

Digital Platforms Inquiry – preliminary report

Response on particular matters from McPherson Media Group, Shepparton – February 15, 2019.

We are indeed at a critical time in the development of digital platforms and their impact on society. The two dominant platforms may be already so powerful as to prevent any one nation state from exercising any effective oversight, regulation or control.

Preliminary Recommendation 5

After encouraging news content providers to make increasing use of their platform over several years, Facebook's adjustments to its algorithms last year had an instant and dramatic effect on our referrals, cutting them by two-thirds. They should be prevented from using their market power to penalise content providers who seek to maintain their own relationship with consumers.

Preliminary Recommendation 6

We support the establishment of a unified, platform-neutral regulatory framework.

Preliminary Recommendation 7

The issue of copyright infringement is a difficult one. The reality is that the value of one individual infringement does not justify the time/expense of challenging it. Some method should be devised – like the CAL system – for platforms to “pay for content” in a way which ultimately rewards content providers. To avoid immense complexity, it could be linked to the tax off-sets etc referred to in the **proposed areas for further analysis**. Thus, the platforms are required to pay a proportionate amount reflecting their use of others' content to a body like CAL, which helps fund offsets or rebates for original content provision.

Proposed areas for further analysis and assessment

1. Supporting choice and quality of news and journalism

It is becoming apparent from the experience of a range of newspaper publishers around the world that “trustworthiness” is becoming more of a competitive advantage, reflected in improving digital subscriptions. However, the numbers tend to reflect a modest proportion of the population; once digital subscribers roughly equal print subscribers, publishers find subscriber churn and the cost of new subscriptions increasing dramatically. It would seem that the majority continue to be happy to trade their privacy/data for the glittering and convenient attractions of the platforms – whatever the ultimate cost.

(a) The use of a signal is an interesting suggestion, if tricky to administer. Some sort of public interest qualification might be needed to avoid, say, an extremist or single-issue group signing up to the Press Council or some other body to acquire “trustworthiness.”

(b) ...and a public interest test?

(c) Without careful thought, the informing is likely to be buried, like their terms of use. Accountability, however, is easier to achieve and arguably more important. It is difficult for those of us facing the exorbitant costs of defamation proceedings to watch how the damages we face in a particular claim are now significantly magnified by the repeating/trolling/tweeting of the offending remark/s on social media platforms – in our case, instanced last year where a small newspaper of some 3800 circulation incurred a severe damages award, way out of proportion to its impact as a newspaper, due to the impact of the platforms. They will say they are not publishers – despite their ever-increasing

curation through sophisticated algorithms. They simply cannot claim the same anonymous character of a carrier. If the law can't quite see fit to yet call them publishers, they are surely exactly the same as a contract **printer**, which remains liable in defamation **whether or not** it is the publisher. There is no obvious difference between a platform – which is profiting from the distribution of other people's content – and the printer, who is doing the same. This legal disparity is grossly unfair and must be addressed.

3. Improving the ability of news media businesses to fund the production of news and journalism.

(a) The initial round under the Small Publishers and Innovation Package has not been a happy one. Only a small portion of the proposed \$16m was allocated (after repeated delays) and most small publishers – the ones who employ most of the journalists – missed out, with the bulk going to metropolitan publishers such as Private Media (*Crikey*) and Black Inc (*The Saturday Paper*.) It is understood that both used a consultant to put their applications together. Most small publishers have little or no experience in applying for government funding of any kind – that is part of their fiercely independent status – and were astonished by the bureaucratic hurdles put in their way (to demonstrate their capacity to meet a range of compliance requirements, including a last-minute request – with a 2-3 day deadline – to demonstrate “no foreign ownership.”)

ACMA staff showed no understanding of the lack of time and resources/applications experience/pressure of work faced by the typical small publisher. In short, it was an appalling roll-out. If the objective is to school a whole country of publishers in the arcane arts of ticking boxes and protecting bureaucrats' backsides, it isn't going to

work. And it raises questions about the capacity of ACMA to administer in a sensitive and intelligent fashion.

(b) It would seem possible to treat such offsets in the same way as R&D rebates, with sufficient documentation capable of audit. It is not difficult to show the output, for example, of the number of journalists employed on local/state government rounds, courts and investigative work, in a way that verifies their roles.

(c) This is an excellent idea. It could also be partly or fully funded by the imposition of a charge on the platforms for using other peoples' content.

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