



This note presents the Audience Measurement Coalition's (AMC) analysis of the concerning changes introduced in the recent draft compromise text prepared by the Cypriot Presidency concerning Article 88a (now Article 5) and Recital 44 of the Proposal for a Digital Omnibus Regulation.

We recognise the rationale behind the change is to fulfill Digital Omnibus' core mission - simplification of digital rules where low risks to data subjects allows.

The proposed changes unfortunately undermine independent digital audience measurement and its processes and may **irreversibly mark the end of such independent audience measurement's general and public interest mission.**

We are troubled by additions that would **overturn the European Media Freedom Act's provisions on audience measurement**, not only via the fundamentally wrong approach in Article 5 (ex-88a) but also with competing, erroneous definitions proposed in Recital 44, ultimately rendering an existing applicable EU regulation a "paper tiger".

The Digital Omnibus draft compromise imposes strict supervision, subjugation and technical restrictions on Joint Industry Committees (JICs) and their research suppliers, departing from the clear definition of audience measurement set by the European Media Freedom Act (EMFA) (Article 2 (16)¹ and Article 24 (1)²). The provisions (now article 5 & Recital 44) imply that their role is more than simply upholding the common good and balance of the media ecosystem. Specifically, the Omnibus draft appears to treat audience measurement as if it involves individual profiling and involves retrieving more information than just the count.

It is vital to differentiate audience measurement—a low-risk, macro-economic analysis that aggregates data to produce statistical reports on viewing events that have already occurred—from ad-tech services like ad delivery verification. Unlike ad-tech services, audience measurement is not part of the real-time bidding process, and the data is neither relevant nor usable for marketing, or behavioural targeting purposes toward individual consumers.

¹ 'audience measurement' means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services or users of content on online platforms for the purposes of decisions regarding advertising allocation, pricing, purchases or sales or regarding the planning or distribution of content; - Article 2 (16) of Regulation EU 2024/1083

² Providers of audience measurement systems shall ensure that their audience measurement systems and the methodology used by their audience measurement systems comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability. - Article 24 (1) of Regulation EU 2024/1083

The collected census data in Audience Measurement is used only **to establish the "volume,"** meaning the **actual size of the audiences** that engaged with the content. The final outcome of census-based audience measurement consists exclusively of aggregated statistical data that does not enable nor intend to identify natural persons. While limited technical identifiers may be processed strictly within the measurement system where technically necessary for statistical **accuracy and validation**, these identifiers are not used for the purpose of identifying natural persons or **creating individual-level profiles**. Importantly, **any demographic or structural insights are derived solely through statistical calibration using independent reference sources, such as (fully consented) representative panels or surveys.**

Independent audience measurement based solely on consent would be devoid of any reliable comparative value: by structurally excluding non-consenting users, it would produce skewed data, incapable of reflecting the actual reach of digital services and, consequently, unfit to fulfil the objective benchmarking function that is the very *raison d'être* of independent measurement. It must therefore benefit from a consent exemption, as the processing it entails is strictly necessary to achieve the statistical representativeness without which independent audience measurement loses its entire purpose.

1. Independent audience measurement providers would not legally be able to use the exemption legal basis if mischaracterized as processors.

Independent audience measurement providers are **not processors according to applicable law and repeated decisions by the CJEU and local data protection authorities**. An independent audience measurement entity, particularly one operating under Joint Industry Committee (JIC) standards and its own methodology, is unequivocally a joint-controller for the processing activities inherent to measurement. This legal status **is functional** and non-negotiable, meaning it is determined by the **entity's actual activity**—defining the purpose (market decisions for commercial purposes and content planning) and all essential means of processing (data types, panel composition, retention, methodology).

The current text, however, grants the exemption exclusively to “third party” processors — whether expressly, as under Recital 44, or implicitly, by referring to ‘third parties acting on behalf of the provider of the service’ within the meaning of Article 5, which equally describes a processor relationship — thereby failing to accommodate independent measurement bodies acting as joint-controllers, whose structural independence from the service provider is precisely what guarantees the objectivity of the measurement.

Any law or contractual agreement that aims to designate an independent measurement body as a processor would be ineffective under the GDPR. An audience measurement service would be requalified as a joint-controller together with the organisation whose viewing or consumption is under independent measurement. This inconsistency would lead to inevitable data protection sanctions as JICs and research suppliers would not be allowed to use the legal basis in the first place. This is a risk that responsible audience measurement providers would not take for itself and its members. Audience measurement would thus revert to consent under the centralised

consent mechanism proposed in former article 88b which is inappropriate for independent measurement purposes, as stated above.

Only the addition of a joint-controller authorized by the online service would remediate this problem.

