



To whom this may concern:

ACCC DIGITAL PLATFORMS INQUIRY – MEAA RESPONSE TO PRELIMINARY REPORT

The Media, Entertainment and Arts Alliance (MEAA) welcome the opportunity to respond to the ACCC's (the Commission's) preliminary recommendations and proposed areas for further analysis and assessment. This is a significant report which we hope will highlight the urgent need for reforms to our laws and policies which currently ignore the overwhelming power of the major digital platforms, especially with regard to the Australian news media industry.

The Commission has rightly recognised that the diminution of our media sector has serious implications for the state of our democracy. The ongoing instability of the Australian media sector will only amplify these dangers.

MEAA has responded to each of the eleven preliminary recommendations and matters for further review in the **attached** paper.

MEAA support an overhaul of Australia's communications laws to ensure a level regulatory playing field for businesses that create and carry content. Without this, the status quo of continuing journalist (and allied staff) job losses, media company downturns and the progressive abandonment of coverage of newsworthy matters, will continue, if not escalate.

MEAA is however anxious that several of the Commission's recommendations potentially suggest an increased role for Government (and its agencies) to stipulate how media companies should be run and vet content.

In the same vein, MEAA is concerned that the Commission's principled efforts to improve the digital platforms' carriage of reliable, verified quality news by pursuing ranking and badging measures, will further empower Google and Facebook by enabling them to arbitrate between quality and questionable news media. We do not support these companies occupying such a position.

Finally, MEAA had hoped that the Commission would have more closely considered the objective needs for digital platforms' to pay for media companies' content. These arrangements are, in MEAA's opinion, key to any constructive resolution of the lopsided nature of the relationship between the digital platforms and the media companies which, in substantial part, drive users to the platforms.

Yours sincerely

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ACCC Digital Platforms Inquiry - Preliminary Recommendations

Preliminary Recommendation 1—merger law

The ACCC considers that section 50(3) of the Competition and Consumer Act 2010, which identifies the factors to be taken into account in assessing the likely competitive effects of a merger or acquisition, could be amended to make it clearer that the following are relevant factors:

- (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.*

MEAA support this preliminary recommendation.

Preliminary Recommendation 2—prior notice of acquisitions

The ACCC is also intending to ask large digital platforms (such as Facebook and Google) to provide advance notice of the acquisition of any business with activities in Australia and to provide sufficient time to enable a thorough review of the likely competitive effects of the proposed acquisition. If such a commitment were not forthcoming from the major digital platforms other options could be considered to address this issue.

MEAA support this preliminary recommendation.

Preliminary Recommendation 3—choice of browser and search engine

The ACCC is considering recommending that:

- (a) suppliers of operating systems for mobile devices, computers and tablets be required to provide consumers with options for internet browsers (rather than providing a default browser), and*
- (b) suppliers of internet browsers be required to provide consumers with options for search engines (rather than providing a default search engine).*

The ACCC considers that where options for internet browsers and search engines are presented, no option should be pre-selected.

ACCC calls for a regulatory authority to be tasked with monitoring, investigating and reporting on the criteria, commercial arrangements or other factors used by relevant digital platforms (identified according to objective criteria reflective of influence and size) to impact:

- (a) the ranking and display of advertisements (or other content when displayed alongside advertisements) with the aim of identifying whether the platforms may be discriminating in favour of their own related businesses or a business with which they have a specific commercial relationship as well as the potential competitive effect*

(b) the ranking and display of news and journalistic content with the aim of identifying the effects of algorithms or other policies on the production of news and journalistic content or competition in media markets. Emphasis added by MC

The regulatory authority could also refer matters to other government agencies for investigation where relevant.

With respect to preliminary recommendation 4(b), MEAA supports in principle the ability of a regulatory body to assess and make findings about the distortive impact of algorithms in terms of news consumption. By this, MEAA submit that we support assessment of digital platforms that do not produce news content providing prominence to news information where no effort has been made to verify the information provided or where ranking of news information is influenced by a commercial relationship between the digital platform and the source of the news item.

Preliminary Recommendation 4—advertising and related business oversight

A regulatory authority should be tasked to monitor, investigate and report on whether digital platforms, which are vertically integrated and meet the relevant threshold, are engaging in discriminatory conduct (including, but not limited to, conduct which may be anti-competitive) by favouring their own business interests above those of advertisers or potentially competing businesses.

