

Audience Measurement Coalition (AMC)

comments on ePrivacy Regulation

Audience Measurement Coalition (AMC) is a business coalition with like-minded research companies and JICs. The AMC includes research organizations such as FINNPANEL (FIN), IVW (DE), Médiamétrie (FR), ATO and SPIR (CZ) Nielsen, Kantar and Gemius.

Audience Measurement ('AM') is counts at market level (i.e. an **entire market**) the size of online audience and media (content) they view/listen to. For example, in Germany 57 million people use the Internet ('online population') of which 47% visit regularly the website www.spiegel.de. AM is the basis for the Audiovisual and Media Services Directive ('AVMSD'): AVMSD imposes a number of quantitative and qualitative restrictions for linear TV and VOD and the objective of the ongoing revision could be severely hampered by ePrivacy Regulation. Those restrictions can be only complied with by measuring audiences: media regulatory bodies are clients of AM providers to obtain the necessary data to fulfill their duties, policing and enforcement.

Public broadcasting need AM data to verify they fulfill their public mandate to cater to all audiences, not just the commercially lucrative segments.

AM is not about collecting data from users with the objective to relate that data back to them, identify **or deliver targeted advertising to them, by using AM data**. Clients typically receive reports, i.e. data are used in an aggregate and is anonymised.

Audience measurement is often referred to as "**the currency of internet**" and is **essential to provide transparency to the market**. AM sheds light into otherwise dark markets that would only benefit few players with the dominant market position. For content owners, AM is crucial to ensure their remuneration, e.g. content sharing or royalties' payments.

AM data **are not used to target advertising to users**. AM bears very limited privacy impact and even Art. 29 WP has recognised this for the subset of Website Analytics. AM deploy a number of privacy safeguards: pseudonymisation, anonymisation and aggregation - audience reports for clients include aggregate data only; raw data is deleted after minimum retention and users are offered a right to object (opt-out). Summing up, Audience measurement benefits society and public services at large, ensures fair market conditions and if any, it has only a very limited privacy impact and should be not blocked by software and exempt from a consent requirement.

Annex

Commission's Proposal	Council's text (12 April)	AMC's Proposal
		<p><u>Recital 21(a new)</u></p> <p><i>For the purposes of this Regulation, information society service providers include audience measurement providers, where the measured activity falls under an information society service.</i></p> <p><i>JUSTIFICATION:</i> <i>Audience Measurement is an essential service that provides aggregate data to public and private broadcasters, regulators and public authorities. It brings transparency into the market and creates a level playing field. Importantly, it is essential to facilitate enforcement and compliance with the obligations of the Audiovisual and Media Services Directive. Audience Measurement is so of such importance to the underlying service that it cannot be distinct from it.</i></p> <p><u>Recital 21 (aa new)</u></p> <p><i>Audience measurement is necessary for information society service providers, advertisers and public authorities and regulators to facilitate compliance with the Audiovisual and Media Services Directive 2010/13/EU. End-users shall be given the right to object to measurement. Audience measurement provider shall provide audience measurement in aggregate reports. Personal data, including online identifiers, from an end-user processed by an audience measurement provider shall not be used to target direct marketing to that end-user.</i></p> <p><i>JUSTIFICATION: Audience Measurement is distinct from online advertising. The Recital clarifies this and provides additional safeguards for end-users.</i></p>

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<p style="text-align: center;"><i>Article 8</i></p> <p>1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:</p> <p>a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or</p> <p>(b) the end-user has given his or her consent; or</p> <p>(c) it is necessary for providing an information society service requested by the end-user; or</p> <p>(d) if it is necessary for web audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user.</p>	<p style="text-align: center;"><i>Article 8</i></p> <p>1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:</p> <p>a. it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or</p> <p>b. the end-user has given his or her consent; or</p> <p>c. it is necessary for providing an information society service requested by the end-user; or</p> <p>d. if it is necessary for web audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user. or by a third party on behalf of the provider of the information society service provided that conditions laid down in Article 28 of Regulation (EU) 2016/679 are met.; or</p>	<p style="text-align: center;"><i>Article 8</i></p> <p>1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:</p> <p>a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or</p> <p>b) the end-user has given his or her consent; or</p> <p>c) it is necessary for providing an information society service requested by the end-user <i>which shall include inter alia maintaining, operating and managing the integrity, access or security of the information society service, enhancing user experience or measures for preventing unauthorized access to or use of the information society service according to the terms of use for making available the service to the end-user;</i> <i>or</i></p> <p>d) if it is necessary for web audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user <i>or an audience measurement provider;</i> or</p> <p><i>JUSTIFICATION: Audience Measurement needs to provide reports of the entire market and needs to combine data from various news publishers, broadcasters etc. Due to this and the different setup of the market, where sometimes AM is carried out by a Joint Industry Committee, and sometimes by a market player directly, AM providers might qualify as controllers.</i></p>

