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To the ACCC
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Dr LJ Patrick submission to the ACCC news media bargaining code inquiry

Thank you for the opportunity to respond to the Australian Competition and Consumer Commission (ACCC) concepts paper released on May 19 2020 regarding news media bargaining.

Who am I?

I am a member of the Australian public who reads news online on a variety of digital platforms such as ABC online and Google News. I don't generally read newspapers or magazines. I've never worked for Google, Facebook, Microsoft, Apple, Amazon, or any news media organisation and I have no financial interests in any of the companies referenced in the ACCC's concepts paper. As such, I'm most representative of the millions of stakeholders affected by the present inquiry. I speak only for myself here although I believe my concerns are shared by other consumers of news who are important stakeholders in the discussion. It is to represent these stakeholders that I am making my submission.

Summary

I have three main concerns about the proposed code. Firstly, the impact on small or growing digital businesses. Secondly, privacy. Thirdly, that any remuneration might not increase investment in Australian journalism, unless it is tied to such outcomes.

I have concerns about potential impacts of the code on small or developing businesses. A specific concern is that the code should not introduce anti-competitive barriers to newcomers in digital markets and should not disincentivise small and growing technology businesses. Another concern is that any advantages handed to news organisations should extend equally to the smaller local and regional news organisations. In short, a code should redress imbalances, and not cement the position of large incumbents, whether of a digital or traditional media business model.

In this automated world, privacy is a huge concern. Privacy requires not passing on personally identifying information to third parties. 'Opt out' approaches are ineffective, and 'opt in' tends to be defeated by requiring broad consent before service is given.

Anonymised data is also private data and should not be given to third parties. Time and again it has been shown that even carefully anonymised private data can be de-anonymised, possibly in other countries where privacy laws are lax. Financial penalties for the user of re-identified data should thus be a precondition for any data flows.

Other large jurisdictions such as EU and California have enacted privacy laws that are changing the way private information is held and processed, not just within their own jurisdictions, but worldwide. If global digital platforms choose to improve consumer privacy across their platforms world-wide, there should be no legal impediment to following suit in Australia. In other words, a mandatory code here that requires information to be shared with third parties cannot and should not prevent companies like Google or Facebook from collecting less such information in the first place or anonymising the data internally. It seems invalid to require a company to share information they do not collect or keep.

It would be perverse for a jurisdiction that is lagging in its development of privacy laws to demand privacy-invading business practices when larger markets are moving in the other direction. For this reason, requiring the sharing of any private customer data, whether anonymised or not, with third parties would not only be a violation of consumer rights and fundamental human rights within Australia, it would likely pre-empt (and eventually be invalidated by) improvements to privacy laws in future. Therefore such suggestions on sharing personal data should be deemed out of the scope of the present discussions on the mandatory code.

Lastly, how will any money diverted from digital platforms to old media companies be spent? How will we know whether more investigative journalism is being produced as a result of this code? If traditional media companies simply take the money and pass it on to shareholders instead of investing in more Australian journalism, how will the ACCC remedy that situation? Will the code stipulate how any fiduciary benefits must be spent, or will it merely be a no-string-attached hand-out?

Responses to Questions

1. How should 'news' be defined for the purpose of determining the type of content that will be subject to the bargaining code?

"News is what somebody does not want you to print. All the rest is propaganda or advertising."¹ This saying contains more than a grain of truth. That is not the whole story, as news must also encompass political and court reporting and other matters of public record, and analysis and interpretation of events. However, it does highlight that not all that is printed in a newspaper is news.

1 <https://quoteinvestigator.com/2013/01/20/news-suppress/>

The mandatory code should have a strong definition of what counts as news for the purposes of the code, and should also list many examples of what does not fall under that definition. This is important in the face of any push from media organisations to expand the definition to cover the entirety of their portfolio. Clarity and listing multiple examples are important.

The definition of news should be tied to established journalistic standards and codes and professional memberships of high regard within the news media industry.

Furthermore, public domain works, publicly distributed articles such as press releases and official government reporting, and other instances of 'fair use', should all be excluded from the scope of the proposed code. For instance, public domain video of a space launch, or a blogger's video of a riot, should not, by mere virtue of being included in a news media organisation's broadcast, be the subject of a mandatory bargaining code, since the original source was not a news media organisation, and these organisations have no ownership rights to that work under copyright law.

