

News Media Europe (NME) is the voice of the progressive news media industry, comprising over 2200 news brands in print, online, television and radio. We work to foster a free, independent and pluralistic media landscape in Europe. Independent news media depends on heavy investment in journalism and this is dependent upon online advertising revenue.

Ensuring privacy without undermining legitimate business models and media pluralism

The digital business model of the news media sector relies heavily on data-driven advertising revenue. The revenue generated through such advertising is worth multiple times that which is generated through more traditional, contextual advertising.

We therefore urge policy-makers to consider how the proposed rules would affect the ability of news publishers to monetize online content. Specifically, we are concerned about a potential obligation to provide full access to online content in the absence of consent from users for processing personal data to generate advertisement revenue.

This is concerning as it implies that the news media industry will have fewer viable business models to rely on while it is clear that certain digital revenue models, such as paywalls and subscriptions, have not been able to compensate for the growing losses incurred due to the shrinking market for print. This is not a viable option to safeguard the future of free and pluralistic press on the internet.

Forcing such a change on the industry could lead to lower access to news content, keep quality journalism in the hands of those who can afford it, unlevel the playing field between private sector and public service broadcasters who have a news offer, and damage the plurality of the EU media landscape.

We also note that users of online news services have high expectations in relation to how content can be accessed. Users are readily prepared to forego financial payments to access content by providing access to their data as a counter-performance in an informed manner. That is, to ensure that a fair process of value exchange takes place.

Legal basis for processing user data and exceptions (Art. 6)

NME believes the GDPR forms the best basis for regulating the online space, including online behavioural advertising which makes use of tracking cookies, to foster trust and a transparent relationship between news providers and consumers.

Under the GDPR, online behavioural advertising will already require affirmative and granular consent, and so-called cookie banners will become obsolete. An informed opt-in process will become the minimum standard for cookie use.

NME notes that the exception for processing personal data to detect adblock technologies included in Recital 21 should be made explicit as part of an Article to provide legal certainty.

Cookies (Art. 8)

In article 8, News Media Europe cannot support the strict consent requirement and propose the use of the publishers' legitimate interests, where publishers could balance the business need against the rights of users as permitted under the GDPR (with the publishers being accountable for their use of legitimate interests).

Furthermore, the ePrivacy Regulation should maintain the clarification in Recital 25 of ePrivacy Directive that access to online services may be conditional on the acceptance of cookies - even if they are not strictly technically necessary to provide a service.

This is about striking the right balance between the right to privacy and the right to conduct business and/or to contractual freedom. This is particularly relevant in cases where legitimate business models are dependent on data-related advertising.

We also note that blocking third party cookies by default may have a severe impact on advertisement revenue. We therefore stress the need to ensure at the very least that online publishers are entitled to directly request consent from consumers.

Browser settings (Art. 10)

NME welcomes a user-friendly, browser-based approach to consent. Yet, we also stress serious competition concerns in relation to browsers becoming gatekeepers of the internet ecosystem. It remains to be seen whether consent collection or notice provision through browsers would allow online publishers to obtain consent under fair circumstances.

Browsers, especially dominant ones, compete with online publishers not only for advertisement revenue but also increasingly for content. This is why a clearly defined set of rules relating to the collection of consent is warranted.

Unsolicited communications and direct marketing (Art. 14-16)

With industry moving beyond traditional online behavioural advertising by way of adding further information to a user's profile, display advertising may be captured within the interpretation of the definition of direct marketing communications. We do not support such an extension of the definition and seek explicit exclusion of display advertising, without prejudice to GDPR obligations to provide an easy opt-out solution to users from profiling for marketing purposes.

NME notes that the suggestion that telemarketing calls should be made identifiable via a prefix or code is problematic. It could lead to blocking of calls in the interest of consumers, such as an offer to renew a subscription. We respectfully suggest this type of regulation be left to Member States.

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