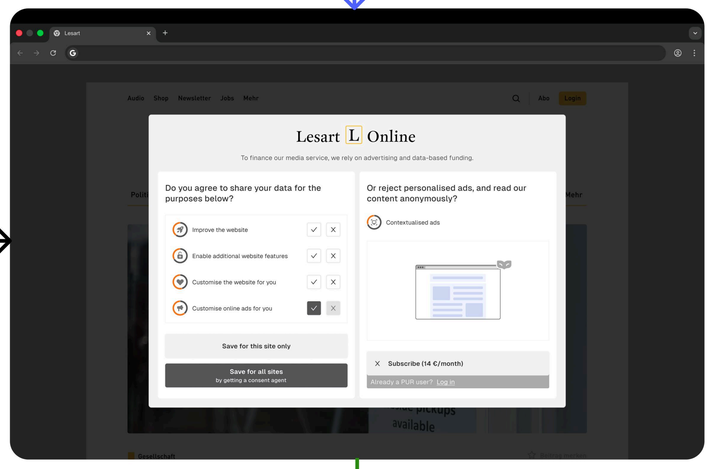
Why is the European media industry lobbying against Article 88b of the Digital Omnibus—even though it is allowed to keep its "Pay or Okay" banners?

This is one of the most puzzling aspects of the current legislative debate.

Importantly, media service providers are exempt from the obligation to accept consent-agent signals. They may continue to display their existing "Pay or Okay" banners, allowing users to choose between personalised advertising and a paid subscription (see 1st picture below 👇). Given the economic importance of editorial media, this exemption is understandable from both a legal and policy perspective.

Article 88b requires service providers to respect users' privacy choices when these are communicated through trusted consent agents. Instead of responding to countless cookie banners, users could manage their preferences once and let their consent agent communicate them automatically. If designed properly, consent agents are the only known way in research and practice to ensure truly informed choices and, on this basis, fair competition for privacy friendly services.

Exemption under Article 88(3):
Media service providers may continue to display their 'Pay or Okay' banner.



Other provisions of Article 88b, however, must also apply to media service providers:

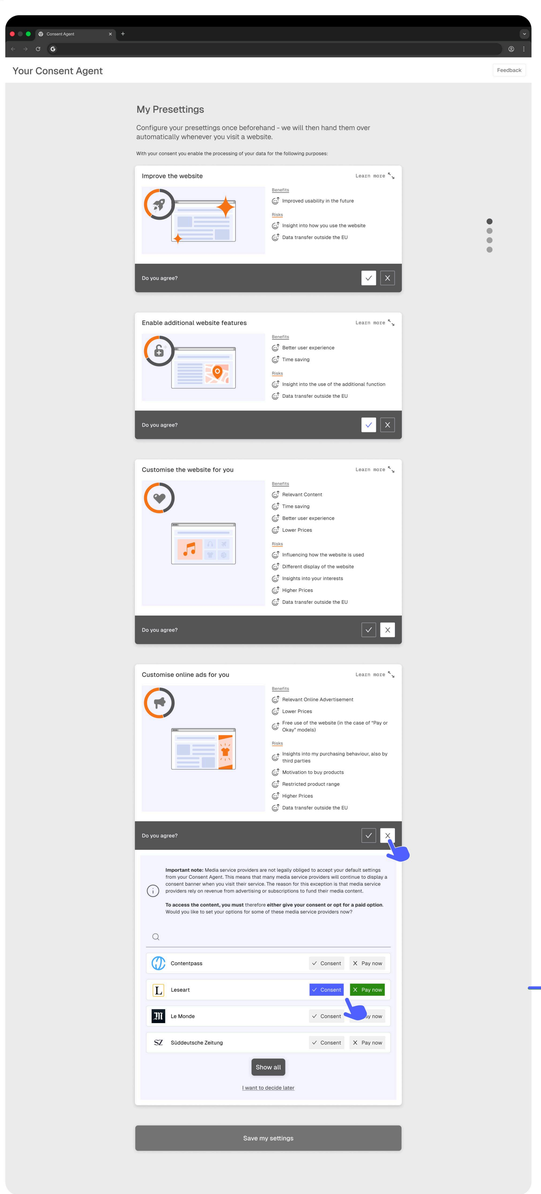
- A call to action (CTA) for users to implement consent agents, in particular to
- receive a human-readable copy of the consent they have given,
- to obtain an overview of the consents given across all services used,
- to be kept informed of subsequent changes to data protection risks in the event of repeated use.

