HARTZER CONSULTING · RESEARCH REPORT

Third-Party Data in Expert Reports and Public Analysis

A survey of thirty digital marketing data licenses, what the Federal Rules of Evidence actually require, and how measurement estimates should be presented in court and in public.

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Prepared for search marketers, analytics practitioners, expert witnesses, and the attorneys who retain them.
This report is not legal advice. Bill Hartzer is not an attorney.

Contents

Executive Summary

This report examines a question that the digital marketing industry has never systematically answered: may the data produced by commercial marketing platforms be presented in an expert witness report, or published in a public analysis? To answer it, thirty license agreements were read in full and coded, and the result was compared against what the Federal Rules of Evidence require.

20/30
agreements are silent on litigation entirely

1/30
restricts use of the data in a legal proceeding

10/30
require prior written consent to publish, or prohibit it

3/30
describe their own data as estimates

FINDING ONE

The industry has no settled position because the question has never been put to it. Across thirty agreements covering search visibility tools, web analytics, advertising platforms, panel measurement firms, domain forensics services and a web archive, twenty contain no reference to litigation, courts, expert testimony or evidence anywhere in their operative clauses. Where those words appear at all, they occur in venue provisions, severability clauses, indemnity language, or definitions of legal process directed at the vendor rather than at the customer.

FINDING TWO

The single agreement that addresses litigation prohibits it. Comscore's published Terms of Use bar a client from introducing the data into an investigation or court proceeding except when responding to a subpoena or other valid process. Compelled production is permitted. Voluntary use is not. This is the only clause of its kind found in the survey, and it inverts the assumption most practitioners hold.

FINDING THREE

The restrictions sit where practitioners would least expect them. Domain and DNS forensics vendors, whose products are marketed to investigators and counsel, impose tighter publication restrictions than the search visibility tools do. Free registry data published under ICANN and Verisign terms is more permissive than any commercial product surveyed. Two of the four largest advertising platforms claim an advertiser's own campaign performance data as the platform's property or confidential information; two do not.

FINDING FOUR

Accuracy language is written to limit liability, not to describe uncertainty. Twenty-seven of the thirty agreements disclaim the accuracy of their data. Only three describe that data as estimates or modeled output anywhere in their published terms. The disclaimers are drafted by lawyers to foreclose reliance claims; they are not statements of measurement error, and they should not be mistaken for methodology.

FINDING FIVE

The distinction that resolves most of the confusion is between contract and evidence. A terms of service is an agreement between a customer and a vendor. It cannot make a document inadmissible, and it is not a defense to a subpoena. Breaching it exposes the customer to termination or a damages claim. Both consequences can occur at once, and conflating them produces bad decisions in both directions.

Why This Question Matters

The occasion for this research was a conversation at the BrightonSEO conference in San Diego in September 2026. Representatives of a well-known audience measurement vendor stated, in substance, that their data should not be presented in a legal case and that their terms of service address the point. The author, who has served as an expert witness in matters involving search engine optimization (SEO), paid search, web analytics, domain names and online reputation for more than two decades, had never read the agreement in question, nor most of the others he has paid for over that period.

That gap is not unusual. It is close to universal, and the empirical literature on standard-form contracts says so plainly. What makes it consequential here is the setting. An expert report is a document filed with a court, subject to disclosure obligations, and tested by opposing counsel who will read every license the expert relied on if it becomes useful to do so. A public analysis published on a blog or presented from a conference stage carries no evidentiary burden but carries the same licensing exposure, and reaches a far larger audience.

The stakes are not theoretical. In the twelve months ending September 30, 2025, 303,563 civil cases were commenced in United States district courts. Expert testimony appears in the substantial majority of civil trials that reach that stage, and challenges to it succeed with striking regularity. Against that backdrop, an expert who attaches a chart to a report without knowing what the underlying license permits has taken on a risk that took twenty minutes of reading to avoid.

Scope and Method

Thirty published license agreements were identified, retrieved and read in full during September 2026. Selection favored breadth across the categories a digital marketing practitioner or testifying expert would plausibly rely on, rather than depth within any single category. The agreements surveyed cover search visibility and competitive estimation tools, desktop crawlers, first-party web analytics platforms, the Google product family, the four largest advertising platforms by spend, two panel-based audience measurement firms, domain and DNS forensics services, registry data sources, and the Internet Archive.

Each agreement was coded on five dimensions: the restriction it places on presenting or publishing the data, whether attribution is required when data is shared, whether the agreement addresses use in a legal proceeding, whether it disclaims accuracy, and whether it characterizes its own data as estimates or modeled output. The publication restriction was coded on a five-level ordinal scale running from no restriction found, through restrictions on resale of the service alone, conditional permission subject to attribution, a requirement of prior written consent, and outright prohibition of publication.

Coding was performed against the operative clauses of each agreement, not against marketing copy, help center articles or site navigation. Where a vendor publishes more than one instrument, such as a self-serve terms of service alongside an enterprise subscription agreement, both were read and the difference is reported. Quotations in this report are reproduced verbatim from the published documents.

Two limitations stated at the outset

First, this survey describes what the agreements say, not how a court would construe them. Contract interpretation turns on facts, jurisdiction and conduct that no document survey can capture. Second, three vendors block automated retrieval of their published terms; those documents were read through a rendering browser, and the material quotations from them should be confirmed against the source before any reader relies on them in a filed document. Adobe blocked retrieval entirely and was excluded from the survey rather than coded on uncertain evidence.

Findings: What the Licenses Say

Litigation is almost never addressed

The cleanest result in this survey is a negative one. Twenty of the thirty agreements contain no reference whatsoever to litigation, courts, expert testimony, subpoenas or evidence in any clause governing the customer's use of the data. The words appear in some of these documents, but in every such instance they occur in a provision about the contract itself rather than about the data: a governing law and venue clause, a severability provision, an indemnity for third-party legal proceedings, or a definition of the legal process under which the vendor may be compelled to disclose customer information.

