

SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

ACCC Digital Platforms Inquiry

April 2018

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the ACCC's Digital Platform Inquiry (**Inquiry**).

The commercial radio industry has survived the onslaught of digital media platforms remarkably well. Its advertising revenue has remained largely stable over the last 10 years, unlike other traditional media platforms.¹ This is a testament to the commercial radio model of listener engagement, focussing on interactivity, local content and mobility, which long precedes the advent of online platforms.

Radio's unique product and direct, personal relationship with each and every individual listener places it in a strong position to withstand new entrants to the media market.

However, even radio may struggle in the future to compete with digital platforms – most notably Facebook and Google – if the current inequality of regulation, monopolisation of internet access, misuse of data, opacity of algorithms and intervention in the crucial relationship between listener and service is allowed to continue unchecked.

1. Key concerns

CRA's key concerns are summarised below, with further detail provided throughout the submission.

Inequality of regulation between broadcaster and digital platforms.

There is currently a gaping inequality between the regulations applicable to traditional broadcasters compared with digital platforms.

¹ Radio's share of advertising compared with print, TV, online, outdoor and cinema was 7.4% in 2009, which is the same as its share in 2017 (Advertising Expenditure In Main Media. Commercial Economic Advisory Service of Australia (CEASA) 2009 – 2017).

This places commercial radio at a significant disadvantage in terms of the content it is permitted to produce. In addition to restricting content, radio is forced to divert significant portions of its resources into compliance with the regulatory framework.

This contrasts with digital platforms, which are able freely to meet new audience demands and direct almost all resources towards the creation of further revenue.

Misleading metrics provided to advertisers

Digital platforms do not properly measure the efficacy of online advertising. There is currently no regulatory means of holding such platforms to account nor of forcing transparency regarding their claims of user engagement and audience size.

The commercial radio system of audience measurement is a robust, well understood and independently audited system. It is easy for advertisers to compare station listening patterns across a variety of formats and day parts.

No such system is used by digital platforms, which throw out figures that frequently fail to show whether a user has even listened to or viewed the content. The digital platform figures are unreliable, inconsistent and poorly explained, yet threaten to tempt advertisers away from established advertising platforms.

No transparency on algorithms leads to less choice for consumers

Algorithms determine what content will be presented to the individual user. Google and Facebook's use of platform algorithms make them the gatekeepers to the internet, capable of choosing and prioritising the content that users are able to see.

Google and Facebook's respective monopoly positions means that they are able profoundly to affect the content available to users. This has the potential significantly to reduce diversity, reduce quality and create 'filter bubbles' of restricted content, often with no regard for factual accuracy, balance or diversity of viewpoints.

There is currently little transparency regarding the use of algorithms by monopoly digital platforms. Google controls the order and content of search results, giving it growing control over what consumers see, do and think.

Digital platforms' use of data is unauthorised and unfair

Digital platforms have access to vast reserves of data left by their users. This is a valuable commodity, particularly to advertisers.

There is little transparency over questions of how data is harvested, used and traded by digital platforms. Users need to understand what is being collected and be given better power to control and restrict use of their own data.

In addition to the erosion of individuals' privacy, the collection and use of consumer data also makes it hard for traditional media platforms to compete on commercially equal terms, both in terms of competing for advertising revenue and establishing new business models.

Digital platforms monetise but do not create content

Digital platforms can no longer legitimately be considered mere 'conduits' through which content passes. Instead, they heavily monetise such content, without investing in that content or creating any of their own.

Digital platforms must take responsibility for the way in which they use third party content by assuming direct liability for copyright infringement.

2. Importance of commercial radio as a part of a healthy Australian media landscape

Commercial radio is a vital part of the Australian media landscape, offering local, interactive and informative content. Out of the 260 commercial radio stations in Australia, 220 are based in and serve regional and remote areas.

Metropolitan, regional and rural commercial radio stations contribute significantly to the Australian economy, by providing employment to around 5,000 people and support for local businesses. The availability of an affordable advertising platform, which penetrates deep into the local community, is vital for local business.

Throughout 2017, an average cumulative audience of nearly 10.5 million people listened each week in metropolitan areas and 81.1% of all radio listeners aged 10+ listened to commercial radio. Commercial radio reaches more than 64% of Australians in their cars every week. In the metropolitan capital cities, more than 7.5 million people listened to commercial radio during breakfast each week (Mon-Fri) and nearly 6.8 million people listened during drive time (Mon-Fri).

