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HARMFUL CONTENT AND ACCESS TO JUSTICE ON ONLINE PLATFORMS: AN EMPIRICAL STUDY ON THE EXPERIENCES AND NEEDS OF VICTIMS

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Harmful Content and Access to Justice on Online Platforms: An Empirical Study on the Experiences and Needs of Victims

Anna van Duin, Naomi Appelman, Brahim Zarouali & Max Kosian

Abstract: *This article analyzes the key findings of a survey on the experiences and needs of people in the Netherlands regarding online content that directly and personally harms them and the possibilities to take (legal) action. One in five encounter harmful behavior online, but only half take steps, even though many perceive their problem as serious. The research reveals a mismatch between existing legal routes and what victims actually do or want. This raises questions about the practical meaning of access to justice and digital due process in this context.*

1. Background: Existing procedures remain underutilized

One in five people in the Netherlands has been affected by harmful online behavior, but only half of them (57.7%) take legal action or other steps. This is evidenced by the results of empirical research into the experiences of people with online content that directly and personally harms them and the possibilities to do something about it.¹ The reason for this research was the observation that harmful content and the lack of effective remedies against it are widely seen as a societal problem, while the available procedural routes for the aggrieved parties remain underutilized.² The research fits into a broader discussion about access to justice³ in the context of content moderation and platform regulation, partly against the backdrop of the Digital Services Act (hereafter: DSA) recently adopted by the EU.⁴ The DSA introduces – in short – new

* Anna van Duin, Naomi Appelman, Brahim Zarouali & Max Kosian, 'Schadelijke content en toegang tot recht op online platforms. Een empirisch onderzoek naar ervaringen en behoeftes van benadeelden', TCR 2023/2, available (open access) via <https://www.bjutijschriften.nl/tijdschrift/civielerechtspleging/detail>.

¹ J.M.L. van Duin, N.M.I.D. Appelman, B. Zarouali & P. van den Bosch, Rapport surveydata Schadelijk gedrag online in Nederland. Resultaten en nadere analyse van surveydata over de ervaringen van mensen in Nederland met schadelijk gedrag online en (juridische) stappen naar aanleiding daarvan, Amsterdam 2022 (hereinafter abbreviated as: Rapport surveydata), which can be consulted via https://dsa-observatory.eu/wp-content/uploads/2022/09/Rapport_surveydata_schadelijk_gedrag_online_Nederland.pdf. The survey was realized with a thematic research grant from the Amsterdam Centre for European Studies (ACES).

² J. van Hoboken, N. Appelman, A. van Duin, T. Blom, B. Zarouali, M. Seel, E. Stringhi, N. Helberger & R. Ó Fathaigh, *WODC-onderzoek. Voorziening voor verzoeken tot snelle verwijdering van onrechtmatige online content* (WODC Rapport 3108), Amsterdam 2020, annex to *Parliamentary Papers II 2020/21*, 34602, no. 6 (hereinafter abbreviated as: *WODC-onderzoek*). In this article, we refer to this research in a few places for a more detailed explanation of the background of the problem.

³ The concept of 'access to justice' is not unambiguous, but it means in any case that the legal system is equally accessible to everyone and leads to outcomes that are individually and socially just, and aimed at both prevention and repair: M. Westerveld, 'Toegang tot het recht. Een problematisch concept', *Nederlands Juristenblad* 2022, issue 20, pp. 1613-1620. Access to justice is broader than access to court. Crucial is that the realization of rights does not become illusory due to all kinds of barriers: N. Doornbos, 'Toegang tot het recht: een rechtssociologische analyse', in: D. de Wolff (red.), *Toegang tot recht. Beschouwingen aangeboden aan Mies Westerveld*, The Hague: Boom juridisch 2019, pp. 25-44.

⁴ Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC.

rules for online platforms and other digital service providers to limit the spread of illegal content in a broad sense.⁵ Important for access to justice is the obligation to offer a notice-and-action mechanism, whereby internet users can make a report or request for removal to the service provider in question.⁶ The importance of online platforms for access to justice and (civil) dispute resolution should not be underestimated; for internet users they are not so much an alternative for State courts, but the standard route for achieving a solution to legal problems.⁷

People come across a wide variety of harmful content on the internet, such as offensive or hateful messages and private data that are shared without consent (doxing).⁸ A 2020 study (before the implementation of the DSA) already showed that it is very difficult in practice to have online content removed – as far as it is illegal or unlawful – and that existing judicial and extrajudicial procedures from the perspective of the aggrieved parties – i.e. those directly and personally affected – are insufficiently effective. For example, the success of notice-and-action depended on the risk assessment of the service provider, who is given broad protection against liability for unlawful content (the so-called 'safe harbor').⁹ If the service provider does not respond to the request, the aggrieved party is still dependent on a judicial procedure.¹⁰ Illustrative is the recent judgment in the successful collective action by the Stop Online Shaming Foundation and the Dutch Expertise Centre for Online Child Abuse, in which the defendant – the operator of a commercial video sharing platform – asserted not to be liable for sharing covertly made or private images that the depicted persons had not agreed to, invoking the safe harbor. The Amsterdam court rejected this assertion, ruling that the platform played an active role in the selection of the videos and thereby acted unlawfully by publishing them without permission; the existence of a notice-and-action mechanism does not change this, because it does not

⁵ 'Illegal content' is any information that in itself or in connection with an activity, including the sale of products or the offering of services, is contrary to EU law or to the law of a Member State consistent with EU law, irrespective of the precise subject matter or nature of that law (Article 3(h) DSA and preamble 12). This is a very broad definition, which does not correspond one-on-one with unlawful content or harmful content; see section 2.1 hereafter.

