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Response to Consultation

Publisher Conduct Requirement

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. In our response to this and the other consultations, our focus for this first set of conduct requirements is where the conduct requirements raise concerns for the wider digital economy, or where its analysis sets a concerning precedent for future SMS investigations.

The benefits and risks of Google providing separate controls over training and grounding outside of general search

Interference with ongoing government policymaking

The Government has consulted upon and is conducting a lengthy process to navigate the political and economic issues relating to AI and copyright. The Government has defined its objectives in terms of a balance: more control for rights holders and more legal flexibility and protection for UK AI training. The CMA's approach, however, risks unduly complicating model training.

We understand that the CMA does not see itself as duplicating or interfering with this work, and considers competition and copyright as separate enforcement areas. However, by promulgating regulations regarding the use of publishers' content to train AI models, the CMA risks interfering with that work and is likely to encounter many of the same issues that the Government process is better placed to navigate (e.g. territoriality, discussed in more detail later). Any impact on the quality of AI services in search would run counter to the Government's objectives, reflected in its strategic steer to the CMA to support economic growth (in this case, deployment of and investment in AI services).

This proposed approach may create numerous practical challenges. For example,the CMA's proposal will introduce a regulatory structure and legal requirements around operating the existing Google-Extended controls in a certain way. If the Government settles on an "opt out" approach which is not the same as the CMA's, Google may have to implement duplicative or conflicting regulatory compliance systems. While the CMA might believe that it can adjust the conduct requirement in the event this occurs, doing so will inevitably complicate what is already a challenging regulatory process for both the Government and businesses it seeks to regulate.

More fundamentally, the CMA's approach here will encourage parties in this and other settings to go "forum shopping". Instead of moderating their demands to reflect the trade-offs that Ministers are trying to strike between different economic and political priorities, they will instead push for the kind of negative-sum "win" that publishers are seeking in this conduct requirement. If this becomes a trend, quasi-legislative action by the CMA will undermine the Government's ability to pursue pro-growth reforms where that requires balancing commercial interests.

Requirements to disclose sensitive information around AI training

There is limited detail in the consultation over what the CMA requires to satisfy its requirement that publishers be able to understand how "Search Content is used for the training and grounding of its generative AI services and features". Transparency is an example of the wider challenges with legislating in this area that the CMA is poorly placed to address. Such transparency over AI training can imply significant risks, including:

- **Security:** if the functionality of AI models is made public, then this will create opportunities for people to exploit those models and how they are trained. Particularly where AI is used in important services such as search, this could then have important consumer or security impacts.[1]
- **Competition:** if developers cannot retain commercial secrets about how their models are developed, it will be harder for innovative developers to compete and stay in the market by differentiating their approach. This includes Google modernising Google Search by including AI features and responding to competitors such as ChatGPT, which the CMA noted was the "market leader" with respect to AI assistants.
- **Practicality and Cost:** sharing information about the very broad sets of data used to train the most significant models will be a major and expensive undertaking and undermine the dynamism of the market, in which a large number of models are currently being developed by a diverse range of companies.

With this in mind, the CMA should be clear that any requirements relate to a high-level summary of how publisher information is generally used, reflecting established industry principles for how to mitigate those risks.[2] More fundamentally, the CMA needs to appreciate the significant difference between data relating to training and data relating to usage, which is both more directly related to UK activity and generally less sensitive.

Creating an artificial distinction between search functions

This intervention is premised on a distinction between AI overviews and wider search results that there is no reason to believe will or should be a permanent state. By requiring different approaches to the management of data for the two functions that Google offers as an integrated service, the CMA risks freezing a dynamic and innovative process of adapting online search to reflect changing technological possibilities and consumer expectations.