Since news reporting is essentially reporting facts about the world, no copyright can be held by the reporting organisations on the actual words that have been said by third parties or the deeds that have been done by them. The copyright upon which news organisations rely lies in the editing, in the arrangement and choice of what to report and the words chosen to describe the central factual elements. Those central factual elements around which a news story is built are facts about the world which are not, themselves, generally copyrightable. Media companies do not own facts; no-one does. This may mean that news reports hold a less substantial copyright than other forms of media or entertainment such as movies or music. As such, it seems valid to treat news differently.

It is important to distinguish the value generated for a democracy by investigative journalism, in the definition of news, from that of the publication of self-serving press releases or photo opportunities. It should be a goal of the proposed code to promote investment in investigative journalism and Australian-specific reporting. The definition of 'news' should reflect that goal.

A strong and clearly enumerated list of what is considered newsworthy will help delineate what the code is intended to foster and give the code legitimacy.

2. How can a bargaining code ensure that both news media businesses and digital platforms can easily and objectively identify the content subject to the code?

Given a clear definition of news within the bargaining code, a media organisation should be in possession of the knowledge of which of their stories is news and is produced to professional journalistic standards, as opposed to

entertainment or other media. Accordingly it should be straightforward for those organisations as part of their online platform delivery systems to tag the information with a relevant identifier which can then be utilised by digital platforms consuming that content. Tagging is a well known and well understood technology of simply associating keywords or special hypertext markers providing metadata about media objects online. Online media organisations already employ such tagging in their search engine optimisation efforts and so this should not provide much additional difficulty. One or more textual tags could be defined within the proposed code identifying news, and can be applied as metadata within media. For example “acc-cc-defined-australian-news” could be used.

There is no easy way for a digital platform to ‘just know’ how a particular piece has been produced or what the perceived newsworthiness or originality is from the point of view of the media organisation producing it. Tagging at the originating source should therefore be a starting point for determining what is considered content subject to the code. However, that may not be sufficient. If a media organisation routinely misapplies such tags, for example by applying the tag to all their content, whether it be news or not, then it seems fair for the digital platforms to be able to place their own weighting on the value of that signal, and downgrade their responses proportionately. There must be good faith on the part of the media organisations for this to work. If it is abused by news media organisations, the mandatory code must define a way for digital platforms to cope with that circumstance.

3. Would it be appropriate for the bargaining code’s definition of ‘news content’ to capture material:

- with the primary purpose of investigating, recording or providing commentary on issues of interest to Australians, and
- that is subject to the professional standards set by a relevant journalism industry body, journalistic standards set in a relevant media industry code, or equivalent journalistic standards set by an individual news media business?

It is a good idea both to limit the definition of news content to those issues of interest to Australians, and to require the content to be subject to professional journalistic standards. A line must be drawn between news, which has unique copyright and business limitations, and other forms of media or entertainment which are more conventionally protected by copyright law and have their own markets. The requirements listed in question 3 will go some way to delineating these different forms of content.

It is right to be concerned about “the declining number of professional journalists focussing on Australian news and the reduction in certain forms of reporting beneficial to society that are unlikely to be the focus of newer forms of journalism”². If a mandatory bargaining code is to be put in place, the production of Australian news is a valid public benefit that should be a primary

2 ACCC Digital Platforms Inquiry final report, June 2019, page 18

goal of such a code. Any remuneration should be tied to outcomes such as an increase in employment of Australian journalists.

If codes similar to the ACCC's proposed code are eventually enacted in multiple jurisdictions around the world, how will governments prevent multinational media organisations from being the recipients of remuneration from digital platforms multiple times over for the same content? One answer to this double-dipping problem is to narrowly define the relevant content as being focussed on only the jurisdiction affected, in this case Australian news specifically.

4. Would a principles-based, or list-based approach be preferable in determining which digital platform services are captured by the bargaining code?

Although a list-based approach may be clear and specific and narrowly targeted, it may appear arbitrary and opaque and become out of date easily.

A principles-based list may provide more guidance on the intent of the code, but could apply to unintended situations, or to smaller or emerging technology companies unless the code is explicitly targeted to specific turnovers.

Whichever approach is used, clarity is vital to prevent legal uncertainty for smaller digital start-ups, otherwise the code could become a significant anti-competitive barrier to entry, reducing competition in the digital marketplace.

13. How relevant are the following factors to determining appropriate remuneration for news media business:

- the value of news to each digital platform
- the value a news media business derives from the presence of its news on each digital platform
- the value of the availability of news on each relevant digital platform to digital platform users?

