Summary of Digital Platforms Inquiry Industry Stakeholder Forum

On 16 August 2018, the ACCC held an invite-only forum in Sydney. The purpose of the forum was to provide industry stakeholders an opportunity to communicate with ACCC Commissioners about their key issues of interest in relation to the ACCC's Digital Platform Inquiry.

The forum was segmented into four sessions:

- Session 1 – impact of digital platforms on news media in Australia
- Session 2 – impact of digital platforms on advertisers and other markets in Australia
- Session 3 – collection, use and availability of data
- Session 4 – regulation and future trends in media and advertising services.

The forum was facilitated by Rob Nicholls, Senior Lecturer at the University of New South Wales. Also in attendance were ACCC Chair Rod Sims, ACCC Deputy Chair Delia Rickard, ACCC Commissioner Roger Featherston and a General Manager of the Digital Platforms Inquiry, Kate Reader. The forum agenda is at **Attachment A**.

The following is a summary of the issues discussed at the forum.

Session 1 – impact of digital platforms on news media in Australia

What has been the effect of digital platforms on news publishers' ability to monetise their content?

Stakeholders discussed how they create news content and how that content is monetised. A number of stakeholders noted that, due to the size and scale of the digital platforms, they are compelled to publish their content on those platforms in order to reach audiences. Some of these stakeholders raised concerns that by doing so, they are reducing their ability to monetise the content. They described that this is because the same level of monetisation cannot be achieved on digital platforms, as on the publishers' own platforms.

One of the digital platforms suggested that digital platforms reduce barriers to entry in the supply of news content, by helping publishers monetise their content on their sites. They do that by sending or referring users to the publishers' websites.

Stakeholders also discussed the importance of audience traffic to monetising content. One stakeholder noted the importance of Google in directing audience traffic and the negative effect of the revenue share arrangements of Accelerated Mobile Pages (AMP), available on Google, to news publishers. Several stakeholders noted that large platforms benefit from valuable news content created by publishers, without paying for that content.

Why do news publishers distribute their content on digital platforms?

One stakeholder indicated that the scale that can be achieved, by publishing on digital

platforms, is considerable. The same piece of content can reach an audience twenty times larger on a digital platform, than on the news publishers' platform. The issue is the publishers' ability to monetise content. Stakeholders indicated that reach is unimportant if the content cannot be monetised.

Another issue raised in relation to the distribution of content on digital platforms was transparency. For example, there is no transparency about algorithm changes and the consequence of that on audience numbers. Stakeholders also indicated that there may be issues in relation to how digital platforms measure audience numbers. In response, one stakeholder noted the third party verification is available on digital platforms, and the measurement systems are independently verified.

Stakeholders also discussed the issue of digital platforms publishing fake news. One stakeholder noted that journalists subscribe to a code of conduct. Digital platforms do not have a similar code.

One stakeholder indicated that there is a problem with attribution, with people considering digital platforms producing news content. This could be a problem for publishers. In response, one stakeholder noted that digital platforms are developing mechanisms to give publishers more credit for the content they produce, and provided illustrations of the initiatives digital platforms were undertaking. Some participants challenged whether the examples given helped publishers monetise content.

Potential regulatory imbalance

There were a variety of views about the effect of defamation laws on publishers' ability to create content. One stakeholder noted that publishers' appetites for defamation risk has fallen as revenues from journalism has fallen and that the amount of defamation litigation coming in via social media has increased dramatically. Other stakeholders submitted that while defamation risk is an issue, it is overstated. One stakeholder noted that the more significant issue is compliance with contempt of court rules and pre-publication legal advice.

One stakeholder noted that radio broadcasters are subject to monitoring by the ACMA, which digital platforms are not. The same stakeholder raised the potential for the ACMA to broaden their powers, so that digital platforms would be subject to the same guidelines.

Several stakeholders indicated that digital platforms do not have the same costs or risks as publishers because they are not subject to the same regulations or laws as publishers,

Effect of digital platforms on editorial decisions

Stakeholders broadly agreed that news publishers tailor or amend their content to suit different platforms, although there was a variety of opinions on the extent to which this has affected the production of news content.

