

Protecting Press Freedom

European press publishers' priorities for the EU Legislative Period 2024-2029

(5 September 2024)



NEWS MEDIA EUROPE

Priorities for the protection of media freedom and diversity for the EU legislative period 2024 - 2029

Newspaper and magazine publishers in the European Union (EU) are increasingly exposed to economic, competition and regulatory challenges. To preserve and further promote the freedom, independence and diversity of journalism and media in Europe, the right political, economic and legal framework conditions are essential. In establishing these conditions, the EU must stay clear of additional regulatory burdens on the press which further hinder its ability to perform its irreplaceable democratic role.

This paper, jointly written by the European Magazine Media Association (EMMA), the European Newspaper Publishers' Association (ENPA) and News Media Europe (NME) and, sets out the priorities of the European news publishing sector for the EU legislative period 2024 – 2029.

Overarching priorities

- ✓ **Better IP protection and enforcement and generative AI**: Large language models (LLMs) present both opportunities and risks to media pluralism and press freedom. Since generative AI depends on high-quality content from professional media, enforceable rules are needed to ensure fairness and proper remuneration for content creators.
- ✓ **Freedom of the press on digital platforms**: A free and diverse press is essential for democracy, offering multiple perspectives to our pluralistic societies. Safeguarding broad access to professional journalism and editorial content, including online, is crucial to combating disinformation. Citizens' access to lawful, professional content should never be limited by digital gatekeepers, very large online platforms or publicly funded anti-disinformation initiatives.
- ✓ **Fair competition and Fair, Reasonable, And Non-Discriminatory (FRAND) access to gatekeepers**: Publishers heavily invest in creating professional online content. To protect a free and diverse press, tech companies, including digital gatekeepers, must be required to fairly compensate publishers for commercial use of their content. The EU must establish fair access conditions and ensure proper remuneration for all digital uses.
- ✓ **Rules for a fair and open online advertising ecosystem**: Supporting the freedom to advertise is essential for diversity of opinion and innovation. It sustains the independent and diverse press that is vital to our democratic societies. Fair data protection rules that respect users' privacy should foster modern, sustainable business models and promote fair competition in the digital world.
- ✓ **Increasing publishers' resilience by safeguarding contractual freedom and the freedom to advertise**: Subscriptions are essential for the distribution and financing of the free press, reflecting the trust between readers and publishers. This relationship should not be distorted by additional regulation.
- ✓ **Fair competition between public and commercial media**: A dual media system of public and commercial media must reflect diversity and ensure the sustainability of the entire media landscape. This balance relies on the healthy coexistence of the free commercial press and public service broadcasters (PSBs). Currently, this balance is threatened by PSBs' press-like online offerings, which distort competition.

1. Better IP protection and enforcement and generative AI

High-quality human-made and creative content contributes decisively to the development and attractiveness of artificial intelligence (AI). Generative AI highly depends on journalistic and editorial content of the press for its training and quality response.

These new technologies pose an existential threat to media diversity. These factors enable the processing of professional media content in real time and at no cost to produce competing editorial content, resulting in “pure AI press” or “prompt journalism.”

Such offerings, directly competing with human-made media offerings, undermine the free formation of a pluralistic public opinion and democratic discourse. Moreover, if these offerings are integrated into the gatekeepers' platform services (e.g. Google, Microsoft, Meta), the resulting loss of web traffic on the websites of newspapers and magazines will raise fundamental competition issues and undermine publishers' profitability.

This stark technological reality demands a responsible approach to copyright and related rights. To avoid widening an unprecedented value gap, tech companies must be held accountable for societal risks and prevented from further increasing legal loopholes. Unless strict laws prohibit the unauthorised exploitation of media content, human-made press risks losing any financial viability.

To this end, the creation of an exclusive right should be envisaged, therefore ensuring that any use of protected content by AI companies requires rightsholders' prior authorisation. This obligation must be accompanied by actionable transparency and verifiability concerning the use of content for whichever purpose(s).

This requires consistency between AI and Copyright legislations. **Text and data mining of press publications should function on the basis of opt-in, not opt-out**, to ensure that press publishers have better control over how their content is used. The current framework¹ places an unreasonable burden on press publishers to have their rights reservation recognised, **when the burden should be on AI companies to seek authorisation.**

Likewise, shifting the burden of proof to AI providers is crucial, given AI systems' ability to exploit protected content without leaving a trace. The large-scale unauthorised harvesting of press content for the training of generative AI tools (e.g. Google Gemini, ChatGPT) over the past years shows that laws need to be reviewed and better enforced.

