

NEWS MEDIA EUROPE

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Introduction

News Media Europe (NME) welcomes the CMA's proposed Publisher Conduct Requirement (Publisher CR) as a necessary and proportionate intervention to address harms arising from Google's Strategic Market Status (SMS) in general search. The CMA correctly identifies that publishers are subject to compelled consent: allowing crawling is a prerequisite for visibility in search, while the same content is increasingly used to power search-integrated generative AI features that materially reduce referral traffic and monetisation.

The Publisher CR is an important step towards restoring meaningful publisher choice and reducing entrenched bargaining asymmetries. However, its effectiveness will depend on enforceability and resistance to circumvention, as well as future-proof design as AI systems evolve.

NME therefore supports the Publisher CR in principle, while recommending focused improvements in three key areas:

1. Enforceability and escalation mechanisms, and ongoing independent compliance oversight
2. Robust measures to prevent loopholes that allow circumvention
3. Granularity of publisher controls across distinct AI uses, with explicit coverage of fine-tuning as an economically significant use

Compliance, monitoring, and enforcement

Meaningful choice requires that controls are verifiable and enforceable in practice, not merely available in theory. Where behavioural remedies fail to deliver real economic choice, the CMA should make clear that it will escalate swiftly to more robust measures, such as full crawler separation.

NME encourages the CMA to state explicitly that ineffective implementation or repeated non-compliance may justify stronger remedies, including more structural interventions. The credibility of such escalation is essential to ensure compliance incentives.

Given the technical complexity of AI systems and Google's informational advantage, ongoing independent compliance audits are necessary. A one-off or baseline audit is insufficient. NME supports a proportionate approach: regular independent audits, funded by Google, focused on high-risk areas and complemented by public compliance reporting.

Preventing circumvention

The Publisher CR must be robust to foreseeable circumvention strategies.

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- Open-source datasets: Where publishers have opted out, Google should be required to remove and exclude that content from any datasets it acquires, regardless of source, prior to any AI use. Otherwise, publisher choice risks becoming illusory.
- Secondary-source scraping: The CR should address scenarios where publisher content surfaced via Google interfaces is scraped by third parties in ways that undermine publisher controls.
- Onward sale or sublicensing: Any onward disclosure or commercialisation of publisher content should require explicit, informed publisher consent.
- Alternative ingestion pathways: Anti-circumvention obligations should apply across all Google products and services through which publisher content may be collected or reused.

Granular controls across economically distinct uses

Publisher content is used in economically and functionally distinct ways, including:

- training,
- fine-tuning,
- grounding of generative outputs,
- and search presentation.

Bundling these uses under imprecise or aggregated controls would undermine bargaining leverage and weaken the CR's objectives. Publishers must be able to authorise or withhold each use independently, at directory and page level, reflecting differences in value, substitution effects, and legal risk.

Page-level controls are particularly important for premium or time-sensitive content, where value is concentrated and blanket site-wide decisions are neither realistic nor efficient.

NME is concerned that fine-tuning is not treated as a separate category of use. Fine-tuning on high-quality, domain-specific content is increasingly central to AI performance and may, over time, substitute for grounding.

Absent a dedicated control, publishers risk losing leverage as AI systems evolve. Claims that fine-tuning is merely internal processing or inseparable from ranking should be tested, not assumed. Remedy design should not be anchored to unverifiable assertions by the SMS firm, particularly where information asymmetries are structural.



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