

Written evidence submitted by the Advertising Association (DUAB28)

Response to the call for written evidence on the Data (Use and Access) Bill

Executive Summary

- The UK advertising industry is a significant economic contributor, representing 17.3% of the UK's Creative Industries' £124 billion GVA. The UK ad market was worth £40.7bn in 2024, which is projected to grow to £43.5bn in 2025. The industry generates £15.3 billion in exports, contributing a £4.3 billion trade surplus, and supports hundreds of thousands of jobs.
- The Advertising Association welcomes the Data (Use and Access) Bill as it modernises the UK's data protection framework while maintaining our high standards of privacy. Data is fundamental to our industry as it enables consumer analytics, behavioural insights, and targeted advertising.
- We support removing the public interest test requirement for scientific research, as additional approval processes could hinder innovation, particularly for SMEs. The Bill also helpfully addresses the overreliance on consent by clarifying legitimate interests as a valid legal basis for direct marketing.
- The risk-based approach to automated decision-making introduces welcome flexibility between low-risk and high-risk applications. We appreciate the Information Commissioner's new obligation to consider innovation and competition when regulating data protection.
- We welcome the revised framework for cookies, particularly consent exemptions for statistical purposes. While we would have preferred primary legislation addressing advertising measurement cookies, we hope delegated powers will extend exemptions to these vital tools for publishers and other content creators.
- We support the soft opt-in for charity direct marketing and the ability for codes of conduct to address both Privacy and Electronic Communications Regulations (PECR) and UK GDPR requirements. Additionally, we endorse the risk-based approach to international data transfer adequacy assessments with appropriate Parliamentary oversight.
- Our industry remains committed to high data protection standards while advocating for a framework that enables innovation and contributes to UK economic growth.

Context

1. The UK advertising industry represents a vital component of the nation's creative and professional business services sector. Advertising and marketing make up approximately 17.3% of the UK's Creative Industries' £124 billion GVA.¹
2. Preliminary estimates show the UK's ad market was worth £40.7bn in 2024, a rise of 11.2% year-on-year. Looking ahead, we anticipate additional growth of 6.9% in 2025, by which point the UK's ad market will be worth £43.5bn.²
3. In addition to this, the UK's ad market generated £15.3 billion in exports, contributing a £4.3 billion trade surplus to the economy.³ As the world's second-largest exporter of advertising services, the sector employs 350,000 people directly, and supports 76,000 jobs in media, and enables 560,000 jobs across the wider economy.
4. The benefits of data-driven advertising extend across multiple stakeholders. For advertisers, it enables more efficient targeting and measurement. Service providers, i.e., publishers and content creators, gain a sustainable revenue model, while users receive access to free, high-quality content and more relevant advertising experiences. When users consent to provide pseudonymised data, they participate in a value exchange that enhances their online experience, while enabling publishers and other content creators to maintain sustainable business models.

Introduction

5. The Advertising Association and its members are highly committed to high standards of personal data protection, and we ensure that data privacy is a central theme to our activities. The introduction of the Bill has been broadly welcomed by advertisers and marketers alike, and we are grateful for the opportunity to submit evidence to the House of Commons Public Bill Committee to inform their consideration of the Data (Use and Access) Bill.
6. From the Bill's original inception (Data Protection and Digital Information Bill) to its current version, we have been advocates for modernising the UK's data

¹ DCMS Sectors Economic Estimates Gross Value Added 2023 (provisional)
<https://www.gov.uk/government/statistics/dcms-economic-estimates-gva-2023-provisional-data-tables-only>

² AA/WARC - UK ad spend rose 9.7% to £10.6bn in Q3 2024
https://www.warc.com/images/WARCSiteContent/PressReleases/AA_WARC_release_Jan_2025_v2.pdf

³ UK trade in services: service type by partner country, non-seasonally adjusted (24 January 2025)
<https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/datasets/uktradeinservicesservicetypebypartnercountrynonseasonallyadjusted>

protection framework. We believe that we need a framework that maintains our high level of data protection but is fit for the 21st century, less burdensome for business and supports the Government's growth mission.

