# Protecting Freedom of Expression on Social Media

The Potential and Challenges of Out-of-Court Dispute Settlement

Moderating Digital Platforms Fall Semester 2025 ETH Zürich

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## I. The new governors

- II. Foundations of ODS
- III. Conceptual questions
- IV. Practical questions



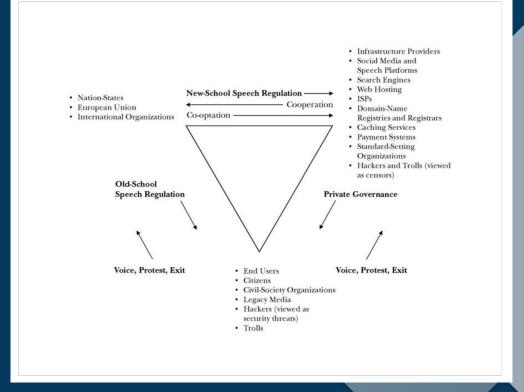
## **ESSAYS**

#### FREE SPEECH IS A TRIANGLE

Jack M. Balkin\*

The vision of free expression that characterized much of the twentieth century is inadequate to protect free expression today.

#### FIGURE 1: THE PLURALIST MODEL OF SPEECH REGULATION<sup>8</sup>





## THE NEW GOVERNORS: THE PEOPLE, RULES, AND PROCESSES GOVERNING ONLINE SPEECH

## Kate Klonick\*

Private online platforms have an increasingly essential role in free speech and participation in democratic culture. But while it might appear that any internet user can publish freely and instantly online, many platforms actively curate the content posted by their users. How and why these platforms operate to moderate speech is largely opaque.



## CONTENT MODERATION AS SYSTEMS THINKING

## Evelyn Douek\*

The stylized picture of content moderation that forms the basis for most regulatory and academic discussion of online speech governance is misleading and incomplete. That picture depicts content moderation as a rough online analog of offline judicial adjudication of speech rights, with legislative-style substantive rules being applied over and over again to individual pieces of content by a hierarchical bureaucracy of moderators.



# Making Systemic Risk Assessments Work: How the DSA Creates a Virtuous Loop to Address the Societal Harms of Content Moderation

