The Guardian

# **GNM Australia Pty Ltd** response to the preliminary report of the ACCC Digital Platforms inquiry

February 2019

# About GNM Australia Pty Ltd

Launched in May 2013, Guardian News & Media Australia Pty Ltd (GNMA) is a free premium digital news site in Australia, with a total reach of 4.5m people *(Nielsen DRM, January 2019)*. GNMA employs 40 journalists with a total number of 74 FTEs through our operations in Sydney, Melbourne, Canberra and Brisbane. We are a trusted source of quality news with a particular focus on politics, the environment and social welfare. We are also part of the Guardian's 24-hour global news operation, helping to cover breaking international stories in all parts of the world. GNM Australia operates as an Australian Pty Ltd company with revenue invested back into Australian journalism.

GNMA is owned by Guardian News and Media Holdings (GNMH) which is owned by Guardian Media Group (GMG) which is the publisher of theguardian.com, a leading global English-language newspaper website. The Scott Trust is the sole shareholder in GMG.

# Summary of responses to ACCC recommendations

- GNMA supports ACCC recommendations 1 and 2 on updating merger law to preserve and enhance potential competition to the major digital platforms.
- GNMA agrees with ACCC recommendation 4, in relation to advertising and related business oversight, and the establishment of an external regulator. GNMA advocates the implementation of a transparent system of programmatic receipting ("TSPR") that would shine a light on the opacity by design at the heart of the digital advertising market. The ACCC should investigate a statutory model of advertising regulation, based on the model of regulating transactions within financial markets.
- GNMA welcomes ACCC recommendation 5 to create a regulatory authority to monitor, investigate and report on the ranking of news and journalistic content by digital platforms and the provision of referral services to news media businesses.
- GNMA agrees with ACCC recommendation 6, that an independent regulatory review of media entities operating in Australia could help to level the playing field between dominant platforms and other digital businesses operating in the market. GNMA agrees with the ACCC focus on updating the data protection framework in Australia to bring the digital rights of citizens up to a similar level to those enjoyed in Europe.
    - It is vital that new data protection laws are structured in a way to ensure that they do not embed the power of dominant platforms over publishers, advertisers and citizens.
- GNMA urges the ACCC to look at the level of payment fees charged by to incumbent digital companies, and to look at the related conflicts of interest around payment mechanisms.

- GNMA concurs with the ACCC's consideration of whether platforms should be "required to take steps to increase the ability of consumers to make informed choices about news and journalism accessed via digital platforms".

## Incentives for investment in civic journalism

- GNMA welcomes the ACCC's focus on "*mechanisms to maintain the incentives on print/online news media businesses to invest in news and journalism, particularly those types of news and journalism which may be at risk of being under-produced".*
- GNMA believes that there are more effective ways to support journalism than through the *Regional and Small Publishers' Jobs and Innovation Package*.
- GNMA welcomes the proposal to focus on tax offsets as the method for enabling independent media businesses to retain revenues for reinvestment in more civic journalism, written by and for Australians.

GNMA believes that the primary focus for the ACCC review should be on supporting a plurality of independent, commercial, high-quality news publishers that hold views across the political spectrum. Mechanism to increase investment in civic journalism should prioritise the creation of an efficient system of taxation and tax reliefs and the allowance of philanthropic funding to fund elements of that civic journalism.

- The zero-rating of the Goods and Services Tax (GST)
- The creation of a philanthropic fund for civic journalism
- The development of a civic journalism tax relief

# Introduction

GNMA is independent from a proprietor or state funding, which enables editors and journalists to produce award-winning journalism free from commercial and political influence. GNMA is ultimately owned by The Scott Trust, a limited company with the one core purpose - to secure the financial and editorial independence of the Guardian in perpetuity, while its subsidiary aims are to champion its principles and to promote freedom of the press. GNMA is a separate financial entity within GMG and spends money that we raise in the Australian market to invest into civic journalism, innovative products and services for Australian citizens.

Launched in May 2013, GNMA has grown its staffing to now employ 74 people – 40 in editorial and 34 split between commercial and operations, 91% of whom are Australian. We tell important Australian stories, covering news, politics, the environment, culture, sport and opinion. We shine a light on human rights issues and provide a platform for diverse, minority voices. We create civic journalism about Australia, read predominantly by Australians (90.9%). Our roster of editorial talent includes some of the most respected voices in Australian media, including our editor-in-chief Lenore Taylor, Katharine Murphy, David Marr, First Dog on the Moon, and Lorena Allam as our first Indigenous affairs editor. In just over five years, GNMA has grown to become the seventh most popular news website in the country. With 4.5m million unique visitors every month[1], Guardian Australia has more online readers than Nine's masthead The Age, Seven West Media's The West Australian and News Corp Australia's mastheads The Australian and The Daily Telegraph.

GNMA's open philosophy means that we have no paywall and are free and accessible to all. Over the past three years we have diversified our revenue streams, continuing to provide every Australian with access to our journalism, while asking them to contribute financially with whatever they can to enable our journalists to keep writing stories about Australian issues that matter to them. Since the launch of our membership program in 2016, more than 90,000 Australian readers have made some form of financial contribution to GNMA, funds which go directly towards producing quality, independent journalism.

Reader revenue now accounts for 41% of the GNMA's revenue, with advertising revenue, including sponsored content produced by Guardian Labs, accounting for the remaining 59%. Over the last three years, GNMA has invested in a range of civic journalism featuring diverse voices from across Australia, including:

- Excellent political coverage including the hugely popular political liveblog.
- The Nauru files which revealed the scale and abuse of children in offshore detention, sparking international coverage and a Senate inquiry to investigate conditions on the island.
- Our Indigenous affairs editor, Lorena Allam, published a series on the HTLV-1 virus which led to the federal government allocating $8M for research into HTLV-1.
- Our work on Centrelink's robo-debt system gave a voice to the disempowered, sparked a number of official inquiries, and forced the government to change approach.
- The investigation by our Melbourne bureau chief, Melissa Davey, in Emil Gayed investigation sparked a NSW department of health investigation involving at least four hospitals where he worked, leading to sweeping legislative reforms and changes to the way the Medical Council of NSW handles complaints.
- Our groundbreaking series Deaths Inside recorded the Indigenous deaths in custody since 2008, winning a Walkley award, among a raft of other nominations.
- Our Wide Brown Land series highlighted Australia's steadily shrinking environmental protections, including a fantastic interactive to show the extent of Australian land-clearing[2], a crisis by international standards and this excellent interactive as part of a major series on the Murray-Darling Basin plan. The series was also recognised by the Banksia awards.

---

[1] Nielsen Digital Content Ratings, January 2019

[2] https://www.theguardian.com/environment/datablog/ng-interactive/2018/mar/06/land-clearing-in-australia-see-how-cleared-areas-compare-with-your-home-town

GNMA agrees with the ACCC that news plays a key role in a democratic society by holding power to account. Academic studies[3] across the world have demonstrated how the decline and closure of local news organisations impacts negatively on the financial efficiency of municipal authorities, leads to a reduction in civic engagement, reduces the accountability of elected politicians, and leads to lower voter turnouts at elections.