Six agreements address legal compulsion only, and do so from one direction. They permit the customer to disclose otherwise restricted data when required by a court order, law or governmental authority. Amazon's advertising agreement is the clearest example, permitting disclosure to the extent required to comply with a valid and binding court order while requiring the advertiser to notify Amazon before disclosing. These clauses cover what a customer is compelled to produce. They do not address what a customer volunteers.

Three agreements are affirmatively permissive without qualification. Verisign's terms for registration data access ask only that the data be used for lawful purposes and impose no restriction on publication or redistribution at all. ICANN's zone file access provisions under the .com registry agreement permit the user to use the zone file for lawful purposes. The Internet Archive publishes a documented process for producing records for legal proceedings, discussed in its own section below.

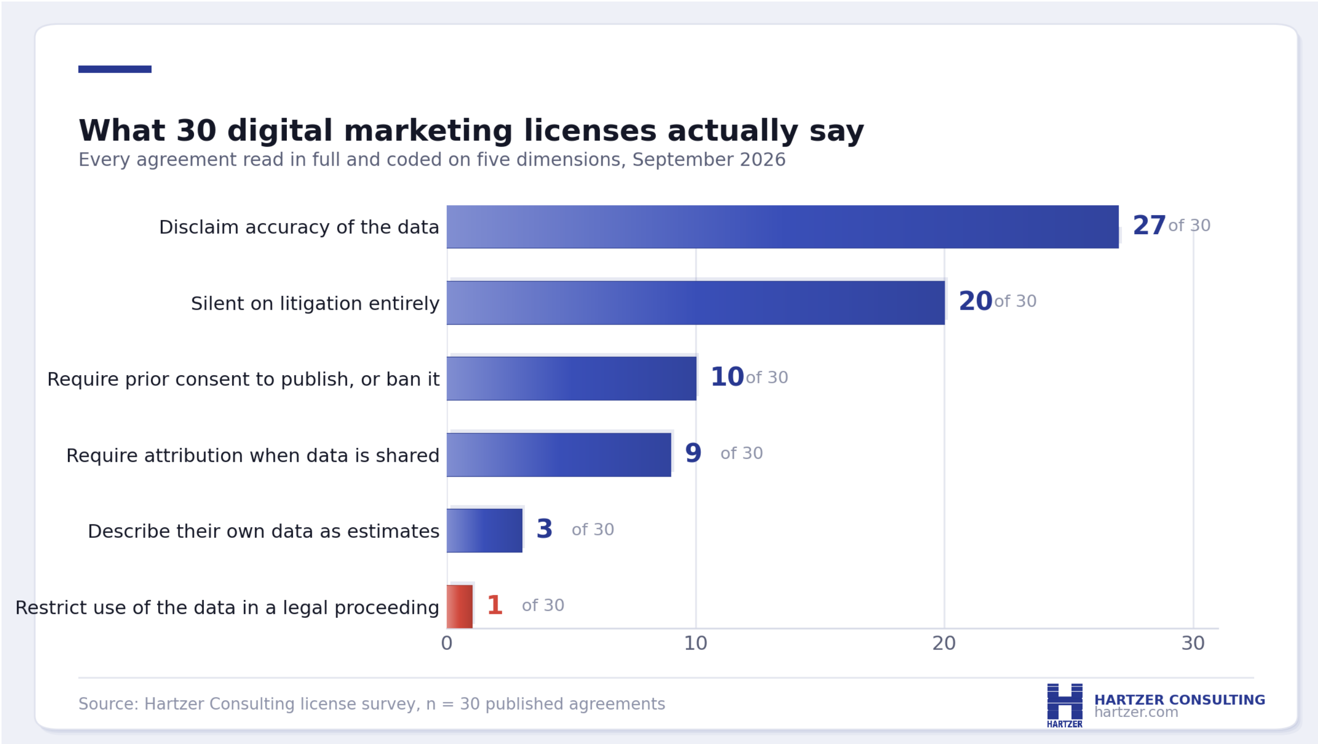


Figure 1. Coded results across thirty published license agreements. The gap between the twenty-seven that disclaim accuracy and the three that describe their data as estimates is the most consequential finding for anyone presenting these figures to a court or a reader.

The one agreement that forbids it

Comscore is the exception, and it is explicit. The company's published Terms of Use, the document its site serves as its master service agreement and which carries the internal marker MSA version 022320, enumerates the uses a client may not make of the deliverables. The final item on that list reads:

> unless responding to a subpoena or other valid process, introduce the Deliverables or derivatives thereof as part of an investigation or court proceeding.
>
> Comscore Terms of Use, license restrictions clause, item (vii)

The structure of that clause repays attention. Compelled production is carved out and permitted; a client served with a subpoena may comply. Voluntary introduction is prohibited. A party that wants to place Comscore figures before a judge because those figures help its case, or an expert who wants to attach a Comscore chart to a Rule 26 report, falls outside the license absent separate written permission.

The same posture runs through the company's separate policy governing public use of its data, updated in June 2026. That policy requires prior written approval before any third party, expressly including journalists, publicly discloses Comscore figures. It asks requesters to submit both the underlying export and a draft of the intended publication for review, allows three business days for that review, and reserves the right to adjust the claim before it runs. Its form consent for inclusion in a regulatory filing has the company disclaim expert status and require that its information be presented as research opinion rather than as a representation of fact.

Read as a whole, this is a company that considered the question and answered it. That is more than can be said for the other twenty-nine. Whether the answer is the right one is a separate matter, taken up later in this report.

