



# Position Statement on ePrivacy Regulation

Coalition for Audience Measurement

## Purpose of Statement and Context

### This Position Statement

- Sets out the recommendations of the audience measurement coalition on Article 8(1)(d) of the ePrivacy Regulation
- Outlines the importance, role and safeguards in the audience measurement system

Earlier this year, the European Commission proposed a wide-ranging revision of the ePrivacy Directive following a successful adoption of the General Data Protection Regulation. These efforts, part of Europe's Digital Single Market initiatives, aim to ensure Europe leverages and benefits from the digital revolution whilst fostering an operating environment that protects individual citizens and safeguards their privacy.

The proposed ePrivacy Regulation will have a significant impact on the ability of an ecosystem of sectors and actors to produce audience measurement and/or use its aggregated outputs to measure audience traffic flows, actual media consumption, set the value of media brands and channels, and enable fair and transparent subsidy allocation based on independent figures. This ecosystem strengthens trust and confidence in the digital economy and its key performance indicators.

This statement seeks to ensure that in the process of legislating, Europe does not unintentionally hinder or damage the production and use of audience measurement tools in Europe. Audience measurement is an essential indicator of the health of Europe's media landscape, and current and future trends that may impact it. It is crucial to ensure Europe's media sector can effectively compete with its global competitors.

Audience measurement has a long and proven track record in safeguarding individual rights and privacy. In addition - and as with the General Data Protection Regulation – we support efforts by the European Union to establish a consistent, comprehensive and clear legal framework to govern activities of the digital economy. Accordingly, we support the decision to propose transitioning the ePrivacy Directive to a Regulation and encourage legislators to secure maximal alignment of requirements between Regulation 2016/679, the General Data Protection Regulation, and its ePrivacy counterpart.

We welcome the European Commission's proposal to introduce an audience measurement exemption as in Article 8(1)(d). Nonetheless, the proposal currently contained in the proposed ePrivacy Regulation needs to be improved to reflect the current or indeed future operating realities of the media ecosystem, and ensure legal certainty for producers and users of aggregated audience measurements.

## Recommendations

We recommend amending Article 8 to ensure that audience measurement conducted by both internet service providers themselves and by third party suppliers – such as audience measurement companies they have an agreement with - can continue to take place, whilst providing the necessary safeguards to mitigate any actual and perceived privacy risks facing individuals. This is very accurately expressed in the [draft](#) of 8 September 2017 proposed by the Council Presidency. It is important that exemptions are carefully crafted so as to account for the diversity of tools and techniques and partnership structures that make effective audience measurement possible today.

We welcome the European Commission's proposal to introduce an audience measurement exemption as proposed in Article 8(1)(d) and welcome a series of further amendments consistent with business practices and privacy requirements, namely:

- ✓ The provision should refer to audience measurement in general, rather than exclusively *web* audience measurement, as audience measurement is not just used to measure audiences on the Internet. The term *web* audience measuring contradicts the principle of technological neutrality. It might create unnecessary legal uncertainty for audience measurement, as was echoed by the Article 29 Working Party in its recommendation to expand the permitted uses cases covered by the exemption<sup>1</sup>.
- ✓ In addition, it should also cover actors operating *on behalf of* the provider of the information society service to carry out audience measurement. Many information society services prefer to delegate these tasks to a supplier to ensure there is quality assurance and independence or where they are not sufficiently technically competent to conduct it themselves.

We propose that Article 8(1)(d) is amended as follows:

*“If it is necessary for **web** audience measuring, provided that such measurement is carried out by, **or on behalf of**, the provider of the information society service requested by the end-user”,*

Some amendments propose limiting the exemption to cover only that which is “technically necessary” and on the condition that no personal data is made accessible to any other party. Whilst we understand the motivation, it is important to note that *technically necessary* introduces a degree of subjectivity that may lead to lengthy disputes during the implementation phase. We therefore recommend reverting to the original proposal, which speaks only of *necessary*. Additionally, we are convinced that the conditions to access personal data are sufficiently governed by the General Data Protection Regulation and the Charter for Fundamental Rights and it suffices only to refer to the obligations derived from those fundamental rights.

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<sup>1</sup> Article 29 WP Opinion 01/2017 on the Proposed ePrivacy Regulation adopted on 4 April 2017, point 25

## About the Coalition for Audience Measurement

Our coalition brings together a dozen leading global and European associations representing the interests of stakeholders providing or using audience measurement to ultimately finance and deliver media-driven information society services to the public. These measurements are not used to directly target individuals and are instead used by decision-makers to improve services, measure performance, and inform innovation and decision-making. The coalition aims to facilitate informed public discourse on legislative initiatives and policy-making impacting on the audience measurement ecosystem. We welcome any opportunities to support the co-legislators in their important work.