These functions could apply to digital platforms which generate more than AU\$100 million per annum from digital advertising in Australia.

The regulatory authority could consider the digital platform’s criteria, commercial arrangements and other circumstances which impact competition between advertisers, suppliers of advertising services and digital platforms. This may include:

- the ranking and display of advertisements and also organic content (when advertisements are displayed alongside the organic content) ²*
- whether the acquisition of any other product or service from the same digital platform (or a related business) affects the display or ranking of advertisements or content ²*
- the impact of any related business of a digital platform (e.g. how referral links appear in the search engine results page or social media news feed).*

The relevant digital platforms would need to be obliged to provide information and documents to the regulatory authority on a regular basis, and the regulatory authority would need appropriate investigative powers. The regulatory authority could have the power to investigate complaints, initiate its own investigations, make referrals to other government agencies and to publish reports and make recommendations.

MEAA support mechanisms to better detect and address digital platforms striking arrangements that benefit the digital platforms own commercial interests at the expense of customers.

Preliminary Recommendation 5—news and digital platform regulatory oversight

The ACCC considers that the regulatory authority could also 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.

These functions could apply to digital platforms which generate more than AU\$100 million per annum in revenue in Australia and which also disseminate news and journalistic content, including by providing hyperlinks to news and journalistic content, or snippets of such content.

In performing its functions, the regulatory authority could consider the digital platform's criteria, commercial arrangements and other factors that affect competition in media markets or the production of news and journalistic content in Australia. This may include:

- (a) the rankings of news and journalistic content presented to consumers*
- (b) the referrals of consumers to media businesses.*

The relevant digital platforms would need to be obliged to provide information and documents to the regulatory authority on a regular basis, and the regulatory authority would need appropriate investigative powers.

The regulatory authority could have the power to investigate complaints, initiate its own investigations, make referrals to other government agencies and to publish reports and make recommendations.

MEAA is prima facie concerned by the establishment of a regulatory authority to actively 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 caveat to this concern is in instances where ranking is linked to the digital platform's commercial benefit or other alleged impropriety.

MEAA is otherwise concerned that the prospect of the regulation involving value judgments about the inherent worthiness of news content. Although disparate in their nature and application, there are codes of conduct, including MEAA's Code of Ethics, Australian Press Council standards, commercial television codes of practice and oversight mechanisms for public broadcasters for consumers to ventilate their concerns and seek remedies. MEAA support the retention of these arrangements, although we would prefer common standards to be developed for application across the media sector.

As MEAA stated in its submission to the Inquiry, we support the extension of regulatory standards to the major digital platforms that carry news content. This ought not be confused with proposals for further review of the conduct of news media organisations, especially where the agency charged with investigating and determining complaints is a government agency.

Preliminary Recommendation 6—review of media regulatory frameworks

The ACCC proposes to recommend the Government conduct a separate, independent review to design a regulatory framework that is able to effectively and consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia, including news and journalistic content, whether they are publishers, broadcasters, other media businesses, or digital platforms.

Such a review should focus on content production and delivery and consider the following matters:²²

Underlying principles: *creating clear guiding principles for an overarching platform-neutral regulatory regime that can apply effectively across media formats and platforms, with common rules applying to online and offline activities, and which is adaptable to new services, platforms and technologies.*

Extent of regulation: *setting objective factors to determine whether regulations should be imposed on certain enterprises and determining appropriate roles for self-regulation and co-regulation.²²*

Content rules: *creating a nationally-uniform classification scheme to classify or restrict access to content regardless of the format of delivery.²²*

Enforcement: *implementing appropriate enforcement mechanisms and meaningful sanctions, including whether it is appropriate to establish or appoint a single agency responsible for monitoring, enforcing, complaints-handling, and administering the unified regulatory framework.*

The implementation of a unified, platform-neutral framework will affect and simplify existing regulations across the different media, communications and telecommunications industries.

The ACCC would intend to contribute its knowledge and expertise to such a review

MEAA supports proposals to conduct a separate, independent review by Government ‘to design a regulatory framework that is able to effectively and consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia, including news and journalistic content, whether they are publishers, broadcasters, other media businesses, or digital platforms.’