A related fact, stated carefully

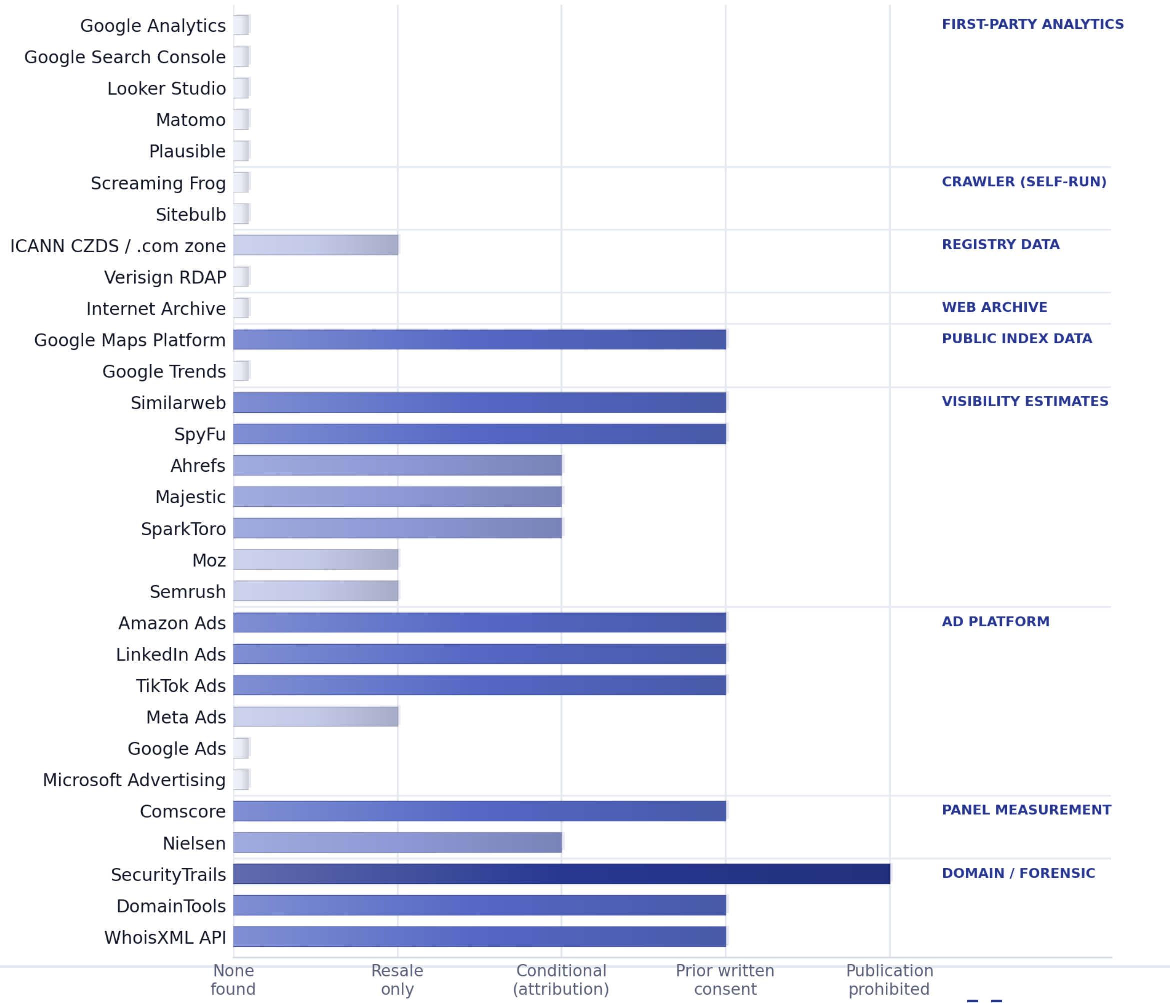
On April 12, 2023, the Media Rating Council formally revoked accreditation for Comscore's Media Metrix desktop digital audience measurement service. The stated basis was procedural: Comscore informed the MRC that it would not be ready to resume an accreditation audit within the period the MRC's procedures require, following a hiatus that began April 19, 2022. The statement contains no allegation of data quality defects, and it should not be characterized as a finding that the numbers were inaccurate. It is relevant here for a narrower reason. A vendor that restricts testing of its data in court and operates outside third-party audit has removed both of the mechanisms by which an outside party could evaluate it.

Six license postures, not one

Treating "third-party tool data" as a single category is the error that makes this question hard. The agreements fall into six groups, and the group determines the answer far more than the vendor does.

How 30 digital marketing licenses restrict publication

The same clause that governs a court exhibit governs your blog post and your conference slide.



Source: Hartzer Consulting license survey of published terms of service, September 2026

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Figure 2. Publication restrictions across the surveyed agreements, grouped by category. The pattern runs opposite to intuition: the data sources marketed to investigators and counsel are among the most restrictive, and the free registry sources among the most permissive.

Data the customer already owns

Google Analytics, Google Search Console, an advertiser's own Google Ads account, Looker Studio, Matomo and Plausible describe the customer's own property, collected with the customer's own tag, in the customer's own account. Search Console carries no product-specific terms at all and runs on Google's general Terms of Service, which states that the user's content remains the user's. Looker Studio's terms provide that the customer owns all intellectual property rights in customer data and treat that data as the customer's confidential information rather than Google's. Matomo On-Premise is licensed under the GNU General Public License, which governs the software and says nothing about the figures an installation produces. Plausible's terms state that the customer retains full ownership and control of website data.

None of these agreements restricts an account holder from producing its own data in a legal proceeding. This is the strongest evidentiary position available, and it is routinely overlooked in favor of more impressive-looking third-party dashboards.

Estimates about other parties' properties

Similarweb, Semrush, Ahrefs, Moz, Majestic, SpyFu and SparkToro vary more than practitioners assume. The most restrictive language found in this group appears in Section 6(iv) of Similarweb's terms of service, effective March 19, 2025, which lists among the prohibited acts to "present or share the data or information received through the Platform without Similarweb's prior consent, and in the event such consent was given, present or share such data or information without attribution to Similarweb pursuant to Similarweb's branding guidelines." The clause says nothing about courts. It conditions presentation of the data at all, to anyone, on prior consent, which places a conference slide and a court exhibit inside the same restriction.

SpyFu is comparably restrictive and considerably more specific, barring the sale, publication, distribution or retransmission of its content without written consent, subject to a narrow exception for occasional distribution of a page or document to a few individuals provided the recipient sees the phrase "Used with permission from SpyFu.com." SparkToro prohibits white-labeling or reselling its output while carving out an exception permitting an agency to incorporate reasonable excerpts into client deliverables with attribution to the provider.

Semrush is the most permissive of the group. Its terms, effective August 25, 2026, bar sublicensing, reselling, scraping, framing, competitive use and the use of its output to train machine learning systems, and contain no clause restricting publication of a chart. Moz restricts reproduction and distribution of its services without imposing an affirmative attribution duty. Majestic asks that its authorship be acknowledged and limits use to research purposes.

