

ACCC - Mandatory news media bargaining code

Response to Concepts paper

McPherson Media Group

5th June, 2020

The McPherson Media Group (MMG) appreciates the opportunity to engage with the ACCC during both the Digital Platforms Inquiry process and discussions concerning a mandatory news media bargaining code.

Obviously the issues raised by the Commission in the Concepts Paper go to the survival of the Group, at least as a family-owned regional publisher committed, over five generations, to reporting on matters of interest and concern to its communities.

This response seeks to amplify our two major concerns about the formulation of any proposed code: the first is that the way in which public interest journalism is defined needs to embrace the unifying contribution it makes to community **effectiveness**; and the second is that any value-sharing arrangements must avoid further concentration of media ownership and dominance. The risks in that are clearly evident.

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

As a purely regional publisher, MMG believes it is essential to take a broader approach in defining news as part of the code development process. While its 13 regional mastheads all report regularly on the kinds of news contemplated by the DPI definition, the “relevant slice” of public interest journalism deriving from the courts, local government, various government agencies and authorities and the activities of our elected representatives is seldom available as a compelling daily – or even weekly – occurrence.

While the daily *Shepparton News* carries national and world news through AAP and other agencies (with deadlines considerably later than metropolitan papers delivered into the area) our research constantly reminds us that few people read it: our readers come to us almost exclusively for local news. That often includes national/world news with a local angle (e.g. local people stranded in Peru during the COVID-19 crisis) but our readers primarily expect us to provide them with the news about their community that nobody else can or will.

What is that news? The news that matters to people in regional areas is necessarily of a different and broader quality than that required in a capital city – for reasons not always understood. City dwellers are never far from world-class hospitals, good public transport, employment, educational and cultural choices and levels of expertise in a vast range of services simply unavailable to country people.

To function effectively, regional communities have to compensate by maintaining vigorous and resilient networks so that people can assist each other in times of difficulty, as well as swap and share expertise in ways not needed in the city. Most regional communities have a strong service club culture, good parental support of schools, high levels of sporting club membership as well as healthy SES and CFA membership, not to mention traditional groups like the Country Women’s Association or farming organisations.

Regional media plays an important role in nourishing this sense of belonging and individual recognition in ways that might only happen in capital cities at the micro-levels of school and organisation newsletters. From the names of children in sports teams and their results to the names and photographs of newborns, centenarians, “people you know” at working bees, social and sporting events, field demonstrations and so on, regional media feeds and stimulates the connections that make smaller communities – so short on the resources taken for granted in capital cities – work. So, news about sporting activity is particularly important, as is school news, coverage of fundraising events, people and families in trouble and a wide range of public-spirited projects and activities.

Informed/educated readers doesn’t cut it in the regions. A further significant difference between metropolitan and regional media is salient when weighing a narrow or broader definition of news – and that it this: metropolitan newspaper readership reflects that proportion of the population – around 12-14% – that marketers refer to as “informed and educated readers.” These are the people who have a strong interest in staying informed and abreast of the kind of journalism the DPI definition contemplated. The listening audience to talk-back radio is slightly higher but not much. Regional publishers simply cannot survive by relying on less than 25% of the regional population – they need to appeal to more like 80%. Thus, the type of news which is relevant and compelling to a viable regional audience is necessarily much broader than that contemplated by the DPI.

Finally, we should be careful that a definition of news under the code doesn’t sow the seeds of its own demise. While we press on with what we consider essential news and information for the public good – attempting to keep people informed of issues critical to our healthy democracy – the platforms continue to develop ever-more artful means of attracting attention – and keeping it.

Forget Orwell – Huxley got it right. Despite some evidence of hand-wringing in private and public spheres about the addictive nature of social media, new tools and techniques continue to appear; growing screen time and short attention spans among young people cause academics, teachers and parents much alarm. As the sharp but temporary ‘subscription bump’ in April 2020 reminded publishers around the world, traditional media remains a “go-to” in times of uncertainty: people know it is there, instinctively know it to be more accurate and trustworthy – but it simply isn’t as entertaining or addictive. It is difficult to see how regional publishers can continue to be commercially viable while the platforms feed off the diligent (and costly) news-gatherers only to the extent they need to – but proceed apace, designing evermore means by which, as Neil Postman observed in his 1985 book, we can “amuse ourselves to death.”