The commercial radio industry creates, produces and broadcasts an enormous amount of high quality local content that is transmitted daily by Australian commercial radio stations. This content spans a range of formats, including news, talk, sport, entertainment and music.

In addition to being Australian, this local content is also connected to the licence area in which each station operates. Local regional stations have minimum local content obligations of 3 hours per day during peak listening times. Commercial radio's focus on local issues within relatively small licence areas is unique within the media industry.

Radio continues to be the most accessible and widely consumed medium, continuing to grow and influence billions. UN Secretary General Antonio Guterres said in 2018 that "in an era of dramatic advances in communications, radio retains its power to entertain, educate, inform and inspire. It can unite and empower communities and give voice to the marginalised."

No other medium offers such a choice of live and local content. To ensure the health and diversity of the Australian media landscape, the industry must be enabled to survive the emerging dominance of the new digital platforms.

3. Inequality of regulatory burden

There is currently a gaping inequality between the regulations applicable to traditional broadcasters compared with digital platforms.

Traditional broadcasters are more heavily regulated than their online counterparts. This places traditional media at a significant disadvantage and hinders its competition with online sources for advertising revenue.

The heavy regulatory burden also places commercial radio at a significant disadvantage in terms of the content it is permitted to produce. In addition to restricting content, radio is forced to divert significant portions of its resources into compliance with the regulatory framework.

(a) Regulatory framework – general

The commercial radio industry is regulated primarily under the *Broadcasting Services Act 1992 (BSA)*.

Section 123 of the BSA contains the requirement for a co-regulatory Commercial Radio Code of Practice (**Code**), which is administered by the Australian Communication and Media Authority (**ACMA**).

The current Code was registered by the ACMA on 15 March 2017 following an extensive period of public consultation and discussions with the ACMA that lasted over 12 months.

Section 123(2) sets out twelve areas which the Code may cover. These include:

- preventing the broadcast of programs that are not suitable for broadcast in accordance with community standards;
- methods of ensuring the protection of children;
- promoting accuracy and fairness in news and current affairs;
- preventing the broadcasting of programs that mislead or alarm the audience;
- broadcasting of Australian music; and
- complaints handling.

The framework is co-regulatory and requires the ACMA to be involved in the development of the Code, the assessment of community safeguards and consultation with the public. It is not open to the commercial radio industry to draft or enforce its own Code. The Code is reviewed triennially.

Before registering the Code, the ACMA must be satisfied that:

- the Code contains appropriate community safeguards; and
- members of the public have been given an adequate opportunity to comment on the code (section 123(4) BSA).

The online platforms have no equivalent system of content regulation.

(b) Local content

The regional commercial radio industry is subject to the most onerous local content requirements in the broadcast sector. *Local content* means content local to the station's licence area.

Under section 43C of the *Broadcasting Services Act 1992 (BSA)* and the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014* all regional commercial radio stations must broadcast specified levels of material of local significance.

Small commercial radio licensees must broadcast **30 minutes** of material of local significance each day, and all other licensees must broadcast **three hours** each day².

The content must be broadcast during day time hours (5am to 8pm) each business day. This means that the local content is broadcast during peak listening times, thereby reaching the maximum number of listeners.

Further local content obligations apply to stations that have experienced a 'trigger event'. A trigger event is, broadly, a change in control of the licensee or registrable media group.³

Following a trigger event, licensees must:

- meet 'minimum standards' for local news, local weather, local community service announcements, emergency warnings and, where applicable, designated local content programs; and
- maintain the existing level of local presence (defined by reference to staffing levels and studios and other production facilities) for a period of 24 months after the trigger event.

The 'minimum standards' set out in section 61CE, *Broadcasting Services Act 1992* are as follows:

- Local news: a local news bulletin lasting at least 12.5 minutes must be broadcast on at least 5 days per week during prime time hours. None of the bulletins may consist wholly of material that has been broadcast in the licence area.
- Local weather: local weather bulletins must be broadcast on at least 5 days per week during prime time hours.
- Community service announcements: trigger event affected licensees must broadcast at least one local community service announcement each week.

² Excluding remote area, section 40 and racing radio stations.