⁶ Article 16 DSA. See, among others, P. Wolters, 'De vlucht naar voren in de Digital Services Act', *Ars Aequi maandblad* 2022, pp. 191-201; P. Ortolani, 'The resolution of content moderation disputes under the Digital Services Act', *Giustizia Consensuale* 2022, issue 2, pp. 533-573; A. Kuczerawy, 'From "notice and take down" to "notice and stay down". Risks and safeguards for freedom of expression', in: G. Frosio (ed.), *The Oxford handbook of intermediary liability online*, Oxford: Oxford University Press 2019, pp. 524-543; F. Wilman, 'De Digital Services Act (DSA): een belangrijke stap naar betere regulering van onlinedienstverlening', *Nederlands tijdschrift voor Europees recht* 2022, issue 9/10, pp. 220-232. Until the introduction of the DSA, many online service providers did not offer a notice-and-action and/or dispute resolution mechanism, but only a reporting possibility as a result of the 'safe harbour' provisions discussed below; see, among others, Council of Europe, *Terms of service and human rights. An analysis of online platform contracts*, 2016. The DSA thus represents an expansion and codification of existing practice.

⁷ See e.g. C. Goanta & P. Ortolani, 'Unpacking content moderation: The rise of social media platforms as online civil courts', in: X.E. Kramer e.a. (red.), *Frontiers in civil justice. Privatisation, monetisation and digitisation*, Cheltenham: Edward Elgar Publishing 2022, pp. 192-216; E.M. van Gelder & J.M.L. van Duin, 'In de schaduw van het recht: over PayPal's Resolution Centre en kwaliteitsstandaarden voor cODR op online platforms', in: P. Ortolani e.a. (red.), *Digitalisering en conflictoplossing*, Deventer: Wolters Kluwer 2021, pp. 129-146.

⁸ M. Huijstee e.a., *Online ontspoord. Een verkenning van schadelijk en immoreel gedrag op het internet in Nederland*, The Hague: Rathenau Instituut 2021; Bureau Clara Wichmann, *Onderzoeksrapport online gendered hate speech: civiel procederen tegen online hate speech*, Amsterdam 2020.

⁹ *WODC-onderzoek*, p. 35. This analysis is based on the practice of notice-and-action under Article 14 of the Directive on Electronic Commerce (implemented in Article 6:196c BW), now Article 6 DSA; see further section 3.1 below.

¹⁰ The DSA aims to change this by stipulating that reporters must have access to an effective internal complaint handling system (Article 20) and extrajudicial dispute resolution by a certified body (Article 21), without this affecting the right to an effective remedy in court under Article 47 of the EU Charter of Fundamental Rights. See, among others, E.M. van Gelder, *Consumer online dispute resolution pathways in Europe*, The Hague: Eleven 2022, pp. 203-205, 259-260 and 264; P. Ortolani, 'If you build it, they will come. The DSA "procedure before substance" approach', in: J. van Hoboken et al. (eds.), *Putting the DSA into practice. Enforcement, access to justice and global implications*, Berlin: Verfassungsblog 2023.

prevent the publication as such.¹¹ However, individual aggrieved parties rarely go to court (see below section 3.1).¹²

In this article, we discuss the main findings of the research we conducted in 2021/2022 into obstacles to access to justice in relation to harmful online content. The central question focused on the experiences and needs of aggrieved parties are with regard to different routes for the removal of harmful content (section 2). Our research provides an overview of the reasons why people do or do not take action. This partially aligns with already known factors and considerations that play a role in respect of access to justice, but had not yet been specifically mapped out for this issue. Furthermore, the research reveals a mismatch between the existing legal possibilities and what people actually do or want when they are confronted with harmful online behavior. For example, removal of the content is not the only goal; people also want to expose the perpetrator – the party who posted the content – while notice-and-action is not aimed at this (section 3). In addition, there are indications that a low threshold for the possibility of reporting harmful content is considered to be more important than (perceived) procedural justice (section 4). At the end of this article, we briefly reflect on the implications of our findings for the further design of this reporting option (section 5).

2. Research questions, scope, and methodology

2.1 Experiences and needs of people who are directly and personally affected

Our research aims to map the experiences of people in the Netherlands with harmful online behavior and the way they deal with it. The main research questions are: what types of harmful behaviors do people experience directly and personally, what are their goals and expectations when they take action, and how do they perceive the obstacles they encounter?¹³

This research focuses on the needs (legal needs) of citizens seeking justice.¹⁴ It is tailored to natural persons who experience online harm that directly and personally affects them; they are the target. It includes wrongful behaviors and/or content that infringes on the personal life sphere as referred to in Article 8 of the European Convention on Human Rights (ECHR),¹⁵ but is not limited to that. The legal qualification of content as illegal or wrongful is obviously decisive for the question of whether the law offers a remedy, and if so, which one.¹⁶ Not all content that can be perceived as harmful, indeed, provides access to the legal system.¹⁷ However, people's

¹¹ Amsterdam District Court 16 February 2022, ECLI:NL:RBAMS:2022:557, §§ 5.26-5.27.