A definition such as this might be inclusive rather than definitive:

News the subject of this code will include:

- a. **Journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision making at all levels of government.**
- b. **Journalism informing citizens on the administration of justice, law enforcement and the activities of emergency services, on issues concerning the effective provision of health, education and local government services and the activities of government agencies and public officials;**
- c. **Journalism informing citizens and encouraging discussion on matters pertaining to the healthy and effective functioning of the community, whether they involve public or private people or entities, community and ethnic groups, clubs or citizens’ organisations or individuals of interest to sectors of the community.**

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

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

Issues of Interest Given our comments regarding the definition in Q.1, obviously our view is that a definition such as that in 3.a would be better included in the inclusive list suggested above: ‘issues of interest’ can range from the important to the trivial, from the instructive to the prurient – and perhaps fails to capture the element of public benefit that we think should inform a mandatory code.

Equally, a definition based on “public affairs” as some are inclined to argue does not capture, in our opinion, the essential element of public benefit. Lip service can often be paid to “community building” and the like without examination of what that actually means - but the supportive role regional media can play may be easily illustrated.

What “community building” means. In Victoria, following the closure during the Kennett government of the Housing Commission (and the building of high-rise social housing in inner-suburban areas) community services moved to a rental model where those seeking social housing might be offered various options depending on their level of urgency. As government rapidly centralised, housing became significantly cheaper in regional areas, first with the La Trobe Valley and privatisation of utilities.

This trend gathered momentum around the state: in Shepparton’s case around 5% of rental housing was government funded 25 years ago: today it is around 75%. This massive injection of social housing into the regions has been repeated up the eastern seaboard, dramatically altering the character of regional communities from Benalla to Bathurst, from Wangaratta to Warwick – mostly without the supporting infrastructure and expertise to adequately deal with it.

Communities often have difficulty recognising slow change and its implications; regional media has played a critical role in articulating these trends, capturing the local intellectual and organisational firepower to deal with them – while avoiding alarm - and harnessing the innovative spirit of regional communities to influence their own future rather than wait for some hoped-for external assistance. This role is considerably more than one of being of “public interest” or reporting on “public affairs” – it is the essence of “community building.”

Professional Standards. However, the second leg of the proposed definition is useful insofar as the implied professionalism required reflects the very real level of expertise and cost incurred by publishers subject to workplace regulations and a raft of legal obligations, including those surrounding copyright, defamation and contempt. And we are not sure why, for example, membership of the Australian Press Council and being subject to its code should be onerous for any professional; whereas publishing one’s own code or set of standards can be easily achieved through a simple “cut and paste.”

7. What are the necessary elements for a bargaining framework to effectively address the bargaining power imbalance between news media businesses and each of Google and Facebook?

MMG favours a level of prescription: most small/regional publishers do not have the resources or bargaining power to conduct effective bilateral negotiations.

8. How effective would the following bargaining frameworks be in achieving appropriate remuneration for news media businesses for the use of news content by each of Google and Facebook:

- ● **bilateral negotiation, mediation and arbitration**
- ● **collective bargaining**
- ● **collective boycott or ‘all in/none in’?**

We believe a collective bargaining framework would be appropriate for smaller publishers – perhaps defined with a revenue cap such as the \$30-50m used to determine “small publishers” under the ACMA grants program.

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

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

From our perspective as a small regional publisher, these values are very difficult to assess and not particularly relevant. The platforms have been vocal about the supposedly modest value of their news content to them in terms of the advertising revenue it delivers but there is no doubt news content, directly and indirectly, drives a huge amount of traffic.

For example, our Facebook followers are far greater in number than our combined print and digital subscribers and we experience significant spikes in visits to our Facebook sites when we publish a “breaking news” story – say a car accident involving a number of local young people. Experience has shown such users remain on the site for just 2-3 minutes and we have gained very few subscribers via Facebook in the past five years.

Facebook’s indirect benefits: an example. On the other hand, every day we see Facebook discussions about news items that have appeared in our print or digital editions and been subsequently shared. In some cases, this leads to sustained platform discussion about issues our publications have raised – discussions that continue to be

replenished by our coverage, but which occur between platform users, with the attendant opinion and anonymous comment that we are not prepared to publish.

An example might be recent controversy around a “super school” proposed by the Victorian Government for Shepparton – a merger of four existing secondary schools with uniformly poor results in a new complex with first-class facilities. Our coverage quickly spawned a Facebook group of several thousand people concerned about the proposal, including a number hotly opposing it: our continuing (and expensive) coverage of the issue remains their core material and their often colourful (and intemperate) comments generate constant activity on the site. So, while Facebook makes nothing from the news itself, it of course serves up to the users a steady stream of advertising.

