Public or Private Communication? Categorising WhatsApp's and Telegram's Group Chat and Channel Functionalities under the DSA

by **Sarah Eskens** *

Abstract: Many messaging apps provide functionalities for chat groups and channels. These functionalities are used to share illegal and harmful content. To determine how the DSA's intermediary liability regimes and due diligence obligations apply to group chat and channels, it is necessary to categorise them in terms of the DSA's intermediary services types. This paper analyses WhatsApp and Telegram as case studies and asks two questions: First, are WhatsApp's and Telegram's group chat and channel functionalities mere conduit, caching, or hosting services? Second, are WhatsApp and Telegram's functionalities that qualify as hosting services also online platform services?

The paper finds that WhatsApp group chats are mere conduit or sometimes caching services but never hosting services. Therefore, WhatsApp group chats cannot be online platform services. To the contrary, WhatsApp channels are hosting services and also qualify as online platform services. Telegram's analysis concerns four parts of the app: private and public group chats and private and public channels. All these functionalities on Telegram are hosting services. Furthermore, public group chats and channels on Telegram also qualify as online platform services. However, private chat groups and channels on Telegram are not online platform services.

The paper also reflects on the relevance of three specific features that give otherwise private functionalities of messaging apps a semi-public character. The paper concludes that these three specific features do not turn otherwise private chat groups or channels into online platforms, despite giving them a semi-public character. Consequently, the paper reflects on the DSA's gap regarding online spaces on messaging apps that do not qualify as online platform services, but have a semi-public character and, while being formally private, might lead to public harms. Further research should reflect on possible solutions to the DSA's gap regarding private group chats and channels on messaging apps with a semi-public character. The conclusion emphasises that any solution should ensure that truly private messaging functionalities will not qualify as online platform services, and are not subjected to content moderation or other third-party interventions, because of the democratic importance of confidentiality of communications.

Keywords: Messaging Apps; Online Platforms; DSA; Private Communication; Group Chats; Illegal Content

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A. Introduction

1 Many messaging apps provide functionalities for sharing messages and chatting in large groups.[1] For instance, you can create groups of up to 1024 members on WhatsApp and groups of up to 200.000 members on Telegram. Some messaging apps also offer broadcasting-like functionalities, often through so-called "channels".[2] With a channel, someone can send messages to a group of people, who cannot chat back. These channels can usually be followed by an unlimited number of people.

2 Most messages sent in group chats and channels contain content such as funny cat videos, family updates, and news. But these functionalities are also used to share illegal and harmful content at a large scale, including child sexual abuse material, ads for drugs and weapons, or disinformation.[3] In the EU, the availability of illegal and harmful content in group chats or channels on messaging apps might trigger the application of the DSA. The DSA aims to ensure a safe online environment by regulating the liability of intermediary services and imposing due diligence obligations upon them.[4]

3 The DSA's system is based on a distinction between different types of intermediary services. First, the DSA distinguishes between mere conduit, caching, and hosting services.[5] Each of these three services falls under a different intermediary liability regime.[6] The DSA also distinguishes online platforms as a subcategory of hosting services and very large online platforms as a further subcategory.[7] The DSA's due diligence obligations vary for intermediary services in general, hosting services, online platforms and very large online platforms. Therefore, to determine how the DSA's intermediary liability regimes and due diligence obligations apply to messaging apps, specifically their group chat and channel functionalities, it is necessary to categorise them in terms of the DSA's intermediary services types.

4 The first step is deciding whether a messaging app provides mere conduit, caching, or hosting services. These services are distinguished based on the "technical functionalities" underlying their provision.[8] Therefore, applying these definitions to messaging apps might seem straightforward because it only requires investigating their technical functionalities. However, in practice, categorising messaging apps as either mere conduit, caching, or hosting services turns out to be complicated. Many messaging apps combine different technical functionalities. For instance, WhatsApp stores undelivered messages but not those directly delivered, and it also stores media (e.g. pictures) in messages but not messages consisting only of text.[9]

5 For messaging apps providing hosting services, a second step is determining whether these hosting services also qualify as online platform services. The DSA defines an online platform – in brief – as a hosting service that stores and disseminates information to the public at a user's request.[10] The definition of "online platform" implies a difference between private and public communication. This is also reflected in the DSA's preamble, which juxtaposes interpersonal communication services, a form of private communication, with online platforms, which afford public communication.[11] However, messaging apps' group chat and channel functionalities come in many varieties that are often not easily identifiable as purely private or public communication.[12] For instance, chat groups

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1 Sophie Haigney, 'How Group Chats Rule the World' *The New York Times* (16 January 2024) <https://www.nytimes.com/2024/01/16/magazine/group-chats.html> accessed 2 July 2025.

2 WhatsApp, 'Introducing Whatsapp Channels. A Private Way to Follow What Matters' (8 June 2023) <https://blog.whatsapp.com/introducing-whatsapp-channels-a-private-way-to-follow-what-matters> accessed 2 July 2025; Telegram, 'Telegram Channels' (29 January 2018) <https://telegram.org/tour/channels>; Meta, 'Introducing Broadcast Channels on Facebook and Messenger' (*Meta Newsroom*, 18 October 2023) <https://about.fb.com/news/2023/10/broadcast-channels-on-facebook-and-messenger/> accessed 2 July 2025.

3 Paul Mozur and others, 'How Telegram Became a Playground for Criminals, Extremists and Terrorists' *The New York Times* (7 September 2024) <https://www.nytimes.com/2024/09/07/technology/telegram-crime-terrorism.html> accessed 2 July 2025; Katie McQue, 'How Facebook Messenger and Meta Pay Are Used to Buy Child Sexual Abuse Material' *The Guardian* (22 March 2024) <https://www.theguardian.com/global-development/2024/mar/14/facebook-messenger-meta-pay-child-sexual-abuse-exploitation> accessed 2 July 2025; Bobby Allyn, 'Group-Chat App Discord Says It Banned More than 2,000 Extremist Communities' *NPR* (5 April 2021) <https://www.npr.org/2021/04/05/983855753/group-chat-app-discord-says-it-banned-more-than-2-000-extremist-communities> accessed 2 July 2025.

4 Martin Husovec, *Principles of the Digital Services Act* (Oxford University Press 2024); Folkert Wilman, Saulius Lukas Kalėda and Paul-John Loewenthal, *The EU Digital Services Act* (Oxford University Press 2024).

5 Art 3(g) DSA.

6 Arts 4 – 6 DSA.

7 Arts 3(i) and 33 DSA.

8 Rec 29 DSA.

9 For more details, see section C.I.

10 Art 3(i) DSA.

11 Rec 14 DSA.

12 Schwieter makes the same point about online spaces in

on messaging apps usually have invite links. And on several apps, the default is that when someone finds such a link, they are automatically admitted to the group. When these invite links with automatic admission are publicly available, an otherwise private chat group gets a semi-public character. Furthermore, chat groups these days can have large numbers of members and enable communities that extend far beyond people's private spheres, while the settings of the group might be private in terms of access and findability. Such features complicate the categorisation of messaging apps, specifically their group chat and channel functionalities, under the DSA.

6 To understand how the DSA's definitions of different intermediary services, including online platforms, must be applied to messaging apps and what issues arise while doing so, this paper analyses two messaging apps: WhatsApp and Telegram. WhatsApp has been chosen as a case study because it is the most popular messaging app worldwide.[13] While there is no public data on the most popular messaging app in the EU, this paper assumes that WhatsApp is among the most popular messaging apps in the EU. Telegram has been chosen because it is also a very popular messenger app globally and, most likely, in the EU,[14] and because it has received particular attention from lawmakers and authorities for the extent to which it is used to spread illegal and harmful content.[15] Therefore, it is societally highly relevant to understand better how Telegram should be categorised under the DSA.[16] Finally, WhatsApp and Telegram both offer group chat and channel functionalities with relatively similar user interfaces, while these apps also configure these functionalities in significantly different ways. These similarities and differences make WhatsApp and Telegram two useful case studies to analyse jointly.

7 Against this background, this paper asks two research questions: First, are WhatsApp's and Telegram's group chat and channel functionalities mere conduit, caching, or hosting services within the meaning of the DSA? Second, are WhatsApp and Telegram's functionalities that qualify as hosting services also online platform services within the meaning of the DSA?

8 The analysis of the DSA's intermediary services concepts and their application to WhatsApp and Telegram can help stakeholders, including victims of illegal content, police authorities, Digital Services Coordinators, and judges, to apply these definitions to the group chat and channel functionalities of the more than 30 messaging apps available on the market. This paper also adds to the academic literature on applying the DSA to parties other than typical online platforms such as Facebook, Instagram, TikTok, or Amazon.[17] Other work has already touched upon the question of how messaging apps should be categorised under the DSA,[18] but this question has not yet been subjected

general, not just messaging apps, see Christian Schwieter, 'Online Safety Regulation & Private Online Communications: The State of Play and Ways Ahead for Addressing Terrorism, Extremism, Hate, and Disinformation' (Institute for Strategic Dialogue 2025) 8 <https://www.isdglobal.org/wp-content/uploads/2025/02/Online-Safety-Regulation-and-Private-Online-Communications-State-of-Play.pdf> accessed 2 July 2025.

13 'Most popular global mobile messenger apps as of February 2025, based on number of monthly active users', *Statista* <https://www.statista.com/statistics/258749/most-popular-global-mobile-messenger-apps/> accessed 2 July 2025.

14 Statista (n 13).

15 For instance, in 2024, the Dutch Lower Chamber organised a roundtable discussion with experts about how illegal content on Telegram can be addressed, see <https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2024A01866>. Furthermore, in August 2024, the CEO of Telegram, Pavel Durov, was arrested in France in the context of criminal investigations into illegal content on the app, see Damien Leloup and Benjamin Quénelle, 'Telegram CEO Pavel Durov Arrested in France in World-First Case' *Le Monde* (25 August 2024) <https://www.lemonde.fr/en/pixels/article/2024/08/25/telegram-ceo-pavel-durov-arrested-in-france-in-world-first-case_6721434_13.html> accessed 2 July 2025.