¹² A notorious example of one of the few cases in which this did happen is the case of a victim of 'revenge porn', who demanded in summary proceedings that Facebook be ordered to provide the data of the perpetrator (account holder): Amsterdam District Court 25 June 2015, ECLI:NL:RBAMS:2015:3984.

¹³ See *Rapport surveydata*, pp. 2-3.

¹⁴ Cf. Vgl. R. Macdonald, 'Access to civil justice', in: P. Cane & H. Kritzer (red.), *The Oxford handbook of empirical legal research*, Oxford: Oxford University Press 2012, pp. 492-521, on pp. 517-518: 'Most human conflict finds expression in language that only remotely mirrors that of legislative and judicial processes. Empirical research must target the everyday law of social interaction where inaccessible justice is first perceived. (...) Studies that enable policy-makers to understand the legal needs of the public, as expressed by citizens themselves – and not according to a matrix derived from the existing framework of substantive and procedural laws – are the optimal vehicles for ensuring that an accessible system of law is also an accessible system of justice.'

¹⁵ *WODC-onderzoek*, pp. 39-41.

¹⁶ Our understanding of 'remedy' has both a material and a procedural component, in the sense that the injured party is entitled to a legal action, on the basis of which they have access to a (extrajudicial or judicial) procedure; see A. van Duin, *Effective judicial protection in consumer litigation*, Cambridge: Intersentia 2022, pp. 5 and 24-25. Remedies must offer the injured party a form of repair, compensation or recognition: T. Nuninga, *Recht, plicht, remedie*, Deventer: Wolters Kluwer 2022, p. 18-19. It is about achieving a solution and the path to it: N. Creutzfeldt, *Ombudsmen and ADR: A comparative study of informal justice in Europe*, Cham: Springer International Publishing 2018, p. 15; see also section 4.2 below.

¹⁷ In the case of providing NAW data (name, address, place of residence) by the internet service provider of users who make anonymous expressions, a specific assessment framework applies: see Supreme Court judgment of 25 November 2005, ECLI:NL:HR:2005:AU4019 (*Lycos/Pessers*).

perception of what their rights are does not necessarily align with the applicable legal rules.¹⁸ Therefore, in this research, not the legal qualification is the starting point, but the actual behavior.

Which behavior is seen as harmful can be time-, place-, or person-dependent. Our search for a classification that does as much justice as possible to what happens in practice led to the typology of Banko and colleagues,¹⁹ derived from community guidelines and content policies of various large platforms, human rights treaties, proposals from non-governmental organizations (civil society), and recommendations from experts. As will be explained later, this involves various categories of harmful content, from doxing to scams. Because these categories are not viewed through a legal lens, they do not coincide one-on-one with (horizontal) privacy infringements.²⁰ Violations in the field of consumer rights, unfair trading practices, and intellectual property may indeed be unlawful or illegal in the sense of the DSA, but are further removed from the person of the victim and fall outside the scope of this research.

The research also concerns individual experiences with harmful online behavior. Certain (marginalized) groups – such as LGBTI people and ethnic minorities – are at greater risk of becoming a target.²¹ The research does not focus on the societal impact of this (think of stigmatization and exclusion). However, one of the findings is that people with a migration background are more often confronted with discriminatory expressions, and women with unwanted sexual remarks.²²

2.2 Survey; focus on whether or not legal steps were taken

We conducted a survey among the Dutch population, aimed at people who have dealt with harmful content.²³ A filter question was first asked whether respondents had ever personally encountered problematic (harmful) online behavior. The total number of respondents was 2500; the filter question was answered with 'yes' by 520 respondents (20.8% of the total sample).²⁴ These 520 respondents then filled in a questionnaire consisting of a combination of closed and open questions. With the closed questions, respondents could choose multiple answers from a series of predefined options, while the open questions gave them the

¹⁸ B. van Rooij, 'Do people know the law? Empirical evidence about legal knowledge and its implications for compliance', in: B. van Rooij & D.D. Sokol (red.), *Cambridge handbook of compliance*, Cambridge: Cambridge University Press 2021, pp. 467-488. See also Doornbos 2019, p. 29.

¹⁹ M. Banko e.a., 'A unified typology of harmful content', in: Association of Computational Linguistics, *Proceedings of the fourth workshop on online abuse and harms*, 2020, pp. 125-137, which can be consulted via <https://aclanthology.org/2020.alw-1.16/>.

²⁰ This refers to privacy infringements in horizontal (private) relationships between citizens and between citizens and companies: B. Schermer & B. van der Sloot, *Het recht op privacy in horizontale verhoudingen* (WODC Rapport 3062), Tilburg 2020 (*Parliamentary Papers* II 2020/21, 34926, no. 11).

²¹ See further O. Haimson e.a., 'Disproportionate removals and differing content moderation experiences for conservative, transgender, and black social media users. Marginalization and moderation gray areas', *Proceedings of the ACM on Human-Computer Interaction* (5) 2021/466, No. CSCW2; J. Vitak e.a., 'Identifying women's experiences with and strategies for mitigating negative effects of online harassment', in: *Proceedings of the 2017 ACM Conference on computer supported cooperative work and social computing*, 2017, pp. 1231-1245; B. Duffy & C. Meisner, 'Platform governance at the margins: Social media creators' experiences with algorithmic (in)visibility', *Media, Culture & Society* (45) 2022, issue 2, p. 285-204; A. Powell, A. Scott & N. Henry, 'Digital harassment and abuse: Experiences of sexuality and gender minority adults', *European Journal of Criminology* (17) 2020, issue 2, pp. 199-223.

