

The European Data Union strategy should prioritise the clarification of EU data protection and privacy legislation for independent audience measurement to ensure online transparency and the protection of public interests

18 July 2025

Introduction

The paper is the Audience Measurement Coalition's response to the Commission's consultation on the Data Union Strategy, with particular focus on the discrepancies linked to the implementation of the ePrivacy Directive and its interplay with the GDPR that are problematic for transparent and accurate independent measurement of online media consumption.

The rapidly evolving digital media landscape necessitates robust and consistent legal frameworks to ensure transparency, consumer protection, and fair market competition. Independent audience measurement, a crucial function for markets, consumers, and public authorities, is currently hampered by a fragmented and unclear regulatory environment stemming from diverging interpretations and applications of the General Data Protection Regulation (GDPR) and the ePrivacy Directive across EU Member States.

In this paper, the Audience Measurement Coalition (AMC) is underlining the urgent need for coordinated interpretation and clarification of these two legislative instruments to ensure legal certainty, facilitate essential digital transparency for the public interest, and safeguard the integrity of the media market.

The absence of a legal framework for a purpose with recognised associated general and public interest objectives has led to unfair competition and enforcement gaps of digital regulation. There is a clear and urgent need for legislative coordination. The need for transparency over the consumption of media and advertising content has exponentially increased with recent EU digital policy.

It is important to note that independent audience measurement is a staple of the media sector, a self-regulatory success story. It has ensured accurate statistical audience measurement reports that adhere to the highest market research standards, particularly as media consumption increasingly shifts to digital platforms. To this end, independent audience measurement - which hinges on behavioural monitoring and observing online audiences - allows stakeholders and public authorities to determine evolving media consumption patterns. Independent audience measurement has multifarious benefits. On a bilateral level, audience measurement data assures advertisers that any transaction with the publisher is transparent, fair

and devoid of fraud. The verification from an independent party will attest that what was paid for was actually provided by the publisher. Similarly, the publisher has a vested interest in understanding the type of audiences they draw - to better identify broader audience consumption trends. Thus, such audience data (also called “media currency”) sustains a symbiotic relationship between advertisers and publishers and helps identify media consumption trends amongst varying audiences. The independence and neutrality of a third party elected by the market ensures that players of all sizes can compete fairly. For that reason, independent audience measurement is the objective ally of smaller players such as European SMEs (whether advertisers or publishers), as it ensures that market dominance and undue advantages are not a determining factor in the distribution of financial resources on the media market.

Furthermore, the need for transparency over media and advertising content has exponentially increased with EU digital policy which seeks to address economic and social issues brought about by digital transformation. Independent audience measurement is essential in the monitoring and enforcement of the following EU regulations:

-Audience measurement data is crucial for enforcing the Audiovisual Media Services Directive (AVMSD), Directive (EU) 2018/1808, by helping to assess compliance with its provisions, particularly those related to media pluralism, advertising restrictions and the protection of vulnerable audiences (such as minors), the prominence of European works, and financial contributions to content creators. Independent audience measurement is an established monitoring mechanism used by public authorities around Europe. For this monitoring mechanism to successfully operate within digital media (and not just linear), independent measurement providers must be able to collect personal data in order to produce aggregated statistical reports.

-The European Media Freedom Act (Regulation (EU) 2024/1083) article 24: requires audience measurement systems and the methodology used to comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability. Some of the key principles such as transparency, impartiality, comparability and verifiability cannot be effectively complied without independent market designated third parties’ access to end-user personal data.

-The Digital Markets Act (DMA) (Regulation (EU) 2022/1925) : article 6.8 requires that gatekeepers provide advertisers, publishers and authorized third parties with access to their performance measurement tools and the data necessary for independent verification of advertisement inventory, including both aggregated and non-aggregated data. Non-aggregated data is a crucial part of the verification process and implies the transfer of end-user personal data to independent audience measurement providers appointed by the market. Independent audience measurement of ad campaigns is an indispensable market mechanism without which there cannot be any fair competition on the media market.

-Digital Services Act (Regulation (EU) 2022/2065) provisions:

Risk Assessment and Mitigation (Articles 34 & 35): VLOPs and VLOSEs must assess systemic risks, including those related to disinformation campaigns. This includes analyzing how their platforms are used to disseminate misleading information but also taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain

support”. Audience measurement data is crucial for understanding and monitoring the reach and impact of these risks.

