

egta – Position Paper on the Digital Omnibus

egta is the international trade body of multiplatform TV and audio businesses. We represent more than 180 members in over 40 markets. Our mission is to contribute to the commercial sustainability of the media industry. We enable our members to flourish as they connect brands with audiences. Through our unique network of experts, we foster collaboration and engage with policy makers. We drive the industry forward through cooperation, benchmarking and alignment on standards. egta is a knowledge-sharing and innovation hub for its members and the broader industry.

egta welcomes the European Commission's initiative to simplify and modernise the EU's digital framework through the **Digital Omnibus Proposal**. A lighter and more coherent framework has the potential to reduce administrative and compliance burdens, while improving competitiveness for the European audiovisual industry.

However, we would like to underline the need to ensure proportionality, coherence and clarity when proposing changes to existing legislations. Any amendments must balance innovation, business sustainability and user trust, particularly in the context of the growing dominance of big tech platforms.

I. Personal Data Processing: Simplification Without Compromising Workability

Legal simplification should not come at the cost of clarity and additional technical and commercial challenges. The ePrivacy framework requires a revision to properly address ambiguities, outdated considerations and excessive compliance burdens. The current interpretation of cookie consent rules under **Article 5(3) of the ePrivacy Directive** is responsible for causing 'consent fatigue' among users, as well as a fragmented implementation and enforcement across Member States. Changes are needed to improve user experience and cut administrative costs.

The Digital Omnibus Proposal explicitly recognises the issue of 'consent fatigue and proliferation of cookies banners' and the need for 'a regulatory solution' in its explanatory memorandum. While **Recital 44** acknowledges the necessity to define a 'limitative list of purposes for which the processing should be permitted without consent' when it comes to 'low risk' processing activities to reduce the compliance burden and provide legal clarity to controllers, the exemptions in **Article 88a(3)** are too restrictive. **More low risk uses need to be recognised to enable the proper functioning of media services.** The UK Information Commissioner's Office (ICO) *Guidance on the use of storage and access technologies* could serve as a useful consideration in this regard.

Article 88a of the Digital Omnibus Proposal creates a rigid system that jeopardises the media's ability to rely on the processing of personal data, positioning 'consent' as the sole possible legal basis. Clearly defined additional exemptions and alternative legal bases would be more appropriate.

Other low-risk processing activities that would not *de facto* require consent from users, for example core service delivery and access management (login, updates, service maintenance, accessibility features...), user experience (first-party analytics) and advertising processing (frequency capping, contextual advertising), should thus be explicitly acknowledged. As such,

Article 88a(3) could introduce a new subpoint **(e)** “Providing low-risk processing activities as per Guidelines to be issued by the Commission after consultation with national regulatory authorities and relevant stakeholders.”

Article 88a(4) also introduces challenging amendments, making the legal basis of consent unreliable. Restrictions on consent requests should be **removed** or at the very least **relaxed**, as it is crucial for media companies to be able to engage continuously with audiences. As such, a six-month ban on follow-up requests as provided in **Article 88a(4)(c)** would have a negative effect on media companies, restricting their capacity to engage in a trusted and regular dialogue with their audiences. This ban would be particularly problematic in cases where there has been a change in service that should be covered by consent, or where, for example, the provider concerned has decided to introduce a Pay or Consent system. The capacity to refuse consent requests via a single click as per **Article 88a(4)(a)** is also problematic for media service providers, especially for providers who financially rely on a Pay or Consent solution. If such a ban were to be maintained, we would suggest **reducing** it (e.g. 2 months) to allow for consent request at proportionate intervals.

We therefore recommend deleting Article 88a(4) paragraphs (a) and (c), as well as adding Article 88a(3)(e) and amending Recital 44 as per below:

Article 88a

(3) Storing of personal data, or gaining of access to personal data already stored, in the terminal equipment of a natural person without consent, and subsequent processing, shall be lawful to the extent it is necessary for any of the following:

(...)

(e) Providing low-risk processing activities as per Guidelines to be issued by the Commission after consultation with national regulatory authorities and relevant stakeholders.

(4) Where storing of personal data, or gaining of access to personal data already stored, in the terminal equipment of a natural person is based on consent, the following shall apply:

~~**(a) the data subject shall be able to refuse requests for consent in an easy and intelligible manner with a single-click button or equivalent means;**~~

(b) (...)

