



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Digital Platforms Inquiry

Issues Paper

26 February 2018

Contents

| | |
|---|----|
| The Digital Platforms Inquiry | 2 |
| Timetable | 3 |
| Process and feedback..... | 3 |
| Treatment of confidential information | 3 |
| 1. Scope of the Inquiry | 5 |
| 'Digital platforms' | 5 |
| 'News and journalistic content' | 5 |
| 'Choice and quality' | 6 |
| 'Media and advertising services' | 7 |
| 2. Industry Overview | 8 |
| The potential for concern..... | 8 |
| Relationships between digital platforms, media content creators, businesses and consumers | 11 |
| Digital platforms | 11 |
| Changes in media and advertising services markets in Australia | 15 |
| 3. Questions to stakeholders..... | 18 |
| Assessing the market power of digital platforms..... | 18 |
| Implications for media content creators, advertisers and consumers..... | 19 |
| Longer-term trends..... | 21 |
| Existing regulation and proposals for change | 22 |
| Attachment A – Terms of Reference | 23 |
| Attachment B – Regulatory Overview..... | 24 |

The Digital Platforms Inquiry

On 4 December 2017 the Treasurer, the Hon Scott Morrison MP, issued a notice requiring the Australian Competition and Consumer Commission (**ACCC**) to hold an inquiry into the impact of digital search engines, social media platforms and other digital content aggregation platforms on the state of competition in media and advertising services markets (the **Inquiry**). The notice outlines that the Inquiry is to look at the impact, in particular, in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.

The Terms of Reference for the Inquiry identify matters to be taken into consideration in the course of the Inquiry, which include but are not limited to:

- i. the extent to which platform service providers are exercising market power in commercial arrangements with the creators of journalistic content and advertisers
- ii. the impact of platform service providers on the level of choice and quality of news and journalistic content to consumers
- iii. the impact of platform service providers on media and advertising markets
- iv. the impact of longer-term trends, including innovation and technological change, on competition in media and advertising markets, and
- v. the impact of information asymmetry between platform service providers, advertisers and consumers and the effect on competition in media and advertising markets.

The Terms of Reference directs the Inquiry to consider, in particular, the impact of digital platforms on the supply of news and journalistic content. The Inquiry will accordingly focus on the digital platforms that impact, or are likely to impact, the supply of news and journalistic content.

The ACCC must submit its preliminary report to the Treasurer by 3 December 2018 and a final report to the Treasurer before 3 June 2019. The preliminary and final reports will be publicly released. This ACCC invites submissions from interested parties on the matters outlined in this issues paper by **3 April 2018**.

The full terms of reference can be found at **Attachment A** on page 23.

Potential outcomes

The Inquiry may lead to a range of outcomes, including but not limited to:

- findings regarding structural, competitive or behavioural issues in the relevant markets
- increased information about competition, pricing and other practices in the supply of online news and journalistic content and advertising services to Australian consumers
- improved transparency for Australian consumers regarding media, advertising services, and news and journalistic content on digital platforms
- ACCC action to address any behaviour that raises concerns under the *Competition and Consumer Act 2010*, and
- Recommendations to the Government for law or policy change.

Timetable

As the Inquiry progresses, the ACCC will publish further information with confirmed dates on its website.

| | |
|-------------------------|---|
| 4 December 2017 | Inquiry commencement date |
| 26 February 2018 | Release of Issues Paper |
| 3 April 2018 | Due date for comments in response to the Issues Paper |
| May – June 2018 | Public external engagement. Dates and venues to be advised. |
| 3 December 2018 | Preliminary report due to be provided to the Treasurer |
| 3 June 2019 | Final report due to be provided to the Treasurer |

Process and feedback

The ACCC invites your views by way of written feedback in response to this Issues Paper.

The ACCC will also directly contact some market participants to request specific information.

Invitation for written submissions

The ACCC seeks feedback on a number of issues. The issues outlined in this paper are a guide and not exhaustive. The ACCC encourages market participants including content creators/journalists, media outlets, platform providers, advertisers, consumers and small business interest groups to raise other issues relevant to the terms of the Inquiry.

Responses to this Issues Paper, including written submissions, should be provided by **3 April 2018**. Written submissions should be emailed to platforminquiry@acc.gov.au.

If you would like to be notified of updates in relation to the Inquiry, please email your details to platforminquiry@acc.gov.au.

Consumer responses via the Consultation Hub

Individual consumers can choose to make a written submission to this Issues Paper or instead choose to complete an online questionnaire via the [ACCC Consultation Hub](#). The online questionnaire is a streamlined process designed to make it easier for consumers to have a say on the issues most relevant to them.

This Inquiry is a public process, so responses will ordinarily be published on the ACCC website as submissions to the inquiry. You need to expressly state if you do not want us to publish your name. See 'Treatment of confidential information' below for further information about the confidentiality arrangements for the Inquiry.

Treatment of confidential information

The Inquiry is a public process and feedback (written and oral) will generally be posted on the ACCC website.

The *Competition and Consumer Act 2010* allows interested parties that provide feedback to the Inquiry to make claims for confidentiality in certain circumstances.

The ACCC can accept a claim of confidentiality from the party if the disclosure of information would damage their competitive position, the ACCC is satisfied the confidentiality claims are justified, and it is not necessary in the public interest to disclose the information. The ACCC will consult with a party where possible and appropriate prior to publishing any information over which that party has claimed confidentiality.

The ACCC invites interested parties, where appropriate, to discuss confidentiality issues further with the ACCC in advance of providing written feedback.

Where a party is providing feedback that contains confidential information, the confidential information should be provided in a separate document and should be clearly marked as 'confidential' on every relevant page. Alternatively, the party may wish to provide a public version of the feedback and a confidential version of the feedback.

Reasons must be provided in support of the claim for confidentiality, so that the ACCC can consider whether the claim is justified.

1. Scope of the Inquiry

The scope of the Inquiry is determined by the Terms of Reference.

The Terms of Reference require the ACCC to examine the impact of digital search engines, social media platforms and other digital content aggregators (platform services), on the state of competition in media and advertising services markets, in particular in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.

A preliminary task for the Inquiry is to explore the terms and concepts used in the Terms of Reference as they are relevant to defining the Inquiry's parameters. Key terms such as 'digital platform' or 'platform service', 'media and advertising services' and 'news and journalistic content' are of critical importance to the Inquiry.

In this section, the ACCC sets out its initial views regarding key terms and concepts in the Terms of Reference and seeks feedback and suggestions on these initial views.

'Digital platforms'

'Platform services' are described in the Terms of Reference as '*digital search engines, social media platforms and other digital content aggregation platforms*' (also referred to as '**digital platforms**' in this Issues Paper).

The ACCC considers that relevant digital platforms for this Inquiry are those that may impact on competition in media and advertising services markets, particularly in relation to the supply of news and journalistic content. Practically, this may include digital platforms that provide media content, social interaction or search functionality (or some combination of these) to attract consumers to the platform and then sell 'access' to these consumers to advertisers. Google, Facebook, Instagram, Twitter, Snapchat, Apple News are examples of such platforms (see **Section 2 Industry Overview** below).

The ACCC notes that the Inquiry is not an inquiry into supply by any particular person or persons (or organisations).

Questions

- 1.1. Which digital platforms do you consider to be relevant to this Inquiry?
- 1.2. Should the Inquiry consider digital platforms that do not currently provide access to news and journalistic content in Australia but may either provide news and journalistic content in the future and/or have an impact in relevant markets (e.g. Amazon,¹ instant messaging applications)?

'News and journalistic content'

The Inquiry is directed at the impact of digital platforms on the state of competition in media and advertising services markets, '*in particular in relation to the supply of news and journalistic content*'. It will be important to consider how broadly the nature and scope of news and journalistic content should be defined.

¹ Amazon is a large global online retailer. In 2016, market research company Bloomreach estimated that 55 per cent of US consumers began their search for products online using Amazon. (Bloomreach, [The State of Amazon 2016](#), 2016, p 1.) The ACCC is considering the extent to which the current and future operations of Amazon in Australia could be relevant to this Inquiry.

The ACCC will consider both well-established news providers and publishers as well as newer online-only suppliers of news and journalistic content, including podcasts. Specialist news suppliers (e.g. providers of science news or technology news) and opinion-led blogs and commentary as well as general news suppliers may also be relevant.

The Inquiry will examine the supply of news and journalistic content to consumers in Australia. This means that the Inquiry will focus on the news and journalistic content that is likely of most interest to Australian consumers, such as reporting and analysis of current events relating to Australia or where a particular Australian perspective is provided. While this focus does not limit the Inquiry to Australian news and journalistic content, it does mean the Inquiry will pay particular attention to Australian news content or perspectives produced by Australian and international publishers and broadcasters.

Questions

- 1.3. What 'news and journalistic content' is particularly relevant to this inquiry? Should the ACCC consider a broad range of specialist suppliers of news and journalistic content?
- 1.4. Should the Inquiry focus on news and journalistic content *supplied to* consumers in Australia or news and journalistic content *produced in* Australia?

'Choice and quality'

The Terms of Reference require the ACCC to take into account the impact of platform service providers on '*the level of choice and quality*' of news and journalistic content supplied to consumers. As discussed in section 2 below, the availability of pluralistic and high-quality news content benefits society as a whole.

Media choice and diversity can be measured in a number of ways. Important indicators include the number of independent media voices present in the relevant region and the range and diversity of perspectives typically covered by those media voices. Digitalisation clearly has the potential to increase the choices of news and journalistic content available to Australian consumers, although established news providers still account for a significant share of online news consumption. However, also relevant to this Inquiry is the extent to which digital platforms impact the diversity of news and journalistic content supplied to consumers, including through the platforms' algorithmic selection of news stories.

The ACCC considers that the 'quality' of the news and journalistic content available refers to the extent to which the content produced exhibits characteristics such as objectivity and accuracy and performs functions such as analysis and investigation. Factors impacting quality might include the funds available for investment in news gathering and reporting and the level of competition between news providers.

In addition to choice and quality, a number of related issues such as journalistic and editorial integrity, access to local content, and promoting Australian culture may also be relevant to this Inquiry. These issues will be considered to the extent that they have arisen due to the competitive impact of digital platforms on the media and advertising markets.

Questions

- 1.5. What are appropriate metrics for measuring the choice and quality of news and journalistic content?
- 1.6. Are there any other issues relevant to the choice and quality of news and journalistic content that should be considered by the ACCC?

'Media and advertising services'

The focus of the Inquiry is on the impact of digital platforms on the state of competition in *'media and advertising services markets, in particular in relation to the supply of news and journalistic content'*.

Media

The ACCC's preliminary view is that the Inquiry should focus on the media markets involved in the supply of news and journalistic content. Media content which is far removed from news and current events, produced solely to entertain rather than inform consumers is unlikely to be a focus of this Inquiry. However, the ACCC recognises that the line to be drawn between news and journalistic content and other media content will not always be clear.

Advertising services

The Inquiry will also explore the impact of digital platforms on competition in the supply of advertising services. Compared to traditional advertising channels (e.g. newspaper, TV, radio), digital platforms provide advertisers with significant reach and greater precision in targeting consumers with particular interests or purchasing patterns. Advertising has consequently become much more efficient. However, there are currently only a few platforms with the scale and data access to offer such services. A key issue for competition in the supply of advertising services is the alternatives available to advertisers. These alternatives depend on the type of advertising (e.g. classified, display), the target audiences and the ability to target particular consumer groups.

Please see below **Questions 3.1 to 3.4** for the ACCC's questions regarding the relevant markets to this inquiry, including the relevant media and advertising services markets.

