

For the attention of Heads of State and Government in the European Council

Press Publishers' key priorities and concerns regarding the Digital Single Market Strategy

ENPA, the **European Newspaper Publishers' Association**, and EMMA, the **European Magazine Media Association**, would like to highlight the main strategic priorities and challenges of the press publishing sector in Europe, ahead of the discussion on the Digital Single Market (DSM) Strategy at the European Council meeting of 25-26 June 2015, and propose ways in which these priorities could be addressed.

1. VAT reform must allow Member States to apply lower VAT rates for digital press

We welcome the commitment in the DSM Strategy which states that the Commission will explore how to address the tax treatment of certain e-services, such as digital books and online publications, in the context of the general VAT reform. Moreover, we very much appreciate President Juncker's subsequent announcement that the Commission will put forward in 2016 a proposal, with the aim of providing Member States with the opportunity to reduce VAT rates for digital press. This long overdue VAT reform needs the specific support of the Council, since it is the Member States which should decide unanimously in favour of this essential adaption of the VAT system to the digital economy..

The recent ruling of the Court of Justice of the European Union against France and Luxembourg, following their consistent application of a lower VAT rate to print and e-books, has demonstrated the need for the EU to urgently update its VAT system to the reality of today's digital market. Newspaper and magazine publishers regard this update of the EU VAT system as indispensable to remove a major obstacle to the further development of the digital press market in Europe. Lowering the VAT rate on digital press would promote the access of European citizens to authoritative and independent press content on all platforms, which plays such a crucial role in European democracy.

Several Member States and Members of the European Parliament have already called for this essential adaptation of the EU VAT system to the digital age. In this context, the possibility for Member States to apply zero, super reduced or reduced VAT rates to printed newspapers and magazines has made an indispensable contribution to wider public policy goals.

We therefore call on the European Council to give its full support to a Commission proposal allowing Member States to apply to digital press the same zero, super reduced and reduced VAT rates that currently apply to printed press, while maintaining the possibility to apply these rates for the printed press.

2. Modernisation of copyright rules must allow European press publishers to thrive, in order to safeguard a vibrant, independent and pluralistic press

Newspaper and magazine content – delivered in print and across all digital platforms - represents a vital contribution towards building a better-informed and engaged democratic society. Effective **copyright protection is a key factor in securing the independent journalism, news and analysis that are fundamental elements of any democracy.** Digitisation has not reduced but increased the need for copyright protection, together with better enforcement. Press publishers must be able to rely on copyright protection to ensure remuneration for their significant investment and for the sustainable delivery of the high-value, quality, professional content they produce for Europe's citizens and businesses.

The substantial investment of publishers in developing new business models is based on the existing EU copyright framework, which carefully balances rights, exceptions and limitations. It is of vital importance that the crucial decision on the future of a new copyright framework is taken in full knowledge of the real economic impact of any new exceptions. For example, the ability of publishers to license their content for press review and other services has long provided a legitimate and essential revenue stream which could be **devastated by a new exception for text and data mining**. Likewise, there should continue to be the possibility for publishers to authorise and make **appropriate agreements with libraries/universities to allow for off-premises online consultation of works**.

One of the key challenges facing press publishers in the digital environment is how to ensure that technology companies, news aggregators and other third parties do not extract the value of their content, without remuneration for those who created or invested in that content. Effective IPR enforcement mechanisms and procedures are essential to combat both piracy and parasitism; as well as to ensure that rights holders and society at large can fully enjoy the benefits of the IP system. Therefore, **a modernised EU copyright framework should include exclusive rights for publishers** to protect their printed and digital press products, as well as promote media pluralism, in line with long existing rights for other creative industries such as, for example, broadcasters or phonogram and film producers.

We ask the European Council to directly acknowledge that copyright reform must under no circumstances threaten Europe's vibrant, independent and pluralistic press sector, which is so crucial for our democratic society. This means rejecting further exceptions and limitations going beyond the current framework and fully supporting the protection of press publishers' content in the digital environment.

