



## Consumer Agenda 2025-2030

### *Addressing Consumer Protection Challenges in the Digital Environment: transparency over media consumption as the foundation*

#### **Introduction**

The rapidly evolving digital landscape presents significant challenges for consumer protection, particularly concerning new technologies and data-driven practices that can undermine consumer choice and wellbeing, particularly when it comes to media and advertising consumption. A key difficulty lies in applying existing and future consumer laws to digital environments, as existing transparency mechanisms ensured by independent audience measurement are facing roadblocks. For decades independent audience measurement has provided foundational transparency across the board ensuring both market fairness and public transparency. Identifying where unfair commercial practices occur (which platforms, which media outlets) and whom (categories of consumers) they affect is the first step to any policy-making and enforcement.

In this response, the Audience Measurement Coalition (AMC), addresses the challenges posed by data-driven practices that undermine consumer choice, consumer mental health, unfair commercial practices linked to dark patterns, misleading influencer marketing due to blurred lines between “user generated” and commercial/professional media content, and addictive digital product design. Independent audience measurement is crucial to identify where the problems lie and whom the unfair commercial practices targets.

#### **Defining the root problem**

It is clear that to address issues that affect consumer behaviour, especially in relation to content consumption, it is essential to have a benchmark of truth. That means transparent and neutral data regarding content consumption and how the content impacts the consumer.

It has been evident for decades in the context of traditional media, that independent data provided through industry-agreed structures provide the official benchmarks upon which regulators and policy-makers base their policies. However, attention to the availability of reliable data for online media has insufficiently been addressed by EU regulation, with the exception of recent landmark legislative texts such as Digital Markets Act<sup>1</sup> and European Media Freedom Act<sup>2</sup>. Although market-agreed structures such as Joint Industry Committees and Research suppliers measure online consumption, the risks have increased in an

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<sup>1</sup> Regulation (EU) 2022/1925, article 6.8

<sup>2</sup> Regulation (EU) 2024/1083, article 24

environment made up of several non-collaborative digital actors combined with the absence of a specific data protection and privacy framework for audience measurement that has caused blind spots for transparency and independent measurement across the digital media and content market.

We often see that despite its reach into many aspects of digital media, Regulation itself fails to address the need for reliable audience data in spite of the highly consequential decisions they inform. Reporting obligations often do not address the real risks of potential bias of first party reported data which is by definition self-reporting by stakeholders themselves. There can be little scrutiny as to the accuracy of information provided, nor any mechanism to correct.

Public institutions thus struggle to effectively enforce the protections they intend to enforce, with minors' online behaviour being a commonly reported challenge. This essentially highlights a structural enforcement vulnerability in the digital ecosystem.

It should therefore be an inherent part of the DNA of any new consumer protection legislation that monitoring and enforcement should be based on impartial and reliable audience measurement data.

Historically and currently, the independence and neutrality of third parties elected by the market to produce audience reports, has ensured that players of all sizes can compete fairly on the media market and that public authorities can monitor and enforce their policies based on a benchmark of truth.

**As a foundational transparency mechanism independent measurement helps identify media and advertising consumption patterns and identify consumer protection gaps:**

Understanding how consumers interact with different platforms and content serves as a foundation to assess where consumer choice might be undermined or where existing laws are ambiguous in their application.

### ***Transparency and fair competition***

Independent audience measurement acts as an objective tool for smaller players such as European SMEs, ensuring that market dominance is not a determining factor in the distribution of financial resources on the media market. This directly counters practices that might undermine consumer choice by favoring dominant players (both advertisers and media players) or enable unfair practices. By providing an impartial view of audience reach and engagement, it helps clarify market dynamics and thus identify where consumer laws might be failing to ensure that the consumer has a wide range of choices.

We recognise, for example, that Policy makers are reviewing rules and new proposals around prominence (findability, discoverability) of content. Much focus is on ensuring citizens have access to a plurality of content, and to ensure that dominance is kept in check. The issues are well covered in CERRE's 2023 paper "Towards Coherent Rules On The Prominence Of Media Content On Online Platforms And Digital Devices"<sup>3</sup>.

