

NEWS MEDIA EUROPE

Copyright recommendations for the next European Commission (2024-2029)

News Media Europe 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.

Recommendations

News Media Europe supports a targeted reopening of the Copyright in the Digital Single Market (DSM) Directive¹ as long as changes remain focused and improve the position of rightsholders from the existing law. Our recommendations are:

- 1) Creating a licensing market in the context of generative artificial intelligence (GAI):** Proprietary content is exploited at an unprecedented scale by AI systems (e.g. OpenAI) to train large language models (e.g. ChatGPT), surface content for users and develop the next generation of search engines (generative search). The Artificial Intelligence (AI) Act clarifies that this type of use must be subject to transparency obligations and authorisation, unless exceptions apply. This is a very good first step, yet insufficient. The DSM Directive needs a targeted improvement to tackle AI issues, reflecting that:
 - i) Prior authorisation from rightsholders is required for using protected content to train GAI systems, or as part of the output generated by GAI systems;
 - ii) GAI systems must be accountable to the principle of fair remuneration;
 - iii) Remuneration proposals from AI companies must be put forward within clear and reasonable timeframes, to avoid delay tactics.

- 2) Protection and recognition of the value of press content for the quality of AI outputs.** Given the uncertainty of how the technology and GAI products will develop, we need future-proof legislation to protect press publications through the different variations of AI. Large language models (LLMs) will power a variety of applications and press content will be used and exploited in many ways. The question not only focuses on the training of the LLM but also on the essential role of professional journalistic content for the quality of the output. Recreating a fair value chain that supports the financial viability of the press and its independence is essential.

- 3) Introducing a presumption that copyrighted content is included in AI models:** The use of quality information and editorial content, which cater for perfect training data, is no longer an assumption, it is stating the obvious. Tech companies have scraped copyrighted works at an industrial scale, raising claims for the largest copyright infringements in history, as pointed out by the New York Times investigation². The Intellectual Property Rights Enforcement Directive (IPRED)

¹ <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

² [How Tech Giants Cut Corners to Harvest Data for A.I.](#), 6 April 2024, The New York Times

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should include a presumption that copyrighted works feed into AI models, reversing the burden on AI developers to prove that they do not infringe intellectual property or have made the necessary licensing arrangements³. This will be made possible through transparency obligations under the AI Act, revealing ideally at a granular level which datasets the models are trained on. The Danish government has already endorsed this proposal made by its tech expert group (see the [report](#)).⁴

- 4) Text and data mining (TDM) of press publications should function on the basis of opt-in, not opt-out:** The TDM provisions of the DSM Directive were not designed to deal with GAI. In light of the slow and uneven development of opt-out solutions, the Commission should reconsider whether Article 4 is fit-for-purpose. This includes whether opt-outs are an inappropriate burden to be placed on press publishers, the lack of shared standards, the granularity in existing opt-out solutions and the legitimate interests of news media. We suggest a corrective review of the Directive (Article 4.3) to ensure that text and data mining of “press publications”⁵ is based on press publishers’ opt-in. It must be emphasised that the reservation of rights should not result in retaliation exercises by platforms leading to loss of visibility for news sites.

- 5) The TDM exception should not be used to circumvent copyright law.** When enforcing Article 3, it must be clear that the copyright exception benefits solely research organisations, within the stated boundaries of “scientific research” purposes, and cannot be used to create technology or services that will be commercially exploited. By extension, public-private partnerships must not be used to escape transparency and remuneration obligations by commercial players. All in all, it must be clear that the enforcement of the TDM exception should not threaten the viability of journalism.

- 6) Creating a European standard for the remuneration of press content:** The European press sector was very much encouraged by the decisions⁶ of the French competition authority and the validation of Google’s commitments⁷ in France. The Commission should consider integrating such rulings into European law. For instance, it should be clear that remuneration under the press publisher right (Article 15 of the DSM Directive) and remuneration under commercial partnerships (e.g. Google News Showcase) are distinct. Also, platforms must commit to “good faith” negotiations and data-sharing obligations necessary for the assessment of content value (e.g. direct and indirect advertising revenues), with a principle of continued display of press content during the talks. This point is particularly important to ensure that citizens continue to have access to news, compared to ongoing blockings in other jurisdictions⁸.

³ Some press publishers might be willing to engage in talks to make licensing possible on a technical level, without halting the development of responsible AI.