This is particularly problematic because the UK would be imposing distinctive requirements not seen in other major markets (e.g. the United States and the European Union). If Google continues to deepen the integration of what is currently AI Overviews with established search functions, and this is not compatible with the CMA's expectation that they remain

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[1] Research by the UK AI Security Institute, the Alan Turing Institute and Anthropic found that "data-poisoning attacks might be more practical than believed". *A small number of samples can poison LLMs of any size* (Oct. 9, 2025), https://www.anthropic.com/research/small-samples-poison. Overly granular transparency over AI training necessarily makes it easier for third parties to identify and exploit opportunities for such attacks.

[2] CCIA, Principles and Template - Transparency in AI Model Training Data, https://ccianet.org/library/principles-and-template-transparency-in-ai-model-training-data/.

separate to enable distinct controls, the company would be faced with a choice between setting back global progress in its services or holding back those developments in the UK. This occurred in some other European countries with delays to the introduction of AI Overviews as a feature.[3]

By creating regulatory uncertainty around AI investments by Google (and other potentially-designated companies), the CMA risks stifling innovation and chilling competition in the UK. It further risks a divergence over time between a legacy service for the UK and a cutting edge service for the United States and other major economies, with new features delayed or not introduced here at all.

To the extent that the importance of AI tools (Google's and others) in terms of overall consumer searching for content online is growing, any purported benefits of this measure will fall over time as well, as the distinction between opting out of AI overviews and other search results becomes less meaningful. Publishers themselves in the CMA's workshop on 11 February voiced the view that over time they would not use this control, or few would, as they want to be featured in AI Overviews results. While publishers may still express an interest in being able to opt out, versus not having such an option, this reflects that they bear none of the social costs associated with worsening the search experience. Publishers have no reason not to support the option of being able to withdraw consent, even if most do not really expect to use that option. The costs in terms of technological and jurisdictional fragmentation will be borne by UK consumers regardless.

Extra-territoriality

Rules over how published content is used are generally territorial. Queen Mary University of London Professor Noam Shemtov notes how "intellectual property rights are created, delimited, and maintained in accordance with the laws in which protection is sought. By the same token, a state has no competence to legislate with respect to conduct occurring outside its territorial jurisdiction."[4]

This reflects that divergent regimes complicate the process of model development. If the CMA and other national regulators impose restrictions over the content used in AI model training, even where that training occurs outside the UK's borders, such as models trained under, for example, the more flexible "fair use doctrine" in the United States. Innovators like Google would be constrained either way, and would likely either have to compromise their practices globally, or to some extent isolate the offer that they provide for the UK, entailing both engineering costs and increased complications in improving the service. As noted above, the likely outcome is a weaker search experience for UK users.

This also functions as a barrier to trade. AI models developed in one market would not be permitted unless they were trained based on CMA expectations for how their training responded to robots.txt requests, with no reason to believe this will not be extended to

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[3] https://www.euronews.com/next/2025/04/01/googles-ai-feature-on-hold-in-most-eu-member-states-due-to-strict-rules.

[4] Noam Shemtov, *Against Extraterritorial Reach: Why the UK Should Resist Extending AI Regulation to Overseas Model Training*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6102107.

other models either by the CMA (in subsequent SMS investigations) or by other regulators in the UK and globally. As Professor Shemtov notes:

> Applied in an extraterritorial fashion, copyright laws may function to restrict the flow of data or AI models across borders. Such restrictions can prevent the export or use of AI systems trained abroad, limiting international exchange. Other jurisdictions may respond with retaliatory measures, further fragmenting the global AI ecosystem upon which British research and enterprise increasingly depend.

The result may be that the CMA is not only constraining the Government's established process to develop AI policy, but also its wider trade policy.

The benefits and risks of Google providing page-level controls outside of general search

Many of the risks noted in the section above, and limits on the utility of the measure, apply to page-level controls, except that the scale of the disruption and the distance between UK and international norms for the use of publisher content would be greater. Publishers do not bear the social costs associated with this fragmentation and their preferences alone are not meaningful evidence that this will improve outcomes for consumers.