16 The European Parliament has even formally asked the European Commission how Telegram must be categorised under the DSA, see Kim van Sparrentak, 'Applicability of the Digital Services Act to Platforms Such as Telegram - Question for Written Answer E-002762/2024/Rev.1 to the Commission' (4 December 2024) <https://www.europarl.europa.eu/doceo/document/E-10-2024-002762_EN.html>. However, the Commission in its answer has refrained from categorising Telegram's functionalities, see 'Answer given by Executive Vice-President Virkkunen on Behalf of the European Commission' (17 February 2025) <https://www.europarl.europa.eu/doceo/document/E-10-2024-002762-ASW_EN.html>.

17 Sebastian Felix Schwemer, Tobias Mahler and Håkon Styri, 'Liability Exemptions of Non-Hosting Intermediaries: Sideshow in the Digital Services Act?' (2021) 8 Oslo Law Review 4; Christoph Busch, 'Regulating the Expanding Content Moderation Universe: A European Perspective on Infrastructure Moderation' (2022) 27 UCLA Journal of Law and Technology 32.

18 Busch (n 17); Tahireh Panahi and others, 'Desinformationserkennung Anhand von Netzwerkanalysen – Ein Instrument Zur Durchsetzung Der Pflichten Des DSA Am Beispiel von Telegram' in Michael Friedewald and others (eds), *Daten-Fairness in einer globalisierten Welt* (Nomos 2023) 346–347 <doi.org/10.5771/9783748938743>; Erik Tuchtfeld, 'Don't shoot the Messenger' (*Verfassungsblog*,

to a detailed analysis, encompassing all WhatsApp's and Telegram's different group chat and channel functionalities. Furthermore, in light of Matamoros-Fernández's call to extend the content moderation debate to encrypted messaging apps,[19] it is crucial to know under which circumstances messaging apps can be held liable for illegal content shared by their users and which due diligence obligations they have under the DSA.

9 After this introduction, the paper discusses the definitions for the various intermediary services categories in the DSA (section B). Then, the paper introduces the two case studies (section C), and analyses them in light of the DSA's definitions (section D). The case study analysis brings to the fore two features of messaging apps that can give otherwise private chat groups and channels a semi-public character, despite not turning them into online platforms from the perspective of the DSA (section E). In the conclusion, the paper reflects on the many further research questions regarding this topic and some possible solutions to the DSA's gap regarding semi-public functionalities of messaging apps (section F).

B. Definitions of Intermediary Services in the DSA

10 The DSA distinguishes three types of intermediary services: mere conduit, caching, and hosting. It also delineates online platforms as a subcategory of hosting services. The following section discusses the DSA definitions, which are then applied to WhatsApp and Telegram in section D.

I. The Concepts of "mere conduit", "caching" and "hosting"

1. Mere Conduit

11 The DSA defines a mere conduit service as performing the technical functionalities of "the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network".[20] Thus, a mere conduit service transmits information through electronic networks or provides access to such a network.

12 According to the DSA, mere conduits' acts of transmission and provision of access may include "the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission".[21] In other words, while mere conduit services primarily transmit information or provide access, they may also transiently store information.

13 The meaning of "transient storage" depends on the purpose of the storage. The DSA determines that by definition, mere conduit providers store information for the sole purpose of carrying out the transmission. Therefore, if a service provider stores information for other purposes and thus for a longer time than is necessary for the transmission, it cannot qualify as a mere conduit provider and might be categorised as a caching or hosting provider.

14 Several messaging apps currently available on the market qualify as mere conduit services because they transmit their users' messages without storing them on their servers beyond a transient period.[22] This conclusion is confirmed by the DSA's preamble, which gives interpersonal communication services as an example of mere conduit services.[23] The concept of "interpersonal communication services" is defined in the European Electronic Communications Code ("EECC") and will be further discussed in section D.II of this paper. Still, for now, it is sufficient to state that messaging apps have traditionally been interpersonal communication services in the sense that they facilitate mediated communication between two people.[24] In a passage unrelated to mere conduit services, the DSA's preamble also briefly talks about interpersonal communication services and then gives private messaging services

21 December 2021) <https://verfassungsblog.de/dont-shoot-the-messenger/>; Eva Ellen Wagner, 'Telegram Als Herausforderung Für Die Plattformregulierung: Digitale Kommunikationsdienste Zwischen Privater Und Öffentlicher Kommunikation' (2022) 105 Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft 109; Husovec, *Principles of the Digital Services Act* (n 4).

19 Ariadna Matamoros-Fernández, 'Encryption Poses Distinct New Problems: The Case of WhatsApp' (2020) 9 Internet Policy Review <https://policyreview.info/articles/analysis/expanding-debate-about-content-moderation-scholarly-research-agendas-coming-policy>.

20 Art 3(g)(i) DSA.

21 Art 4(2) DSA.

22 Martin Husovec, 'Liability Exemptions: Specific Services', *Principles of the Digital Services Act* (Oxford University Press 2024) 125–126.

23 Rec 29 DSA.

24 Jörg Becker, Bernd Holznagel and Kilian Müller, 'Interoperability of the EKEK to Messenger Services' in Judit Bayer and others (eds), *Perspectives on platform regulation: concepts and models of social media governance across the globe* (2021) 131–133.

as an example.[25] Thus, the DSA is based on the idea that messaging services are typically interpersonal communication services and, thereby, mere conduit services.

2. Caching

15 The DSA describes a caching service as "consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request".[26] This definition is – in a somewhat unsystematic manner – slightly extended by the DSA's provision on conditional immunity for caching services. The latter provision states that the temporary storage offered by caching services has the purpose of making the transmission "more efficient *or more secure*".[27] Thus, the temporary storage of a caching service must be for efficiency or security reasons.

16 Caching services are similar to mere conduit services in that they primarily transmit information through networks, where such transmission may involve intermediate storage. The difference between those services lies in the type of intermediate storage. Mere conduit services provide *transient* storage to carry out the transmission, and caching services offer *temporary* storage to make the transmission more efficient or secure.

17 The meaning of "temporary storage" by caching services thus depends on the purpose of the storage, similar to how the meaning of "transient storage" in the case of mere conduit services is defined through its purpose. The DSA allows caching services to store information for the sole purpose of making the transmission more efficient or secure. Thus, if a service provider stores information for other reasons and hence longer than is necessary for efficiency or security reasons, it cannot qualify as a caching service and might instead be a hosting service (assuming it was already disqualified as a mere conduit service).

18 The preamble to the DSA gives a few examples of caching services, such as content delivery networks, reverse proxies or content adaptation proxies.[28] While these examples do not bring messaging apps to mind, some messaging apps might qualify as caching services if they temporarily store messages on their servers to make the transmission more efficient. For instance, as will become clear in section C of this paper, WhatsApp stores media *included in messages*, such as photos, on its servers for up to 30 days to make the delivery, and specifically the forwarding, of messages more efficient. Thus, although WhatsApp is not a typical caching service, it provides such services if we look at the DSA's definition. This illustrates the point made by Wilman, Kalėda and Loewenthal, that "the legal concept of 'caching' could over time conceivably be construed in a manner extending beyond its original, narrow technical meaning".[29]

3. Hosting

19 Finally, the DSA defines hosting services as "consisting of the storage of information provided by, and at the request of, a recipient of the service".[30] Where mere conduit and caching services focus primarily on transmitting information, hosting services store information for their users on a server or in the cloud, with the storage being the core of the actual service. The Regulation on addressing the dissemination of terrorist content online ("TCO Regulation"), which uses several similar concepts as the DSA, defines storage in this context as "holding data in the memory of a physical or virtual server".[31] Although mere conduit and caching services may briefly store information for their users, hosting services offer storage of a more permanent character. The duration of the storage of hosting services is not limited to what is necessary to carry out the transmission of information or make such transmission more efficient or secure. Several messaging apps on the market that provide cloud storage for chats will count as hosting services.[32]

II. The Concept of "online platform"

20 Online platforms, and specifically very large online platforms, bear the majority of due diligence obligations in the DSA. The DSA defines "online platform" as 1) a hosting service that, 2) at the request of a recipient of the service, 3) stores and disseminates information to the public, 4) unless

25 Rec 14 DSA.

26 Art 3(g)(ii) DSA.

27 Art 5(1) DSA; italics by the paper's author.

28 Rec 29 DSA.

29 Folkert Wilman, Saulius Lukas Kalėda and Paul-John Loewenthal, 'Liability of Providers of Intermediary Services', *The EU Digital Services Act* (Oxford University Press 2024) 64.

30 Art 3(g)(iii) DSA.

31 Rec 13 TCO Regulation; see also Case C-324/09 *L'Oréal and others v. Ebay and Others*, para 110.

32 Husovec, 'Liability Exemptions' (n 22) 143.

– in brief – the activity of publicly disseminating information is a minor and purely ancillary feature of the service.[33] In the latter case, the service is only a hosting service. For the purposes of this paper, the third element of this definition should be analysed further.

21 The DSA defines the concept of "dissemination to the public" as "making information available, at the request of the recipient of the service who provided the information, to a potentially unlimited number of third parties".[34] The DSA's preamble further explains this concept:

> The concept of 'dissemination to the public', as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, meaning making the information easily accessible to recipients of the service in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. Accordingly, where access to information requires registration or admittance to a group of recipients of the service, that information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access. (...)[35]

22 The phrase "making the information easily accessible to *recipients of the service in general*" suggests that whether information is disseminated to the public should be assessed within the context of a specific service. That is to say, the question is whether all users of the service can access the information, not whether the entire world, including people who have not registered for the service, can access the information.

23 The DSA's preamble also stipulates that to count as an online platform, information on a hosting service should be *easily* accessible to all the service's users. The preamble does not explicitly explain when access to information is considered easy or difficult, but the preamble's text suggest that "easily" (and thereby, the "definition of dissemination to the public") should be understood in relation to access control. Immediately after the sentence containing the reference to "easily", the preamble provides that "[a]ccordingly, where access to information requires registration or admittance to a group of recipients of the service, that information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access". In other words, if an online service hosts information in groups to which people need to be admitted before they can access the information, then the host becomes a platform only where people are admitted to those groups automatically or without a selection of whom to grant access. In such a case, access to the information can probably be considered easy for the service's users.