14. Would it be appropriate for commercial negotiations conducted under the bargaining code to have regard to the cost of producing news content?

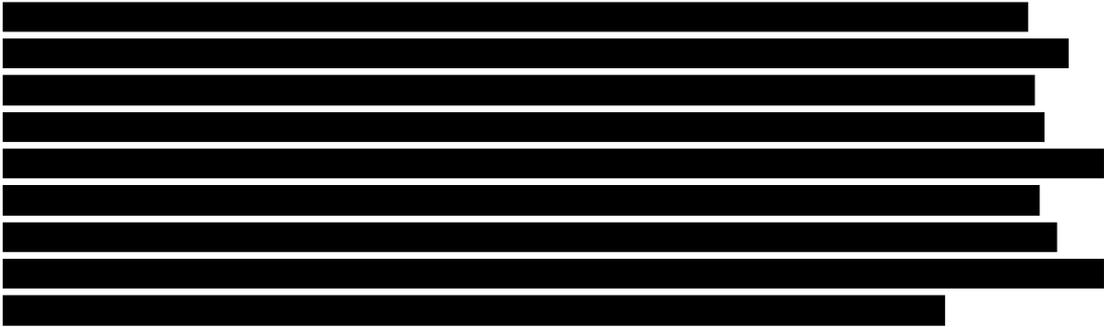
We think so. In the example just quoted – and in many like it – MMG invests heavily in investigating and reporting on the issue, with all that it entails: dealing with ministerial advisers, departmental officials and communications staff, school leaders, parents and various stakeholders. We have two journalists assigned to this issue and, while they are also engaged in other reporting activities, keeping abreast of such a controversial issue requires careful attention and scrutiny. No such costs are occasioned by Facebook, which nevertheless enjoys a revenue stream deriving from the time-on-site generated by our coverage.

15. How might any of the factors listed in Questions 13 and 14 above be quantified and/or treated in the course of negotiations between parties?

Clearly there are a range of factors that may be relevant to different publishers, depending on their audiences and distribution methods. From MMG’s point of view, the example given in Q.13 illustrates the difficulty in using “average monthly users” of our Facebook sites, and similar metrics: such metrics neither reflect the value of efforts to the platforms nor the cost to us of providing it.

The cost issue has its own dimensions and complexity too: in the case of digital-only publishers, the absence of pre-press and printing/distribution costs of the printed product radically alters cost structure. For digital start-ups, that is fair enough. But what value should we ascribe to regional publishers who persist with providing a printed product for their older readers, many of whom have neither digital skills nor access? The recent move by News Ltd to cease printing 100-odd newspapers in regional and suburban communities brings this issue into stark relief: it may make business sense, but it represents a significant loss of connection and belonging for hundreds of thousands of older citizens around the country.





Our view is that weighting should be given to a range of factors which provide degrees of public benefit.

These might include easily quantifiable direct costs such as:

- Editorial salaries;
- Pre-press, imaging and graphic design salaries;
- Printers' salaries;
- Distribution costs, including transport and postage;

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

There has been much discussion around the industry and industry bodies about the “tech stack”, the cost of technology platforms required for fast and efficient publication in print, online, on mobile and streaming without unnecessary duplication. Of particular importance is the added layer of online subscription packages and the accompanying data tracking and analysis, customer relationship management and so on. These technological developments and their evolution is a challenge for many businesses – but for publishers attempting to manage the transition to a viable digital model while still serving traditional print readers, it is a particularly difficult one.

For example, at MMG our current subscriptions to various software packages includes:

- Publishing platform
- Circulation system
- Paywall
- Content Management System licence fee (website)
- Editorial management workflow tool
- Digital asset management library for images, video etc
- Prepress job monitor – manages the artwork workflow between reps and graphic artists (size of advertisement, publication booked into, its status etc)
- Hosting
- CRM platform for the sales representatives.

This amounts to a total of \$443,400 per annum excluding our classified system and any sophisticated analytics such as Google 360 (an annual additional cost of some \$150,000).

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

A separate bargaining stream? MMG contends that the smaller/independent/NFP/regional publishers warrant a separate stream or category for bargaining under the code.

