

**Subject: Position of French Publishers for the EDPB Stakeholder Event on "Consent or Pay" Models, November 18, 2024**

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In recent years, and particularly since the entry into force of the GDPR, publishers have placed the protection of their users' personal data at the core of their values and take pride in contributing to the development of a responsible European digital economy. However, publishers' digital responsibility extends beyond personal data protection to encompass respect for all fundamental rights set forth in the Charter of Fundamental Rights of the European Union, including the rights to freedom of expression and information, and freedom to conduct a business.

These fundamental rights hold equal weight and must be balanced harmoniously in practice. Accordingly, in line with Recital (4) of the GDPR, the right to information and freedom to conduct a business should consistently be weighed against the protection of personal data. GESTE is thus particularly committed to establishing balanced frameworks that benefit both citizens and European digital stakeholders.

The fragile and evolving business models of publishers have been massively impacted by the digital revolution. To adapt within an increasingly unbalanced competitive landscape and legal framework, publishers have had to adjust their strategies. In a context where users' willingness to pay for content has stagnated, free access to content plays a significant role in supporting media pluralism, ensuring that diverse voices and perspectives remain accessible to the public despite economic challenges. By allowing all users, regardless of financial means, to access information, this model encourages a more informed society. It also supports a balanced media environment where publishers can offer unique perspectives and cover diverse topics.

Thus, in the digital environment, advertising—particularly targeted and behavioral advertising—serves as an essential means for publishers to fund content without requiring payment from readers. Additionally, content funding is far from the only expense that publishers must manage. Among the non-exhaustive list of costs borne by the publisher:

- Costs related to program and content acquisition (rights acquisition / production / commissioning external content)
- Costs related to the remuneration of journalists and rights holders
- Costs related to bandwidth and "rich media" content
- Costs for content moderation
- Costs for developing innovative features (resuming playback, personalization, seamless user experience)
- Hosting / server / cloud costs
- Marketing, development, and R&D expenses
- Compliance costs (regulatory obligations and virtuous goals for publishers, including privacy and various aspects of CSR such as environmental sustainability, social equity, and accessibility...)

- HR expenses and service fees
- Website and mobile app maintenance costs
- Advertising management costs + fees and commissions
- Technical costs (content security, CDN, Data Rights Management, transcoding, etc.)
- “Hard” physical costs, including electricity, water, etc.
- External costs for services and features

Running any business inevitably involves costs. The idea that digital services and content should always be free is unrealistic, even while providing guarantees governed by GDPR. While it's important that users have equal access to online services, there is no legal requirement for any service provider to offer services without charge, be it direct or indirect. Even essential resources, such as water, oil, gas, and electricity, are provided at a cost. Consequently, news and media services should not be considered as free of charge services. Moreover, information is not just another commodity; it is a cornerstone of democracy.

For many years, businesses have provided price reductions in exchange for consumer data, particularly through loyalty programs. Examples in television, radio, newspapers, supermarkets, retail, hospitality, and transportation illustrate this exchange, where clients receive discounts or free of charge services in exchange for providing information such as their centers of interest, or social demographic data, such as birth dates, preferences, etc. These businesses gain valuable insights from this data, when monetizing their audience towards advertisers and their intermediaries, allowing them to engage customers further and often tailored services to individual preferences, thereby enhancing both customer experience and business sustainability.

Digital-based press, media and content publishers get a large part of their revenue from advertising, including targeted advertising, which is more profitable than non-customized advertising. Without targeted advertising, such digital businesses would lose their value and be left to die. This points to the utmost importance of pluralism and journalism for modern democracies.

In light of this, many publishers have chosen to anticipate the foreseeable decline in consent rates, a decline almost mechanically linked to the increasing regulatory constraints imposed to secure valid consent. To do so, they have implemented "Cookie Walls" (or, more specifically, **Alternative Content Access Mechanisms**, with the most widespread and adopted being “Pay or Consent” models), a strategy supported by a currently favorable legal context, although certain aspects remain to be clarified.

