunity to provide feedback to the European Commission's work on a Delegated Regulation, which further specifies principles and procedures for independent, second-party audits within the Digital Services Act (DSA) framework.

Our feedback follows from our organizations' respective firsthand experiences conducting independent, third-party audits of platforms' algorithmic systems, and focuses on three points: 1) Independence and expertise of second-party auditors, 2) Recognition of independent, third-party auditors within the auditing framework, and 3) Publicly disclosed audit reports.

1) Independence and expertise of second-party auditors

In public discourse, "AI audit" or "platform audit" are umbrella terms that encompass various types of auditing practices, each with differing levels of accountability and emerging practices [rather than standards](#). However, **Article 37 of the DSA reserves the term "independent audits" exclusively for second-party auditors**, i.e. commercial auditors whose services are to be contracted and paid for by Very Large Online Platforms and Search Engines (VLOP/SEs) in order to fulfill mandatory annual evaluations.

The risk of audit washing and capture by large consulting firms

Such second-party audits of VLOP/SEs within the DSA framework are a significant undertaking that will likely give a competitive advantage to large, multinational consulting firms. **It is important to recognize that these firms often lack expertise in human rights assessment and are primarily accountable to their shareholders rather than the broader public.** And because the DSA places the financial burden on platforms to comply with the DSA's auditing requirements, this problematically opens the door to [audit capture](#) in that even well-intentioned auditors may have an adverse incentive to cater to the interests of powerful VLOP/SEs in an interest to attract and retain lucrative auditing contracts, as [continues to happen](#) in the [case of financial audits](#).

Second-party auditing may thus result in "audit-washing" with self-adopted methodologies and standards, potentially undermining the effectiveness and reliability of the auditing process and calling into question whether such audits can truly be "independent."

We welcome that Article 37(3) of the DSA therefore stipulates independence requirements for second-party auditors vis-à-vis their clients, and that they have "proven expertise" in risk management, as well as "proven objectivity and professional ethics" according to relevant standards. However, this begs the question: [Who audits the auditors?](#)

Article 4(1) of the draft Delegated Regulation only specifies that VLOP/SEs are responsible for checking that their selected auditors meet the DSA's independence and competence criteria. The draft fails to elaborate on the criteria which would constitute an auditor's "proven expertise," for example, nor does it appoint an oversight mechanism when it comes to vetting auditing organisations.

The Delegated Act should expand on these requirements for selecting competent auditors and consider providing for additional oversight. The current omission of such an oversight mechanism is stark, considering the [far more elaborate system](#) for vetting public interest researchers under DSA Article 40.

2) Recognition of independent, third-party auditors within the auditing framework

Second-party audits, which are the subject of this Delegated Regulation, are distinct from third-party audits (also known as adversarial audits) which may be conducted by independent actors such as researchers, civil society organizations, investigative journalists, and community advocates. Unlike second-party auditors, third-party auditors do not have a contractual relationship with the audited provider and thus are less at risk of audit washing or capture.

Independent, third-party audits have proven to be highly impactful in uncovering and understanding the harms caused by AI systems in various contexts, and have succeeded in raising public awareness as well as spurring regulatory action. For example, following Russia's invasion of Ukraine in 2022, [investigations by Tracking Exposed](#) into TikTok's algorithmic restrictions in Russia served as the basis for a US Senate [official letter](#) summoning TikTok's CEO. [AlgorithmWatch's Instagram Monitoring Project](#), meanwhile, collected data donations to show that Instagram was prioritizing far-right political content in the run-up to the German elections. When Facebook forced the project to shut down by [weaponizing its Terms of Service](#) in 2021, its abuse of power became the basis for [a public campaign](#) pushing for stronger data access rules in the DSA, and securing the inclusion of civil society organisations as vetted researchers.

We acknowledge the potential of DSA Article 40 in facilitating third-party audits through data access for vetted researchers, and have proposed recommendations via the Commission's Call for Evidence to help inform a Delegated Regulation on data access provided for in the DSA (See the feedback from [AlgorithmWatch](#) and [AI Forensics](#)).

While we welcome that the draft delegated act on independent audits encourages auditors to inform their analyses in part with materials from researchers who are vetted within the DSA framework, **it must also be stressed that evidence from non-vetted researchers should also be considered by auditors.** This clarification would help ensure that a broader ecosystem of independent third parties including civil society organisations, independent researchers and investigators, and journalists are empowered to continue playing an important role in holding VLOP/SEs accountable for systemic risks.

Addressing funding imbalances in the auditing ecosystem

The European Commission should take into account the imbalanced competition for independent funding that civil society organizations and independent researchers face to enable a trustworthy and diverse auditing ecosystem. These stakeholders often struggle to secure adequate resources for conducting audits due to limited and unsustainable funding.

Given the track record of large platform companies in obscuring harm and responsibility, it is essential to empower civil society organizations and independent researchers to enhance accountability.

It is therefore important that such independent third-party auditors, especially non-profits, have access to financial resources which are not tied to platform demand and potential conflicts of interest. We propose that the Commission and/or Digital Services Coordinators make flexible funding available to such eligible organizations who may apply for it in order to help finance independent, third-party audits. This money could, for example, be apportioned from the supervisory fees levied on VLOP/SEs, and needs to be distributed in such a way that ensures the independence of funding allocation.

3) Publicly disclosed audit reports

Given the DSA's implementation timeline on risk assessments and second-party audits for VLOP/SEs, we expect that the public will only see the first audit reports (and audit implementation reports) from December 2024, and that these disclosures will be heavily redacted by audited entities.

This timeline raises two potential transparency issues that could, if left unaddressed in the Delegated Acts, seriously impede third-parties' ability to scrutinize audit reports:

- 1) the long lag time between VLOP/SEs' first risk assessments and their public disclosure, and
- 2) the apparent carte blanche that audited entities have to redact information from the reports if publication of that information might disclose "confidential information," cause security vulnerabilities, undermine public security, or harm recipients in some way.

Addressing a lack of transparency

To address the first issue, **it is essential that civil society organizations and other third parties invested in the DSA's accountability ecosystem (particularly those with relevant expertise e.g. in risk assessment and/or human rights impact assessment) are given a window into the implementation process.** This could be achieved, for example, through formalized exchanges facilitated by the Commission.

The second transparency issue speaks to the need for stronger oversight to ensure that redactions from audit reports are indeed proportional to the risks associated with disclosure of potentially sensitive or harmful information. The Delegated Act should therefore specify a responsible party for such oversight, which could be aided by a third-party intermediary body such as the one envisioned by Article 40 of the DSA.

Clarifying linkages between DSA Article 37 and Article 40

As with the previous recommendation, these non-transparency issues would further benefit from clarification on the linkages between Article 40 of the DSA and Article 37 on audits. **It should be made clear in the Delegated Regulations that vetted researchers may gain access to the unredacted audit reports**, whether in part or in whole, in order to fulfill their public interest mission and better scrutinize platforms' systemic risk assessment and mitigation efforts.