

PPA (Professional Publishers Association)

Consultation Response: Call for views on “consent or pay” business models

About the PPA

The Professional Publishers Association (PPA) is the professional body for special interest member companies, ranging from large consumer magazine publishers to business-to-business data and information providers, as well as smaller independent publishers. Its 300+ members include 150 of the UK’s largest publishing houses, including Bauer Media Group, Condé Nast, Future PLC, Haymarket Media Group, Hearst UK, Immediate Media Co, Incisive Media, New Scientist and William Reed Business Media, as well as many smaller independent publishers.

Specialist publishing is worth £3.74 billion to the UK economy, employing around 55,000 people. Its reach covers 83 per cent of the population, with more than 40 million adults in the UK reading a magazine each month.

For enquiries regarding this submission, please contact:

[REDACTED]
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PPA (Professional Publishers Association)

[REDACTED]
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Response

1. Do you agree with our emerging thinking on “ consent or pay ”?
Disagree
Please explain your response to Q1
<p>The PPA does not agree with the ICO’s emerging thinking on “consent or pay” as it fails to acknowledge the differences in how publishers use data in comparison to dominant tech platforms. Also, the ICO’s approach does not give due consideration to the duties of other regulators such as the Competition and Markets Authority (CMA) to maintain a competitive digital economy and Ofcom to protect media plurality, as well as the “freedom to conduct a business” enshrined in Recital 4 of the GDPR.</p> <p>The PPA maintains that the industry, along with most UK websites and certainly all ad-funded sites already employs a free-of-charge, clear and transparent communication model for consumers to accept or decline tracking (see section 2(d) below).</p> <p>Furthermore, in the case of specialist publishers, they use particular data collection for advertising that aligns with user expectation. For instance, a fashion publisher would present its audience with fashion-related advertising in addition to its works. In some cases, this is part of what the audience are seeking when they visit the publisher’s website. The PPA believes that the ICO should recognise that difference between the narrow, purpose-specific way in which advertising data is used by specialist publishers and the broad sweeping data collection conducted by dominant tech platforms.</p> <p>Additionally, our members’ ad-funded content is restricted by the implementation of a “consent or pay” model for data, whereas platforms are not. More publishers and particularly more specialist publishers will be forced out of business as they will have less opportunity to transact on their current, ad-funded revenue model. ‘Consent or pay’ is not employed by or suggested for dominant tech platforms but is a significant business change for the media sector.</p> <p>We believe that a better balance needs to be struck between an individual’s right to protection of personal data and consumer rights. This is in the interests of businesses and users.</p> <p>Specialist publishers provide their audiences with access to their intellectual property, which costs money to curate. The creation of this content is funded by advertising. It is not financially feasible for any business to provide products for free: this is no different for specialist publishers.</p>
2. How helpful are the indicative factors in comprehensively assessing whether “consent or pay” models comply with relevant law?
a) Power balance

Neither helpful nor unhelpful

In the case of specialist publishers, a user could access content from a competitor if they wished to withdraw consent. Therefore, it is the view of the PPA that there is no power imbalance between specialist publishers and their users.

However, the PPA urges the ICO to liaise with the CMA to align its assessment of power imbalance with the new legal definition of “Strategic Market Status”. Large tech platforms that possess a disproportionate amount of user data and market influence should be recognised as consequentially having disproportionate market power by the ICO and the CMA alike.

b) Equivalence

Unhelpful

The PPA requests that the ICO give greater clarity on whether publishers may offer a choice between personalised ads and a ‘premium’ ad free service that bundles content from several publications together. This is how ‘consent or pay’ has materialised in other markets such as Spain. We also urge the ICO to take into consideration the distinction between collection of data for advertising and the collection of data for preference settings, which facilitates user empowerment.

Additionally, the PPA ask that the ICO’s enforcement approach should not inhibit the range of options for users and businesses with respect to advertising , content access and preferences. Specialist publishers may wish to offer a range of options to the consumer, including:

- A service where the user accepts cookies and receives targeting advertising and content without paying a fee;
- A service where the user accepts cookies and receives targeting advertising and content while also paying a fee;
- A service where the user rejects cookies and receives non-targeted advertising and content while also paying a fee;
- A service where the user rejects cookies and receives content without advertising while also paying a fee;
- A service where the user may reject cookies and receive a limited amount of content with non-targeted advertising without paying a fee, and then being required to pay a fee to access further content;
- A service where the user may reject cookies and receive a limited amount of content without advertising without paying a fee, and then being required to pay a fee to access further content.

The PPA recommends that equivalence be foregone on the grounds that in cases where the option to not give consent is more attractive, that we can say with confidence that if a user gives consent, then that consent is freely given.

c) Appropriate fee
<p>Neither helpful nor unhelpful</p> <p>The PPA encourages the ICO to defer to the Competition and Markets Authority (CMA) on regulation of pricing. Further, any measures on price caps should be subject to thorough stakeholder consultation. Specialist publishers are private enterprises and therefore should have authority on their pricing strategies within the market.</p>
d) Privacy by design
<p>Helpful</p> <p>The PPA wishes to draw to the ICO's attention that specialist publishers uphold high standards of user agency with respect to privacy. Users are provided with thorough, clearly comprehensible information that allows them to make informed decisions about their privacy settings.</p>
<p>3. Are there any other factors that should be considered? Or anything else that you feel the ICO should consider in relation to the factors?</p>
<p>There are three factors that the PPA believes that the ICO should consider in their approach to consent or pay: the impact on freedom to conduct a business, the impact on the duties of other regulators and the impact on the data protection regimes in other markets such as the US.</p> <p>We are deeply concerned that the enforcement action taken by the ICO which is leading to consideration of 'consent or pay' models for specialist publishers will have an adverse impact on businesses and consumers. Our members have reported that being presented with a paywall is not a positive user experience and has led to mass decline in website visitation in markets where this has been used. The PPA strongly urges the ICO to reconsider its position on cookies and recognise that allowing publishers to have two-page banners for cookies strikes a balance of promoting business interests and individual privacy interests in a way that advantages all parties.</p> <p>We also believe that the ICO's narrow and restrictive approach to data protection regulation is incoherent at least in principle with the regulatory duties of the CMA and Ofcom. The CMA is responsible for promoting a competitive digital market, which involves making necessary market interventions to increase publishers' access to user data for advertising.</p> <p>Additionally, Ofcom is responsible for promoting media plurality, which is reliant on the existence of thriving specialist publishing businesses. Therefore, unnecessarily undermining the financial stability of the specialist publishing sector undermines the objectives of both the CMA and Ofcom. If the ICO are to continue on this trajectory of enforcement, we urge them to</p>

<p>consider journalistic exemptions for publishers so as not to harm media plurality.</p> <p>The PPA also wishes to stress the importance of considering data protection enforcement in other markets such as the US when considering its regime to consent or pay.</p>
<p>4. Do you agree that organisations adopting “consent or pay” should give specialist consideration to existing users of a service?</p>
<p>Neither agree nor disagree</p>
<p>Please explain your response</p>
<p>Without consent it would not be possible for publishers to track user behaviour to determine who was a registered but dormant user, and who was an existing active user.</p>