Crawlers the practitioner runs personally

Screaming Frog and Sitebulb occupy a different position, and their licenses reflect it. Both restrict redistribution of the software. Neither restricts what the user does with the crawl output, because that output is generated by the user pointing a tool at a website rather than delivered from a vendor's index. Screaming Frog's license does remind users to comply with copyright and data retention requirements when storing and sharing extracted data, and to honor the terms of any third-party application programming interface (API) the software calls on the user's behalf.

For evidentiary purposes this distinction matters a great deal. A crawl the expert ran personally is closer to first-party observation than to licensed data. The expert can testify to the configuration, the date, the user agent, the crawl depth and the rate limit, which is precisely the kind of methodological account Rule 702 asks for.

Advertising platform performance data

Here the picture inverts, and most advertisers are unaware of it. Amazon's advertising agreement, posted July 23, 2026, restricts how a customer may use ad services data, states that all such data is Amazon's exclusive property, and permits disclosure only to the extent required to comply with a valid and binding court order, law or governmental direction, on condition that the customer notify Amazon before disclosing. LinkedIn's ads agreement, updated November 3, 2025, expressly designates its metrics and professional demographics as confidential information and restricts use of ad services data to aggregate and anonymous performance assessment. TikTok's commercial terms restrict sharing platform data with third parties.

In both the LinkedIn and TikTok agreements, the restriction on performance data and the legal-compulsion carve-out sit in different sections governing separately defined terms, which leaves a genuine question as to whether the carve-out reaches the data restriction at all. Practitioners in a discovery dispute involving either platform should raise that question with counsel rather than assume the answer.

Microsoft Advertising and Meta take the opposite approach. Microsoft's advertiser agreement contains no confidentiality clause whatsoever. Meta's self-serve ad terms do not designate campaign data as confidential, and Meta publishes political advertisers' spend, reach and targeting information in its Ad Library for seven years. The one restriction in Meta's advertiser contract concerns the relationship rather than the data: an advertiser may not issue a press release or make public statements about its relationship with Meta without written permission.

Panel measurement

Comscore and Nielsen have both thought harder about publication than any search marketing vendor surveyed. Comscore's prohibition is addressed above. Nielsen's press room terms, last updated in September 2012, cap editorial use at the top twenty-five positions of any chart in a single piece, bar archival use, require additional approval for analytics covering more than the previous ninety days, and require that the source of all data and charts be prominently attributed to Nielsen.

Nielsen also does something almost no other organization in this survey does. Its published description of methodology for local radio measurement discusses sampling error, standard error and confidence intervals, describes the limits of a sample that is not a perfect probability sample, and records that its Portable People Meter service is accredited by the Media Rating

Council subject to annual audits by certified public accounting firms engaged by the council. That is what defensible measurement documentation looks like. It is also buried in an eighty-page document while the company's press releases quote panel sizes with no error bars attached.

Domain, DNS and forensic data

This category produced the most surprising result in the survey. These vendors sell to investigators, security teams and law enforcement, which led to an expectation that their licenses would expressly permit investigative and legal use. They do the opposite.

The DomainTools terms of service, last updated December 5, 2024, contain a section headed "No External Use or Investigations," which provides:

> You, including without limitation where You are a government agency, brand protection company or law firm, may not use the Service, Partner Data, or DomainTools Data, or any portion thereof, to investigate or evaluate any third-party information, domain, or brand unless it is to investigate misuse or viability of your own domain, name, trademarks, or branding.
>
> DomainTools Terms of Service, Section III(g), last updated December 5, 2024

The clause names law firms. An attorney who signs up at the self-serve tier and runs a lookup on an opposing party's domain is outside the license. The company's enterprise subscription agreement drops that restriction, which indicates that the bar operates as a commercial gate rather than a legal position. Investigative use is the upsell.

SecurityTrails, now governed by the Recorded Future terms of use effective February 6, 2026, limits use to internal security purposes and prohibits publicizing any output or making output publicly available in any way. Filing an exhibit on a public docket is, on its face, making output publicly available. The same company markets a product named the Forensics API. WhoisXML API confines use to internal business purposes and bars distribution of the data to third parties under terms updated in March 2025, while its marketing pitches intelligence to governments and counsel.

The genuinely permissive documents in this category are the ones nobody sells. Verisign's terms for registration data access impose no publication restriction. ICANN's zone file provisions permit lawful use. For an investigator who needs to publish or file what was found, registry data is the cleanest source available, and it carries no fee.

The accuracy gap

The most consequential finding for practitioners is a mismatch between two numbers. Twenty-seven of the thirty agreements disclaim the accuracy of the data they deliver. Three describe that data as estimates or modeled output anywhere in their published terms.

These are not the same thing, and the difference is not cosmetic. A warranty disclaimer is a liability instrument. It says the vendor will not be answerable if the customer relies on the figures and suffers loss. A statement of measurement uncertainty is a methodological instrument. It says what the number is, how it was produced, and how far it can be expected to depart from the quantity it estimates. The first forecloses a claim. The second lets a reader, a client or a court evaluate the figure.

Similarweb states that its data rests on estimations and extrapolations. Google publishes a caveat that Trends data should be considered one data point among others and is not a perfect mirror of search activity. Nielsen publishes genuine sampling error documentation. The remaining twenty-seven agreements offer a disclaimer and nothing else. Majestic comes closest to candor without using the word, explaining that the changing structure of the web renders it "impossible to provide completely accurate link data."

A practitioner who quotes a competitor's monthly traffic as a fact, rather than as a model output with an unpublished error band, is making a statement the vendor itself has declined to stand behind.

A License Is a Contract, Not a Rule of Evidence

Most of the confusion in this area collapses two questions that are governed by different bodies of law and answered by different decision makers.

The first question is whether a court may receive the material. That is governed by the rules of evidence and decided by the judge. No private company controls it. A vendor cannot render a document inadmissible by writing a sentence into a click-through agreement, because admissibility is not a matter the parties to that agreement are competent to determine. A litigant who issues a subpoena under Rule 45 of the Federal Rules of Civil Procedure will not be met successfully with the argument that the vendor's own terms forbid production.