Any remuneration should be tied to how invested the media organisation is to Australia and news journalism. An organisation which reduces its news journalism outlay in Australia, despite receiving remuneration via application of the proposed mandatory code, should over time receive appropriately less remuneration for having not invested in Australian journalism. Conversely, a media organisation that makes new investments in Australian journalism should receive a bigger part of the pie.

A direct way to decide remuneration is to count the number of Australian journalists employed, and the number of news articles about Australian topics that are produced. These should be the primary news media factors involved in any remuneration calculations. It should not depend solely on the fraction or value of an organisation's output that is news in general, but how much of its

output is *Australian news*. Furthermore, we should not reward foreign-owned media companies for investing only token amounts into Australian journalism, or for skimping on regional reporting. We should reward those investing in regional news reporting, and in original reporting, rather than syndicated repeats. A weighting factor may be needed to value regional reporting more highly, in order to promote expenditure in that area.

16. What other factors may be relevant to determining appropriate remuneration for news media businesses?

It is right to point out that there is an inherent value to news media organisations in having billions of click referrals from digital platforms to the media organisations' web sites³. The value of each click needs to have a monetary value placed on it, just like in digital advertising, if there is to be a meeting of minds here. The overall balance can only be properly calculated by establishing the value of the news content on one side, and on the other side the value to the media organisations from the clicks. Failure to account for the referral value that digital platforms provide for media organisations would render the code one-sided and rob it of legitimacy. Therefore, a price must be set on both content, and clicks, if there is to be any valid discussion of remuneration.

If the media organisations do not set a price on click referrals, a price should be set with reference to advertising prices. There seems to be some inconsistency in both asserting that click referrals to stories have zero value (or simply ignoring clicks in this discussion) and simultaneously demanding that digital companies must index stories so that consumers can click on them. Such demands show there is inherent (monetary) value in those clicks. A price should be put on them.

19. How might any bargaining framework implemented by the bargaining code deal with the full range of businesses present in the Australian news media industry, including smaller, local and regional news media businesses and not-for-profit news media organisations?

The code should not grant special powers exclusively to the larger organisations. Doing so may entrench the big players, at the expense of the smaller businesses, and introduce an anti-competitive bias. Therefore, whatever information or remuneration is afforded large media businesses should also be afforded to the smaller businesses, proportionately to their production of quality news content as defined in the code.

22. Should the bargaining code include minimum data-sharing obligations for each of Google and Facebook? If so, what should these minimum data-sharing obligations require?

3 <https://www.accc.gov.au/system/files/Google%20%28April%202018%29.pdf>

Certain forms of data sharing are likely now or soon will be contrary to privacy law. Consumer privacy is the subject of increasingly stringent laws in other jurisdictions, such as the GDPR in Europe, and similar Californian law, and similar privacy laws will undoubtedly be developed in Australia. The mandatory code should not pre-empt such developments.

Furthermore, certain consumer data is not owned by Google or Facebook. It is generated by the actions of consumers and often is personally identifying and personal in nature. A bargaining code should not force an organisation to share a consumer's data with another organisation. Such data is not theirs to share.

Opt-out is not a viable workaround to this fact. How would a person even know which companies they must opt-out of regarding data collection after their data has been shared? How can a person consent when they cannot in practice know what is happening behind the scenes? How can a bargaining code require such consent-free data flows? Let us not ingrain bad practices.

Opt-in is more viable when it comes to obtaining consumer consent, but even that can and has been abused as a practice in Europe, where key services are hidden behind cookie-agreement walls that require consumer to agree in order to obtain any service at all. Europe has issued clarification on the GDPR regarding this issue, stating that such practices of refusing to offer service are contrary to the intent of the GDPR.⁴

Anonymised data can generally be de-anonymised⁵, and so is also not a viable workaround to the fact that much of the data under discussion is data about consumers, is generated by consumer actions, or has impacts on the consumer. Data can be sent to other countries for de-anonymisation even if that practice is outlawed here. One way to try to avoid that is stringent financial penalties if such data is used this way. However, the only sure way to protect private data is to not collect it in the first place. This may be the outcome of future privacy laws.

Two more factors are important in discussions of data flows, even if anonymised.

Firstly, foreign-owned or controlled media companies will be subject to the laws of their own countries, and as such any data flows to those companies should be treated as tantamount to sending data about private Australian citizens directly to foreign governments. This may also be true of any flows of data that involve foreign-owned data storage facilities, even if the companies themselves are Australian-owned. Given a context of increasing foreign interference with national affairs, hacking scandals involving universities and national infrastructure, the provision of data even about what articles are being clicked on could be considered a security threat.