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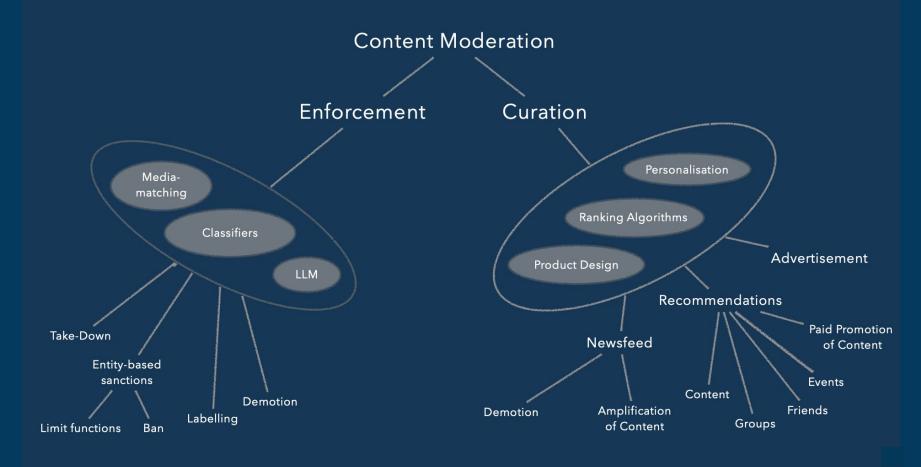
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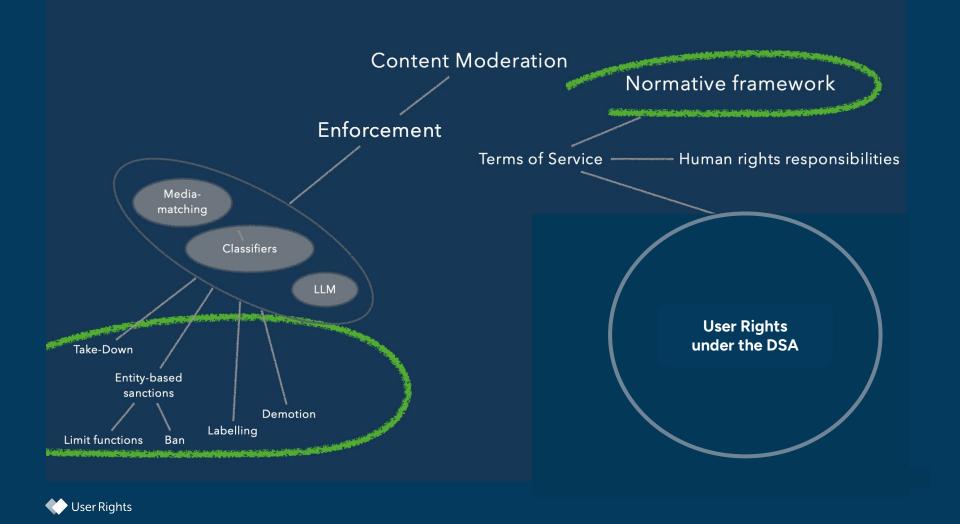
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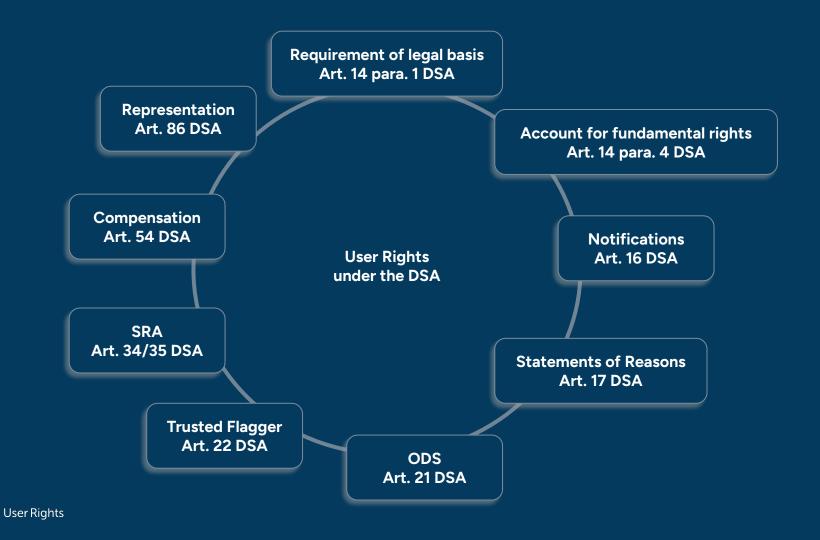












### Article 21

## **Out-of-court dispute settlement**

1. Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with paragraph 3 of this Article in order to resolve disputes relating to those decisions, including complaints that have not been resolved by means of the internal complaint-handling system referred to in that Article.

ODS Art. 21 DSA



## Article 21

## Out-of-court dispute settlement

- Certification: Designated by national DSC; must be impartial & financially independent from platforms.
- **Expertise:** Requires qualified members with independent remuneration.
- Access & Transparency: Digital access, at least one EU language, public procedural rules.
- Nature of Decisions: Non-binding, but platforms must cooperate in good faith.
- **Costs:** Platforms cover reasonable fees; users pay none or a nominal fee unless abuse is evident.





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## A New Animal Joins the Circus: On the Nature and Value of Out-of-Court Dispute Settlement Under the DSA

NIKLAS EDER, GIOVANNI DE GREGORIO / JUN 1, 2024

This piece is part of a series of published to mark the first 100 days since the full implementation of Europe's Digital Services Act on February 17, 2024. You can read more items in the series <u>here</u>.