2. Industry Overview

Before the introduction of the internet and the emergence of digital platforms, the production and distribution of news and journalistic content in Australia was chiefly within the control of media organisations (including media businesses and public broadcasters):

- Journalists created content that was then provided to consumers by media organisations via specific channels (e.g. TV, print, radio). Typically, these media organisations provided news content on specific channels with limited cross-platform distribution.
- Journalists were paid for creating content by media organisations.
- Those media organisations which were not publicly funded typically funded the creation and distribution of news and journalistic content by selling advertising services to advertisers and, to a lesser extent, by subscriptions and sales.

By bringing together two distinct groups of users (consumers and advertisers) that interact with each other, media organisations can be characterised as operating in a two-sided market. Decisions made by the media organisation on one side of the market, such as pricing, are likely to have flow on effects on the other side of the market. Media organisations have the incentive to fund journalistic and other content in order to attract both consumers and advertisers.

Digitalisation has transformed the way that news and journalistic content is produced and delivered to Australian consumers, including by changing the flow of revenue between the different industry participants. New online-only providers of news, comment and analysis have found ways of connecting with consumers. Consumers can now access news online at any time on a range of different devices, both directly from the websites of media organisations (either for free or with a subscription) and indirectly via digital platforms including search engines, social media or other digital content aggregators. These digital platforms have a growing role in directing consumers to news and journalistic content. The digital platforms' attractiveness to consumers as well as their advanced algorithms and access to user data has contributed to a sharp shift in advertising revenue away from traditional media companies.

The potential for concern

The prevalence of digital platforms and the use of consumer data by these platforms gives rise to new opportunities and innovations in media and advertising services markets. It also creates the potential for competition and consumer concerns including, but not limited to:

- the impact of the reduction in media companies' advertising revenue on the creation of news and journalistic content in Australia, and
- the wider effects of digital platforms on the nature of and consumption of news, such as the collection of consumer data through the use of 'big data' technologies and the impact of algorithmic selection on the plurality of news and journalistic content presented to Australian consumers.

Reduced funding for quality news and journalistic content

Access to a plurality of high-quality news and journalistic content benefits Australian consumers by enabling them to make informed judgments on the issues of the time and to effectively participate in a democratic society. Yet the growth of digital platforms and their increasing share of advertising revenue has challenged the business models of traditional media companies, particularly those reliant on advertising revenues such as newspaper

publishers and broadcasters. A key concern is that lower advertising revenues are impeding the capacity of traditional media companies to fund the production and distribution of news and journalistic content.

News and journalistic content can generate benefits to society that are broader than the benefits to readers and advertisers. It may be difficult for creators of this content to be rewarded for all these public benefits. For example, a recent report by the Senate Select Committee on the Future of Public Interest Journalism (**Select Committee**) notes that whilst investigative journalism 'is expensive to do, takes a long time, sparks legal action and upsets powerful interests', it may also save lives, expose corruption, improve environments, creating significant benefits for the community generally in a way that cannot be readily monetised by the media companies bearing the cost for producing the content.²

The Select Committee's report, prepared under different terms of reference to the Terms of Reference for this Inquiry, noted the following challenges facing public interest journalism:

- restructuring of traditional business models due to declining advertising revenue has, in the Committee's view, led to fewer journalist positions and a reduced capacity to undertake public interest and investigative journalism
- the speed of online media's '24-hour news cycle' has, in its view, put pressure on media companies to produce content at all costs and to break stories early
- there has been a reported decline of the 'journal of record functions' of journalism in recent years, particularly in news coverage of local courts, councils and politics
- the impact of declining advertising revenue on media companies has been reported to disproportionately affect rural and regional communities, and
- the slump in public interest journalism may be contributing to a more partisan culture of debate as well as an increase in the circulation of misleading news stories and the existence of online 'echo chambers'.

In this Inquiry, the ACCC will undertake an independent review of the extent to which advertisers now prefer to use digital platforms rather than traditional media, and the potential impact of that market shift on the ongoing creation of news and journalistic content in Australia.

The ACCC will consider any benefits as well as the reported disadvantages to market participants that may flow from this structural change.

Digital platforms' use of big data technologies

Digitalisation and, in particular, consumer use of digital platforms has led to an exponential increase in the generation and collection of consumer data, and big data technologies have enabled the extraction of commercial value from this data through high-velocity data capture, discovery and analysis.³ These technologies may be harnessed by digital platforms to create new or improved products and services that better target the individual needs of consumers and advertisers.⁴ At the same time, however, the use of large sets of personal data for commercial purposes raises competition and consumer concerns, as well as broader policy issues.

² Australian Senate Select Committee, [Report on Public Interest Journalism](#), February 2018, p 5.

³ International Data Corporation, [Big Data: What It Is and Why You Should Care](#), June 2011, p 3.

⁴ OECD, [Bringing Competition Policy to the Digital Era](#), Background Note, 2016.

Big data and competition concerns

It has been observed that data-driven network effects and economies of scale may give established digital platforms that possess large amounts of data an enduring competitive advantage.⁵ Companies with a large database of user information may use that information to improve the quality of a product or service, thereby attracting more users and collecting more user information, and so on.⁶

While this is part of the competitive process and is usually beneficial for consumers, it can cause markets to become highly concentrated. Without access to a large database of user information, new entrants may find it difficult to compete, entrenching the market positions of established digital platforms, which may ultimately be to the detriment of users and impact related markets for advertising services and media content.

Big data, consumer privacy and informed consent

Consumer protection concerns in relation to big data include whether platforms are providing consumers with adequate levels of privacy and data protection. Accumulating consumer behaviour data to expand targeted advertising may improve services to advertisers (and potentially be of greater interest to their audience) but also represents a cost to consumers in the form of a loss of privacy.⁷ For example, an increase in the level of personal data obtained from users or the supply of more data to third parties, may be viewed as an effective increase in the price or a decrease in the quality of the ‘free’ service (e.g. social media interaction or search functionality) supplied to consumers.

The extent to which consumers are aware of the amount of data they provide to digital platforms, the value of the data provided, and how that data is used is another potential source of concern. Across a number of platforms, consumers are required to provide wide-ranging consents regarding the collection and use of their data in order to use the platform and it is important that they are supplied with adequate information on this data collection and use in order to be able to provide informed consent. (Please see **Questions 3.21 and 3.23** on pages 21 and 22.)

Impact of algorithms on news diversity

A further consumer protection concern arises from the contention that digital platforms use advanced algorithms to process user data and deliver targeted content that matches a user’s tastes and preferences.⁸ This may create a ‘filter bubble’ effect where users may find themselves receiving less exposure to new information or conflicting viewpoints.⁹ A counterargument, however, is that digital platforms have improved accessibility to online content and have broadened rather than narrowed the diversity of news and comment available to consumers.¹⁰

The Inquiry will accordingly consider the potential impact of big data technologies and the use of the algorithms by key digital platforms on media diversity, that is, the level of choice of news and journalistic content provided to consumers.

⁵ OECD, [Bringing Competition Policy to the Digital Era](#), Background Note, 2016, p 9 and Autorité de la Concurrence and Bundeskartellamt, 2016, “[Competition Law and Data](#)”.

⁶ OECD, [Bringing Competition Policy to the Digital Era](#), Background Note, 2016, p 10.

⁷ OECD, [Bringing Competition Policy to the Digital Era](#), Background Note, 2016, p 18.

⁸ Robin Foster, ‘News Plurality in a Digital World’, p22.

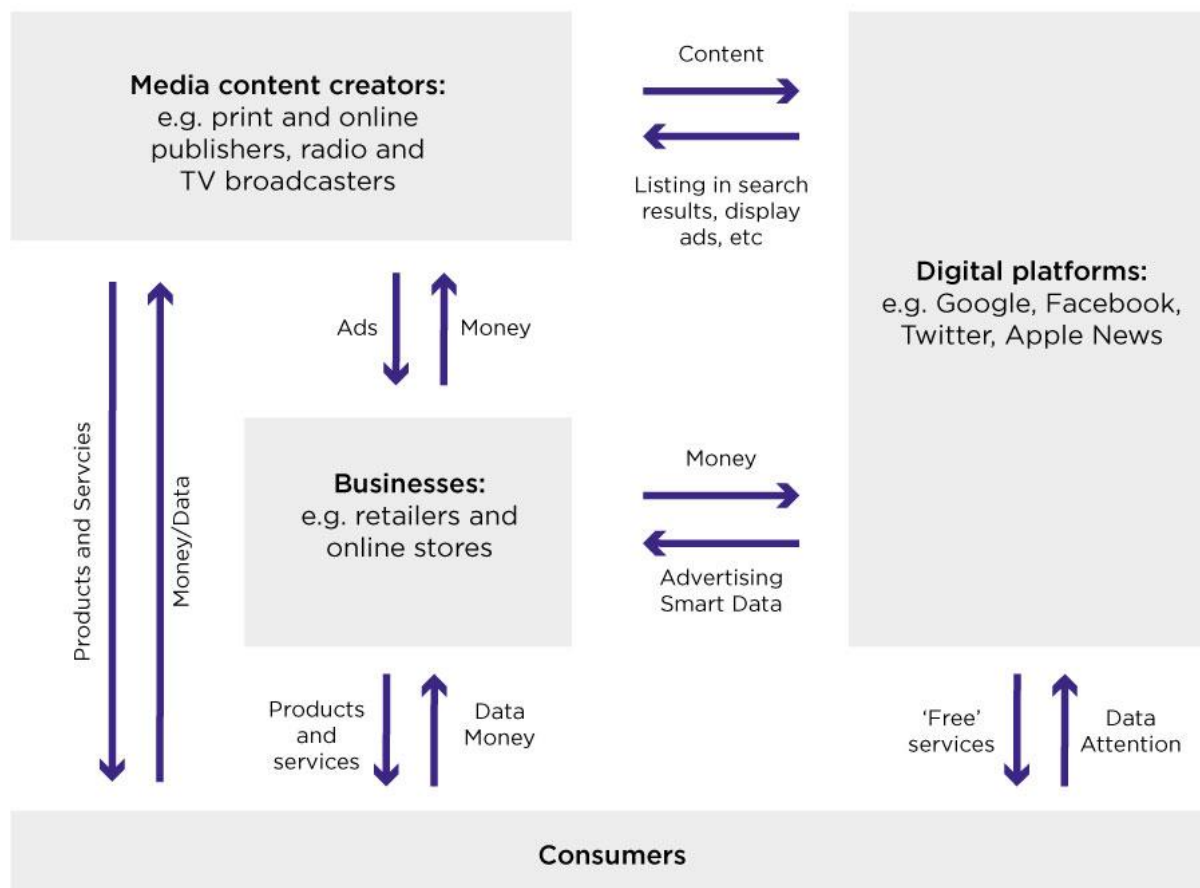
⁹ Ibid, citing Eli Pariser, ‘The Filter Bubble: What the Internet is Hiding from You’ (Penguin Press, 2011).

¹⁰ Robin Foster, ‘News Plurality in a Digital World’, p22.

Relationships between digital platforms, media content creators, businesses and consumers

The below **Figure 1** presents an overview of the relationships between digital platforms, media content creators, businesses and consumers in the supply of news and journalistic content.

Figure 1 – Relationships between digital platforms, media content creators, businesses and consumers in the supply of news and journalistic content



Source: Extracted from Figure 3, 'Big Data Ecosystem' from OECD, Bringing Competition Policy to the Digital Era: [Background note by the Secretariat](#), 29-30 November 2016, p 12. Figure has been updated and adjusted as relevant to the Australian context and matters of key relevance to the Inquiry.

