



Summary of Digital Platforms Inquiry Industry Stakeholder Forum

On 18 March 2019, the ACCC held an invitation-only forum in Sydney. The purpose of the forum was to provide industry stakeholders with an opportunity to communicate their views in relation to the preliminary recommendations in the ACCC's Digital Platforms Inquiry preliminary report, and the proposals raised in submissions, related to advertising and media markets.

The forum was facilitated by General Managers of the Digital Platforms Inquiry, Morag Bond and Kate Reader. Also in attendance were ACCC Chair Rod Sims, ACCC Deputy Chair Delia Rickard, and ACCC Commissioner Roger Featherston.

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

Session 1 – Preliminary recommendations and proposals raised in submissions relating to the supply of advertising services

ACCC preliminary recommendation 4 – advertising and related business oversight

Stakeholders discussed the ACCC proposal to task an existing or new authority with oversight over vertically integrated digital platforms in the advertising markets. Some stakeholders expressed the view that additional regulatory oversight was not necessary, as existing laws were adequate to deal with the issues identified in the ACCC's preliminary report.

Other stakeholders supported this type of recommendation because they identified a lack of insight and transparency as to the advertising auction process. These stakeholders considered that regulatory oversight could eliminate opacity particularly in the programmatic advertising supply chain.

Free TV submission proposal – facilities access regime

Stakeholders discussed the proposal raised in Free TV's written submission that an access regime be introduced which applied to digital platforms with substantial market power. It was suggested that this proposal could act as an upfront legislative scheme that would set the basis for digital platforms' interactions with publishers; and allow for sustainable monetisation of content.

Some stakeholders were supportive of such a regime on the basis that they considered large digital platforms to be unavoidable business partners. These stakeholders considered that an access regime may help address issues of monetisation of media content, for example by giving publishers a greater ability to negotiate terms and conditions and thereby differentiate their content and monetise through advertising.

Other stakeholders considered that an access regime was unnecessary, as they considered that the ACCC's preliminary report had not identified any instances of harm that warranted intervention.

News Corp submission proposal – register of algorithm changes

Stakeholders discussed the proposal raised in News Corp's written submissions for a register of digital platform algorithm changes. Some stakeholders were supportive of this proposal as they considered publishers had not been notified or consulted in advance of any significant algorithm changes in the past. Some stakeholders considered that the market power of digital platforms contributed to a lack of transparency around algorithm changes.

Other stakeholders rejected the claim that there was insufficient transparency, outlined the proactive measures that digital platforms had undertaken, and highlighted that increased transparency of algorithms could allow bad actors to manipulate outcomes.

Some stakeholders raised that, in relation to the ranking of news sources, digital platforms that provide these services did not monetise these queries, and that achieving reach alone on digital platforms would not address the current issues facing public interest journalism.

News Corp submission proposal – divestiture of Google

Stakeholders discussed the proposal raised in News Corp's written submission for the divestiture or functional separation of elements of Google's business.

Some stakeholders rejected the proposal, stating that the recommendation was a broad reaching remedy to a problem that did not exist.

ACCC area for further analysis and assessment 5 – monitoring of intermediary pricing

Stakeholders discussed an area for further analysis identified in the ACCC's preliminary report which considered whether the monitoring and disclosure of pricing for advertising intermediary services could improve transparency:

- Some stakeholders opposed the proposal on the basis that there were already mechanisms within platforms that provided transparency.
- Some stakeholders considered that advertisers were more focused on outcomes rather than specific margins at each point of the advertising supply chain, and they already have enough information to assess these outcomes.
- Other stakeholders considered there was a lack of transparency in the ad tech supply chain, especially with regards to how the different ad tech vendors operate with each other.
- Some stakeholders considered that an increase in transparency would expose the margins charged by intermediaries
- Another stakeholder noted that ensuring complete transparency in the ad tech stack was difficult as the vendor only has visibility from their own side of the transaction.