Brussels, Belgium - November 3, 2022; European Flags in front of the European Commission Headquarters building. <u>Shutterstock</u>





## Your reach has been restricted?

We review your rights on social media. Reliable, free, and independent.

**SUBMIT A CASE** 

Your Benefits

For these platforms, we will review your case:











- I. The new governors
- II. Foundations of ODS
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- What is the added value of ODS for content moderation?
- What is the nature of ODS under the DSA?
- What role should they take in the larger system of the DSA?
- How can they contribute to platforms improving their content moderation systems and how they treat users over time?
- What analogies help to concretise the role and functioning of ODS bodies?
- How do European fundamental rights apply between people and platforms?





I. The new governorsII. Foundations of ODSIII. Conceptual questionsIV. Practical questions



## 1. The basics

- How to ensure independence of the organisation?
- What should be the expertise of reviewers?
- What should the reasoning of decisions look like?



**USER RIGHTS** 

## Article 21 Academic Advisory Board

Article 21 of the EU's Digital Services Act (DSA) allows national Digital Services Coordinators (DSCs) to endow organisations with the task of settling content moderation disputes. The Article 21 Academic Advisory Board ('The Board') brings together researchers to facilitate discussions and provide practical guidance on how out-of-court dispute settlement (ODS) bodies should function.



## 2. Statements of reasons

- How should shortcomings relating to statements of reasons impact the decisions of ODS bodies?
- Should ODS bodies comprehensively review the compliance of platforms' content moderation decisions with the DSA, including errors such as inadequate reasoning?





#### **Discussion Report**

#### The role of statements of reasons in out-of-court dispute settlement under the DSA

Article 21 - Academic Advisory Board - Discussion Report No. 01

August 2024

Partcipating Board Members: João Quintais, Iva Nenadic, Giovanni De Gregorio, Hannah Ruschemeier

Guest discussant: Jeffrey Howard

#### INTRODUCTION

The Article 21 Academic Advisory Board (the Board) discusses the most challenging issues arising in the development of out-of-court dispute settlement bodies under the DSA (DDS bodies). Article 21 DSA allows for different models and bodies. The Board explores different models and and discusses their up- and downsides. It provides guidance to ODS bodies and regulators and informs the work of academics and civil society organisations. It helps to develop reasonable solutions where the law and regulators leave ODS bodies discretion as to how they should operate.

The first meeting of the Board was based on the observation that neither the DSA itself nor authorities implementing the DSA provide specific guidance on how ODS bodies should resolve cases. More specifically, it is uncertain whether and, if so, how shortcomings related to the statement of reasons provided for content moderation decisions issued by platforms should impact the outcome of cases handled by ODS bodies. This raises the following concrete questions the Board discussed in its first meeting:

How should shortcomings relating to statements of reasons impact the decisions of ODS bodies? Should ODS bodies comprehensively review compliance of platforms' content moderation decisions with the DSA, including errors such as inadequate reasoning?

The Board concluded that ODS bodies should adopt a differentiated approach based on the relevance of the requirements of Art. 17 DSA for ODS processes.

Art. 17 para. 3 DSA lists the information that any statement of reasons provided by platforms should contain. While some pieces of information listed in Art. 17 para. 3 DSA are necessary for users to exercise their right under 21 DSA and for ODS bodies to decide cases, others are not.

The question of whether and how ODS bodies should account for shortcomings in the statement of reasons of platforms also raises overarching issues relating to the nature and purpose of ODS bodies under the DSA. These include the standard of review of ODS bodies, the role of fundamental rights in dispute resolution, strategic cooperation of ODS bodies with other important actors (e.g. fact checkers), possibilities of ODS bodies to encourage platforms to provide statements of reasons that satisfy the requirements under Art 17 DSA and the role of reporting data and sharing insights with other actors and academia. The Board reflected on these broader questions in its discussion and decided to tackle them in greater detail in future sessions.