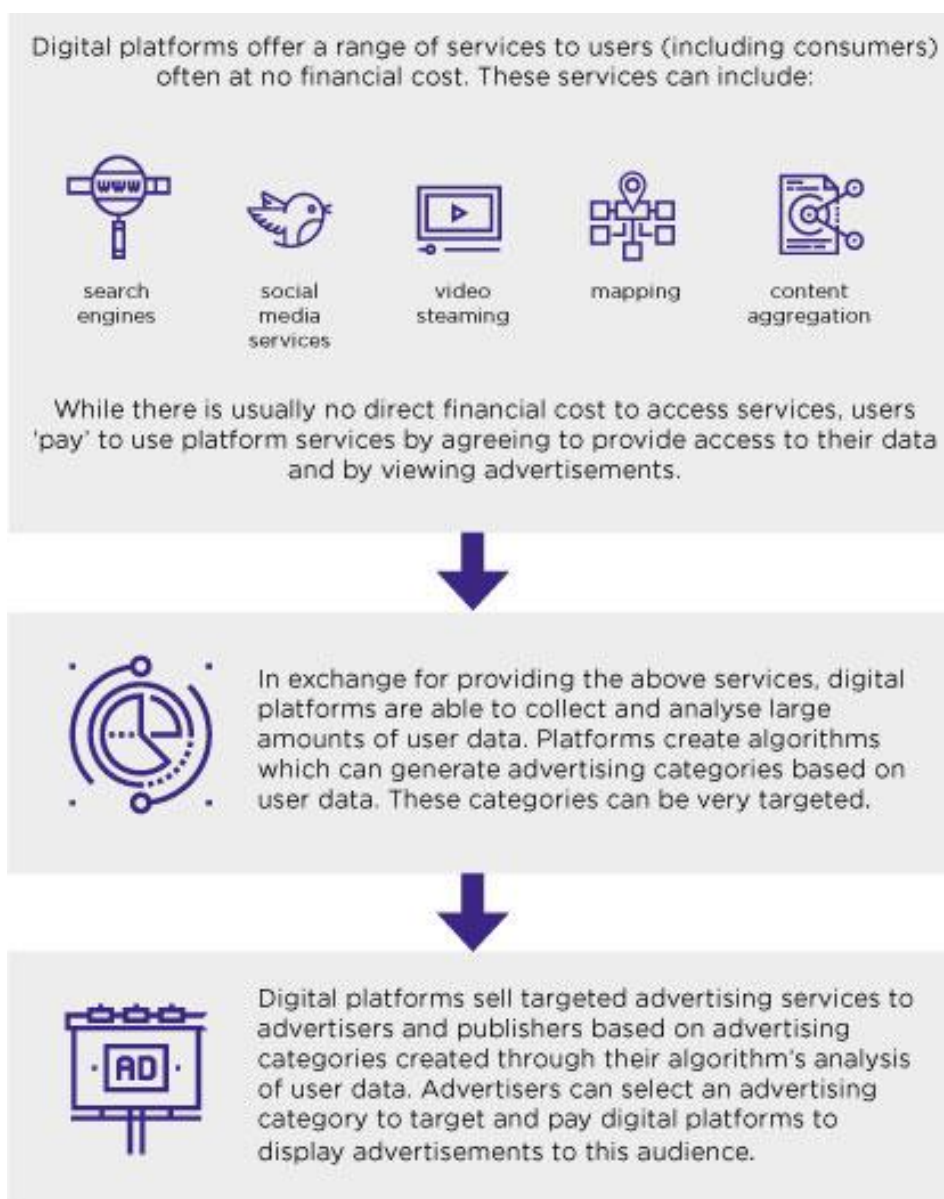
Digital platforms

The terms of reference are directed at the competitive impact of:

- Digital search engines
- Social media platforms
- Other digital content aggregation platforms

The below **Figure 2** provides a high-level overview of the business model through which digital platform services generate revenue through the collection and analysis of user data.

Figure 2 – Overview of digital platforms’ advertising business model using user data



Note: The level of revenue generated by advertising varies between digital platforms, which also generate revenue through the provision of other goods and services to consumers. E.g. around 16 per cent of Google's revenue in the last quarter of 2017 was derived from sources other than advertising.¹¹

Search engines

Search engines are digital platforms that generate and maintain databases of online content (e.g. web pages, images or other types of digital files) in an easily searchable format.¹² They collect and organise online content in an automated fashion using sophisticated algorithms.

¹¹ Google, [Q4 2017 Results](#), p. 1 and 2.

¹² OECD, [The Economic and Social Role of Internet Intermediaries](#), April 2010, p. 12

Although consumers' use of a search engine does not involve a direct financial cost, consumers 'pay' for the service by allowing search engines to access and collect their data and by viewing advertisements in their search results. Search engines may also collect user data and sell advertising services based on this data to advertisers. The sale of advertising services is the main source of revenue for Google's parent company, Alphabet Inc.

Google is the main digital search engine used in Australia and globally.¹³ Other digital search engines, including DuckDuckGo, Bing, Yahoo, Ask.com and Baidu, also operate in Australia, but are small relative to Google.

About Google

Google's primary offering is a search engine service. It performs this service by searching online documents, files and websites for key words and collecting and organising the findings in a search results page. It is by far the leading provider of digital search, providing 86 per cent of digital search services globally.¹⁴ In Australia, Google is estimated to provide 95 per cent of digital search services.¹⁵

There is no financial cost for users to access Google's search service. However, by using the search service, users enable Google to access their personal data. This includes personal information, search history, videos watched, ads clicked on, location, emails sent or received through Gmail, calendar events, photos uploaded and more.¹⁶ Google then analyses this data and uses it to sell targeted advertising services to advertisers. This general business model is depicted in Figure 2.

In 2016 Alphabet Inc., Google's parent company, became the world's most valuable publicly traded company. In the same year, Google generated annual revenue of USD89.46 billion, of which USD67.39 billion was from advertising (75.4 per cent). In the fourth quarter of 2017, Google's total revenues were USD32.3 billion, up 24 per cent compared to the same period in 2016. Advertising accounted for more than USD27 billion of this (84.2 per cent).¹⁷ The remainder of Google's revenue comes from non-advertising related products such as the Chromecast, Chromebooks, certain Android smartphones, Google Apps and the Google Cloud Platform.¹⁸

As well as offering general search services, Google offers other relevant products including:

- **Google News** – a news aggregator service that summarises and links to news articles including news publishers in Australia.
- **YouTube** – a video sharing website and mobile app which plays ads before and during videos.
- **Google Play Newsstand** – a news aggregator and digital newsstand app which allows users to subscribe to news publications and magazines.
- **Analytics** – a service which provides a website's owner with data and reports on traffic to their site. Analytics is also integrated with AdWords and so allows users to track performance of AdWords advertising campaigns.

¹³ IBISWorld, [Search Engines in Australia Major Companies](#), accessed 25 January 2018.

¹⁴ IBISWorld, [Search Engines in Australia Major Companies](#), accessed 25 January 2018

¹⁵ IBISWorld, [Search Engines in Australia Major Companies](#), accessed 25 January 2018.

¹⁶ Google, [Privacy Policy](#), accessed 2 February 2018.

¹⁷ Google, [Q4 2017 Results](#), p. 1 and 2.

¹⁸ Google, [Annual Report 2016](#), p. 26.

- **AdWords** – a service which enables advertisers to display advertising to their chosen audience in searches, on sites, in videos and in application (apps). Advertisers select keywords which, if searched, will show the relevant advertising. Advertisers only pay for AdWords if a consumer clicks on their advertising.
- **AdSense** – a free service for publishers which places text, image, video or interactive advertisements which are relevant to their content on their websites. Publishers generate revenue on a per-click or per-impression basis.
- **AdMob** – an advertising product for mobile applications (apps) which allows publishers to monetise content through banner, full page and video advertisings.
- **DoubleClick** - A Google subsidiary which develops and provides internet advertising services, including for mobile. It also partners with third party marketing firms which can manage advertising campaigns.

Social media platforms

Social media platforms are multi-sided platform businesses that allow users to create content and connect with other users, groups and businesses on the platform. Like digital search engines, social media platforms attract users by offering services at little to no financial cost and generate revenue through sale of advertising services. Users may 'pay' for the service by allowing social media platforms to collect their data and by viewing advertisements, which may be based on user data collected by the social media platform.

Facebook, founded in 2004, is the leading social media platform globally and also within Australia. Other popular social media platforms within Australia include Twitter, LinkedIn, Snapchat, Instagram, Pinterest and Google+.

About Facebook

Facebook, founded in 2004, is the leading social media platform globally and also within Australia. Globally, Facebook reports that in the fourth quarter of 2017 it had approximately 2.1 billion monthly users and 1.4 billion daily users.¹⁹ In Australia, as at 2016, it was estimated that 15 million Australians use Facebook monthly and more than 210 million people on Facebook are connected to the Facebook Page of a business in Australia.²⁰ Recent Australian surveys suggest that 95 per cent of Australian consumers who use social networking used Facebook.²¹

Facebook attracts users by offering social media services at no financial cost, but users effectively 'pay' for the service by allowing Facebook to collect and use their data and by viewing advertisements. The data Facebook collects includes users' personal information, usage history, frequency and duration of use, location and information about payments and transactions made through the service. Facebook also tracks web browsing behaviour on non-Facebook partner websites which allows it to collect data on consumers who do not use its social media platform. Facebook also collects information from third-party partners about its users.²² Facebook analyses user data and then generates advertising categories using algorithms it creates. There are thousands of advertising categories that can be extremely targeted to an audience. Facebook then sells targeted advertising services to advertisers and publishers. This general business model is depicted in Figure 2.

¹⁹ Facebook, [Q4 2017 Results](#), p. 2 and 3.

²⁰ D. Cowling, '[Social Media Statistics Australia – July 2017](#)'. *SocialMediaNews.com.au*, 1 August 2017, accessed 23 January 2018 and J. Harkness "["We've seen a rise in Facebook-only Australian businesses," says platform's local Head of SMB](#)". *Dynamic Business*. 27 November 2017, accessed 23 January 2018.

²¹ Productivity Commission, [Data Availability and Use](#), 31 March 2017, p. 573.

²² Facebook, [Data Policy](#), accessed 2 February 2018.

In 2016, Facebook generated USD27.64 billion in revenue globally. Of this, USD26.89 billion (97.3 per cent) was from advertising.²³ The remainder of its revenue came from payments made to use its services and sales of virtual reality products.²⁴ In 2017, Facebook's revenue jumped by 47 per cent to USD40.7 billion. Advertising accounted for USD39.9 billion of this (98 per cent).²⁵

As well as offering social media services, Facebook offers other relevant products including:

- [Audience Network](#) – enables publishers and advertisers to display ads on mobile apps other than Facebook by integrating ads into the mobile app format.
- [Instant Articles](#) – enables content to be published to the Facebook mobile app without the user having to leave the app and visit the content creator's website.
- [Branded content](#) – publishers can publish content on Facebook that features a business partner. These arrangements must be identified as paid content.
- [In-Stream Video](#) – video publishers can deliver ads on videos on Facebook.
- [CrowdTangle](#) – allows publishers to track performance of their content and competitors' content on various social media platforms.

Facebook owns other businesses including Instagram and WhatsApp.

Digital content aggregation platforms

Digital content aggregation platforms are online intermediaries that collect, organise and evaluate dispersed information including news and journalistic content from media companies and other content producers. There is also an emerging role for digital content aggregation platforms in commissioning the production of their own original media content in addition to aggregating media content produced by others.

These platforms attract users by offering services at little to no financial cost and collect user data and display advertisements in exchange for providing these services. Digital content aggregators may then sell targeted advertising services based on this user data. **Figure 2** on page 12 above depicts this business model.