4 <https://techcrunch.com/2019/03/08/cookie-walls-dont-comply-with-gdpr-says-dutch-dpa/>

5 <https://www.fastcompany.com/90278465/sorry-your-data-can-still-be-identified-even-its-anonymized>

Secondly, on the topic of security threats, advertisement networks have been implicated not only in privacy-invading tracking processes subject to little oversight, but have also been used to serve malware to the computers of consumers on some occasions.⁶ The provision of data to advertising networks can be a security risk. Allowing advertisements to appear in web browsers can also be a security risk. Increasingly many consumers are resorting to ad-blocking tools not merely for the convenience of avoiding distractions when searching for information, or for avoiding paying for the bandwidth required to download video advertisements, but also to protect themselves from identity theft and compromise of their computers.⁷ In this context, part of the reason for the failure of some ad-based revenue models is simply due to a natural and reasonable aversion by consumers to unwanted advertisements.

The code should not be forcing any data about consumers to be handed over to media organisations or advertising companies. The mandatory bargaining code therefore should not enshrine or countenance any privacy-eroding data flows.

23. How should data-sharing and revenue-sharing arrangements facilitated by the bargaining code interact, given both would be intended to recognise that digital platforms obtain a benefit from content produced by news media businesses?

If media organisations want consumer data then it must have monetary value to them. Therefore, a monetary value should be placed on that data. Money should thus be paid to digital platforms for collecting such data. But why stop there? Both digital platforms and media organisations that seek to use consumer-generated data could also pay the consumers themselves for generating and giving access to that data. Arguably, digital platforms 'pay' for consumer data by providing services, often free of monetary charge. How would media companies pay for that user data? By providing news? If that is so, how is that consistent with the use of paywalls? That seems like double-dipping.

Consumers are stakeholders when it comes to data. Their data should not be bought and sold without their knowledge or permission. If there's value in their data, why shouldn't they deserve to be financial recipients of some of that value? And if the value to them is not financial, the bargaining code must at least acknowledge what non-financial benefits they receive from their data flowing between large organisations without their consent.

24. How should costs incurred by digital platforms in collecting and sharing data with news media businesses be recognised in data-sharing arrangements facilitated by the bargaining code?

6 <https://en.wikipedia.org/wiki/Malvertising>

7 https://en.wikipedia.org/wiki/Ad_blocking#Benefits

Digital platforms have invested millions if not billions in researching and building software, platforms, tools, whole operating systems and novel devices, to aid consumers in searching and using the web. Google, for instance, has sponsored many open source software projects including new programming languages and netware, created competition to Apple in the mobile phone space, created competition with Microsoft in the office software and web browser space, and has fostered innovation in many areas. There has been much good these companies have done, and they have produced many software tools and platforms that have helped many people. This is also true of many other large digital organisations such as Microsoft and Apple. Many of these tools and platforms are made publicly available for anyone to use. For example, the Linux and Android operating systems, Firefox, Chrome, and much of the cloud software that the media landscape relies upon today, have all been fostered by these large companies. There is a philanthropic lining to all the advertising-funded digital platforms today, and that fact should not be forgotten or undervalued.

Many media groups have benefited enormously from these advances in digital production and distribution that digital companies have developed. If media companies wish to benefit from the digital data collected via those platforms that media companies did not themselves create, then it seems reasonable that there should be some price put on the creation and maintenance of those platforms and factored into such data flows, above and beyond the price assigned to the data itself.

25. Would it be appropriate for the bargaining code to address data sharing by putting in place commitments requiring 'good faith' negotiations on this subject between news media businesses and each of Google and Facebook?

Any use of the term 'good faith' should apply equally to all stakeholders, and not be one-sided in its application.

26. Would it be appropriate for any data-sharing requirements in a bargaining code to be limited to data collected during the course of users' direct interaction with each news media business's content? Should this include data relating to aggregate audience numbers, audience demographics and audience interactions, such as how many and which users clicked on, 'liked', 'shared' or otherwise interacted with the content of that particular news media business? What other specific metrics might be relevant?

The collection and transmission of such data should be as limited as possible. Words like 'aggregate numbers' and 'demographics' are an implicit acknowledgement that anonymisation may be necessary to attempt to legitimise this kind of practice. But all of the clicks, all of this 'audience' data, is generated by consumers and may be personally identifying, and therefore falls under privacy law. It should therefore not be shared with third parties without explicit consent. It is one thing for a person to interact with a digital platform,

it is another thing for their data to be sold behind the scenes without their knowledge. Such deceptive practices should not be given a veil of respectability.