Creating the necessary conditions for the emergence of a licensing market in the context of generative AI is vital. This will facilitate fair and meaningful remuneration. With the adoption of the AI Act, the EU has created a first basic framework for AI-related handling of content protected by copyright and other intellectual property rights. However, timely improvements are needed to duly acknowledge and protect the contribution and investment of media and creative professionals.

In addition, a stronger enforcement of the press publishers' right, through mechanisms such as binding arbitration, should allow for the fair and meaningful remuneration. We take inspiration from the Australian model, where the threat of arbitration encouraged platforms (e.g. Facebook, Google) to come to the negotiation table and to make significant remuneration proposals.

We also take inspiration from the French case, where the competition authority validated a negotiation framework for fair remuneration agreements. **Creating general European standards which guarantee the highest possible remuneration for the remuneration of press content** is essential to ensure consistency and fairness across the continent.

¹ Article 4.3 of the Copyright (Digital Single Market) Directive

In conclusion, establishing these principles ensures a balanced digital ecosystem where both technological advancements and media diversity thrive, benefiting society as a whole. This includes holding tech companies accountable for unauthorised content exploitation, ensuring fair remuneration for rightsholders, and creating robust frameworks for managing and protecting intellectual property rights in the age of AI. Such protections preserve the integrity and economic viability of the press and journalism while fostering innovation within the media landscape.

Priority Actions:

- ✓ **Verifiability and transparency:**
 - Shifting the burden of proof to AI providers is crucial, given AI systems' ability to exploit protected content without leaving a trace.
 - Access to detailed evidence of all content used for AI training, input, or other purpose is indispensable to enable rightsholders to exercise and enforce their rights.
- ✓ **Exclusive right of use:**
 - EU law must clearly determine that protected content may only be used with the prior authorisation of the rightsholder, for training, input or other any other purpose.
 - Where reservations of rights are exercised, this may never negatively impact the visibility of or access to rightsholders' content.
 - The AI Act obligation to ensure compliance measures with EU copyright law must be technology-neutral and adaptable to new developments. Also, it will be to no effect unless complemented with the required enhanced verifiability and transparency (see above).
- ✓ **Remuneration right:**
 - Introducing a general, non-waivable and enforceable remuneration obligation, which is essential in light of the unprecedented levels of exploitation by AI technologies of protected human-made works.
- ✓ **Extraterritorial effect of EU copyright law compliance measures:**
 - Any provider offering AI services in the Union must be subject to EU law, regardless of where they operate and/or are headquartered globally.
 - Strictly enforce the AI Act requirement to ensure EU law compliance with EU copyright, regardless of the jurisdiction(s) under which they take place.
- ✓ **Minimum liability standards for AI-generated content:**
 - AI-generated content must be contingent on liability standards in no way less strict than those applicable to professional content subject to human review or editorial control.

2. Press freedom and diversity on the platform internet

Media freedom is the cornerstone of our activity as press publishers and a fundamental pillar of European democracies. We take our mission to inform the public based on factual information and to foster democratic debates extremely seriously.

Press freedom and freedom of expression, protected by laws, are essential for citizens' rights to access diverse information, form opinions, and participate in democratic processes. In our pluralistic societies, these rights must be safeguarded online, ensuring the unhindered and non-discriminatory dissemination of digital press and media content on digital platforms.

As digital gatekeepers have become central distribution channels for editorial content, they can

exert arbitrary control over news and editorial content visibility and viability. This has the double effect of conditioning both public opinion and the financial outcomes for press offerings online. Policy makers and regulatory authorities must not allow such actors to dictate the terms and limits of press freedom and freedom of expression online.

The European Media Freedom Act (EMFA) should protect rather than regulate the press. It appears vital to enhance press freedom in order to maintain a diverse and independent media landscape. Additionally, safeguarding against government interference and spyware is essential to ensure the independence and safety of media professionals.

Anti-disinformation initiatives must not undermine press freedom. Imposing third-party standards that affect the visibility and prominence of lawful editorial content risks silencing legitimate journalistic voices. Efforts to combat disinformation should focus on algorithmic content amplification rather than the content itself. Such initiatives must not impact the press and media falling within the scope of the EMFA but should instead promote measures that preserve economic and journalistic press freedom.

More and meaningful transparency requirements for algorithms that influence the prevalence of news and editorial content online are essential. Digital gatekeepers, especially Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), wield significant influence over public access to news content. This power must be used transparently to ensure fair and non-discriminatory dissemination of legal and editorial content. For instance, the implementation of the Digital Services Act must ensure that big platforms do not use Terms & Conditions (T&C) to arbitrarily limit the reach of lawful editorial content.