One stakeholder considered that where news content is driven by clicks and revenue, this leads to more production of 'fluff' pieces or clickbait, where there is a gap between the headline of an article and the actual content. Several other stakeholders noted that this has led to quality control issues; as publishers try to publish content on diverse platforms, this stretches their resources, which then impacts on the quality of content.

There were differences in opinion about the effect of digital platforms on the quality of content produced. Some stakeholders submitted that the quality of content has not changed; the issue is monetising that content. One stakeholder highlighted the success of *The Australian* and *The New York Times* as publishers of 'hard news'. Other stakeholders noted a blurring of lines between advertorial and editorial content.

Algorithms

A number of stakeholders expressed strong views about the effect of digital platforms' algorithms on their ability to monetise content. In particular, some stakeholders considered that digital platforms are effectively making editorial decisions, through their algorithms. Stakeholders also noted that algorithms are opaque, and that consumers don't understand how algorithms work or how it affects news provided to them. Another stakeholder noted that algorithms do not reward quality journalism as it does not prioritise content produced by journalists.

Some stakeholders also noted the cost burden that algorithms have on their business. One stakeholder indicated that their organisation is spending millions of dollars to understand how algorithms work.

In response, one stakeholder indicated that it is in digital platforms' interests to have good content online and that for this reason digital platforms are working with news organisations on these issues.

Session 2 – impact of digital platforms on advertiser and other markets in Australia

Bargaining positions of advertisers relative to digital platforms

Stakeholders indicated their desire for a level playing field between digital platforms and other suppliers of advertising, so that advertisers can compare the effectiveness of advertising on digital platforms, relative to traditional media, such as TV and radio. There was some criticism of the Media Ratings Council (MRC) standard adopted by the digital platforms, with one stakeholder suggesting that the MRC standard does not provide for a good consumer experience.

Stakeholders also discussed suppliers of search advertising other than Google. One stakeholder noted that Bing and Yahoo claim to have 12 per cent of traffic through search but that the ACCC's issues paper puts that estimate at a lower figure. The same stakeholder suggested that where there is one search platform through which the majority of search traffic is processed, that platform is able to extract large rents from the market than it otherwise would. Another stakeholder estimated that Google and Facebook have more than 90 per cent of the market.

In response, one stakeholder put forward its view that the market is competitive and noted that digital platforms compete with small and large players. In addition, digital platforms are constrained by offline media.

One stakeholder noted that the long term rise of revenue for digital platforms is all coming from classifieds in print advertising, with other advertising types, such as radio, outdoor and TV advertising continuing to grow from different ways. The same stakeholder noted that all advertising is digital, with a focus on a personalised advertising experience for consumers.

Another stakeholder raised issues regarding transparency and the amount of information provided by digital platforms to their customers. In response, one stakeholder refuted this and provided examples of the information digital platforms provided to advertising customers.

Vertical search and risk of foreclosure

Stakeholders noted the importance of the advertising technology (ad tech) supply chain to the supply of programmatic advertising. One stakeholder referred to ad tech as 'controlling the pipelines of the advertising ecosystem'.

Stakeholders raised issues related to the transparency of the ad tech supply chain and programmatic advertising. In particular, several stakeholders noted a lack of transparency in relation to price prioritisation and the vertically integrated nature of the ad tech supply chain. For instance, certain ad tech suppliers will both facilitate the sales auction and act as a buyer.

There was also some discussion of Google's ad blocking technology in its Chrome browser. This is particularly an issue in relation to the blocking of auto-play advertising, which could result in a 20–50 per cent reduction in video advertising. Some stakeholders argued that while there may be some consumer benefit to removing some advertising, this removes a key revenue stream for advertisers and publishers. Another issue is that stakeholders bear the cost of changing their advertising models to work with particular advertising formats. One example discussed the use of Google's One Box, which requires the investing resources to comply with particular rules.

In terms of foreclosure, one stakeholder noted that Snapchat has been the only viable social media competitor in the last five years. However, Facebook implemented similar features to Snapchat's, which has impeded Snapchat's growth. This demonstrates that large digital platforms have the ability to limit and foreclose other businesses that enter into a competing area.