GNMA is clear that the internet, and changing modes of consumption, can be a major force for growth in the ecology of high-quality media in society, in the case of GNMA, being harnessed as a positive force for civic journalism in Australia. The ability to quickly and efficiently distribute GNMA journalism directly to our readers has been fundamental in enabling GNMA to enter the Australian media market, in order to offer a fresh and original voice for Australian readers. The growth of original voices in the Australian news market is a positive development, creating a plurality of original journalism across a range of political outlooks. However, it is important to distinguish between the value and immediacy of internet technology, and the focus of the ACCC's preliminary report - the distortion of the digital economy by just a few major search and social platforms.

Despite the differences in political outlook, business model and ownership structure among news organisations in Australia, we share in common: a commitment to professional ethics; are bound by rules embedded in an editorial code; have transparent complaints processes, either through the Australian Press Council, or in the case of Guardian Australia employ an independent readers' editor – or ombudsman – who answers questions and criticism from our readers; we are liable under the law for the journalism that we publish; and we are accountable for where the advertising we take sits within our products and services. This contrasts with the platforms, which, as the inquiry rightly identifies, operate according to a different set of standards.

GNMA believes that the ACCC is right to focus on a new settlement for the Australian digital economy that promotes transparency, fair access, privacy, competition and innovation. Its preliminary report on this issue is world-leading, and offers a potential blueprint for much-needed platform regulation in territories around the world.

[3] https://journalistsresource.org/studies/society/news-media/local-newspapers-civic-engagement/

# Responding to specific ACCC recommendations

## An updated merger regime for the digital age

## GNMA agrees with ACCC recommendations 1 and 2 in relation to the need to update merger law to reflect the need to preserve and enhance potential competition to the major digital platforms.

Over the longer term, Facebook, Apple and Google's position as the gatekeepers to closed ecosystems empowers them with both the understanding of user behaviour online, and the financial wealth required to identify emerging companies that represent the greatest threat - or potential addition - to their businesses.

Documents published by the DDCMS select committee of the UK Parliament, showed how "*Facebook used Onavo to conduct global surveys of the usage of mobile apps by customers, and apparently without their knowledge. They used this data to assess not just how many people had downloaded apps, but how often they used them. This knowledge helped them to decide which companies to acquire, and which to treat as a threat.*"[4] Reporting by Techcrunch, in January 2019, found that Facebook has been *"secretly paying people to install a 'Facebook Research' VPN that lets the company suck in all of a user's phone and web activity"*[5] in contravention of Apple's platform policies.

Further research by Techcrunch discovered that Google has a similar program in place, the Google Screenwise Meter app, which also operates in contravention of Apple's enterprise certificate policy.[6] As a result of Techcrunch's reporting, both the Facebook and Google surveillance applications were banned from being installed on Apple phones. Both applications demonstrate the degree to which Facebook and Google seek to access and accrue data in order to determine which businesses - or features of a third-party business - they should seek to acquire or mimic through their own products in future. Both also demonstrate that the ACCC is right to recommend changes to merger law to prevent dominant platforms from acquiring businesses that pose a potential competitive threat to their dominant market position. In doing so, it is important to recognise both the value of data that would be transferred as a result of any transaction, as well as the key emerging technologies owned by an acquisition target.

---

[4] https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Note-by-Chair-and-selected-documents-ordered-from-Six4Three.pdf

[5] https://techcrunch.com/2019/01/29/facebook-project-atlas/

[6] https://techcrunch.com/2019/01/30/googles-also-peddling-a-data-collector-through-apples-back-door/

## Understanding the value of big data in merger situations

The collection, aggregation and exploitation of personal data has quickly become the dominant business model of the largest players in the digital economy. While competition law orthodoxy has tended to focus on the exchange of monetary value, there is a growing body of thought that believes that commodities such as data and consumer attention are special cases and do not obey the same rules as other products. Large data sets can be very difficult to gather and replicate, which creates a barrier to entry for everyone apart from the one company which gains dominance first. In addition, the value of data is directly linked to an organisation's ability to process it and to use the insights from that data. A piece of data on its own can be worthless if it is not understood within the context other pieces of data, and therefore cannot be understood and analysed to guide commercial decisions.

Once a monopoly is achieved, big technology companies are able to use the lock-in they have with consumers to exploit personal data in ways that consumers might not otherwise agree to. The convergence of data protection and competition law is encapsulated in the German competition authority's final ruling against Facebook[7], which found, earlier this month, that *"The extent to which Facebook collects, merges and uses data in user accounts constitutes an abuse of a dominant position."*[8]

GNMA agrees with the ACCC that *"Google's purchase of DoubleClick also helped to entrench its market power in search and search advertising"*, and that as well as enabling Google to acquire data and functionality, it was also able to eliminate a rival supplier from the market.

In a 2014 paper, the European data protection supervisor, Giovanni Buttarelli, said that[9] *"With such a purely economic approach to the [DoubleClick] case, the commission did not consider how the merger could have affected the users whose data would be further processed by merging the two companies' data sets, conceivably to provide services, perhaps bundled or even tied to the simple search service, that were not envisaged when the data were originally submitted. The decision did not refer to consumer welfare nor to the users of Google's search engines, even though this potentially implicated every internet user in the EU. It therefore neglected the longer-term impact on the welfare of millions of users in the event that the combined undertakings information generated by search (Google) and browsing (DoubleClick) were later processed for incompatible purposes."*

---

[7] https://www.law.kuleuven.be/citip/blog/when-competition-law-and-data-protection-law-embrace-the-german-competition-authority-investigates-facebook/

[8] https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html?nn=3591568

[9] https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2014/14-03-26_competitition_law_big_data_EN.pdf

Citing the OFT's previous judgment in relation to Facebook's purchase of Instagram, Ben Thompson noted that *"As Mark Zuckerberg frequently explains, there is a formula for monetisation: first grow users, then increase engagement, next attract businesses, and finally sell ads. Just because Instagram, at the time of this acquisition, was still in Stage 1, did not preclude the possibility of Stage 4; the problem is that the Office of Fair Trading simply had no idea how this world worked. The issue is straightforward: networks are the monopoly makers of the internet era. To build one is extremely difficult, but, once built, nearly impregnable. The only possible antidote is another network that draws away the one scarce resource: attention. To that end, when it comes to the internet, the single most effective tool in antitrust regulation is keeping social networks in separate competitive companies. That the FTC and Office of Fair Trading failed to do so in the case of Instagram and WhatsApp is to the detriment of everyone."*[10]

## Acquisition of key emerging technologies

Concern about mergers is particularly relevant in the context of key emerging technologies that are likely to define the next phase of growth and power in the digital economy. As the ACCC report highlights, the role that artificial intelligence (AI) is beginning to have on the creation and distribution of news and other forms of media. Reviewing a new book by one of China's top venture capitalists and AI scientists, Kai-Fu Lee, FT columnist Rana Faroohar notes that the age of open, largely university-funded research into AI is giving way to the objectives of commercial firms like Google, Facebook, Amazon, Microsoft, Baidu, Alibaba and Tencent, who are seeking to commercialise AI, in the process *"becoming more monopolistic, becoming big and relatively closed-off systems in an effort to control "talent and resources on breakthroughs that will remain mostly in-house"*[11].