Safeguarding freedom of expression and information in content regulation is crucial. While it is important to address illegal content, any regulatory measures must ensure that they do not infringe upon the rights of journalists, newsrooms and editorial teams to report freely and critically.

In conclusion, policymakers and regulatory authorities must adopt a balanced approach to regulation, prioritising measures that protect press freedom and freedom of the press, safeguard data, and effectively regulate digital platforms without compromising press freedom. It is crucial to emphasise transparency, fair treatment, and the preservation of journalistic independence. This approach will foster a media environment that not only supports democratic processes but also ensures the economic sustainability of press organisations. By upholding these principles, we can strengthen public trust in the media and uphold the fundamental right to freedom of the press in the digital age.

Priority Actions:

- ✓ **Freedom of the press on the platform internet:**
 - What is legal offline must also be legal online. Companies qualifying under the EMFA as a media service (provider) must benefit from additional protection prohibiting any interference in legal and lawful media content by digital platforms based on their own internal rules.
- ✓ **No restrictions on press and media freedom under the guise of fighting disinformation:**
 - Anti-disinformation measures like the Code of Practice against Disinformation or specific standards must not sanction the arbitrary treatment of or hinder access to lawful media content, including by granting platforms discretionary moderation powers.

3. Fair competition and Fair, Reasonable, And Non-Discriminatory (FRAND) access to gatekeepers

Press, media companies and editorial teams invest significant human and financial resources to produce and distribute their editorial offerings online. Distributing news and other content allows citizens to access information and publishers to monetise their content, for example through advertising

or subscriptions.

For such a model to be sustainable, content publishers should be the primary financial beneficiaries of the revenue generated with their content, rather than the digital intermediaries who passively benefit from said revenue and impose abusive terms due to their gatekeeper role and market power. This poses a serious threat to media companies' ability to produce and distribute content, undermining media diversity and choice. Therefore, it is essential to quickly establish fair framework conditions for all uses of press and media content.

Non-discriminatory treatment of editorial content by online gatekeepers is essential to maintain a level playing field. Implementing and enforcing fair and non-discriminatory access to gatekeeper platforms, as foreseen in Article 6(12) of the Digital Markets Act (DMA), is critical. Where gatekeepers refuse to negotiate in good faith on a fair price for the publishers' rights, the dispute settlement mechanism foreseen by the DMA must be available.

Although legal protection against AI-related exploitation of press content is still developing, the press publishers' neighbouring right under the 2019 EU Copyright Digital Single Market (DSM) Directive provides a basis for fair compensation for online uses. The Digital Markets Act (DMA) offers a key opportunity to address these issues and prevent gatekeepers from forcing media companies to transfer rights for free.

Concluding existing competition cases with big tech companies is crucial to restoring fair competition. These cases highlight ongoing challenges and abuses in the digital marketplace that disadvantage press publishers. The Google adtech case in particular must be a priority for the new Commission given the unprecedented and ongoing harms to publishers. Cases involving Apple's unfair app store practices and data practices must also be promptly resolved. This will set important precedents and deter future anti-competitive practices.

In conclusion, to support the independence and diversity of European media, it is essential to address both the opportunities and challenges presented by the digital advertising ecosystem and data protection regulations. Implementing these measures will create a more equitable and sustainable environment for media companies, allowing them to continue their crucial societal role. This includes holding tech companies accountable for unauthorized content exploitation, ensuring fair remuneration for rightsholders, and establishing robust frameworks for managing and protecting intellectual property rights in the age of AI.

Priority Actions:

- ✓ **Effective use and enforcement of the DMA and competition rules to tackle digital gatekeepers' unfair practices and exploitation and secure fair remuneration for their uses of online press content.**
 - The DMA provisions on self-preferencing and on fair and non-discriminatory access conditions to gatekeeper platforms must be strictly enforced.
 - An arbitration mechanism should be set up to facilitate the enforcement of press publishers' rights against digital gatekeepers, drawing inspiration from the international model of Australia and Canada.

4. Rules for a fair and open online advertising ecosystem

Freedom to advertise is a basic requirement for independent media. Advertising plays a uniquely important role in financing editorial teams and the production of quality journalism, press and editorial content. Therefore, bans or restrictions on advertising can have serious repercussions not just on media financing, but also on the diversity, quality, and independence of the European press.

Building a European Environmental, Social and Governance (ESG) taxonomy acknowledging the democratic value of investments in media is needed to reward advertisements and capital held in media. Advertisers need to be at the forefront of any initiative related to advertising, as their buy-in is crucial to the viability of these solutions.

