



NEWS MEDIA EUROPE

MEDIA SECTOR JOINT AMENDMENTS ON THE DIGITAL OMNIBUS

1. White list for low-risk processing – 88a

Amendment suggestions:

NEW: 88a(3) *(ba) carrying out low-risk processing activities listed in Annex I. The European Commission is empowered to adopt delegated acts in order to introduce additional processing activities in Annex I in view of technological and market developments.*

NEW: ANNEX I: *Low processing activities*

- *Core service delivery & access management: login/authentication, software updates and maintenance, accessibility features, storing of privacy choices.*
- *Service improvement & user experience: first-party analytics, A/B testing and optimisation of interfaces and user journeys*
- *Maintaining, operating and protecting the integrity, security and proper functioning of that service, including for the purposes of detecting, preventing or mitigating fraud, automated or non-human traffic, unauthorised access, misuse of the service, circumvention of technical access conditions, or other uses that are contrary to the provider's terms and conditions.*
- *Delivering and measuring the performance of advertising, including frequency capping cookies, ad serving and display, advertising audience measurement cookies, or cookies to combat click fraud, and support for monetisation models.¹*

Justification: The list of purposes for which processing is permitted without consent should be expanded and clarified to adequately reflect the legitimate low-risk processing activities essential to a media services' operations and business models.

The creation of a “white list” of essential, low-risk use cases exempt from the consent requirement would avoid unnecessary consent requests for benign technical and necessary processes, allowing the deployment of privacy-preserving technologies, while providing clarity and legal certainty for media service providers. Including an exemption for the delivery and measurement of the performance of advertising would also help achieve the objective pursued by Articles 88a and 88b of the Digital Omnibus: reducing consent fatigue by addressing its root causes, while maintaining a high level of data protection for users.

¹ As in certain member states Public Service Media are not allowed to carry online advertising, the European Broadcasting Union does not take an official position on this provision.

2. Audience measurement – 88a(3)c, recital 44

Amendment suggestions:

Article 88a(3)c – *Measuring the audience of an online service in order to create* aggregated information about the usage of an online service, *as defined by article 2(16) of (EU) Regulation 2024/1083 (“European Media Freedom Act”)*, where it is carried out by the controller of that online service solely for its own use, *or by a third party acting jointly with or on behalf of this provider, including where the third party is an entitled and independent third party performing audience measurement in accordance with Article 24(1) of Regulation (EU) 2024/1083. This provision does not apply to gatekeepers within the meaning of Regulation (EU) 2022/1925 (“Digital Markets Act”)*;

Recital 44 – (...) it is necessary to define a limitative list of purposes for which the processing should be permitted without consent. *This list should include measuring the audience of an online service by creating aggregated information about the usage of an online service, where it is carried out by the provider of that online service, or by a third party, such as a market research company or a Joint Industry Committee, acting together with or on behalf of this provider. ‘Audience measurement’ should be understood in accordance with Article 2(16) and with Article 24(1) of Regulation (EU) 2024/1083. Gatekeepers designated under Regulation (EU) 2022/1925 carrying out audience measurement may not rely on article 88a(3)c of this Regulation.*

Justification: As recognized in the European Media Freedom Act, audience measurement is crucial for the media sector. Media service providers depend on meaningful and comprehensive measurement for many reasons, including advertising allocation, pricing, purchases or sales, as well as understanding audiences, editorial planning and supporting the development of innovative and appealing services. While welcome, the exemption foreseen in Article 88a(3)c is defined too narrowly and would exclude well-established industry frameworks. Furthermore, safeguards are needed to ensure that media services maintain full control over further uses of their audience data by gatekeepers.

3. Restrictions to requesting consent – 88a(4)

Amendment suggestion: *Delete article 88a(4) and recital 45*

Justification: The restrictions on consent requests are disproportionate and unworkable: they would prevent media organisations from effectively seeking user consent, undermining digital revenues and the capacity to invest in quality content - to the benefit of large platforms and at the expense of Europe's media plurality and access to information. Alternatively, media service providers should be exempted from this obligation.

4. Consent conditionality – recital 46

Amendment suggestion:

Recital 46 – In light of the importance of independent journalism in a democratic society and in order not to undermine the economic basis for that, media service providers *need the ability to make access to their services' content conditional on user's consent, including refusing access to content, offering paid alternatives to users who refuse consent, or requesting users to log-in.*

Justification: Media companies must remain in control of the conditions under which they make content available, including refusing access to content and offering paid alternatives to users who refuse consent.

5. Centralised consent – 88b, recital 46

Amendment suggestion: ***Delete article 88b and related provisions in recital 46***

Justification: Article 88b would establish a default architecture favoring large platforms and browser providers - entities controlling consent infrastructure who are themselves major digital advertising players. It enables browser providers to interpose themselves between media companies and audiences, instrumentalising privacy protections to reinforce market dominance. This directly conflicts with the Digital Markets Act's objectives to limit gatekeeper power. It is also difficult to reconcile GDPR consent criteria -which require specific, informed consent - with universal browser signals that are by definition general and decontextualised. Moreover, even if the new consent management services were provided by non-gatekeepers, media providers would still be cut off from their direct relationship with readers and users. Regardless of who assumes the role of the new gatekeeper, consent rates will decline significantly, and European businesses and media providers would no longer be able to request and obtain the consent that the current legal framework requires them to have.