The second question is whether the customer has breached the license. That is contract law between the customer and the vendor. The available remedies are termination of the account, a claim for damages, and injunctive relief. Several agreements in this survey carve breaches of their data provisions out of the general liability cap, and at least one provides for injunctive relief without bond, which indicates how seriously the drafters treat them.

Both outcomes can occur together. A court may accept an exhibit that a vendor's terms say the customer should not have shared. The customer may prevail on the evidentiary question and lose the account. Practitioners who assume that a restrictive license bars the evidence are wrong, and practitioners who assume that admissibility cures the breach are equally wrong.

What the Federal Rules Actually Require

Rules 702 and 703

Rule 702 of the Federal Rules of Evidence, as amended effective December 1, 2023, requires the proponent of expert testimony to demonstrate, more likely than not, that the testimony rests on sufficient facts or data, that it is the product of reliable principles and methods, and that the expert's opinion reflects a reliable application of those principles and methods to the facts of the case.

Rule 703 governs the third-party data question directly. An expert may base an opinion on facts or data the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. Where the underlying facts or data would otherwise be inadmissible, the proponent may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

The reasonable reliance standard is the pivot. Search marketers, agencies, acquirers and in-house teams rely on this class of data to make decisions with substantial money behind them. United States internet advertising revenue reached $294.6 billion in 2025, and the measurement platforms surveyed here are the instruments by which a large share of that spend is planned, allocated and evaluated. A pattern of professional reliance on that scale is the showing Rule 703 asks for, and it is considerably easier to make in 2026 than it was fifteen years ago.

Reliance is not proof. Rule 703 permits an expert to build an opinion on estimated traffic figures. It does not permit the expert to tell a jury that a website received a specific number of visits in a specific month because a dashboard displayed that number.

Rule 26(a)(2)(B) and the disclosure trap

A retained expert's written report must contain the facts or data considered in forming the opinions, together with the exhibits that will be used to summarize or support them. The operative word is considered, not relied on, and the breadth is deliberate.

That obligation interacts badly with a restrictive license. An expert who consults a dashboard, and whose opinion is shaped by what it displayed, must disclose that source. The expert cannot review the data, form a view, and then conceal the source because a terms of service asks for confidentiality. The disclosure obligation runs to the court. The confidentiality preference runs to a vendor. When the two collide, the court prevails, and an expert who attempts to split the difference will be taken apart in deposition.

This is the practical reason the Comscore restriction carries weight beyond its own customer base. It can place a client in a position where the honest route through discovery is the route that breaches the contract. That is a problem worth raising with counsel before an engagement begins rather than after a report is served.

Authentication under Rules 901 and 902

Rule 901 requires the proponent to produce evidence sufficient to support a finding that the item is what the proponent claims it is. Rules 902(13) and 902(14), both effective December 1, 2017, permit records generated by an electronic process or system, and data copied from an electronic device or file and authenticated by digital identification, to be self-authenticating on a certification from a qualified person, subject to the notice requirements that apply to certified business records.

The Advisory Committee on Evidence Rules explained the purpose of those amendments in terms that apply directly to the present question, observing that the types of electronic evidence covered are rarely the subject of a legitimate authenticity dispute, yet the proponent is nonetheless forced to produce an authentication witness at expense and inconvenience.

A screenshot of a vendor dashboard is a record of what an examiner observed on a screen on a date. Standing alone, that is all it is. A certification from the vendor's records custodian would carry it substantially further. A vendor that declines to engage with litigation never produces one, with the consequence that its data can illustrate a point but cannot prove one.

How often expert testimony is actually excluded

Practitioners who have not been through a Daubert challenge tend to assume exclusion is rare. It is not. Three independent studies, covering different case types and different eras, converge on a similar figure.

