

Response to the digital omnibus call for evidence

News Media Europe, the voice of the progressive news media industry in Europe representing over 2,700 news brands. Our aim is to protect the freedom of the press, to champion the digital future of our industry, and to ensure that the value of content is protected.

European news publishers see an urgent need to simplify EU digital rules impacting their business, going far beyond what the Commission outlines in the digital omnibus call for evidence.

EU rules are increasingly complex and anchored in burdensome procedures rather than outcomes. This makes them generally more difficult to enforce and to comply with, thereby reducing their overall effectiveness.

In addition, EU digital rules often contain horizontal obligations that must always be complied with irrespective of actual risks, contrary to the often-stated intent of observing a risk-based approach. Too often, the measures proposed to ease the impact of regulations on SMEs are also entirely insufficient.

In some cases, EU digital rules have also become far more complicated than the problems they are intended to solve. Therefore, these rules must change and adapt to business realities, such that they remain business-friendly and proportionate.

A case in point is the Regulation on the Transparency and Targeting of Political Advertising, which has already led the dominant market players such as Google, Meta and Microsoft to terminate their political advertising services in Europe, because of the burden created by those new EU rules.

These rules, which are motivated by real concerns about protecting democracies against foreign interference, failed to meet a simple common sense test: the regulation has become overly complex and burdensome relative to the size of the market it regulates.

And yet, the elephant in the room remains the General Data Protection Regulation, which continues to impose disproportionate costs on publishers of all sizes while failing to tackle the biggest risks to citizens data: big tech and AI companies.

We expect that proposals to simplify rules concerning the data governance act, free flow of non-personal data, cybersecurity incident reporting, and electronic identification will have no impact on ordinary business stakeholders, including publishers.

The only proposal that could have a real impact are those concerning cookies and other tracking technologies, while proposals to simplify the AI Act raise concerns about the dilution of copyright provisions adopted to support holders of copyright.

In our view, a meaningful simplification of EU digital rules should address the following areas:

- The General Data Protection Regulation
- The ePrivacy Directive
- Transparency and Targeting of Political Advertising Regulation
- The upcoming Digital Fairness Act - commitment to keep it evidence-based and proportionate, using a risk-based approach
- The AI Act – simplification should not dilute copyright obligations

General Data Protection Regulation

Publishers express a strong desire for targeted changes to the GDPR that would make compliance more practical and proportionate to their day to day realities, without undermining the fundamental rights the regulation seeks to protect. A common theme across responses is the call for a more risk-based and context-sensitive approach that recognises the specific role and limitations of media organisations, particularly smaller publishers.

There is a consensus about the need to reduce the formal and documentation-heavy obligations, especially for low-risk processing activities. This would allow publishers to focus their limited resources on genuinely high-risk operations, such as complex profiling or the use of third-party data for targeted advertising. For example, they suggest simplifying or waiving requirements like appointing dedicated GDPR roles for small companies, while maintaining the core data protection principles for all.

The extensive documentation requirements are inherent in all obligations, which leads to substantial resources spent on data processing activities that sometimes only present a low risk for individuals. This one size fits all approach is a problem and creates a drag on the business of publishers. Below, we identify some of the most difficult obligations to manage:

- Managing the legal bases for processing activities
- Dealing with individual data subject requests
- Overseeing international data transfers
- Reviewing GDPR-related contract provisions
- Applying the definitions of data controllers and processors
- Creating and maintain records of processing activities

ePrivacy Directive

Publishers are deeply frustrated at the current ePrivacy framework and specifically the rules concerning cookies and other tracking technologies. These rules are largely outdated and seen as ineffective and burdensome.

The ability to freely and lawfully process personal data for advertising, measurement, and performance analysis, is indispensable for news publishers to understand their audience, improve services and demonstrate value to advertisers.

The most frequent and pressing concern is the overlap and inconsistency between the GDPR and the ePrivacy Directive, particularly around cookie consent rules. Publishers argue that these rules make it unnecessarily difficult to use basic, first-party data for editorial and analytical purposes, and they limit audience engagement.

And so they call for a clearer distinction between first- and third-party data — especially where the processing supports editorial goals and democratic functions, such as audience measurement or product development. Ideally, the rules concerning cookies should also incentivise the use of first party data to promote privacy friendly usage of personal data.

Several publishers also call for expanded use of “legitimate interest” or “performance of contract” as a lawful bases for certain types of non-invasive processing — such as contextual advertising, frequency capping, audience measurement, basic campaign analytics, and non-profiling A/B testing.

They propose a “light-touch” legal basis or exemption for consent for such purposes, provided there are strong safeguards, such as no use of persistent identifiers and easy opt-outs. This would help reduce reliance on consent for routine processing that does not pose significant risks to individuals.

There is also an urgent need to clearly defend the use of so-called “consent or pay” models for news publishers, which are the subject of guidelines which the European Data Protection Board is expected to deliver this year.

The guidance is expected to build on the EDPB decision on Meta that finds the use of this model to be illegal, based on the exceptional circumstances of the case, namely Meta’s position as a dominant undertaking combined with the depth and invasive nature of the profiling activities it undertakes in respect of its users.

For publishers, the use of consent or pay business models takes place in relation to an entirely different service and context, as it serves to finance journalistic activities and information in the public interest. This happens as concerns continue to grow about the need to foster a more resilient media landscape against foreign interference.

