

SUBMISSION BY BBC GLOBAL NEWS LIMITED

NEWS MEDIA BARGAINING CODE – DRAFT BILL

28 August 2020

EXECUTIVE SUMMARY

BBC Global News Ltd (“**GNL**”) provides significant value to Australian audiences who want access to independent and impartial journalism. The BBC provides a number of news services to Australian audiences including the BBC.com website which provides news, sport and features content including a dedicated ‘Australia’ homepage at bbc.com/Australia; the BBC World News TV channel; and producing, commissioning and distributing news content for Australian audiences across digital platforms.

GNL agrees that, in the context of the aims of the Digital Platform Inquiry, the news sources that are entitled to register under the Code should be registered news media businesses publishing predominantly ‘core news content’.

In GNL’s view the Australian Audience test as currently drafted is ambiguous in parts and will best serve its purpose by placing Australian audiences at its core. Media plurality relates to the number of independent editorial voices, the variety of coverage as it relates to topic, format, and geographic focus, and the range of perspectives represented. In order to maintain plurality in this context, it is vital that foreign news businesses are not excluded from the benefit of the Code, and we do not believe that to be the ACCC’s intention. To ensure the Australian audience test is met, we suggest amending the wording of the test to ensure that none of the mistaken interpretations we outline can be reached.

In relation to algorithmic transparency, attribution, value capture, data availability and arbitration, we welcome proposed changes and would encourage further specificity. For example:

- where data should be made available to news businesses we would welcome clarity as to what types of explanations would constitute reasonable grounds for access refusal and further detail on minimum standards.
- where algorithmic changes are notified to news providers, we would encourage the final code to specify the time period.

- where value capture is discussed, we would encourage the final code to specify that direct revenue, indirect revenue and non-monetary benefits should be included.

About BBC Global News Limited

BBC Global News is a commercial subsidiary of the British Broadcasting Corporation.

We provide significant value to Australian audiences who want access to independent and impartial journalism. Audience growth from key global events, including US/UK and Australian elections; civil unrest; trade disputes; pandemics; and, importantly, coverage of local Australian events such as the bushfires, demonstrate the ways in which Australian audiences come to BBC Global News content. Around 7 million unique browsers use BBC.com in Australia each month, and the site ranks in the top ten online news publishers in Australia.

The BBC provides the following news services to Australian audiences:

- the BBC.com website which provides news, sport and features content including a dedicated 'Australia' homepage at bbc.com/australia;
- the BBC World News TV channel which is distributed to 2m households in Australia through local broadcasters (e.g. Foxtel) and commercial vendors (e.g. hotels). It broadcasts 24/7 news and current affairs content including programmes such as Asia Business Report and Newsday (Asia Pac) which are produced specifically for Asia-Pacific audiences;
- producing, commissioning and distributing news content for Australian audiences across digital platforms including Facebook and Google products;
- supplying extensive news content to ABC news outlets (including their television and radio output); and
- providing access to BBC World Service radio output through both analogue and digital services, and via IPTV.

SPECIFICS OF THE CODE

We consider that in a number of areas, more clarity would be helpful to ensure business certainty (both for platforms and for news businesses) and to prevent any circumvention of the code that could hinder its effectiveness in levelling the playing field between news media businesses and digital platforms. We set out below areas where we consider that the code would benefit from greater specificity.

1. Registration requirements – the four tests

Paragraphs 52(G) to 52(K) (inclusive) of the draft code set out the four 'tests' an applicant corporation must satisfy in order to be able to register with the ACMA for the purpose of being covered by the code. GNL submits the following with respect to each of the tests:



Paragraphs 52(G) “Revenue test” and Paragraph 52(K) “Professional Standards test”: in GNL’s view, each of these two tests are clear, unambiguous and appropriate for the scope of the code and consistent with the aims of the Digital Platform Inquiry.