In Europe, the European commission has moved to recognise the importance of key data and technology assets to the future economic wellbeing and national security of the continent of Europe. Through its proposals to screen foreign direct investment (FDI) in the EU[12], the commission will provide member states with new powers to intervene in a transaction if *"a foreign investment might affect media independence or the EU's strategic autonomy, the investor has a track record of investing in projects that might threaten security or public order, or the investment could lead to the creation of a monopoly".*[13]

---

[10] https://stratechery.com/2017/why-facebook-shouldnt-be-allowed-to-buy-tbh/

[11] https://www.ft.com/content/fda4d382-ba67-11e8-94b2-17176fbf93f5

[12] http://www.europarl.europa.eu/news/en/press-room/20180528IPR04446/foreign-investment-to-be-screened-to-protect-eu-countries-strategic-interests

[13] http://www.europarl.europa.eu/news/en/press-room/20180528IPR04446/foreign-investment-to-be-screened-to-protect-eu-countries-strategic-interests

Similarly, the UK government has consulted on its own framework on FDI, through its consultation on national security and investment[14]. The consultation paper recognises that “*technological advances continue to fundamentally change the way we live our lives. For example, continued advances in computing power and connectivity in and out of the home are changing the way people interact with their family, friends, businesses and the government. These advances present huge opportunities to positively transform our lives. But they also present complex challenges, including to national security.”*[15]

Therefore, while some antitrust academics believe that there is no evidence to use antitrust powers against the dominant platforms[16], an increasing number of academics recognise the need to take a fresh look at how competition levers are used to deliver positive outcomes for citizens in the digital economy.[17] When considering the “likely competitive effects” of a proposed acquisition, the ACCC should consider adopting a mergers framework on the grounds of both national security and the potential importance of those businesses to the future economic wellbeing of the country.

GNMA agrees with the ACCC in its recommendation to change merger law to take into account “*(a) the likelihood that an acquisition would result in the removal of a potential competitor, and (b) the amount and nature of data which the acquirer would likely have access to as a result of the acquisition.”*

## Addressing opacity by design in the digital advertising market

# GNMA agrees with ACCC recommendation 4 on the need for the establishment of an external regulator to examine the practices of digital platforms.

Programmatic advertising technology enables marketers to target advertising at individuals wherever they go across the web, as opposed to targeting advertising at a specific website that is chosen because of the regular audience of that website. The process of targeting advertising at individuals - often through the use of a lunarscape of intermediaries sitting between advertisers, publishers and citizens - is cloaked in complexity, uncertainty and a lack of transparency. GNMA terms this phenomenon opacity by design.

---

[14] https://beisgovuk.citizenspace.com/ccp/nsi/supporting_documents/20180723%20%20National%20security%20and%20investment%20%20final%20version%20for%20printing%201.pdf

[15] Ibid

[16] https://www.marketwatch.com/story/using-antitrust-laws-to-break-up-amazon-facebook-and-google-is-just-political-fantasy-2018-04-03

[17] https://www.theguardian.com/commentisfree/2017/nov/02/facebook-google-monopoly-companies

Opacity by design sits at the heart of the digital advertising market. It enables vast amounts of ad fraud. An estimated $19bn of digital advertising spending - 9% of total spending - was lost from the market in 2018[18]. Despite initial promises by ad tech companies that programmatic advertising would reduce transaction costs for advertisers and publishers, data suggests that these costs have risen sharply. ZenithOptimedia has suggested that over the past six years, the digital advertising market grew by 177% with ad tech revenues growing by a massive 930% over the same period[19]. Opacity by design enables and exacerbates both of these market phenomena.

The leakage of revenues from the advertising supply chain represents lost revenue to the creative economy, which might otherwise fund the creation of high-quality media or civic journalism. It results in a loss to the real economy too, as spending that might otherwise be allocated to price cuts for consumers is leaked out of the system without the knowledge of the marketer.

In enabling advertising to follow an audience across the internet, programmatic advertising can also facilitate adverts appearing next to fake news, misinformation, viral and low-grade content on search and social platforms that would have been deemed unacceptable to the advertiser in a pre-internet era. The ad tech company AppNexus has drawn a direct line between ad fraud that is enabled by opacity by design and a black economy that supports and encourages the proliferation of fake news[20]. Opacity by design means that advertisers often have no idea where advertising impressions have appeared online.

Opacity by design denies advertisers and publishers the ability to hold intermediaries to account for their performance against contracts because they cannot track relevant ad tech activity. It prevents those parties verifying how effective their ad spending is, and exactly how their ads are being treated. This has created a dynamic whereby platforms are largely unaccountable to the advertisers that fund them. At present, advertisers simply do not know the sort of content that their ad dollars are funding.

Advertisers and publishers are currently operating with a limited understanding of how money is moved around the system, which intermediaries are taking a cut of that transaction, and why. The lack of market information undermines the ability for brands to plan the most effective ways to spend their marketing budgets, or to select the most efficient partners with whom to place marketing spend.

GNMA believes that by eliminating opacity by design we could begin to restore the link between advertising and the content and activity it funds, creating accountability and generating an impetus for platforms and websites to take greater social responsibility for how they derive revenues from digital advertising.

---

[18] https://www.businesswire.com/news/home/20170926005177/en/Juniper-Research-Ad-Fraud-Cost-Advertisers-19

[19] https://adexchanger.com/agencies/zenith-more-money-goes-to-ad-tech-than-to-actual-media/

[20] https://www.appnexus.com/en/company/whitepapers/inventory-quality-whitepaper

From a publisher perspective, eliminating opacity by design would enable greater certainty about the efficiency of the technology partners that are contracted to serve advertising through the products and services provided by the publisher. In the context of the ongoing debate about the sustainability of high-quality journalism, greater transparency for advertisers could lead to an increase in the amount of advertising spend that is directed towards publishers of high-quality environments and creative content.