~~**(c) if the data subject declines a request for consent, the controller shall not make a new request for consent for the same purpose for a period of at least six months.**~~

Recital 44 paragraph 3

“With a view to reducing the compliance burden and providing legal clarity to controllers, and given that certain purposes of processing pose a low risk to the rights and freedoms of data subjects or that such processing may be necessary to provide a service requested by the data subject, it is necessary to define a limitative list of purposes for which the processing should be

permitted without consent. **Such low risk processing include: core service delivery and access management (login, updates, service maintenance, accessibility features...), user experience (first-party analytics) and advertising processing (frequency capping, contextual advertising).** As regards storing of personal data, or the gaining of access to personal data already stored, in a terminal equipment, and subsequent processing that is necessary for those purposes, this Regulation should therefore provide that the processing is lawful.”

II. **Audience Measurement: Essential for Media**

Among the low-risk exemptions, audience measurement in **Article 88a(3)(c)** stands out as a priority for the sustainability of the media sector. Media service providers depend on meaningful and comprehensive measurement to understand their audiences, but equally for their financing through advertising, which is at the core of their funding. This is what enables them to reach users with news, as well as to innovate, protect their intellectual property, and compete effectively with gatekeeping platforms.

However, the current wording in **Article 88a(3)** would cause significant harm to the audience measurement ecosystem, limiting the exemption to first party controllers only. This fundamentally ignores how audience measurement works, which is via authorised and trusted third parties.

We therefore suggest introducing the following amendment:

Article 88a

(3) Storing of personal data, or gaining of access to personal data already stored, in the terminal equipment of a natural person without consent, and subsequent processing, shall be lawful to the extent it is necessary for any of the following: (...)

(c) **measuring the audience of an online service in order to create**ing aggregated information about the usage of an online service to measure the audience of such a service, **as defined by article 2(16) of Regulation 2024/1083**, where it is carried out by the controller of that online service, solely for its own use, **or entitled third parties jointly authorised by advertisers and publishers, solely for the measurement of the overall market performance;**

Recital 44 paragraph 3

“(…) The controller, such as a media service provider, may mandate a processor **or an authorised third party**, such as a market research company **and Joint Industry Committee**, to carry out the processing on its behalf. (...)”

III. Centralised Consent: Risks for Media Sustainability

Article 88b introduces browser-level centralised consent, placing further control in the hands of browser manufacturers leading to significant intermediation risks and depriving smaller players of any control over their services. Offering more control and agency to gatekeepers would directly go against the established goals of the **Digital Markets Act**.

Moreover, the proposed mechanism does not meet **GDPR** criteria, not least the requirement for ‘specific, informed and unambiguous’ consent, as the introduction of a centralised consent mechanism would prevent users from expressing such consent. Furthermore, this would lead to lower opt-in rates, coercing publishers to convert their services from “free” to “paid” in order to sustain their ecosystem.

While we welcome and appreciate the introduction of a ‘media exemption’, this carve-out would be technically impossible to implement. A further consequence of the media exemption would be increased user scrutiny of media owners’ websites as they would be the only pages displaying cookie banners.

Efficient consent should remain decentralised and service-specific in order to ensure transparency, accountability, and proportionate control, while offering a level-playing field for all actors in the digital ecosystem. Browser-level centralised consent would be a disservice to the digital ecosystem, instead introducing additional legal uncertainty, dependence on already dominant players and additional compliance burdens that come with it, as well as severe competition issues.

For these reasons, **we recommend that the co-legislators delete Article 88b**, or at the very least substantially amend it to make it workable, acknowledging the abovementioned difficulties that would otherwise negatively affect the digital ecosystem.

Should Article 88b not be deleted, the media exception becomes indispensable for ensuring a minimum level of protection for the financing of media services, provided that its shortcomings are addressed and market realities are taken into account.

IV. Conclusion

The European Commission’s aim to reduce unnecessary regulatory burdens while maintaining a high level of data protection is a significant step forward that we welcome, and could help provide media service providers with greater legal clarity and certainty.

However, in their current form, **Articles 88a** and **88b** fall short of these objectives, and risk producing unintended consequences that would undermine the sustainability of the media sector rather than alleviate its compliance burden. In particular, the lack of adequate exemption for low-risk data processing activities, combined with the introduction of centralised consent mechanisms, would have serious implications for the media financing model, audience measurement, and the ability of media services to engage meaningfully with their audiences.

Media services play a unique societal role by financing entertainment, trusted news and journalism, contributing to European cultural diversity and democratic engagement. We believe that, through more dialogue and consultation with stakeholders, it is possible to reach a genuine and legally sound simplification that would benefit the media sector’s sustainability and competitiveness.