The digital business models of press publishers rely on data and its processing is essential to measure sales, and advertising - all key for the economic viability of the press - and to provide and improve journalistic and editorial products. Trust is central to every publication's relationship with its audience and handling user data with respect is a top priority.

Raising awareness about the vital role of cookies in digital advertising, including measurement and verification, is also essential. Cookies provide the functionality that advertisers and publishers rely on, allowing publishers to better understand their audiences and to justify the prices they charge their advertising clients.

Publishers must be able to monetise their online services in the way most suitable for their situation, without unduly favouring or discouraging legal business models. For this reason, it is important to defend the right for publishers to ask users for consent to data processing activities. At a minimum, **publishers must be able to request, obtain, manage, and implement their readers' consent and preferences as well as making access to their professional content dependent on consent**. Once granted, consent must also be directly implementable and take precedence over any default settings (e.g., browser or consent management tools).

While the EU has launched several initiatives regulating online advertising such as the General Data Protection Regulation (GDPR), ePrivacy, the DSA and the cookie pledge, press publishers' experience is that these initiatives risk exacerbating existing imbalances in digital markets. In many cases, they have created additional burdens for publishers, particularly smaller ones, by imposing one-size-fits-all solutions.

Many studies, reports and Commission investigations have already **identified the need to rebalance online advertising markets to support the digital press for journalistic, editorial, and commercial activities, notably due to the abusive market practices of big tech companies**. The EU's data protection framework must be better enforced and synchronised with the EU's competition tools when it comes to big tech companies. Indeed, the cost of compliance and potential sanctions for breaches is easily absorbed, even budgeted, by these multi-billion companies as part of their business activities.

A bold intervention in the Google AdTech case is needed to address urgent competition problems in advertising. The well-documented abusive practices of Google stifle competition and unfairly deprive independent media of revenues. **Putting an end to Google's 'Privacy Sandbox' and similar initiatives by gatekeepers is crucial to avoid the abuse of data dominance** and to stop gatekeepers from further restricting business users from processing data otherwise permitted by law. **Similarly, stronger enforcement of the DMA's advertising provisions** is critical to prevent gatekeepers from manipulating advertising auctions to their advantage, artificially inflating prices for advertisers and depriving publishers of revenues.

In conclusion, to support the independence and diversity of European media, it is essential to address both the opportunities and challenges presented by the digital advertising ecosystem. By implementing the measures outlined above, the EU can create a more equitable and sustainable environment for media companies, ensuring they can continue to play their crucial role in society.

Priority Actions:

- ✓ **Respect the freedom to advertise by avoiding any further restrictions**
 - Refrain from imposing advertising bans.
 - Maintain the right of press publishers to request, obtain, manage, and implement their readers' consent and preferences, and to make the access to their content dependent on consent.

5. Increasing publishers' resilience by safeguarding contractual freedom and the freedom to advertise

Newspaper and magazine subscriptions and advertising are the backbone of journalistic and editorial distribution and the financing of the printed and digital press. The free press relies on both subscriptions and advertising to finance its offerings, including online content. Restrictions on subscriptions and advertising threaten publishers' financial sustainability.

These two types of revenue are crucial for funding editorial teams and producing professional journalism. Restrictive measures that reduce the value of subscriptions and advertising space can undermine media outlets' economic viability, diminishing the diversity and quality of content available to the public. Publishers must continue to be able to attract and retain readers and sign up subscribers with full contractual freedom.

EU law already offers a high level of consumer protection with the necessary flexibility to prevent legal loopholes in the digital environment. The introduction of additional regulatory hurdles for publishers and their readers when signing up for press subscriptions is therefore misguided. Publishers depend on easy, direct communication with readers. The introduction of further barriers would be detrimental to press diversity.

No additional administrative or compliance burdens in the consumer acquis via a forthcoming Digital Fairness Act and related initiatives should be imposed on publishers. Existing regulations already provide robust consumer protection, and additional requirements could disproportionately impact all publishers, in particular small and medium-sized publishers, reducing their ability to compete and innovate. The focus should be on effectively enforcing current laws.

Assessing and mitigating any potential risks or unjustified burdens stemming from the forthcoming EU Code of Conduct on age-appropriate design is crucial. While protecting young audiences is important, any new rules must be balanced to ensure they do not unduly burden publishers or stifle their ability to provide content. This includes avoiding excessive compliance requirements that could divert resources away from content creation and innovation.