³ Section 43B of the *Broadcasting Services Act 1992* and *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014*.

- Emergency warnings: trigger affected licensees must broadcast emergency service warnings when requested to do so.

Australian music

The obligation to play Australian music is set out in section 5 of the Code. In summary, this provides that:

- licensees must play the applicable proportion of music performed by Australians during the Australian Performance Period (section 5.1);
- Australian Performance Period means the total period of 126 hours occurring in each week between the hours of 6.00am and 12.00 midnight daily (see Definitions section);
- Australian means a person who is a citizen of or ordinarily resident in Australia;
- the applicable portion of total time is determined based upon the predominant format of the licensee's service and ranges from 0 (e.g. talk stations) to 25% (e.g. Top 40 stations). This is set out in a table at section 5.2 of the Code;
- there are additional obligations for some categories of station (A, B and C) to play New Australian Performances as a proportion of their total Australian performances (section 5.3); and
- New Australia Performances means a sound recording of a previously unpublished performance performed by an Australian, which has been on sale for a period not exceeding 12 months from the date recorded in the ARIA Report as the date of its initial release in Australia.

The online platforms have no obligation to communicate Australian content.

(c) Unequal regulations relating to advertising

Digital platforms and traditional media both rely on advertising revenue to survive. Traditional broadcasters should be permitted to compete on equal terms for the advertising dollar.

The current inequality of advertising regulations means that digital platforms are frequently given an advantage when it comes to seeking advertising, escaping significant restrictions that apply to commercial radio.

For example, clause 3A of Schedule 2 to the BSA requires that a broadcaster must not broadcast an election advertisement from the end of the Wednesday before polling day until the close of the poll on polling day, where an election is to be held in an area which relates to a licence area, or an area where a broadcast can normally be received.

The 'blackout' was introduced many years ago, as a means of preventing broadcasters from influencing voters immediately prior to election. In a world where so much information is provided from other sources there is no logic for maintaining a blackout in relation to traditional broadcasters while online platforms are free to advertise as they like.

The online platforms are not subject to an election advertising blackout but may continue to advertise without restriction. This means that valuable advertising, placed shortly before voters are due to vote, is entirely diverted to digital platforms.

Government is starting to close the gap between online advertising restrictions and those applicable to traditional broadcasters. For example:

- the *Communications Legislation Amendment (Online Content Services and Other Measures) Act 2018* will extend gambling advertising restrictions to online platforms once the *Online Content Service Rules* are finalised; and
- the *Electoral and Other Legislation Administration Act 2017* extends political advertising tagging requirements to online platforms.

However, there has been a considerable time lag in making the above changes, resulting in a period where advertising revenue was simply diverted from traditional to new platforms as a result of uneven regulation.

4. Misleading metrics provided to advertisers and consumers

Digital platforms do not properly measure the efficacy of online advertising. There is currently no regulatory means of holding such platforms to account nor of forcing transparency regarding their claims of user engagement and audience size.

Digital platforms, such as Facebook and Google, sell advertising based on metrics that are distorted, misleading and poorly understood. This is a key issue that should be addressed by the ACCC.

The commercial radio system of audience measurement is a robust, well understood and independently audited system. It is easy for advertisers to compare station listening patterns across a variety of formats and day parts.

Unlike radio, there is no independent, rigorous and consistent mechanism for measuring digital impressions. The methodology used by digital operators is not transparent and is therefore difficult to critique and compare. This leads to frequent misleading claims being made by digital platform operators regarding the extent of their advertising reach.

This distortion of advertising metrics is highly significant, as reach is the currency of advertising. Media platforms with higher audience figures generally prove more attractive to advertisers.

Increased advertising revenue – albeit based on flimsy metrics – enables digital platforms to continue to invest, market more widely, buy up competitors and expand their monopolies and influence. In the long term, this is likely to be at the expense of Australian local media platforms and the provision of quality content.

Commercial radio audience measurement system

The GfK Radio Ratings system is reliable, consistent and accurate.

GfK recruits over 50,000 respondents every year across the five metropolitan and three main regional markets. Using data from the ABS, GfK ensures that each sample is placed in line with the population, so it is representative of the market on which it is reporting.

GfK uses a 'Probability Proportional to Size' sampling model to establish the individual sampling points within each of the predefined survey areas.