24 A "selection of whom to grant access" might in practice also be linked to the findability of information. Where access to information requires registration or admittance to a group of recipients of a service, but a user can only find the group when an admin or member invites them to the group by adding them or sending an invite link, and not via the service's search function, then there is a selection of whom to grant access (namely: who is actively invited?). In such a case, one could also say that the information is not "*easily* accessible to recipients of the service in general". In other words, where information is available only in a specific online group, and one must be added or receive an invite link to find the group, the group probably does not qualify as an online platform service. This interpretation of the DSA is further discussed in section E.I.

25 The DSA's preamble's explanation on access control also implies that "the mere existence of a registration process does not make [online] services private".[36] Only manual access control to information hosted in online groups keeps those groups private and prevents them from being categorised as online platform services. For instance, if a messaging app enables group chats that can be viewed only after registration to the group, then that in itself does not prevent the app's group chat functionality from being categorised as an online platform. As long as users of the messaging app can automatically join those chat groups (and the groups can be found), the information in those groups may be considered to be disseminated to the public, provided that the other elements of the definition are also met.

26 The foregoing paragraphs also lead to the observation that the class of "potentially unlimited number of third parties" who receive the information shared via a service should be unlimited in terms of access control and not in terms of actual numbers. That is

33 Art 3(i) DSA. Bracketed numbers added by the paper's author.

34 Art 3(k) DSA.

35 Rec 14 DSA. The DSA has borrowed the concept of 'dissemination to the public' and the further interpretation of this phrase from Art 2(3) and Rec 13 TCO Regulation.

36 Martin Husovec, 'Introduction to Accountability Framework', *Principles of the Digital Services Act* (Oxford University Press 2024) 165.

to say, if a messaging app enables chat groups with only a *limited* number of users – for instance, 1024 or 200.000 users – then this numerical limitation does not in itself prevent those chat groups from being qualified as online platforms. Likewise, if a messaging app offers channels with an *unlimited* number of users, then this feature does not necessarily lead to the conclusion that these channels are online platform services. The question is how users of the service can join those chat groups and channels (automatic or manual access control), not whether some people might be barred from joining certain groups because they reached their maximum number of users, nor whether a numerically unlimited number of people can follow a channel.

27 The DSA's preamble further explains that "dissemination to the public" means that information is made public "without further action by the recipient of the service providing the information being required". This phrase is not further explained in the DSA or its legislative history. Still, one can imagine a situation in which someone uploads a document to a hosting service and then subsequently shares the URL to the document on their publicly accessible social media profile. Such further sharing of an otherwise private URL probably does not turn the original hosting service into an online platform.

28 Finally, the DSA's preamble juxtaposes online platforms with interpersonal communication services:

> (...) Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council (24), such as emails or private messaging services, fall outside the scope of the definition of online platforms as they are used for interpersonal communication between a finite number of persons determined by the sender of the communication. However, the obligations set out in this Regulation for providers of online platforms may apply to services that allow the making available of information to a potentially unlimited number of recipients, not determined by the sender of the communication, such as through public groups or open channels. (...)[37]

29 In other words, a service cannot be both an interpersonal communication service and online platform. The EECC defines the concept of "interpersonal communications service" as enabling interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipients.[38] Typical examples of interpersonal communications services are voice calls between two individuals, emails, and one-to-one messaging services.[39] From this definition, it follows that on online platforms, the sender of information *does not* determine its recipients, which is also stressed in the preamble's passage quoted above.

30 The idea that on online platforms, the sender of information does not determine its recipients could be seen as another manifestation of the idea that online platforms lack manual access control over who can view the information. If the sender of information determines its recipients, they effectively control who can access the information. Nonetheless, for the analysis in section D, it is useful to consider both aspects separately, being mindful of the fact that in essence they express the same idea.

31 Notably, the DSA's preamble suggests that "public groups or open channels", presumably on messaging services, may be online platforms. However, a more detailed analysis of all the features of a messaging app's functionality is required before we can conclude that it is an online platform, as will be shown in section D of this paper.

32 If we integrate all these explanations and definitions, then it can be said that an online platform is 1) a hosting service that, 2) at the direct request of a recipient of the service, 3) stores and disseminates information to the public, meaning that a) all recipients of the service can easily access the information without manual access control, and b) the sender of the information does not determine its recipients, 4) unless these publicising activities are not the core activity of the service. The following section will describe the case studies, after which the definitions of "mere conduit", "caching", "hosting", and "online platform" are applied to them.

C. Description of Case Studies

33 WhatsApp and Telegram are two popular messaging apps that offer, among other things, group chats and channels. To understand the workings of both apps, the following publicly available documents have been consulted:

34 For WhatsApp: FAQ,[40] Terms of Service (for the EEA),[41]

37 Rec 14 DSA.

38 Art 2(5) EECC.

39 Rec 17 EECC.

40 'Help center', *WhatsApp* <https://faq.whatsapp.com> accessed 2 July 2025.

41 'WhatsApp Terms Of Service', *WhatsApp* <https://www.whatsapp.com/legal/terms-of-service-eea> accessed 2 July

Privacy Policy (for the EEA),[42] Supplemental Terms of Service for Channels,[43] Supplemental Privacy Policy for Channels,[44] and Channels Guidelines.[45]

35 For Telegram: FAQ,[46] Privacy Policy,[47] Terms of Service,[48] Channels FAQ,[49] User Guidance for the EU Digital Services Act,[50] and FAQ for the Technically Inclined.[51]

36 For both apps, the author of this paper found several default settings by using the apps, such as by creating a new chat group. In the section below, WhatsApp's and Telegram's descriptions are primarily based on their FAQ, unless otherwise specified in the footnotes.

I. WhatsApp

37 WhatsApp is a messaging app owned by Meta. It was founded in 2009 and acquired by Meta in 2014. WhatsApp is the most popular global messaging app, with almost 3 billion monthly users.[52]

38 If you open WhatsApp on a phone, you can choose between five tabs at the bottom of the screen: Updates, Calls, Communities, Chats, and Settings. These tabs offer access to multiple functionalities: individual and group chats, communities, channels, status updates, and voice and video calls or voice chats. Status updates (similar to Stories on Instagram), communities, voice and video calls and voice chats are outside the scope of this paper. WhatsApp also provides access to Meta AI, an LLM service within WhatsApp, which is also excluded from the scope of this paper.

1. Group Chats

39 *Type of communication.* WhatsApp group chats enable people to send messages in groups.[53] The default setting for a new group is that each group member can send messages. Thus, such groups afford many-to-many and two-way communication.[54] However, group admins can toggle off the option for members to send messages, making the communication one-to-many and one-way.[55]

40 *Size*. WhatsApp groups can have up to 1024 members.

41 *Organisation.* Creators of WhatsApp groups become group admins. Admins can appoint more admins for their groups.

42 *Findability*. WhatsApp users can find and join group chats in multiple ways. First, group admins and members can add new members to a group. However, group admins can change this setting so only admins can add new members.[56] Second, each group automatically has a link. Group admins can invite people to join a group by sharing the group link. Group members cannot access this link via the app to send it to others.[57] Furthermore, WhatsApp can block a group's invite link feature to address

2025.

42 'WhatsApp Privacy Policy', *WhatsApp* <https://www.whatsapp.com/legal/privacy-policy-eea> accessed 2 July 2025.

43 'Supplemental Terms of Service for WhatsApp Channels', *WhatsApp* <https://www.whatsapp.com/legal/channels-terms-of-service> accessed 2 July 2025.

44 'WhatsApp Channels Supplemental Privacy Policy', *WhatsApp* <https://www.whatsapp.com/legal/channels-privacy-policy> accessed 2 July 2025.

45 'WhatsApp Channels Guidelines', *WhatsApp* <https://www.whatsapp.com/legal/channels-guidelines/> accessed 2 July 2025.

46 'Telegram FAQ', *Telegram* <https://telegram.org/faq> accessed 2 July 2025.

47 'Telegram Privacy Policy', *Telegram* <https://telegram.org/privacy/eu> accessed 2 July 2025.

48 'Terms of Service', *Telegram* <https://telegram.org/tos/eu> accessed 2 July 2025.

49 'Channels FAQ', *Telegram* <https://telegram.org/faq_channels> accessed 2 July 2025.

50 'User guidance for the EU Digital Services Act', *Telegram* <https://telegram.org/tos/eu-dsa> accessed 2 July 2025.

51 'FAQ for the Technically Inclined', *Telegram* <https://core.telegram.org/techfaq> accessed 2 July 2025.

52 Statista (n 13).

53 WhatsApp also offers a functionality called 'broadcast lists' which, on a first sight, might look like group chatting. People can use broadcast lists to send the same message to several contacts at once. If someone uses a broadcast list, then each contact in the list receives the message sent via the list as an individual (one-to-one) chat with the sender. Broadcast lists are thus not a form of group communication but a tool for sending multiple identical individual chat messages simultaneously.

54 Gabriele Balbi and Juraj Kittler, 'One-to-One and One-to-Many Dichotomy: Grand Theories, Periodization, and Historical Narratives in Communication Studies' (2016) 10 International Journal of Communication 20.

55 It is not entirely correct to describe a group with restricted messaging options for members as one-to-many and one-way. If such a group has multiple admins, then these admins can still send messages to each other in front of the other group members. Furthermore, in such groups, members can still react with emojis to messages shared by group admins. Groups with restricted messaging options for members thus still have a degree of interactivity that is lacking in traditional one-to-many and one-way communication such as television broadcasting.

56 The author of this paper found this by using the app.

57 The author of this paper found this by using the app.

Terms of Service violations. Third, groups in a community can also be found and joined via the group directory in that community. WhatsApp users cannot search for groups to join through WhatsApp's search interface.[58]

43 *Links.* Group links on WhatsApp can be URLs or QR codes. They can be shared with and used by multiple people and are not created to invite one specific person.[59] Group admins can reset group links to make them invalid and create new links.

44 *Admission.* WhatsApp's default setting is that anyone who finds a group can join and is automatically granted admission. However, group admins can toggle on the "approve new members" setting. Once this setting is on, admins must review every request to join the group before a member is admitted.