Furthermore, publishers must be able to monetise their online services that suits their audience best, without undue favouring or discouraging of the various legal business models. Therefore, it is important to defend publishers' right to ask users for consent to advertising and to make access to their content conditional on user consent to advertising as an alternative to payments.

In conclusion, supporting the independence and diversity of European media requires supporting a fair digital advertising ecosystem and balanced data protection regulations. We can create a more equitable and sustainable environment for media companies, ensuring they continue their crucial societal role. This includes allowing publishers to request and manage consent and preferences at the website level, supporting flexible business models, and establishing a data protection regime that supports their digital operations.

Priority Actions:

- ✓ **Differentiated approach in data and consumer-related initiatives:**
 - Data and consumer protection initiatives dealing with data collection and processing, data-driven advertising, cookies or similar tools must take a differentiated approach which duly considers digital gatekeepers' data power and the resulting deep imbalances and discrimination impacting all other digital services.
- ✓ **Right to request (and precedence of) individual consent:**
 - Publishers' ability to directly and easily request, obtain and manage readers' consent on the website must be preserved.
 - Where consent is granted, it must be directly implementable, take precedence over default settings, and may be made a prerequisite for access to digital offerings (digital entrepreneurial freedom) with no obligation to provide alternatives.

6. A successful and thriving dual public and commercial media system

European citizens deserve a diverse media landscape where quality journalism and opinions within the limits of the law are provided by both the free press and public service broadcasters (PSBs). This wide choice distinguishes our democracies globally. However, the uncontrolled publicly funded presence of PSBs in all on-demand online formats (text, images, audiovisual) threatens fair competition and the economic viability of private media.

The private press and public broadcasters play distinct, irreplaceable roles in ensuring quality and pluralistic information – also online. National and EU law must not provide legal backing to competition distortions nor to the crowding out of private media offerings.

This is not about opposing PSBs, but about restoring competition between press publishers and public service broadcasters. This has become an urgent priority as European PSBs increasingly expand beyond their State-funded broadcasting activities.

Enforcing existing EU State aid rules, which prohibit State support for non-broadcasting activities, must be prioritised to prevent PSBs from becoming “public service press”. This is about ensuring that private media can compete on fair terms and attract audiences, advertisers, and subscribers.

Regrettably, many Member States are undermining the sustainability of the commercial press by both extending and adopting broad interpretations of the operational remits of their public service broadcasters.

As a result, EU publishers have in recent years launched multiple competition proceedings to protect them from unfair competition. The EU must take a proactive stance towards enforcement and consider the need for targeted measures to protect the commercial press.

Similarly, public subsidies within the publishing sector must be fair and non-discriminatory, based on positive incentives such as taxation and VAT reductions to support the democratic mandate of private media. This ensures that all press entities, regardless of size or market position, can benefit from public support, promoting a diverse and pluralistic media landscape.

The EU is called upon to examine the increasing number of complaints launched by European press associations' against PSBs under State aid and competition law, in line with the Amsterdam Protocol, and the concerns raised therein. Such proceedings must be concluded and lead to appropriate and significant improvements to the protection of the free press online.

Priority Actions:

- ✓ **End the unrestrained growth of press-like online offerings by PSBs**
 - National PSB frameworks must be brought in line with the Amsterdam Protocol to put an end to the unrestrained expansion of press-like online offerings by PSBs.
 - The numerous competition and State aid complaints by European publishers must be examined and brought to a conclusion safeguarding the free press.
 - The European Commission must ensure that the funding and remit of activity of PSBs remain regulated solely by EU State aid rules and the Amsterdam Protocol.
- ✓ **Any possible funding for the private press must be fair and non-discriminatory based on positive incentives such as taxation and VAT reductions**

European Magazine Media Association - EMMA

The European Magazine Media Association, is the unique and complete representation of Europe's magazine media, which is today enjoyed by millions of consumers on various platforms, encompassing both paper and digital formats.

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European News Publishers' Association - ENPA

ENPA is an international non-profit organization representing publishers of newspaper and news media on all platforms. ENPA is working on a number of areas of European policy and legislation which are essential for the effective day-to-day running of operations of local, regional and national newspapers. In a rapidly changing media environment, ENPA supports publishers with the aim of achieving a successful and sustainable future for independent news media in Europe.

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News Media Europe - NME

NME is the voice of the progressive news media industry in Europe, representing over 2,700 news brands in print, online, radio and TV, through national associations from sixteen countries. Together, we defend key principles which are vital to us: protecting the freedom of the press, championing the digital future of our industry, and ensuring that the value of content is properly protected.

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