The benefits and risks of Google providing performance and engagement information on a 'per feature' basis within general search

Specific information requirements seem at odds with the consideration in other areas (e.g. data portability) where the CMA has avoided UK-specific engineering requirements. Generally speaking, the CMA should seek to align with both existing practice and avoid creating UK-specific systems that could need to be continually adjusted as these services change and improve over time (changing the feature set). Any requirements in this area should be designed carefully to avoid unnecessary costs.

The most effective way(s) for Google to provide publishers with information to enable them to understand the quality of clicks referred from search generative AI features

There is also no practical link between consumer outcomes, which the CMA is supposed to be regulating, and an evolving international dialogue on the quality of clicks. CMA is attempting to regulate an international dialogue between Google and some publishers globally which, for better or for worse, will only have an extremely indirect and hard to predict impact on consumer outcomes in the UK.

The quality of clicks is necessarily a nuanced question and one that will evolve over time with digital services. It is not clear that there is an overall information asymmetry: Google

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knows more about where traffic has come from, while publishers know more about how that traffic behaves. There is no clear market failure that justifies CMA action.

Whether a mechanism for publishers to more easily communicate the reasons for blocking content from appearing in Google's search generative AI features would enhance the effectiveness of the proposed Publisher CR while ensuring it remains proportionate

It is not clear what market failure this would address. Both Google and publishers have reasonable incentives to take proportionate steps to understand their counterparties' motivations. Making this a regulatory question, subject to inflexible specifications, is likely to raise costs versus companies seeking to independently understand why content is blocked or not.

Examples and metrics that help explain how Search content is attributed in search generative AI features and the factuality of those features, and views on how these data would best be disseminated

No response.

The extent to which the proposed Publisher CR can be expected to result in identified consumer benefits, including ensuring that users are able to assess and trust content they read on the web

The CMA has not made a strong case for discernible consumer benefits. It has argued that there will be benefits for some publishers and assumed that this will result in improvements for consumers.

The CMA's assessment does not give proper consideration to the implications of constraining the development of Google Search over time. With the growth and evident potential of AI to improve many digital services, including online search, this is neglecting the most important question and troubling with a view to future SMS investigations.

There is no evidence presented that Google Search is not trusted (particularly versus other services) and indeed it has been described as "the industry's highest quality search engine" by a judge in the U.S.[5] Results in AI Overviews are attributed to sources and no case is made that Google does not have an incentive to continue to maintain that quality and

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[5] United States v. Google LLC, No. 1:20-cv-03010 (D.D.C. Aug. 5, 2024), ECF No. 1033, at 6.

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consumer trust by enabling consumers to click on appropriate links and verify its responses.

Impact on available content in AI Overviews

While the CMA cites potential publisher benefits stemming from increased control in withholding content, no evidence is provided for the claim that the risk of content being withheld to consumers is "low". There is no consistent attempt to weight the costs and benefits from additional content being withdrawn from AI Overviews, which represents an immediate cost to consumers that use the service.

Any costs stemming from these controls might easily outweigh any purported indirect consumer benefits that flow from whatever publishers might achieve by withholding content. The CMA should clarify whether these controls will be widely utilized by publishers to control consumer access to content, and the net costs or benefits of doing so.

Impact on innovation in Google Search

The most significant risk would be that the quality of Google Search is lower than it might otherwise be because the company has less flexibility in how it develops the integration of AI tools in its online search service. This risks chilling innovation, which might lead either to the service improving more slowly overall, or limiting or prohibiting new features being offered to UK consumers (either because they are technically hard to reconcile with this CR, or it is a lengthy process to establish that they are to the CMA's satisfaction). There have been prominent examples of such delays to services being introduced in the EU following the passage of the DMA.[6]

Any impact of this kind, even marginal, is likely to be large relative to the speculative upsides of this measure given the frequency with which Google Search. The CMA's analysis does not appear to give full consideration to the proposed regulation's potential negative impacts on innovation.