45 *Message visibility.* Messages posted in a WhatsApp group are visible only to a group's members.[60]

46 *Message history.* When someone joins a WhatsApp group, they cannot see messages sent in the group before they joined, but only the messages sent since joining. Furthermore, the "disappearing messages" feature can be turned on in a group so that messages disappear within 24 hours, 7 days, or 90 days after they have been sent. By default, each group member can turn on "disappearing messages", but admins can change a group's settings to allow only admins to do this.

47 *Encryption.* All messages shared in group chats on WhatsApp are protected with end-to-end encryption.[61]

48 *Storage.* WhatsApp's Privacy Policy explains how messages in group chats are stored.[62] In principle, WhatsApp stores these messages on users' devices and not on its own servers. However, WhatsApp stores messages in encrypted form on its servers while they are being delivered. Once a message is delivered, WhatsApp deletes it from its servers. Furthermore, if WhatsApp cannot deliver a message, it stores it in encrypted form on its servers for up to 30 days while trying to deliver it. If a message is undelivered after 30 days, WhatsApp deletes it from its servers.

49 WhatsApp takes a slightly different approach to storing media, such as pictures, within messages. Media within messages are always stored for up to 30 days in encrypted form on WhatsApp's servers to facilitate more efficient delivery, such as when users forward a picture to other users.[63]

50 The possibility of "linking" devices on WhatsApp has no implications for its storage policies. Linked devices means that WhatsApp users can access their accounts via their phones, desktop apps, browsers, tablets, and wearable devices such as smartwatches. When users link several devices, their primary phone sends an end-to-end encrypted copy of their most recent messages to the newly linked device, where the messages are stored locally. Thus, the fact that WhatsApp enables linked devices does not mean that WhatsApp stores messages on its servers.

51 Likewise, the backup function within WhatsApp does not change its storage policies. WhatsApp enables users to backup their chat history via their Google or iCloud account. In that case, the cloud storage is provided by Google or Apple, not by WhatsApp.[64]

2. Channels

52 *Type of communication.* Channels on WhatsApp enable people and organisations to send messages ("updates") to a group of followers. The default setting is that followers cannot chat back but add emoji reactions to updates and vote on polls. Channel admins can turn off the emoji reactions.[65] Channels thus provide one-to-many and one-way communication,[66] although the ability to react with emojis and vote on polls gives channels some interactivity.

53 WhatsApp introduced channels in 2023.[67] News organisations, football clubs, public bodies like the European Commission, influencers, and many other parties use channels to send updates to their followers.

54 At first glance, channels resemble group chats set up so only admins can send messages. However, as the discussion below shows, channels have different features from group chats, making them different functionalities.

55 *Size.* The number of followers of a WhatsApp channel is unlimited.

56 *Organisation.* Creators of WhatsApp channels become

58 The author of this paper found this by using the app.
59 With thanks to Paddy Leerssen for pointing me to this feature.
60 WhatsApp Privacy Policy (n 42).
61 WhatsApp Privacy Policy (n 42).
62 WhatsApp Privacy Policy (n 42).
63 WhatsApp Privacy Policy (n 42).
64 'How to back up your chat history', *WhatsApp* <https://faq.whatsapp.com/481135090640375> accessed 2 July 2025.
65 The author of this paper found this by using the app.
66 WhatsApp (n 2).
67 WhatsApp (n 2).

admins. Admins can appoint more channel admins.[68]

57 *Findability*. WhatsApp users can find and join channels in several ways. First, each channel automatically has a link. Channel admins can share this link with contacts or via other websites such as social media. WhatsApp encourages such sharing practices,[69] unlike its policy that discourages the public sharing of group and community invite links.[70] Channel followers can also access the channel link to share it (via the "share" option in a channel's menu) with other contacts.[71] Second, users can find channels via a searchable directory within WhatsApp.[72]

58 *Admission.* When a WhatsApp user finds a channel, they can click "follow" and are automatically admitted. Channel admins cannot approve new followers or remove them.

59 *Message visibility.* Anything channel admins share in their channel is public and visible to all their followers and people who don't follow the channel but only open it in the app ("viewers").

60 *Message history.* Updates shared in a channel are available for 30 days for its followers and viewers.

61 *Encryption.* WhatsApp's FAQ and Privacy Policy do not explicitly state that it does *not* provide end-to-end encryption to channels, but the lack of such encryption is implied.[73]

62 *Storage.* Updates shared in channels are stored on WhatsApp's servers for up to 30 days.

II. Telegram

63 Telegram is a messaging app that launched in 2013. News reports often state that the brothers Nikolai and Pavel Durov co-founded Telegram, although Telegram's Press Info webpage currently only lists Pavel as the app's founder, owner, and CEO.[74] Telegram is the fourth most popular global messaging app, with around 900 million users in 2024.[75]

64 If you open Telegram on a phone, you can choose between three tabs at the bottom of the screen: Contacts, Chats, and Settings. Chats gives access to all the messaging functionalities, including individual and group chats, channels, and Stories (similar to Stories on Instagram). Telegram also enables (video) calling with individuals and groups.[76] The (video) calling and Stories functionalities within Telegram are excluded from the scope of this paper.

1. Group Chats

65 *Type of communication.* Telegram's group chats allow users to send messages in groups. When a group has been created, the default is that each group member can send messages in the group.[77] Group chats thus afford many-to-many and two-way communication. However, group owners can configure a group so that only they and admins can send messages. In that case, the communication is one-to-many and one-way.[78]

66 *Size.* Telegram groups can have up to 200.000 members.

67 *Organisation.* A creator of a Telegram group become its "owner". Group owners can appoint admins and decide which privileges each admin has. The following paragraphs describe the powers of group owners, but some of these actions might also be performed by admins, depending on the privileges they receive.

68 To further describe the features of Telegram groups, it is necessary to distinguish between private and public groups. It should be noted that Telegram's use of the terms "private" and "public" does not

68 When WhatsApp introduced Channels in 2023, it was still possible for admins 'to decide ... whether they want their channel to be discoverable in the directory or not', see WhatsApp (n 2). However, it appears that the option to make a channel 'private' has disappeared.

69 'About creating a WhatsApp Channel', *WhatsApp* <https://faq.whatsapp.com/265055289421317> accessed 2 July 2025.

70 'How to create and invite into a group', *WhatsApp* <https://faq.whatsapp.com/3242937609289432> accessed 2 July 2025.

71 The author found this by using the app.

72 WhatsApp (n 2).

73 WhatsApp FAQ states: 'Channel updates are kept in a separate tab from your chats. As always, your personal messages and calls remain end-to-end encrypted. No one else, not even WhatsApp, can read or listen to them'; see 'About safety and privacy on channels', *WhatsApp* <https://faq.whatsapp.com/1318001139066835> accessed 2 July 2025.

74 'Telegram Press Info', *Telegram* <https://telegram.org/press> accessed 2 July 2025.

75 Statista (n 13).

76 Telegram's video calling functionalities are accessible via a contact's profile or a group chat.

77 The author of this paper found the default setting by using the app.

78 Similar to group chats on WhatsApp, it could be noted that it is not entirely correct to describe Telegram groups with restricted messaging options as 'one-to-many', because if a group has multiple admins, these admins can send messages to each other in front of the other group members.

necessarily correspond with what can be considered private and public from the perspective of the DSA. This section follows Telegram in its use of "private" and "public" to distinguish the two types of chat groups and channels, but then re-evaluates the use of these terms in section D.

69 Telegram groups are private by default, but group owners can make them public.

70 *Findability.* Telegram users can find and join private and public groups in multiple ways.[79] First, group owners and members of private and public groups can add contacts to a group or add users by searching for their usernames.[80] However, group owners can choose to disable members from adding new members.[81] Second, people can be invited via a link. Telegram automatically creates a link for private groups that starts with "https://t.me/" and is followed by a random string of characters. When a group owner chooses to make its private group public, they must also create a name for the group, so that the link will look like, for instance, "https://t.me/publictestgroup". Consequently, owners of private and public groups can send these links to other people. Members of public groups can also access a group's invite link to share it with others.[82] To the contrary, private group members cannot access these invite links via the app.[83] Third, Telegram users can search for public groups via Telegram's search function within the app to join them.[84] The search function does not include private groups in its search results.

71 *Links.* Invite links on Telegram take the form of a URL or QR code.[85] They can be shared with and used by multiple people and, thus, are not created to invite one specific person.[86] Group owners can revoke group links to make them invalid and create new links.[87]

72 *Admission.* Telegram's default setting is that anyone who finds a group through an invite link or, in the case of public groups, Telegram's search function and clicks "join" is automatically admitted. However, private group owners can toggle on the "request admin approval" setting.[88] People can then join the group only after the group owner approves them. Public group owners have a slightly different option. They can toggle on the setting "approve new members".[89] When this setting is on, new members can join a group immediately, but can start messaging in the group only after the group owner approves them.

73 *Message visibility.* Messages posted in private Telegram groups are visible only to group members. Messages posted in public groups are visible to both group members and Telegram users who open the group in the app but are not members. Each message in a public group also has a link that can be shared elsewhere.[90]

74 *Message history.* New members of a private Telegram group can see up to 100 previously sent messages by default.[91] Private group owners can also configure a group so that new members can see all messages sent before joining.[92] New members of a public Telegram group can see its entire chat history. Public group owners cannot toggle off this chat history feature.[93]

75 *Encryption.* Messages shared in Telegram group chats are encrypted, but not with end-to-end encryption. Users can start an individual (one-to-one) chat as a "secret chat", which is end-to-end encrypted. However, secret chats are not available for group chats. Thus, neither private nor public group chats are end-to-end encrypted.

76 *Storage.* Telegram is a cloud service, which means that messages in group chats are stored in the cloud.

79 Nathalie Van Raemdonck and Jo Pierson, 'Contentious Content on Messaging Apps: Actualising Social Affordances for Normative Processes on Telegram' in Hopeton S Dunn and others (eds), *The Palgrave Handbook of Everyday Digital Life* (Springer International Publishing 2024).