In addition to Google News, examples of digital content aggregation platforms include Apple News, Flipboard and Reddit.

Changes in media and advertising services markets in Australia

This Inquiry will examine key changes in the media and advertising services markets in Australia. We are seeking feedback on the role of digital platforms in these changes, and in particular the impact of digital platforms on the state of competition in media and advertising services markets (see **Section 3 Questions to stakeholders** on page 18).

²³ Facebook, [Annual Report 2016](#), p. 62.

²⁴ Facebook, [Annual Report 2016](#), p. 63.

²⁵ Facebook, [Q4 2017 Results](#), p. 4.

Changes in the consumption of news in Australia

Australian consumers are increasingly accessing their news online.²⁶ Some sources estimate between 50 and 74 per cent of Australians get their news online (including from social media) while only 33 to 36 per cent get their news from print and 36 per cent from radio.²⁷ TV is predicted to remain the main source of news for Australians.²⁸ As the consumption and distribution of print news declines, digital news distribution has increased and many providers have moved to multiple-digital platforms, including social media, to distribute their content.²⁹

Digital platforms, as providers of online referral services³⁰ to news and media websites, are increasingly important for consumers seeking to access news and journalistic content. News content can be accessed via digital search engines, social media or other content aggregation platforms. Some of this content can be read or viewed within platforms and in other instances, users are referred or redirected to news and publisher websites where the content originates from. Instant messaging applications are also beginning to perform an emerging role in allowing users to find, share and discuss news content overseas, some of which offer users the advantage of encrypted communications particularly relevant to countries where it may be risky to share politically controversial information.³¹

The role digital platforms have providing online referral services and acting as a gateway to Australian online media sources is one of the issues this Inquiry will consider. The Inquiry will also consider other digital platforms that do not yet have such a role but may do so in the future.

Shift in advertising spend

The growing importance of digital platforms in the consumption of news in Australia described above is accompanied by a significant shift in advertising spend in Australia. The Australian Communications and Media Authority (ACMA) reports that print media's share of advertising expenditure has decreased (from 46 to 13 per cent) while the share of online advertising has increased (15 to 48 per cent) from 2009 to 2016 as shown in **Figure 3** on page 17.

²⁶ The Australian Communications and Media Authority, [Communications Report 2016/17](#), 8 December 2017, p. 9.

²⁷ These estimates are based survey's from the following sources (which have differing collection methods and samples sizes): Roy Morgan, [State of the Nation: Media Report – the audience is transforming](#), 23 August 2017. News and Media Research Centre University of Canberra, [Digital news report: Australia 2017](#), 22 June 2017, p. 29. Reuters Institute for the Study of Journalism, [Reuters Institute Digital News Report 2017](#), p. 117. The latter study asked users 'Which, if any, of the following have you used in the last week as a source of news?' and allowed multiple responses (thus the percentages will not sum to 100 per cent).

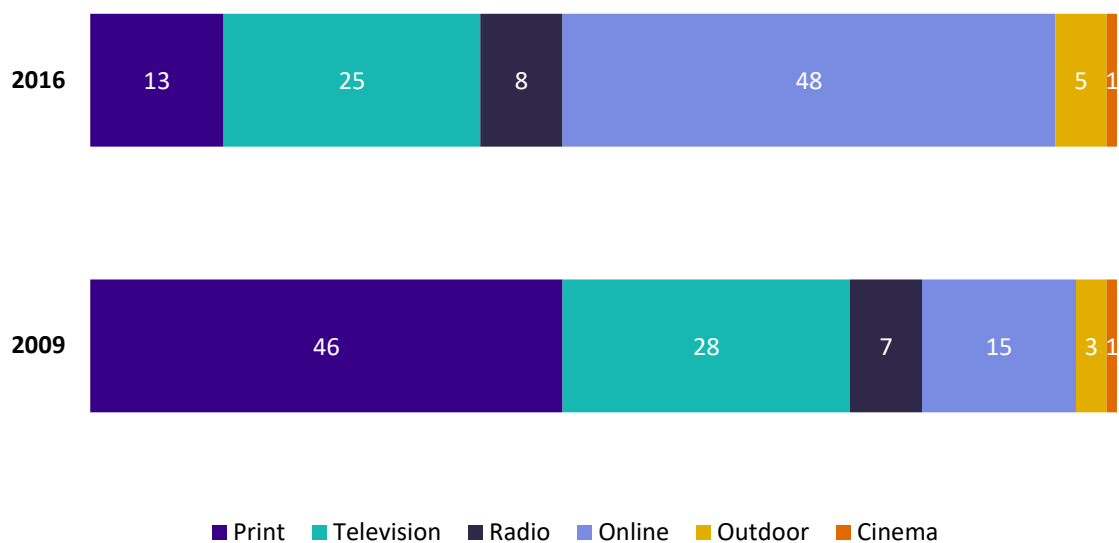
²⁸ Roy Morgan, [State of the Nation: Media Report – the audience is transforming](#), 23 August 2017. This study estimated that 69 per cent of Australians mainly get their news from TV. News and Media Research Centre University of Canberra, [Digital news report: Australia 2017](#), 22 June 2017, p. 2 found that 63 per cent participants reported accessing news from TV.

²⁹ The Australian Communications and Media Authority, [Communications Report 2016/17](#), 8 December 2017, p. 82.

³⁰ Online referral services are similar to a recommendation from one website to another, typically as the result of a search, advertisement or sharing on social media. Source: The Australian Communications and Media Authority, [Communications Report 2016/17](#), 8 December 2017, EN 52 p.91 (footnote 52).

³¹ Reuters Institute for the Study of Journalism, [Reuters Institute Digital News Report 2017](#), p12

Figure 3 – Change in share of Australian advertising expenditure by medium between 2009 and 2016 (percentage)



Source: The Australian Communications and Media Authority Communications Report 2016/17, p 40 and The Australian Communications and Media Authority Communications Report 2009/10, p 50.

Venture Insights reports that from 2011-2015 Australian newspaper and magazine publishers lost AUD1.5 billion and AUD349 million respectively in physical print advertising revenue but only gained AUD54 million and AUD44 million in digital advertising.³²

Within the online segment, digital platforms (and in particular Google and Facebook) have taken an increasingly large share of advertising revenue. Research by Morgan Stanley in 2016 estimated that digital platforms in media, such as Google and Facebook, would take up to 40 per cent of total Australian advertising revenue for the year.³³ This equates to around three quarters of the total Australian online advertising expenditure for 2016.³⁴ The extensive data collected and processed by Google and Facebook on their users, the use of sophisticated algorithms and their ongoing use by many consumers, has allowed them to offer advertisers highly targeted advertising opportunities, increasing their attractiveness to advertisers.

Some Australian media providers are responding to this shift by engaging in ‘partnerships’ with digital platforms. For example, in December 2017 it was announced that Fairfax Media would enter into a partnership with Google to streamline advertising and develop digital media products. This partnership would allow advertisers to book Fairfax Media advertising space using Google’s digital programmatic platform.³⁵

³² Venture Insights, [Australian Advertising Expenditure Market Outlook](#), 7 June 2017, p. 9.

³³ P. Cogan, ‘[MORGAN STANLEY: Global tech giants are about to crush the Australian media industry](#)’, *Business Insider*, 29 January 2016, accessed 25 January 2018.

³⁴ Internal calculations based on The Australian Communications and Media Authority, [Communications Report 2016/17](#), 8 December 2017, p. 41.

³⁵ J. Duke, ‘[Google, Fairfax join forces in advertising partnership](#)’, *Sydney Morning Herald*, 12 December 2017, accessed 25 January 2018.

3. Questions to stakeholders

In addition to the questions on key terms and concepts for the Inquiry, the ACCC has identified a number of matters on which it is seeking submissions from stakeholders.

The ACCC does not expect or require submissions to cover each of these questions in detail. We encourage interested parties to provide information in response to matters raised in this Issues Paper, or the Terms of Reference of this Inquiry, as relevant to them.

Assessing the market power of digital platforms

The Terms of Reference require the Inquiry to consider the extent to which digital platforms are exercising market power in commercial dealings with the creators of journalistic content and advertisers.

To consider this issue, it is necessary to assess the degree of market power of digital platforms (if any), identify any sources of that market power, and identify those most at risk from the exercise of any market power.

Central to this assessment is the recognition that digital platforms provide services to different types of users (e.g. consumers seeking to search the internet and advertisers seeking to reach an audience) and that the demand for the use of a platform by the different types of users can be interdependent (e.g. the value of a search engine to advertisers can depend on the number and type of consumers who use it). This interdependence can lead to different types of network effects for one or more groups of users (e.g. the more users on a social media network increases the value of that network for other users as well as for advertisers).

Network effects can benefit established digital platforms by entrenching their market position and raising barriers to entry for new entrants who have not yet acquired a critical mass of users. Barriers to entry may also be heightened by steps taken by digital platforms such as contract terms that seek to prevent new entrants from accessing users in established networks or the acquisition of potential rivals.³⁶ The ACCC seeks views on issues relevant to assessing the market power of digital platforms in relation to relevant groups of users including consumers, advertisers, and media content creators. The ACCC also seeks views on whether specific steps taken by digital platform may raise barriers of entry in any relevant market.

Questions

- 3.1. What are the relevant media and advertising services markets for this Inquiry? Who are the key market participants?
- 3.2. What are the relevant markets for assessing the market power of digital platforms? Who do digital platforms compete with?
- 3.3. How should the market power of digital platforms be assessed? What are appropriate metrics for measuring any market power (e.g. market concentration, profits, prices, number of users, access to user data)?
- 3.4. Do digital platforms have market power? If so, which digital platforms and in which markets? In particular:

³⁶ OECD Global Forum on Competition, '[Disruptive Innovation and Competition Policy Enforcement](#)', Note by Alexandre de Stree and Pierre Larouche (2015), pp 4-5.

- (a) What realistic alternatives are available to users (i.e. consumers, advertisers and media content creators) of digital platforms? Do these alternatives effectively constrain the behaviour of digital platforms?
 - (b) Do users use multiple digital platforms for similar functions? Do you have any evidence or observations on switching between platforms or the growth of new platforms?
 - (c) What difficulties do users encounter in switching between platforms? Do digital platforms engage in behaviour that makes switching between platforms more costly or more difficult for users?
 - (d) Does increasing the number of users increase the attractiveness of that digital platform for other users? Does this mean that it is only viable for one or two digital platforms providing a similar service to consumers to operate at the one time?
 - (e) What difficulties are faced by providers in establishing competing platforms? Does the threat of new entry limit the market power of digital platforms? Over what timeframe should the threat of new entry be assessed?
 - (f) Are there examples where digital platforms have engaged in behaviours that indicate the exercise of market power? What types of users are most at risk from any exercise of market power by digital platforms?
- 3.5. Do digital platforms engage in any behaviour that enhances their market position by excluding competitors or potential competitors, e.g. through the acquisition of rivals or restrictive contract terms?

Implications for media content creators, advertisers and consumers

The Inquiry is required to consider the impact of digital platforms on the state of competition in media and advertising services markets. In the following questions, the ACCC seeks input into how these markets have been affected by digital platforms and the resulting implications for media content creators, advertisers and consumers.