GfK also use a multi-mode recruitment methodology which gives access to diverse types of respondents. In the metropolitan markets, 70% of the sample is recruited via door-knock recruitment for the paper diary and 30% via online panels for our electronic diary. For the regional markets, 20% of the paper diary respondents are recruited using telephone recruitment (CATI), the remaining 50% from door to door and 30% via online.

The GfK Radio Ratings system is also independently audited across many aspects of the survey, including the training of interviewers, placement of the sample, tools used to collect the ratings information and the ratings results themselves. GfK is open and transparent about all aspects of its methodology and works closely with the Auditor.

The methodology employed to capture the radio ratings in Australia has remained the same for many years, with modifications occurring more recently with the introduction of the e-diary in 2014 when GfK became the ratings supplier.

Due to the rigorous and consistent methodology, users of the data are able to look at the research across time and can make informed decisions about station performance and audience behaviour. They can draw comparisons between stations and interrogate the data with confidence.

Digital platform metrics

Digital platform metrics usually claim a number of impressions or 'clicks' as evidence of user engagement. However, these impressions do not accurately reflect the volume or extent of user engagement with their platforms.

The Chief Marketing Officer of Unilever, Keith Weed, is reported by the Wall Street Journal to have described the current self measurement by digital online platforms as equivalent to 'letting them mark their own homework'.⁴

Digital audience measurement systems are frequently deeply flawed. For example:

- Digital impressions can be created automatically, when content is sent from a server. In these cases, no individual human sees the content.
- Impressions and clicks do not measure the amount of time that users engage with the content. Digital platforms use techniques to enhance the number of physical clicks, such as placing the content in a position where users are likely to click accidentally, without measuring whether or how long a user engages with the subject matter.

⁴ <https://www.wsj.com/articles/facebook-overestimated-key-video-metric-for-two-years-1474586951>

- Some metrics count multiple views of the same page from the same user, thereby ‘double counting’.
- Some metrics exclude certain categories of user activity, such as very short viewing times, when calculating average durations. There is usually little transparency regarding such techniques.

Numerous reports of the misleading use of advertising metrics have surfaced in the last few years:

- In September 2016, the Wall Street Journal reported that Facebook had ‘vastly overestimated average viewing time for video ads on its platform for two years’⁵ by only counting views of more than 3 seconds when calculating its ‘average duration of video viewed’ metric.
- In November 2016, Facebook disclosed that it had overstated two further advertising metrics to brands:
 - the average time spent on Instant Articles – Facebook’s faster alternative for consuming news - had been over reported by 7-8% since August 2015; and
 - Facebook had included repeat visitors in its calculation of the number of people businesses reached in unpaid posts on their Facebook pages.⁶
- On 3 December 2014, Google published research showing that 56.1% of adverts on the internet are not seen by humans.⁷

5. Lack of transparency of algorithms

Algorithms determine what content will be presented to the individual user. Google’s use of platform algorithms make it the gatekeeper to the internet, capable of choosing and prioritising the content that users are able to see.

Academics at Harvard Kennedy School’s Shorenstein Center have described the use of algorithms as follows:

On a basic level, an algorithm is a program that decides based on a set of ranking criteria which option from a set of alternatives to prioritise. Because of the explosion of content on social media platforms, with millions of posts uploaded each minute, algorithms determine the content that will be presented to the individual user.

Platforms optimise their algorithms with one goal in mind: getting and holding users’ attention. User attention is a platform’s ultimate source of revenue. By keeping users

⁵ Wall Street Journal, Sept 22 2016. – ‘Facebook overestimated key video metric for two years’ by Suzanne Vranica and Jack Marshall.

⁶ <http://money.cnn.com/2016/11/16/technology/facebook-ad-metrics/index.html>

⁷ <https://www.thinkwithgoogle.com/marketing-resources/data-measurement/5-factors-of-viewability/>

engaged, platforms are able to capture an audience that can be sold things and ideas.

Because people's attention is a scarce resource, social media algorithms are highly personalised to optimise for each user's engagement. This means they will rank highest the content that each user is likely to interact with (using actions such as clicks, likes, comments, and shares as indicators of preference). To determine the content users find most engaging, platforms collect and use hundreds and sometimes thousands of what are known as 'signals' to predict whether a user will engage with a given piece of content. [...]. The origins and values behind that content are largely irrelevant – what matters most is that the content is popular and that the user remains engaged.⁸

Google and Facebook's respective monopoly positions mean that they are able profoundly to affect the content available to users.