80 The author of this paper found that both owners and members can add people by using the app.

81 The author of this paper found this feature by using the app.

82 The author of this paper found this feature by using the app.

83 The author of this paper found this feature by using the app.

84 Note that Pavel Durov states in a message posted to his public Telegram channel that 'Search on Telegram ... allows users to find public channels and bots', see <https://t.me/durov/345> accessed 2 July 2025. This statement leaves out that search on Telegram also allows users to find public groups.

85 The author of this paper found these features by using the app.

86 The author of this paper found this feature by using the app. With thanks to Paddy Leerssen for pointing me to this aspect.

87 The author of this paper found this by using the app.

88 Telegram, 'Hyper-Speed Scrolling and Calendar View for Shared Media, Join Requests, Global Chat Themes on iOS and More' (3 November 2021), <https://telegram.org/blog/shared-media-scrolling-calendar-join-requests-and-more> accessed 2 July 2025; see also author's app use.

89 The author of this paper found this feature by using the app.

90 The author of this paper found this feature by using the app.

91 The author of this paper found this feature by using the app. Confusingly, in the Telegram interface, this configuration is the 'hidden' option for the feature 'chat history for new members'.

92 The author of this paper found this feature by using the app. In the Telegram interface, this configuration is the 'visible' option for the feature 'chat history for new members'.

93 The author of this paper found this feature by using the app.

The cloud storage ensures that messages are synced across all the devices a user logs in to. Secret chats are not stored in the cloud, but, as just mentioned, group chats cannot be secret and are therefore always stored in the cloud.

2. Channels

77 *Type of communication.* Telegram channels allow individuals and organisations to send messages to large audiences ("subscribers"). The default is that subscribers cannot send messages in a channel, although they can respond with emojis to messages sent. Channel owners can turn off the emoji response feature to have less interactivity. On the other hand, channel owners can also toggle on the "discussion" feature for more interactivity.[94] If this feature is on, a discussion group is added to the channel, and each message sent by a channel owner will have a comment button below it, enabling subscribers to comment on the message. These comments show up as a thread below the original message in the channel and are also automatically forwarded to the discussion group attached to the channel.[95]

78 Telegram describes channels as a "tool for broadcasting".[96] To some degree, channels are indeed for one-to-many and one-way communication.[97] However, emoji responses provide some interactivity, and when the discussion feature is enabled, a channel is even more interactive.

79 *Size.* Telegram channels can have an unlimited number of subscribers.

80 *Organisation.* A creator of a Telegram channel becomes its owner.[98] Owners can appoint channel admins and decide which privileges each admin has.[99] The following paragraphs describe the powers of channel owners, but some of these actions might also be performed by admins, depending on the privileges they receive.

81 To further describe the features of Telegram channels, it is necessary to distinguish between private and public channels. Again, Telegram's use of these terms does not necessarily correspond with what can be considered private and public from the perspective of the DSA. This section also follows Telegram in its use of "private" and "public" to distinguish the two types of channel, but then re-evaluates the use of these terms in section D.

82 Channels are private by default, but owners can make them public.

83 *Findability.* Telegram users can find and subscribe to a channel in multiple ways.[100] First, owners of private and public channels can add new subscribers to the channel. Once a channel has 200 subscribers, owners can no longer manually add new subscribers. From that point, new subscribers must find and join the channel in other ways. Second, people can subscribe to a channel via a link. Telegram automatically creates a link for private channels that looks like "https://t.me/" and is followed by a random string of characters. When a channel owner wants to make a private channel public, they must also create a name for the channel so that the link will look like, for instance, "https://t.me/publictestchannel". Owners of private and public channels can then send these invite links to others. For public channels, subscribers can also access the links to send them to others.[101] Subscribers of private channels cannot access the invite links via the app menu.[102] Third, Telegram users can search for public channels via Telegram's search function within the app to subscribe.[103] Private channels are not included in the search results.[104]

84 *Admission.* When a Telegram user finds a channel, they can join and are automatically admitted. However, private and public channel owners can remove subscribers.[105] Channel owners cannot turn of automatic admission.[106]

85 *Message visibility.* Messages posted in private Telegram channels are visible only to channel subscribers. Messages posted in public channels are visible to subscribers, Telegram users who are not subscribed to the channel but open it in the app, and even people who don't have a Telegram account but open the channel via a link in their browser and click "preview channel".[107] Each message in a public or private channel also has a link which can be shared

94 Telegram, 'Search Filters, Anonymous Admins, Channel Comments and More' (30 September 2020) <https://telegram.org/blog/filters-anonymous-admins-comments> accessed 2 July 2025.

95 Telegram, 'Focused Privacy, Discussion Groups, Seamless Web Bots and More' (31 May 20219) <https://telegram.org/blog/privacy-discussions-web-bots> accessed 2 July 2025.

96 Telegram (n 92).

97 Balbi and Kittler (n 54).

98 Telegram Channels FAQ (n 49).

99 Telegram Channels FAQ (n 49).

100 Telegram Channels FAQ (n 49).

101 The author of this paper found this feature by using the app.

102 The author of this paper found this feature by using the app.

103 Telegram Channels FAQ (n 49).

104 The author of this paper found this feature by using the app.

105 Telegram Channels FAQ (n 49).

106 The author of this paper found this feature by using the app.

107 The author of this paper found the latter point by using the app. See, for instance, the public channel of Telegram's CEO, Pavel Durov: <https://t.me/s/durov>.

on other websites.[108]

86 *Message history.* When Telegram users subscribe to a private channel, they can see its entire message history.[109] On public channels, when Telegram users subscribe to or just open one, they can also see its entire message history.[110] Channel owners cannot turn of this message history feature.[111]

87 *Encryption.* Messages shared in Telegram channels are encrypted, but not with end-to-end encryption. Channels cannot be used for secret chats.

88 *Storage.* Messages shared in Telegram channels are stored in the cloud.

D. Application of Definitions to Case Studies

89 The DSA revolves around different types of intermediary services. To categorise the various functionalities offered by WhatsApp and Telegram under the DSA, a first question is what unit should be considered a service.[112] Do WhatsApp and Telegram both offer one service, namely a messaging service, with different functionalities (individual chats, group chats, channels) or are the various functionalities that they provide separate services, namely an individual chat service, group chat service and channel service? Furthermore, if these are indeed separate services, are Telegram's private and public group chats and channels then also separate services, or are these just different functionalities of broader group chat and channel services?

90 The DSA does not define the scope of the concept of "service", but it contains a hint on how to understand it. The definition of online platform stipulates that a hosting service where the dissemination of information to the public is a "minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service" is not an online platform.[113] From this, it can be inferred that when a functionality is *not* minor and can be used without other parts of the service, it might be, in Husovec's words, "separable" and, therefore, an independent service.[114] For instance, the European Commission concluded that Messenger is a service separate from Facebook.[115]

91 Based on this interpretation, this paper proceeds on the assumption that WhatsApp and Telegram provide multiple services, since all these chat functionalities can be used independently of each other. WhatsApp offers individual chat, group chat and channel services, and Telegram offers individual chat, private and public group chats and private and public channel services.

I. WhatsApp

92 The first question is whether WhatsApp's group chat and channel functionalities are mere conduit, caching, or hosting services. The answer depends on WhatsApp's storage policies, which differ for group chats and channels. The second question is whether those services that qualify as hosting services are also online platform services.

1. Group Chats

93 WhatsApp's Privacy Policy emphasises that messages in group chats are stored on users' devices, which suggests that WhatsApp is merely transmitting information and, thus, is a mere conduit provider. However, it appears that WhatsApp also stores messages in group chats on its servers. The question then becomes whether such storage is transient and with the purpose of carrying out the transmission, temporary and with the purpose of making the transmission more efficient or secure, or more permanent, being a core part of the service offered to end-users. The fact that WhatsApp deletes a message from its servers once it has been delivered suggests that WhatsApp is transiently storing these messages to carry out the transmission. Therefore, WhatsApp's group chat functionality probably qualifies as a mere conduit service.

94 However, WhatsApp separately stores media in messages on its servers for up to 30 days "to aid in more efficient delivery", such as when someone forwards a meme to another chat.[116] In this case, the

108 The author of this paper found this feature by using the app.

109 Telegram Channels FAQ (n 49).

110 The author of this paper found that also people who are not subscribed to a public channel can see its entire message history.

111 The author of this paper found this feature by using the app. The menus with channel settings do not provide an option to change this message history feature.

112 With thanks to Paddy Leerssen for pointing me to this question.

113 Art 3(i) DSA.

114 Husovec, 'Introduction to Accountability Framework' (n 36) 174–175.

115 European Commission, 'Commission Decision of 25.4.2023 Designating Facebook as a Very Large Online Platform in Accordance with Article 33(4) of Regulation (EU) 2022/2065' (2023) <https://ec.europa.eu/newsroom/dae/redirection/document/101005> accessed 2 July 2025.

116 WhatsApp Privacy Policy (n 42).

purpose of the storage is making the transmission of the media more efficient, not just purely carrying out the transmission. This suggests that WhatsApp provides caching services for users sending media in group chats.

95 As group chats on WhatsApp are mere conduit and sometimes caching but never hosting services, they cannot be online platform services. Note that the possibility for linked devices and backups does not change this conclusion, since devices are linked via encrypted copies of chats that are stored on users' devices and cloud backups are hosted by Google or Apple, not by WhatsApp. In other words, linked devices and cloud backups do not involve WhatsApp hosting any user content.

2. Channels

96 Channel updates are stored on WhatsApp's servers for up to 30 days. In this case, the question is whether such storage is tied to the transmission, and thus part of mere conduit or caching services, or whether such storage is the core of the actual service delivered to end-users. Since WhatsApp does not delete channel updates from its servers after they have been delivered to a channel's followers, channels are not a mere conduit service. Furthermore, there are no indications in WhatsApp's Privacy Policy that WhatsApp stores channel updates for efficiency reasons. Instead, it seems that WhatsApp stores channel updates for 30 days to provide a message history feature so that, for instance, new followers or viewers can scroll back to see recent updates shared in the channel. WhatsApp also specifically explains to users that they can preview channel updates before they decide to follow a channel.[117] In other words, the storage of channel updates on WhatsApp's servers, albeit temporary, is a feature of the channel functionality. From that perspective, WhatsApp channels should be categorised as a hosting service.