3. Fair competition and transparency in the digital world is essential

In the Digital Single Market, fair competition and transparency are vital to maintain media plurality and to promote informed citizenship. In order to allow readers to find and access press content, non-discriminatory and fair access of publishers to all digital platforms, as well as transparent and fair search engines, are prerequisites for the development of attractive and sustainable content offers. **Principles such as fair search, net neutrality and platform neutrality are key and have to be upheld**, with the intervention of competition authorities where necessary. Otherwise, legislators must act in order to prevent gate-keeping or bottleneck effects that could hamper the development of content offers online.

In particular, Google's market behaviour and consequently the Commission's investigation in the **Google competition case (AT.39.740)** are crucial to press publishers' economic viability, media pluralism and diversity, as well as for future investments in new jobs, products and premium content. ENPA's Spanish member AEDE and German member BDZV, jointly with EMMA's German member VDZ, are formal complainants in the Google case, which has been ongoing for five years.

We welcome the Commission's statement of objections of 15 April 2015 regarding the self-preferential treatment of own shopping services in a quasi-search monopoly and support the extension of this finding on publishers' products and services. We share the Commission's preliminary assessment of 13th March 2013, that Google is abusing its dominant position in the field of web search services and welcome the Commission's intention to find appropriate remedies for this market distortion.

Publishers from Germany and Spain, supported by the vast majority of publishers from across Europe, have expressed the view that it is time for the Commission, as a highly respected competition authority, to enforce EU Competition rules effectively. **Only a clear ban on Google's preferential treatment of its own services and content within its quasi search monopoly can put an end to the anti-competitive conduct** and would restore competition, innovation and consumer choice in the digital market.

We agree with the Commission's commitment to fair competition and a level playing field in online activities. We welcome the way in which the DSM Strategy has identified problematic areas regarding platforms controlling access to markets and remuneration, using strong bargaining power and promoting their own services to the disadvantage of competitors. The Commission's commitment to launch a comprehensive assessment of the role of platforms is also a welcome development

The most urgent action in this field is the ban of self-preferential treatment in a quasi-search monopoly, which the Commission should take in the ongoing Google case. We ask the Council and the Member States to give the Commission the full support it needs to finalise this important case. As regards further action and the assessment of the aforementioned tasks, we ask the Council and the Member States to acknowledge the concerns outlined by the Commission and for their help in finding appropriate measures to remedy misuse of market dominant positions in the online environment.

4. Data protection rules should not hamper a free and independent press

As trialogue negotiations are now set to begin on the proposed General Data Protection Regulation, the current and forthcoming Presidencies of the EU have a mandate to negotiate. However, Member States will continue to have a critical role in this debate to ensure **that the final text agreed does not affect Europe's core democratic values, which include press freedom**. In this regard, the draft Regulation must ensure that journalists can continue fulfilling their daily mission and it must not pose a threat to the long-term economic sustainability of the press sector.

In particular, Member States' obligations to provide for **exemptions for journalistic data processing** under the existing Directive 1995/46/EC must not be weakened under the new Regulation (Article 80). The draft Regulation **should also not endanger press subscriptions and controlled circulation**, which strongly depend on data processing for direct marketing purposes based on opt-out, as allowed under the existing Directive. It is essential to keep an adequate balance between the data subject's rights on the one hand and the necessary use of data for publishers' current and future business models on the other.

We therefore call on Member States to robustly defend the Council's approach as a minimum solution during the forthcoming trialogue discussions on Article 80, and to avoid an overly restrictive approach, in particular on Articles 6, 14, 19 and 20, which could seriously and immediately affect the sustainability of press business models because it would prevent publishers from reaching potential new subscribers and readers.

5. It is vital to maintain an exception for the press in any review of the AVMS Directive

Consultations are underway regarding the future revision of EU Directive on Audiovisual Media Services (AVMS), which explicitly excludes electronic versions of newspapers and magazines from its scope. As addressed in the DSM Strategy: "the Commission will consider whether the current scope or the rules should be broadened to encompass new services and players that are currently not considered as audiovisual media services under the Directive...".