The Guardian submission proposal – system of transaction receipting

Stakeholders discussed the proposal raised in The Guardian's written submission for a transparent system of programmatic receipting. This proposal suggests that a reconcilable record be maintained for each advertising transaction and provided to the buyer and seller to enable reconciliation of transactions in the ad tech supply chain at a unit level.

Some stakeholders considered that technical difficulties would likely arise from implementing this type of system. The same stakeholders identified that this type of system would require a unified currency, which did not currently exist in the digital ecosystem.

Other stakeholders considered that the disclosure of such information could also assist with identifying fraud that occurred through digital channels.

ACCC area for further analysis and assessment 8 – opt-in targeted advertising

Stakeholders discussed an area for further analysis identified in the ACCC's preliminary report which considered whether to prohibit entities from collecting, using, or disclosing personal information of users for targeted advertising purposes without their express, opt-in consent. It was generally agreed by stakeholders that customers should be given transparent use and control of their data, and that this could be further facilitated by operating under a framework similar to the GDPR. One stakeholder noted that the proposal could have significant ripple effects across the economy and that it should be examined further.

Session 2 – Preliminary recommendations and proposals raised in submissions related to the supply of news

ACCC preliminary recommendation 5 – regulatory authority to report on the ranking of news and journalistic content and the provision of referral services to news media businesses

Stakeholders discussed the preliminary recommendation in the ACCC's report for additional oversight into the ranking of news and journalistic content.

- Some stakeholders considered that regulation would not help support public interest journalism. They considered that digital platforms already provided information which explained how referral links were ranked, and that additional transparency could generate unintended negative consequences.
- One stakeholder raised concerns that the recommendation may result in a regulator determining what news and journalism the Australian public reads.
- Other stakeholders strongly supported the recommendation. These stakeholders considered that digital platforms are unavoidable business partners, and the sustainability of journalism is influenced by the ability to monetise content on these platforms.
- These stakeholders considered that any recommendation should recognise the link between monetisation options on digital platforms and the sustainability of news content.
- Some stakeholders identified that Facebook is an essential channel for referrals and reach despite the lack of monetisation options on that platform.
- Some stakeholders noted that Google had made efforts to assist publishers in this area.
- Stakeholders debated whether the algorithms diminished incentives to produce original content. Some stakeholders considered that the way algorithms currently ranked news stories was diminishing incentives to produce news, while others considered that the ranking of news stories was a reflection of the news cycle with newer versions of stories replacing older ones.

ACCC area for further analysis and assessment 1 – supporting choice and quality of news and journalism

Stakeholders discussed the area for further analysis in the ACCC's preliminary report which considered whether a badging mechanism could help signal to consumers quality news. Stakeholders had a range of views:

- It was generally agreed that consumers should have the right to make an informed choice. However there was concern that mainstream organisations would be favoured in the badging system, and that it may be difficult to determine which content conformed to quality standards. Some stakeholders considered that leaving this decision to the Government was undesirable.
- Some stakeholders considered that existing co-regulatory schemes could be used as a framework to determine the relevant standards.
- Some stakeholders considered that the proposal may not achieve its intended goal because it would not capture international publications.
- One stakeholder supported the proposal on the basis that a badging system could be a signal to consumers; making journalistic content distinguishable from other types of content.

News Corp submission proposal – licensing regime for news content

Stakeholders discussed a proposal raised in News Corp's written submission to introduce a licensing regime which would require digital platforms to pay compensation for using publisher content for traffic generation or data collection. Various stakeholders made the following submissions:

- Some stakeholders supported the proposal on the basis that it helped recognise the value of snippets to digital platforms in keeping users on the platform rather than being redirected to the news websites.
- One stakeholder expressed the view that negotiations within the proposed licensing regime should be by commercial arrangement or implemented through a statutory regime, and could encompass data and advertising relationships as well as content.
- Some stakeholders opposed the proposal. They considered that search results producing news referral links did not display advertisements, and therefore that a licencing fee was uneconomic.
- Some stakeholders raised that publishers can currently monetise their content for free (e.g. Instant Articles on Facebook). In response, other stakeholders noted that publishers had stopped using Facebook's Instant Articles as it was difficult to make a profit when operating on Facebook's terms.
- Some stakeholders expressed frustration that consumers were not accessing content from the original publisher site, instead choosing to access the same content through digital platforms. One stakeholder expressed frustration with Google News as they lose control of their content once it appears on a digital platform.