## Industry attempts to eliminate opacity by design

GNMA and parent company GMG have engaged in a range of proactive work to reduce the prevalence of fraud through its own digital advertising value chain. This work includes identifying specific instances of anomalous charging[21] and working with industry partners such as Google on welcome initiatives such as ads.txt, to understand how the development of new standards can help to tackle the symptoms of opacity by design.[22] But as the Wall Street Journal noted earlier this month, even these well-meaning initiatives are vulnerable to fraud, writing that *"DoubleVerify Inc., a company that offers software for advertisers and ad vendors to authenticate ad inventory, identified a scheme it says was designed to take advantage of the growing adoption of Ads.txt. DoubleVerify estimated the scam could have taken between $70 million and $80 million of advertisers' spending a year had it gone unchecked."*[23] In follow-up articles about the development, Hamish Nicklin, chief revenue officer at GNM, said that *"Ads.txt was a welcome initiative to tackle ad fraud, but in reality, it is a sticking plaster to treat the symptoms of a market that is distorted by opacity by design... Without a fundamentally more transparent system, ad fraud and bad practice will continue to thrive. This could be solved if buyers and sellers reconciled transactions through a transparent system of programmatic receipting."*[24]

As the ACCC notes in its report, in October 2016, GNM published the results of a series of tests to purchase its own advertising inventory to understand how money flows through the digital advertising supply chain. Through those tests, GNM discovered that in relation to some intermediaries, just 30% spent by an advertiser was received by the publisher[25]. However, these tests were conducted in relation to a single intermediary, allowing a partial understanding of the efficiency of vendors in the digital advertising market, when a much broader view of the market is required to deliver the fundamental changes that are required.

---

[21] https://digiday.com/media/cheat-sheet-guardian-rubicon-project-lawsuit/

[22] https://www.theguardian.com/guardian-us-press-office/2018/jul/23/guardian-us-teams-up-with-google-and-mightyhive-to-uncover-programmatic-ad-on-the-open-exchange-and-test-adstxt

[23] https://www.wsj.com/articles/scammers-target-ad-industrys-initiative-to-thwart-fraud-11549537200

[24] https://digiday.com/media/sticking-plaster-ads-txt-not-stamping-fraud/

[25] https://digiday.com/media/cheat-sheet-guardian-rubicon-project-lawsuit/

While businesses within the GMG group have used those experiments to develop and embed seven key principles into every vendor contract, the enforcement of these contracts is subject to the position and power of the vendor in the market. Where there is substitutability of a vendor - allowing publishers to replace a non-compliant vendor with a compliant one - then enforcing these good practice principles is possible. Where vendors have a dominant market position, and there is no realistic prospect of substitutability, enforcing compliance is hard or impossible.

Therefore GNMA believes that there is a need for the ACCC to consider a step change in accountability through the establishment of a transparent system of receipting for digital advertising transactions in order to shine a light on the activities of digital intermediaries, for the benefit of both advertiser and seller.

## A transparent system of programmatic receipting ("TSPR")

The implementation of a transparent system of programmatic receipting ("TSPR") would enable buyers and sellers of advertising inventory to understand where, when and how money is directed within the programmatic ecosystem. Industry should create a system based on trust, identity and record-keeping in the form of clear and detailed receipting. A TSPR could be developed by industry and backed by advertisers; however it is likely that such a change would require support from the government. One aspect of this could be in a demand by the government's own ad-buying agencies, to adopt the system.

A TSPR would provide buyers and sellers with a complete, reconcilable record for every ad transaction, creating a record of the "truth", which is reconcilable after the event such that investors can verify their every transaction with near certainty. It would mean an end-to-end paper trail that would provide information for the buyer and seller, and underpin potential regulatory action.

While such a TSPR sounds complex, in reality it is simply a form of dual-book accounting that would require vendors to include an additional field of non-personal data in the reports provided to the buyers and sellers of digital advertising inventory. This is information that exists today, but which vendors currently withhold for their own exclusive use.

The "reporting" that currently exists for buyers and sellers today is a partial, one-sided record of the transaction with an intermediary, with transaction IDs removed to prevent participants reconciling transactions at a unit-level. As a result it is impossible to spot fraud, hidden fees or reselling through discrepancy.

This would act as the foundation for businesses to trust that they can securely interact and exchange value with each other. Individuals and businesses could engage in the economy without fear of being duped, with the aim of heralding a new age of open data and transparency.

Beyond the value of the TSPR for advertisers and publishers, a TSPR would have value for multiple additional stakeholders:

a. For the Australian government, a TSPR would provide the Australian Treasury with the ability to understand - at an aggregate level - the geolocation of digital advertising impressions. A TSPR would enable the Treasury to more accurately assess where tax is owed on digital advertising that is served within Australia.
b. For the advertising self-regulator, Ad Standards, a TSPR could provide them with the potential ability to investigate complaints more thoroughly to understand the origin of advertising, and also enable them to allocate who should fund the future settlement of advertising self-regulation.
c. The Australian Communications and Media Authority (ACMA) could use the TSPR to understand trends in digital advertising, particularly the nature of the websites and publishers that are funded through the digital advertising market.

A TSPR could provide the ACCC - or whichever body is empowered to monitor, investigate and report on whether vertically integrated platforms are engaging in discriminatory conduct by favouring their own business interests - with a crucial tool to analyse revenue flows in the market, and any anomalies in those revenue flows that require further investigation.

## A statutory model of regulation

While the ACCC preliminary report recommends steps to monitor the behaviour of vertically integrated digital platforms, it is also important to think about what action it might take in the event that anomalies and abuse are discovered.

A statutory system of regulation would enable policymakers to move beyond the use of transaction data to underpin a more accountable and transparent digital advertising market, to create a system of regulation that seeks to separate out the functions of intermediaries that sit across multiple roles in the facilitation of digital advertising transactions.

While the digital advertising industry represents a much smaller market than the financial markets in terms of economic value, there are strong parallels between the way that digital advertising is bought and sold, and transactions within financial markets. There is value, therefore, in thinking about how steps taken in Europe, to create the MiFID II regulation that governs those who distribute and trade financial instruments, could serve as a model for regulating the digital advertising industry.

A system of regulation based on the MiFiD II regulation would provide:

a. Investor protection: MiFID II will introduce stringent requirements in terms of communication, disclosure and transparency in favour of investors. The equivalent here is for communication, disclosure and transparency in favour of advertisers.
b. Conduct of business: MiFID II will see additional and reinforced powers of supervision, coordinated with the European Securities and Markets Authority, with wider general powers to oversee governance processes. The equivalent here would be an obligation for a regulatory body to have

oversight of the most structurally significant ad tech/ad vendors, overseeing the governance processes in relation to advertising transactions.

c. Organisational requirements: MiFID II will further emphasise the importance of market participants' compliance, audit and risk management functions, particularly as they relate to the production and marketing of new financial instruments, reporting and conflicts of interest. The equivalent might be for structurally significant ad tech/ad vendors to document compliance, audit and risk management functions.

# GNMA welcomes recommendation 5 in the ACCC preliminary report, calling for the creation of a regulatory authority to monitor, investigate and report on the ranking of news and journalistic content by digital platforms and the provision of referral services to news media businesses.

The algorithms that curate these environments, across media formats, are increasingly central to the media consumption of Australian citizens. As the internet activist Wael Ghonim has written, *"The time has come to end the opacity and secrecy surrounding social media. If social media platforms are truly committed to being the productive, responsible and ethical force in society they have the potential to be, there are crucial steps they must take. Before anything else, we need far more transparency of the outputs produced by these algorithms so we can create an effective accountability mechanism."*[26]

Through the decisions made by human programmers, platform algorithms determine the prominence - and therefore distribution - of different types of content. The changes can be unpredictable and difficult to manage. For example, over time, Facebook has repeatedly iterated the news feed algorithm around this central objective of engagement with more than 37 separate announced changes to the news feed algorithm listed since August 2013[27]. The objective of these changes to the news feed in terms of fundamental user experience are usually small, but each change impacts on some element of the ecosystem and can, in aggregate, significantly alter how information is consumed via the platform.