7. Data is fundamental to the advertising and marketing industry and is critical for tasks such as consumer trend analysis, behavioural insights, market segmentation, targeted advertising, and AI.
8. Data helps brands deliver more relevant and timely ads, and it also improves the entire online advertising experience – ensuring that consumers are not bombarded with the same advert repeatedly or shown irrelevant ads. Research shows growing levels of understanding and comfort among UK consumers with data processing to support tailored online advertising and content.⁴
9. Parliamentarians have previously raised the issue of data adequacy, which allows for the free flow of personal data from EEA countries, in the context of the Bill. The EU remains the UK's largest export market for advertising and marketing services. Significant divergence from the EU's data rules or the loss of data adequacy agreement between the UK and EU would be a serious blow to UK-based firms' competitiveness and mean that UK businesses operating in the EEA would have to significantly increase compliance costs and efforts to maintain that flow of personal data.
10. Our detailed analysis of the proposed changes confirms that the Data Bill provides the essential equivalence required for EU Data Adequacy while achieving the objective of the Bill to modernise the current data protection framework. Hence from a technical perspective, we believe that the Data Bill does not affect EU data adequacy. EU data adequacy does not require the same laws verbatim, but it does require essentially equivalent outcomes. To that end, it is worth highlighting that a) the UK's starting point, from a legislative point of view, is GDPR, and b) the EU has granted Japan data adequacy⁵ even though Japan has not implemented GDPR within its data protection framework.
11. Our submission comments on specific parts of the legislation that is directly relevant to the advertising and marketing sector. Please contact Konrad Shek (konrad.shek@adassoc.org.uk) for any questions regarding this response.

⁴ UK Data Privacy: What the Consumer Really Thinks 2022 <https://dma.org.uk/research/uk-data-privacy-what-the-consumer-really-thinks-2022>

⁵ European Commission Press Release: European Commission adopts adequacy decision on Japan, creating the world's largest area of safe data flows (23 January 2019) https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_19_421/IP_19_421_EN.pdf

Our Response

Part 5 – Data Protection And Privacy Chapter 1 Data Protection

Public interest test when using personal data for scientific research purposes (Clause 67, Paragraph 1, Page 75)

12. We have some concerns about the potential impact of requiring researchers to undertake and pass a public interest test upfront when using personal data for scientific research and therefore support the proposed government amendment (Gov 13)⁶ to remove this.
13. While we strongly support responsible and ethical research practices, introducing an additional layer of approval could create uncertainty and delays in research projects, creating additional financial and compliance burdens for the research industry -the majority of which is comprised of SMEs.
14. Additional, prescriptive requirements would discourage and limit exploratory or early-stage research where the public interest may not always be immediately demonstrable. This could have a negative effect on innovation and limit the scope of curiosity-driven research. This matter should also be considered in tandem with the UK's AI plans, which largely encourages innovation, and requires, with appropriate safeguards in place, less-burdensome requirements in undertaking genuine research in the public interest.
15. In the context of AI and web scraping, it is essential to have clear and enforceable safeguards to prevent the misuse of personal data, such as the guidelines established and operated by the Market Research industry. The Market Research Society (MRS) Code of Conduct⁷ ensures a strict ethical framework for the Market Research industry and aligns with public interest and ensures that personal data is handled responsibly. We also support the use of the ICO's indicative criteria for scientific research, which is a non-exhaustive list of activities and features that are indicative of scientific research processing, and includes:
 - Formulating hypotheses, isolating variables, designing experiments
 - Objective observation, measurement of data
 - Critical exposure to scrutiny, including peer review
 - Ethics guidance
 - Committee approval
 - Peer review
16. In effect, existing data protection frameworks, such as the ICO checklist and Trade Association Codes of Conduct, such as the MRS Code of Conduct and

⁶ Notices of Amendments as at 26 February 2025 https://publications.parliament.uk/pa/bills/cbill/59-01/0179/amend/data_uses_rm_pbc_0226.pdf

⁷ Market Research Society Code of Conduct <https://www.mrs.org.uk/standards/code-of-conduct>

supplementary guidance, provide robust mechanisms to ensure data protection compliance and best practice. Adding further regulatory requirements will be counterproductive to the UK's research ambitions and significantly impact research and innovation-scaling in the UK. Striking the right balance between oversight and enabling research is crucial to fulfilling and maintaining the UK's position as a leader in data-driven innovation.

Legitimate Interests (Clause 70, Paragraph 4, Page 79)

17. Ever since the implementation of GDPR in the UK there has been an over-reliance on consent and marketers have viewed legitimate interests for lawful processing as more complicated and riskier than other legal grounds. This in fact runs counter to the spirit of GDPR as risk-based legislation and the fact that Recital 47 of the UK GDPR states

“[...] The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.”