Commercial Radio of Australia submission proposal – digital audience measurement methodology

Stakeholders discussed a proposal raised in Commercial Radio of Australia's written submission to impose a digital audience measurement methodology on digital platforms, requiring third-party collection and analysis of data. Some stakeholders considered that there was a lack of consistency with how data is collected and used, as well as how audiences were measured between digital platforms and other mediums, such as radio.

Some stakeholders asserted that digital metrics distorted the ability of advertisers to look across all channels and estimate their reach for their advertising spend.

Free TV submission proposal – code of practice for digital platforms

There was some discussion of a proposal raised in Free TV's written submission that a code of practice could be established and be administered by the Australian Communications and Media Authority (ACMA).

Stakeholders discussed that under this proposal, principles could be established that digital platforms must abide by in writing their algorithms.

Additionally the proposed code could deal with provenance issues, ranking and algorithmic changes, with a suggestion that the ACMA could focus on issues surrounding content, and the ACCC could focus on regulating and monitoring competition issues.

Multiple stakeholder submission proposals – positive filtering obligation for digital platforms

Stakeholders discussed a proposal raised in the written submissions of the Australian Copyright Council and the Australian Society of Authors, Music Rights Australia, and the Coalition of Major Professional and Participation Sports, Getty Images, Village Roadshow, Commercial Radio Australia, and Nine that the ACCC should recommend imposing positive obligations on the part of digital platforms to monitor for copyright-infringing content.

Some stakeholders supported this and expressed a range of views including:

- that the present situation was undesirable because there was a reliance on rights-holders to inform the platform that content is infringing.
- that some digital platforms could do more in providing engineering resources and collaborate with businesses to develop efficient filtering systems that do not require human intervention.
- that existing removal mechanisms on digital platforms, such as content identification systems, were expensive to use, and that copyright issues had not been solved through the use of this technology.

Other stakeholders considered the proposal was unnecessary or unworkable and expressed a range of views including:

- that some digital platform's content identification systems successfully allowed large rights-holders to administer rights on a global scale.
- that up to 98 per cent of rights management occurs through content identification systems and that take downs on average generally occurred very quickly (in minutes).
- that even if positive filtering obligations were imposed on digital platforms, the onus to remove infringing content would still lie with the publishers, as users could easily manipulate content to by-pass systems for detection.

A further discussion of some of these issues also formed part of the discussion of ACCC preliminary recommendation 7 (see further).

ACCC preliminary recommendation 6 – review of media regulatory frameworks

Stakeholders discussed the preliminary recommendation in the ACCC's report for the Australian Government to conduct a review to design a media regulatory framework able to effectively and consistently regulate the conduct of all entities which perform comparable

functions in the production and delivery of content in Australia, including news and journalistic content. Stakeholders raised the following issues:

- Some stakeholders considered that existing regulatory frameworks imposed greater obligations on traditional broadcasters than digital platforms, and resulted in inefficiencies and increased compliance costs for media companies.
- Some stakeholders considered that rather than undertaking a review, immediate action should be made to remove particular areas of broadcasting regulation from TV and radio broadcasters such as election content blackout laws and other local content requirements that apply to particular broadcasters (through licencing and other regulation) and not digital platforms. Some also noted that Australian content laws are outdated and do not serve the same purpose today as when they were implemented.
- Some stakeholders noted that given the age of the Broadcasting Act, there are some areas that would warrant review in greater detail in order to determine whether they are needed and how they should apply to the range of businesses that now communicate to the public (apart from the areas identified above).
- Some stakeholders noted that 'smart' regulation was needed that could address clear problems.