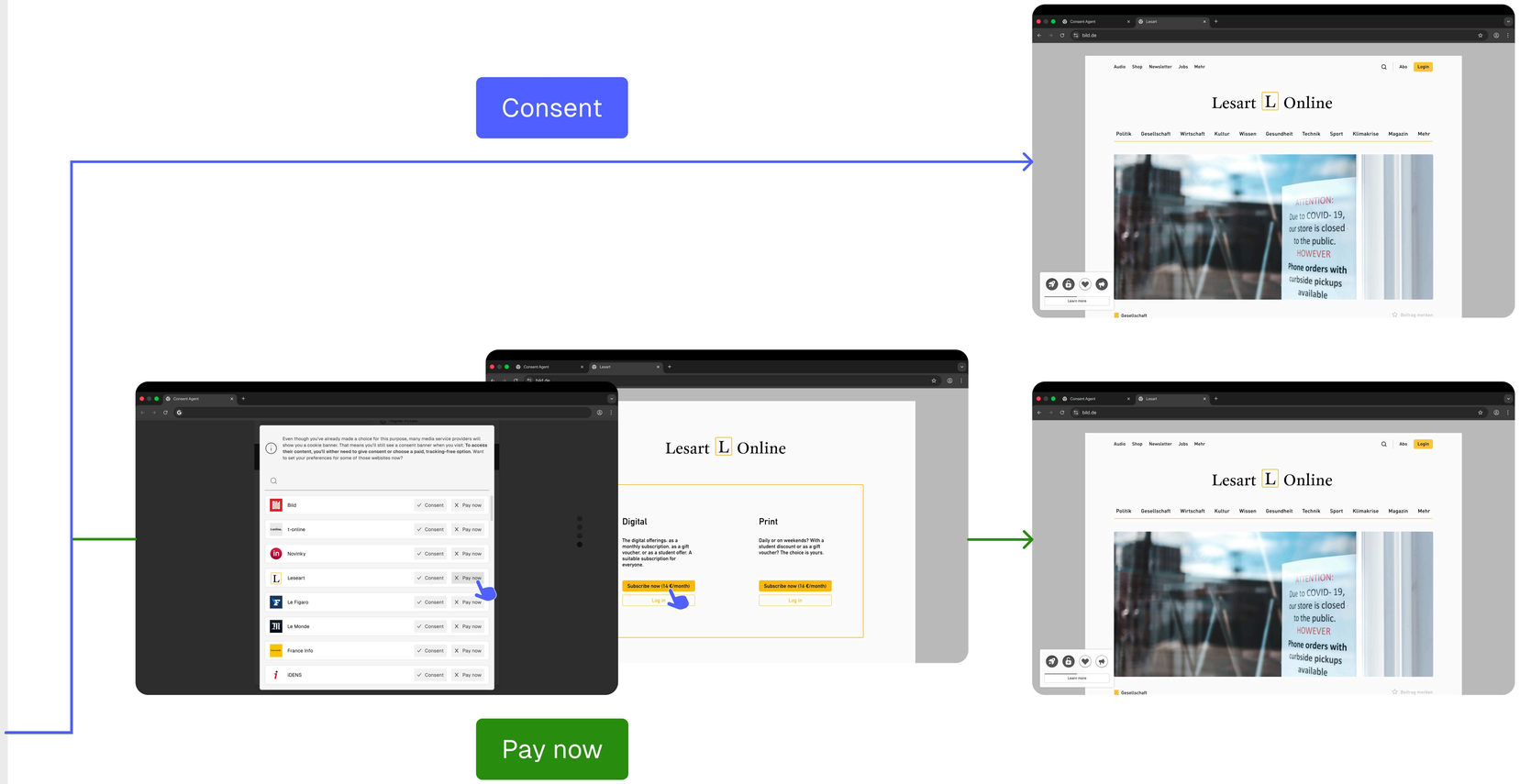
Article 88b does not weaken the media sector – it could strengthen it…

… if the media industry were to focus on the benefits of fair consent agents, rather than worrying about what it might lose if consent agents are unfairly designed (see Apple's ATT).

Well designed consent agents make their users aware of the fact that media services will need them to pay or consent to fund their content. To ensure a seamless experience, the consent agents will enable their users to either consent or subscribe to their preferred media services directly within the agent itself.

At the same time, Article 88b strengthens their competitive position vis-à-vis large platforms, which skim off a large portion of the financial value of their media content without bearing any editorial responsibility for it. Platforms are hence not covered by the media exemption.





Consent agents create a new subscription channel for publishers,
whilst at the same time ensuring a seamless browsing experience.