A change to the algorithm in June 2016[28] saw the news feed algorithm changed to favour content that was shared by friends and family, over and above content and journalism shared by pages that the user had liked, which included the pages of established news

[26] https://www.washingtonpost.com/news/democracy-post/wp/2017/10/31/its-time-to-end-the-secrecy-and-opacity-of-social-media/?utm_term=.497f1eb1f81f

[27] https://newsroom.fb.com/news/category/news-feed-fyi/

[28] http://newsroom.fb.com/news/2016/06/news-feed-fyi-helping-make-sure-you-dont-miss-stories-from-friends/

organisations such as the Guardian. These changes were made without warning to publishers, and many believe that the changes led to sensationalist content prospering over high-quality journalism[29]. Facebook has not released data establishing the impact of this change to the News Feed algorithm, however, research conducted by Craig Silverman suggested a dramatic shift in the nature of content being shared on Facebook from June 2016 onwards[30].

In January 2018, Facebook announced plans to prioritise trusted news sources through its news feed algorithm.[31] In a blog post, Facebook CEO, Mark Zuckerberg suggested that *"There's too much sensationalism, misinformation and polarization in the world today. Social media enables people to spread information faster than ever before, and if we don't specifically tackle these problems, then we end up amplifying them. That's why it's important that News Feed promotes high-quality news that helps build a sense of common ground."*[32] A working study[33], highlighted by Nieman Lab[34], examined the effect of Facebook's methodology of crowdsourcing trust among its users, finding that the the methodology *"dramatically reduces the difference between mainstream media sources and hyperpartisan or fake news sites."* Data from NewsWhip for the month of August 2018, highlighted on Twitter[35] by The Guardian's editor of strategic projects, Chris Moran, showed that the top publishers on Facebook were ladbible.com, foxnews.com, cnn.com, followed by unilad.co.uk. By contrast, similar analysis from NewsWhip for the month of June 2018, found that Ladbible was 25th in the list with 7.46m engagements. Unilad was 24th with 7.57m.

In the context of video content hosted by YouTube, in recent months, articles and studies by Danah Boyd[36], Buzzfeed[37] and a report by Rebecca Lewis[38], have examined the rise of rightwing alternative influence networks on YouTube, and how YouTube's user

---

[29] https://www.nytimes.com/2016/06/30/technology/facebook-to-change-news-feed-to-focus-on-friends-and-family.html?_r=0

[30] https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook?utm_term=.onOR1EqvA#.olqxlbLga

[31] https://www.ft.com/content/2d303634-fd65-11e7-9b32-d7d59aace167

[32] https://www.facebook.com/zuck/posts/10104445245963251

[33] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3118471

[34] http://www.niemanlab.org/2018/02/crowdsourcing-trusted-news-sources-can-work-but-not-the-way-facebook-says-itll-do-it/

[35] https://twitter.com/chrismoranuk/status/1037712241762750464

[36] https://points.datasociety.net/media-manipulation-strategic-amplification-and-responsible-journalism-95f4d611f462

[37]https://newsletters.buzzfeed.com/campaigns/reports/viewCampaign.aspx?d=t&c=57F3E30BE9A0AEE6&ID=4BBFFC39418D21F2&temp=False&tx=0

[38] https://datasociety.net/output/alternative-influence/

experience is designed to feed that content to its users via its algorithm. As Ezra Klein notes in a summary of the emerging debate about the role of YouTube as a home for reactionary rightwing alternative influence networks[39], if the only outcome of recent research had been to find "*some commonalities between the sprawling network of right-leaning YouTube hosts, that would have been interesting, but it wouldn't have attracted much notice. But the core of her paper is about how this new ideology is shaping, and being shaped, by the social media platforms it operates on."*[40] What Lewis's research shows is that the effect of the YouTube algorithm is to create nodes such that what might begin "*in a relatively mainstream place can quickly get carried into deep depths of misogyny and racism".*[41]

In February 2018 The Guardian published an investigation with a former YouTube insider, Guillaume Chaslot, detailing how the algorithm built by the platform is designed to engage users on the site. *"YouTube is something that looks like reality, but it is distorted to make you spend more time online … The recommendation algorithm is not optimising for what is truthful, or balanced, or healthy for democracy."*[42] As Ezra Klein notes, "*Extremism is interesting. That's part of the YouTube right's programming strategy and it's part of YouTube's algorithmic strategy. But whether anyone intends it to or not, this mixture of social, political and algorithmic preferences for extremism means that a 17-year-old kid who begins watching videos on the YouTube right can get drawn into very dark places very fast."*[43]

In the context of audio content, in June 2018, Google announced the launch of a native podcast app, with its product manager saying that *"there's still tons of room for growth when it comes to podcast listening",* suggesting that *"creating a native first-party Android app for podcasts "could as much as double worldwide listenership of podcasts overall"*[44]. Google suggested it is attempting to do for audio content what it has done for text and visual information. In doing so, it is trying to understand how Google AI can be used to index and serve audio content in new ways across Google's suite of products and services. The industry is likely to experience rapid growth especially if Google develops the delivery of audio advertising programmatically. This could be positive for the publishers of news media podcasters in the short term. But it is also important to learn the lessons of consolidation in search, and the impact this has had on the ability of the

[39] https://www.vox.com/policy-and-politics/2018/9/24/17883330/dave-rubin-ben-shapiro-youtube-reactionary-right-peterson?curator=MediaREDEF

[40] Ibid

[41] ibid

[42] https://www.theguardian.com/technology/2018/feb/02/how-youtubes-algorithm-distorts-truth

[43] https://www.vox.com/policy-and-politics/2018/9/24/17883330/dave-rubin-ben-shapiro-youtube-reactionary-right-peterson?curator=MediaREDEF

[44] https://www.theverge.com/2018/6/19/17475878/google-podcast-app-android-download-launch-date

producers of journalism to control how that journalism is distributed, monetised and presented.

Google's ambitions to "*double worldwide listenership of podcasts overall*" could ultimately result in the consolidation the market within an app owned and designed by Google, which would in turn utilise Google AI to serve personalised recommendations to users. Just as Google News is a product that creates value for the Google brand, leadership in the distribution of news and information in an audio format is likely to provide similar value to the Google brand.

In these increasingly rich search and social contexts, it is vital that Australian citizens and policymakers are able to understand the context and reason why citizens are proactively fed specific types of content. This need for transparency is even more important as the degree of automated delivery of text, video and audio content matures, to enable publishers to understand how and why their journalism features within these aggregated environments. GNMA believes that the ACCC is right to recommend a much higher degree of regulatory oversight in this area.

