

Procedure for Handling Reports of Illegal Content on Fotka.com

1. Purpose and Scope of the Procedure

1.1. The purpose of this Procedure is to define the rules for handling Reports of:

- a) Illegal Content and
- b) content that violates the Terms of Service,

posted on the Fotka.com platform, in accordance with the requirements of Regulation (EU) 2022/2065 of the European Parliament and Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act).

1.2. The Procedure outlines the following matters related to handling Reports:

- a) explanation of key concepts in the area of Report handling and application of the DSA;
- b) rules and procedures for receiving Reports;
- c) rules for processing Reports, including deadlines for resolving cases;
- d) methods for content moderation;
- e) appeal procedures;
- f) rules governing the Company's liability.

2. Definitions

The terms used in this Procedure have the following meanings:

Application: The version of the Service provided by the Company as a native application intended for mobile devices or other end devices with an appropriate operating system (e.g., iOS or Android), enabling access to the services offered through the Service.

DSA: Regulation (EU) 2022/2065 of the European Parliament and Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), Official Journal of the EU L.2022.277.1.

Business Day: Any day other than Saturday, Sunday, or a public holiday.

Form: The Illegal Content Report Form available through the Service, serving as the mechanism for reporting and acting upon issues under Article 16 of the DSA.

Content Moderation: Actions, whether automated or not, undertaken by the Company aimed particularly at detecting, identifying, and combating Illegal Content or information that violates the Terms of Service, shared by Users. This includes measures that affect the availability, visibility, and reach of such Illegal Content or information, such as de-ranking, demonetization, restricting access to or removing the content, or actions affecting the ability of Users to share such information, such as account suspension or termination.

Illegal Content: Information that, by itself or through its reference to an action, including the sale of products or the provision of services, is not in compliance with European Union (EU) law or national law consistent with EU law, regardless of the specific subject or nature of the law.

Terms of Service: The Terms of Service of the platform available at <https://fotka.com/regulamin>, along with appendices that are an integral part of it.

Service: The Fotka.com online platform available via the website <https://fotka.com/> or the Application. The Service constitutes an "online platform" as defined in Article 3(i) of the DSA.

Company: Fotka spółka z ograniczoną odpowiedzialnością sp.k. based in Elbląg, ul. Władysława Orkana 24, 82-300 Elbląg, registered in the Register of Entrepreneurs maintained by the District Court for the Capital City of Warsaw in Warsaw, XIV Commercial Division of the National Court Register, under KRS number: 0000721451, NIP: 1132579612, REGON: 140315867, being a provider of "intermediary services" as defined in Article 3(g) of the DSA.

User: Any natural or legal person using the services offered through the Service, especially for the purpose of searching for or sharing information, regardless of whether they have a registered account on the Service. The User is a "recipient of the service" as defined in Article 3(b) of the DSA.

Reporter: Any person or entity submitting a Report.

Report: A notification submitted to the Company via the Form regarding the presence of specific information in the Service, which the Reporter considers Illegal Content or content that violates the Terms of Service.

3. Illegal Content and Content Violating the Terms of Service

- 3.1. Users are prohibited from posting Illegal Content or content that violates the Terms of Service on the platform.
- 3.2. Illegal Content and content violating the Terms of Service may include, but are not limited to:
 - a) Offensive, discriminatory content or content that infringes on the personal rights of another person or persons;
 - b) Content that violates copyright, related rights, or other intellectual property rights;
 - c) Content of a terrorist nature;
 - d) Content that is pornographic, erotic, or obscene;
 - e) Profanity;
 - f) Hate speech; and
 - g) Any references to materials containing such content.

4. Rules and Procedure for Submitting Reports

- 4.1. In compliance with the DSA requirements, the Company has implemented a mechanism enabling any person or entity, especially Users, to report the presence of specific information in the Service that they believe to be Illegal Content or content violating the Terms of Service. Reports can be submitted via the Form provided in the Service.
- 4.2. A Report should include:

- a) A sufficiently reasoned explanation of why the Reporter believes the indicated information constitutes Illegal Content or violates the Terms of Service;
 - b) A clear indication of the exact electronic location of the information, such as the precise URL or URLs, and, where applicable, additional information to help identify the Illegal Content or content violating the Terms of Service;
 - c) The Reporter's name and email address, except when the Report pertains to information related to one of the crimes mentioned in Articles 3-7 of Directive 2011/93/EU;
 - d) A declaration confirming the Reporter's good faith belief that the information and allegations in the Report are accurate and complete.
- 4.3. The crimes referred to in section 4.2(c) of the Procedure include crimes related to sexual exploitation, child pornography, solicitation of children for sexual purposes, and incitement, aiding, and attempting to commit these crimes.
 - 4.4. Reports should be made personally by the Reporter or by a person legally authorized to do so on their behalf.
 - 4.5. There is no fee for submitting a Report.
 - 4.6. If the Report includes the Reporter's electronic contact details (as outlined in section 4.2(c) of the Procedure), the Company will, without undue delay and no later than within 3 Business Days from the date of receipt, send a confirmation of receipt to the Reporter.