In practice, the complexity of mandatory legal disclosures displayed within publishers' consent management platforms, combined with that of the digital advertising value chain, often renders users' choices more random and binary rather than informed and granular. For the user, the primary goal is to access the desired content with minimal friction. This is evidenced by the extremely low percentage of users opting for granular choices among various cookie purposes—a rare, if not nonexistent, practice. Nevertheless, the binary nature of this decision (yes/no) can have significant repercussions on the economic model of the media, impacting their ability to integrate fully into the data economy.

Furthermore, this mechanism allows users to make decisions based solely on privacy considerations. However, since consent rates directly affect the media's economic model, it is crucial for users to understand the impact of their choices on other fundamental rights and freedoms at stake, particularly the financing of news media.

These Alternative Content Access Mechanisms are designed to allow users, according to their preferences, to choose among several ways to access a service, thereby accommodating:

- Users who choose to refuse advertising cookies and the storage of information, or access to information already stored on their terminal equipment, may therefore be provided an alternative access option that does not include advertising cookies, limiting cookies to only those strictly necessary for the service's functionality.
- Users who consent to the processing of their personal data through advertising cookies may select this option to access the service.

These mechanisms, widely adopted in recent years, have helped users better understand the economic model of media sites by providing alternative content access options. This approach clarifies the value exchange involved—where free access is often supported by advertising revenue or data collection—and promotes transparency, empowering users to make informed choices about how their data contributes to free content and sustains diverse media services.

During the exchange session on November 18, we aim to promote transparency and an educational approach to these issues. Our experience in discussions on this topic leads us to request that certain preconceived notions be clarified in light of these issues :

- **Debates and discussions should avoid creating confusion between advertising and personal data protection.** Indeed, discussions often tend to focus on the principle of advertising itself. This confusion often centers around the saying “if it's free, you are the product,” whereas in reality, as outlined above, it would be more accurate to say, “if it's free, it's because value is shared,” without necessarily implying abusive exploitation or non-proportioned and opaque practices. Adopting this perspective would allow for more balanced discussions. In any case, the EDPB is neither the regulator of advertising nor is the purpose of the meeting to interfere with the business models of private operators. Furthermore, the use of user data serves many purposes beyond advertising alone: site and application development, service innovation, fraud prevention, adaptation of editorial content - all of which also benefit the user.
- Moreover, one of the primary criticisms of targeted advertising is its intrusive nature, which some consumers find bothersome. While users have become accustomed to ads tailored to their browsing behavior, certain individuals perceive this as an invasion of privacy and would prefer contextual advertising, which is considered less intrusive. Publishers fully understand and take this perspective into account. Although less lucrative, contextual advertising- especially when based on cookieless technologies and anonymized data, as can also be the case with behavioral

advertising- could, in certain cases, be a viable option and a reasonable compromise, provided it includes controlled frequency capping, precise and granular performance measurement, and effective anti-fraud measures, which is not achievable under the current legislation without user consent.

**This is why we rely on publishers to refocus this debate and take an educational approach in addressing this discourse, which, while it may be understandable, is often skewed by a misinterpretation of the applicable legal framework.**

**We also rely on the EDPB to refocus on the core interpretation of GDPR principles aiming at balancing fundamental rights and personal data processing, without exploring consumer protection, competition, or gatekeepers' regulations, for which they have no jurisdiction.** The articulation between the GDPR and the DMA (Article 5.2) and the DSA, as well as with the Omnibus consumer protection Directive, requires to rule Pay or Consent alternatives under the GDPR only, as far as the EDPB is concerned. Then, the European Commission or competition authorities, as well as the BEUC and local consumer protection authorities, will consider and provide their own interpretation of “reasonable expectations” (which does not apply under GDPR consent requirements), “equivalent services”, “fair price” and “imbalance of powers”. The pending confusion of competencies between competing regulators will provide neither a strong and secure interpretation of the GDPR, nor a tangible and reliable enforcement of consumer protection and competition rules resulting from other European legislations.