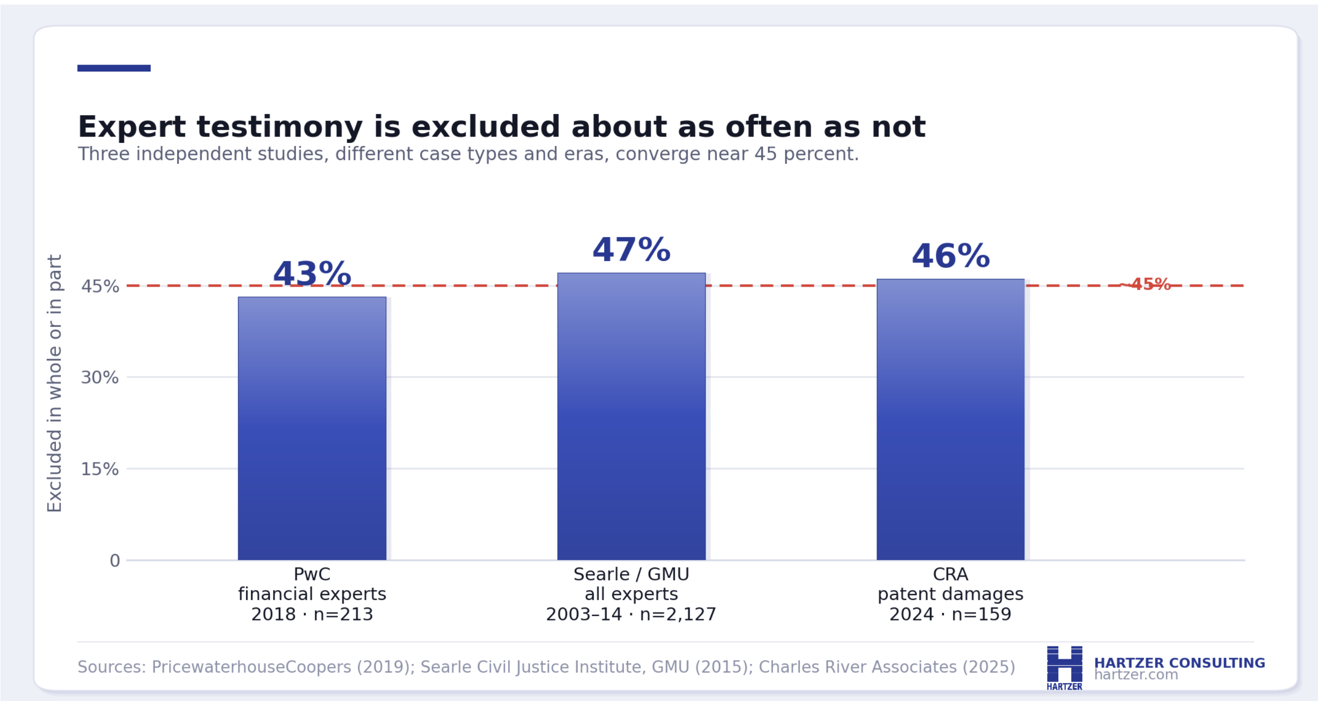

Figure 3. PricewaterhouseCoopers recorded 213 reported Daubert challenges to financial expert witnesses in 2018, of which 91, or 43 percent, resulted in partial or full exclusion. The Searle Civil Justice Institute study of 2,127 Daubert motions across 1,017 federal civil cases found that 47 percent produced some limitation on expert testimony and 23 percent struck the expert entirely. Charles River Associates found an approximate 46 percent exclusion rate among patent damages experts in 2024.

Two details within those studies bear directly on the subject of this report. First, reliability, rather than qualifications or relevance, is consistently the dominant ground of exclusion. The PricewaterhouseCoopers series records that lack of reliability, alone or in combination with other factors, has been the main reason for financial expert exclusions throughout the study period, and that courts most often cite insufficient data or methods that are not generally accepted. An expert whose figures come from a source that publishes no methodology is exposed on exactly that axis.

Second, the 2023 amendment to Rule 702 was adopted specifically to tighten judicial gatekeeping, yet the only measured study located for this report concludes that it "has not shown to have a material impact on exclusion rates." Exclusion was already common. The amendment clarified the standard rather than raising the bar.

How Reliable Is the Underlying Data?

The licensing question and the reliability question are separate, and an expert must answer both. A peer-reviewed study published in PLOS ONE in 2022 provides the most direct available measurement of how far a third-party estimate departs from a site's own instrumentation.

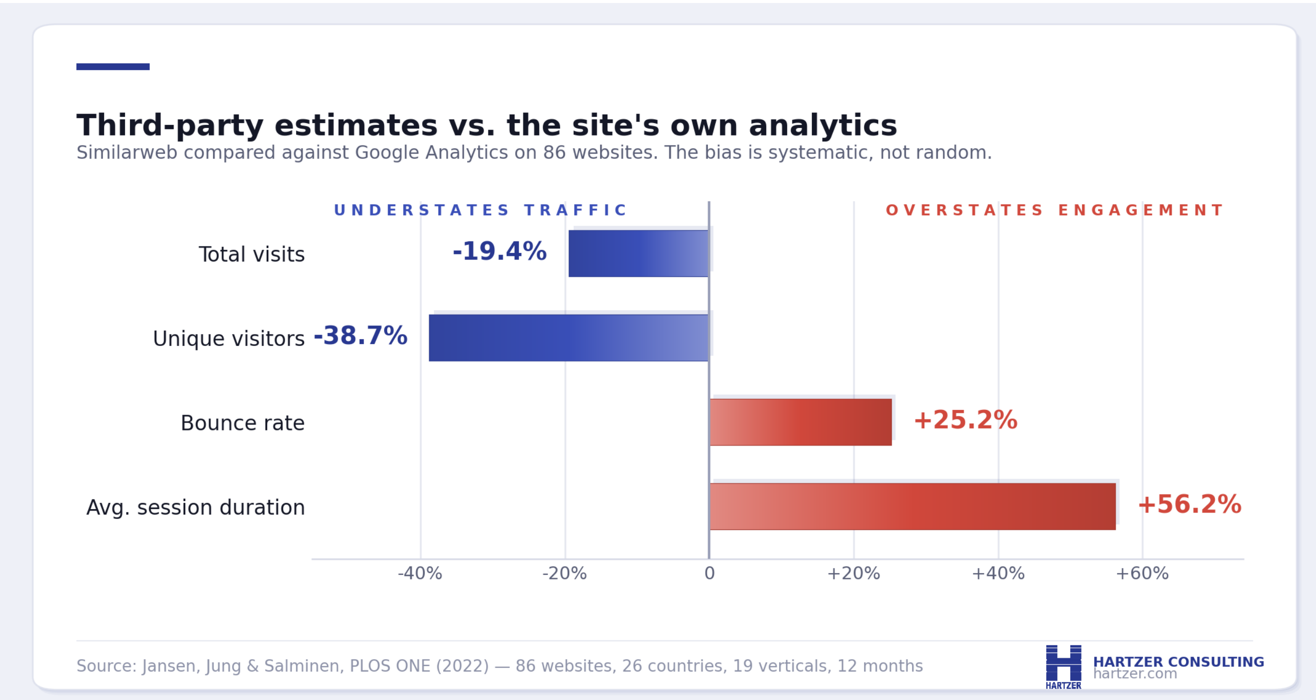

Figure 4. Jansen, Jung and Salminen compared Similarweb against Google Analytics for 86 websites across 26 countries and 19 industry verticals over twelve months. The divergence is systematic rather than random: traffic volume is understated, engagement metrics are overstated. Figures are as reported in the published article; an earlier preprint of the same study reports different values for two of the four metrics.

Two aspects of that result matter for a testifying expert. The direction of the bias is consistent, which means an estimate is not simply noisy but predictably skewed in a known direction. And the magnitude on unique visitors approaches forty percent, which is large enough to change the answer to a question a court might be asked to decide.

The finding is not unique to one vendor. Research presented at the ACM Internet Measurement Conference in 2022 compared widely used website popularity rankings against server-side request data and found that 87.1 percent of the Alexa top one thousand were overranked, with 56.7 percent overranked by two or more orders of magnitude. The authors concluded that most such lists capture web popularity poorly.