²² See *Rapport surveydata*, pp. 7-8; in Banko's typology, these are 'identity attacks' and 'identity misrepresentation' resp. 'sexual aggressions'.

²³ See the questionnaire in *Rapport surveydata*, chapter 4. The survey was conducted by Panel Insight, a leading research agency that works with online panels in the Netherlands.

²⁴ Both the filter question and the follow-up question about which behavior it was, were formulated openly - without further specification - to find out what people themselves understand by 'harmful behavior online'. The percentage of 20.8% refers to the portion of respondents who say they have had to deal with this, based on their own (subjective) judgment. It may be that someone who, for example, came into contact with phishing, but did not experience it as problematic, answered the filter question with 'no'. The percentage of people who have actually had to deal with harmful behavior online may therefore be even higher in reality.

opportunity to add their own perspectives and subjective opinions. In addition, respondents were asked about their age, gender, ethnic background, education level, geographic region, and socio-economic status.

The research is exploratory in nature. It aims to contribute to the understanding of this issue and serves as a starting point for further research. The survey was conducted in the period from October to November 2021. For a detailed explanation of the data collection and limitations of the research, we refer to the report published in September 2022.²⁵

The questionnaire was divided into two parts: experiences with harmful online behavior (part 1) and steps taken in response to harmful online behavior (part 2). The questions in part 1 were based on the typology of Banko and colleagues, who divide harmful content into eleven subcategories.²⁶ The category 'ideological harm' (extremism, terrorism, organized crime, and misinformation) is excluded, as this category mainly causes societal harm and therefore falls outside the scope of the research. Table 1 provides an overview of the subcategories and the percentage of respondents (n = 520) that have experienced the behavior in question.²⁷

Table 1 Subcategories of harmful online behavior and percentage of respondents who have experienced it

Hate and harassment		
1.	Posting private information online with the intention of causing harm (Doxing)	14.8%
2.	Making hateful, or aggressive online comments about someone personally based on, for example, their race, sexuality, gender, or religion (Identity attacks)	29.4%
3.	Online expressions that are generally negative, hurtful, or stereotypical about, for example, religion, race, gender, or sexuality (Identity misrepresentation)	22.1%
4.	Online insults, for any reason (Insults)	48.7%
5.	Making unwanted sexual comments online, sharing sexual photos or videos without consent (Sexual aggressions)	15.0%
6.	Online threats of violence (Threats of violence)	14.4%
Self-inflicted harm		
7.	Online encouragement of disturbed eating behavior (Eating disorder promotion)	7.7%
8.	Online encouragement of self-harm (Self-harm)	2.9%
Exploitation		
9.	Offering illegal sex work or human trafficking online (Adult sexual services)	7.3%
10.	Making sexual comments online to minors, or sharing sexual material of minors (Child abuse)	9.0%
11.	Attempts at online scams (Scams)	71.5%

Part 1 of the survey reveals that harmful behaviors usually occur on social media, such as Facebook and Twitter. Age is a relevant factor: young people (18 to 34 years) are particularly affected.²⁸ People generally perceive the behavior they have experienced as serious.²⁹ Yet only a small majority (57.7%) actually take any action.³⁰ Virtually no one initiates legal proceedings against the perpetrator or the platform (2.3% and 0.7% respectively; see section 3.1 below).

²⁵ See particularly *Rapport surveydata*, p. 4 en 6.

²⁶ Banko e.a. 2020, p. 20.

²⁷ *Rapport surveydata*, pp. 6-8.

²⁸ *Rapport surveydata*, p. 7.

²⁹ See *Rapport surveydata*, p. 8 and 10. On a scale of 1 to 7 (from 'I didn't mind at all' to 'I minded a lot'), 77.9% of respondents gave a 5 or higher.

³⁰ See *Rapport surveydata*, p. 11. There is a significant but weak correlation between the perception of the severity of the problem and whether or not action was taken.

In this article, we focus on the findings from part 2 of the survey. Respondents were asked whether and, if so, what steps they took, with what aim, what stopped them and to what extent, which (legal) options they know to report harmful content, and what they find important in this regard.

3. What steps are taken and with what aim?

3.1 Knowledge and use of available routes against harmful content

Internet users have various options to act against harmful content.³¹ As discussed above in section 1, the first and most accessible step is the notice-and-action procedure, where a report or request for removal is made to the involved internet service provider. This procedure, now anchored in Article 16 of the Digital Services Act (DSA), stems from the conditional exemption from liability of hosting providers, including online platforms.³² These service providers are not liable for the content of their users as long as they do not play an 'active role' in the production or selection of this content, have no knowledge of the unlawful nature of the content, and act 'promptly' after that knowledge is obtained.³³ Importantly, this exclusion (or limitation) of liability does not prevent a court order for removal.³⁴ Moreover, there are various civil, administrative, and criminal law routes, depending on the legal classification of the content. If it concerns a violation of rights under the General Data Protection Regulation (GDPR), a complaint can be filed with the Dutch Data Protection Authority. If it involves a (potential) criminal offense, a report can be made to the police. If it concerns a wrongful statement, a claim can be filed – possibly in summary proceedings – with the civil court. Access to justice also includes primary legal aid and access to legal information and advice,³⁵ which can be obtained, among others, from the Legal Counter or Victim Support Netherlands.³⁶ In addition, there are specific reporting centers for this issue, such as the National Internet Fraud Reporting Center and the initiative Meldknop.nl, which provides victims with information and refers them to support organizations like Helpwanted.nl.³⁷