### Addressing the imbalance of content regulation

## GNMA agrees with ACCC recommendation 6, that an independent regulatory review of media entities operating in Australia could help to level the playing field between dominant platforms and other digital businesses operating in the market.

The absence of primary legal liability for the content distributed and behaviour facilitated by tech platforms, is enabled by provisions in the law that protect the platforms from legal liability until notice is given, and in some cases through the provision of complete immunity means that historically they have been able to take a passive approach to self-regulation. This status in law provides a significant financial advantage for search and social platforms, enabling the publication of a vast amount of professional and user-generated content, which the platforms use to generate attention, which in turn is used to sell advertising. The ability to publish exponential volumes of content, largely without concern about the potential legal risk of doing to, enables search and social platforms to serve exponential volumes of accompanying advertising. It is, in short, fundamental to the business model of search and social platforms.

In the absence of a guiding legal framework, the platforms have been reluctant to make judgments about hosting different types of content on their platforms. Any regulation of content and behaviour on online platforms is generally conducted according to a set of ad-hoc community guidelines. This activity is often carried out by third-party contractors operating in poor conditions[45]. An investigation by ProPublica found that moderators made wrong decisions in almost half of the cases they investigated. The lack of transparency about the work of moderators working on behalf of Facebook, the conditions in which they operate, the guidance they use, the effects of their decisions and the lack of any routes of appeal were explored by Nick Hopkins, Olivia Solon, Julia Carrie Wong and others in The Guardian's reporting on the Facebook Files[46] .

Under pressure from politicians, policymakers, the press and the public, tech platforms are seeking to adapt their policies to respond to multiple concerns about conduct on their platforms[47]. On 28th January, Facebook's Sir Nick Clegg[48] outlined plans to consult with stakeholders about an oversight board for content decisions taken on the platform. Such steps are welcome, but it is important to recognise that they are pursued by Facebook on an entirely voluntary basis, with no formal regulatory oversight by a third party.

While the Cairncross Review into the future sustainability of journalism, which recently reported in the UK, did not favour the idea of changing the liability of platforms, it did suggest establishing a *"regulatory body to oversee the reliability of online information. This body would report annually to parliament on a range of issues, including trends in the most widely shared and read stories, and the effectiveness of voluntary initiatives such as trust marks and credibility signalling. Indeed, at the moment, one of the biggest problems facing policymakers is the difficulty of understanding and assessing what platforms are already doing to tackle fake news. If platforms were more transparent about the steps they are taking and their impact, the government may be better able to judge whether there is still a case for further intervention."*[49]

The establishment of a regulatory framework through which a regulator is able to make information requests of the platforms, as well as hold the platforms to account for performance against codes of practice, is a welcome step forward in the global debate about the regulation of dominant digital platforms. But in creating such a framework, it is essential that the right to freedom of expressions, as set out in the International Covenant on Civil and Political Rights, sits at its heart.[50]

[46] https://www.theguardian.com/news/2017/may/21/facebook-moderators-quick-guide-job-challenges

[47] https://newsroom.fb.com/news/2019/01/oversight-board/

[48] https://newsroom.fb.com/news/2019/01/oversight-board/

[49] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778021/021119_THE_CAIRNCROSS_REVIEW_A_sustainable_future_for_journalism.pdf

[50] http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html

## Updates to the Data Protection framework

# The ACCC is right to recommend updates to the data protection framework in Australia in order to bring the digital rights of Australia citizens up to a similar level to those enjoyed in Europe

As GNMA has outlined throughout this submission, the voracious appetite of the digital platforms for user data in order to serve digital advertising, combined with opacity by design at the heart of the digital advertising market, together with the dominance of businesses such as Facebook in monetising Australian citizens' social graph, mean that citizens should be empowered with new rights to control how their personal data is used and accessed.

The reporting by The Guardian and its sister UK paper The Observer into the way in which companies such as Cambridge Analytica have sought to use personal data in order to influence political elections, also demonstrate the power of personal data to help political parties to shape the public sphere, and alter the outcomes of democratic elections.

Many of the news publishers and media businesses operating in Australia will already have experience of the sort of privacy laws envisaged by the ACCC, through their compliance with the EU General Data Protection Regulation (GDPR), which came into force across Europe in May 2018. With that law now in force, the first rulings of breaches of the GDPR will continue to flow through the regulatory system.[51]

Concerns have been expressed by publishers in Europe about uncertainty created by the GDPR - and potentially a new European ePrivacy directive - for the future of digital advertising revenue streams for publishers. GNMA is supportive of data protection laws that empower citizens, but which do not have the effect of further empowering already dominant platforms. The ongoing implementation of GDPR will have a significant impact on the digital landscape and the advertising market - especially for those businesses that rely on data but don't have any direct relationship with customers and readers, such as the ad tech sector. Those with direct, trusted relationships should be much better placed to adapt - but publishers still face a great deal of uncertainty about how this will work in practice.

Some commentators suggest that dominant search and social platforms, which have first-party relationships with its users, may be the primary beneficiaries of the new legislation, enabling them to maintain dominant share of the advertising market.[52] As the ACCC report makes clear, Google's unique position across all facets of the demand

---

[51] https://www.theguardian.com/technology/2019/jan/21/google-fined-record-44m-by-french-data-protection-watchdog

[52] https://digiday.com/media/winners-losers-gdpr/

and supply of advertising, and across the consumer facing digital economy, mean that it has unique understanding and leverage when it comes to settling how the rules of GDPR are interpreted for the advertising economy. Before finalising a new data protection framework for Australia, the ACCC should work with regulatory authorities across the world to assess whether data protection laws are cementing the market share and power of dominant platforms over publishers, advertisers and citizens than ever before.

## High platform fees & tying

The ACCC preliminary report highlights aspects of the European Commission's ruling against Google Android, that relate to the impact of tying on consumers and businesses. Concerns about the practice of tying extend beyond Google to other incumbent digital ecosystems, particularly in relation to Apple.

As well as being reviewed in relation to the DG Competition case on the Google Android[53] ruling, these issues were also considered as part of the commission's review of the independence of card processing schemes[54]. As a result of the latter case, and the enforcement of a package of remedies, EU citizens have benefited from new *"requirements concerning the separation of certain functions, which enter into effect on 7 February 2018. This includes limits on information exchange, as well as separate profit and loss accounts, separate corporate organisation (workspaces, management and staff) and separate decision-making. As a result of this separation, retailers will be able to choose the best processor for their card transactions, while consumers benefit from reduced processing costs in their daily payments in shops, restaurants, online or via a growing range of card-based mobile payment applications."*

While Apple is seen primarily as a hardware business, at its Q3 '18 results, Apple reported service revenues of $9.548bn, a sum comparable to the combined revenues generated by the sale of iPads ($4.471 bn) and Macs ($5.330 bn)[55]. Analyst Daniel Ives suggests that '*Apple's Services business generates gross margins in the "mid-50% range"* and *"easily tops the iPhone's margins*. What's more, he believes there's a *"tailwind for margins" in Services that will only push them higher in the next few years*[56]'.

