

Friday 28 August 2020

Australian Competition and Consumer Commission  
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Canberra ACT 2601

bargainingcode@accc.gov.au

To whom it may concern

**Re: News media bargaining code Exposure draft**

The Australian Digital Alliance (ADA) welcomes the chance to comment again on the proposed news media bargaining code, and thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to make a submission responding to the exposure draft of the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020.

The ADA provides a voice for the public interest in access to knowledge, information and culture in copyright reform debates. We are a broad nonprofit **coalition** of public and private sector groups spanning various sectors including universities, schools, disability groups, libraries, archives, galleries, museums, research organisations, technology companies and individuals.

In this submission, the ADA does not intend to comment on the provisions set out in the draft legislation specifically – others are better placed to provide comments on the proposed code and its likelihood of fairly addressing bargaining power imbalances between digital platforms and Australian news businesses. Rather, we are pleased that the new code will operate within the competition space, and does not affect Australia’s copyright law.

In our **submission** in response to the news bargaining code concepts paper you released on Tuesday 19 May 2020 we provided suggestions for drafting the code to avoid unintended impacts on copyright law and the rights of Australians to share and make use of news. These were:

- avoiding language linked to copyright;
- using a narrow definition of news;
- limiting the code to specific services;
- not involving a copyright collecting society;
- avoiding adopting undesirable elements of copyright collective licensing schemes;
- including good faith negotiation requirements; and
- separating any remuneration from assertions of copyright.

On reading the Exposure draft and explanatory materials we note that the proposed code generally addresses those concerns. We are pleased that copyright licensing is not part of the scheme, and it does not involve a copyright collecting society. This keeps the scheme outside of copyright. We are also encouraged to see the code requires all parties to bargain in good faith and minimises impacts on Australians' engagement with news content.

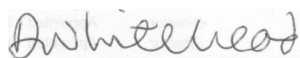
Based on the draft legislation and the accompanying explanatory materials the scope of 'news content' seems to be journalistic 'hard news' and sports and entertainment related news. While this limits the scope of content covered, the low threshold to register as a news business with the Australian Communications and Media Authority (ACMA) could result in a potentially significant number of news organisations entering the scheme.

In our submission in response to the concepts paper we raised concerns that a bargaining scheme related to news content online could result in libraries, education providers, disability groups, startups and others finding themselves bound by the code. This was the basis for our recommendation that the scheme limit the platforms or services it covered. As it stands specific services offered by Google and Facebook have been flagged for determination if the code comes into force. While the scheme is currently focused on those two companies, there are few limitations on making a determination compelling a platform to participate. It is particularly worrying that a determination remains valid even where no consideration of a perceived bargaining imbalance between Australian news providers and the platform in question has taken place.

While not strictly a copyright issue, the ADA is generally concerned by any action that limits Australians' free speech and their ability to engage in the democratic process. We will watch the application of the code with interest.

Our principal contact with respect to this matter is our Copyright Officer, Elliott Bledsoe, who can be reached at [elliott@digital.org.au](mailto:elliott@digital.org.au) or on **02 6262 1118**.

Yours sincerely



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