Our research shows that 26.3% (137 of the 520 respondents) filed a report or complaint with the website or platform, and that 21.9% (114 of the 520 respondents) reported to the police. The other routes are used much less (see table 2).³⁸

Table 2 Actions taken with corresponding percentages

Complaint or report to website/platform	26.3%
Report to the police	21.9%
Reporting center (<i>meldpunt</i>)	8.8%
Directly approached the offender	6.9%
Searched for legal information	3.1%
Complaint or report to the Data Protection Authority	2.7%
Legal proceedings against the offender	2.3%

³¹ See in detail *WODC-onderzoek*, chapters 4 and 5. Under the DSA, there is a new option: the Digital Services Coordinator (DSC), where individuals can also file complaints (Article 49).

³² Article 6 DSA.

³³ EU Court of Justice 12 juli 2011, C-324/09, ECLI:EU:C:2011:474 (*L'Oréal/Ebay*); F. Wilman, *The responsibility of online intermediaries for illegal user content in the EU and the US*, Cheltenham: Edward Elgar Publishing 2020; A. Kuczerawy, *Intermediary liability and freedom of expression in the EU. From concepts to safeguards*, Cambridge: Intersentia 2018.

³⁴ Article 6(4) DSA.

³⁵ See e.g. Doornbos 2019, p. 25; E. Bauw e.a., *Togadragers in de rechtsstaat. De juridische professies en de toegang tot het recht*, The Hague: Boom juridisch 2022, p. 216.

³⁶ *WODC-onderzoek*, p. 91. Vgl. M.J. ter Voert & M.S. Hoekstra, *Geschilbeslechttingsdelta 2019. Over verloop en afloop van (potentieel) juridische problemen van burgers (Cahier 2020-18)*, The Hague: WODC 2020, p. 23.

³⁷ *WODC-onderzoek*, pp. 92-93.

³⁸ See *Rapport surveydata*, pp. 11-12. Respondents could check multiple options (including 'other, namely ...').

Contact with support organizations	1.5%
Inquired at a legal aid provider	1.3%
Contact with legal insurance	1.0%
Hired a legal advisor or lawyer	0.6%
Legal proceedings against website/platform	0.6%

This aligns with the awareness of options to report harmful content. Over 40% of respondents (224) are familiar with the possibility of notice-and-action and 55.2% (287) with the option of reporting to the police.³⁹ This contrasts starkly with the number of respondents – 8.9% (46) – who are familiar with the possibility of initiating a procedure against the website or platform, of any kind (judicial or extrajudicial, civil or administrative). Most people apparently do not know that the internet service provider involved can be obliged to remove the content under certain circumstances. Also striking is the low percentage that seeks legal aid, especially in light of the finding that people are deterred from taking action because it is difficult to start a procedure or because they know too little about it (see section 4.1 below). However, the open answers show that respondents interpret possible steps broadly, at least not limiting them to legal options, let alone remedies. They indicate, among other things, that they have unsubscribed from the website or changed their data, which may be partly explained in light of the relatively large number of respondents who have dealt with scams.⁴⁰ The solution is thus not always sought in the legal domain, also because the law does not offer a remedy for all content that can be perceived as harmful (see section 2.1).

3.2 Reasons to take action

The results suggest that people are mainly focused on the perpetrator, who is often anonymous or untraceable and can only be traced with the cooperation of the platform (or by the police).⁴¹ Nearly 50% of respondents (257) indicated they wanted the perpetrator to be punished, and about the same amount (249) that the perpetrator was unmasked.⁴² A lower percentage wanted the content to be removed as soon as possible (33.8%) and/or no longer be found (19.2%). While the emphasis in notice-and-action is on removal, this is therefore not the only goal people wanted to achieve.⁴³ Only a small percentage of respondents – 6.7% (35) – wanted financial compensation. This is important in order to assess whether and to what extent existing procedures meet the needs and desires of internet users. The expected return is a determining factor for taking (legal) action.⁴⁴ This context involves more than legal redress in the form of 'classic' remedies such as rectification or damages. The damage is often non-material and magnified by the scale and speed of dissemination of content via the internet.⁴⁵ Compensation afterwards therefore offers victims little or no benefit. These findings also correspond with recent social science research that showed that people have different remedies in mind for harmful content, ranging from removal of the content to a public apology from the perpetrator. The desired remedy also depends on the type of content. This means that remedies in this

³⁹ *Rapport surveydata*, p. 17.

⁴⁰ *Rapport surveydata*, pp. 13-14.

⁴¹ See *Report survey data*, p. 14; cf. *WODC-onderzoek*, p. 35. For this reason, victims sometimes try to track down the NAW data of the person who posted the content, see for example the case that led to Supreme Court of the Netherlands 10 November 2017, ECLI:NL:HR:2017:2844 (*Google Inc.*). See also the case against Facebook mentioned in footnote 12.

⁴² *Rapport surveydata*, p. 13.