Our coalition comprises the following associations:

### AGOF

AGOF is the central German association for neutral online audience research. As an association of the main German online publishers and sales houses AGOF online research result (digital facts) is the currency for German online advertising. It provides a neutral and statistic audience research system for internet usage. Audience measurement and research is necessary to provide information on the usage and acceptance of online services for the whole public online market. The goal of the scientific analysis is to provide independent, verifiable data to build a trustworthy currency for online usage.

### EBU

The [European Broadcasting Union](#) (EBU) is the world's leading alliance of public service media. We have 73 Members in 56 countries in Europe, and an additional 34 Associates in Asia, Africa and the Americas. Our Members operate almost 2,000 television and radio channels together with numerous online platforms. Together they reach audience of more than one billion people around the world, broadcasting in more than 120 languages. The EBU operates Eurovision and Euroradio services.

### EGTA

egta is the Brussels-based trade association of television and radio sales houses that market the advertising space of both public and private broadcasters across Europe and beyond.

### EFAMRO

EFAMRO represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses across 14 countries.

EFAMRO's objectives are to represent the common interests of its members at European and international level; maintain and improve the reputation of market, opinion and social research to the public; develop and establish international quality standards for market, opinion and social research; develop, maintain and enforce international professional principles and rules which are mandatory for the members of the Federation; combat unfair trading and support members and other national associations in the field of market, opinion and social research by providing corresponding information and services.

## ESOMAR (Coordinator)

ESOMAR is the global voice of the research, analytics and insights community, speaking on behalf of over 4900 individual professionals and 500 companies who provide or commission research, analytics and insights in more than 130 countries. All community members agree to uphold the ICC/ESOMAR International Code.

Together with national and international research associations, we set and promote professional standards and self-regulation for our sector and elevate the value of research, analytics and insights in illuminating real issues and bringing about effective decision-making.

## Febelmar

Febelmar unites Belgian research agencies. Febelmar was founded in 1980 under the influence of 6 agencies specialised in market research. Today, Febelmar brings together 33 institutes and is the professional association of Belgian market research agencies grouping approximately 85% of the total investment in market research in Belgium.

## MLE

MLE co-ordinates and represents the common economic interests of businesses representing the print media towards government, political institutions, parties, and business partners. Its aim is to ensure a strong representation of the print media's benefits for all players in the media market, using the domestic and international experiences of members of the association.

It promotes the spread of fair business practices, promotes cutting-edge business solutions, strengthens ethical behaviour in both the publishing and journalistic spheres, enhances the prestige of the newspaper publishing industry.

## MOA

The MOA, Center for Marketing Insights, Research and Analytics is an association of companies and institutions engaged in market research, digital analytics, marketing intelligence and policy research based in the Netherlands. The MOA's aim is the quality of survey based and non-survey based information, both nationally and internationally, in the broadest sense of the word to promote, develop and stimulate. In addition, the association promotes the interests of (virtual) respondents, users, and providers of digital analytics, marketing research and opinion and policy research.

## News Media Europe

News Media Europe is the voice of the progressive News Media Industry in Europe, comprising over 2200 news brands in print, online, television and radio. The industry is committed to fostering a free, independent and pluralistic media landscape in Europe. Independent news media requires a heavy investment in journalism and this is dependent upon, and financed through, advertising revenue, which in the digital world is reliant on an understanding of its audience.

## SYNTEC Etudes

SYNTEC Etudes is the French syndicate representing market research professionals in France. Its objectives are to represent, promote and defend the collective professional, ethical and economic interests of legal

entities that have as a major activity market and opinion research on behalf of organisations and companies, public or private.

SYNTEC Etudes brings together nearly 60 companies, ranging from SMEs to the largest market players, covering the entirety of market research and opinion research service offers. In terms of turnover and staff, the member organisations of SYNTEC Etude comprise over half of the French market for market and opinion research.

## WAN IFRA

The World Association of Newspapers and News Publishers was founded in Paris by survivors of the World War II clandestine press of France and The Netherlands. Today, 72 national associations of newspaper publishers from 67 countries are our members, giving to WAN-IFRA the privilege to represent more than 18,000 publications, 15,000 online sites and over 3,000 companies.