If several regulators apply similar concepts under their own jurisdiction without aligning their respective interpretations, the application of consumer protection rules under GDPR will be applicable to European press and media services, and will not only apply to gatekeepers and social media platforms.

**It is essential that users and consumer association representatives invited to this discussion understand that, given the interaction between the ePrivacy Directive and GDPR requirements, user consent is required for purposes and operations that are minimally intrusive yet vital for publishers,** such as ad frequency capping, A/B testing, performance measurement, and tracking newsletter deliverability. Even when no personal data is involved, the combined effect of the GDPR and the outdated 2002/58 ePrivacy Directive significantly impacts publishers' activities. The user's refusal via an "opt-out all" button in a CMP, aside from the rare cases of granular consent, means that the publisher is left completely in the dark, unable to accurately count displayed ads or control their frequency.

- Another misconception that should be clarified from the outset—and that all stakeholders must keep in mind—is that consent enables users to benefit from all the rights and safeguards provided under the GDPR. We emphasize this point particularly, as consent is often perceived as an unregulated area—a sort of “wild west” without rules or constraints—creating the impression that the GDPR no longer applies. This is absolutely not the case: **even when consent is given, the GDPR fully applies and continues to protect users.** The paywalls model does not imply any sacrifice of privacy protection: free access to a service or content provided subject to an advertising consent should always result in data processing by the

service provider that is compliant with all the data protection principles. Your institution is ideally positioned to recognize this reality and should communicate it even more emphatically.

Thus, we will be particularly attentive to ensure that forthcoming discussions and guidelines focus more on supporting publishers and enhancing their legal certainty, rather than on questioning the principle or excessively tightening constraints around these mechanisms—often misunderstood as a whole—which could have serious consequences not only for publishers but, above all, for users.

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### **About Alliance de la Presse d'Information Générale**

Founded in 2018, the Alliance brings together 297 news publications. It is the main organization of French publishers in terms of journalist employment and print and digital circulation. The Alliance advocates the interests of publishers and promotes a fair ecosystem for press and journalism. <https://www.alliancepresse.fr/>

### **About FNPS**

The FNPS, whose action aims to represent, defend, inform and advise its members, brings together 7 unions of press publishers: SPCS (cultural and scientific press), SPEPS (press specialized in the health sector), SPEJP (press economic, legal and political) SPPRO (professional press), SPMS (specialized magazines), SPS (social press), SNPAR (agricultural and rural press) which represent 420 publishing houses, publishing more than 1,700 professional and specialized magazine titles (1,200 printed magazines and 500 online press services) [www.fnps.fr](http://www.fnps.fr)

### **About GESTE**

GESTE is a French organization that brings together the main publishers of online content and services, comprising more than 100 members, including most French media groups. Since its establishment in 1987, GESTE has been analyzing changes in publishers' economic models, providing a better understanding of the challenges of digital transformation, and contributing to the development of favorable economic, legislative, and competitive conditions. [www.geste.fr](http://www.geste.fr)

### **About SEPM**

SEPM represents 80 member companies, both press groups and independent publishers, with nearly 500 print publications for the general public and over 200 online publications, covering general and political news, culture, youth and the full range of French interests. SEPM member publishers represent the 2nd largest employer of journalists in France, and reach millions of readers every day

### **About SRI**

The SRI (Syndicat des Régies Internet) is a French trade association regrouping 29 members, digital sales houses and sell-side adtech partners. The SRI and its members share their expertise and promote best practices for a responsible and sustainable digital advertising landscape. It also provides keys to understand the complexity of the digital advertising ecosystem, in particular through [l'Observatoire de l'e-pub](http://l'Observatoire de l'e-pub). [www.sri-france.org](http://www.sri-france.org)