2. **The proposed legal basis is purely designed for internal analytics not independent market level measurement**

The core deficiency in this proposal is the fundamental **mischaracterization of audience measurement**. It mistakenly reduces this highly institutionalized, industry-regulated mechanism—essential for market transparency, fair competition, and public oversight—to mere internal, confidential reporting. This **directly contradicts the European Media Freedom Act (EMFA)**, which mandates that audience measurement must be transparent, impartial, verifiable, and comparable, and carried out according to widely accepted self-regulatory mechanisms, which is the rule, not the exception. As a precision, this does not mean that independent measurement providers act without authorisation. A contractual agreement exists between the media services providers and Joint Industry Committees (JICs), and any research providers that have an **official role within their respective media market (consider Standard and Poor for the financial markets as an analogy)**. Nevertheless, the measurement provider's role is complex: it does **not act upon the precise instructions of the client**. It acts according to the KPIs and methodologies that have been **collectively agreed by all sides of the market, according to expert market research standards, and in the context of an industry-wide mandate attributed by the industry**. The Omnibus proposal entirely disregards the existing market instruments for digital audience measurement. Consequently, its provisions benefit dominant platforms by legitimizing opaque, internal measurement systems that can distort the European market.

This amounts to a surrender of European digital sovereignty. The **restrictions in the Digital Omnibus accommodate the platforms and will reward them for their disregard of European transparency standards that the European Media Freedom Act embraces**.

Furthermore, these new proposed rules provide actors who operate outside of these standards with an alibi to **resist providing essential impartial audience statistics when required by public authorities for consumer protection and accountability**. We thus urge the Council to remove "solely for the provider's own use" to eliminate this fundamentally flawed understanding of the role of independent measurement that threatens the very foundations of media transparency in Europe.

3. **Defining technical processes in legislation which in fact cancel out the independent measurement process itself.**

The draft compromise introduces an unprecedented level of technological detail, particularly in Recital 44, by defining the precise manner in which audience measurement processes should be conducted. Specifically, it mandates that the data is instantly anonymised, aggregated and in

a general manner to reinforce the assumption in Article 5 that aggregate anonymized data is sufficient for audience measurement.

To be very clear: once data has been immediately aggregated, an accurate measurement process can no longer take its course, and the collected data is no longer auditable. It prevents the provider from using the granular data points, the non-aggregated data, necessary to accurately **count** a unique individual end-user. The measurement process requires a minimum time to process data in order to ensure the correct counting of individual end-users is made. Any process following immediate aggregation would be reduced to very general models and be highly assumptive, unreliable and unverifiable. The requirement for immediate aggregation is functionally analogous to banning a precise audience measurement process altogether, as it eliminates the underlying data necessary to perform the valid and accurate measurement calculations.

B. The ban on combination and deduplication

Furthermore, the new recital introduces a critical restriction: collected data cannot be “combined with data from other services from the provider of the online service or from a third party, such as analytics information from other websites or apps”. This measure would immediately outlaw the very cross-media audience measurement that is the *raison d’être* of modern independent audience measurement.

Independent, multi-publisher measurement fundamentally requires cross-publisher deduplication to provide the comparable media “currency” demanded by advertisers and media companies and to ensure statistics are accurate on a macro-economic level. By banning combinations, the compromise fatally undermines the ability to produce reliable, industry-standard statistics. Crucially, in its current form, the proposal would prohibit measurement providers from matching census data (for volume of media consumption) with recruited panels for calibration purposes. If such a combination is prohibited, panels can no longer correct biases and inaccuracies in the census data sources. This can introduce systematic bias, overcounting, and underrepresentation—especially for small or diverse audiences. Ultimately, this ensures data cannot be combined, each platform or service under measurement becomes its own “black box,” rendering measurement highly fragmented, unverifiable, and incomparable across the ecosystem.

We also note that this approach is highly unusual for lawmaking. Legislation should be properly rooted in principles, technology-neutral, and future-proof, defining clear purposes and solid definitions.

By moving from a principle-based framework to a prescriptive, technology-specific rule set, the draft text creates a regulation that risks being quickly outdated and unworkable. We therefore urge the Council to remove technical specifications and insert instead, as the AMC has suggested, a **formal ban** on using the legal basis for any purpose related to advertising, profiling, or any purpose unrelated to audience measurement.

Audience measurement of advertising is not contextual advertising

The compromise text (new Article 5) establishes a legal basis for "measuring the display and performance of advertising made solely on the basis of the immediate content displayed on the user's interface and not based on any type of profiling," and labels this as "*contextual advertising*."

This severely mischaracterizes our activity by conflating the act of measuring advertising campaigns with contextual advertising.

Advertising is the act of creating and distributing messages to promote products or services, while advertising measurement is the essential process of validating campaign performance to protect the market from **advertising misreporting, or worse, fraud**. Measurement, therefore, has no link to the core purpose of advertising itself. It is intended to prevent the deliberate practice of reporting invalid ad impressions, clicks, or conversions. Advertising seeks to create-impact, whereas **measurement quantifies actual reach to protect the market from risks of distortion**.