The association set out in 1948 with the triple objective of seeking international commitments and guarantees to safeguard freedom of expression, of ensuring the renewed availability of the means of newspaper production, and of creating a new dialogue and exchange of information and ideas between representatives of the newspaper community world-wide. Our broader mission has largely remained the same, with a clear focus on all issues that benefit from the unique international perspective that WANIFRA's global membership provides. According to the statutes, the principle that underlines our work is the following: "The basic conviction of WAN-IFRA is that free and independent newspapers and a free and independent news publishing industry play an indispensable role in maintaining free societies and promoting human rights."

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## Background explanatory note:

### Introducing the audience measurement ecosystem

Numerous stakeholders, ranging from website owners to media platforms use audience measurement. Audience measurement has been with us for nearly 65+ years, it has been used to measure audiences on radio and television channels and has now evolved to capture the proliferation of new channels offered by digital technology. Through its history, audience measurement has enabled us to determine the proportion of users using a channel or seeing a piece of content enabling various stakeholders to legitimately measure and report popularity, traffic flows to and from sources, or the effectiveness of content placement.

Website owners and those financing the Internet (digital economy) require, like traditional media channels, precise and independent audience measurement to be able to measure the relevance and effectiveness of a variety of content, as well as to improve the web experience of users. Additionally, accuracy is a key consideration to combat fraud and assign a realistic valuation of web traffic and consequently media investment. To reach these objectives, increasingly, audience measurement is conducted using a variety of methods, tools, techniques and service partnerships that are combined to achieve even more accurate and real-time measurements for decision-makers. These activities form critical parts in the functioning of the Internet and are therefore crucial to facilitate a successful Digital Single Market.

### Why is audience measurement important?

Audience measurement is an unsung hero of the digital economy. Nearly all information society providers and those who finance them use audience measurement as a vital tool to better understand traffic flows and the performance of content place and service provision and in turn use this information to inform their strategies and development plans.

The objective of audience measurement is not to track individuals or to target them, but rather to aggregate individual user behaviour to establish realistic measures. This ultimately enables the ecosystem and indeed society to benefit from vital insights that allow for the setting of fair and competitive pricing for content placement, helping inform government bodies setting media policies, and to allow them to make informed choices to optimize the quality of the service's distribution and improve diversity of media offering.

These measures are established by various stakeholders who have a long track record of manipulating data sets to produce aggregated outputs that fully respect accepted international standards for data protection and privacy, and responsible data collection and use.

Without these measures, national audio-visual, competition or regulatory authorities, and statistical public institutions seeking to promote effective national media diversity would lack important sources of data and insights. Additionally, media organisations at large would not be able to provide independent

measurements of the size of their audience, its composition, and thereby proving their comparative value to their partners.

Advertisers would not be able to trust media platforms about the effectiveness of their ad placements thereby reducing trust between key actors of the consumer-facing digital economy. Website owners would not be able to reliably track the performance of their website designs and content placement strategies preventing them from securing revenue to finance their websites' operations.

## Who produces audience measurement and uses audience measurement?

### Research and Analytics Providers

Research and analytics providers have a long tradition in producing audience measurements and providing them in an aggregated format that enables decision-makers to take decisions based on verified and independent statistics. These statistics are often derived using a variety of collection methods. These include using data provided by panel members who consent to their viewing habits being tracked, and census data using cookies and similar technologies to establish the representativeness of the panel members. These two data sources are calibrated between each other to ensure the aggregated measurement reports provided to clients of audience measurements are accurate.

Many research and analytics providers subscribe to established self-regulation schemes that enable panel members and passive participants to enforce their rights. These are built on established international standards set forth by the ICC/ESOMAR International Code and national codes across many EU countries. These providers have also proactively provided education content to the public to increase awareness of data collection practices through initiatives such as the Research Choices programme<sup>2</sup>.

### Media organisations

To carry out audience measurement, media organisations frequently outsource work to research and analytics providers based on contractual agreements.

While TV and radio audience measurement based on statistically-representative panels and samples remains important, the media industry is currently evolving towards a more holistic approach which involves measurements for all types of content (text, video, audio, etc.) across platforms, formats and devices. As such, data enables broadcasters to capture various types of usage that leave a digital footprint, such as clicks on or within a given website, app or media player, launch of a stream, pausing or stopping. TV set-top boxes and connected TVs also offer a valuable source of data for audience measurement. This kind of data is often called "return-path data".