Article 28 on the protection of minors online: mandates that platforms accessible to them implement measures to ensure a high level of privacy, safety, and security. The efficiency of the measures cannot be effectively monitored without independent audience measurement.

Recommender Systems (Article 27): VLOPs and VLOSEs must explain how their recommender systems work. Audience measurement data helps in understanding the impact of these systems on user behavior and potential biases.

Advertisement Repositories (Article 39): VLOPs and VLOSEs must maintain public repositories of advertisements, including information on targeting parameters. Audience measurement data is vital for understanding the scale of reach, effectiveness and potential harms of online advertising.

Enforcement: The European Commission and national authorities will monitor compliance with the DSA. Independent Audience measurement data is essential as the official benchmark data to assess whether platforms are effectively mitigating risks and adhering to the transparency requirements.

-Importance for the EU AI (Act Regulation (EU) 2024/1689) :

Impact Assessment: By analyzing user engagement, interaction patterns, and feedback related to AI systems or AI generated media content, authorities can gain insights into how these systems are being used and can consider the scale of the potential for harm. For example, if an AI-powered recommender system consistently directs users towards biased or harmful content or promotes discriminatory outcomes, audience measurement data could help identify this as a high-risk system.

Risk Classification: Analyzing audience behavior can help benchmark and refine the risk classification of AI systems and AI generated content, potentially leading to the reclassification of some systems as low or high-risk, potentially requiring different regulatory oversight approaches.

To summarize, challenges faced by independent audience measurement providers, to effectively and accurately perform their function, including Joint Industry Committees and research suppliers, is not only a sectoral problem European Media but a collective one that could jeopardize enforcement of various areas of wider digital regulation and weaken fair competition. This issue should thus mobilise the Commission and other EU Institutions.

The Interplay and Current Discrepancies

The GDPR governs the processing of personal data, while the ePrivacy Directive addresses the initial collection of data through access to end-user devices, particularly through technologies like cookies. For audience measurement, these two pieces of legislation are inextricably linked. The interpretation of article 5.3 in the ePrivacy Directive and article 6 of the GDPR should be interpreted consistently as they are regulating two different stages that both are necessary in the process of providing audience measurement:

collection and subsequent processing. Currently, the interpretation of both provisions are unclear and fragmented across the EU. The current situation is characterized by significant inconsistencies:

Divergent DPA Approaches: National Data Protection Authorities (DPAs) hold varying opinions on whether audience measurement can rely on a different legal basis than consent under the GDPR, with some requiring new national laws or court rulings, others providing exemptions without clear legal bases, and many others remaining mostly silent.

Interplay with the ePrivacy Directive: Equally, the ePrivacy Directive is often interpreted in a manner that offers little clarity as to its interplay with provisions other than the GDPR's consent provision, particularly when it comes to audience measurement. While Recital 25 of the ePrivacy Directive suggests that cookies for analyzing website effectiveness can be legitimate, the application of this principle for independent audience measurement provided by third parties remains unclear. The draft ePrivacy Regulation (published by the Commission in 2017), which would have repealed the Directive, would have settled the question. It was clear from the positions of the European Parliament¹ and the Council of the EU² that audience measurement, including when provided by third parties, was to be exempted from consent. This much needed clarification would inevitably have served as a basis for a coherent and consistent interpretation of the GDPR, including when it comes to the use of legal bases other than consent.

Problematic Reliance on Consent: In the absence of legal certainty, consent has become the default legal basis in some countries, despite being incompatible with the quest for accuracy in statistical exercises such as independent audience measurement. Not all users provide consent, leading to potentially significant gaps or blind spots in data, making it challenging to accurately assess media consumption, evaluate public broadcasters' performance, and inform public policy decisions based on statistically accurate data.

Misinterpretation of Third-Party Data Collection in the context of independent market audience measurement: Some DPA guidelines see audience measurement as being part of "analytics" which solely serves the micro-economic interests of website owners. This overlooks the essential role of independent third-party organizations in audience measurement, which operate for trust, neutrality, and impartiality,

¹ "if it is technically necessary for measuring the reach of an information society service requested by the user, provided that such measurement is carried out by the provider, or on behalf of the provider, or by a web analytics agency acting in the public interest including for scientific purpose; that the data is aggregated and the user is given a possibility to object; and further provided that no personal data is made accessible to any third party and that such measurement does not adversely affect the fundamental rights of the user; Where audience measuring takes place on behalf of an information society service provider, the data collected shall be processed only for that provider and shall be kept separate from the data collected in the course of audience measuring on behalf of other providers; (...)" (Art. 8, paragraph 1 point d, [Report of the European Parliament](#), 20 October 2017)