Implications for media content creators (journalists and media organisations)

Questions

- 3.6. Describe the nature of any impacts (positive and negative) that digital platforms are having on media content creators? What causes these impacts? Are these impacts temporary or ongoing?
- 3.7. What are the advantages and disadvantages for media content creators of using digital platforms to publish or distribute their content?
- 3.8. What terms and conditions do digital platforms offer media content creators to publish or distribute their content? How do they differ from those offered by other distributors of media content? Do digital platforms offer different terms to different media content creators?
- 3.9. Have digital platforms changed the price, quality or choice of media content for Australian consumers? If so, what are the implications of this for media content creators? For example, how easily can media content creators offer access to subscriber only content via digital platforms and how readily can they obtain brand attribution for content accessed via digital platforms?
- 3.10. Do digital platforms have access to user data that is helpful to media content creators (e.g. readership statistics)? Does this access to user data create any information

asymmetry between digital platforms and media content creators and, if so, how does this impact competition in the relevant markets?

- 3.11. If so, how much do media content creators value access to such user data? How does the access to or control over user data impact the relationship between digital platforms and media content creators? For instance, how transparent are digital platforms about how content reaches consumers via their algorithms and how much notice do media content creators receive when significant changes are made?
- 3.12. How important are digital platforms in delivering audience (and revenue) to media content creators relative to total audience and revenue?

Implications for advertisers

Questions

- 3.13. Describe the nature of the impacts (positive and negative) that digital platforms are having on advertisers? What causes these impacts? Are these impacts temporary or ongoing?
- 3.14. What are the advantages and disadvantages of using advertising services offered by digital platforms for advertisers (i.e. advertising agencies and businesses directly advertising on digital platforms)?
- 3.15. What terms and conditions do digital platforms offer advertisers? How do they differ from those offered by other suppliers of advertising services? Have digital platforms changed the price, quality or choice for advertisers? If so, what are the implications of this for advertisers?
- 3.16. Do digital platforms have access to user data that is helpful to advertisers (e.g. return on investment statistics)? Does this access to user data create any information asymmetry between digital platforms and advertisers and, if so, how does this impact competition in the relevant markets?
- 3.17. How much do advertisers value digital platforms' access to user data? How does the access to or control over user data impact the relationship between digital platforms and advertisers?

Implications for consumers

Questions

- 3.18. Describe the nature of the impacts (positive and negative) that digital platforms are having on consumers? What causes these impacts? Are these impacts temporary or ongoing?
- 3.19. What are the advantages and disadvantages of using digital platforms for consumers?
- 3.20. What terms and conditions govern consumers' use of digital platforms? How do they differ from those which apply when consumers obtain news and journalistic content from other sources?
- 3.21. Are consumers generally aware of these terms and conditions? Specifically, do Australian consumers understand the value of the data they provide, the extent to which platforms collect and use their personal data for commercial purposes, and

how to assess the value or quality of the service they receive from the digital platforms?

- 3.22. Have digital platforms changed the price of media content supplied to Australian consumers?
- 3.23. If you consider the collection of data part of the effective price paid by consumers for use of the digital platforms, to what extent are consumers aware of and provide informed consent for the collection and use of their data?
- 3.24. Have digital platforms changed the quality or choice of media content supplied to Australian consumers? Has the use of algorithms to select content changed the diversity of news supplied to consumers?
- 3.25. How do consumers value digital platforms' access to their data? Do consumers see it as a cost or a benefit (e.g. it enables customisation of the content displayed)? How does the access to or control over user data impact the relationship between digital platforms and consumers?

Longer-term trends

Innovation and technological change have led to significant changes to the way news and journalistic content is delivered and consumed in Australia over the past decade. In the following questions, the ACCC seeks stakeholder comment on the impact of longer-term trends, including innovation and technological change, on the state of competition in media and advertising services markets.

Questions

- 3.26. How have the channels used by Australian consumers' to access news and journalistic content (e.g. TV, newspapers, social media, search engines) changed in the past five to ten years? How will this change in the next five to ten years?
- 3.27. How have the types of news and journalistic content accessed by Australian consumers' changed in the past five to ten years? How will this change in the next five to ten years?
- 3.28. How has Australian advertising expenditure changed over time? In particular, how have digital platforms impacted the advertising revenue of media companies, especially those involved in the supply of news and journalistic content, and how have media markets responded?
- 3.29. Have innovation and technological change increased or decreased competition in the media and advertising services markets?
- 3.30. Have the markets that digital platforms operate in changed over time and are they likely to change further in the future? For example, to what extent can digital platforms now be considered to be publishers rather than distributors of content, and is this likely to evolve in the future?
- 3.31. How are the business models for news and journalism likely to evolve over the next decade and how sustainable is the commercial provision of high quality news in Australia? Do you have any other comments or observations on the impact of digital platforms or on the state of competition in the media and advertising services markets?

Existing regulation and proposals for change

In the following questions, the ACCC seeks submissions on the effectiveness of existing regulation applicable to the digital platforms and to the media and advertising services markets, as well as proposals for change.

Questions

3.32. **Attachment B** summarises the key existing regulation in Australia that applies to the media and advertising services markets. Are there any additional existing or proposed laws or regulations in Australia which should be taken into account by the ACCC in this inquiry?

3.33. How do existing laws and regulations apply to the conduct of digital platforms?
For example:

- are digital platforms required to verify news and journalistic content before distributing it?
- do intellectual property and copyright laws apply to the conduct of digital platforms in a similar way as to other market participants?

If these laws and regulations do not apply to digital platforms, what are the implications for competition in the media and advertising services markets and how does this impact the quality and choice of news and journalistic content for consumers?

3.34. Should digital platforms be subject to the same laws and regulations as other market participants in the media and advertising services markets (e.g. news and journalistic content creators or distributors)?

3.35. What steps have been taken by digital platforms to address any competition and consumer concerns that have been raised (e.g. self-regulatory codes or guidelines). To what extent have these initiatives addressed concerns?

3.36. Are the existing laws and regulations sufficient to address the activities of digital platforms? Is there a case for the specific regulation of digital platforms and, if so, what issues would proposed regulation seek to address?

Attachment A – Terms of Reference

COMMONWEALTH OF AUSTRALIA

COMPETITION AND CONSUMER ACT 2010

INQUIRY INTO DIGITAL PLATFORMS

I, Scott Morrison, Treasurer, pursuant to subsection 95H(1) of the *Competition and Consumer Act 2010*, hereby require the Australian Competition and Consumer Commission to hold an inquiry into the impact of digital search engines, social media platforms and other digital content aggregation platforms (**platform services**) on the state of competition in media and advertising services markets, in particular in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.

Matters to be taken into consideration include, but are not limited to:

- i. the extent to which platform service providers are exercising market power in commercial dealings with the creators of journalistic content and advertisers;
- ii. the impact of platform service providers on the level of choice and quality of news and journalistic content to consumers;
- iii. the impact of platform service providers on media and advertising markets;
- iv. the impact of longer-term trends, including innovation and technological change, on competition in media and advertising markets; and
- v. the impact of information asymmetry between platform service providers, advertisers and consumers and the effect on competition in media and advertising markets.

This is not to be an inquiry into supply by any particular persons or persons, or by a state or territory authority.

This inquiry is to commence today and submit to me a preliminary report within 12 months and a final report within 18 months.

DATED THIS 4th DAY OF December 2017

SCOTT MORRISON

Treasurer

Attachment B – Regulatory Overview

This attachment provides an overview of:

- recent developments in Australian media regulations
- legislation and regulations that apply specifically to media companies
- legislation and regulation that apply more broadly across the Australian economy
- self-regulatory frameworks that apply to businesses and individuals operating in the media industry in Australia, and
- guidelines and policies adopted by certain digital platforms, such as Google, Facebook, Twitter, Snapchat and Apple.

Developments in Australian media regulation

Recent changes

On 4 December 2017, the Treasurer, the Hon Scott Morrison MP, and the Minister for Communications, Senator the Hon Mitch Fifield, jointly announced the Government's direction to the ACCC to hold an inquiry into the impact of digital platform services on the state of competition in media and advertising services markets.³⁷ The Inquiry forms part of the Australian Government's broader 'Broadcast and Content Reform Package' (the **B&C Package**).

The purpose of the B&C Package, announced by the Australian Government in May 2017, is to 'improve the sustainability of Australia's free-to-air broadcasting sector, support the creation of high quality Australian content and modernise broadcasting and content regulation.'³⁸ The measures announced in May included:

- (a) the abolition of broadcasting licence fees and datacasting charges, and the introduction of a tax on the spectrum used by broadcasters; and
- (b) the repeal of two media control and ownership rules: the '2 out of 3' and '75 per cent audience reach' rules.

Legislation giving effect to these reforms was passed on 16 October 2017.³⁹

Proposed changes

A number of additional proposed measures would complement the B&C Package.

- On 18 September 2017, the Minister for Communications and Senator the Hon Arthur Sinodinos AO, jointly announced that funding of \$60.4 million dollars would be provided over three years to support the provision of news journalism, comprising an Innovation

³⁷ Senator the Hon Scott Morrison MP and Senator the Hon Mitch Fifield MP, '[ACCC to review digital platform services](#)', 4 December 2017, accessed 22 January 2018.

³⁸ Senator the Hon Mitch Fifield MP, '[Major reforms to support Australian broadcasters](#)', 6 May 2017, accessed 22 January 2018.

³⁹ Australian Government, '[Broadcasting Legislation Amendment \(Broadcasting Reform\) Bill 2017](#)', accessed 22 January 2018.

Fund, a Cadetship Program and a Scholarships Initiative.⁴⁰ The first grants under these programs are expected to be made in 2018-19.

- On 15 and 17 August 2017, the Minister for Communications announced a range of measures agreed with cross-bench Senators.⁴¹ In addition to the Digital Platforms Inquiry, these measures included:
 - a public register of foreign-owned media assets;
 - a range of measures relating to the Australian Broadcasting Corporation (**ABC**) and the Special Broadcasting Services Corporation (**SBS**);
 - a package of funding and legislative changes to support community radio, and an extension of community television licences; and
 - enhanced requirements for the provision of local content by commercial television broadcasting licensees in regional markets.

Various bills implementing these measures are currently before the Australian Parliament.

- On 6 December 2017, the *Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017* was introduced into the Senate.⁴²

Beyond the B&C Package, there are a number of other changes affecting media organisations that have been proposed or that are being implemented.

- In May 2017, the Government released an exposure draft of a bill to reform Australia's spectrum management framework, including spectrum used for media services, along with a series of information papers.⁴³ Further consultations are proposed in 2018, focusing on a revised Radiocommunications Bill along with associated transitional and consequential amendments.
- On 6 December 2017, the *Copyright Amendment (Service Providers) Bill 2017* was introduced into the Senate.⁴⁴ The Bill seeks to extend the current 'safe harbour' provisions – which provide limitations on the scope of remedies against 'carriage service providers' for copyright infringements that they do not control – to include the disability, education, library, archive and cultural sectors.

Parliamentary inquiries

Separate to these processes, on 10 May 2017, the Australian Senate established a Select Committee to inquire into the 'future of public interest journalism'.⁴⁵ The inquiry investigated a variety of matters, including 'the adequacy of current competition and consumer laws to deal with the market power and practices of search engines, social media aggregators and content aggregators, and their impact on the Australian media landscape'.⁴⁶

⁴⁰ Senator the Hon Arthur Sinodinos AO, Senator for New South Wales, and Senator the Hon Mitch Fifield, Minister for Communications '[New measures to support regional media organisations](#)'. 18 September 2017, accessed 22 January 2018.

⁴¹ Senator the Hon Mitch Fifield MP, [One National support for media reform package](#), 15 August 2017, accessed 13 February 2018. Senator the Hon Mitch Fifield MP, [Turnbull Government working with Senate crossbench to secure passage of vital media reforms](#), 17 August 2017, accessed 13 February 2018.

⁴² Parliament of Australia, Bills of the current Parliament, *Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017*, accessed 14 February 2018.

⁴³ Senator the Hon Mitch Fifield, Minister for Communications, *Modernising Australia's spectrum framework*, 18 May 2017, accessed 14 February 2018.