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<sup>3</sup> [https://cerre.eu/wp-content/uploads/2023/12/CERRE\\_Prominence-of-Media-Content\\_Issue-Paper.pdf](https://cerre.eu/wp-content/uploads/2023/12/CERRE_Prominence-of-Media-Content_Issue-Paper.pdf)

The AMC's view is that without a framework of enforced independent audience measurement that allows regulators to see reliable data on the real outcomes of compliance efforts, impact assessments will be inadequate.

### ***Influencer marketing***

The distinction between "user-generated" and professional media content has become increasingly blurred, primarily as both types of content now actively participate in commercial activities, receiving sponsorships and advertising revenue. This can make it challenging for consumers to discern genuine personal opinions or experiences from paid endorsements or professionally produced advertisements disguised as authentic user content.

The delineation between professional and user generated is increasingly outdated as the platform economy has made way for self-employed, micro-enterprise types of media "influencer" endeavours, some even evolving to become multi-million-euro businesses. This is the "creator" economy.

Establishing very clear criteria to separate<sup>4</sup> user-generated content vs. commercial endeavours should be a key first step. The Unfair Commercial Practices Directive does not offer explicit definitions nor criteria that helps identify user-generated content that results from a professional activity.

Equally, the application of AVMSD often hinges on whether the content is professionally produced and disseminated but does not offer insight into user-generated content categorisations. While EMFA defines a "media service" as a service where the principal purpose is to provide programmes or journalistic productions to the general public<sup>5</sup>, it excludes user-generated content uploaded to an online platform unless it constitutes a professional activity normally provided for consideration, be it of a financial or other nature. EMFA does not provide clear benchmarks to identify user-generated content that would constitute a professional activity. It is however clear from the definition of a "media service", that the size and reach of audiences is a key factor in its definition. It thus also gives a strong indication as to the commercial motivations of a content creator. Having a substantial number of subscribers, followers, or regular viewers indicates motivation to go beyond a private circle and gain a following that is of interest to advertisers.

To protect the consumer, authorities must be able to identify the actors that fall under the scope of consumer law underpinned by evidence-based analysis of consumer behaviour rather than superficial categorisations such as "content creation", "user generated" vs "media service". Currently, influencers' "user-generated" content is opaque and reported privately through non-public proprietary audience measurement systems. To be able to identify content creators that engage in influencer marketing, impartial assessment of the size and reach of their audiences should be a cornerstone of any new consumer regulation.

In this space, independent audience measurement can significantly enhance transparency by providing neutral, evidence-based data on content consumption patterns. By objectively identifying who is watching what, and how content is affecting them, exposing instances where commercial interests are obscured, and

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<sup>4</sup> Regulation (EU) 2024/1083, Recital 9

<sup>5</sup> Regulation (EU) 2024/1083, Article 2 (1)

thus supporting public authorities with the reliable data needed to monitor and enforce consumer protection policies against deceptive influencer practices.

Of importance in this area is the need to recognise that a high degree of consumption is carried out by minors. It is observed that platforms willingness or ability to provide usage data on this cohort is extremely protected. This is counter to the culture, obligations and principles adhered to by traditional media under AVMSD.

## **Protection of Children and Minors**

Independent audience measurement helps identify how a child's behaviour changes and shifts from one platform to another. This data is crucial for governments and industries to respond to emerging threats and identify access to harmful online content by minors.

### ***Online Gaming***

It is undeniable that there is substantial financial investment in gaming platforms and other gaming services and an increasing reliance on gaming as an advertising channel. The actors operate within their own walled garden and the data reported by these services are proprietary and self-reported. Although independent audience measurement suppliers provide video game measurement at the request of advertisers and non-for profit organisations the online gaming space is largely opaque. Corrective technologies and advanced market research techniques are required to make up for the blind spots and lack of information from the online gaming sector. This issue is to be taken particularly seriously in light of the fact that these forums have become hubs for minors' media consumption. For numerous younger demographics, gaming has evolved beyond simple recreation into a multifaceted environment for social interaction, learning and media consumption. Gaming platforms and other types of structures have integrated film, television, and literature into their services. It is thus important to note that media consumption now flows through the gaming platforms, not only through social media or other on demand services.

Many online games, particularly those with "free-to-play" models, employ design elements and monetization strategies (e.g., loot boxes, in-game purchases, battle passes) that can be highly addictive and manipulative.