⁴³ Respondents who had taken steps were asked the open question of why they did so (such as standing up for your own rights); respondents who had not taken any steps were asked the closed question - with a number of options (including 'other, namely ...') - what they would have liked to have happened. The answers were then combined.

⁴⁴ Cf. Ter Voert & Hoekstra 2020, p. 17.

⁴⁵ *WODC-onderzoek*, pp. 29-30.

context must be broadly construed and 'responsive' in the sense of aligning with the perceptions of victims.⁴⁶

Another interesting finding from our research is that the percentage of respondents who want to prevent others from experiencing the same thing (28.8%) is slightly higher than the percentage who want to prevent personal damage (20.9%). This goal goes beyond achieving a solution for the individual problem of the victim (and the conflict or dispute, if any, with the perpetrator and/or the internet service provider involved). It is also notable that some explicitly noted that, in their opinion, it was pointless or led nowhere to report or make a complaint about harmful behavior.⁴⁷ Many respondents do not know at all whether anything happens when they report content; we will return to this in section 4.1.

4. What hinders access to justice?

4.1 Extent to which certain things deter people from taking action

Research on access to justice in general and people's needs in that context shows that there are different types of people who seek legal redress, who are more or less deterred by various obstacles.⁴⁸ To a certain extent, people make a cost-benefit analysis, in which the type of problem and its severity influence the approach.⁴⁹ The term 'obstacles' suggests that it is only about objectively measurable factors such as costs, and that it concerns problems on the side of individuals rather than systemic problems. However, there are also socio-cultural and demographic factors that influence an individual's access to justice, as well as structural inequalities based on factors such as socio-economic status, ethnicity, or gender within the legal system.⁵⁰ Subjective factors that play a role include the availability of social and economic resources and psychological factors, such as legal capability.⁵¹ Differences in self-sufficiency can lead to unequal access to justice and an unequal position.⁵² Particularly, lower-educated elderly people (65+) appear to lack sufficient digital skills (digital capability) to find legal information.⁵³ This makes it extra difficult for them to navigate the complex legal landscape in this context.

In our research, respondents were asked to what extent certain issues deterred them or made it more difficult for them to take action, on a Likert scale of 1 to 7 (see Table 3).⁵⁴

Table 3 Extent to which respondents are deterred (from 1 'this does not deter me at all' to 7 'this deters me greatly')

⁴⁶ S. Schoenebeck e.a., 'Online harassment: Assessing harms and remedies', *Social Media + Society* (9) 2023, issue 1, p. 1-12.

⁴⁷ See *Rapport surveydata*, p. 13; cf. K. Vaccaro e.a., "'At the end of the day Facebook does what it wants". How users experience contesting algorithmic content moderation', *Proceedings of the ACM on Human-Computer Interaction* (4) 2020/167, No. CSCW 2, p. 3.

⁴⁸ Ter Voert & Hoekstra 2020, p. 85; A. Mein & F. de Meere, *Motieven van burgers om (niet) naar de rechter te gaan* (Raad voor de rechtspraak Research Memoranda 2018, nr. 3), The Hague: Sdu Uitgevers 2018; C. Denvir & A.D. Selvarajah, 'Safeguarding access to justice in the age of the online court', *Modern Law Review* (85) 2022, issue 1, p. 27.

⁴⁹ Ter Voert & Hoekstra 2020, p. 17.

⁵⁰ Macdonald 2012, p. 510; J. Beqiraj & L. McNamara, International access to justice: Barriers and solutions, International Bar Association 2014, p. 14 and 22. This can include a lack of legal services for specific problems or an accumulation of problems not recognized by legal service providers: M. ter Voert, 'Toegang tot recht in beweging. Over burgers en hun oplossingsstrategieën', *Jv* 2014, no. 1, pp. 62-76, on p. 66, resp. Ter Voert & Hoekstra 2020, p. 15-16.

⁵¹ Ter Voert & Hoekstra 2020, pp. 16-17 and 19.

⁵² Cf. Ter Voert & Hoekstra 2020, p. 54.

⁵³ College voor de Rechten van de Mens, *Toegang tot het recht* (jaarlijkse rapportage mensenrechten in Nederland), 2018, p. 47; European Union Agency for Fundamental Rights, *Your rights matter: Data protection and privacy. Fundamental rights survey*, Luxembourg: Publications Office of the European Union 2020, p. 9; Denvir & Selvarajah 2022, p. 48; A. van Deursen & J. van Dijk, 'Internet skills and the digital divide', *New Media & Society* (13) 2011, issue 6, pp. 893-911.

⁵⁴ *Rapport surveydata*, p. 14.

It costs money (sometimes)	4.47
It is difficult to initiate legal proceedings	4.34
The perpetrator is anonymous or untraceable	4.07
I have little confidence in a fair judgment	3.99
It can take (too) long before I have an outcome	3.67
Nothing more can be done about it	3.66
It is uncertain whether I will get a positive outcome	3.65
I know too little about it	3.60
It is stressful	3.42
I do not want to burden my environment with it	3.36
The problem has resolved itself	3.33
It takes effort	3.10
I do not want to limit others in what they can or cannot say on the internet	2.90
I do not want to confront the offender	2.70