⁴⁴ Parliament of Australia, Bills of the current Parliament, *Copyright Amendment (Service Providers) Bill 2017*, accessed 14 February 2018.

⁴⁵ The Senate Select Committee On The Future Of Public Interest Journalism, [Senate Select Committee Appointed to Investigate the Future of Public Interest Journalism](#), 12 May 2017, accessed 22 January 2018.

⁴⁶ Australian Government, [Terms of Reference](#), accessed 6 February 2017.

Following submissions and public hearings, the Select Committee reported on 5 February 2018.⁴⁷ It made eight recommendations, including that:

- the ABC and SBS be funded adequately (Recommendation 1);⁴⁸
- that the tax arrangements of non-profit and for profit news media organisations be examined with a view to supporting those that adhere to standards of practice for public interest journalism (Recommendations 4 and 5);⁴⁹ and
- that a number of measures be undertaken to ensure legal frameworks protect public interest journalism (Recommendations 6 to 8).⁵⁰

Direct media regulation

A number of regulations apply specifically to traditional media outlets in Australia, primarily to providers of broadcasting services. The principle elements of these legislative frameworks are summarised below.

Broadcasting Services Act 1992 (Cth)

The *Broadcasting Services Act 1992 (Cth)* (the **BSA**) is the primary statute regulating media services in Australia. The BSA establishes the licensing, planning and regulatory framework governing television and radio broadcasting services. The BSA also regulates newspaper publishers in terms of the control and ownership of certain publications, and online content providers in terms of illegal and offensive content. The BSA seeks to further a number of objects, including promoting the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information, and providing a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs.⁵¹ The BSA was subject to recent changes through amendments passed in October 2017,⁵² and further changes are being progressed (outlined above).

Radiocommunications Act 1992 (Cth)

The *Radiocommunications Act 1992 (Cth)* (the **RC Act**) regulates radiocommunications in Australia and prohibits unlicensed radiocommunications (except in emergency situations).⁵³

'Radiocommunications' is broadly defined under the RC Act as 'radio emission or reception of radio emission for the purpose of communicating information'.⁵⁴ This definition extends not only to radio broadcasts but also radio transmissions for other purposes (such as the measurement of meteorological observations, and the operation of lighthouses).⁵⁵

The ACMA is responsible for managing the radiofrequency spectrum under the RC Act, which includes facilitating access to the radiofrequency spectrum through licensing,

⁴⁷ Australian Government, [Report – Senate Select Committee on the Future of Public Interest Journalism](#), Senate Select Committee on the Future of Public Interest Journalism, 5 February 2018.

⁴⁸ Australian Government, [Report – Senate Select Committee on the Future of Public Interest Journalism](#), p.9.

⁴⁹ Australian Government, [Report – Senate Select Committee on the Future of Public Interest Journalism](#), p.9.

⁵⁰ Australian Government, [Report – Senate Select Committee on the Future of Public Interest Journalism](#), p.9-10.

⁵¹ *Broadcasting Services Act 1992 (Cth)*, Part 1 s 3.

⁵² *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*. Among other things, the amendment repeals the '2 out of 3' and '75 per cent audience reach' rules referred to in the 'Developments in Australia media regulation' section of this Attachment.

⁵³ *Radiocommunications Act*, Part 3.1.

⁵⁴ *Radiocommunications Act*, s 6.

⁵⁵ ACMA, [Object and scope of the Radiocommunications Act 1992](#), accessed 7 February 2018.

managing interference, and ensuring compliance with mandatory standards.⁵⁶ The ACMA also makes decisions on the use of the radiofrequency spectrum in accordance with the Table of Frequency Allocations in the Australian Radiofrequency Spectrum Plan, which is prepared under s 30 of the RC Act.

Australian Communications and Media Authority Act 2005 (Cth)

The Australian Communications and Media Authority (**ACMA**), a regulatory body established under the *Australian Communications and Media Authority Act 2005 (Cth)*, regulates and monitors broadcasting, radiocommunications, telecommunications and some online activities. The ACMA's functions are principally set out in the *Australian Communications and Media Act 2005* and the *Broadcasting Services Act 1992*, as well as the *Radiocommunications Act 1992 (Cth)*. Broadcasting licences issued by the ACMA are required for the transmission of television and radio programs to the public.⁵⁷

Australian Broadcasting Corporation Act 1983 (Cth)

The *Australian Broadcasting Corporation Act* establishes the ABC, and sets out the framework under which it fulfils its statutory functions and provides broadcasting and digital media services. The ABC's Charter, outlined in section 6, provides that the ABC's functions include the provision of innovative and comprehensive broadcasting services of a high standard, including programs that contribute to a sense of national identity and that inform and entertain, and reflect the cultural diversity of, the Australian community.⁵⁸

Special Broadcasting Service Act 1991 (Cth)

The *Special Broadcasting Service Act* establishes the SBS, a statutory body that provides broadcasting and digital media services in Australia. The principal function of the SBS is to provide multilingual and multicultural radio, television and digital media services that inform, education and entertain all Australians, and in doing so, reflect Australia's multicultural society.⁵⁹

General industry-wide regulation

In addition to industry-specific regulations, media companies are also subject to legislation and regulations that apply more broadly across the Australian economy. Those with particular application to the media industry are outlined below.

Competition and Consumer Act 2010 (Cth)

The object of the *Competition and Consumer Act 2010 (Cth)* (the **CCA**) is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.⁶⁰ Broadly, the CCA applies to relationships between suppliers, wholesalers, retailers, and consumers in Australia. It covers areas including anti-competitive practices, mergers and acquisitions and regulation of industries including telecommunications industries.⁶¹ The ACCC is responsible for enforcing the CCA.

⁵⁶ ACMA, [Object and scope of the Radiocommunications Act 1992](#), accessed 7 February 2018.

⁵⁷ ACMA, [Types of broadcasting licence](#), accessed 7 February 2018.

⁵⁸ *Australian Broadcasting Corporation Act 1983 (Cth)*, s 6.

⁵⁹ *Special Broadcasting Services Act 1991 (Cth)*, s 6.

⁶⁰ CCA (Cth), s 3.

⁶¹ See [ACCC Legislation](#).

In particular:

- Part IV of the CCA contains 'Restrictive trade practices' provisions. For example, it includes in general terms a prohibition on firms entering into a contract, arrangement or understanding that has the purpose, effect, or likely effect, of substantially lessening competition (see section 45). It also prohibits a firm with a substantial degree of market power from engaging in conduct that has the purpose, effect of likely effect of substantially lessening competition in a market in Australia (see section 46).
- The ACCC assesses mergers and acquisitions, including proposed media mergers, to consider whether they will have the effect, or likely effect, of substantially lessening competition in a market, in contravention of s 50 of the CCA (also contained in Part IV). The ACCC has published Media Merger Guidelines, updated in 2017, to highlight particular issues relevant to the ACCC's assessment of proposed media mergers.⁶²
- The ACCC is responsible for the economic regulation of the communications sector, including telecommunications and the National Broadband Network (**NBN**), broadcasting and content sectors.⁶³ The ACCC's functions are both under the CCA and other industry-specific legislation. This involves functions such as setting wholesale prices and terms of access for declared services such as the superfast broadband access service and the Wholesale ADSL service as well as monitoring and reporting on prices and competition in the communications industry.^{64,65} The ACCC also makes decisions relevant to the broadcasting and content sectors, including on the digital radio service access regime.⁶⁶

Australian Consumer Law

Schedule 2 of the CCA contains the Australian Consumer Law (**ACL**), which applies nationally. The ACL set out the rights of Australian consumers as well as rules applying to businesses advertising and selling goods and services in Australia, including in relation to advertising on social media platforms and managing online reviews.⁶⁷ In particular, the ACL includes:

- prohibitions on businesses engaging in conduct in trade or commerce that is misleading or deceptive (section 18), or unconscionable, or engaging in unfair practices when supplying goods or services;
- provisions guaranteeing consumer rights when buying goods or services, and setting out the obligations of manufacturers or sellers who supply defective goods or services;
- penalties, enforcement powers and consumer redress options.

The prohibition against engaging in misleading or deceptive conduct in section 18 does not apply to 'information providers', such as broadcasters and media companies, in their supply of content to consumers.⁶⁸ However, the ACL expressly provides that section 18 still applies to the publication by such information providers of advertisements, or the promotion of goods and services.⁶⁹

⁶² ACCC, [Media Merger Guidelines](#), 2017, accessed 6 February 2018.

⁶³ See [ACCC role in communications](#).

⁶⁴ ACCC, [Superfast broadband access service](#), accessed 6 February 2018.

⁶⁵ ACCC, [Wholesale ADSL](#), accessed 6 February 2018.

⁶⁶ ACCC, [Digital radio services](#), accessed 6 February 2018.

⁶⁷ ACCC, [Advertising and promoting your business](#), accessed 6 February 2018.

⁶⁸ Australian Consumer Law, Section 19(1).

⁶⁹ Australian Consumer Law, Section 19(2) and (3). Note that ACL s 251 provides publishers with a defence in relation to advertisements that contravene s 18, for example, where the publisher received the advertisement in the ordinary course of business and had no reason to suspect that publication of the advertisement would contravene s 18.

The ACL is jointly enforced by the ACCC and the State and Territory consumer protection agencies.⁷⁰

Privacy Law

The *Privacy Act 1988* (Cth) (**Privacy Act**) regulates the handling of personal information⁷¹ about individuals, by certain entities including federal government agencies, corporate bodies, trusts and partnerships.⁷² This includes all incorporated media entities in Australia, including the ABC and the SBS. These bodies must comply with the “Australian Privacy Principles”, which set out standards, rights and obligations for the handling, holding, use, accessing and correction of personal information.⁷³ The Privacy Act deals with anonymisation of private information, dissemination of private information and the use of private information.⁷⁴

Copyright Law

The *Copyright Act 1968* (Cth) (**Copyright Law**) provides property right protections on original works of literary, dramatic, musical and artistic works.⁷⁵ Copyright protection under this Act is inherent and does not require any formality or registration of the work for protections to apply. It extends copyright protection to the work of market participants such as media companies and journalists.

Defamation Law

Defamation law in Australia (**Australian Defamation Law**) is set out in substantially uniform legislation across Australian states and territories.⁷⁶ Common law principles also operate.

Liability for defamation in Australia largely relies on the ‘publication’ of defamatory matter. ‘Publication’ can occur through many means including articles, reports, advertisements, pictures, the broadcast of television or radio, or communicated over the internet or other electronic means.⁷⁷ One defence to defamation is the ‘substantial truth’ defence, where liability will not extend to publishers that can prove the allegedly defamatory material is substantially truthful.⁷⁸

Self-regulation of journalism and advertising

Journalism

Journalism in Australia is subject to general laws, including Australian Defamation Law and Copyright Law outlined above. In addition, journalists and news content producers are

⁷⁰ Australian Government, [The Australian Consumer Law](#), accessed 6 February 2018.

⁷¹ For the definition of ‘personal information’, see *Privacy Act 1988* (Cth), Section 6.

⁷² For the definition of ‘APP Entity’, see *Privacy Act 1988* (Cth), Section 6.

⁷³ *Privacy Act 1988* (Cth), Part 3 Div 2 and Schedule 1. See Australian Government, Office of the Australian Information Commissioner, [Australian Privacy Principles](#), accessed 6 February 2018.

⁷⁴ *Privacy Act 1988* (Cth), Part 1, Div 2 and Schedule 1.

⁷⁵ *Copyright Act 1968* (Cth), Part III.