27. Would it be appropriate for each of Google and Facebook to provide news media businesses with access to additional data associated with individual users (based on anonymised user IDs), such as whether a visit to a news media business's website follows previous interaction with this business's content on a digital platform? If so, what steps should be taken to ensure an individual's privacy is protected?

No, it would not be appropriate. Anonymised data can often be de-anonymised with surprising ease⁸. Statistically speaking, it's very hard to anonymise data properly. Most organisations do not have the skills to do it properly. It will never be intellectually or morally valid to force digital platforms to divulge user data to third parties. Privacy law should be respected, and not pre-empted or subverted by this code.

28. Would it be appropriate for each of Google and Facebook to provide each news media business with a list of all types of user data they collect through users' engagement with their news content on their services, such as data collected on users accessing content published in the AMP and Instant Articles formats?

Consumers should be protected, not have their data forcibly traded to settle bargaining disputes at the big end of town. Listing the data that is being collected could be taken as a promise that such data could be obtained now or in future. As I've stated, I believe privacy laws now and in future will have something to say about that.

30. What would be an appropriate threshold for identifying a significant algorithm change which requires advance notice to be given by each of Google and Facebook, and what criteria should be used to determine this threshold?

Having worked for decades in the information technology arena, I know that algorithms change every day, sometimes multiple times per day. Some changes take a long time to make and produce only small efficiency improvements. Some changes are quick to implement and have huge impacts.

It is not easy to identify a threshold concerning such changes. Often times it is not obvious what effects any given change will have. Often it is necessary to simply try the change on large amounts of data before it is feasible to understand what effect the change has. Algorithms are now sufficiently complex and have such subtle behavioural impacts that their outcomes cannot be known in advance of deploying them.

8 <https://www.jdsupra.com/legalnews/redaction-and-re-identification-risk-69578/>

31. How much notice should be provided by each of Google and Facebook for significant algorithm changes? How can this notice period be set in order to not unreasonably limit digital platforms' flexibility to implement algorithm updates that may benefit consumers?

Because algorithms can and often do change on a daily basis, no notice should be given or required. As mentioned before, often the effect of an algorithmic change can only be determined by trying it. How much notice should reporters be required to provide to public figures that a story is being written about them? This seems an unreasonable imposition on day-to-day business.

34. Under what circumstances might it be acceptable (or socially desirable) for each of Google and Facebook to not provide advance notice of significant algorithm changes?

It is necessary for digital platforms to test algorithmic changes in order to understand the effects of such changes. Generally speaking, it's not easy to predict how changes to an algorithm will affect its output when operating at large scales on real world data. Accordingly, digital platforms must be free to trial changes to algorithms for some time to understand the effects.

Furthermore, there are often circumstances where for the public good changes must be made urgently without any notice period. If such a change has unintended consequences because there was no time to check the impacts on all stakeholders, that should not be held against the platforms making the change. It's more important to quickly remedy any unintended consequences.

Many bad actors are constantly trying to game search results to promote their sites into higher rankings. It is fully within the rights of digital platforms to identify such attempts and delist or reduce the rankings of such sites by modifying the ranking algorithms. Such actions provide value to consumers and help digital businesses gain and retain trust. It's part of the value proposition to a consumer that search results are relevant and of high quality. Sometimes such changes, again, have unintended consequences for third party businesses. That is unfortunate, but often can't be helped, and there will often be a period of adjustment in which algorithmic changes are modified to avoid any deleterious effects. Digital platforms should not be punished in these cases for such unintended side effects when their intentions were good and their corrections are timely.

35. Would it be appropriate for a bargaining code to include:

- mechanisms requiring digital platforms to provide news media businesses with advance notice of algorithm changes that may significantly affect the ranking and display of news at least X days in advance of implementing these changes, and/or

- mechanisms requiring digital platforms to notify news media businesses of algorithm changes that may significantly affect the ranking and display of news within X days of making a decision to implement such changes, and/or
- relevant exemptions or flexibility in complying with any advance notification requirements where the digital platform considers urgent algorithm changes must be made in the interests of its users?

The organisations that would best be able to make use of such information would be the large media organisations, not the small, rural, or independent news reporting businesses. Is this bargaining code intended to help the big boys at the expense of the little guys? That seems unfair.