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	<p>e. it is necessary for a security update provided that:</p> <ul style="list-style-type: none"> i. security updates are necessary and do not in any way change the privacy settings chosen by the end-user are not changed in any way, ii. the end-user is informed in advance each time an update is being installed, and iii. the end-user is given the possibility to postpone or turn off the automatic installation of these updates; or <p>f) it is necessary to locate, at the time of the incident, a caller of an emergency call from the terminal by organisations dealing with emergency communications.</p>	<p>e) <i>if the processing relates to a television broadcasting; or</i></p> <p><i>JUSTIFICATION: Art. 8 relates to terminal equipment but the exceptions relate to information society services. As television broadcasting is out of scope, it is necessary to exclude television broadcasting that can be watched on a smart TV that would qualify as terminal equipment.</i></p> <p>f) <i>the end-user is party for the performance of a contract, or</i></p> <p><i>JUSTIFICATION: This exception is limiting cookies-fatigues, as it excludes cases, where a contract exist that already has to comply with the GDPR. For example, audience measurement for linear TV is carried out by installing a specialised terminal equipment (meters) in such households that have agreed contractually to be measured. Unless such cases are excluded, users would agree in a contract to participate in a panel but would need to specifically consent again, when the meters are switched on. This also applies to e-commerce sites, where users agree to the terms that already comply with the GDPR and would need to specifically consent to certain cookies etc. that are part of the contract again.</i></p> <p>g) <i>[OPTION 1] a clear and prominent notice is displayed to the public informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation 2016/679/EU where</i></p>

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<p>2. The collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:</p> <p>(a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or</p> <p>b) a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.</p> <p>The collection of such information shall be conditional on the application of appropriate technical and organisational measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation (EU) 2016/679, have been applied.</p> <p>3. The information to be provided pursuant to point (b) of paragraph 2 may be provided in combination with</p>	<p>2. The collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:</p> <p>a. it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or</p> <p>b. a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.</p> <p>The collection of such information shall be conditional on the application of appropriate technical and organisational measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation (EU) 2016/679, have been applied.</p> <p>3. The information to be provided pursuant to point (b) of paragraph 2 may be provided in combination with standardized icons in order to give a meaningful</p>	<p><i>personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimize the collection.</i></p> <p><i>The collection of such information shall be conditional on the application of appropriate technical and organization measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation 2016/679/EU, have been applied.</i></p> <p><i>[OPTION 2] under the conditions as set out in point (b) of paragraph 2 and paragraph 3.</i></p> <p>2. The collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:</p> <p>a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or</p> <p>b) a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.</p> <p>The collection of such information shall be conditional on the application of appropriate technical and organisational measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation (EU) 2016/679, have been applied.</p> <p>3. The information to be provided pursuant to <i>point (g) of paragraph 1</i> may be provided in combination with</p>