⁷⁶ See, *Civil Law (Wrongs) Act 2002* (ACT); *Defamation Act 2006* (NT); *Defamation Act 2005* (NSW); *Defamation Act 2005* (QLD); *Defamation Act 2006* (SA); *Defamation Act 2006* (Tas); *Defamation Act 2005* (Vic); *Defamation Act 2005* (WA).

⁷⁷ See for example, *Defamation Act 2005* (NSW) s 4 (definition of ‘matter’); See also, for example, *Defamation Act 2006* (NT) s 3; *Defamation Act 2005* (Vic) s 4; *Defamation Act 2005* (WA) s 4.

⁷⁸ *Civil Law (Wrongs) Act 2002* (ACT) s 116; *Defamation Act 2006* (NT) s 3; *Defamation Act 2005* (NSW) s 4; *Defamation Act 2005* (Qld) s 4(1), Sch 5; *Defamation Act 2005* (SA) s 4; *Defamation Act 2005* (Tas) s 4; *Defamation Act 2005* (Vic) s 4; *Defamation Act 2005* (WA) s 4.

subject to self-regulation through standards, guidelines and codes overseen by industry representative bodies.

The Australian Press Council (**APC**) sets and oversees journalistic self-regulation standards in Australia.⁷⁹ Breaches of the APC Standards of Practice are adjudicated by the APC. Its decisions are only binding on APC members.⁸⁰ Outcomes of adjudication can involve informal expressions of regret by the publication, the publication of balancing material, a correction, clarification or apology, amendments or a commitment to future coverage.⁸¹ More serious or unresolved complaints may incur more serious penalties including APC reprimand or censure, remedial action by a publisher including an apology or retraction, or measures to prevent future breaches of the Standards of Practice.⁸²

The APC also has non-binding Advisory Guidelines, which are a series of guidelines for the publishing of different types of material, such as the reporting of mental health and 'race' issues.⁸³

APC Statement of General Principles

These principles outline the APC's basic standards for journalistic content in Australia, which include ensuring accuracy and clarity, fairness and balance, privacy and avoidance of harm, integrity and transparency.⁸⁴

APC Statement of Privacy Principles

These standards seek to ensure that journalists respect privacy in the course of their investigations, including by seeking to ensure personal information is kept secure and only disclosed appropriately, and to ensure that sources are offered anonymity.⁸⁵

APC Specific Standards of Practice

APC Specific Standards of Practice guides are a series of codes designed to regulate journalists' actions regarding specific areas of journalism, including suicide coverage and contact with patients.⁸⁶

Media Entertainment and Arts Alliance Code of Ethics

Australian journalists also have a self-regulated code of conduct, the Media, Entertainment and Arts Alliance (**MEAA**) Code of Ethics, which applies to its members.⁸⁷ The Code encourages fair and unbiased reporting.

⁷⁹ A PC, [Standards](#), accessed 6 February 2018. For a discussion of the perceived shortcomings of the APC model, see: The Senate Select Committee On The Future Of Public Interest Journalism, '[Report – Senate Select Committee on the Future of Public Interest Journalism](#)', 4 February 2018, Australian Government, p. 17-18, accessed 6 February 2018.

⁸⁰ APC, [Standard of Practice](#), accessed 6 February 2018. A list of APC members is available at: APC, [Who are our members?](#), accessed 6 February 2018.

⁸¹ APC, [Consideration of complaints – Level 1](#), accessed 6 February 2018.

⁸² APC, [Referral to adjudication panel – Level 2](#), accessed 6 February 2018.

⁸³ APC, [Advisory Guidelines](#), accessed 6 February 2018.

⁸⁴ APC, [General Principles, July 2014](#), accessed 6 February 2018.

⁸⁵ APC, [Statement of Privacy Principles, December 2015](#), accessed 6 February 2018.

⁸⁶ APC, [Specific Standards](#), accessed 6 February 2018.

⁸⁷ The MEAA Code of Ethics outlines that it seeks to promote honesty, fairness, independence and respect for the rights of others. It also seeks to ensure that reporters are unbiased and not influenced by external factors such as advertising or bias. See: MEAA, [Code of Ethics](#), accessed 6 February 2018.

Advertising

There are various restrictions and regulations governing advertising in the Australian media. Political and election advertising is subject to regulation at the Commonwealth and State and Territory levels.

Beyond these requirements, advertising in Australia – particularly in terms of content – is largely subject to co-regulatory or self-regulatory arrangements.

Matters such as the placement and amount of advertising on television and radio services, decency and language, depictions of violence, and the disclosure of commercial or sponsorship arrangements, are dealt with through industry codes of practice developed under the *Broadcasting Services Act 1992*. The amount of foreign produced advertising on commercial television, and the amount and content of advertising during children's programming, are regulated through standards made by the ACMA.

In addition, advertising in Australia is regulated by the Australian Association of National Advertisers (AANA), an industry body which sets codes for Australian advertisers,⁸⁸ and the Advertising Standards Bureau (ASB), an industry body which manages competitor and consumer complaints.⁸⁹ The AANA proscribes a number of codes that its member advertisers must adhere to.

The AANA Code of Ethics outlines prohibited behaviour and types of advertising that may give rise to consumer and competitor complaints.⁹⁰

Other relevant codes include:

- (a) AANA Best Practice Guideline – Clearly Distinguishable Advertising,⁹¹ and
- (b) AANA Best Practice Guideline: Responsible Marketing in the Digital Space.⁹²

The Australian Digital Advertising Alliance is an organisation established by the AANA and several other Australian advertising associations and major participants in the online media market. The ADAA has introduced a self-regulatory guide in relation to online advertising, the Australian Guideline for Online Behavioural Advertising (OBA).

The OBA outlines general guidelines as to how advertisers should conduct themselves with respect to online advertising. The OBA has particular regard to internet specific advertising and how consumer data is handled during these transactions.⁹³

Digital Platforms

Digital platforms operating in Australia are subject to general laws (such as the CCA) but are generally not subject to industry specific regulation. Digital platforms operating in Australia publish their own internal terms, policies and rules.

Digital platforms such as Google, Facebook, Twitter, Snapchat and Apple make publicly available policies, terms and guidance regarding what constitutes acceptable use of their platforms, including by publishers and advertisers. Typically, in order to access the services

⁸⁸ AANA, [Promoting, defending and evolving self-regulation](#), accessed 6 February 2018.

⁸⁹ ASB, [The advertising complaints process](#), accessed 6 February 2018.

⁹⁰ AANA, [Code of Ethics](#), accessed 6 February 2018.

⁹¹ AANA, [Clearly Distinguishable Advertising Best Practice Guideline](#), accessed 6 February 2018.

⁹² AANA, [AANA Best Practice Guide Marketing Digital Space, 3 June 2015](#), accessed 6 February 2018.

⁹³ Published by iab Australia for an on behalf of ADAA, [Australian Best Practice Guidelines – Interest Based Advertising, September 2014](#), Australian Digital Advertising Alliance, accessed 6 February 2018.

of a digital platform, a user is required to agree to these documents. These materials, while often extensive, may not be comprehensive. For example, they may exclude the publication of internal policies and procedures which also govern how the digital platforms are operated, or the use of consumer information.

Facebook

Facebook's governance framework comprises of terms of service set out in a 'Statement of Rights and Responsibilities' (**SRR**), policies and guidelines.

Statement of Rights and Responsibilities

The SRR includes terms relating to privacy, sharing content and information, protecting other people's rights, and special provisions applicable to advertisers, advertisements and other commercial content served or enhanced by Facebook.⁹⁴

With respect to content covered by intellectual property (**IP**) rights, subject to certain setting chosen by each user, users grant Facebook a '*non-exclusive, transferable, un-licensable, royalty-free, worldwide licence*' to use any content that they post on, or in connection with, Facebook. This IP licence ends when users delete the content or account, unless that information has been shared with others who have not deleted it.

Other provisions of the SRR are intended to protect users against the infringement of their IP rights by other users, requiring that if users collect information from other users, they will obtain their consent and post a privacy policy.⁹⁵

With respect to advertisements and commercial content, the SRR provides that users agree to give Facebook permission to use their name, profile picture, content and information '*in connection with commercial, sponsored, or related content*' served by Facebook, and that Facebook '*may not always identify paid services and communications as such*.'⁹⁶

Advertising Policies

Facebook's Advertising Policies apply to advertising or other commercial and/or sponsored activity on Facebook or its published network, including on Instagram.⁹⁷ Facebook's Advertising Policies include provisions with respect to the kinds of content that is prohibited and restricted, and specific rules with respect to video advertisements. The Advertising Policies also impose data use restrictions for advertising data collected from Facebook.

In addition, the Advertising Policies require agreement with Facebook's Self-Serve Ad Terms. These terms provide that Facebook cannot guarantee in every instance that an ad will reach its intended target, does not guarantee the activity (such as clicks) that ads will receive or how any such activity is generated (such as 'click fraud'), that advertisers may be responsible for paying ads that run in the 24 hours after the cancellation of an advertising order, and that Facebook can use the ads for marketing or promotional purposes.⁹⁸

⁹⁴ Facebook, [Statement of Rights and Responsibilities](#), accessed 24 January 2018.

⁹⁵ Facebook, [Statement of Rights and Responsibilities](#), accessed 24 January 2018 and Facebook, [Facebook Principles](#), accessed 24 January 2018.

⁹⁶ Facebook, [Statement of Rights and Responsibilities](#).

⁹⁷ Facebook, [Statement of Rights and Responsibilities](#) and Facebook, [Advertising Policies](#), undated, accessed 24 January 2018.

⁹⁸ Facebook, [Self-Serve Ad Terms](#), 10 November 2017, accessed 24 January 2018.

Data Policy

In addition to the provisions in the SRR, Facebook's Data Policy requires users to agree to allow Facebook to collect a range of personal information, such as information in messages and posts, usage patterns and payment information (including credit card numbers), including information which Facebook may share with third parties, such as advertisers.⁹⁹

Cookies Policy

Facebook's Cookies Policy states that Facebook utilises cookies if a user has an account, *'uses the Facebook Services (including when they are logged out), or visit other websites and apps that use the Facebook Services (such as Facebook's Like Button and advertising tools).'*¹⁰⁰ The policy states that Facebook uses cookies for a range of purposes, including advertising, insight and measurement, and analytics and research.¹⁰¹

Guidelines

Facebook's guidelines state that breaches of IP on Facebook will be removed and repeated infringements can lead to a user's account being disabled, and sets out a number of methods Facebook states it undertakes to protect the IP rights of users.¹⁰²

Google

Google's governance framework is underpinned by a Terms of Service, policies and guidance.¹⁰³

Terms of Service

The Terms of Service state that users retain ownership of any intellectual property rights they hold in content they upload, submit, store, send or receive on the platform. As Google states, *'what belongs to you stays yours'*.

Concurrently, users grant Google a worldwide licence to *'use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content.'*

The Terms of Service provide that, if a user has a Google Account, Google may use their profile name and photo (unless the user has opted out of this), and actions taken on Google or connected third-party applications (such as reviews and comments posted), including to display ads and other commercial purposes.

The Terms of Service make specific reference to business uses of Google's services in the context of Google being held harmless and indemnified from the use of its services.¹⁰⁴

Privacy Policy

Google's Privacy Policy sets out the information it collects from users of its services.¹⁰⁵

⁹⁹ Facebook, [Data Policy](#), accessed 25 January 2018.

¹⁰⁰ Facebook, [Cookies](#), 20 March 2017, accessed 25 January 2018.

¹⁰¹ Facebook, [Cookies](#), 20 March 2017, accessed 25 January 2018.

¹⁰² Facebook, [Trademark](#), accessed 25 January 2018 and Facebook, [Copyright](#), accessed 25 January 2018.