Barriers to entry

Stakeholders discussed the height of barriers to entry to publishing, platform services and advertising. In terms of publishing, stakeholders noted that barriers to entry are low. In terms of platform services, barriers to entry are high because of network effects. Once consumers are on a platform, their ability to change and switch away from that platform is hard.

In terms of advertising, stakeholders noted that advertising on traditional media, such as television advertising, is responding to digital advertising by targeting consumers on a personalised level. For instance, addressable television advertising is a direct response to the digital platforms. However one stakeholder noted that the pricing of advertising on television as compared to YouTube is not really comparable, with advertising on YouTube one tenth of the cost of advertising on television.

In addition, while television broadcasters have a large number of viewers, they cannot go up against the depth of data that digital platforms hold. Stakeholders noted the value of data in being able to compete in digital advertising.

In response, one stakeholder provided examples of companies that have innovated and come up with new business models, such as Uber and Booking.com. The same stakeholder suggested that every advertising supplier has the ability to obtain data, and that the focus in providing a good product should be on user experience rather than data — providing a good user experience allows a supplier to get better data.

Some digital platforms also suggested that they have not been taking money out of the market, but have contributed to opening up the advertising market to smaller advertisers. One stakeholder noted that a large number of advertisers spent less than $100 on advertising on digital platforms; such advertisers would not have had access to the scale of advertising digital platforms provide, using traditional media.

Session 3 – collection, use and availability of data

Value of data

Stakeholders highlighted the value of first party data, relative to third party data, and noted that access to high quality data can impact the effectiveness of an advertisers' business.

Stakeholders also discussed the importance of the quality of first party data; in particular, the number of 'touch points' at which an advertiser or publisher can collect data will affect the quality of the data.

One stakeholder suggested that there is no such thing as first party data. As Australians, we own our data and effectively lease it to digital platforms, publishers and other parties to do things with that data. The same stakeholder indicated that there should be a regulatory framework in place to protect consumer data.

There was some discussion on the relationship between application programming interfaces[1] (APIs) and data. In particular, one stakeholder suggested that APIs effectively govern the type and quality of data obtained. The context in which data is gathered is therefore important. Another stakeholder noted that this statement may be too simplistic — APIs are controlled by publishers and constantly change, like algorithms and terms of trade.

Stakeholders considered the different types of consumer data available and broadly agreed that the value of data depends on the type of data. One stakeholder drew a distinction between location data and behavioural data. Location data is a point of information about a consumer, while behavioural data is the web of relationships between different data points on a consumer. The same stakeholder noted that this is the type of data that locks consumers in and makes it difficult for them to port their data.

Most stakeholders broadly agreed that consumers need to understand the value of the data they are giving away and how that data is used. For instance, consumers that sign up to a loyalty program in order to get discounts at a store may not be aware that the data they provide to the store is used in a different way. In this way, use of data is contextual. One stakeholder noted that it is not enough to tell consumers that data is being collected 'generally for marketing purposes'.

One stakeholder put forward their view that it is difficult to place a value on data because there is currently no market for data.

Data portability

Stakeholders discussed the extent to which data is portable and shared. One stakeholder notes that consumer data is often collected as a part of another product; for example, an insurance company could collect data from consumers in order to build a model from risk scores. Because of this, it can be difficult to unpick more general consumer data from data provided for a specific purpose of product.

Consent to use data

Stakeholders noted the importance of consent in data collection and privacy protection. One stakeholder suggested that an issue is that consumers are given a false sense of control over the data that is collected on them. The same stakeholder noted that current consent controls are not adequate, with most companies disclosing how they collect data in very broad terms in their privacy policies. The same stakeholder cited a survey that suggested 94 per cent of consumers surveyed do not read all privacy policies that apply to them and that there should be a framework in place that gives consumers better control over their data.

Another stakeholder noted that privacy policies are effectively data collection policies — that is, consumers are giving away data when they agree to a privacy policy. There was some discussion about the need for transparency about what consumers are giving away and what they're getting back in return.

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[1] An application programming interface (**API**) is a set of routines, protocols, and tools for building software applications, effectively specifying how software components should interact.

Stakeholders are cognisant that requiring businesses to comply with data requirements could be costly. It may be more burdensome for smaller businesses to comply than for larger businesses. One stakeholder noted New Zealand's 'RealMe' initiative[2] could be a good first step by the government to provide consumers with confidence about where their data is held.