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<p>standardized icons in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.</p> <p>4. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 determining the information to be presented by the standardized icon and the procedures for providing standardized icons.</p>	<p>overview of the collection in an easily visible, intelligible and clearly legible manner.</p> <p>4. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 determining the information to be presented by the standardized icon and the procedures for providing standardized icons.</p>	<p>standardized icons in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.</p> <p>4. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 determining the information to be presented by the standardized icon and the procedures for providing standardized icons.</p>
<p>Article 9</p> <p>1. The definition of and conditions for consent provided for under Articles 4(11) and 7 of Regulation (EU) 2016/679/EU shall apply.</p> <p>2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.</p> <p>3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any</p>	<p>Art. 9 4a</p> <p>1. The definition of and conditions provisions for consent provided for under Articles 4(11) and 7 of Regulation (EU) 2016/679/EU shall apply to natural persons and, <i>mutatis mutandis</i>, to legal persons.</p> <p>1.a Paragraph 1 is without prejudice to national legislation on determining the persons who are authorised to represent a legal person in any dealings with third parties or in legal proceedings.</p> <p>2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet.</p> <p>3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent</p>	<p>Article 9</p> <p>1. The definition of and conditions for consent provided for under Articles 4(11) and Article 7 I-III [Option 1: no reference to Art. 7 IV] of Regulation (EU) 2016/679/EU shall apply. [Option 2, if reference to 7 IV remains]: <i>The application of Art. 7 IV of Regulation (EU) 2016/679/EU must not oblige providers of information society services to offer a service without data processing which the service provider means to provide together with the service like, e. g. data processing for the purpose of advertising.</i></p> <p>2. Without prejudice to paragraph 1, Where technically possible and feasible, <i>in particular</i> for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the Internet, <i>or by continuing the use of an information society service, having been provided with clear and comprehensive information that this action by the end-user signifies consent.</i></p> <p>3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any</p>

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<p>time as set forth under Article 7(3) of Regulation (EU) 2016/679 and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.</p>	<p>at any time as set forth under Article 7(3) of Regulation (EU) 2016/679 and be reminded of this the possibility to withdraw their consent at periodic intervals of [no longer than 6 12 months], as long as the processing continues, unless the end-user requests not to receive such reminders.</p>	<p>time as set forth under Article 7(3) of Regulation (EU) 2016/679 and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.</p>
<p style="text-align: center;">Article 10</p> <ol style="list-style-type: none"> 1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the option to prevent third parties from storing information on the terminal equipment of an end-user or processing information already stored on that equipment. 2. Upon installation, the software shall inform the end-user about the privacy settings options and, to continue with the installation, require the end-user to consent to a setting. 	<p style="text-align: center;">Article 10</p> <ol style="list-style-type: none"> 1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the option to prevent third any other parties then the end-user from storing information on the terminal equipment of an end-user or processing information already stored on that equipment. 2. Upon <u>At the time of installation or first usage and every update</u>, the software referred to in paragraph 1 shall inform the end-user about the privacy settings options <u>and navigate the end-user through them, to continue with the installation or usage, require the end-user to consent to a setting shall remind the end-users of the availability of privacy settings with periodic intervals.</u> 	<p style="text-align: center;">Article 10</p> <p><i>OPTION 1: Deletion of Art. 10 (1) and (2), if this is not possible</i></p> <p><i>OPTION 2: State interference on installation must be balanced by assuring later choice for individual information society services:</i></p> <ol style="list-style-type: none"> 1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the Internet, shall offer the option to prevent third parties from storing information on the terminal equipment of an end-user or processing information already stored on that equipment. 2. Upon installation, the software shall inform the end-user about the privacy settings options and, to continue with the installation, require the end-user to consent to a setting. <i>After installation and insofar the privacy settings prevent storing and reading of information on the terminal equipment, the software shall ensure that an information society service requested by the end-user may prompt that end-user for his or her expression of consent in the sense of Art. 8(1) point (b) and that a consent given in this context by an end-user is accordingly applied by the software, e. g., via</i>

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<p>3. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than 25 August 2018.</p>	<p>2.a The software referred to in paragraph 1 shall provide in a clear manner easy ways for end-users to change the privacy setting consented to under paragraph 2 at any time during the use.</p> <p>3. In the case of software which has already been installed on [25 May 2018] the date of entry into application], the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than [25 August 2018] 3 months after the date of entry into application]</p>	<p><i>offering an interface or plugin. [Alternative wording for sentence 2: Such software shall ensure that a consent given by an end user under Article 8 (1) point (b) prevails over the privacy settings chosen at the installation of the software.]</i></p> <p>3. <i>The software shall not block data processing which is legally allowed according to Art. 8 (1) (a), (c), (d), (e), (f) or (2) a), irrespective of the browser settings.</i></p> <p><i>JUSTIFICATION: It follows logically that purposes granted an exception in Article 8 shall not be blocked by the browser or be subjected to a software manufacturer's decision. Otherwise market players might use this regulation to limit competition. That shall not prevent settings that exist today and allow users to exercise their right to object.</i></p> <p>4. 3. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than 25 August 2018.</p>