Paragraph 52(H) “Content test”: GNL agrees that, in the context of the aims of the Digital Platform Inquiry, the news sources that are entitled to register under the Code should be registered news media businesses publishing predominantly ‘core news content’. We note the proposed definition of ‘core news content’ refers only to content that records or investigates “issues”, which potentially excludes the reporting of events which are not “issues”, such as crime or court reporting, or other incidents which do not necessarily fall within the ordinary meaning of the word “issue” but which nevertheless are matters about which there is a public interest in Australians being informed. We note the explanatory materials explicitly include court and crime reporting as examples of content intended to be captured by the test and therefore suggest this could be addressed with the addition of the words “current events and” immediately before the word “issues” in the definition (see below).

The proposed definition also includes a requirement for the content to (i) be of public significance “for Australians”, or (ii) be relevant in “engaging Australians”, or (iii) relate to community and local events. We think the third limb of the test would benefit from the addition of the words “and issues in Australia” to ensure the focus of content covered by the definition remains that which is aimed at or of interest to Australian citizens.

We therefore propose the following minor amendments to the proposed definition:

core news content means content that:

- (a) is created by a journalist; and
- (b) ~~that~~ records, investigates or explains current events and issues that:
 - (i) are of public significance for Australians; or
 - (ii) are relevant in engaging Australians in public debate and in informing democratic decision-making; or
 - (iii) relate to community and local events and issues in Australia.

Paragraph 52(J) “Australian audience test”: in GNL’s view the Australian Audience test as currently drafted is ambiguous in parts and will best serve its purpose by placing Australian audiences at its core.

The ACCC stated in the Digital Platforms Inquiry Final Report that it considers that commercial news media businesses perform a central role in providing journalism and contributing to media plurality, and that a wide range of news sources should be active in the provision of all categories of journalism in order to ensure depth of coverage and a





broader range of media voices throughout Australia. The report also noted the importance of ‘choice’ in terms of what is available in the market; what is distributed or made accessible to consumers; and what is consumed.

In order to help ensure media plurality and choice for Australian consumers, we agree that the Australian audience test should apply to ‘news sources’ rather than the ‘applicant corporation’, and we note the definition of “responsible digital platform corporation” specifically requires the corporation to be incorporated or managed in Australia, whereas no such requirement is proposed for the definition of a “registered news business corporation”. We also note that paragraph 1.55 of the explanatory notes states that a local business of a foreign news business may satisfy the Australian audience test if the local business operates predominantly in Australia for the dominant purpose of serving Australian audiences, and that a global news business that only occasionally produces *Australian news content* (emphasis added) will not satisfy the test.

“Australian news content” is not defined in the explanatory notes, but given the definition of “core news content” already contains a requirement for an applicant’s news sources to publish predominantly content that is (i) of public significance **for Australians**, or (ii) relevant in **engaging Australians**, we find the term “Australian news content” to be unhelpful considering the overall public policy aims and the needs and expectations of Australian audiences. We are not aware of any suggestion that core news content must only be about Australia, written from an Australian perspective, or written, produced or published in Australia. Indeed, media plurality, as noted in the report, relates to the number of independent editorial voices, the variety of coverage as it relates to topic, format, and geographic focus, and the range of perspectives represented. In order to maintain plurality in this context, it is vital that foreign news businesses are not excluded from the benefit of the Code, and we do not believe that to be the ACCC’s intention.

In our view, the proposed wording of the Australian audience test - on one reading (a reading which we believe would not be in line with ACCC’s intentions) - could exclude a foreign news business even where it meets all the other tests. The proposed requirement is for the applicant’s news sources to ‘*operate predominantly in Australia for the dominant purpose of serving Australian audiences*’. This definition could be interpreted to mean either:

- a) the news source operates predominantly in Australia, and its dominant purpose for operating in Australia is serving Australian audiences; or
- b) the news source’s dominant purpose for operating predominantly in Australia is to serve Australian audiences.

Interpretation (a) could exclude:

- i. a news source that operates in a number of jurisdictions (because it doesn’t operate predominantly in Australia), and
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ii. a news source that operates exclusively in Australia, but exists for the purpose of serving audiences in a number of other jurisdictions as well as in Australia, even where, in both of the above cases, the news source satisfied the Content test, i.e. published journalistic content created by a journalist that is either of public significance for Australians, engaged Australians in public debate, or related to events in Australia.

