AER position on the Digital Fairness Act

AER – the Association of European Radios – is the voice of commercial radios in Brussels. It is the trade body representing and defending the interests of thousands of private/commercial radio stations across Europe. AER promotes the development of commercially-funded radio broadcasting in Europe, by ensuring a fair and sustainable economic framework for radio so it can continue to thrive.

European radio plays a vital role in providing consumers with trusted information, entertainment, companionship, cultural content, and emergency alerts, all free at the point of use. Advertising is the financial backbone of commercial radio, enabling it to remain free and accessible to millions of listeners. However, commercial radio faces increasing competition for advertising revenue from global big-tech-platforms that dominate online ad markets. To sustain a diverse and vibrant radio sector, any future legislative framework must ensure fair competition by avoiding excessive advertising restrictions on commercial radio and address the dominance of big tech in digital advertising ecosystems.

Moreover, in the digital environment, radio faces growing challenges from global big-tech-platforms that control distribution and increasingly use manipulative design practices - such as default settings that disadvantage radio and virtual assistants self-preferencing their own radio-like services - to steer consumer choices.

The Digital Fairness Act must ensure that consumer protection rules apply proportionately: strong obligations for gatekeepers that shape digital consumer journeys, and lighter obligations for radio broadcasters already bound subject to strict regulation at both national and European level.

Safeguarding the access, findability and interoperability of radio across connected devices – like smartphones and smart speakers – and in cars, is critical to preserving consumer choice, road safety, universal access to information and, ultimately, media plurality and social cohesion.

Consistency with the existing European Media Freedom Act (EMFA) and Digital Markets Act (DMA), as well as the upcoming revision of the European Electronic Communications Code (EECC) and proposal for a Digital Networks Act (DNA) will ensure that consumer protection, fair competition and media pluralism reinforce each other.

A forward-looking framework that safeguards the future of radio in the new digital landscape (in the ways described above) will benefit both consumers and Europe’s diverse media ecosystem.

Dark patterns

Existing EU regulations, specifically the Unfair Commercial Practices Directive (UCPD) and the Digital Services Act (DSA), already play a vital role in addressing the well-documented issue of "dark patterns" within digital commercial practices. These legislative frameworks aim to protect consumers from manipulative and deceptive design choices that can influence their decisions online.

A nuanced and differentiated regulatory approach is crucial, particularly when considering the diverse landscape of digital actors. Specifically, dominant and vertically integrated big-tech platforms, with their extensive market reach and significant data processing capabilities, warrant a different level of scrutiny compared to other players, such as media service providers. This differentiated approach is warranted given the fundamental differences between business models, bargaining power, and the societal role these entities play. For instance, radio broadcasters play a critical role in supporting independent local journalism and culture, providing essential information and entertainment to communities. Their public value contributions, business models and commercial incentives differ significantly from those of large, dominant big-tech-platforms. In this context, any new policy intervention at EU level must be proportional to the risks posed by different market participants and their impact on consumers and the broader digital ecosystem.

Moreover, the proliferation of digital interfaces and the increasing sophistication of design techniques necessitate a clearer and more universally accepted definition of what constitutes a "dark pattern." Currently, an ever-growing number of commercial practices are being indiscriminately labelled as dark patterns, leading to potential confusion and inconsistent application of existing regulations. It is paramount to establish a precise distinction between genuinely coercive or deceptive design tactics and legitimate design, which is a common and acceptable practice in various online contexts. Examples of legitimate design include media subscription offers from licensed broadcasters or consent banners, which seek user permission in a transparent manner. These examples demonstrate how design can influence user behavior without resorting to manipulation or deception.

Unfair personalisation practices

A fair approach to consumer protection relies on well-informed consumers who are empowered to make autonomous decisions taking into account a range of options. The European consumer protection framework at the moment strikes the right balance between safeguarding consumer interests and supporting economic sustainability. For commercial radio, which relies heavily on advertising revenue, advertising restrictions and bans, or mandatory warning messages risk undermining the economic foundation that keeps free-to-air programming diverse and accessible to millions of EU citizens. Advertising rules are already strict at the EU and national level, complemented by effective self-regulation. Imposing further burdens would be detrimental to radio's ability to create content, innovate, and offer quality free programming.

The advertising ecosystem is currently unbalanced. While commercial radio relies heavily on advertising revenue, big tech companies dominate advertising exchanges and control the key digital marketplaces and technologies where ads are bought and placed programmatically. This dominance gives them substantial influence over how advertising budgets are allocated and which publishers receive revenue. In contrast, commercial radio lacks comparable access and control within these digital advertising ecosystems. This creates an uneven playing field that limits commercial radio's ability to compete fairly, weakens its financial position, and threatens media pluralism.

As rightly recognised, personalisation is something that users are asking for more and more in order to cut through irrelevant information. By no means the term personalisation should have a negative connotation. In the near future radio broadcasters will be able to offer more services with personalised characteristics. Any restrictions on personalisation would have a detrimental impact on innovation in the radio sector as well as on radio broadcaster's ability to engage with their audiences in a personalised way.

Radio broadcasters' approach to profiling and other personal data activities is both transparent and consent based. On the other hand, third-party ad tech providers who adopt problematic personalisation practices must be regulated. This is important both for end users and also for radio broadcasters who rely on third-party ad tech providers - any problematic behaviour by the latter could have a detrimental knock-on effect on the reputation of radio broadcasters who interact with advertisers, the third-party ad tech providers and audiences.