#### KEYWORDS:

Statement of reasons; Article 17 DSA; standard of review of ODS bodies; fundamental rights; fact finding.

## 3. Application of fundamental rights

- Should ODS bodies do a fundamental rights review of content moderation decisions?
- And if so, in what kind of cases should they do such a review?





#### Discussion Report

#### The role of fundamental rights in out-of-court dispute settlement under Art. 21 DSA

Article 21 - Academic Advisory Board - Discussion Report No. 02

November 2024

Board Members: João Pedro Quintais, Iva Nenadic, Giovanni De Gregorio, Hannah Ruschemeier

Guest discussant: Martin Husovec

#### KEYWORDS:

Fundamental rights; Standard of review by ODS bodies; Article 14 (4) DSA; EU Charter of Fundamental Rights (CFR)

#### INTRODUCTION

The Article 21 Academic Advisory Board (the Board) discusses the most challenging issues arising in the development of out-of-court dispute settlement bodies (ODS bodies) under the Digital Services Act (DSA), Article 21 DSA allows for different models of ODS bodies. The Board explores different models and discusses their upsides and downsides. It provides guidance to ODS bodies and regulators, and informs the work of academics and civil society organisations. It helps to develop reasonable solutions where the law and regulators leave ODS bodies discretion as to how they should operate.

Article 14 (4) of the DSA mandates that platforms shall enforce restrictions "in a diligent, objective and proportionate manner" and with due regard to "fundamental rights and freedoms as enshrined in the Charter." European secondary legislation mandating private entities to account for fundamental rights laid out in the CFR, which is European primary law, raises difficult theoretical as well as practical questions. In its second meeting, the Board focused on the question of how Article 14 (4) of the DSA and the rights laid out in the CFR should be accounted for in decisions by OSD bodies.

The Board recognises that the DSA places fundamental rights at the centre of the content moderation landscape it creates. However, it does not provide precise guidance on how these rights

should be accounted for by the various actors in this landscape. The Board recommends that ODS bodies incorporate fundamental rights considerations into content moderation assessments, ensuring that moderation decisions align with the standards set by the DSA, the CFR, and the European Convention on Human Rights (ECHR).

The Board emphasises that ODS bodies play a critical role in providing independent, swift, and thorough remedies to users, with the aim of protecting their rights. Their work complements the more scaled content moderation practices of platforms and judicial remedies before courts and should contribute to informing systemic risk assessments.

The Board stresses that fundamental rights assessments by ODS bodies must balance thoroughness and efficiency. Therefore, ODS bodies should decide on a case-by-case basis whether a fundamental rights review is necessary. Additionally, the Board advises that ODS bodies facilitate dialogue among stakeholders, including researchers and civil society, to clarify the standards governing the review of fundamental rights in procedures under Article 21. The goal of this dialogue is to specify how fundamental rights apply to content moderation and to define the roles of different actors in upholding these rights under the DSA. Acknowledging the need for further discussion, the Board resolved to examine in greater detail how fundamental rights should be applied and to develop concrete legal standards for these assessments in a future meeting.

## 4. Misinformation

• How should ODS bodies review content moderation decisions related to false information on social media platforms?



#### Discussion Report

#### The review of content moderation decisions related to false information by ODS bodies

Article 21 - Academic Advisory Board - Discussion Report No. 03

April 2025

Board Members: João Pedro Quintais, Iva Nenadic, Giovanni De Gregorio, Hannah Ruschemeier

Guest discussant: Tommaso Canetta

#### KEYWORDS

False information; misinformation; disinformation; standard of review by ODS bodies; DSA; EU Code of Conduct on Disinformation

#### INTRODUCTION

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This discussion report reflects insights from the Board's third meeting which focused on the role of ODS bodies in reviewing content moderation decisions related to false information, including manipulated content. The Board examined the intersection of fact-checking, content moderation, and dispute resolution and discussed how ODS bodies should function in light of the existing fact-checking landscape.