A statistical analysis leads to a number of findings related to the socio-demographic characteristics of the respondents. Young adults (aged 18 to 34 years) and adults (35 to 49 years) – more than older age groups – indicate that they were deterred because it is difficult to start a legal procedure, because they have little confidence in a fair judgment, because it is uncertain whether they will get a positive outcome, or because it takes too much effort or is too stressful.⁵⁵ This also corresponds with recent social science research that shows that young adults consider harmful online behavior a ubiquitous problem, but are not themselves willing to invest in possible solutions, and moreover have little hope that the damage will be mitigated.⁵⁶

Regarding a lack of knowledge as an obstacle to taking (further) steps, we specifically asked what this lack of knowledge pertained to. Most respondents – 39% (n = 203 out of 520) – attribute this to the fact that they do not know if anything happens when they report harmful content.⁵⁷ Only the group that has completed a university of applied sciences/university propaedeutic or university bachelor's degree, attributes the lack of knowledge more often to the fact that they do not know who to sue.⁵⁸ This is also the most common answer among young adults and adults.⁵⁹ Of the young adults, 31.7% do not know whether the behavior is illegal/unlawful; this percentage is much lower in the other age groups.⁶⁰ People with a migration background suffer more from this than people with a Dutch background; they also often do not know where to go for information or help. Of all respondents, less than 10% are aware of the possibility of asking for help from a relevant organization.⁶¹

4.2 Importance of (perceived) procedural justice

From the above, we can conclude that there is a correlation between (especially) age and – in short – the perception of the effort it takes to take action, uncertainty about the outcome and lack of trust in a fair judgment. The latter can be related to perceived procedural justice. By this, we do not mean the (legal) prerequisites for a fair trial, but rather legal psychological research into the material and procedural aspects of the decision – and the process that precedes it – that influence people's perception of justice, such as having their own input (voice), being heard

⁵⁵ Rapport surveydata, p. 15.

⁵⁶ R. Young e.a., 'Young adults' folk theories of how social media harms its users', *Mass Communication and Society* (26) 2023, issue 1, p. 23-46.

⁵⁷ See Rapport surveydata, p. 15. Various transparency mechanisms in the DSA try to tackle parts of this problem: see Articles 16 and 17.

⁵⁸ Rapport surveydata, p. 17.

⁵⁹ Ibid.

⁶⁰ Rapport surveydata, p. 16.

⁶¹ Rapport surveydata, p. 17.

and being able to object.⁶² This raises questions about the importance of perceived procedural justice in this context, especially when this is compared with the finding that respondents (among other things) find speed more important than characteristics related to procedural justice. When asked, 39% of the respondents think it is important that the possibility to report harmful content is followed by swift action.⁶³ The percentage that values thorough examination, being able to speak to someone personally or the possibility of objection, is significantly lower than the percentage that values user-friendliness (see Table 4).⁶⁴

Table 4 Features of the reporting capability and the percentage that find it important

Reporting feature is easy to find	59.2%
Reporting feature is user-friendly	45.4%
Reporting feature is understandable	41.2%
Reporting feature is informal and accessible	40.6%
Quick handling	39.0%
Reporting actually leads to removal	30.8%
Reporting feature can be used anonymously	30.2%
Motivated response to the report	29.8%
Independent oversight	26.5%
Being able to speak to someone personally	26.4%
Thorough examination	26.0%
Being able to object to the response	20.6%
Protection of freedom of speech	17.7%

The top five of these characteristics are related to accessibility.⁶⁵ Notably, the protection of freedom of speech is at the bottom. This can be partly explained by the fact that the survey was exclusively aimed at people who are confronted with harmful behavior online, and not at people whose content is being removed. This raises the question whether procedural safeguards would be considered more important in light of the risk of 'over-removal', where mechanisms to remove harmful content lead to (too) much legal content also being filtered out.⁶⁶ It is important to emphasize that this over-removal often disproportionately affects marginalized groups,⁶⁷ which aptly illustrates the legal and societal complexity of content moderation and access to justice.

5. Conclusion

⁶² See e.g. R. Hollander-Blumhoff & T. Tyler, 'Procedural justice and the rule of law: Fostering legitimacy in alternative dispute resolution', *Journal of Dispute Resolution* 2011, issue 1, p. 1-19; Van Gelder 2022, p. 10-11 with further literature references; H.A.M. Grootelaar e.a., 'Judicial and litigant perceptions in Dutch court cases: Perceptions of outcome importance overlap, perceptions of procedural justice diverge', *Social Justice Research* (35) 2022, p. 243-274; C. Pan e.a., 'Comparing the perceived legitimacy of content moderation processes', *Proceedings of the ACM on Human-Computer Interaction* (6) 2022/82, No. CSCW 1, pp. 20-21.

⁶³ For online content, the factor time carries extra weight (see also section 3.2) because the content can spread very quickly: *WODC-onderzoek*, p. 34. .

⁶⁴ *Rapport surveydata*, p. 18.

⁶⁵ E. Bauw et al., *Naar een nabijheidsrechter?* (WODC-eindrapport), The Hague: WODC 2019, p. 22 (*Parliamentary Papers* II 2019/20, 35300, C). This report mentions – in the context of access to the court – among other things a temporal aspect (quick turnaround times), a human aspect (finding hearing and understanding) and a cognitive aspect (comprehensibility of procedures and judgments).

⁶⁶ See also *WODC-onderzoek*, p. 46 en 57; European Commission, *Open public consultation on the Digital Services Act package* (samenvatting van de openbare consultatie over de DSA), Brussel 2020, p. 5. See further Kuczerawy 2018.