Measurement problems extend into the advertising data that experts are asked to evaluate in disputes over campaign performance. The industry's own benchmark for market size carries a methodology note stating that PricewaterhouseCoopers does not audit the information supplied by participating companies and provides no opinion or assurance with respect to it. Research on invalid traffic presented at the ACM Conference on Computer and Communications Security in 2021 reported that a detection system identified fifteen percent of active devices in a production dataset as fraudulent, generating thirty-one percent of bid requests, and that ninety-three percent of that invalid traffic was not detected by the platform's existing system.

None of this makes the data useless. It makes the data what it has always been: a modeled approximation, useful for direction and pattern, unsuited to carrying a precise factual assertion on its own. An expert who says so in the report is describing the instrument accurately. An expert who does not will be asked about it under oath.

The Internet Archive Model

One organization in this survey has built a published, priced and documented process for producing records for court. It is a nonprofit, and it does not want the work.

The precedent came first. In *Telewizja Polska USA, Inc. v. EchoStar Satellite Corp.*, 2004 WL 2367740 (N.D. Ill. 2004), the court accepted an affidavit from an Internet Archive employee as sufficient to authenticate archived pages. In *Marten Transport, Ltd. v. PlattForm Advertising, Inc.*, No. 14-cv-02464 (D. Kan. 2016), the court took judicial notice of the operation of the Wayback Machine. The Sedona Conference, in its 2020 commentary on electronically stored information evidence and admissibility, observes that the reliability of the Wayback Machine process may now be established by a certificate from an Internet Archive official under Rule 902(13).

The Archive's current policy on information requests is candid about its own view of this work. It states that it is not in the business of fulfilling requests for documents for use in legal matters, and asks requesters to seek judicial notice or a stipulation from the opposing party before approaching it. Asked in its published frequently asked questions whether a party may subpoena someone from the Archive to testify, the answer given is that it would prefer the requester did not and will most likely fight it.

For those who proceed, the terms are public: $250 per request, $20 for each extended URL, $30 for each URL pointing to a downloadable file, and a further $100 if a notarized affidavit rather than an unnotarized declaration is required. Fifteen business days is the stated target, with no guarantee and no expedited option.

The limitation on what that affidavit establishes is the part most often overlooked. The Archive's own guidance states that the affidavit affirms only that the printed document is a true and correct copy of its records, and that it remains the requester's burden to convince the finder of fact regarding the presence of past online material. The affidavit authenticates the record. It does not establish that a visitor saw that page on that date.

There are technical reasons for that caution. An archived page is a composite, assembled from captures of its component images, scripts and stylesheets taken at different times, sometimes days or months apart from the capture of the page itself. The Archive's standard declaration notes that the date indicated by an extended URL applies to the preserved instance of the file for that URL and not necessarily to any file linked from it. Flattening a capture into a static exhibit discards that metadata along with the warning it carries. The Sedona Conference makes the related point that ninety-five percent of websites incorporate JavaScript, so that something more than a screenshot or a static capture is required to preserve and authenticate interactive website evidence.

The model nonetheless works, and it is the only one in this survey that does. A third-party data source becomes usable in litigation when the custodian supplies an authentication path and the expert states the limitations plainly. The organization that built that path has the smallest budget and the least commercial incentive of any entity surveyed here.

Nobody Reads These Agreements

It would be convenient to treat the author's failure to read thirty license agreements over twenty-five years as a personal lapse. The empirical literature says otherwise, and the numbers are worth stating because they bear on how the industry should respond.

The landmark study of consumer attention to standard-form contracts, drawing on clickstream data from 45,091 households across 66 software companies, found that end user license agreements were accessed in 55 of 120,545 visits to software retailers, a rate of five hundredths of one percent. The authors concluded that only one or two of every thousand retail software shoppers chooses to access the license agreement. Among those who did, the average time spent on the agreement page was 47.7 seconds.

A later controlled study of 543 participants joining a fictitious social network found that 74 percent skipped the privacy policy entirely by selecting a quick-join option, that 98 percent failed to notice clauses requiring them to surrender data to employers and to provide a first-born child as payment, and that participants spent an average of 51 seconds on terms of service that should have taken fifteen to seventeen minutes to read.

The readability research explains part of why. An analysis of the sign-in-wrap agreements of the five hundred most popular United States websites found a mean Flesch Reading Ease score of 34.86 against a recommended score of sixty, with 498 of the 500 falling below that threshold, and a mean Flesch-Kincaid grade level of 14.67, which is college level. In 70.4 percent of those agreements, average sentence length exceeded twenty-five words.

Courts nonetheless enforce these agreements with regularity, and the manner of presentation matters more to enforcement than to comprehension. Industry research analyzing 2020 decisions reported that clickwrap agreements were enforced in 70 percent of cases and browsewrap agreements in 14 percent, while separate empirical work found that a clickwrap presentation increases the rate at which the agreement is actually read by approximately one third of one percentage point.

The practical implication is not that practitioners should feel absolved. It is that an industry in which effectively nobody reads the license has no collective knowledge of what its licenses permit, which is exactly the condition this report documents. Reading thirty agreements took an afternoon.

Recommendations

For expert witnesses and the counsel who retain them

- **Build the opinion on first-party data.** Analytics, Search Console, server logs, advertising account exports and customer relationship management records belong to a party and can be authenticated by a custodian at that party. They also carry no licensing restriction on production.
- **Treat third-party data as corroboration.** It establishes a pattern, a direction and a competitive picture. It should not be asked to carry a precise factual assertion on its own.
- **Label estimates as estimates.** Every figure should carry its source, its date of capture, and a plain statement of what the vendor says the number represents.
- **Disclose what is unknown.** Where a vendor publishes no panel size and no modeling approach, that sentence belongs in the report before it appears in a deposition transcript.
- **Corroborate across sources.** Two independent tools pointing the same direction is an argument. One tool is a screenshot.
- **Capture properly.** Full-page capture, visible URL, visible timestamp, a hash of the file, and retention of the underlying export alongside the image.
- **Read the license before the report is served, and raise conflicts with counsel.** Where a restriction collides with a Rule 26 disclosure obligation, that is a question for the retaining attorney, not a question for the expert to resolve privately.
- **Disclose commercial relationships with vendors.** Brand ambassadorships, affiliate arrangements and free access all belong in the report. Opposing counsel will find them.