As publishers seek to diversify revenue streams for reinvestment in high-quality journalism, many have looked to readers to directly fund that journalism. GNMA has pursued a model of contributions from readers to enable us to continue investing in high-quality journalism through our websites and app. A number of other local and national news organisations are asking their readers to pay for journalism directly, and this number is likely to grow over time. Within Apple iOS, Apple has a policy of taking

---

[53] http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099

[54] http://europa.eu/rapid/press-release_IP-18-342_en.htm

[55] https://www.apple.com/newsroom/pdfs/Q3FY18DataSummary.pdf

[56] http://fortune.com/2018/05/02/apple-services-business-growth/

30% of any subscriptions or contributions made to news organisations made through news apps downloaded from the Apple store, providing no exemptions or alternate ways to for readers to pay without incurring a 30% charge. This means that if a reader downloads the Guardian app through the Apple Store, and wants to make a payment to The Guardian via the Guardian app on an Apple device, Apple would take 30% of that transaction. This is despite the fact that such transactions represent a marginal cost to Apple.

By contrast, while Google also charges a fee for contributions payments made through its app store payment mechanism, it allows its users to exit Android apps to make a payment via a web browser. This enables GNMA to provide a range of alternative payment providers, meaning that readers can contribute via a browser through Stripe (with a payment fee of 0.1%) or PayPal (with a fee of about 3.4%).

While Apple does provide an exemption for charitable organisations, very few if any news organisations qualify as a charity in key territories across the world. The payment policies of companies such as Apple should not dictate the constitution that publishers choose to pursue in order to prevent Apple taking a significant minority of revenue through what is effectively an Apple Tax.

As a result of Apple's decision to charge the 30%, GNMA has turned off payment functionality within the Guardian app on iOS. This is not without cost. Internal modelling suggests that payments through the iOS app could drive a significant uplift in reader revenue, which would deliver a significant uplift in revenues which would be reinvested in high-quality journalism about and for Australians. However, due to this 30% 'Apple Tax', and as a point of principle, we have decided not to allow that functionality with the current version of the Guardian iOS app.

Such fees demonstrate how the promise of the internet, as a neutral medium to empower businesses and consumers by reducing transaction costs to zero, has given way to a world of proprietary digital gateways, owned by some of the most profitable corporations that have ever existed, which constantly seek to lock businesses and consumers into their ecosystem, and levy high in order to generate revenue for shareholders.

As well as this practice of tying businesses and consumers to its payment mechanisms, Apple has also recently moved into the area of premium publishing through the purchase of Texture[57], a digital magazine app regarded as a "Netflix for magazines". As the Cairncross Review has noted in the UK, "*Apple's reported plans to relaunch Texture were greeted warily by media executives, concerned that the service could poach their existing subscribers, and that their participation would not provide sufficient revenue to make up for what they might lose.*"[58] On the day of publication of the Cairncross Review, news reports emerged[59] suggesting that Apple is seeking to take a 50% share of

[57] https://www.ft.com/content/0898b90c-2607-11e8-b27e-cc62a39d57a0

[58] https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism

[59] https://www.theverge.com/2019/2/12/18222281/apple-news-subscription-service-50-percent-cut-publishers-media-deal

of any revenues generated through the service, raising considerable concern among news organisations. The inclusion of news would see Apple become a direct competitor to individual and aggregated paid-for news apps that are seeking to find an audience through the Apple platform. This conflict of interest speaks to many of the themes throughout the ACCC report, not just in terms of the impact that high fees have on competition, but also in terms of the potential promotion of those apps within merchant stores and key user interfaces within the ecosystem.

GNMA urges the ACCC to look at the level of fees charged by payment mechanisms tied to incumbent digital ecosystems, as well as practices related to the prioritisation of products and services owned by those ecosystems.

## Promoting civic journalism within search and social environments

# GNMA welcomes the ACCC's consideration of whether platforms should be "required to take steps to increase the ability of consumers to make informed choices about news and journalism accessed via digital platforms".

GNMA's parent company, Guardian Media Group, has responded to the UK communications regulator, Ofcom, and to the Cairncross Review in the UK, to suggest how civic journalism could be promoted within search and social environments.

GMG has suggested that Ofcom could develop a definition of civic or high-quality journalism for use in a regulatory context. *'Within such a definition, Ofcom should not simply identify the journalism produced by news publishers that it regulates, but rather it should look to scope the principles and attributes of high-quality journalism produced by a wide range of sources. The creation of such an identifier … is too often a conversation that has been owned by the platforms themselves*[60][61]*, third-party NGOs and voluntary groups.'* Such an identifier could focus on whether the publisher in question adhered to an editorial code, whether they have a complaints process and right of reply in place, as well as the investment those publishers make in original civic journalism in Australia.

Such an identifier could then be used by the regulator to understand the volumes of civic journalism that are distributed across search and social platforms, to analyse the way in which algorithms are designed to promote or suppress such journalism, and to consider potential interventions to ensure that civic journalism is highlighted within dominant search and social platforms.

---

[60] https://thetrustproject.org/

[61] https://www.facebook.com/facebookmedia/blog/launching-new-trust-indicators-from-the-trust-project-for-news-on-facebook

The Cairncross Review, recently released in the UK, suggests a variation on this approach, recommending that *"the online platforms' efforts to improve their users' news experience should be placed under regulatory supervision. Online platforms have already developed initiatives to help users identify reliability, and the trustworthiness of sources. They must continue and expand these efforts, but do so with appropriate oversight. This task is too important to leave entirely to the judgment of commercial entities. The initial requirement would be only a reporting one, to allow a regulator to gather information on the steps online platforms are taking to improve people's awareness of the origins and quality of the news they read."*[62]

## Incentives for investment in civic journalism

# GNMA is pleased that the ACCC is considering "mechanisms to maintain the incentives on print/online news media businesses to invest in news and journalism, particularly those types of news and journalism which may be at risk of being under-produced".

The ACCC notes three potential mechanisms:

A. *Continuance or expansion of the Regional and Small Publishers' Jobs and Innovation Package in 2018–19.*
B. *Tax offsets for the costs incurred by news media organisations to produce particular types of journalism that have high public benefits and are at risk of under-production.*
C. *Making personal subscriptions for publications by media businesses that are signatories to a registered ACMA code of practice, as set out in the potential proposal described above, tax deductible to encourage production and consumption of news and journalism.*

In relation to the Regional and Small Publishers' Jobs and Innovation Package in 2018–19, GNMA editor-in-chief, Lenore Taylor, wrote recently[63] that while we supported public funding being made available to small independent publishers such as Crikey, The Monthly and The Saturday Paper, the deliberate exclusion of certain publications based on what appeared to be politically motivated grounds raise concerns about the fairness of this approach.

GNMA supports measures that reduce burdens on businesses that invest in independent high-quality journalism, enabling those businesses to focus on commercial innovation, retaining the proceeds of that investment for reinvestment in high-quality journalism.

