



Foxglove response to Competitions and Markets Authority consultation on conduct requirements relating to Google's general search services

Enforceable obligations on Google are long overdue [REDACTED]. As we have previously [submitted to the CMA](#), the impact on publishers of Google's ongoing behaviour is devastating and cannot be allowed to continue.

Publishers have no meaningful choice but to allow Google to scrape their content for use in their AI Overviews. If a publisher wishes to 'opt out' of AI scraping, they must block Googlebot from scraping their website altogether, thereby delisting themselves from the Google search results page. Given Google's Strategic Market Status and 90% monopoly in search, this is a death sentence for publishers.

Publishers must be able to stop Google from scraping their content for AI Overviews, and other generative AI products, *without* being punished by Google in search ranking.

The publisher opt-out - which we have urged the CMA to put in place since June 2025 - would give publishers a fighting chance of survival: it would give them control over how their content is used, allowing them to opt out of being scraped for Google AIOs without being removed from search, and provide them with a more equal footing for negotiations with Google on consent and/or compensation. To that extent, the CMA's proposed conduct requirements are welcomed, but they do not go far enough, and the proposed timetable is far too slow. Without interim remedies in place, the CMA is giving Google permission to continue stealing and profiting from publishers' work in the meantime.

Why granular opt-out controls and internal auditing are inadequate

Google's track record shows they cannot be trusted – the compliance of any conduct requirements must be externally verified by the CMA. The CMA has a duty to ensure that any remedy put in place is effective. Google has a long history of non-compliance that the CMA needs to take into account. It is now one of the world's most fined companies for non-compliance with antitrust law; EU fines amount to over €9bn and are only available for deliberate breach of the law. In *Epic Games v. Google*, Judge James Donato described Google's actions in relation to evidence suppression and destruction as "*a frontal assault on the fair administration of justice*" and "*the most serious and disturbing evidence I have ever seen ... with respect to a party intentionally suppressing relevant evidence.*" Many further examples of Google's long track-record in this respect can be found in the Annex.



The CMA's proposal of a Google internal audit, once every six months, is wholly inadequate. And separate crawlers – web from AI – must be required from Google, as [proposed by the News Media Association](#) among others.

The proposed system of 'granular' controls will not sufficiently address the problems identified by publishers or the CMA because Google's word cannot be trusted. The proposed auditing system allows Google to mark its own homework.

The CMA's proposal places all the control in Google's hands and prevents publishers from using any non-Google tools to block Googlebot from accessing their content without removing themselves from Google Search. It is clearly inappropriate to allow Google to maintain a unified AI and web crawler as well as audit itself. Both must change for the remedy to work.

For auditing: under the conduct requirements a third party will be enlisted to provide a 'baseline' audit of Google upon imposition of the conduct requirements. We see no reason why this third party - if they are to be trusted with seeing inside Google's 'black box' once - cannot be relied upon to audit Google's compliance with conduct requirements every six months. Publishers need an opportunity to assess the impact of conduct requirements on their businesses, and share such results with the CMA, so the regulator can properly assess the impact of their intervention.

Why separating crawlers is necessary and proportionate

There are multiple reasons for preferring a crawler separation solution.

The first is that the unified crawler - [REDACTED]

[REDACTED] e. The CMA has expressed its concern that Google is able to use unmatched volumes of publisher content to train and ground its AI products, and that this gives it an unfair advantage over the providers of rival AI models. If it continues to ingest data through a unified crawler that unique advantage persists, as the conduct requirement focusses only on which AI features are allowed to use which slices of data, rather than the initial acquisition mechanism and accumulated data that gives Google an [REDACTED] edge.

Second, in contrast to the granular controls' solution, crawler separation is observable and enforceable. Blocking a crawler - for example, with Cloudflare or robots.txt - is externally verifiable; publishers will be able to see whether the AI crawler obeys the rules and whether its traffic appears in logs.

