gettyimages®

GETTY IMAGES SUBMISSION IN RESPONSE TO ACCC DIGITAL PLATFORMS INQUIRY PRELIMINARY REPORT

15 February 2018

Getty Images appreciates the opportunity to respond to the ACCC's preliminary report on the Digital Platforms Inquiry ('Preliminary Report').

1. **Preliminary Report: Recommendations:**

Getty Images supports recommendations 1-8 outlined in the Preliminary Report, in particular:

Recommendation 5: News and digital platform regulatory oversight

Our view is that a regulatory approach would not only highlight any non-competitive behavior in relation to content rankings and referrals by the affected digital platforms but would also enable enforcement of the inclusion of hyperlinks to news and journalistic content, both text and images. Hyperlinks provide content providers the benefits of consumer access to sites, access to content providers advertising and also access to consumer data itself, including for photographs, video and music content. While news and journalistic content may often include hyperlinks, photographs, videos and music appearing on digital platforms generally do not include hyperlinks back to the original source. All digital platforms should be required to display a hyperlink back to the original source of the editorial content.

From a consumer protection angle we are concerned about digital platforms terms and conditions that purport to grant the platform rights to any content uploaded, no matter what the source. Consumers, we imagine for the most part unwittingly, accept this condition which is tucked away in the platforms' terms and conditions. Getty Images would argue that any term requiring a user to give away property rights for no monetary payment should be prohibited or, at the very least, require a separate and unambiguous opt-in (GDPR style). A regulatory approach could address this issue directly.

Recommendation 6: Review of Regulatory framework

We support the design and implementation of a platform neutral framework to ensure that all parties involved in content creation and delivery are governed by the same regulatory framework. This would place all players on a level playing field.

Recommendation 7: Take down procedures

Critically important to content providers, Getty Images supports and applauds the recommendation that the ACMA determine a Mandatory Standard regarding digital platforms' take-down procedures for copyright infringing content to enable effective and timely take-down of copyright-infringing content. Pursuing takedowns of copyright infringing content on digital platforms is costly and time consuming. Different platforms have different policies, each offering varying degrees of success to content owners. The ACCC has identified the difficulties faced by content owners such as Getty Images in its Preliminary Report and Getty Images advocates for increasing the clarity of how authorisation liability operates under the Copyright Act and to increase its utility to rights holders.

2. Preliminary Report: Areas for Further Analysis and Assessment

a) Review of International Actions

The ACCC raises a number of areas for further analysis and assessment which interestingly are being considered concurrently by a number of other institutions and governments around the globe.   The global nature of online digital platforms and their impact on the distribution of political and issue based advertising and authentic and accurate information are raising universal concerns.

The European Union (EU) has been one of the first to tackle disinformation and is now addressing similar issues to those raised by the ACCC.

In the private sector the EU Code of Practice[1] was agreed by a number of online platforms and the advertising industry in September 2018. The aim of the Code of Practice is to create a more transparent, trustworthy and accountable online ecosystem and protect users from disinformation. For the purposes of the Code of Practice:

"Disinformation" is defined as verifiably false or misleading information which, cumulatively,

   a) is created, presented and disseminated for economic gain or to intentionally deceive the public; and

   b) may cause public harm, intended as threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens' health, the environment or security."[2]

This reflects many of the concerns the ACCC has raised for further analysis.

The initial signatories to the EU Code of Practice on Disinformation include the main online platforms (Facebook, Google, YouTube and Twitter), software providers, advertisers, as well as a number of trade associations representing online platforms and the advertising industry.

The Code aims to implement safeguards against disinformation, ensure transparency around political and issue-based advertising, implement policies against misrepresentation, prioritise authentic, accurate and authoritative information in search feeds and improve the findability of trustworthy content. It lists a number of commitments on the part of signatories including scrutiny of ad placements, political advertising and issue-based advertising, integrity of services and empowering consumers and the research community. Importantly it includes measures to monitor its own effectiveness after a 12-month period, which we would argue is a vital component.

Tackling disinformation in the online world has also been made a priority by the European Commission in its "Action Plan against Disinformation" released in Brussels on 5 December 2018[3]. The Action Plan aims to build up capabilities and strengthen cooperation between Member States and EU institutions to proactively address Disinformation. Fundamentally, it recognizes that any response to combat Disinformation requires not only close cooperation of civil society and member states but also the private sector, especially online platforms.

Getty Images recommends the ACCC review and evaluate both the EU Code of Conduct and the EU Action Plan against Disinformation and adopt as appropriate a plan of action aligned and coordinated with the EU approach, involving both government and private sector participants.

---

[1] https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation

[2] European Commission Communication "Tackling online disinformation: a European approach" (http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51804.)
[3] https://eeas.europa.eu/headquarters/headquarters-homepage/54866/action-plan-against-disinformation_en

The role of competition policy was recently addressed at a conference held in Brussels, hosted by Commissioner Vestager and titled "Shaping Competition Policy in the Era of Digitisation"[4]. It addresses a number of topics the ACCC is currently reviewing, including data ownership, regulation, privacy, innovation, market power and the role of competition policy and gave an indication of some of the main issues the EU will be seeking to address over coming years. The urgency of the situation and the need to take a holistic view, involving both private and public solutions, to obtain the optimum solution for consumers was a common thread throughout and one that Getty Images would endorse.

b) Supporting choice and quality of news and journalism

Getty Images is passionate about maintaining journalistic integrity and the role of photo journalism in revealing true stories. Getty Images photographers have won more than 1,000 major industry awards including World Press Photo, Picture of the Year International, Sony World Photography Awards, White House Photographer of the Year, Visa d'Or, Ville de Perpignan Remi Ochlik, UK Picture Guild Awards Press Photographer of the Year, Sports Photographer of the Year and Creative Review Photography Annual.

Getty Images is committed to international press freedom and the belief that images can be a powerful force for change. For example, Getty Images photographer John Moore's image of a 2-year-old daughter looking up and crying at her mother at the US-Mexico border went viral globally. The Honduran mother and child were being taken into custody by federal agents when they were photographed.

The image triggered a debate among critics across the political spectrum who have gone onto attack President Trump's now-reversed policy of separating children from parents who are then being illegally detained for entering the US.

Another example are the images of Getty Images photographer Brent Stirton, who highlighted the fate of gorillas in East Congo as conservation rangers clashed with the local illegal charcoal industry.

---

[4] https://webcast.ec.europa.eu/shaping-competition-policy-in-the-era-of-digitisation#

Brent Stirton's images made waves around the world and caused worldwide condemnation of the illegal charcoal trade in Virunga national Park, East Congo[5]. Since taken in 2007 the gorilla population within the park has had increased protection.

This commitment to delivering quality photo journalism is undermined when content is distributed without the content owners permission, when content is manipulated/altered/changed without the copyright holders' consent or when content is republished on digital platforms without attribution or acknowledgement. For example, modified images have no legitimate editorial integrity and may have been manipulated for an individual's own purposes, yet the consumer has no knowledge of this lack of integrity.

Getty Images strongly supports funding of quality journalism and the continued support of the government in this regard. For its own part Getty Images founded the Getty Images Grants program in 2004, and since then has supported the photojournalism and photography communities, including emerging photographers, with over $1.4 million in financial grants. However, this only addresses a small segment of the news journalism market. While private entities have a role to play here, it requires the ongoing support and encouragement of the public sector to have any meaningful impact in any one location.

---

[5] https://www.theguardian.com/environment/2008/nov/29/endangered-silverback-gorilla-congo ;
https://www.thedodo.com/heartbreaking-gorilla-picture-1424690984.html