Transparency of data collection

There was some discussion about what could be done to provide consumers with a better understanding of the value of their data and how it is used. Some stakeholders suggested that regulation, whether government regulation or self-regulation, could be a solution to this issue. Some other stakeholders considered that the issue in relation to data is consumer knowledge and education; unless consumers understood the value of their data and how it is used, regulation is unlikely to make a significant difference. Another stakeholder suggested that there should be an opt-in selection for apps collecting consumers' location data.

Stakeholders also discussed the possibility of consumers providing informed consent to the collection of their data by businesses. That is, prior to giving consent to the collection of their data, consumers should be able to see precisely what information they are giving and how it is being used. One stakeholder raised concerns about the concept of informed consent and asked how the collection and aggregation of data, and its uses, could be explained to 'the notional person from Western Sydney'.

Consumer rights

Stakeholders discussed the potential for there to be a consumer right to data erasure, similar to the 'right to be forgotten' under the European Union's General Data Protection Regulation (GDPR). A stakeholder suggested the possibility of providing consumers the right to encrypt data. The relevant consumer would then be provided with a key to decrypt that data. Another stakeholder suggested that where a business is collecting data on a consumer for a primary purpose, the consumer should be able to opt-in to the business collecting data for any other purposes.

One stakeholder indicated that providing consumers with the right to remove data on digital platforms may affect the digital platforms' business model, particularly where that platform produces content. This may not be such an issue for platforms that do not produce content.

Existing legal framework

A stakeholder criticised the current legal framework in place, in relation to consumer protections around data collection, due to the principles-based nature of the framework. Another stakeholder considered that there are privacy protections for consumers, and that the issue is that they are not being enforced.

One stakeholder noted that Google's suite of products provides Google with data of a scale and depth that cannot be matched. Google's collection of this data is also difficult to opt-out of, which indicates how important this data is to Google. The same stakeholder suggested that because greater and more targeted data benefits advertisers, they are ultimately the ones driving the data collection behaviours of digital platforms

Session 4 – regulation and future trends in media and advertising services

Illegal conduct on digital platforms

[2] RealMe is a New Zealand initiative that allows users to access multiple online services with one username and password, and securely prove who they are online.

Stakeholders discussed problems with users of digital platforms uploading live streams of exclusive content onto the digital platforms and the difficulty in asking digital platforms to remove those live streams. Stakeholders noted the damage to reputation and monetary losses that results from this conduct.

Stakeholders recognised that there are systems in place to deal with such conduct, including for example YouTube's Content ID and Facebook's Rights Manager. However, stakeholders indicated users could bypass these systems by manipulating images or videos; for instance, by putting graphics or letterboxing on the screens. Stakeholder suggested that a potential solution could be direct access to the IT teams of digital platforms, so that exclusively licensed content can be removed quickly.

Another issue raised by stakeholders is the availability of illegal or unauthorised subscription websites on digital platforms. Rather than the digital platforms bearing the responsibility for removing these websites, the onus is on the producer of the content to raise the issue with digital platforms.

A stakeholder suggested that these issues are not a matter of insufficient regulation but a lack of incentive on the part of digital platforms to take down or remove the content. The same stakeholder noted that this is due to the very business of model of digital platforms, where content is monetised through views or clicks. There is no incentive for an effective or proactive response from platforms to the presence of such content on their platforms. The stakeholder suggested that there should be clear takedown procedures.

Copyright

Stakeholders discussed the application of copyright law to digital platforms. One stakeholder noted that there is no copyright in news. Smaller publishers that republish news content are privileged in Google Search results, at the cost of publishers that actually created that content.

Another stakeholder noted that where copyright laws do apply, it can be extremely difficult to enforce those laws. For instance, it can be very difficult to enforce copyright laws with respect to foreign companies that scrape content from podcasts and live streams.

There was some discussion about the impact of voice activated devices on content and copyright. One stakeholder suggested that voice activated devices could aggregate content and on-supply that content to consumers. This could be in breach of copyright. The same stakeholder suggested that there needs to be mechanism for content producers to deal with such breaches.