¹ [REDACTED]: see *USA vs Google (Search) Mehta Opinion Judgment of 5th August 2025* and *EU Decision Google Search (Shopping) 2017* and CAT preliminary issue trial decision of 2025 in *Kelkoo, Connexity and Infederation vs Google*.



In addition, Google should be required to document and add an electronic tag to evidence which crawler powers which AI or search feature, allowing publishers to empirically check whether their content has been taken and test how altering their robots.txt affects different crawlers' behaviour and their appearance in Google's products. This evidence chain and direct observability advances the CMA's stated requirement that Google provide clear documentation and disaggregated data on the use of content in AI features.

Separating crawlers is both technically feasible and an industry norm. It has been noted that Google already separates out [nearly 20 other crawlers](#). Google itself [laid out a plan](#) in 2024 for how it could separate its AI crawler, but simply [chose not to pursue it](#).

Other companies providing AI products, such as OpenAI and [Anthropic](#), use [separate crawlers for search and AI training](#); it is clear that separating search bots from AI bots is the standard within the industry. Taken together, it is unclear why Google should want to remain a solitary exception, save that doing so provides it with an [REDACTED] advantage.

Conclusions

Allowing Google to keep control over how content is used within its black box, with no evidence chain, verification system or external auditing, does not adequately address publishers' concerns. In contrast, separating Google's crawlers and subjecting these conduct requirements to rigorous and regular evidence gathering, external auditing and oversight would provide an effective means of checking that the remedy is effective. This, along with interim remedies, would also ensure publishers have control over how their content is used and give them peace of mind that these requirements are being implemented fairly and thoroughly.

It is vital the CMA places more power in the hands of publishers. [REDACTED]

[REDACTED] Publishers must be able, urgently, to opt out of their content being used for Google's AI products without being penalised by Google. Without this, many publishers will not survive.

Thank you for your time and consideration.



Annex: [REDACTED]

Google has been characterised as a multi-recidivist in an open debate of the European Parliament,² by Valentina Palmisano MEP and Stéphanie Yon-Courti MEP. This pattern of deliberate non-compliance is evidenced, among other instances, by Google's behaviour in the *Google Shopping proceedings*, where it failed to adhere to remedies imposed by the European Commission.³

This pattern of deliberate non-compliance and evasion is also evident in United States litigation, where Google is regularly accused of violations in relation to the disclosure of evidence and the creation of an "environment of concealment".⁴

By way of example:

- It must be appreciated that Google is now one of the world's most fined companies for non-compliance with antitrust law, with EU fines only being available for deliberate breach of the law and amounting to over €9 billion.⁵
- In *Epic Games v. Google*,⁶ Judge James Donato described Google's actions in relation to evidence suppression and destruction as "*a frontal assault on the fair administration of justice*"⁷ and "*the most serious and disturbing evidence I have ever seen ... with respect to a party intentionally suppressing relevant evidence*,"⁸ highlighting its systematic obstruction of due process.
- In the *USA v Google (AdTech) [2023]*,⁹ Judge Leonie Brinkema observed that "*Google's systematic disregard of the evidentiary rules regarding spoliation of evidence and its*

²"Multirécidiviste": Valentina Palmisano and Stéphanie Yon-Courti – [European Parliament 20 October 2025](#)

³ In the European Commission's Google Shopping investigation (Case AT.39740), Google was required to give rival comparison shopping services equal treatment in search results, including unbiased presentation and fair participation mechanisms. Despite these formal obligations, Google implemented an opt-in auction system and subtle interface changes that technically complied with the remedies but continued to favour its own services, preserving its market advantage. This episode exemplifies Google's pattern of circumventing regulatory obligations by adhering to the letter of imposed requirements while undermining their intended effect, demonstrating the risk that Conduct Requirements without robust monitoring and enforcement may fail to produce genuine behavioural change.: [Connexity and others v Google – Judgment \(Preliminary Issues\)](#) see also <https://techcrunch.com/2024/11/20/duckduckgo-calls-for-eu-to-widen-its-digital-markets-act-probe-of-google/>