Furthermore, the accompanying provisions in Recital 44 impose extremely narrow, technological constraints, mandating that this measurement must be based on a "single web page or based on a single search query and does not involve any retention or link with the user's past or future activity". These constraints severely restrict the ability to measure advertising performance over any period longer than the instant interaction, making campaign-level performance measurement impractical and virtually impossible. We recommend removing this entire section to prevent the conflation with advertising, so that advertising measurement is properly treated in its rightful place, as a normal component of measurement

AMC request for amendments:

Consequently, we are encouraging the Council to intervene to reverse the course of a policy that will be catastrophic and irreversible for the European media ecosystem, transparency, and public oversight. **In this context, we also note that the current drafting risks increasing legal uncertainty by further fragmenting the relationship between the GDPR and the ePrivacy Directive, whereas a coherent approach across both instruments would be essential for independent audience measurement. We would urge the Council to revert back to an approach where the two instruments would be fully aligned and coordinated.** We hope the Council will support a reasonable approach and seriously consider the AMC's changes below, which guarantee a mission-based audience measurement grounded in the public and general interest and set forth clearly a ban on any misuse of the article in order to protect the end-user's privacy.

Article 5 (b)–Draft Council Compromise	AMC critical changes
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<p>b) creating anonymous aggregated information about the usage of an online service requested by the user to measure the audience of such a service, where it is carried out by the provider of that online service, or by a third party acting on behalf of this provider, solely for the provider's own use;</p>	<p>b) measure the audience as defined in article 2(16) of Regulation 2024/1083creating anonymous aggregated information about the usage of an online service requested by the user to measure the audience of such a service, where it is carried out by the provider of that online service, or by a joint controller or processor mandated by the provider of that online service a third party acting on behalf of this provider, solely for the provider's own use;</p>
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<p>Recital 44 – Draft Council Compromise</p>	<p>AMC critical changes</p>
<p>Creating aggregated information about the usage of an online service to measure the audience of such a service where it is carried out by the controller of that online service solely for its own use, or by a processor acting on behalf of this provider, also referred to as ‘audience measurement’, means processing to obtain insight into the performance and use of the online service in an instantly anonymised, aggregated and general manner. The aggregated information should not relate to a specific data subject and should therefore be anonymous aggregated information. The data collected should not be further processed for another purpose, combined with data from other services from the provider of the online service or from a third party, such as analytics information from other websites or apps, or shared with third parties.</p> <p>(...)</p> <p>The measurement of the display and performance of advertising which is made solely on the basis of the immediate content displayed on the user's interface, also referred to as ‘contextual advertising’, may be lawful without the consent of the user provided that it is not based on any type of profiling, that it is based on a user's current visit to a single web page</p>	<p>Creating aggregated information about the usage of an online service to measure the audience of such a service where it is carried out by the controller of that online service solely for its own use, or by a processor acting on behalf of this provider, also referred to as ‘audience measurement’, means processing to obtain insight into the performance and use of the online service in an instantly anonymised, aggregated and general manner. The controller, such as an online service or a media service provider, may mandate a processor or joint controller, such as a market research company or Joint Industry Committee, to carry out the processing jointly or on its behalf, subject to strict safeguards ensuring that such processing is proportionate, compliant with the requirements of Article 24(1) of Regulation (EU) 2024/1083 and is not repurposed for advertising, profiling, or other unrelated purposes. The aggregated information results should not relate to a specific data subject and should therefore be anonymous aggregated information. The data collected should not be further processed for another purpose, combined with data from other services from the provider of the online service or from a third party, such as analytics information from other websites or apps, or shared with third parties other than the joint controller or processor mandated by the provider of</p>

or based on a single search query and does not involve any retention or link with the user's past or future activity.

the online service specifically referred to in article 5 (b).

(...)

~~The measurement of the display and performance of advertising which is made solely on the basis of the immediate content displayed on the user's interface, also referred to as 'contextual advertising', may be lawful without the consent of the user provided that it is not based on any type of profiling, that it is based on a user's current visit to a single web page or based on single search query and does not involve any retention or link with the user's past or future activity.~~

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 Joint Industry Committees (JICs) and research suppliers. 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.

Joint Industry Committees:

AGF - Videoforschung (Germany)

AGMA - Arbeitsgemeinschaft Media-Analyse e.V. (Germany)

AIMC- Asociación para la Investigación de Medios de Comunicación (Spain)

ARMA - Asociația Română pentru Măsurarea Audiențelor (Romania)

CAEM - Comissão de Análise de Estudos de Meios (Portugal)

CIM - Center for Information about Media (Belgium)

Danske Medier Research (Denmark)

Finnpanel (Finland)

Mediapulse (Switzerland)

Médiamétrie (France)

Media Metrics Finland Oy (Finland)

MMS - Mediamätning i Skandinavien (Sweden)

NMO - Nationaal Media Onderzoek (Netherlands)

Norwegian MOC (Norway)

PBI - Polskie Badania Internetu (Poland)

TAM Ireland (Ireland)

WEMF AG für Werbemedienforschung (Switzerland)

Research suppliers:

Comscore

GfK

Ipsos

Nielsen

Fifty5Blue (formerly Kantar Media)

Streamhub

Sensemakers

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