MEAA strongly supports regulatory equality for all news media organisations, while noting (as the ACCC’s report has) that Australia’s regulation of media organisations is hopelessly fractured, out of date (especially with respect to digital entities) and enables free riders to escape reasonable standards of conduct and scrutiny (i.e. digital platforms that do not produce, curate and fund news media content).

MEAA note however that significant work has already been performed through the Convergence Review in 2012 and 2013. That review persuasively advanced the concept of platform neutral regulation.

MEAA is otherwise concerned, as with ACCC preliminary recommendation 5, that such a review might be pathway for *additional* government encroachment into the conduct of news media organisations. MEAA will closely monitor the progress of this preliminary recommendation.

Preliminary Recommendation 7—take-down standard

The ACCC proposes to recommend that the ACMA determine a Mandatory Standard regarding digital platforms’ take-down procedures for copyright infringing content to enable effective and timely take-down of copyright-infringing content. This may take the form of legislative amendments to the Telecommunications Act so that the ACMA has the power to set a mandatory industry standard applicable to digital platforms under Part 6 of the Telecommunications Act.

MEAA believes that much greater effort is required by digital platforms to act promptly in response to copyright owners' requests to remove unauthorised content from their sites. MEAA would wish to be consulted about the development of any 'mandatory standard' that would apply to digital platforms.

Preliminary Recommendation 8—use and collection of personal information

The ACCC proposes to recommend the following amendments to the Privacy Act to better enable consumers to make informed decisions in relation to, and have greater control over, privacy and the collection of personal information. In particular, recommendations (a) and (b) are aimed at reducing information asymmetries to improve the transparency of digital platforms' data practices.

Recommendations (c) and (d) seek to provide consumers with stronger mandated controls over the collection, use, disclosure and erasure of their personal information to lessen the bargaining power imbalance between consumers and digital platforms. Recommendations (e) to (g) are measures to increase the deterrence effect of the Privacy Act.

*(a) **Strengthen notification requirements:** Introduce an express requirement that the collection of consumers' personal information directly or by a third party is accompanied by a notification of this collection that is concise, transparent, intelligible and easily accessible, written in clear and plain language (particularly if addressed to a child), and provided free of charge.*

*(b) **Introduce an independent third-party certification scheme:** Require certain businesses, which meet identified objective thresholds regarding the collection of Australian consumers' personal information, to undergo external audits to monitor and publicly demonstrate compliance with these privacy regulations, through the use of a privacy seal or mark. The parties carrying out such audits would first be certified by the OAIC (Office of Australian Information Commissioner).*

*(c) **Strengthen consent requirements:** Amend the definition of consent to require express, opt-in consent and incorporate requirements into the Australian Privacy Principles that consent must be adequately informed (including about the consequences of providing consent), voluntarily given, current and specific. This means that settings that enable data collection must be pre-selected to 'off'. The consent must also be given by an individual or an individual's guardian who has the capacity to understand and communicate their consent.*

*(d) **Enable the erasure of personal information:** Enable consumers to require erasure of their personal information where they have withdrawn their consent and the personal information is no longer necessary to provide the consumer with a service.*

*(e) **Increase the penalties for breach:** Increase penalties for breaches of the Privacy Act to at least mirror the increased penalties for breaches of the Australian Consumer Law.*

*(f) **Introduce direct rights of action for individuals:** Give individual consumers a direct right to bring actions for breach of their privacy under the Privacy Act.*

*(g) **Expand resourcing for the OAIC** to support further enforcement activities: Provide increased resources to equip the OAIC to deal with increasing volume, significance, and complexity of privacy-related complaints.*

MEAA supports most components of preliminary recommendation 8. Digital platforms must abide by effective standards of information collection and use. These necessarily involve creating improved rights for digital platform users to approve and reject the use of personal information. We noted and supported the reforms recently enacted in the European Union in our submission to this inquiry and our recommendations 5, 6 and 7, which favoured:

1. *fast-tracking the Productivity Commission’s recommendations for a new Comprehensive Right for consumers to control their data and creation of a new Data Sharing and Release Act*
2. *that the Government consider increasing maximum penalties for ‘mass’ privacy/data breaches*
3. *that consumers be provided with plain language information about the extent of algorithm use and advised of safeguards*

Preliminary Recommendation 9—OAIC Code of Practice for digital platforms

The ACCC proposes to recommend that the OAIC engage with key digital platforms operating in Australia to develop an enforceable code of practice under Part IIIB of the Privacy Act to provide Australians with greater transparency and control over how their personal information is collected, used and disclosed by digital platforms. A code would allow for proactive and targeted regulation of digital platforms’ data collection practices under the existing provisions of the Privacy Act.