⁴ [How Google Spent 15 Years Creating a Culture of Concealment](#) – The New York Times

⁵ The European Commission has fined Google in Google Shopping (€2.42 billion fine), Android (€4.34 to €4.12 billion), AdSense (€1.49 billion) (although this case is currently under appeal to the European Court of Justice) and Ad Tech (€2.95 billion)

⁶ *Epic Games, Inc. v. Google LLC*, No. 24-6256 (9th Cir. July 31, 2025)

⁷ [The curious case of Epic Games: how the developer beat Google but not Apple](#) - The Guardian; [Federal judge vows to investigate Google for intentionally destroying chats](#) - The Verge; [Judge deciding Google's fate in Epic case is antitrust veteran](#) - Reuters

⁸ *Ibid.*

⁹ *United States et al. v. Google LLC*, No. 1:23-cv-00108 (E.D. Va. Jan. 24, 2023).



*misuse of the attorney-client privilege may well be sanctionable*¹⁰ emphasising that Google’s document-management practices undermined trust in its representations.

- In the *USA v Google (Search) [2020]*,¹¹ Judge Amit P. Mehta observed that *“Google...trained its employees, rather effectively, not to create “bad” evidence.”*¹² He noted that *“the court is taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants”*¹³ and *“as a result of Google’s chat deletion policy, “years’ worth of chats—likely full of relevant information—were destroyed” and thus never subject to regulatory scrutiny.”*¹⁴
- In the same *USA v Google (Search) [2020]* case, in a memorandum in support of plaintiffs’ motion to sanction Google and compel disclosure of documents where Google unjustifiably claimed were attorney-client privileged: *“As part of Google’s larger efforts to shield documents from production, Google employees were expressly directed to add artificial indicia of privilege on all written communications relating to the exclusionary search-distribution agreements at the heart of Google’s monopolies.” Google’s employees followed the Communicate-with-Care training, routinely adding in-house counsel to business communications, affixing privilege labels, and including pretextual requests for legal advice when no advice was actually needed, sought, or thereafter received. In these email chains, the attorney frequently remains silent, underscoring that these communications are not genuine requests for legal advice but rather an effort to hide potential evidence.”*¹⁵
- In France, after ordering interim measures in the form of injunctions in April 2020 ([Decision 20-MC-01 of 9 April 2020](#)),¹⁶ the *Autorité* found that Google had not complied with these injunctions and imposed a fine of €500 million, as well as ordering Google to comply, under penalty payment, with the initial injunctions (Decision 21-D-17 of 12 July 2021).¹⁷

¹⁰ Ibid. [Memorandum Opinion](#). Page 114

¹¹ *United States v. Google LLC*, No. 20-cv-3010, 2024 WL 3647498 (D.D.C. Aug. 5, 2024).

¹² Ibid. Page 275

¹³ Ibid pg. 275

¹⁴ Ibid pg. 273

¹⁵ Memorandum In Support Of Plaintiffs’ Motion To Sanction Google And Compel Disclosure Of Documents Unjustifiably Claimed By Google As Attorney-Client Privileged (21 March 2022) available at <https://www.justice.gov/atr/case-document/file/1577876/dl?inline>. See also Sidley Austin’s release on this at <https://www.sidley.com/en/insights/newsupdates/2022/04/doj-accuses-google-of-intentionally-misusing-privilege-to-hide-sensitive-documents>

¹⁶ <https://www.autoritedelaconurrence.fr/en/decision/requests-interim-measures-syndicat-des-editeurs-de-la-presse-magazine-alliance-de-la>

¹⁷ <https://www.autoritedelaconurrence.fr/en/decision/compliance-injunctions-issued-against-google-decision-20-mc-01-9-april-2020>