97 If WhatsApp channels are hosting services, they might also be online platforms. As a reminder, section B of this paper broke down the definition of "online platform" into four elements: "an online platform is 1) a hosting service that, 2) at the direct request of a recipient of the service, 3) stores and disseminates information to the public, meaning that a) all recipients of the service can easily access the information without manual access control, and b) the sender of the information does not determine its recipients, 4) unless these publicising activities are not the core activity of the service." Note that in light of the observation in section B.II ("the idea that on online platforms the sender of information does not determine its recipients could be seen as another manifestation of the idea that online platforms lack manual access control over who can view the information"), the discussion under element 3(b) could also be rephrased as being about access control.

98 The main question in deciding whether WhatsApp channels are online platforms is whether they enable the dissemination of information to the public. The other two remaining elements, namely whether information is made public at the direct request of the sender, and whether these publicising activities are the core activity of channels, are assumed to be met for the purposes of this paper.

99 The first question is whether all WhatsApp users can easily access updates shared in channels without needing to pass manual access control. To access updates shared in a specific channel, people must register with WhatsApp. After registration with WhatsApp's services, WhatsApp users can find all the available channels via in-app search or when they receive an invite link, and they are automatically admitted to a channel when they click "follow". Moreover, WhatsApp users can even view updates shared in channels they are not following, as users do not need to follow – that is, register for – a channel to see its most recent content. Thus, channel updates are easily accessible to all users of WhatsApp's channel service in general, without manual access control.

100 The second question is whether the sender of a channel update determines its recipients. If a channel owner shares an update in their channel, they arguably determine the update's recipients, namely all the current followers of the channel (in other words: they manually control who can view the information). However, new followers of a channel can see updates shared up to 30 days ago. This means that when a channel owner shares an update, they do not fully determine its recipients, because afterwards new followers may join who can also see the update. Furthermore, as just mentioned, on WhatsApp, people not following a channel can view updates of up to 30 days old shared therein. This means that if a channel owner shares an update, an unknown group of viewers may also see it. For these reasons, a channel owner does not determine all the recipients of an update, that is, does not have full control over who can view the information they shared.

101 Thus, WhatsApp channels facilitate the dissemination of information to the public, and thereby, they are online platform services. One could say that all

117 WhatsApp, 'How to find and follow WhatsApp Channels' <https://faq.whatsapp.com/630432792316720> accessed 2 July 2025.

WhatsApp channels are public.

102 WhatsApp has also concluded that its channels are online platform services. Since February 2023, WhatsApp has been reporting every six months on the average monthly active users of WhatsApp channels,[118] in line with the DSA's reporting requirements for providers of online platforms.[119] Notably, in its February 2025 report on its average monthly active users, WhatsApp disclosed that from July to December 2024, WhatsApp Channels had approximately 46.8 million average monthly active users in the EU.[120] These user numbers cross the DSA's threshold for very large online platforms. Therefore, it is likely that the European Commission will designate WhatsApp Channels as such.

II. Telegram

103 The first question is whether Telegram's group chat and channel functionalities are mere conduit, caching, or hosting services. Telegram's group chat and channel functionalities are part of its cloud service, designed to provide seamless sync.[121] This indicates Telegram stores messages in group chats and channels for longer than just carrying out the transmission or making the transmission more efficient. Instead, the storage is part of Telegram's service offered to end-users. Therefore, Telegram's group chat and channel functionalities are hosting services.

104 The second question is whether Telegram's hosting services are also online platform services. To answer this question, we must separately analyse private and public group chats and channels. Again, we are using the concept of "online platforms" as parsed in section B of this paper. For all four services analysed below, we concentrate on the question of whether the service enables the dissemination of information to the public. Also note again that the discussion about whether the sender of the information determines its recipients can be rephrased as being about access control.

1. Private Group Chats

Does the sender of the information (not) determine its recipients?

105 When a member of a private group chat on Telegram sends a message in the group, it arguably determines the message's recipients (and in that sense manually controls who can view the information), namely all the current members of the group. Furthermore, messages posted in private group chats on Telegram are visible only to group members and not to anyone else (compare, for instance, messages posted in public Telegram groups, which are visible to both group members and people who just open the group in the app without joining it). From this perspective, one could argue that the sender of a message in a private Telegram group determines its recipients. It would follow that private Telegram groups cannot be online platforms.

106 However, an argument can be made that the sender of a message in a private Telegram group does *not* determine its recipients (thus, does not fully control who can view the information they shared), which opens the door to being categorised as online platform. When a new member joins a private Telegram group, the default is that they can see up to 100 previously sent messages. Private group owners can even configure a group so new members can see all messages sent before they joined. This message history feature means that when Anselm posts a message in a private Telegram group, and Bruce joins the group after Anselm posts the message, Bruce might see Anselm's message without Anselm having determined Bruce as a recipient of the message. In fact, Telegram does not enable group owners to configure a group so that new members only see messages posted after they joined. The most far-reaching restriction on message history possible within Telegram is that group owners can determine that new group members can see messages from up to only one day ago. In other words, new private group members on Telegram will always be able to see *some* messages posted before they joined, unless no one has posted anything recently.

107 Telegram's message history feature should be seen together with its other possibilities for access control. While new private chat group members on Telegram can always see some messages posted before they join, one could argue that if the sender of the information can control who accesses the group, they effectively still have control over the message's recipients and who views the information they shared. However, the default on Telegram is that each private group member can add new members. Therefore, in the default settings, the sender of a message cannot fully determine its recipients. For instance, when Anselm sends a message in a private

118 WhatsApp, 'Regulatory and Other Transparency Reports' <https://www.whatsapp.com/legal/transparencyreports> accessed 2 July 2025.

119 Art 24(2) DSA.

120 WhatsApp (n 115).

121 See section C.II.

chat group on Telegram, and Charlie decides to add Bruce to the group, then Bruce can view Anselm's message without Anselm having determined him as a recipient. Private group owners can disable members from adding new members, but in that case, Anselm would need to be the group owner to have control over his message's recipients. From this perspective, most private Telegram groups meet the online platform criterion that the sender of the information does not determine its recipients.

Can all recipients of the service easily access the information without manual access control?

108 If we look at the behaviour of invite links on Telegram, it could be argued that private chat groups on the app lack manual access control, which brings them close to being categorised as online platform services. When someone finds a private group through an invite link, the default setting on Telegram is that they only need to click "join" and are then automatically admitted.

109 However, private Telegram groups have another mode of access control, namely through their findability. Telegram users can only find private groups by being added to them or receiving an invite link. Telegram users cannot search for private groups via Telegram's search function. When someone is added to a group or sent an invite link, there is a clear "selection of whom to grant access". Therefore, information shared in private Telegram groups is *not* easily accessible to all Telegram users without manual access control. This would lead to the conclusion that, despite the conclusion under the first prong of "dissemination to the public", private Telegram groups cannot be categorised as online platforms. From that perspective, Telegram groups labelled as "private" are indeed private.

2. Public Group Chats

Does the sender of the information (not) determine its recipients?

110 When someone sends a message in a public group on Telegram, they arguably determine its recipients, namely all current group members. However, new group members on Telegram can always see its entire chat history. Furthermore, messages posted in public Telegram groups are visible both to group members and to Telegram users who open the group in the app without being a member. For these reasons, the sender of a message in a public Telegram group does not determine its recipients; there are always unknown new members who may see the message and unknown viewers who can see the message without being a group member.

Can all recipients of the service easily access the information without manual access control?

111 The findability and admission features of public chat groups on Telegram suggest that these groups do not have manual access control. Public Telegram groups are easy to find. Most importantly, Telegram users can find public groups through the in-app search function, next to being added to a public group, or receiving an invite link. Furthermore, Telegram's default setting is that anyone who finds a public group through Telegram's search function or an invite link and clicks "join" is automatically admitted. Public group owners cannot toggle on a setting such that Telegram users can only join the group after their approval. Telegram provides the setting "approve new members" for public groups. However, when this setting is toggled on, new members are still automatically admitted to the group after clicking "join" and can read the messages shared therein. In that case, the sole restriction is that new members can send messages in the group only after the group owner approves them. Thus, the easy findability and automatic admission to public Telegram groups means that all Telegram users can easily access the information shared in public groups without manual access control. Based on these considerations, public chat groups on Telegram can probably be qualified as online platform services and are correctly labelled "public".

3. Private Channels

Does the sender of the information (not) determine its recipients?

112 When the owner of a private channel on Telegram posts a message in the channel, it arguably determines the message's recipients, namely all the current followers of the channel. Messages posted in private channels on Telegram are also visible only to the channel's followers and not to anyone else, contrary to how, for instance, messages posted in public Telegram channels can even be viewed by people who don't have a Telegram account. From this perspective, one could argue that the sender of a message in a private Telegram channel determines its recipients. It would follow that private Telegram channels cannot be online platforms.

113 Contrary to private group chats on Telegram, the message history feature of private Telegram channels does not provide an argument that the sender of a message in such a channel does *not* determine its recipients. When Telegram users subscribe to a private channel, they can always see its entire message history. This message history feature means that when Anselm owns a private Telegram channel

and posts a message, and then Bruce subscribes to the channel, Bruce might see Anselm's message. However, only the owner of a private channel on Telegram can add new subscribers to their channel or access the invite link to send it to others. That means that only Anselm can determine who receives his messages sent in his channel, because, as the channel owner, formally he is the only one who can provide people access to the channel. From that perspective, despite the message history feature in private Telegram channels, the sender of information in such a channel still determines its recipients. The conclusion would be that private channels on Telegram cannot be online platforms.

114 Still, one more feature of private Telegram channels should be considered. Although subscribers of private Telegram channels cannot access a channel's invite link in the app menu to send it to others, if a subscriber has received an invite link from the channel owner as an invitation to join, this subscriber in practice has access to the invite link. And once having access to an invite link, nothing prevents channel subscribers from sharing it with other users to invite them to the private channel. Imagine that Anselm owns a private channel on Telegram and sends an invite link to Bruce. Thereafter, Bruce, who now has access to the invite link, forwards the link to Charlie, who then clicks "join", is automatically admitted (as is the default on Telegram), and consequently can see the channel's entire message history. In such a situation, Anselm did not determine Bruce as a recipient of his messages sent before the latter joined. If one accepts this reasoning, then private Telegram groups meet at least one condition of the definition of online platform.