Interpretation (b) could also exclude a news source that published content that satisfied the Content test, specifically targeted at Australian audiences, and was popular with Australian audiences, but that didn't operate predominantly in Australia.

We do not believe either outcome to be the intention behind the drafting, and suggest that the focus of this limb of the test should be on serving Australian audiences, not operational matters. This will help ensure Australian audiences can continue to benefit from a variety of news content from differing providers, including international networks who are able to fill gaps in the market which domestic news media organisations may not be able to address with the same breadth. It aligns more closely with the Digital Platforms Inquiry Final Report, placing more focus on the type of news content which would be covered by the code, rather than the character/composition of the registered news media businesses themselves.

In our view, the Content test already ensures that the code will only apply to news sources who produce content that is either of public significance for Australians, engages Australians in public debate, or is related to events in Australia, thus helping to ensuring media plurality in Australia. To ensure the Australian audience test is met, we suggest amending the wording of the test to ensure that none of the mistaken interpretations outlined above can be reached. By clarifying that *the purpose of making a news source available* in Australia must be for the dominant purpose of serving Australian audiences, operational matters around how the registered news business is incorporated, or how it operates, are removed from the focus of the test.

It will then be for the ACCC to determine whether the news source is being made available in Australia for the purpose of serving Australian audiences, and applicant corporations could provide evidence in support of this to include matters such as whether they had prominent reach in Australia, and/or the amount of investment they had made in journalism in Australia, and/or the marketing of their services in Australia.

We therefore suggest the proposed wording for the Australian audience test is amended as follows:

52J Australian audience test

- (1) For the purposes of subparagraph 52E(1)(e)(ii), the requirement is that all the news sources covered by subsection (2) (considered as a whole) are made

available to audiences ~~operate predominantly~~ in Australia for the dominant purpose of serving Australian audiences.

- (2) This subsection covers a news source if it is set out in the application (in accordance with paragraph 52D(2)(b)).

2. Data access

Paragraph 52(M)(2) requires digital platforms to supply news businesses with lists of data pertaining to users' engagement with news content on their platforms. However:

- the code only requires an explanation of how data that is made available to news businesses differs in form from data that is not (**sub-bullet (d)**), and provides no clarity as to what types of explanations would constitute reasonable grounds for access refusal. We would encourage the final code to be more explicit in its minimum standards regarding the conditions under which platforms must provide news businesses access to their user data.
- the code has not specified the level of detail and extent of the data collected by digital platforms which should be included in the list provided to news businesses. For example, where Google holds information about a user through its Google account, device or IP address, and that user engages with news content on Google Search, it is not clear to what extent information known about the user and its device would be included as information that Google collects through the users' "engagement with covered news content" (**sub-bullet (a)**). We would encourage the final code to mandate the provision of at least all information relevant to the user at the time of engagement, such as device type, browser, location, time of engagement and user demographics.
- the code has not specified what it constitutes as "engagement" with covered news content (**sub-bullet (a)**). For example, it is not clear whether this will include content that is surfaced to the user irrespective of whether the user clicks through to the underlying content. We would encourage the final code to mandate the provision of information to a news business whenever the business' content is surfaced to the user on the platform irrespective of whether the user clicks through to the underlying content. In particular, details of the user's query, device type, location, and demographics, as well as the ranking and placement of the news business' content on the page, would all be important data for GNL to assess the performance of our content and inform future commissioning.

Paragraph 52(M)(3)(a) requires digital platforms to update the information supplied pursuant to subsection 2 annually. Given the frequency with which digital platforms change (i) the nature of the data they collect, (ii) the products and services that collect it, and (iii) the data they make available, a requirement to update this information annually is woefully inadequate. We would encourage digital platforms to be required to provide this information monthly, or in the alternative, for digital platforms to be required to



notify registered news business corporations within 28 days of any change to the information provided under subsection 2.