- In 2010, in the UK, the UK data protection authority, the Information Commissioner's Office (ICO) ordered Google to delete personal data obtained from its Street View cards from open WiFi networks. Google later admitted that it did not erase the data by mistake, data which could include millions of emails and passwords. Google did not comment regarding the moment when they realised they had not deleted all the data. Nick Pickles, director of privacy at the pressure group Big Brother Watch: *"Given that Google failed to respect people's privacy in the first place and subsequently failed to adhere to its agreement with the information commissioner, serious questions need to be asked to understand why Google seemingly sees itself as above the law."*¹⁸
- In the EU Google Shopping case, Google was permitted to propose a remedy under Article 9. The resulting design relied on auction mechanisms that, on paper, appeared neutral and non-discriminatory. However, in practice, the remedy failed and is now under investigation for non-compliance under the Digital Markets Act 2022 self-preferencing obligation.¹⁹ Independent evaluations found that the auction design imposed additional costs on rivals, while Google's own services benefited from structural advantages in traffic, brand recognition, and integration with general search. Organic demotion of competitors persisted, traffic flows did not shift meaningfully, and no meaningful competitive entry occurred.
- Google often resists any disclosure or searching of documents from senior executives and their document repositories. In one of the UK private actions against Google further to the *Google Shopping* case, the claimants highlighted that many documents refer to the strategy of demoting comparative shopping sites but the strategy document itself is not disclosed nor any documents from senior executives have been searched / included in the disclosure.²⁰
- Google protects all disclosure by creating image files that are difficult to search but then claims that it has technically complied with the disclosure orders and the provision of searchable documents being visible for inspection.²¹ It uses combination of image and TIFF and text files to prevent parties from being able to effectively inspect evidence.
- Google often uses "GoogleSpeak" that confuses non-Goglers. Internal document

¹⁸ <https://www.standard.co.uk/panewsfeeds/google-ordered-to-hand-over-data-7982341.html>

¹⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811

²⁰ See *Kelkoo & Others v Google UK Ltd & Others* [case management conference of 26 July 2023](#), in particular, page 61

²¹ *Skimbit Ltd & Others v Google & Others* in the UK Competition Appeal Tribunal regarding damages following Google Shopping. See [transcript of case management conference dated 18 July 2025](#) where references are made to Google's hyperlinks in documents not working and thus lacking the relevant document metadata (see pages 50 to 52) and that Google discloses documents in TIFF format for security reasons in all worldwide proceedings in this format (see page 45)



reference project codenames (often Star Wars related such as Project Jedi after Jedi Blue) or with a tangential relationship to a subject. Product names are also changed regularly which makes tracking them over time difficult in terms of search terms or for document investigations spanning different product time periods.

- In the *EU Android* case, to address foreclosure arising from preinstallation and default search settings, Google introduced a “choice screen” intended to allow users to select alternative search engines. Empirical assessments, however, showed that the intervention produced less than a one percent shift in market share.
- More recent experience under the EU’s Digital Markets Act 2022, under Article 6(11), Google was required to share search click, query, ranking and view data with competitors. Google implemented this obligation by imposing thresholds that excluded over 99 percent of queries from the shared dataset. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- The Aspiegel Digital Markets Act 2022 effectiveness review documents these dynamics step by step, demonstrating how Google preserves disproportionate advantages “*in the structure, design, function, and manner of operation*” of operating systems and app distribution layers. Crucially, these practices are often compatible with a literal reading of the obligations, while clearly violating their economic intent. As a result, significant non-compliance investigations were opened within months of the DMA’s entry into force.

Together, these findings and patterns of behaviour reveal a consistent and well-documented pattern of evasive conduct that transcends jurisdictions and enforcement contexts. Whether before regulators or courts, Google’s approach to compliance has been marked by concealment, selective disclosure, and the calculated erosion of oversight mechanisms. This entrenched behaviour demonstrates that formal undertakings alone are insufficient to secure genuine compliance. Any regulatory framework must therefore be designed on the assumption that Google will seek to circumvent its obligations unless subject to continuous and independently verifiable enforcement.