



Date: November 20, 2024

To: European Data Protection Board  
Rue Wiertz 60,  
1047 Bruxelles,  
Belgium

## Comments on Draft Guidelines 1/2024 on Processing of Personal Data Based on Article 6(1)(f) GDPR

Dear Members of the European Data Protection Board,

Norwegian Media Businesses' Association (MBL) is the media trade- and tariff organization in Norway. MBL aims to strengthen and protect freedom of expression, press freedom, and freedom of information as fundamental values in a democratic and open society. MBL seeks to uphold and safeguard the journalistic principles represented by the Editors' Code and the Code of Ethics.

MBL works to ensure that a diverse range of economically sustainable media can serve as the open society's platform for free information, societal critique, and debate.

MBL represents 330 member companies with approximately 10,000 employees, including 205 media houses, of which 185 are newspapers, and 170 of those are local newspapers. Other media houses include commercial broadcasters, magazines, and local TV. MBL also represents businesses associated with media houses, such as newspaper printing facilities and distribution companies. MBL is a national association within the Confederation of Norwegian Enterprise (NHO)

### Comments on the Draft Guidelines:

- 1. Recognition of legitimate interests:** MBL supports the Draft Guidelines' recognition that legitimate interests under Article 6(1)(f) is a viable legal basis. This provision is significant, as not all publisher activities can feasibly or appropriately rely on consent. The ability to process data under Article 6(1)(f) plays a key role in supporting a pluralistic and independent media landscape, a cornerstone of any democratic society, and for maintaining competitive operations in a digital environment increasingly influenced by large tech companies.
- 2. Balancing test and transparency:** MBL values the emphasis on the balancing test and transparency as outlined in the Draft Guidelines. The requirement for legitimacy, necessity, and a thorough balancing test, establishes Article 6(1)(f) as a robust legal basis. When relied upon by publishers, it ensures that the processing of personal data is conducted with a high degree of accountability and respect for the privacy rights of data subjects, reinforcing the trust essential to the publishers' operations and relationships with their audience.
- 3. Interplay with the ePrivacy Directive:** MBL notes that the Draft Guidelines could benefit from a clearer exposition on the interplay between the GDPR and the ePrivacy Directive, particularly regarding the use of cookies and similar technologies. While the Draft Guidelines acknowledge that consent is generally required under Article 5(3) of the ePrivacy Directive, this consent requirement does not extend to cookies that are strictly necessary for providing digital services. For the subsequent processing of personal data derived from such cookies, other legal bases under the GDPR, such as Article 6(1)(f), may be applicable. Additionally, it should be noted that the IAB Europe Transparency & Consent Framework (TCF) supports the use of legitimate interests for a number of processing purposes, providing a structured approach for managing consent and legitimate interests in line with regulatory requirements.
- 4. The notion of direct marketing:** MBL agrees that processing personal data for direct marketing may be considered a legitimate interest. However, we caution the EDPB against expanding the notion of direct marketing. The contexts discussed in CJEU cases C-102/20 and C-252/21, as referred to in the Draft Guidelines, involve practices different from advertisements normally displayed on online websites, including newspapers. The ECJ has not categorically classified online advertisements as direct marketing. EDPB should carefully consider how these cases are referred to.



## Conclusion

MBL is committed to ensuring that the processing of personal data by publishers is conducted responsibly, balancing the need to support a free and financially viable press with the privacy rights of individuals. We believe that the Draft Guidelines provides useful guidance in achieving these objectives. We do however encourage the EDPB to consider the broader impact of these guidelines on the competitiveness of the European digital market, which requires that controllers, including the online news media industry, can continue to operate and innovate their activities through data-driven processes.

We thank you for considering our views and remain at your disposal for any further information or discussion at your convenience.

Sincerely,

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