ODS bodies should actively assess the moderation of false information and manipulated content, ensuring platforms apply their policies fairly and respect fundamental rights, particularly freedom of expression

However, they should not conduct fact-checking themselves. Platforms must maintain fact-checking systems that comply with recognised standards and disclose their processes and partnerships. If these meet DSA requirements, ODS bodies should accept them as reasonable attempts to balance freedom of expression with ensuring the integrity of the online information sphere.

Platforms should also provide clear statements explaining why content is deemed false, manipulated or misleading; failure to do so should lead to recommendations for reinstatement. Given the implications for freedom of expression, strict standards should apply to moderation decisions.

Further engagement with fact-checking networks, journalists and media representatives is needed to refine best practices, particularly in defining criteria for evaluating platforms' fact-checking processes.

The Board also discussed the evolving role of fact-checking networks, challenges in distinguishing false statements from opinions, and the impact of content labels on visibility.



# 5. Reporting and Transparency

- Who Is the Audience for Reporting and Transparency?
- What Should Be the Substance of Reporting and Transparency Efforts?
- What Should Be the Format of Reporting?



#### Request for Submissions

## Reporting and Transparency of Out-of-Court Dispute Settlement Bodies under Article 21 DSA

Article 21 - Academic Advisory Board

May 2025

#### KEYWORDS

Out-of-Court Dispute Settlement; Article 21
DSA; Reporting; Transparency; User Choice;
Accountability; Social Media; Content
Moderation.

#### INTRODUCTION

This discussion paper outlines the topic that will be addressed by the Article 21 Academic Advisory Board at its fourth meeting. It provides background about the Board and the process, presents the key issues for discussion and outlines potential best practice options.

The administration of the Article 21 Academic Advisory Board shares this discussion paper with relevant stakeholders who have an interest in the topic and invites them to submit their perspectives and input.

#### What is the Article 21 Academic Advisory Board?

The Article 21 Academic Advisory Board discusses the most pressing challenges in the development of out-of-court dispute settlement mechanisms under the Digital Services Act (DSA). It provides guidance to ODS bodies and regulators, and informs the work of academics and civil society organisations.

By exploring how to put Article 21 DSA into practice, the Board aims to contribute meaningfully to the emerging landscape of out-of-court dispute resolution—and to shape how such mechanisms can improve content

moderation accountability across Europe and

The Board was founded by User Rights and invites other certified ODS bodies to participate.

#### What is the scope of this paper?

This paper sets the agenda for the Board's fourth meeting. It raises the core questions to be addressed, offers relevant background, and outlines practical options for improving transparency and reporting standards among ODS bodles. It is shared in advance with stakeholders to encourage their participation and input.

#### How can stakeholders provide input?

Stakeholders interested in contributing to this discussion are invited to submit a written response to the discussion paper, or contact the administration of the Advisory Board to schedule a call and provide feedback orally. Please provide your input no later than 15th of June.

### When will the meeting take place and who will participate?

The fourth meeting of the Article 21 Academic Advisory Board will take place in the second week of June. The following Board members will take part in the meeting: Associate Professor João Pedro Quintais, Iva Nenadić. (Ph.D.). Professor Giovanni De Gregorio, Prof. Hannah Ruschemeier



- 1. What are the options?
- 2. What is your preferred approach?

## 1. The Basics

- How to ensure independence of the organisation?
- What should be the expertise of reviewers?
- What should the reasoning of decisions look like?

## 2. Statements of Reasons

- Should shortcomings relating to statements of reasons impact the decisions of ODS bodies?
- Should ODS bodies comprehensively review compliance with Art. 17 DSA?

## 3. Application of fundamental rights

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## **ENCORE**

How should ODS bodies use technology?



Text Rulemap