Can all recipients of the service easily access the information without manual access control?

115 The discussion under the first prong of "dissemination to the public" is somewhat inconclusive, but the degree of manual access control for private channels on Telegram points to a clearer conclusion. The fact that only owners of private channels on Telegram can add new subscribers or access the invite link to send it to others means that such channels come with a form of manual access control. Even if a channel subscriber further shares an invite link without formally not being able to access the link through the app menu, there is manual access control. Therefore, similar to private group chats on Telegram, for private channels on Telegram, there is a "selection of whom to grant access". In other words, it is *not* the case that all Telegram users can easily access the information shared in private channels without manual access control. From this perspective, private channels on Telegram cannot be online platforms. Thus, the "private" label seems appropriate from a DSA perspective.

4. Public channels

Does the sender of the information (not) determine its recipients?

116 When the owner of a public channel on Telegram shares a message in the channel, it arguably determines the message's recipients, namely all the current followers of the channel. However, when a new subscriber joins a channel, they can see its entire message history. Furthermore, messages posted in public channels on Telegram are not only visible to the channel's subscribers; people who don't have a Telegram account and just open the channel via a link in their browser can see the contents of a channel too. These features mean that whenever a public channel owner sends a message in their channel, they do not determine all its recipients. With that, public channels on Telegram meet this part of the online platform concept.

Can all recipients of the service easily access the information without manual access control?

117 Similar to public group chats, the findability and admission features of public channels on Telegram suggest that they lack manual access control. Public Telegram channels are easy to find. People can discover public channels through Telegram's search function, be added to a public channel, or receive an invite link. Furthermore, when someone finds a public channel through Telegram's search function or an invite link, they can join and are automatically admitted. Owners of public Telegram channels can remove subscribers, which could be seen as a form of retroactive manual access control. However, until they are removed, new members can read all the contents of a public group. Furthermore, as just mentioned, messages posted in public channels on Telegram are also visible to people who don't have a Telegram account but just open the channel via a link in their browser. These features mean that all Telegram users can easily access the information shared in public channels, without manual access control.

118 Thus, it can be concluded that public channels on Telegram enable the dissemination of information to the public and are, hence, online platforms.

E. Features Giving Non-Platform Groups and Channels a Semi-Public Character

119 The analysis in section D has led to the conclusion that channels on WhatsApp and public group chats and channels on Telegram qualify as online platform

services. To the contrary, group chats on WhatsApp and private group chats and channels on Telegram are not online platform services. However, the functionalities of WhatsApp and Telegram that are not online platform services have features that give them a semi-public character. Nonetheless, this section argues that these features affording a degree of publicity to non-platform spaces in messaging apps do not lead to different conclusions under the current DSA.

I. Automatic Admission to a Group or Channel

120 Both on WhatsApp and Telegram, the default setting is that anyone who finds a group or channel and clicks "join" is automatically admitted. Since the DSA's preamble stipulates that "information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted", one could be inclined to conclude that automatic admission to a group or channel necessarily turns it into an online platform service.

121 However, as became clear through WhatsApp's and Telegram's analysis in the previous section, if automatic admission is paired with a lack of findability, a group or channel remains private. When a group or channel cannot be found via an in-app search interface, users of the service typically can only "find" the group or channel by being actively added or sent an invite link by an admin or member of the group or channel. In those cases, there is a "selection of whom to grant access", which means that, despite being automatic admission upon clicking "join", those groups or channels cannot be categorised as online platform services. Nonetheless, automatic admission gives groups or channels a semi-public character.

II. Chat Groups and Channels with Publicly Available Invite Links

122 Although chat groups on WhatsApp and private groups and channels on Telegram cannot be found via in-app search, these groups and channels come with invite links. On both apps, invite links are not created to invite one specific person and, thus, can be used by multiple people. Also, on both apps, the default setting is that once someone finds a link, they are automatically admitted to the group or channel after following it.

123 Nothing prevents admins of chat groups on WhatsApp and owners of private groups or channels on Telegram from sharing the invite links to their groups and channels publicly instead of sending them only to selected people. For instance, invite links can be shared on public channels within the same app or on social media like Reddit and Facebook. The BBC reported that links to private Telegram groups containing child sexual abuse material are indeed shared in public comments under YouTube videos.[122] Invite links to non-platform chat groups and channels are also publicly shared through online directories,[123] and most certainly also on the dark web. WhatsApp advises people to share invite links for groups only with "trusted individuals",[124] but it does not restrict people from publicly sharing invite links through technological solutions.

124 One could argue that when the invite link to an otherwise private chat group or channel is made publicly available, and the link provides automatic admission once someone clicks it, the chat group or channel itself becomes public too.[125] Notably, Telegram seems to follow a similar reasoning. Its FAQ for Channels states that "private channels with publicly available invite links will be treated in the same way as public channels, should it come to content disputes".[126] From that perspective, such private chat groups and channels may disseminate information to the public and actually be online platforms rather than spaces for private communication.

125 However, the idea that chat groups and channels may become online platforms based on how users share invite links creates an important problem. It would mean that messenger app providers must assess on a case-by-case basis which otherwise private chat groups and channels might be online platforms, and accordingly fulfil the DSA's due diligence obligations for online platforms concerning these spaces. Tuchtfeld argues for such a case-by-case analysis of chat groups or channels.[127] But, it seems practically unfeasible for messenger app providers to review for each otherwise private group chat or channel whether its invite link can also be found online, especially if those links are shared on public online spaces outside of the app.

122 BBC, 'Child Abuse Images Being Traded via Secure Apps' (19 February 2019) <https://www.bbc.com/news/technology-47279256> accessed 2 July 2025.

123 Lifewire, 'Discover WhatsApp Group Links Without Invites: A User's Guide' (2 June 2025) <https://www.lifewire.com/how-to-find-and-join-whatsapp-groups-4782103> accessed 2 July 2025.

124 WhatsApp, 'How to create and invite into a group' <https://faq.whatsapp.com/3242937609289432/> accessed 2 July 2025.

125 Tuchtfeld (n 18).

126 Telegram Channels FAQ (n 49).

127 Tuchtfeld (n 18).

126 The idea to consider whether invite links to chat groups and channels are publicly shared is also impractical in light of the ephemeral ways such links can be shared. Imagine that someone creates a private group on Telegram to share illegal content. They can then share the invite link to their private group in a public channel on Telegram, but remove that message after 24 hours, for instance, when the public channel starts to draw the attention of the authorities. After that, the group owner can continue to share the invite link on other public channels, playing a game in which the link is publicly available for a short time, removed again, and then publicly shared again elsewhere. Consequently, the private group would swing back and forth between fully private and semi-private, with a degree of public findability. Research shows that people indeed use Telegram to create fleeting and complex communication networks across which content in private groups or channels is made more publicly accessible.[128]

127 Another issue with the idea that groups or channels may become online platforms due to users publicly sharing invite links is that some of these groups or channels are not hosting services – an essential element of the DSA's definition of "online platform". For instance, as section D.I.1 concluded, all chat groups on WhatsApp are mere conduit or caching services and not hosting services. Therefore, these chat groups cannot be online platform services either, regardless of how WhatsApp group invite links work and are spread online.

128 Finally, the possibility that otherwise private groups or channels can turn into online platforms when users publicly share their invite links seems to conflict with the DSA's preamble stipulation that the dissemination to the public should not require "further action by the recipient of the service providing the information". It could be argued that such further action includes making the extra effort to publicly share an invite link.

129 In summary, there are multiple practical and legal reasons not to take into account whether users publicly share invite links to otherwise private groups or channels when deciding whether those groups and channels are online platform services. Nonetheless, it should be emphasised that this feature gives such otherwise private groups and channels a semi-public character.

128 Johua Fisher-Birch, 'Half Measures to Remove Neo-Nazi Telegram Channels Do Not Work' (*Counter Extremism Project*, 23 June 2021) <https://www.counterextremism.com/blog/half-measures-remove-neo-nazi-telegram-channels-do-not-work> accessed 2 July 2025; Van Raemdonck and Pierson (n 76).

III. Chat Groups and Channels With Large Numbers of Users

130 Chat groups on WhatsApp can have 1024 members, and chat groups on Telegram can even have 200.000 members. And on both apps, channels can have an unlimited number of followers (called "subscribers" on Telegram), which can lead to a large number of followers too. Note that we have already concluded that all WhatsApp channels are online platform services, so the following concerns specifically private chat groups and channels on Telegram and chat groups on WhatsApp.

131 If an otherwise private chat group has 1024 or even up to 200.000 members, or an otherwise private channel a very large number of subscribers due to the absence of a limit on its subscriber count, one can question whether communication in such groups or channels is still truly private.[129] In a chat group of 1024 members, many members probably do not know each other in real life and cannot trust whether the messages they share will be kept confidential by other members.[130] This argument is even stronger for chat groups of up to 200.000 members, or channels with a very large number of subscribers. One could argue that in such online spaces on messaging apps, users cannot expect confidentiality of communications and that sharing information in such spaces is similar to sharing it in public online spaces. Therefore, one could question whether otherwise private chat groups with large numbers of members or private channels with large number of subscribers due to an absence of a limit on their subscriber count should qualify as online platform services.

132 On first view, private channels with an unlimited number of subscribers seem to meet the element of the DSA's concept of "online platform" that information is disseminated "to a potentially unlimited number of third parties". However, as explained in section B.II of this paper, "unlimited" refers to access control, namely whether people can automatically join an online space where information is hosted, or whether there is manual access control on admission to such a space. While private channels on Telegram can have a numerically

129 Christian Schwieter, 'Online Safety Regulation & Private Online Communications: The State of Play and Ways Ahead for Addressing Terrorism, Extremism, Hate, and Disinformation' (Institute for Strategic Dialogue 2025) 8 <https://www.isdglobal.org/wp-content/uploads/2025/02/Online-Safety-Regulation-and-Private-Online-Communications-State-of-Play.pdf> accessed 2 July 2025.