We see a danger in any code treating “one size fits all”, particularly in the Australian context where media ownership is extremely concentrated – and likely to become more so. It would be tempting – if not a given – for the dominant groups to argue that a share of remuneration from the platforms should reflect circulation/readership/audience in a direct relationship.

This would deliver the lion’s share of any such remuneration to the dominant groups and reinforce their overwhelmingly dominant position, risking further diminution of diversity. There are, in our view, cogent arguments for weighting relative shares on the basis of a number of other more nuanced but important elements.

Audience is important – but it doesn’t reflect the amount of public-interest journalism occurring – or its importance to our communities. Chief among these is the level of activity devoted to public interest journalism by the smaller players around the country – and there are means to measure this. The number of editorial staff employed is obviously one; the number of stories generated weekly or monthly is clearly another, as is the number of printed pages produced and website pages/stories loaded.

While these elements don’t attract the raw readership/audience number of the major groups, they generate their own rich ecosystems in their communities. Frequently they are “picked up” by metropolitan newspapers, radio or television; much of our story-telling is source material for ABC regional newsrooms, which have considerably less staff and rely on regional publishers; regional news sites are scoured by local politicians and state and federal departments, often generating responses that can reverberate into larger stories.

The training ground that keeps on giving. It should also be noted that the smaller/regional publishers are the training ground for journalists around the country: regional newsrooms have suffered from high staff turnover for many years – in our case usually more than 30% annually – because of relentless poaching of talented staff by larger groups. While we try very hard to attract local people, or people with

local roots who see a career in journalism where they live, the reality is that we must source the best young journalists we can from journalism schools who can “hit the ground running”. Our sad expectation is that they will remain with us less than two years on average; one of the consequences of easily accessible online news is that larger groups can easily spot emerging talent, luring them with bigger salaries.

21. What specific user data do news media businesses already receive from each of Facebook or Google in relation to users’ engagement with news media business content and what further user data would news media businesses like to receive from each of Facebook and Google?

Google Analytics provides a useful range of tools relevant to our own websites; data from Facebook mainly concerns interactions with Facebook sites by Facebook customers and is of limited interest to us – our future viability depends on maintaining a direct relationship with our readers.

There are further tools Google provides at a cost, which are of interest to us and include:

- The Google 360 platform, which would enable us to match to our data and better understand usage patterns, include setup and guidance on baseline requirements.
- BigQuery would enable us to store data and to be able to report historically to a point in time and would include setup and guidance on baseline requirements.

Obviously, we are interested in any data and reporting enabling us to target audience through our owned inventory, so that we can achieve a high CPM rate; any audience insights and ability to target audience would add value to our owned media sales.

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

Since the major platforms make data available to a wide range of commercial entities it would seem unnecessarily complex to carve out separate arrangements for a range of publishers. Our view would be that an appropriate compensation/remuneration share would allow MMG to negotiate commercial terms to secure the data we most value.

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

As per our response to Q.23, it seems an unwieldy solution compared to commercial arrangements that might be contemplated once a reasonable remuneration formula is developed.

36. What benefits, if any, did Australian news media businesses experience following Google’s adjustment to its ranking algorithm to prioritise original news in September 2019?

This is difficult to quantify – but they tried. We must all accept it is in the public interest for news about matters of important public concern to be freely available. Copyright law attempted to deal with this by valuing a form or words or particular image but technological advances have rendered it obsolete and practically useless. Thus, some measure of compensation is clearly appropriate where a platform or other media outlet profits unduly from the efforts of others.

43. What restrictions on the display and presentation of news content on digital platforms do you consider necessary, and why?

It is difficult to sustain an argument for any restriction on the presentation of news on matters of public interest – it becomes an issue of acknowledgement and appropriate compensation. Such arrangements were once common between media outlets but have largely disappeared in recent years; media outlets commonly use content from others’ sites without any attempt to negotiate or pay compensation – or even acknowledgment of the source. This tendency has certainly become pronounced, if not effectively caused by, the flagrant disregard of copyright online.

46. Should a bargaining code include:

mechanisms requiring digital platforms to enter into good faith negotiations with individual news media businesses on the display and presentation of their news content, and/or

Yes.

mechanisms requiring digital platforms to provide news media businesses with advance notice of and/or consultation on changes to policies and practices affecting the display and presentation of news, and/or

Yes.

mechanisms setting out either principles-based or prescriptive requirements for digital platforms to grant news media businesses a greater degree of control over display and presentation of content than is granted to other content creators?

No.