Benefits to industries are assumed to benefit consumers

There are a wide range of reasons for the challenges facing many publishers, including:

- Increased competition for advertising, with valuable markets (e.g. classified ads) now much easier for new publishers to replicate online (whereas previously the challenges of physical distribution limited competition).
- Increased competition for consumer attention, with many choosing between more options over where to spend their leisure time, including more direct (e.g. new online publishers such as Wikipedia competing with publishers of encyclopedias) or less direct (e.g. streaming video or video games competing with publishers of entertainment of all kinds) alternatives.

While some publishers may play important roles, the role of news in supporting democracy is a public policy question and not within the scope of the DMCC.

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[6] Examples are given here: https://ccianet.org/articles/europes-digital-markets-act-is-failing-users/.

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While Google Search is used a lot overall, this reflects that it has a large range of uses. In terms of e-commerce content, it competes with large e-commerce services with their own brands. For news content, Ofcom data suggests that the search engine is the 9th most common way for consumers to access news; for general knowledge, there is rapid growth in competitors such as ChatGPT.[7]

Given the highly competitive and dynamic nature of the online search market, purported publisher benefits stemming from this proposed regulation may not result in any notable improvements to consumers. It seems at least as likely that any stream of benefit from CMA intervention will raise regulatory compliance costs and lessen publisher incentives to adapt to a changing technological and commercial environment. At the very least, the CMA should demonstrate a clear causal mechanism for how the proposed regulatory measures in the consultation should be expected to benefit consumers. Otherwise the logic of the intervention becomes a transfer, rather than a competition measure.

Misplaced intervention in the AI market

The CMA noted intensive competition in the market for AI services such as chatbots in its designation of Google Search, and indeed noted that Google was not the market leader. However, it then justifies these measures as an attempt to improve competition in those adjacent AI sectors.

The CMA cites evidence that fewer publishers opt out of Google Search crawling (including AI Overviews) than other AI training. However, much AI training takes place under U.S. copyright law, where developers' AI training has been found to be fair use and therefore non-infringing.[8] Companies comply with opt outs voluntarily, in part because the nature and scale of many generative models is such that respecting machine-readable opt outs voluntarily has limited impact on the quality of the resulting models which are trained on very large volumes of content from across the Internet. This is also why publisher expectations of significant earnings related to AI training (versus more extensive integrations in the output of AI models) are unrealistic.

The fact that Google has generally crawled separately for Gemini evidences this point. If this was a profound advantage, why would Google neglect it in the development of its AI chatbot? Particularly given that, as the CMA has acknowledged, it is not the market leader.

Google's ability to integrate AI features is equally irrelevant in the context of this CR. Many AI developers have the potential to integrate new tools either in their own services or in services operated by other companies through commercial partnerships. Simply asserting the prevention of Google specifically doing this as a benefit without any sector-wide view of the sector, and when the investigation has rightly decided Google's wider AI services are not in scope in part because of the extent of competition it faces, is not credible.

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[7] Ofcom, *News consumption in the UK: 2025*, https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/online-research/adult-and-teen-news-consumption-survey/news-consumption-in-the-uk-2025-research-findings.pdf?.

[8] 17 U.S.C. § 107 ("the fair use of a copyrighted work . . . is not an infringement of copyright."). The economic role of fair use is discussed in Miller et al, The Economic Importance of Fair Use for the Development of Generative Artificial Intelligence, https://ccianet.org/research/case-studies/economic-importance-of-fair-use-for-development-of-generative-artificial-intelligence/

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It is prima facie at least as plausible that dynamic competition in AI would be undermined by asymmetric intervention in the sector; or that the overall development of AI will be impeded by making integrations necessary to the distribution of innovative services subject to disproportionate regulatory scrutiny (raising hard-to-quantify risks for other companies integrating AI services and potentially subject to SMS designation).