¹⁰³ Google, [Policies](#), 25 October 2017, accessed 7 February 2018.

¹⁰⁴ Google, [Google Terms of Service](#), accessed 7 February 2018.

The policy states that Google collects information such as personal information provided by users (such as names, email addresses and credit card numbers), device information, log information (including how Google services are used, telephony log information, and IP addresses) and location information. The policy also states that Google uses cookies and similar technologies to collect and store user information, including when users interact with advertising and other services Google provides to its partners, and analyses content (including emails), which it uses to provide 'personally relevant product features', such as tailored advertising.¹⁰⁶

The policy also sets out the options Google provides to users in relation to the privacy of their content.¹⁰⁷ In addition, the policy states that Google also adheres to several self-regulatory frameworks, including the EU-US and Swiss-US Privacy Shield Frameworks, and works with the appropriate regulatory authorities to resolve complaints regarding the transfer of personal data.

Google also publishes notices, and a Google Product Privacy Guide, explaining its privacy practices for specific products and services, as well as other materials related to user privacy.¹⁰⁸

Advertising policies and guidance

Google publishes a range of advertising policies which broadly address prohibited content, prohibited practices, restricted content and editorial and technical standards. Specific aspects the policies address include ad formats and features, copyright, sensitive content, personalised advertising and political content.¹⁰⁹

Twitter

The use of and access to Twitter services is governed by a Twitter User Agreement, comprised of the Twitter Rules, which includes a set of policies, a Privacy Policy and a Terms of Service.¹¹⁰

Twitter User Agreement

Twitter regulates the types of content and conduct that is prohibited on its platform through a range of policies. Twitter's Media Policy describes the types of content it prohibits or restricts, such as graphic violence and adult content, and how it deals with requests for such content to be deleted.¹¹¹ Its private information policy prohibits the publishing of another person's private or confidential information without consent, and its impersonation policy prohibits the impersonation of individuals, groups, or organisations in a manner that misleads, confuses, or deceives others, such as through 'username squatting'.¹¹²

¹⁰⁵ Google, [Privacy Policy](#), 18 December 2017, accessed 7 February 2018.

¹⁰⁶ Google, [Privacy Policy](#), 18 December 2017, accessed 7 February 2018, p. 1-3.

¹⁰⁷ Google, [Privacy Policy](#), 18 December 2017, accessed 7 February 2018, p. 3-4.

¹⁰⁸ Google, [Privacy Policy](#), 18 December 2017, accessed 7 February 2018, p. 5.

¹⁰⁹ Google, [AdWords Policies](#), accessed 7 February 2018.

¹¹⁰ Twitter, [Enforcing our rules](#), accessed 9 February 2018 and Twitter, [Twitter Rules](#), accessed 9 February 2018.

¹¹¹ Twitter, [Media Policy](#), accessed 9 February 2018.

¹¹² Twitter, [Sharing personal information](#), accessed 9 February 2018, Twitter, [Impersonation Policy](#), accessed 9 February 2018, and Twitter, [Username squatting](#), accessed 9 February 2018.

Twitter states that it may prevent certain content from trending, and provides details of its rules around this. According to Twitter, it may consider the newsworthiness of the content, or whether it is in the public interest, when determining whether to allow a topic to trend.¹¹³

Twitter also has a Hateful Conduct Policy which prohibits the promotion of violence and other hateful conduct.¹¹⁴

Twitter states that breaches of the Twitter User Agreement may result in Twitter taking actions such as requiring the user to delete prohibited content before creating new posts, temporarily limiting the user's ability to create posts or interact with other users, or permanent account suspension.¹¹⁵

Twitter's Trademark Policy provides guidance on what constitutes a trademark violation and how Twitter responds to violations.¹¹⁶ Its Copyright Policy indicates that Twitter undertakes a range of steps when handling alleged copyright violations.¹¹⁷

Twitter's Parody, newsfeed, commentary, and fan account policy indicates that Twitter does not actively monitor users' content, or edit or remove user content in circumstances other than a violation of its Terms of Service, or a legal process.¹¹⁸

Privacy Policy

Twitter's Privacy Policy sets out how Twitter collects, uses and shares information on its services, and with third parties. Twitter collects information from users who have Twitter accounts, and persons who have otherwise interacted with a Twitter service, such as visiting a third party website that includes Twitter content. Use of Twitter services constitutes consent to the collection, transfer, storage, disclosure, and use of certain information, including certain personal information, location information, interaction with links and web pages and device information.

Twitter states that it may use the information described in the Privacy Policy to serve tailored advertising, measure the effectiveness of advertising, and to assist third party service providers to perform functions and provide services to Twitter.¹¹⁹

Twitter Ads Policies

Twitter's Ads Policies applies to its paid advertising products, such as promoted tweets, accounts or trends.¹²⁰ Twitter states that it prohibits certain forms of advertising, including advertising that make misleading or deceptive claims, or which promotes hateful conduct or contain adult content, and that it restricts political campaigning.¹²¹ Twitter's guidance on its Ads Policies encourages advertisers who are members of industries or trade associations that have their own self-regulatory codes for advertising and marketing to refer to those codes.

¹¹³ Twitter, [Twitter trends FAQ](#), accessed 9 February 2018.

¹¹⁴ Twitter, [Hateful Conduct Policy](#), accessed 9 February 2018.

¹¹⁵ Twitter, [Twitter Rules](#), accessed 9 February 2018.

¹¹⁶ Twitter, [Trademark Policy](#), updated 30 June 2016, accessed 9 February 2018.

¹¹⁷ Twitter, [Copyright Policy](#), accessed 9 February 2018.

¹¹⁸ Twitter, [Parody, newsfeed, commentary, and fan account policy](#), accessed 9 February 2018.

¹¹⁹ Twitter, [Privacy Policy](#), accessed 9 February 2018.

¹²⁰ Twitter, [Twitter Ads policies](#), updated 30 August 2017, accessed 9 February 2018.

¹²¹ Twitter, [Political campaigning](#), accessed 12 February 2018.

Twitter also publishes a number of policies and rules applying to the use of copyright and trademark material, tailored audiences, targeting by keywords, and the collection and use of personal information from Twitter users.¹²² In addition, Twitter states that it restricts the targeting of advertisements to trending topics and sensitive breaking news.

Snapchat

Snap Inc. (Snap), which owns Snapchat, publishes a Terms of Service (applying to users living within the United States), a Snap Group Limited Terms of Service (applying to users living elsewhere) including a Privacy Policy and Advertising Policies, and Community Guidelines.¹²³

Snap Group Limited Terms of Service

The Snap Group Limited Terms of Service sets out the rights users grants to Snap Group Limited (Snap). Users grant Snap a licence to use content they have created, uploaded, posted, sent, received or stored on the platform, which varies in scope depending on the services used and whether the user has designated the content as public or not.

For content that is not public, users grant Snap a worldwide, royalty-free, sub-licensable and transferable licence to use and distribute the content, for the purpose of operating, developing, providing, promoting and improving Snap services. For content that is public, the user grants Snap a broader licence, which includes the rights to use or distribute the content in any form and in any and all media or distribution methods.

The terms state that while Snap reserves the right to review all content that appears on the services, and to remove any content that violates its terms of service or Community Guidelines, content is the sole responsibility of the person or organisation that submitted it.

The Snap Group Limited Terms of Service state that users may not use the Services in a manner that violates or infringes someone else's rights of publicity, privacy, copyright, trademark or other intellectual-property right; bullies, harasses or intimidates; defames, or ; spams or solicits users. In addition, Snap states that it takes "reasonable steps" to expeditiously remove material that infringes copyright, and to terminate an account that has repeatedly infringed copyrights.

Privacy Policy

The Snap Privacy Policy describes the types of information it collects about users, including information users share with Snap, information Snap collects when users interact with its services (such as usage, content, device, location and log information), and information Snap collects from third parties (such as contact details in another user's phonebook).¹²⁴

The Privacy Policy also sets out how Snap uses and shares the information it collects. Snap allows third parties to use cookies and similar technologies to collect information on the use of Snap services, and to use information collected on its services to serve relevant advertising and measure the performance of advertisements.

The Privacy Policy states that some Snap services may use content for longer periods of time than 'Snaps' (photos and videos sent to friends, which are deleted after they have been

¹²² Twitter, [Copyright Policy](#), accessed 12 February 2018 and Twitter, [Trademark Policy](#), updated 30 June 2016, accessed 12 February 2018.

¹²³ Snap Inc., [Snap Inc. Terms of Service](#), 26 September 2017, accessed 12 February 2018 and Snap Inc. [Snap Group Limited Terms of Service](#), 26 September 2017, accessed 12 February 2018.

¹²⁴ Snap Inc., [Privacy Policy](#), 26 September 2017, accessed 12 February 2018.

opened by all recipients or have expired) and therefore follow different deletion protocols. The Privacy Policy does not specify the time period for which these Snap services may use user content.

Advertising Policies

Snap's guidance on its Advertising Policies states that Snap prohibits advertisements that infringe on the intellectual property, privacy, publicity, copyright or other legal rights of any person or entity, or are false, misleading, fraudulent, defamatory or deceptive. In addition, that certain types of advertising content (including content that demeans, degrades, or shows hate towards a particular group or member of a protected class, content depicting excessive violence, and shocking, sensational or disrespectful content) and advertising for particular products and services are prohibited.¹²⁵

Snap publishes a set of Political Advertising Guidelines which indicate that it will review political advertising on a case-by-case basis, and will never exercise its discretion with the intent to favour or disfavour any candidate or political party.¹²⁶

Apple

Apple publishes a number of terms and policies that apply to its online services, including Apple News.

Apple Media Services Terms and Conditions

The Apple Media Services Terms and Conditions govern the use of Apple's services which provide access to media, apps and other in-app services. These terms and conditions restrict the use of content delivered through Apple's services, and the types of materials that can be posted (such as deceptive, harmful, person or private information).¹²⁷

Users consent that Apple may collect and use technical data and related information (such as technical information about their device, system and application software) to facilitate the provision of certain related services.

Apple sets out terms specific to iBooks, including that users acquire content from the third-party provider, not Apple. Apple also sets out terms specific to Apple Music.

Advertising Guidelines

Apple publishes content guidelines that apply to video, banner and native advertising on the Apple News App and the App Store.¹²⁸ The guidelines prohibit certain types of content, including content that promotes hate or is defamatory, profane, or contains deceptive messaging or unclear pricing or price claims. Apple also states that it restricts other types of content, such as advertisements that reference a position of a controversial public issue. For advertisements that collect user data, the guidelines also require that the advertiser must be clearly identified and include a link to the collecting organisation's privacy policy.

Apple's advertising guidelines set out responsibilities of advertisers using its services, including in relation to intellectual property rights and the substantiation of content.

¹²⁵ Snap Inc., [Advertising Policies](#), accessed 12 February 2018.

¹²⁶ Snap Inc. [Snapchat Political Advertising Guidelines](#), accessed 12 February 2018.

¹²⁷ Apple, [Apple Media Services Terms and Conditions](#), accessed 12 February 2018.

¹²⁸ Apple, [Apple Advertising Platforms](#), May 2017, accessed 12 February 2018.

Privacy Policy

Apple's Privacy Policy sets out the types of personal information it collects, as well as "non-personal" information Apple aggregates, such as occupation, language, zip code, area code, unique device identifier, search queries and information regarding customer activities on Apple websites. The policy also sets out how Apple uses the information it collects, including for the purposes of undertaking data analysis, and for targeting advertising.¹²⁹

¹²⁹ Apple, [Privacy Policy](#), updated 19 January 2018, accessed 12 February 2018.