5. Rules for Processing Reports

- 5.1. The Company reviews all Reports submitted via the Form in a timely, non-arbitrary, and objective manner, ensuring due diligence.
- 5.2. The Report should be addressed without undue delay, but no later than within 14 days from the date of receipt. The Company informs the Reporter of the outcome in the notification mentioned in section 4.6 of the Procedure.
- 5.3. Based on an analysis of the reported information, the Company makes a decision by either:
 - a) Confirming the validity of the Report and applying restrictions according to the list provided in section 6 of the Procedure;
 - b) Determining that the Report is invalid and refraining from imposing any restrictions.
- 5.4. The Company informs the Reporter of its decision regarding the reported information without undue delay, but no later than 14 days from the date of receipt. This notification includes information on the possibility of appealing the decision.
- 5.5. If the Company uses automated tools to assess the Report or make a decision, this information is included in the notification referenced in section 5.4 of the Procedure.
- 5.6. If necessary, the review period can be extended by an additional 7 days from the expiry of the original deadline, with a notification to the Reporter explaining the reason for the delay. This information must be sent within 7 days of receiving the Report.
- 5.7. The Report is reviewed by a person or persons designated by the Company, who are familiarized with this Procedure and authorized to process personal data related to handling Reports.
- 5.8. The person substantively reviewing the Report may request the Reporter to provide additional information if:
 - a) The Report does not contain all the necessary details mentioned in section 4.2 of the Procedure;

- b) The Report is unclear or otherwise does not allow for proper review.
- 5.9. The request to provide additional information must specify a deadline, which should not be less than 3 days from the date the Reporter receives the request. Failure to provide the requested information or the inability to contact the Reporter due to missing electronic contact details may result in the Report being left without review. The review period is suspended until the additional information is provided, and the Reporter must be informed of this in the request.
- 5.10. The Company will issue a decision declaring the Report invalid and refuse to impose restrictions if:
- a) It does not identify any Illegal Content or content violating the Terms of Service in the Service;
 - b) The Report is unjustified for other reasons, especially if imposing restrictions on the User is legally inadmissible or unnecessary.

6. Content Moderation

- 6.1. The Company may impose the following restrictions when User-provided information is deemed Illegal Content or violates the Terms of Service:
- a) **Content Visibility Restrictions:** This includes actions such as removing content, blocking access, or de-ranking content.
 - b) **Financial Restrictions:** Suspension, termination, or limiting payments to the User.
 - c) **Service Restrictions:** Suspension or termination of services, either partially or entirely.
 - d) **Account Suspension or Closure:** Suspension or closure of the User's account on the Service.
- 6.2. When the Company has access to the User's contact information, it provides clear and specific justification regarding the imposed restrictions. This requirement applies no later than on the day the restriction is imposed, regardless of the reason or method of enforcement.
- 6.3. Exceptions to this justification requirement apply when the information concerns misleading high-volume commercial content.
- 6.4. The justification mentioned in section 6.2 of the Procedure must include at least the following details:
- a) Whether the decision involves content removal, access restriction, de-ranking, or visibility limitation, or whether it imposes financial restrictions or other measures listed in section 6.1, including, where applicable, the geographical scope and duration of the decision.
 - b) Facts and circumstances behind the decision, including whether it was based on a Report or voluntarily initiated checks by the Company, and if necessary, the identity of the Reporter.
 - c) Information regarding the use of automated tools in decision-making, including whether automated means were involved in detecting or identifying content.
 - d) In cases of potentially Illegal Content, the legal basis for the decision, along with explanations supporting why the content is considered Illegal.
 - e) For decisions based on Terms of Service violations, the contractual basis for the decision and reasons supporting the determination of non-compliance.
 - f) Clear and user-friendly information on the User's available options for appealing the decision, including legal recourse.