18. In some circumstances asking a data subject for consent could be an unfair shifting of responsibility, especially if they are being asked to review and understand complex activity without the requisite knowledge. Using legitimate interests, however, means that the onus is on the data controller to inform the data subjects of the data processing activities. The balancing test is there to ensure that the interests of the data subject is not overridden by the data controller and that should be incorporated as part of the risk assessment of the data processing involved. But clearly there is a market failure if companies then still revert to consent to reduce risk and complexity.

19. The Data Bill helpfully addresses the overreliance on consumers' consent to their data being used as a legal basis. By moving the wording of Recital 47 to the operative text it gives legal certainty and clarity to the use of *legitimate interests* – an equally valid legal basis under GDPR – to process data that is necessary for the purposes of direct marketing.

Processing of special categories of personal data (Clause 74, Page 84)

20. We remain somewhat sceptical of the need for the additional delegated powers which enable the Secretary of State to create additional special categories of data (New Article 11A). Not only is the current list of special categories of data quite extensive, but there is a potential risk of a proliferating new special categories of data. Given the importance of bias mitigation in AI, we need to thoroughly assess the impact of creating more restrictive special categories of data, especially where it may be necessary to process such information to identify and avoid discrimination.

Automated decision-making (Clause 80, Page 95)

21. Article 22 of the UK GDPR originally established the right of the data subject not to be subject to a decision solely based on automated processing if it produced legal effects that concerned or significantly affected them. With automated processing becoming more widespread, it is necessary and important that the data subject can challenge such decision making and require human review and/or intervention where necessary. However, there was a risk that the drafting of current legislation could potentially capture more activities in scope than what was intended and more types of processing over time.
22. Therefore, we welcome Articles 22A-D which bring additional flexibility and introduce a risk-based approach that distinguishes between low-risk and high-risk applications. For example, we would regard digital advertising generally to be low-risk except in specific edge cases (e.g., employment opportunity recommendations) where there is evidence to support this conclusion. Ultimately, we believe that this will encourage more organisations to use automation, particularly in low-risk scenarios which make up most of the use cases.

Information Commissioner's role (Clause 91, Paragraph 3, Page 115)

23. We welcome the new Clause 120B, which introduces the obligation on the Information Commissioner to have regard to (a) the desirability of promoting innovation and (b) the desirability of promoting competition where it is relevant in the circumstances. We believe that is important to align data protection regulation with the Government's wider economic goals for the digital economy.
24. Regulation needs to be flexible and have clear guidelines to ensure certainty and keep pace with emerging technologies. If the Government wants to succeed with its growth ambitions and unlock the power of data, it is necessary that regulators should be given a statutory duty to have regard to competition and innovation.
25. We also think that proportionality should be considered as an additional component to align with the principles established in Recital 4 of UK GDPR. To be clear, by proportionality we mean that regulation must meet the necessity test and be the least restrictive measure to achieve the desired policy outcome.

Chapter 2 Privacy and electronic communications

Storing information in the terminal equipment of a subscriber or user (Clause 112, Paragraph 2, Page 143; Schedule 12 Pages 228 – 231)

26. Cookies and similar technologies continue to play an important role in data-driven advertising and marketing. We welcome the fact that the Data Bill revises the risk-based framework to recognise that not all cookies and online identifiers are of an intrusive nature. For example, it will grant, via the new Schedule A1, a

consent exemption for cookies used for statistical purposes to improve the service and the website.

27. While this statistical cookie exemption is a positive step forward, there remain important categories of cookies essential to our industry that are not yet addressed in the Bill. We have previously lobbied the Government to consider extending the exemption to audience measurement cookies and ad performance cookies, which are vital to publishers and other online content providers. More specifically:

- Audience measurement is an important function for media owners to determine consumption of content and to price advertising space for advertisers. Such metrics are crucial to assess the effectiveness of a media channel.
- For sites that carry advertising, cookies are used to verify the delivery and performance of a digital ad i.e., confirmation that an ad has been served or presented to a user, and whether it has been clicked on. This information is essential to accurately invoice an advertiser for the number of ad impressions in a digital ad campaign. Due to the way the consent mechanisms for UK GDPR and PECR interact currently, legal guidance requires media owners to seek separate consents for each purpose and consumers can decline these important cookies, rendering the ads to that user worthless. Put simply, if the advertiser is not provided with evidence that the user has interacted with the ad, due to the user declining cookies that measure ad performance, the advertiser cannot be invoiced for the interaction and the publisher will not get paid.