The goals of the code should explicitly be to foster independent journalism, Australia news, regional news, court reporting, and other reporting of public interest and value, and also to foster competition. It would be perverse if the effect of the code was that the large organisations become entrenched because they have access to better data or are more able to make use of such data.

37. In order to prioritise original news content on each of Google and Facebook, would it be appropriate for the bargaining code to include:

- mechanisms requiring news media companies to identify and advise platforms of material that is original news content, so that this could be taken into account by platforms in prioritising or communicating original content to users, and/or
- a set of broad principles governing how digital platforms prioritise original news content through their ranking and display algorithms, and/or
- mechanisms setting prescriptive requirements governing how digital platforms prioritise original news content?

One of the values of the internet, perhaps the primary value, is that it allows many voices to be heard. I worry that forcing search engines and aggregators to follow any kind of prescriptive externally-defined prioritisation rules is an intrusion into the very value that the internet provides to society.

I want to see more than just the mainstream media voices when I search for news and other information on the internet. The ability for consumers to choose their own search terms and define their own streams of data is part of the very reason why so many eyeballs are looking at digital data now rather than print media. Ignoring that, or trying to wind back the clock, by entrenching the old incumbent media companies into the ranking algorithms of the new digital companies is not only an intrusion on their business models but is also fundamentally at odds with what consumers want.

38. How could 'original news content' be defined and identified under the bargaining code, and who should be responsible for defining or identifying this content?

The news media organisations are best placed to know what of their content is original content. They should tag that content appropriately. There should be penalties if they inappropriately claim content that is either not under their copyright or not original news content or not Australian content as defined by the code, so that the temptation to tag everything is not abused.

40. Should the bargaining code contain any mechanisms requiring each of Google's and Facebook's ranking and display algorithms not to penalise the use of news media business models that incorporate paywalls and subscription fees?

Web servers can be configured by media organisations to allow Google's indexing service to index content that is behind the paywall but to disallow the general public.

Feedback is often used in ranking algorithms to know what links people are clicking. Consumers learn which sites are behind paywalls and some proportion of them will avoid clicking on those links, so feedback may, over time, naturally lower the rankings of paywalled sites. Putting a thumb on the scales by mandating that those unpopular links remain high in the rankings may essentially just dilute the useful links for some users. It's unclear whether that would help anyone.

As a consumer, knowing whether a site is behind a paywall has value, so if this idea is implemented it seems fair and valuable to consumers to highlight such sites using colour or placement. Digital platforms should not be punished for performing that service for consumers.

45. How might a bargaining code strike the appropriate balance between:

- providing news media businesses sufficient control over presentation and display of news content
- providing consumers with easy access to news content, and
- protecting the user experience on digital platforms, including providing digital platforms with the flexibility to improve this user experience?

As a consumer of news, one of the values of Google News is the consistent display of news articles from various sources, which I can follow to the source if I choose. I don't really want media businesses to have control over Google's display of information.

48. Which restrictions on advertising directly associated with news content are necessary for each of Google and Facebook to impose, and why are these restrictions necessary?

Consumers have an expectation when looking for news that they will be presented facts above opinions or paid advertisements. Going back to the statement that news is what people don't want printed and everything else is propaganda or advertising, one of the primary values of something like Google News is that there is no advertising. It's like the ABC. Many consumers value and trust that, just like the ABC's reporting is valued and trusted, and for similar reasons. Restrictions on advertising are therefore necessary to the extent that the primary purpose of something like Google News is to convey information to consumers, not to advertise media companies.

50. How might a bargaining code strike the appropriate balance between:

- supporting the ability of news media businesses to monetise news through advertising directly associated with news
- consumers being adequately informed about the nature of sponsored content, and
- preserving the user experience of consumers accessing news through digital platforms?

Sponsored content must be flagged for consumers to clearly identify. Failure to do so may be a breach of journalistic standards.

People are often motivated by a desire to find facts when they seek news. The value proposition of many digital news sites from a consumer's perspective is as an information source, not an advertising venue. The user experience must reflect that to some degree or people will go elsewhere.

Conclusion

My main concerns about the proposed code are around the broadness and consequential uncertainty in such a code, the potential for privacy violations that may be imposed on consumers, and that remuneration should be contingent on outcomes.

For these reasons, I advocate the code should clearly focus on Australian news, be measured against Australian outcomes such as journalist jobs and the production of Australian news articles, and avoid mandating any privacy-eroding data flows.