We support the Commission's efforts to limit exploitative profiling, particularly practices that target consumers, enable cross-site tracking with limited transparency, or lead to discriminatory outcomes like opaque or dynamic pricing. However, regulation must also respect proportionality: already heavily regulated, personalisation by media companies should not face the same restrictions as opaque, large-scale profiling by big-tech-platforms. To ensure consumers retain genuine choice and autonomy, and to foster a sustainable media environment, excessive regulatory burdens on commercial radio must be avoided. Instead, policy should focus on creating fair, competitive market conditions that level the playing field between commercial broadcasters and big tech platforms.

Harmful practices by social media influencers

Radio broadcasters, alongside their counterparts in the wider media landscape, find themselves at a critical juncture. Broadcasters face the unique challenge of competing for advertising spend with influencers who are not legally accountable for the way in which they promote and monetise their content. This is not only an issue of fairness but also of consumer protection. This necessitates a robust and targeted approach to upholding consumer protection and advertising standards across all social media platforms.

Therefore, we would support the imposition of commercial disclosure obligations on influencers within the DFA, to include the latter's marketing practices. As part of this, the role and powers of national advertising self-regulatory organisations should be strengthened. These organisations, members of the European Advertising Standards Alliance (EASA), as is AER, play a vital role in ensuring that advertising, regardless of its format or distribution channel, remains transparent, ethical, and compliant with established standards. By empowering and supporting these bodies, we can collectively work towards a fairer, safer, and more transparent digital environment for both consumers and media service providers.

Digital contracts

The EU has a framework of directives and regulations that ensure legal certainty and consumer protection in the digital marketplace with regard to digital contracts. Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services regulates exactly those transactions where a trader provides digital content (like streaming media or apps) to a consumer in exchange for money or data. It defines obligations regarding quality, conformity, and remedies in case of non-performance.

Of course, the Consumer Rights Directive (2011/83/EU), the e-Commerce Directive (2000/31/EC), the Digital Services Act (DSA, Regulation (EU) 2022/2065) and the Unfair Commercial Practices Directive (2005/29/EC) all contribute to better consumer protection and transparency for digital contracts.

The radio industry, while often perceived as traditional, is undergoing a significant transformation which includes experimentation with subscription models. The core objective is to innovate around the user experience, moving beyond simply broadcasting content to actively increasing engagement and fostering a deeper connection with listeners.

This innovation necessitates a more granular understanding of listener preferences and behaviors to offer highly personalised content and services. This could range from curated playlists and exclusive programming to interactive features that allow listeners to influence content or participate in community discussions. Secondly, the user interface and overall accessibility of radio services must be intuitive and seamless across various platforms, including traditional radio, web, and mobile applications. This ensures that the listening experience is convenient and enjoyable, regardless of where or how the listener chooses to tune in.

Furthermore, increasing engagement goes beyond passive listening. It involves creating opportunities for active participation, such as live Q&A sessions with artists or hosts, and user-generated content features. The ultimate goal is to build a vibrant and interactive ecosystem around the radio offering, transforming listeners into active participants and advocates. By focusing on these areas, radio can not only retain its existing audience but also attract new generations of listeners who are accustomed to personalised, on-demand, and interactive media experiences. Continuous innovation in user experience and engagement is crucial for the long-term sustainability and growth of the radio sector.

As consumers grow accustomed to new ways of listening, we see the opportunity for a new wave of digital innovation, benefitting listeners, radio broadcasters and advertisers alike, bringing higher levels of consumer choice and empowerment, new routes to market and the potential for tailored advertising. For example, several radio brands have launched subscription digital radio services with online radio stations, on-demand shows, and other content.

Within the existing legal and regulatory landscape governing digital contracts, we believe that the introduction of additional rules is unwarranted and would prove counterproductive. Imposing further regulations could stifle innovation, increase operational burdens, and divert resources away from core broadcasting activities.

Instead, the Commission's focus should be on ensuring effective enforcement of existing rules and providing clearer guidance to radio broadcasters on their application.

Interaction of cross-cutting EU consumer protection legislation with other existing EU legislation

Global big tech platforms (including virtual assistants) increasingly control the way radio broadcasters' services are carried and presented to listeners, but are not subject to any of the carefully considered content or distribution regulations that apply to licensed radio stations (in order to protect citizens from harmful material and support democracy). Stronger regulation of such big tech platforms is essential to secure fair competition and a level playing field in the audio sector.

New initiatives, such as the Digital Fairness Act and the Consumer Agenda should be fully aligned with other relevant pieces of EU legislation, including the European Media Freedom Act (EMFA) (Art. 20 on user interfaces), the Digital Markets Act (DMA) (gatekeeper obligations), and forthcoming European Electronic Communications Act (EECC) revision/Digital Networks Act, to avoid contradictions and ensure coherent rules.

Virtual assistants, now unavoidable gateways to radio, should be urgently designated as gatekeepers under the DMA, so that the latter's unfair practices can be properly regulated. The future of radio in cars must also be safeguarded: all new vehicles put on the market should include hybrid (FM, DAB+, IP) enabled receivers, with easy findability via a dedicated radio button.

As cars and home devices become increasingly digitised, older and vulnerable groups risk losing simple, free access to radio if radio stations become hard to find on the car dashboard. AER supports an emphasis on protecting children, elderly people, and persons with disabilities. For radio, this protection should rely on proportionate content rules and scheduling under established co-/self-regulation instead of age blankets. To support this goal, radio must remain universally accessible across FM, DAB+ and IP - hybrid distribution. It should also be easy to find, for example, through a prominently placed radio button in cars and devices, and guaranteed to remain free-to-air to safeguard vulnerable listeners.

A coherent approach is the only way to avoid conflicting obligations and effectively protect consumer choice, media pluralism, and radio's essential role in mobility, road safety, and emergency communication.