² "it is necessary for the sole purpose of audience measuring, provided that such measurement is carried out by the provider of the service requested by the end user, or by a third party, or by third parties jointly on behalf of or jointly with provider of the service requested provided that, where applicable, the conditions laid down in Articles 26 or 28 of Regulation (EU) 2016/679 are met; (...)" (Art. 8, paragraph 1, point d, [Mandate for negotiations with EP](#), 10 February 2021, Council of the EU)

providing anonymized data to the market without acting as data brokers for any other purpose than statistical reporting.

Exclusion from Privacy-Enhancing Operating Systems: The double legal ambiguity (interplay of the ePrivacy Directive with the GDPR and the interpretation of the GDPR itself) has subsequently driven many major online platforms to design “privacy-enhancing” operating systems that sometimes exclude independent measurement technologies, further contributing to the challenges of market opacity.

Consequences of Legal Limbo and Fragmentation

Compromised Public Policy enforcement: Public policies and decisions, including the evaluation of public broadcasters' performance (as mandated by law in some EU countries), monitoring of advertising restrictions under the Audiovisual Media Services Directive and the allocation of subsidies to content creators (critical for media plurality and cultural industries), rely heavily on audience measurement data. Inaccurate or incomplete data due to consent requirements undermines the legality and fairness of such decisions.

Undermined Fair Competition and Media Plurality: Independent audience measurement is a crucial mechanism for fair competition, determining the equitable distribution of revenues across the media sector. Without it, objectively assessing a media organisation's impact on the media market is not possible, jeopardizing media plurality and the survival of European media organizations. In that connection, it should be noted that European Media Freedom Act (Regulation (EU) 2024/108) in its recital 69 recognizes that “Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector” and that “[it] is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content” and that media players (...) should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions.”

Legal Uncertainty for our sector: Organizations involved in audience measurement face significant challenges due to inconsistent legal regimes, hindering their ability to operate effectively and ensure consistent standards across the EU.

Proposed Solutions

Renewed Legislative Effort: Given the persisting disagreements leading to the future withdrawal of the Draft ePrivacy Regulation, the European Commission is strongly encouraged to make a new proposal that includes a clear legal basis for audience measurement that explicitly clarifies and recognizes independent audience measurement as a purpose compatible with Article 6(1)(e) (public interest) of the GDPR, provided all other data subject rights are duly ensured.

To ensure a coherent legal framework the current ePrivacy Directive would have to be aligned with the GDPR concerning audience measurement. If public interest is recognised for collection and processing data for the purpose of audience measurement under the GDPR, then the ePrivacy Directive

should be interpreted to allow initial data collection accordingly, especially when clear and precise information is provided to the end-user. The spirit of Recital 25 of the ePrivacy Directive should be strongly supported and interpreted to facilitate independent audience measurement.

By implementing the proposed solutions, particularly in a coordinated approach that considers the interplay between the ePrivacy Directive and the GDPR, the EU can establish a coherent and effective legal framework that supports a transparent, competitive, and accountable media market while upholding data protection principles.

About the Audience Measurement Coalition

The Audience Measurement Coalition (AMC) is an association that serves as the voice of the independent audience measurement sector, which includes research suppliers and Joint Industry Committees (JICs) including AGF (Germany), AGMA (Germany), ARMA (Romania), CAEM (Portugal), CIM (Belgium), Danske Medier Research (Denmark), Finnpanel (Finland), Mediapulse (Switzerland), Médiamétrie (France), MMS (Sweden), NMO (Netherlands), Norwegian MOC, TAM Ireland, WEMF (Switzerland), Comscore, Gemius, GfK, Ipsos, Nielsen, Kantar and Streamhub. For decades the members of the AMC have served European markets to ensure that both traditional and digital publishers' and broadcasters' number of active users (audiences) are measured correctly. Independent audience measurement serves as the backbone of Europe's media industry, providing invaluable insights into consumption patterns for media companies. Additionally, it supports public service media in fulfilling their mandates and assists advertisers and public authorities in making informed decisions.

<https://audiencemeasurementcoalition.eu/>

E-mail: info@audiencemeasurementcoalition.eu