For marketers publishing public analysis

- **Assume a publication clause applies until it is confirmed otherwise.** A blog post, a conference slide, a webinar and a forwarded client proposal are all presentations of data received through a platform.
- **Ask for permission where the terms require it.** Vendors generally grant it, because a cited chart is free marketing.
- **Follow the attribution format the vendor specifies.** Several agreements condition consent on attribution, and some dictate the wording, the product, the platform, the data month and the geography.
- **Publish the methodology alongside the number.** Name the tool, the metric, the date range and the known limitation, in the same paragraph as the figure rather than in a footnote.

- **Do not present an estimate as a measurement.** A competitor's monthly traffic figure is a model output with an unpublished error band, and the peer-reviewed evidence indicates the error is systematic.

For vendors

The current posture of this industry serves nobody well. A blanket restriction on litigation use is a business decision presented as a legal necessity, and the legal mechanisms for protecting a methodology in a contested proceeding already exist and are used every day. Protective orders, attorneys' eyes only designations and sealed exhibits are ordinary features of commercial litigation. Empirical research on federal sealing practice finds that at least ninety percent of motions to seal are granted, which suggests the risk of compelled methodology disclosure is considerably smaller than the drafting implies.

A vendor that wishes to be relied on in serious settings has a clear path available. Publish the methodology at a level of detail the company can defend, as Nielsen does for radio measurement. Publish the confidence interval. Designate a records custodian prepared to certify an export under Rule 902(11), as the Internet Archive does for captures. The first platform in this category to do all three becomes the one testifying experts reach for, and earns a durable commercial advantage that no case study can purchase.

Limitations of This Study

This survey describes published contract language as of September 2026. It does not predict how any court would construe that language, which depends on jurisdiction, facts and the conduct of the parties. Readers should treat the coding as a map of stated positions rather than as legal conclusions.

The sample was selected for breadth across categories rather than by any probabilistic method, and it is not a random sample of the digital marketing tool market. Adobe was excluded because its published terms could not be reliably retrieved, and three further vendors block automated retrieval; their terms were read through a rendering browser and the material quotations should be confirmed at source before being relied on in a filed document. Several agreements exist in multiple versions by region and by customer tier, and enterprise agreements are generally not public, so an enterprise customer's actual terms may differ materially from the published instrument coded here.

The ordinal coding of publication restrictions involves judgment at the boundaries, particularly in distinguishing restrictions drafted for resale from restrictions that reach ordinary citation. Where that judgment was close, the reasoning is given in the body of this report rather than left implicit in the score.

Not legal advice. Bill Hartzer is a search marketing and domain name consultant and a testifying expert witness. He is not an attorney, and nothing in this report constitutes legal advice or creates an attorney-client relationship. Practitioners facing a specific licensing question, discovery obligation or evidentiary dispute should consult qualified counsel. Contract terms change; every agreement discussed here should be confirmed at its source before being relied on.

Disclosure. The author is a brand ambassador for Majestic and for Oncrawl, both of which appear in or adjacent to this survey, and has held paid subscriptions to a number of the platforms discussed. He has not used Similarweb or Comscore data in any report provided to any court. No vendor reviewed, funded, or was given advance sight of this report.

Appendix A: License Survey Coding Table

Publication restriction scale: **0** none found · **1** resale or service redistribution only · **2** conditional, subject to attribution or an excerpt carve-out · **3** prior written consent required · **4** publication prohibited. Litigation clause: **0** silent · **1** permissive or published process · **2** compelled-disclosure carve-out only · **3** restricted.

Platform	Category	Publication restriction	Attribution required	Litigation clause	Accuracy disclaimer	Calls data estimates
Google Analytics	First-party analytics	0	No	0	Yes	No
Google Search Console	First-party analytics	0	No	0	No	No
Looker Studio	First-party analytics	0	No	2	Yes	No
Matomo	First-party analytics	0	No	0	Yes	No
Plausible	First-party analytics	0	No	0	Yes	No
Screaming Frog	Crawler (self-run)	0	No	0	No	No
Sitebulb	Crawler (self-run)	0	No	0	Yes	No
ICANN CZDS / .com zone	Registry data	1	No	1	No	No
Verisign RDAP	Registry data	0	No	1	Yes	No
Internet Archive	Web archive	0	Yes	1	Yes	No
Google Maps Platform	Public index data	3	Yes	2	Yes	No
Google Trends	Public index data	0	Yes	0	Yes	Yes
Similarweb	Visibility estimates	3	Yes	0	Yes	Yes
SpyFu	Visibility estimates	3	Yes	0	Yes	No
Ahrefs	Visibility estimates	2	No	0	Yes	No
Majestic	Visibility estimates	2	Yes	0	Yes	No
SparkToro	Visibility estimates	2	Yes	0	Yes	No
Moz	Visibility estimates	1	No	0	Yes	No
Semrush	Visibility estimates	1	No	0	Yes	No
Amazon Ads	Ad platform	3	No	2	Yes	No
LinkedIn Ads	Ad platform	3	No	2	Yes	No
TikTok Ads	Ad platform	3	No	2	Yes	No

Platform	Category	Publication restriction	Attribution required	Litigation clause	Accuracy disclaimer	Calls data estimates
Meta Ads	Ad platform	1	No	0	Yes	No
Google Ads	Ad platform	0	No	2	Yes	No
Microsoft Advertising	Ad platform	0	No	0	Yes	No
Comscore	Panel measurement	3	Yes	3	Yes	No
Nielsen	Panel measurement	2	Yes	0	Yes	Yes
SecurityTrails	Domain / forensic	4	No	0	Yes	No
DomainTools	Domain / forensic	3	No	0	Yes	No
WhoisXML API	Domain / forensic	3	No	0	Yes	No

Appendix B: Sources

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Amazon Advertising Agreement, posted July 23, 2026.
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WhoisXML API Terms of Service, updated March 3, 2025.
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https://www.icann.org/en/data-protection/terms-of-service

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