[62] https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism

[63] https://www.theguardian.com/media/2017/sep/15/how-the-coalitions-blind-ideology-over-media-reform-stiffed-guardian-australia

GNMA welcomes the proposal to focus on tax offsets as possible methods for enabling independent media businesses to retain revenues for reinvestment in more civic journalism, written by and for Australians.

In relation to the ACCC's recommendation on tax deductions for "*personal subscriptions for publications by media businesses"*, GNMA welcomes this proposal, but notes that a range of independent media - including GNMA - are not signatories to the ACMA code of practice or the Australian Press Council (APC). We do, however, adhere to an editorial code which meets and arguably exceeds the respective standards set out in the ACMA code and by the APC. Therefore, if any system of tax offsets is established, it is essential that there is a mechanism for recognising multiple editorial codes, not just that adhered to by ACMA and APC members.

GNMA suggests three further mechanisms that might be used to increase the amount of revenue available for reinvestment in civic journalism:

## 1. Zero-rating of the Goods and Services Tax

GNMA suggests that the ACCC considers recommending a zero-rating of tax in relation to the sale of digital news products. The Cairncross Review in the UK has also examined the case for equalising the treatment of digital and paper news publications, recommending *"extending the zero-rating of VAT to digital newspapers and magazines, including digital-only news publications."*[64]

Based on current projections for the next financial year, GNMA predicts that zero-rating of the Goods and Services Tax, for digital products sold by GNMA, could enable material reinvestment back into civic journalism in Australia.

## 2. The creation of a philanthropic fund for civic journalism

GNMA has recently partnered with Melbourne University, launching the Guardian Civic Journalism Trust in February 2018. The Trust provides a vehicle for educational philanthropic funding of GNMA journalism projects that advance public discourse and citizen participation in issues such as the environment, Indigenous affairs, human rights, inequality and governance and accountability. In addition, students of Melbourne University receive training from GNMA journalists as part of Melbourne University's Centre for Advancing Journalism and through participation in the respective philanthropic projects. This allows for philanthropic funding to receive DGR status under Subdivision B of the Income Tax Assessment Act 1997.

The Guardian Civic Journalism Trust has undertaken two ongoing projects, including a partnership with the Balnaves Foundation for increased coverage of Indigenous affairs, and a partnership with the Susan McKinnon Foundation for increased coverage of government accountability.

---

[64] https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism

While this funding is a welcome method for GNMA to increase investment in public interest journalism and train the next generation of journalists, it requires a substantial amount of administration, and limits GNMA's ability to grow philanthropic revenue on its own.

GNMA advocates a small amendment to ITAA 1997 Subdivision 30B in order to allow institutional philanthropic donations for the purpose of civic journalism. Currently independent media cannot benefit from larger philanthropic donations as those donors often require a DGR endorsed entity to receive the funds.

We suggest that the ITAA 1997 be amended to include in subdivision 30-B, in a relevant place ("other recipients" or "education" on the basis that the outcome will be research which is to be published as journalism and which is for the public benefit), the following category:

> *"A public fund maintained for the purpose of providing money for civic journalism or an institution whose sole activity is the undertaking or support of civic journalism."*

A suggested definition for civic journalism is:

> *"Journalism that investigates and explains public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision-making."*

The impact of this amendment for independent media publishers would be to enable the establishment of qualifying entities, which could seek ACNC registration and ATO approval for the receipt and use of philanthropic funding for the purposes of civic journalism. Once that approval is forthcoming they could provide receipts that would allow donors to claim tax deductions and therefore promote institutional philanthropic support of civic journalism. 100% of auditable donations received would have to be utilised for the specified purpose of the creation of civic journalism. The relevant trust/fund or institution would not need legislative authorisation if it meets the requirements of the relevant category.

This approach is similar to the use of the US tax category 501(c)(3) by independent practitioners of civic journalism such as ProPublica, The Marshall Project, The Texas Tribune & InsideClimate News, all of which invest in high-quality civic journalism in the United States. The Cairncross Review in the UK has recommended *"that the government gives priority to exploring the development of a form of tax relief, ideally under the Charities Act but if necessary along the lines of the Creative Sector reliefs, to support public interest journalism."*[65]

## 3. Civic journalism tax relief

The system of tax credit reliefs has been used in other countries to help sustain

[65] https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism

investment in key creative industries, including film, television, video games, theatres, regional orchestras, exhibitions of museums and galleries. For the tax year 2015-2016, the UK film industry tax credits totalled £338.4 million, with high-end TV benefitting from £95.9 million, animation £50.9 million, and video games £45 million in the same period.

The UK Treasury currently has a group of eight corporation tax reliefs that allow qualifying companies to claim a larger deduction, or in some circumstances claim a payable tax credit when calculating their taxable profits.

In Australia the TV and film industry benefits from tax offsets through the Australian Screen Production Incentive. This provides a rebate of between 16.5% to 40% depending on the nature of the production.[66] The creation of Australian screen content and talent provides around $3 billion annually to the local economy, generating in excess of 25,000 jobs. Australian feature films, TV dramas and documentaries earn at least $252 million annually through exports[67]

GNMA believes that this approach to tax credits is something that the ACCC should consider recommending in relation to independent news publishers in Australia.

Subject to the news media company conducting journalism that meets the definition of civic journalism above, a journalism tax credit scheme could increase the amount of allowable tax-free expenditure for its spending on core areas such as investigative journalism, editorial and publishing costs and it could claim a cash rebate on a proportion of those costs. The relief could be structured in a similar way to the current R&D relief. A percentage of qualifying expenditure - 43.5% for companies with an aggregated turnover of less than $20 million, or 38.5% for companies with an aggregated turnover above $20 million - is refunded by the ATO either as a reduction in the company's tax payment or a cash repayment if no other taxes are payable by the company.

Alternatively, there could be a payable tax credit model where the independent news publishers would benefit from such an increased tax free allowable expenditure. If the company made a loss, instead of carrying this forward for up to four years to set against future taxable profits, it may be able to surrender the carried forward tax loss and convert some or all of it into a payable tax credit.

## Levies

GNMA has demonstrated that, through a combination of initial loan finance, advertising and innovative commercial models, it is possible to build an independent commercial model of civic journalism without the need to rely on state funding in order to be financially sustainable.

---

[66] https://www.arts.gov.au/what-we-do/screen/australian-screen-production-incentive

[67] https://www.screenaustralia.gov.au/sa/media-centre/news/2016/11-15-screen-currency

As we outline above in relation to the regional growth fund, the pursuit of independent journalism requires absolutely minimum dependency on the state or third-party commercial companies. The creation of a levy scheme - however independent - could lead to new dependencies on the politicians who were designing the scheme. By its very nature, the creation of a levy scheme will lead to questions about its dispersal. This could raise concerns about whether such funding would be dispersed to media outlets that more closely shared the views of the politicians designing the schemes.

GNMA believes that the primary focus for the ACCC review should be on the support of a plurality of independent, commercial high-quality news publishers that hold views across the political spectrum. Therefore, any calls for a move to a levy-based system of finance should be treated with caution.

## GNM Australia Pty Ltd
## February 2019