3. Algorithmic transparency

Paragraph 52(N)(1) requires digital platforms to give notice to news businesses of planned algorithm changes that are likely to have a significant effect on the ranking of the news businesses' news content on the platform. We understand from paragraph 1.79 of the explanatory materials that a "significant" effect is considered to be either a 15%+ change in referral traffic for 25%+ of registered news businesses, or a significant effect on the performance of a registered news business' content on the digital platform. With respect to the former condition, we would encourage the final code to specify the time period over which this 15% change is expected to arise. With respect to the latter condition, we would encourage the final code to be more explicit about how a "significant" effect on an individual business' content performance would be characterised.

Moreover, news businesses should also be given some context as to the implications of the proposed changes, and advice on how to adapt to them to be able to appropriately mitigate any negative effects.

4. Attribution

Paragraph 52P(2) requires digital platforms to give notice to news businesses of significant changes to the display and presentation of news content on the platform. We understand from paragraph 1.85 of the explanatory materials that the final code will include requirements for "genuinely considering reasonable proposals" from news businesses for appropriate prominence and branding. We would encourage the final code to be more explicit about what is required of platforms to prove "genuine consideration" has been undertaken, and what is required of news businesses to prove proposals are "reasonable".

5. Value capture

Paragraph 52ZC(1) requires digital platforms to provide data relating to the platform's benefit obtained from the display of news content from each represented news business (**sub-bullet (a)**) and of every Australian news business (**sub-bullet (b)**).

- It is not clear how the "benefit" to the platform as described here should be defined. For example, is this benefit strictly revenue derived from the display of news content or should this include additional traffic to the platform, data collected by the platform and reputational benefits to the platform (all of which may serve to



generate indirect revenue)? We would encourage the final code to specify that direct revenue, indirect revenue and non-monetary benefits should be included.¹

- We note that there is a high degree of asymmetric information between platforms and news businesses over the benefits that platforms derive from news content and the information available to the platform in this regard. We encourage the final code to specify how the determination of the relevant information to be provided by platforms will be transparent and fair.
- As part of these benefits, it is important for registered news businesses to be informed of what uses digital platforms make of registered news business users through their engagement with covered news content on their platforms, particularly whether this data is synchronised or otherwise matched with data held in other parts of the platform's ecosystem. The platform will doubtless enjoy wider benefits from this data, for example, by matching the data collected about our users through their engagement with covered news content with data collected elsewhere about those same users, either on the platform's other products and services, or with information supplied or procured by third party platforms. The data therefore has a higher value to the platforms beyond that specifically associated with the consumption of news content; the value the platforms obtain is an important component in calculating a fair and appropriate value for the data acquired by the platform from the registered news business' users in addition to the value provided to the platform by the content itself.
- We would encourage the final code to clarify whether the information required under **sub-bullet (b)** must be provided in aggregate or for each news business individually. In light of the asymmetry of information flagged above, we are of the view that the more detailed the information made available to news businesses the better.

6. Arbitration process for non-monetary issues

As discussed above, it is our view that the minimum standards set by the code should mandate the responsibilities of the platform vis-à-vis news businesses content, such as data access and attribution. Following this, the bargaining process will be helpful in settling disputes over how much data should be made available and the extent of attribution that should be given.

Instead, the current code appears to leave the determination of these responsibilities open to negotiations.² However the code does not make clear how the differences in views over the platforms' basic responsibilities will be resolved through bargaining, and the obligation for parties to "negotiate in good faith" (**paragraph 52ZB**) may not be sufficient to reach agreement. The code provides a high level of detail on the arbitration

¹ We note that recognition is given to the possible direct and indirect benefit "whether monetary or otherwise" of news business' content to digital platforms at **paragraph 52ZP(2)**. We consider these same terms should be similarly applied to the permissible contents of the information request described in **paragraph 52ZC(1)**.

² See **paragraph 52Y(1)**: "The bargaining news business corporation for a registered news business may notify a responsible digital platform corporation for a digital platform service that it wishes to bargain over one or more specified issues relating to the registered news business' covered news content made available by the digital platform service."



process relating to remuneration issues (**Division 7**), but no detail on process on non-monetary issues. We would encourage further clarity in this regard.

END OF SUBMISSION.