ACCC preliminary recommendation 7 –take-down standard

Stakeholders discussed the recommendation in the ACCC's preliminary report that the ACMA determine a mandatory standard regarding digital platforms' take-down procedures for copyright infringing content.

Stakeholders expressed a range of views on this proposal. Some of these views included:

- concerns with the lack of consistency as to the approach, rationale and standards of digital platforms regarding takedown requests, which increases the difficulties in removing infringing content.
- a view that the present processes for the removal of content were too slow and left rights holders to 'clean up' digital platforms rather than platforms being responsible for the content they hosted and displayed. The timing of content removal was noted as a particular issue for time sensitive rights such as live sports content. Particular issues were also noted by some stakeholders with the removal of signposting to copyright infringing material, that is, displaying links to sites that aggregate links to infringing content.
- that take downs and filtering obligations were not sufficient to address the issues faced by rights holders and rather that the legal liability of digital platforms needed to be clarified. That would leave rights holders to enforce their rights more effectively. It was noted that supporters of this view included not just broadcasters but rights holders in the music industry and others.

Other stakeholders, however, suggested that digital platforms had spent a lot of money in developing content identification systems that could identify and remove copyright infringing content and that not all take downs are straight forward and can be easily processed and identified. In relation to live sports events, some stakeholders noted that some digital platforms worked with sports federations to get live streams of events to allow them to more easily detect unauthorised streams on their platforms.

There were mixed views about safe harbours and the exclusion of digital platforms from safe harbour protections in Australia. Some expressed that this was an issue for digital platforms, which benefit from safe harbour protections in the US. Others argued that safe harbour was 'never meant' to apply to commercial entities.

Some stakeholders considered that given the harm to consumers and individuals caused by fake advertising, a take-down code should consider the removal of more than copyright infringing content and potentially consider such matters. The use of celebrities and logos in fake advertisements on digital platforms were problematic to businesses who used celebrities in their businesses. Some stakeholders also expressed the difficulties in contacting digital platforms to have this type of fake advertising removed quickly. A 24 hour take down standard was suggested.

Other issues

ACCC area for further analysis and assessment 3 – improving the ability of news media businesses to fund the production of news and journalism

Stakeholders discussed another area for further analysis identified in the ACCC's preliminary report which considered whether tax relief was needed for news publishers and the broader issue of the ability for news publishers to monetise and commercialise news content

It was suggested that the Government could implement a zero rating of GST on news subscriptions which would decrease subscription costs for consumers, and that the *Income Tax Assessment Act 1997* (Cth) could be amended to allow for philanthropic funding for civic journalism. It was also suggested that tax offsets be available to independent news publishers in Australia, similar to what is currently employed in the film and television industry.

ACCC area for further analysis and assessment 4 – digital platforms ombudsman

There was limited discussion about this proposal. Some stakeholders supported it as a mechanism to help consumers and small businesses, but called for it to be applied to all platforms and advertisers. Other stakeholders considered it unnecessary, and expressed the view that if a regulatory authority is tasked with regulatory oversight in the supply of advertising and news, then a Digital Platforms Ombudsman would be an unnecessary duplication.

ACCC preliminary recommendation 8(d)

A stakeholder expressed the view that there was a lack of evidence to justify recommendation 8(d), which proposes to provide consumers with the right to request erasure of personal information on an economy wide basis.

ACCC preliminary recommendation 10 – serious invasions of privacy

A stakeholder expressed the view that a statutory cause of action for serious invasions of privacy was unnecessary as the Privacy Commissioner is already able to impose civil penalties, and therefore an expansion of powers was unjustified.

It was suggested that a lack of enforcement under the current regime was due to a lack of resources rather than insufficient legal remedies