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Reference Inquiry into Digital Platforms

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Internet Australia appreciates the opportunity to make a submission to the ACCC's Digital Platform Inquiry, responding to the Discussion Paper released in February 2017.

One of Internet Australia's concerns raised by this Inquiry is the market power exercised by digital platforms such as Google and Facebook. As the Inquiry's Issues Paper documents (at page 17), there has been a huge shift in advertising revenue away from more traditional media, particularly from the press. This enables digital platforms to favour their own sources of advertising revenue on their platforms, limiting the choices of advertising sources presented to platform users – the public.

We would be happy to have our members and experts meet with the ACCC to further discuss our comments and observations raised in this paper.

Yours Sincerely

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About Internet Australia

Internet Australia is the not-for-profit organisation representing all users of the Internet. Our mission – “Helping Shape Our Internet Future” – is to promote Internet developments for the benefit of the whole Australian community, including business, educational, government and private Internet users. Our leaders and members are experts who hold significant roles in Internet-related organisations and enable us to provide education and high level policy and technical information to Internet user groups, governments and regulatory authorities. We are the Australian chapter of the global Internet Society, where we contribute to the development of international Internet policy, governance, regulation and technical development for the global benefit. <https://internet.org.au>

About the Internet Society

Founded by Internet pioneers, the Internet Society (ISOC) is a non-profit organization dedicated to ensuring the open development, evolution, and use of the Internet. Working through a global community of chapters and members, the Internet Society collaborates with a broad range of groups to promote the technologies that keep the Internet safe and secure, and advocate for policies that enable universal access. The Internet Society is also the organizational home of the Internet Engineering Task Force (IETF). <http://www.internetsociety.org/>



Submission by Internet Australia

ACCC Inquiry into Digital Platforms

Introduction

End-users are increasingly reliant on on-line sources of content, news and social media interactions to understand the world around us and the impact that decisions we and others are making. Online search engines and ‘sharing’ of recommendations and pointers to online content articles and sites by other end-users has made it increasingly easy to access sources of information, however the sheer volume of mentions and pointers and sources makes it increasingly difficult for a user to critically evaluate the quality of the information and the likely biases of the authors and sources.

The ease by which digital information can be copied, re-distributed and re-presented in multiple locations by apparently independent sites and publications without any independent checking, or perhaps to deliberate spread false information, can serve to reinforce opinions and amplify the credibility of dubious news of questionable factual basis by creating an illusion that the information and opinions are coming from multiple sources.

These are important aspects to be investigated by a government inquiry.

However, we point out that while the issues raised by this Inquiry are important in terms of the public’s access to a wide range of information sources (including advertising), the issues are not about the Internet per se. Concerns about the concentration of media content, access to a diversity of opinions and views, and avenues for responsible advertising have been ever present in the media landscape in this and other countries for decades and pre-date the development of online and digital media. Australia’s former media ownership regulations and restrictions were largely developed due to concerns about the effect of concentration of ownership on dissemination of diversity of opinion in the pre-digital era.

For this reason we submit that this Inquiry, and any remedies or changes arising from it, should be focussed more on the “Platforms” than the digital nature of information access.

Internet Australia submits that there should be as little difference as possible between regulation of off-line and online behaviours. There are already a range of regulatory and self-regulatory mechanisms to address the media and advertising services markets. To the extent possible, existing off-line mechanisms should be used to address particularly the competition issues raised for on-line sources, to ensure as far as possible consistency between on-line and off-line regulation.



This submission will address some of the questions requested in the Discussion Paper, but not all, as many of the questions are relating to issues of advertising and media regulation that Internet Australia does not have a policy position on.

Also, in some of the submissions below we feel it is important to distinguish between a platform that is a source of journalistic content and news articles ('news platforms'), from a 'link platform' such as search engines, social media platforms and the like that typically act to widely distribute links and pointers to such content, rather than originate news and articles in their own operation.

Q 1.1 Which digital platforms do you consider to be relevant to this Inquiry?

Internet Australia notes that practically all the former pre-digital major media platforms, including News Corporation, Fairfax Press, and the various television and radio networks, have become important platforms for on-line news and editorial articles – in many cases they have created multiple on-line sites and platforms to segment the interests of readers. They have joined the growing number of 'digitally native' online platforms both nationally and internationally.

We consider that these platforms as originating sources of journalistic content, news and advertising are relevant to this inquiry, as well as the various on-line forms of 'link platforms' to such content in the form of search engines and social media platforms.

In particular for advertising, we note that advertising networks exist that insert advertising into online sites without the online sites having any control over which advertisements are displayed. Other advertising platforms, such as 'Bing Ads', may be similar to Google in that the advertisements appear within the boundaries of a web browsing screen, but can also appear within apparently offline activity on digital devices. We highlight that device operating systems such as Microsoft Windows and Android increasing supports advertising within applications¹ and in the device menus, which may appear even while a device is not connected online², and device operating systems may be considered as platforms relevant to this Inquiry also.

Q 1.2 Should the Inquiry consider digital platforms that do not currently provide access to news and journalistic content in Australia but may either provide news and journalistic content in the future and/or have an impact in relevant markets (e.g. Amazon, instant messaging applications)?