28. We believe that these new exemptions extend to audience measurement but not advertising measurement. However, the Government have expressed to us privately that their preference is to use the delegated powers in the Bill to examine this issue (see Clause 112, Paragraph 3, Page 143 – New Regulation 3A).

29. This view was also expressed on the record during House of Lords Committee Stage. Baroness Jones, Minister for Parliamentary Under-Secretary of State for the Future Digital Economy and Online Safety, stated the following

“[...] There is a balance to strike between driving growth in the advertising, news and publishing sectors while ensuring that people retain choice and control over how their data is used. To exempt advertising measurement cookies, we would need to assess how intrusive these cookies are, including what they track and where data is sent. We have taken a delegated power so that exemptions to the prohibition can be added in future once evidence supports it, and we can devise appropriate safeguards to minimise privacy risks. In the meantime, we have been actively engaging with the advertising and publishing sectors on this issue and will continue to work with them to consider the potential use of the regulation-making power. I hope that the noble Lord will accept that this is work in progress. [...]”⁸

⁸ Baroness Jones of Whitchurch (Columns 24GC and 25GC)
[https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data\(UseAndAccess\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data(UseAndAccess)Bill(HL))

30. Whilst our preference would have been to draft provisions in Primary legislation, we have conceded that this is unlikely to happen. Therefore, we hope that the new Regulation 6A delegated powers will also be used to examine ad performance cookies with a view to extending the consent exemption as well as potentially other low-risk cookies used in advertising such as ad frequency capping, ad fraud and brand safety etc.

Use of electronic mail for direct marketing by charities (Clause 114, Page 144)

31. We are supportive of the government's reintroduction of the soft-opt in for direct marketing by charities. The soft opt-in is important for charities to build meaningful relationships with their supporters and is a practical alternative to consent. This clause essentially extends the well-established rules that currently benefit commercial organisations and therefore levels the playing field for charities.

Codes of conduct (Clause 116, Page 146-147)

32. New regulation 32A (8) addresses an anomaly under current legislation where an approved code of conduct under Article 40 of the UK GDPR was not applicable to PECR. The Data Bill now makes it clear that a provision in the code of conduct can address requirements under both PECR and the UK GDPR thereby simplifying compliance. In the future, the ICO will be able to give an opinion on whether the code complies with the UK GDPR and relevant provisions in PECR or just relevant PECR provisions.

Transfers of personal data to third countries etc: general processing (Schedule 7 Pages 198-206)

33. We support the Government's risk-based approach to adequacy assessments, and agree that in any adequacy process, it is important that the Government accounts for its duty to keep UK citizens safe, protect fundamental rights, and assess countries on their legal frameworks, as well as the real-world risks and cultural traditions that are unaccounted for in legislation.

34. The Bill introduces important governance mechanisms for international data transfers. New Article 45A(5) ensures appropriate Parliamentary oversight through the negative resolution procedure, while New Article 45B establishes "the data protection test" - a transparent framework of criteria for assessing whether third countries provide adequate protection standards. Together, these provisions create a more structured and accountable process for determining the suitability of international data transfer partners.

Conclusion

35. We believe the Data (Use and Access) Bill represents a significant step forward in modernising the UK's data protection framework while maintaining high

standards. We expect that the legislation will fully deliver on its objectives to support innovation and economic growth whilst protecting individuals' rights.

36. We remain committed to working constructively with the Government, Parliament and the ICO on the implementation of these recommendations to achieve a data protection framework that balances privacy protection with the UK's ambitions to be a global leader in the data-driven digital economy.

About the Advertising Association

37. The Advertising Association promotes the role and rights of responsible advertising and its value to people, society, businesses, and the economy. We bring together companies that advertise, their agencies, the media and relevant trade associations to seek consensus on the issues that affect them. We develop and communicate industry positions for politicians and opinion-formers, and publish industry research through advertising's think-tank, Credos, including the Advertising Pays series which has quantified the advertising industry's contribution to the economy, culture, jobs, and society.
38. The membership of the Advertising Association is very broad and includes the associations representing industry sectors, such as advertisers (through the Incorporated Society of British Advertisers), the agencies and advertising production houses (through the Institute of Practitioners in Advertising and the Advertiser Producers Association), all the media (from broadcasters and publishers, cinema, radio, outdoor and digital), advertising intermediaries and technology providers (such as platforms like Google and Meta, as well as the Internet Advertising Bureau UK), market research (through the Market Research Society) and marketing services (through the Chartered Institute of Marketing).

4 March 2025