

Position Paper on the proposals for a Digital Services Act, a Digital Markets Act and a Data Governance Act

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Framing legal provisions for an Open European Web Index

The World Wide Web has become a core technology and infrastructure, driving not only research and innovations but forming the backbone of our digital economy and societal processes.

Essential for finding resources on the web are so-called web indices, i.e. large databases containing all web pages and corresponding fast lookup mechanisms. Web indices are not only vital to develop and run search engines but are in general needed to utilize web pages in data-driven applications. The recent success in AI-based Natural Language Processing technologies, for example, is built to a large degree on utilizing data from the WWW. Due to the technological complexity and huge amount of data, building such an index is costly and resource intensive.

Despite its core functionality for tapping the potential of the World Wide Web for businesses, innovators and researchers, there is no open index of the Web today. The only available indices of the web are operated by big internet companies. This positions these handful of corporations not only as gatekeepers of accessible information in the web, but also gives them significant influence on the future technological, ethical and societal development of the WWW as well as society as a whole.

To address these issues, we—the Open Search Foundation (OSF), together with its partners and community—recommend and seek the development of an Open Web Index, analogous to Open Access for publications and Open Source for source code. Such an Open Web Index will provide an openly available index database plus associated web data for growing services and innovations – independent from big internet corporations.

Statement on the proposed regulations

The Open Search Foundation welcomes the efforts of the Commission to regulate the areas affected by the three proposed regulations. However, we feel that parts of the proposed regulations may have, in their current form, the potential to display unintended effects on the establishment and operation of an Open Web Index in Europe. This may in turn hinder the current efforts towards digital sovereignty, a value which has been identified by the European Union as an important asset and objective in the digital age. An Open Web Index would significantly promote digital sovereignty by providing an alternative to established indices and thus a basis for the development of a market of independent European search engines and many other digital services.

→ We call upon lawmakers to consider whether the proposed Digital Markets Act might unduly restrict development and operation of an Open Web Index. This is especially relevant with regard to the designation of gatekeepers in Article 3(1) which suggests that an Open Web Index might constitute such a gatekeeper, since it would have significant impact on the internal market by providing the first comprehensive European web index.

Such a web index would also operate as a core platform and an important gateway for businesses that wish to base their business model fully or partially on the web index. An Open Web Index might also evolve into an entrenched and durable position in its operations. The phrasing “to reach end users” in Article 3(1)(b) seems open to interpretations that would make an Open Web Index a gatekeeper. An Open Web Index should either be explicitly included or excluded from being designated a gatekeeper in order to prevent legal uncertainty.

→ We call upon lawmakers to include access to established web indices to the provisions in the proposed Digital Markets Act where such indices reach a certain size, scope and significance. The proposal for a Digital Markets Act specifically seeks to limit the power of gatekeepers and addresses online search engines in particular. However, the proposal fails to directly address the gatekeeper position that the ownership of a web

index provides; it instead focuses on ranking data as defined by Article 2(18) as well as query, click and view data. Such data are however only one side of the coin when it comes to increasing competition and competitiveness in the search engine market. It should be recognised that there are several conjoined markets that relate to internet search: a market for internet search services, a market for additional services, a market for advertising, and a market for web indexing. Provisions should therefore be included that enable a less restricted use of existing web indices by competing search engine providers. Otherwise, the goals and procedures laid out in Recital 56 of the proposal will remain incomplete.

Access restrictions imposed by a web index operator that also serves as a search engine provider on a competing search engine provider that does not have the capability to operate its own web index usually seek to protect the market position of the former while restricting the competitiveness of the latter. We therefore propose to expand the call for “access, on fair, reasonable and non-discriminatory terms” to any web index that exceeds a certain threshold in size, scope and significance. This would be in line with the goals of the proposal and amend the measures that are to be established.

→ Furthermore, we call upon the lawmakers to consider whether the proposed Data Governance Act might affect the operation of an Open Web Index if such a web index were to take the form of a public sector body or of a private-public-partnership. One question in particular is whether an Open Web Index or some of its contributing parts in a federated, collaborative structure with a mix of private actors and public sector actors might be considered an intermediary or a data holder, or even a combination of both. The exceptions in Article 14 would, in the current form, not apply to an Open Web Index.

With regard to all three of the proposed regulations, we caution against an abundance of definitions that might confuse rather than clarify. There is an excess of terms, many of which are already defined in other existing legal texts and which the respective proposals do not seek to derogate from. We propose to eliminate the definitions of concepts that are already assumed or defined in previous regulations in force, but which are not expressly referred to. If they are retained, we propose to refer to existing legislation that already defines a specific term.

The proposed Digital Services Act and the proposed Data Governance Act seek to establish two new boards, the European Data Innovation Board (DGA) and the European Board for Digital Services (DSA). Both entities have common characteristics: a diverse composition of experts and authorities, provisions for inviting stakeholders and third parties (Article 26(2) DGA), experts, observers, agencies and advisory groups (Article 48(5) DSA), as well as the

main task of assisting and monitoring compliance with the regulations. The Open Search Foundation has significant experience in relevant fields and offers assistance by participating in these boards as a third party, as an observer or in another, similar capacity.

We are available for questions and further discussion.

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The Open Search Foundation is a non-profit initiative that lays the foundation for open, transparent and independent internet search in Europe and beyond—making online orientation a public good.

Together with its associated organisations the Open Search Foundation is committed to creating an open, European search index that can be accessed by all. An important principle: Internet search should serve the people, not the other way around. To achieve this, the Open Search Foundation relies on dialogue and research, on cooperation with computing centres, science, politics, administration and civil society. It initiates research projects and stimulates political discussions. Beyond the big internet platform corporations, the basis for a variety of alternative search engines and new kinds of services will thus be created.

Other important building blocks of the work of the Open Search Foundation are raising public awareness and creating competence in politics, civil society, schools, business and administration. After all, open internet search only contributes to social welfare if it is understood and used.