In response, one stakeholder outlined the steps that digital platforms had taken to protect copyright, including the expenditure that one digital platform had undertaken on rights management products.

Defamation

Stakeholders discussed the application of defamation laws to digital platforms. There were a variety of opinions in relation to the extent to which digital platforms should be considered to be publishers that make editorial decisions, instead of platforms. Some stakeholders considered that such digital platforms should be held to account in the way that news publishers and journalists are. One stakeholder suggested that where a digital platform provides search results in a particular order, that platform is effectively making decisions about how content is provided.

One stakeholder noted that legal action and legal threats in relation to defamation have increased post-internet, as allegedly defamatory material can be discoverable on a repeated

basis on the internet through digital platforms. However, instead of suing the digital platform for defamation, plaintiffs will generally sue the journalist and news publisher.

Another stakeholder put forward their view that defamation laws in Australia are the worst in the democratic world and need to be amended.

Other rules and regulations

There was some discussion on the extent to which existing legislation that applies to traditional media competitively disadvantages traditional media, relative to digital platforms. Two particular examples were discussed — special rules around political advertising and Australian content rules.

There were some variety in views about Australian content rules. One stakeholder considered that Australian content rules were outdated and should be abolished altogether. Another stakeholder submitted that these rules should be retained. Other stakeholders argued the Australian content rules should allow for greater flexibility.

Digital platforms as publishers

A number of stakeholders considered that digital platforms should be held responsible for content available on their platforms. There was agreement between a number of stakeholders that rather than putting a name on what digital platforms are or what they are doing, the focus should be on their actions.

One stakeholder suggested that digital platforms should pay for the content they take from publishers and make available on their platform. The same stakeholder noted that the onus should not be on publishers to follow up with digital platforms on this issue, given the volume of content that is made available every day. Another stakeholder noted that publishers should be entitled to a share of the revenue that digital platforms have gained from publishing their content.

In response, one stakeholder provided examples of the mechanisms by which digital platforms regulate content.

Smart technologies

Stakeholders discussed the effect of smart devices, including voice activated technologies, on the businesses of content producers. One stakeholder submitted that smart devices are likely to preference content aggregators, rather than content producers. The same stakeholder suggested a mechanism to bring the user's attention back to the content creator.

Another stakeholder suggested that there may be a point where voice activated devices can influence the businesses of content producers. A stakeholder noted that it is virtually impossible to monetise content on voice activated platforms. The same stakeholder suggested that a way forward would be if the industry could agree on standards to be imposed on such technologies.

There was also some discussion about the importance of maintaining a radio licensing regime. One stakeholder indicated that it would be very damaging if we moved to a world without spectrum management and licensing.

Consumer protection regulations

One stakeholder suggested that there is a broader issue about consumer protection legislation, in that it is not drafted in a way that is fit for purpose. That is, there are discrepancies between the way content is treated on different platforms. This leads to asymmetrical burdens on content producers and confusion for consumers.

Attachment A: Industry stakeholder forum agenda

ACCC Digital Platforms Inquiry

9.00am – 5.00pm | Thursday 16 August 2018| Sydney

State Library of New South Wales

Agenda

Time	Session
9.00 – 9.30	Registration, welcome and housekeeping
9.30 – 11.00	*Session 1 – impact of digital platforms on news media in Australia* • Ability of news media companies to monetise content • Effect of digital platforms on news production and distribution
11.00 – 11.15	Morning tea
11.15 – 12.45	*Session 2 – impact of digital platforms on advertisers and other markets in Australia* • Relationships between digital platforms and advertisers • Ad tech supply chain • Expansion of digital platforms into related markets
12.45 – 13.45	Lunch
13.45 – 15.15	*Session 3 – collection, use and availability of data* • Data as an input to media and advertising services • Transparency of data collection and potential asymmetry • Effectiveness of current legal framework in relation to consumer data and privacy
15.15 – 15.30	Afternoon tea
15.30 – 17.00	*Session 4 – regulation and future trends in media and advertising services* • Efficacy of existing regulatory framework in relation to copyright, defamation and other issues • Effect of new technologies on advertising and media markets (e.g. voice activated technologies, smart TVs, etc.)