The Internet has provided the public with easier and cheaper access to a much richer range of news and information and a much wider range of sources, than was ever possible in the pre-digital era. It is routinely just as easy now to access international journalistic sources such as the Wall Street Journal in the USA, The Times from the UK, non-English content on 'news platforms'. By considering

¹ "Monetise your app with ads", <https://developer.microsoft.com/en-us/store/monetize/ads-in-apps>

² "Windows 10 lock screen ads begin with Rise of the Tomb Raider push", <https://www.pcworld.com/article/3037396/windows/windows-10-lock-screen-ads-begin-with-rise-of-the-tomb-raider-push.html>



'linking platforms' such as social media and search engines within the scope, it is inevitable that other digital platforms as contemplated in this question will need to be considered, as in many cases the 'linking platforms' are displaying links and advertising to articles and suppliers with no presence or link to Australia. It is common when using a search engine to search for an item to purchase, that many of the links are to overseas sites with no method or intention to supply their products into Australia.

Q 1.4. Should the Inquiry focus on news and journalistic content supplied to consumers in Australia or news and journalistic content produced in Australia?

Internet Australia submits that it will be difficult to focus on either of these distinctions, as the nature of the Internet and on-line digital content makes geography meaningless and jurisdiction uncertain. Content can be supplied to consumers in Australia (or at least consumed by consumers in Australia) without the authors or publishing platforms having any connection or intention to specifically have their content accessed by an Australian user, from servers with no connection to Australian jurisdiction.

Similarly, news and journalistic content might be produced in Australia but published through an international platform. The increasing use of Content Distribution Networks (CDNs) which replicate an item of Internet content into servers across the globe to be close to the consumers of the item in order to improve performance of access when it is accessed makes the notion of where any item of content is published difficult to ascertain. In any case, many of the platforms identified in the paper are international in scope.

We submit that the Inquiry might instead consider whether its focus should be described as on news and journalistic content published by platforms under Australian ownership or Australian control in some form, concentrating on the controller of the platform rather than where the platform's content is produced or consumed.

1.6 Are there any other issues relevant to the choice and quality of news and journalistic content that should be considered by the ACCC?

We note again that Internet has provided the public with easier and cheaper access to a wider range of news and information from a much wider range of sources and geographies than ever before the advent of digital and on-line news distribution, and significantly increased choice – but this can only be effective if the user actively seeks out such choice and alternative sources, or if the various 'linking platforms' make pointers and links available to the multitude of articles and just as prominent as the current main sources. We note that many of the platforms under question are social media in nature (such as Facebook and Twitter) and the diversity of links is essentially governed by other users rather than the platform itself.



In any case, we also note again that there should be as little difference as possible between regulation of off-line and online behaviours. Where there are already a range of regulatory and self-regulatory mechanisms to address choice and quality of news and journalistic content, they should apply to all situations whether online or off-line.

3.32. Attachment B summarises the key existing regulation in Australia that applies to the media and advertising services markets. Are there any additional existing or proposed laws or regulations in Australia which should be taken into account by the ACCC in this inquiry?

We note that social media platforms operating in Australia already come under the eSafety Commissioner's purview with a report-and-take-down system allowing the Commissioner to resolve issues involving security and cyber-bullying issues. This scheme could be extended for more serious issues raised by digital platform content.

***3.33. How do existing laws and regulations apply to the conduct of digital platforms? For example:
* are digital platforms required to verify news and journalistic content before distributing it?
* do intellectual property and copyright laws apply to the conduct of digital platforms in a similar way as to other market participants?***

We note that many of the digital platforms of most concern – the social media platforms such as Facebook, Twitter, Snapchat, etc are 'linking platforms' and do not originate or control any news or journalistic content of their own. On these platforms, users post and share links to news and journalistic content originating and hosted outside the platform. While intellectual property laws and copyright laws might apply to the articles on whichever site or platform they are originally hosted on, it would be infeasible for the social media sites to verify content or police IP and copyright laws of the external articles that users post links to, in real-time.

Platforms that do originate and publish news and journalistic content – such as the traditional news media, and online portals of television and radio, and the platforms to which the links distributed via social media point to, and news/headline aggregation sites – should be subject to these requirements.

Many of the sites that do host actual media content uploaded and stored by users (e.g. Instagram as an example³) do have complaint mechanisms whereby a copyright or IP owner can highlight a post that points to copyright material and ask for it to be taken down after the fact, however the laws and processes are often the laws of the country in which the service is owned (e.g. USA's Digital Millennium Copyright Act), not the laws of Australia.

3.34. Should digital platforms be subject to the same laws and regulations as other market participants in the media and advertising services markets (e.g. news and journalistic content creators or distributors)?

³ Instagram "Reporting Copyright Infringements", <https://help.instagram.com/454951664593304>



Internet Australia's view is that there should be as little difference as possible between regulation of off-line and online behaviours. There are already a range of regulatory and self-regulatory mechanisms to address the media and advertising services markets. To the extent possible, existing mechanisms should be used to address particularly the competition issues raised – noting that many digital platforms under this review are not publishers of news or journalistic content, so the off-line laws regarding such content may not apply.

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