⁴ [Boundaries for big tech's development and use of AI.pdf \(em.dk\)](#)

⁵ Within the meaning of Article 2(4) of the Copyright DSM Directive

⁶ [Decision 20-MC- 01 of April 09, 2020](#) and [Decision 21-D-17 of July 12, 2021](#)

⁷ <https://www.autoritedelaconcurrence.fr/en/press-release/related-rights-autorite-accepts-googles-commitments>

⁸ [Google blocks California news in response to bill that would force tech giants to pay](#), NPR, 12 April 2024

- 7) Enforcing the press publisher right through binding arbitration:** A harmonised framework for negotiations is needed, based on:
- i) A relevant contact point for copyright negotiations at technology companies;
 - ii) An obligation for platforms to share adequate data about the reuse of press content and revenues derived;
 - iii) The possibility for binding arbitration, in the absence of agreements within a certain timeframe;

We need a harmonised negotiation framework, ensuring that press publishers are treated on an equal footing across Europe. To this end, remuneration talks should be backed by a competition tool, for instance in the Digital Markets Act (DMA)'s alternative dispute resolution mechanism⁹. In Australia for instance, the threat of arbitration led to the successful conclusion of 30 agreements in the first year following legislation¹⁰. In comparison, in Denmark, despite the best efforts of the mediator, Meta and Tik Tok refused to negotiate, which de facto stalled the work of the mediator. In Belgium and Italy where arbitration exists, copyright laws are being challenged by platforms. A harmonised arbitration system would bring legal certainty and support the enforcement of the DSM Directive.

- 8) Facilitating the creation of collective management organisations:** In order to increase press publishers' bargaining power, the neighbouring right is largely managed collectively by existing or new collective management organisations. While this process takes time, it has proved particularly difficult in markets where press publishers do not have the resources to set up such complex and innovative structures or where administrative red tape hampered any progress. Collective management should be accessible for press publishers who need it. Therefore the creation of CMOs should be facilitated by the regulators, while the administrative and accounting obligations should remain reasonable.

Explanatory statement

Building on the work of the previous European Commission, News Media Europe's objective is simple: ensuring the economic viability and the availability of independent quality journalism. The role of a diverse and free press is more important than ever. Europe's democracies are challenged. Disinformation and influence operations are likely to grow in force and magnitude, assisted by new technologies, such as GAI and social networks. A free and professional press is the most important tool to share credible information and create fact-based public debates, that are essential to our democratic societies.

To ensure the economic viability of journalism, press publishers need better control over how to monetise their intellectual property. Enforcing intellectual property rights remains a challenge. First, because tech

⁹ The European Commission could interpret the FRAND terms in order to establish some key principles (e.g. transparency, data-sharing) and provide press publishers with stronger bargaining power vis-a-vis big tech.

¹⁰<https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/government-implement-all-recommendations-news-media>

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giants circumvent the press publishers' neighbouring right. Second, because AI is disrupting business models and may soon alter the way press content is consumed.

Journalistic content is being reused for the training of LLMs and GAI systems, without any approval. The transparency obligations of the AI Act are helpful, but remain incomplete. The use of press content by LLMs should be subject to **clear prior authorisation and fair remuneration**. In this regard, it is unreasonable to put the burden on rightsholders for opting-out from text and data mining, when the impact of such TDM is so consequential.

Moreover, it is crucial to **give teeth to the press publisher right**. In the conformity assessment of the DSM Directive, it is important to assess whether transposition laws promote the effectiveness ("*effet utile*") of the neighbouring right. The reality is that some large platforms abuse their dominant position to circumvent the application of the right, forcing competition authorities to intervene.

In France for instance, the competition authority validated a commitment procedure binding on Google to conduct good faith negotiations. In Germany, following a decision of the competition authority, the Arbitration Board of the German Patent and Trademark Office was asked to set a copyright tariff. In Spain, the competition authority recently opened an infringement procedure. Despite the helpful decisions delivered so far, it should not be left to competition authorities to interpret copyright law. This approach is unfair to press publishers who do not have the time, financial and human resources to pursue such complex and lengthy procedures. Legal proceedings actually postpone the time when press publishers get remunerated, meaning that newsrooms risk their financial sustainability and very existence pending legal adjustments. This approach is also leading to fragmentation across member states.

Lastly, the effectiveness of the neighbouring right also depends on the ability for press publishers to be equipped with sufficient bargaining power vis-a-vis large online platforms that distribute or reuse their content, for instance via collective management.

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