These designs can exploit psychological vulnerabilities, leading to excessive spending, problematic gaming behavior, and even gambling-like harms, especially among children and vulnerable individuals.

Children, in particular, are exposed to risks such as age-inappropriate content, in-game harassment, and misleading marketing tactics (e.g., "pay-to-win" schemes, influencer marketing that blurs advertising with genuine gameplay). As with other digital environments, applying traditional consumer protection laws to the nuances of online gaming can be challenging. The rapid evolution of game mechanics and monetization models often outpaces regulatory frameworks, creating gaps in enforcement.

Additionally, the gaming market often involves influencer marketing that blurs advertising with genuine gameplay. Independent audience measurement can help determine the actual reach and engagement of content creators within gaming, ensuring transparency over commercial motivations.

Independent audience measurement should be a requirement on gaming platforms for basic transparency and reporting purposes. They should prove to authorities that they comply with the same consumer protective measures when it comes to online media (such as advertising restrictions). In addition, independent audience measurement is crucial to identify how children's and other users' behaviors change and shift across different online gaming platforms so as to is essential identify patterns related to addictive design elements and manipulative monetization strategies (e.g., loot boxes, in-game purchases, battle passes) that can lead to excessive spending or problematic gaming behavior.

### ***Addictive design***

Human attention is emerging as a vulnerable resource in the digital environment, subject to commercial exploitation with hitherto lacking in sufficient safeguards.

Excessive “attention harvesting” – through endless scrolls, constant notifications, autoplay videos, and other tactics – is increasingly recognised as harmful to individual autonomy and public health. The roll out of AI-based agents with hyper-personalised content-generation risks accelerating the problem.

Today no EU law explicitly protects a person’s “attentional integrity” as a right in itself. Existing regulations like the Digital Services Act (DSA), Digital Markets Act (DMA), and proposed AI Act address pieces of the problem (e.g. banning certain manipulative practices or mandating data transparency), but they do so in a fragmented way.

There remains a regulatory gap: pervasive design techniques that maximise time-on-screen – even at the cost of user well-being – fall between the cracks of current law.

Without clearer boundaries, platforms will continue to push the limits of attentional extraction. This not only undermines user welfare, but also weakens media pluralism and fair competition, as gatekeepers hold proprietary data on user attention that outsiders cannot verify.

In short, European digital policy must evolve to treat attention with the same seriousness as data protection or content moderation and demand that platforms are independently measured and audited.

### **Independent audience measurement is the ally of the consumer: it must be reflected in the interpretation of EU privacy and data protection regulation**

Inconsistent interpretations by national Data Protection Authorities are, in many instances, forcing independent audience measurement providers to rely on consent, creating data blind spots that hinder transparency in digital media.

This is highly problematic for the effective public interest role of independent third-party measurement, which provides anonymized, impartial data crucial for a functioning digital economy and public transparency. To address this, we advocate for explicit recognition that independent audience measurement, with proper definitions and safeguards, is compatible with the GDPR's public interest legal basis (Article 6(1)(e)). Equally, the ePrivacy Directive should allow flexibility for data collection for this purpose, given proper user information.

## **Conclusions and suggestions**

Independent audience measurement, delivered by neutral JICs and research suppliers provides critical, evidence-based data that can inform regulatory responses to the challenges of consumer protection in the digital age.

By ensuring market transparency, aiding in the detection of fraudulent activities, and crucially, monitoring the consumption patterns of vulnerable groups such as children. Its impartial nature and adherence to high market research standards make it an indispensable tool for public authorities and stakeholders committed to safeguarding consumers in an increasingly complex digital environment.

Future regulation aiming to protect consumers must establish clear benchmarks based on evidence-based observation of real consumer behaviour, which includes reliance on independent audience measurement.

Digital actors that engage in media and advertising must be independently monitored. Public authorities should not rely on assumptions, public relations claims or self-reporting of audience numbers. Limiting audience transparency to traditional media services does not align with the reality of current consumption patterns, particularly those of minors.

Independent audience measurement providers must be able to fulfill their mission and thus supported by EU data protection and privacy law. Independent organisations that provide official market-agreed audience measurement to public authorities must be covered by the public interest legal basis in the GDPR (article 6.1 (e) of Regulation (EU) 2016/679).

## **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.

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