Another important point of concern are proposals to centralise default settings for cookies in browsers, operating systems or other similar vehicles. This would cause significant disruption to the services of publishers and harm their business models, because such settings would drastically reduce the pool of monetisable, targeted advertising inventory, leading to declining revenues.

If the European Commission proceeds with proposals to centralise cookie settings, it

should exempt media service providers, as defined in the European Media Freedom Act (EMFA), thereby protecting their financial strength and overall resilience thereby furthering the goals of the EMFA and the upcoming EUDS. This enables MSPs to continue to fulfill their democratic mandate and promote security in the European Union.

Centralising cookie settings is also by definition incompatible with the core principles of the GDPR which require that consent be specific and granular with respect to each controller and processing operation. Therefore consent cannot be valid if it is provided in bulk. A “bulk refusal” is also legally inadequate because it is not informed and specific about the processing activities that are being refused.

The centralisation of cookie settings in browsers, operating systems or similar is also problematic from a competition point of view, since it would essentially reinforce the position of gatekeepers through regulatory means and exacerbate existing power imbalances in digital markets.

By making gatekeepers the de facto control points for user data preferences, introducing such rules would effectively hand them a significant advantage and increase their control over the digital advertising value chain which is already under serious scrutiny by authorities globally.

Transparency and Targeting of Political Advertising Regulation

These new rules are motivated by real concerns about protecting democracies against foreign interference. However, they have become very complicated and burdensome to implement due to the extensive requirements which are imposed on publishers of political advertisements (eg. media companies).

The regulation essentially forces publishers of political advertisements to engage in extensive data collection and verification exercises relating to the advertisements they display on their properties, and for which they are fundamentally not responsible for (the advertisers are).

The regulation also introduces restrictions on the targeting of political advertisements to individuals, when using personal data. Several of those restrictions, however, go beyond and diverge from the applicable rules already found in the existing GDPR/ePrivacy framework.

The rules apply to publishers and online platforms in the exact same way irrespective of size, and so small publishers, local parties, and SMEs face the same requirements as large platforms.

Overall, the regulation failed to meet a simple common sense test: there is a real risk that compliance costs may exceed the limited revenues of this small advertising

segment. And by the same token, the regulation has become overly complex and burdensome relative to the size of the market it regulates.

This has already led the largest dominant market actors such as Google, Meta and Microsoft to terminate their political advertising services in Europe, because of the burden created by those new EU rules.

Digital Fairness Act – commitment to keep it evidence-based and proportionate, using a risk-based approach

While the specific contents of the upcoming DFA are yet to be determined, the Commission has already indicated interest in horizontal rules across different issues such as subscriptions, personalised advertising, dark patterns, and the protection of minors.

The inherent risk associated with horizontal rules is that creating one-size-fits-all obligations inevitably overlooks sectoral specificities and imposes unnecessary administrative burdens, at a time where the priority should be to simplify EU digital rules to make it easier to do business in Europe. This is a priority for publishers too, many of which are SMEs that find it difficult to navigate the EU's digital rulebook.

These concerns find reason in the current evidence base presented in the Fitness Check which, in our view, is insufficient to justify new legislation. The quantitative analysis informing the Fitness Check relies heavily on opinion-based data, and struggles to isolate and attribute impacts directly to gaps in the existing Directives.

We therefore urge the European Commission to prioritise better enforcement of existing consumer protection legislation before considering the introduction of new, far-reaching obligations that could add complexity and legal uncertainty. Doing so would support the stated aim of legislative simplification, reduce the risk of fragmentation, and enable a unified interpretation and effective enforcement.

It is crucial that any potential legislative proposals adopt a risk-based approach. This approach should be targeted and prioritise sectors and practices where actual consumer harm or unfairness is demonstrably occurring, rather than adopting broad horizontal measures that risk unintended negative impacts on news publishers.

The Digital Fairness Act could directly impact how publishers design, deliver and monetise their digital services. While addressing manipulation or deception is legitimate, the proposed rules must avoid unintended consequences for editorial freedom and innovative user engagement.

For example, many of the concerns raised relating to “dark patterns” lack a clear and consistent definition, which are likely to lead to overenforcement. Such enforcement could subsequently create spillover effects in the enforcement of different but related fields of law, such as data protection.

Our main concern is therefore that overly generic rules could further undermine the economic and editorial challenges faced by independent news media, thereby threatening their ability to provide trusted journalism. A targeted, evidence-driven focus will ensure that consumer protection is both effective and proportionate.

Artificial Intelligence Act – simplification should not dilute copyright obligations

The AI Act is both important and necessary to protect citizens against high-risk applications of AI technology. In addition to the rules that prohibit or regulate high-risk applications, the Act also sets out rules concerning so-called General Purpose AI “GPAI” models (Chapter 4 and 5), which also includes large language models such as OpenAI’s ChatGPT and Google’s Gemini.

Whatever simplification the Commission is considering, it is essential that the Commission maintains a clear exemption for the labelling of AI-generated content when it undergone a process of human review or editorial control and where a natural or legal person holds editorial responsibility for the publication of the content.

In addition, it is equally important that the simplification measures do not impact the obligations GPAI models have under Article 53 relating to EU copyright law and the making available of a sufficiently detailed summary about the content used for training of the GPAI model.