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Europe's press publishers & Microsoft call for Australian-style arbitration mechanism in Europe to ensure tech gatekeepers remunerate press publishers fairly for use of content.

Europe's press publishers and Microsoft today agreed to work together on a solution to ensure that Europe's press publishers get paid for the use of their content by gatekeepers that have dominant market power in line with the objectives of the new neighbouring right in the EU Digital Single Market Copyright Directive, which comes into force this June and to take inspiration from the new Australian legislation that requires the tech gatekeepers covered by that law to share revenue with news organisations.

The solution should mandate payments for the use of press publishers' content by these gatekeepers and should include arbitration provisions, to ensure that fair agreements are negotiated. Such provisions should consider the model established by the Australian law, which enables an arbitral panel to establish a fair price based on an assessment of the benefits derived by each side in having the news content included on these gatekeepers' platforms, the costs of producing this content, and any undue burden an amount would place on the platforms themselves.

Although press publishers have been granted a neighbouring right in the EU, negotiations with such gatekeepers will not produce fair outcomes unless additional regulatory measures are brought forward to address gatekeepers with dominant market power, through appropriate regulatory frameworks such as the Digital Markets Act, Digital Services Act or other national laws.

EMMA, ENPA, EPC, NME & Microsoft therefore call for an arbitration mechanism to be implemented in European or national law requiring such gatekeepers to pay for

press content in full respect of the Publisher's Right set out in Directive 2019/790. We welcome proposals made by several Members of the European Parliament to introduce a final arbitration mechanism into relevant regulation. This is needed to prevent undermining the scope of the Publishers' Right and to create legal certainty. Otherwise, even though press publishers have a neighbouring right, they might not have the economic strength to negotiate fair and balanced agreements with these gatekeeper tech companies, who might otherwise threaten to walk away from negotiations or exit markets entirely.

Christian Van Thillo, Chairman of the European Publishers Council said "We welcome Microsoft's recognition of the value that our content brings to the core businesses of search engines and social networks because this is where Google and Facebook generate the vast majority of their revenues. It is crucial that our regulators recognise this key point, and don't get misled into thinking that side deals on the basis of a stand-alone product are the same thing, because they are not at all and undermine the neighbouring rights that we have been granted. All publishers should get an agreement – no one should be left out".

Fernando de Yarza, President of News Media Europe said "The experiences in France and Australia have shown us that there's a real need for a binding instrument to address inherent imbalances in bargaining power with gatekeepers, which undermine the potential of Europe's press sector. We look forward to working with Microsoft and others on a solution that allows for a healthy and diverse online news media ecosystem".

Jean-Pierre de Kerraoul, President of ENPA said: "Independent journalism is vital to the social cohesion that is essential for democracy. But the internet and social media have not been kind to the free press with most outlets hit hard. A fully functioning and competitive ecosystem will strengthen media pluralism and will ultimately strengthen democratic discourse. Democracy relies on a free press to make it through difficult times. Any legislative proposal that strengthens democracy and supports a free press should be promoted by the technology industry, which is a product of the very same freedoms and values."

Xavier Bouckaert, President of EMMA said: "The DMA or other binding regulation should entail a specific obligation for the gatekeepers to grant all legal publications and offerings non-discriminatory access and fair terms and conditions to their services. This must include an obligation for market dominant platforms to enter into negotiations with all rightsholders of the Publishers' right and offer fair payment for their content. We therefore welcome today's commitment, as it covers newspaper and magazine publishers alike."

Casper Klyngne, Vice President, Microsoft, said "Access to fresh, broad and deep press coverage is critical to the success of our democracies. Our commitment to preserving and promoting journalism isn't new. In October 2020, we launched a new initiative to invest in and support local media and, through Microsoft News, we have been sharing a large portion of revenue with press publishers. This initiative is a logical next step."

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