It is important to underline from the outset, that the press sector in Europe, in all its forms, cannot be regulated in the same way as broadcasting and other audiovisual services which are based on state licensing, prior authorisation and supervision of content by authorities, co-regulation and specific, strict commercial communications restrictions. It is therefore **essential to preserve press freedom on digital platforms by keeping digital press out of the scope of application of the AVMS Directive – including accompanying audiovisual services not being the principal purpose of the service.**

In the interests of maintaining a vibrant and pluralistic media landscape, where the broadcast media and the press can co-exist successfully in the Digital Single Market as vehicles of information, policymakers must realise the importance of maintaining a sufficient advertising share for the press in order to ensure its sustainability. The 12 minute per hour limitation for advertising for broadcast programmes was not only established as a consumer protection measure, but also to allow a fair distribution of advertising between different media. It is therefore **important that this limit remains in place.**

Furthermore, the possibility to grant certain content providers (e.g. public service broadcasters) **privileged status with regard to their findability** on these new hybrid platforms is against the principle of net neutrality, as it would affect the availability of access to other types of content on an equal and non-discriminatory basis, and **should therefore be rejected.**

We call on the European Council for its support on this matter in order to preserve press freedom and promote media pluralism on all platforms.

6. Combatting illegal content on the Internet while respecting freedom of expression

The DSM Strategy addresses the question of removing illegal content (e.g. based on terrorism, child pornography, copyright infringement, etc) and the role and liability of intermediaries under the E-Commerce Directive. The press publishing sector understands the public policy objectives to protect society against any threat to security or individual freedoms. It is therefore crucial to ensure that any measures taken on this basis do not impede other fundamental rights and freedoms, including freedom of expression. We therefore welcome the statement by the Commission that there will be **due regard to the impact on the fundamental right to freedom of expression and information.**

We would however ask the European Council to recognise the need to preserve the E-Commerce Directive, which is a cornerstone of the digital economy in Europe. Any future legislative proposal to tackle illegal content on the Internet should not lead to an obligation for publishers to monitor constantly blogs, forums, comments, etc. Such an obligation would go against press freedom, as it would lead to a systematic prior content control and censorship. The respective rules on liabilities in the E-Commerce Directive have already enabled the balancing of the various interests.

7. EU legislation on consumer contracts and banning “geo-blocking” will have a profound impact on press publishers’ businesses

It is vital for press publishers, which are mostly SMEs, to avoid the introduction of any legislation that could hinder distribution and easy access by consumers to European magazines and newspapers. Any **potential new legislative measures would make the process of agreeing and managing contracts more complicated**, in particular subscription contracts which are becoming an increasingly important source of revenue for publishers. We are therefore extremely concerned about the reference in the DSM Strategy to proposals for legislation for harmonised mandatory EU contractual rights applicable to domestic and cross-border sales of tangible goods, and for online purchases of digital content.

While a non-legislative, non-mandatory “tool box” may well be useful for some business models, it would be **inappropriate to launch into legislation** in this area and we are not aware of any solid evidence demonstrating the need to do so. There is already comprehensive legislation in place, including the Consumer Rights Directive. When discussing this Directive, the EU institutions notably rejected various ideas which would have made it more complicated to agree and manage subscriptions, or would have obliged press publishers to deliver subscriptions to all Member States.

Linked to this latter point, we are also **concerned to see that the DSM Strategy suggests that “unjustified” commercial decisions to not supply a certain territory** (“geo-blocking”) could be banned. It is important to note that press publishers, which are mainly offering national or local products, have e.g., defamation laws to take into account, as well other factors such as delivery costs. This may lead to differing prices and availabilities in different places. Moreover, the freedom to contract in a targeted way depending on the location has to be respected, in view of market driven business models which take the location of supply and demand into account.


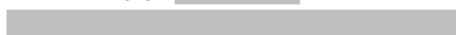
We would therefore ask the European Council to take note of these priorities and concerns in light of the future legislative initiatives and other measures planned in these areas, which would have a profound impact on press publishers’ businesses.

We hope that you will take these high priorities for the press publishing sector into consideration in the ongoing discussions on the Digital Single Market Strategy and its implementation.

Yours sincerely,


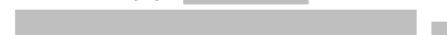


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ENPA is an international non-profit organisation representing publishers of newspapers and news media on print and digital platforms. ENPA represents over 5,200 national, regional and local newspaper titles, published in many EU Member States, plus Norway, Switzerland and Serbia. Website: www.enpa.be

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