This has the potential significantly to limit diversity, reduce quality and create 'filter bubbles' of restricted content, often with no regard for factual accuracy, balance or diversity of viewpoints.

The quality content produced by traditional media organisations, such as radio, could potentially be pushed lower in rankings by digital platforms' algorithms, as they seek material that will engage users' attention, with no regard for the authenticity or quality of such content.

There is currently little transparency regarding the use of algorithms by monopoly digital platforms. Google controls the order and content of search results, while Facebook controls the content directed at users, giving them growing collective control over what consumers see, do and think.

The ACCC should seek more transparency and consider regulating the use of algorithms, to ensure that a wide variety of content, diversity of viewpoints and quality news and entertainment remains available to Australian consumers.

6. Digital platforms' use of data

Digital platforms have access to vast reserves of data left by their users. Data is the currency on which the digital platforms have been built, enabling the creation of algorithms that direct and control the content and advertising visible to users.

However, there is little transparency over questions of how data is harvested, used and traded by digital platforms.

While much detail regarding the extent of the 'data trade' remains unknown, it is clear that significant breaches of privacy have taken place. Most recently:

⁸ Harvard Kennedy School, Shorenstein Center on Media, Politics and Public Policy – *Transparency: What's gone wrong with social media and what can we do about it?* By Wael Ghonim and Jake Rashbass. March 2018.

- in March 2018, it was revealed that political analysis firm Cambridge Analytica had improperly accessed the data of 50 million Facebook accounts; and
- in November 2017 Google was sued on behalf of 5.4 million consumers in the UK after secretly accessing browsing patterns on iPhones.

Users need to understand what is being collected and be given better power to control and restrict use of their own data.

In addition to the erosion of individuals' privacy, the collection and use of consumer data also makes it hard for traditional media platforms to compete on commercially equal terms, both in terms of competing for the advertising dollar and establishing new business models.

This concentration of powerful data in the hands of Google and Facebook is likely to lead to a tightening of their duopoly, to the detriment of both consumers and competing businesses.

7. Digital platforms must be liable directly for copyright infringement

Few would argue with the proposition that Google and Facebook are now highly influential entities, which highly effectively monetise the content created by others.

The days when such digital platforms were considered mere 'conduits' of information have long gone.

The digital platforms' use of data and algorithms mean that their use of content is highly controlled. They create no content of their own but are adept at monetising content created by others, without which their business models would fail.

It is no longer fair that digital platforms escape direct liability for copyright infringement on the basis that they have no control over that content. They have shown themselves capable of controlling, directing and monetising third party content in an extremely sophisticated manner. It follows that digital platforms must also take responsibility for protecting that content, by assuming direct liability for copyright breaches.

8. Recommendations

- Establish clear set of rules applicable to digital platforms, which currently escape the prescriptive regulation that applies to radio. The current regulatory frameworks applicable to radio and digital platforms are unequal and place radio at a regulatory and commercial disadvantage.
- Establish a robust and transparent audience measurement system for digital platforms, so that advertisers and consumers are not misled by digital platforms' claims of audience share and reach.
- Review the market power held by digital platforms. Platforms such as Facebook and Google are increasingly acting as a 'gateway to the internet', controlling access to information and services. This has the potential to threaten radio's unique direct

engagement with its listeners by creating an unnecessary intermediary between the listener and the radio station.

- Seek transparency of algorithms. We need to understand how the algorithms work, so that consumers are informed of how results are gathered and any downstream impact on other businesses can be properly assessed.
- Establish clear limitations on digital platforms' use of consumer data. Give consumers transparency and power over how their data is used. The data sets obtained by online platforms, without consumers' knowledge, are very attractive to advertisers. Collection and use of such data erodes consumers' privacy and makes it difficult for other platforms to compete for the advertising dollar.
- Legislate to confer greater liability on digital platforms for copyright infringement. This is particularly critical given that digital platforms monetise the content of others without creating content of their own.

Please contact Joan Warner, on 02 9281 6577, for clarification on any aspect of this submission.

Commercial Radio Australia