130 With thanks to Emma Bree for prompting me to reflect on confidentiality of communications in this context.

unlimited number of followers, the fact that there is a selection of whom to provide access (see section D.II.3) means that their number of followers is not unlimited in terms of access control.

133 Regarding private chat groups with large numbers of members, such as 200.000 on Telegram, it should be emphasised that the absolute number of people who can access information on a hosting service is not an element of the DSA's definition of "online platform". Instead, the DSA conceptualises online platforms as hosting services enabling the dissemination of information to a "potentially unlimited number of third parties". One could argue that private chat groups of up to 200.000 members in practice have an unlimited number of members. Still, as just reiterated, the *unlimited* in this element of the online platform concept refers to unlimited in terms of access control. And due to WhatsApp's and Telegram's lack of findability of private chat groups and channels, there formally is a "selection of whom to grant access" even in very large groups or channels. Wagner has drawn a similar conclusion about private chat groups on Telegram. She argues that private Telegram groups do not qualify as online platform services under the DSA, "unabhängig von der Gruppengröße" (regardless of their group size).[131]

134 In conclusion, when a chat group or channel is private in most respects but has a large number of members or subscribers, this does not turn the group or channel into an online platform service. Nonetheless, it remains the case that private chat groups or channels with a large number of members or subscribers have a semi-public character.

F. Conclusion

135 This paper has asked two research questions: First, are WhatsApp's and Telegram's group chat and channel functionalities mere conduit, caching, or hosting services within the meaning of the DSA? Second, are WhatsApp and Telegram's functionalities that qualify as hosting services also online platform services within the meaning of the DSA?

136 WhatsApp's analysis concerned its group chats and channels. The analysis has shown that WhatsApp group chats are mere conduit or sometimes caching services but never hosting services. Therefore, WhatsApp group chats cannot be online platform services. To the contrary, WhatsApp channels are hosting services and also qualify as online platform services, which WhatsApp also seems to have concluded for themselves.

137 Telegram's analysis has focused on four parts of the app: private and public group chats and private and public channels. All these functionalities on Telegram are hosting services. Furthermore, public group chats and public channels on Telegram also qualify as online platform services. However, private chat groups and channels on Telegram are not online platform services within the meaning of the DSA.

138 In WhatsApp's and Telegram's analysis, the following features have been found relevant when applying the DSA's intermediary services concepts, including the concept of "online platform": the findability of chat groups and channels, the behaviour of invite links, the admission settings, message visibility, message history, and storage. It turns out that it is usually a combination of different features that leads to the categorisation of online platform and that just one feature giving a degree of publicity is usually not enough to categorise a hosting service as an online platform. For instance, WhatsApp channels are online platform services because a channel can be found through in-app search, clicking "follow" gives automatic admission, and new channel followers can see updates of up to 30 days ago. Furthermore, it turns out that a hosting service sometimes has both private and public dimensions, without qualifying as an online platform. For instance, private group chats on Telegram are private in the sense that they lack findability through in-app search, although they are relatively public in the sense that the default setting is automatic admission, they can have very large numbers of members, and new members can see some messages sent before joining.

139 The conclusion that WhatsApp and Telegram both offer functionalities that qualify as online platform services but also still services that are more classic private messaging services aligns with observations by media scholars that messaging apps are blurring the distinction between private messaging and social media.[132] Legal scholars have also talked of "hybrid services" in this context.[133] Nonetheless, while certain parts of WhatsApp and Telegram are online platform services, typical social media often algorithmically order content posted by their users, while the messaging apps analysed in this paper show user-generated content in groups and channels chronologically.[134] At the same time, messaging apps are not entirely void of algorithmic recommendations, since both WhatsApp and Telegram recommend channels to follow to their

131 Wagner (n 18) 127.

132 Jo Pierson, 'Digital Platforms as Entangled Infrastructures: Addressing Public Values and Trust in Messaging Apps' (2021) 36 European Journal of Communication 349.

133 Husovec, 'Introduction to Accountability Framework' (n 36).

134 Van Raemdonck and Pierson (n 76).

users.[135]

140 The paper has also reflected on the relevance of three specific features of messaging apps' functionalities and what these features mean for the DSA's application. The paper has concluded that chat groups and channels with automatic admission are not necessarily online platform services, despite certain text in the DSA's preamble pointing in that direction. Furthermore, chat groups and channels that are otherwise not online platform services, sometimes cannot and otherwise should not become online platforms if their invite links are publicly available. Finally, the fact that some chat groups or channels have large numbers of members or subscribers does not necessarily turn them into online platform services. In this, it is important to underline that non-hosting services can never qualify as online platforms, despite the semi-public character they may have.

141 The conclusion that private group chats and channels with automatic admission, a very large number of members or subscribers, or publicly available invite links are not online platforms is problematic given their semi-public character and the public harms these online spaces can cause. In other words, the DSA has a gap regarding online spaces on messaging apps that cannot qualify as online platforms, while having features that give them at least a semi-public character. Note that this paper specifically analyses WhatsApp and Telegram; it could be that other messaging apps have functionalities with different features that give them a semi-public character without bringing them within the scope of the DSA's concept of "online platform".

142 While the DSA imposes some due diligence obligations on intermediary services in general, with some more obligations for hosting services, it imposes an important set of further due diligence obligations on online platforms. Among other things, online platforms must have internal complaint-handling systems where users can submit complaints against decisions taken by the service.[136] These internal complaint-handling systems must enable, among other things, complaints about decisions regarding whether or not to remove certain content.[137] The opportunity to complain about the decision *not* to remove certain content is specifically useful for users or entities that have submitted a notice about illegal content which harms them or society more broadly. Online platforms must also ensure that notices submitted by trusted flaggers are given priority and are decided upon without undue delay,[138] and suspend users who frequently provide manifestly illegal content.[139] These, and the other due diligence obligations specifically for online platforms, are not mandated for private group chats and channels on messaging apps.

143 Moreover, when private chat groups and channels are not online platform services, they can also not be very large online platform services. The DSA imposes the heaviest due diligence obligations on these largest players, such as the obligation to identify and mitigate the systemic risks stemming from their service.[140] While it is too early to conclude whether the risk management framework is successful, it has the potential to significantly impact how very large online platforms address illegal and harmful content.[141] WhatsApp Channels since recently qualifies as a very large online platform service due to its number of monthly active users in the EU.[142] It is not unlikely that the non-platform but semi-public parts of WhatsApp, namely its largest group chats combined, may have an amount of monthly active users in the EU that would otherwise qualify them as very large online platform. Likewise, it is not unlikely that the non-platform but semi-public parts of Telegram, namely some of its private group chats and channels, have an amount of monthly active users in the EU that would otherwise qualify them as very large online platforms, especially when combined with the true platform parts of Telegram. That is to say, if the user numbers of the semi-public spaces are very large, it can be questioned whether the DSA's rationale of imposing heavier due diligence obligations upon the largest service providers because they pose the largest societal risks should also be applied to these semi-public spaces.

144 Further research should reflect on possible solutions to the DSA's gap regarding private group chats and channels on messaging apps with a semi-public character. It should be emphasised that any solution should ensure that truly private messaging functionalities will not qualify as online platform services, and are not subjected to content moderation or other third-party interventions. Confidentiality of communications is a key democratic value.[143]

135 WhatsApp, 'About how WhatsApp recommends channels' <https://faq.whatsapp.com/962978635456336> accessed 2 July 2025; Telegram User guidance for the EU Digital Services Act (n 50).

136 Art 20 DSA.

137 Art 20(1)(a) DSA.

138 Art 22 DSA.

139 Art 23 DSA.

140 Arts 34 and 35 DSA.

141 Niklas Eder, 'Making Systemic Risk Assessments Work: How the DSA Creates a Virtuous Loop to Address the Societal Harms of Content Moderation' (2024) 25 German Law Journal 1197.

142 See section D.I.2.

143 Frederik J Zuiderveen Borgesius and Wilfred Steenbruggen, 'The Right to Communications Confidentiality in Europe: Protecting Privacy, Freedom of Expression, and Trust'

The DSA's view that interpersonal communication services, including messaging apps, in principle cannot be online platforms,[144] is justified in light of confidentiality of communications and broader privacy concerns.[145] If lawmakers want to address this gap in the DSA, a solution should be found which precisely targets private group chats and channels that are a societal problem due to their semi-public character, despite them not qualifying as online platforms. That is to say, this paper is not arguing for further going due diligence obligations, or voluntary content moderation, in the truly private spaces of messaging apps. This paper only problematises those private spaces that have a semi-public character.

145 In trying to find a solution, a key question is: when can users of messaging apps no longer reasonably expect confidentiality of communications? In other words, at which point is it justifiable that an online space for communication is seen as "public" and that, consequently, content moderation and other forms of monitoring by the service provider are justified? And, can the law possibly draw clear demarcation lines between public and private spaces online, so that the application of the law is predictable for service providers, authorities, and users? The fact that the difference between private and public communication is fluent in practice, makes such legal demarcation lines difficult.

146 Finally, many other questions about messaging apps and the DSA's intermediary concepts should be researched. For instance, an app like Telegram is highly customisable. Chat group and channel owners on Telegram can change many of Telegram's default settings, such as whether someone who clicks on an invite link is automatically admitted or whether members of chat groups can also add new members. What happens to a group or channel's categorisation under the DSA when its owner changes a default setting relevant to the DSA's concept of "online platform"? Furthermore, many messaging apps these days have functionalities resembling Stories on Instagram. How should these "story-like" functionalities be categorised from the perspective of the DSA?

147 These further research questions underline an important implication of this paper: any distinction that the law makes between private and public online spaces will most likely leave grey areas with both private and public dimensions. A clear distinction between private and public online space will probably always be a legal fiction.

(2019) 20 Theoretical Inquiries in Law <http://www7.tau.ac.il/ojs/index.php/til/article/view/1616>.

144 Rec 14 DSA.

145 Griffin makes the same argument about the NetzDG's scope, which excludes private messaging services, see Rachel Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media: The Case of Germany's NetzDG' (2022) 46 Telecommunications Policy <https://www.sciencedirect.com/science/article/pii/S0308596122001136>.