- 6.5. The information provided by the Company must be clear, easily understandable, and as precise and detailed as reasonably expected under the circumstances. It must particularly enable the User to effectively exercise their right to appeal as mentioned in section 6.4(f) of the Procedure.
- 6.6. The provisions of sections 6.1 - 6.5 do not apply to orders from national courts or administrative authorities regarding Illegal Content under applicable EU or national law.
- 6.7. The Company may suspend services for a reasonable period—after issuing a prior warning—to Users who frequently share clearly Illegal Content via the Service.
- 6.8. Similarly, the Company may suspend for a reasonable period—after issuing a prior warning—the processing of Reports submitted via the Form by persons or entities that frequently submit obviously baseless Reports.
- 6.9. In making suspension decisions, the Company assesses each case promptly, objectively, and diligently, considering all relevant facts and circumstances from available information. Such considerations include:
 - a) The absolute number of clearly Illegal Content submissions or baseless Reports within a given period.
 - b) The relative ratio of such submissions compared to the total number of information or Reports provided in that period.
 - c) The severity of abuse, including the nature and consequences of the Illegal Content.
 - d) The User's or Reporter's intent, if determinable.
- 6.10. The Company outlines its abuse policy in the Terms of Service, providing examples of facts and circumstances considered when assessing whether behavior constitutes abuse and determining the suspension period.

7. Appeal Procedure

- 7.1. Users and Reporters have the right to appeal the Company's decision referenced in section 5.3(a) or 5.3(b) of the Procedure within 14 days from the date of receiving the decision.
- 7.2. Appeals can be submitted electronically via the email address from which the decision was sent, or through the designated contact email for service recipients, as stipulated by Article 12 of the DSA. The appeal should include a detailed justification explaining why the appellant (either the User or the Reporter) believes the decision is incorrect and should be reconsidered by the Company.
- 7.3. Appeals are free of charge.
- 7.4. The Company reviews appeals without undue delay, but no later than 7 days from the date of receiving the appeal. Within this period, the Company is required to send the appellant a response containing its final decision along with the reasoning behind it.
- 7.5. Appeals are handled in a timely, non-discriminatory, objective, and non-arbitrary manner, with consideration given to human review factors.
- 7.6. The Company informs both the User and the Reporter about the rules for submitting and reviewing appeals, in accordance with sections 5.4 and 6.4(f) of the Procedure.

8. Suspected Commission of a Crime Against Life or Safety of Persons

- 8.1. If the Company becomes aware of any information giving grounds to suspect that a crime threatening the life or safety of a person or persons has been, is being, or may be committed, it

immediately informs the law enforcement or judicial authorities of the relevant Member State(s) and provides all available information on the matter.

- 8.2. If the Company cannot determine with sufficient certainty the relevant Member State, it informs the national (Polish) law enforcement authorities or Europol.
- 8.3. For the purposes of this section, the relevant Member State is defined as the EU Member State where the crime is suspected to have been, is being, or may be committed, or the Member State where the person suspected of committing the crime resides or is located, or the Member State where the victim of such an alleged crime resides or is located.

9. Trusted Reporting Entities

- 9.1. Through the Form, the Company has implemented appropriate technical measures to allow for the prioritization of Reports made by trusted reporting entities operating in designated fields where they have expert knowledge. These measures also facilitate the prompt review and decision-making on such Reports (i.e., immediately upon receipt of the Report).
- 9.2. The status of a trusted reporting entity is granted upon request by any entity, by the Digital Services Coordinator of the Member State where the applicant is established, provided that the legal requirements set forth in Article 22 of the DSA are met.
- 9.3. Prioritizing Reports from trusted reporting entities is not mandatory, though recommended.

10. Company's Liability

- 10.1. In accordance with the DSA, the Company is not generally required to monitor the information it stores or makes available at the request of Users, nor to actively seek out facts or circumstances indicating illegal activity. This does not preclude the Company from conducting such activities on its own initiative.
- 10.2. The Company is not liable for information stored at the request of Users, provided that:
 - a) it does not have actual knowledge of illegal activity or Illegal Content, and with respect to claims for damages, it is unaware of facts or circumstances that clearly indicate illegal activity or Illegal Content; or
 - b) it promptly takes appropriate action to remove or prevent access to Illegal Content once it obtains such knowledge or notice.
- 10.3. Reports are considered to provide grounds for obtaining actual knowledge or notice, as mentioned in point 10.2 of the Procedure, regarding specific information, if they allow the Company, acting with due diligence, to determine—without a detailed legal analysis—the illegal nature of the activity or information.
- 10.4. Conducting voluntary checks or taking other measures on its own initiative to detect, identify, and remove Illegal Content or to prevent access to it, or taking necessary measures to comply with EU and national law, including requirements specified in the DSA, does not preclude the Company from invoking the liability exemption referred to in point 10.2 of the Procedure.

11. Final Provisions

- 11.1. This Procedure does not prejudice the provisions of the Terms of Service and its annexes, which form an integral part thereof. These documents should be read and applied together.
- 11.2. A simplified scheme for handling reports of illegal content under the DSA is an annex to this Procedure.

ANNEX – Scheme for Handling Reports of Illegal Content under the DSA