⁶⁷ C. Are, 'An autoethnography of automated powerlessness: Lacking platform affordances in Instagram and TikTok account deletions', *Media, Culture & Society* (45) 2022, issue 4, p. 822-840; B. Duffy & C. Meisner, 'Platform governance at the margins: Social media creators' experiences with algorithmic (in)visibility', *Media, Culture & Society* (45) 2022, issue 2, p. 285-304.

This research confirms the heterogeneity of the problem:⁶⁸ people encounter various behaviors and obstacles, not to mention the different applicable normative frameworks. Whether the approach advocated by the DSA – a low-threshold notice-and-action procedure with associated procedural safeguards, such as a motivated response⁶⁹ – sufficiently addresses this heterogeneity is still questionable. This is all the more the case now that there seems to be a mismatch between the existing possibilities to counteract harmful behavior online and what the aggrieved parties actually do or want.

First, only a quarter of people confronted with harmful content use notice-and-action. Second, notice-and-action is aimed at removing the content, but for the aggrieved, this is not the only goal. Respondents also, and primarily, want to punish or unmask the perpetrator. With that in mind, the anonymity or untraceability of the perpetrator is a significant barrier, which makes taking (civil law) legal measures more difficult.⁷⁰ Third, virtually no one starts a legal procedure and/or engages legal help, while the difficulty of starting a procedure and a lack of knowledge are real obstacles. Specifically, for young adults, while they have more digital skills, they also feel more deterred because it is difficult to start a procedure, or because they do not know if the behavior in question is illegal/unlawful.

Moreover, (perceived) procedural justice seems at first glance less important than accessibility when it comes to the ability to report harmful behavior online. Following our previous study, we concluded that the design of quick, accessible, and scalable remedies is at odds with procedural (constitutional) safeguards, such as an adversarial process, and protection of freedom of speech.⁷¹ That is not to say that procedural justice would not be important in this context. The research indicates that people are deterred because they have little confidence in a fair judgment or due to uncertainty about the outcome; many respondents do not know if anything happens when they report harmful content. In this respect, the existing procedures for litigants are a black box, which underscores the relevance and urgency of 'digital due process'.⁷²

Access to justice and 'digital due process' are not only important in individual cases but also have a societal dimension.⁷³ The criticism of a citizen-centered approach that puts legal needs at the center is that it relies too much on people's own strength to solve their problems.⁷⁴ With our research, we do not want to overlook the need for systemic solutions in content moderation, such as risk-reducing measures,⁷⁵ administrative enforcement,⁷⁶ and collective actions.⁷⁷ On the contrary: our research shows that in dealing with harmful content, we cannot rely too heavily on the procedural initiative of individual aggrieved parties. The question of whether content in a specific case is illegal or unlawful – and should therefore be removed – often remains unanswered.

⁶⁸ N. Appelman e.a., 'Access to digital justice: In search of an effective remedy for removing unlawful online content', in: X.E. Kramer e.a. (red.), *Frontiers in civil justice. Privatisation, monetisation and digitisation*, Cheltenham: Edward Elgar Publishing 2022, p. 217-236.

⁶⁹ Article 17 DSA. On this 'procedural turn' see Ortolani 2023.

⁷⁰ See also *WODC-onderzoek*, p. 25.

⁷¹ *WODC-onderzoek*, p. 12.

⁷² See S. Meyers West, 'Censored, suspended, shadowbanned: User interpretations of content moderation on social media platforms', *New Media & Society* (20) 2011, issue 11, p. 4366-4383, on p. 4379. See also P. Ortolani, *Digital due process. The pursuit of fairness in digital adjudication* (inaugural speech Nijmegen), 2021. The DSA seeks the solution in information and transparency obligations for online platforms (Articles 16 and 17): P. Leerssen, 'An end to shadow banning? Transparency rights in the Digital Services Act between content moderation and curation', *Computer Law & Security Review* (48) 2023.

⁷³ See e.g. F. Mostert, "'Digital due process": A need for online justice', *Journal of Intellectual Property Law & Practice* (5) 2020, issue 5, p. 378-389.

⁷⁴ Westerveld 2022, p. 1615 and 1620.

⁷⁵ See Article 34-35 DSA (applicable to very large online platforms and online search engines).

⁷⁶ Chapter IV DSA.

⁷⁷ Article 86 and 90 DSA; Annex I to Directive (EU) 2020/1828 of the European Parliament and the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers.

The above does not detract from the fact that the reporting option on platforms remains an important (extrajudicial) route in practice. Our research shows that both the awareness and the findability, user-friendliness, and comprehensibility are points of attention. Those for whom this route is intended have not (yet) found their way to it, even though many perceive their problem as serious. Where the legal system does provide people with a remedy, but they cannot use it or the remedy does not meet their needs, access to justice falls short. The findings offer points of departure for what is also called a 'human-centered design approach to access to justice',⁷⁸ where the experiences and needs of those seeking justice – and their digital skills – are taken into account in the design and layout of (online) tools that help them find an appropriate remedy. Such an approach can contribute to the implementation of the DSA as an iterative and responsive process, which truly increases access to justice and procedural fairness in this context.

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⁷⁸ M. Hagan, 'A human-centered design approach to access to justice. Generating new prototypes and hypotheses for intervention to make courts user-friendly', *Indiana Journal of Law and Social Equality* (6) 2018, issue 2, p. 199-239.