Media organizations are developing advanced 'hybrid' audience measurement models which combine different types of data from different sources. Depending on their needs, they may prefer the audience

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<sup>2</sup> Available online at <http://researchchoices.org>. It offers educational content about passive audience measurement and online research more generally that is applicable to most research providers. It offers an independent contact point for members of the general public who are concerned, wish to opt-out, or wish to lodge a complaint against one of the participating companies.

measurement technique offered by a given technology provider for the whole market, or choose to use different solutions.

### Advertisers

For advertisers, the ability to have access to independent, verified audience measurement is critical to measure both the effectiveness of the content being placed on broadcasters' channels, but also to ensure that fair pricing is being charged for the placement of the content. Independent audience measurement helps to build trust and confidence in all of the stakeholders of the ecosystem thereby enabling more usage of all channels availability and consequently advertising spend. It is this spend which continues to be one of the leading sources of revenue keeping the internet free to use for all end-users. Audience measurements used by advertisers may help inform advertising strategies, but it is not the audience measurements themselves which drive or enable automated targeted advertising.

### National Governments

National governments are also using audience measurement, both in order to evaluate whether public interest messaging is reaching the right audiences, but also in order to take media policy decisions. Audience measurement can play a key role in confirming the success of policy initiatives, for example, leading audience measurement agencies participate frequently in government communications campaigns. Audience measurement helps to provide metrics on audience reach and impact of important public policy communication initiatives on topics ranging from violence against women, to social equality issues for instance.

## How do we mitigate any risks to privacy from audience measurement?

Audience measurement respects the fundamental rights and freedoms of individuals including the individual's right to privacy. Safeguards are built in to address various real and perceived privacy risks. Audience measurement is different to and is distinct from advertising.

Audience measurement's essential ingredient is traffic behaviour which is collected by technologies like research and analytics cookies and other similar tools. These are the easiest technologies to use without intruding or interfering with the normal browsing activities of the end-user.

However, as personal details of individuals are contained in those tools, it is recognised that privacy risks do exist. This information is theoretically capable of being surreptitiously intercepted or accessed by unauthorised parties or being misused for purposes other than strict audience measurement such as singling out for individual targeting purposes. Considering this, stringent measures are put in place to ensure that both the severity and likelihood of any such risks to individuals are fully considered and eliminated or minimised.

The information contained in these individual cookies is of low economic value to industry sectors, as it is the analysis and the aggregation of the individual data points which provides the insight into traffic flows. Essentially it is of use only for the service providers and their stakeholders who use the information at a macro-level in an aggregated and thus anonymised format. Accordingly, the privacy risk and likelihood of any adverse impact on the individual is low.

The aggregated information is complemented with a second data point, that of panel users who have consented to have their behaviours more richly recorded for the purposes of audience measurement. It is this information that will serve as the basis of further analysis, rather than the information collected passively for the purposes of establishing the census against which the panels' own data can be weighted.

Safeguarding individual rights is built on both full legal compliance and best practice ethical approaches by the stakeholders in the audience measurement ecosystem. All participants in the process put in place organisational and technical measures to mitigate against risks. These include:

- Purpose limitation – Audience measurement data is not used to advertise directly to individuals or to re-identify individuals. These requirements on limitation of use are reflected in contractual arrangements.
- Aggregation - Audience measurement organisations use what is commonly referred to as aggregation which provides summary statistics of individuals' information published at a group level. By releasing only aggregated reports featuring these groups within research findings, the risk of re-identification is limited significantly.
- Pseudonymisation - Another technique organisations commonly use is hashing, or indeed other forms of pseudonymisation, using random unrelated values to change information associated with

a specific browser in such a way that it is difficult to link the pertinent information back to any individual.

- Encryption - Other techniques are used to encrypt the data sets with access codes that are provided only to professional and trained researchers. Alternatively, pseudonymised identifiers are removed altogether from datasets only leaving behind the aggregated information for audience measurement purposes.

As set out above all stakeholders will at a minimum utilise and apply appropriate techniques to any personal data collected in order to maintain individuals' privacy along with all the proportionate organisational security measures implemented at the company level to ensure there is no unauthorised access of the data. Individual organisations will also use a variety of other methods to provide additional layers of security and protection.

Compliance with these techniques is verified by self-regulation schemes like those enforced by ESOMAR and national research bodies on members. This requires a clear distinction between audience measurement activities and other activities, and offers members of the public a mechanism to complain against subscribed companies leading to thorough investigations and if necessary the issuance of public reprimands or exclusion. Leading media operators work primarily with organisations that subscribe to these national and international codes and standards precisely because of the effectiveness of these mechanisms.

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