The code of practice would likely contain specific obligations on how digital platforms must inform consumers and how to obtain consumers’ informed consent, as well as appropriate consumer controls over digital platforms’ data practices. The ACCC should also be involved in the process for developing this code in its role as the competition and consumer regulator.

MEAA support this preliminary recommendation on an ‘in-principle’ basis.

Preliminary Recommendation 10—serious invasions of privacy

The ACCC proposes to recommend that the Government adopt the Australian Law Reform Commission’s recommendation to introduce a statutory cause of action for serious invasions of privacy to increase the accountability of businesses for their data practices and give consumers greater control over their personal information.

MEAA would need to more closely evaluate any law reform (a new tort) enabling prosecution of serious breaches of privacy. We note that such a recommendation was advanced by the Australian Law Reform Commission in its Serious Invasions of Privacy in the Digital Era Report (ALRC Report 123, 2014).

MEAA further note that recommendation 9-2 of this report stated that

The Act should include the following list of countervailing public interest matters which a court may consider, along with any other relevant public interest matter:

- (a) **freedom of expression, including political communication and artistic expression;**
- (b) **freedom of the media, particularly to responsibly investigate and report matters of public concern and importance; *emphasis added***
- (c) **the proper administration of government;**

- (d) open justice;
- (e) public health and safety;
- (f) national security; and
- (g) the prevention and detection of crime and fraud.

Recommendation 9–3 went on to state that a new Act:

should also provide that the plaintiff has the legal onus to satisfy the court that the public interest in privacy outweighs any countervailing public interest that is raised in the proceedings.

Preliminary Recommendation 11—unfair contract terms

The ACCC proposes to recommend that unfair contract terms should be illegal (not just voidable) under the Australian Consumer Law, and that civil pecuniary penalties should apply to their use, to more effectively deter digital platforms, as well as other businesses, from leveraging their bargaining power over consumers by using unfair contract terms in their terms of use or privacy policies.

MEAA support this preliminary recommendation.

Proposed areas for further analysis and assessment

The ACCC has identified 9 areas where further analysis and assessment is required. The ACCC is particularly interested in views and analysis on the following issues.

1. Supporting choice and quality of news and journalism

The Terms of Reference direct the ACCC to consider the impact of digital platforms on the level of choice and quality of news and journalistic content to consumers.

In considering the impact of the digital platforms on the quality of news and journalistic content, the ACCC has not attempted to undertake an empirical assessment of news and journalistic content. However, consistent with existing codes and frameworks that aim to hold Australian journalists and news media businesses to account, the ACCC considers that there are certain aspects of the process of producing news which are important indicators of quality, such as objectivity, accuracy (fact-checking) and the performance of functions such as analysis and investigation.

The rapid digitisation of news and the growth of the digital platforms have led to the atomisation of news and, for some consumers, a disconnect between news content and its source. These consumers may not know where their news comes from and whether the creator of that news content has committed to journalistic processes, such as fact checking and accuracy. Combined with the algorithmic selection of news, this potentially exposes individuals/consumers to the risk of filter bubbles or echo chambers, as well as the risk of unreliable information.

While the extent of these effects in Australia is not yet clear, the ACCC is concerned that there is a real risk of these consequences either now or in the immediate future. The ACCC is therefore considering proposals to provide greater transparency to consumers about the news they consume on digital platforms. The ACCC notes that some digital platforms, including Facebook and Google, are taking steps to signal and/or curate content served to consumers. In so doing, the platforms are making their own decisions regarding the quality or “trustworthiness” of the content to be served to consumers. While these steps may be well intentioned, individual decisions by platforms on these key factors may reflect their own interests and may not necessarily serve consumers well. The ACCC considers that a more transparent approach may be preferable.

The ACCC is considering whether digital platforms and media businesses should be required to take steps to increase the ability of consumers to make informed choices about news and journalism accessed via digital platforms. This proposal would not interfere with how the algorithms select and display news and journalism, the news stories which consumers may choose to access (consumer choice) or press freedom. The ACCC is particularly interested in feedback from news media businesses and journalists as to the potential operation of the proposal below and the relationship with existing codes of journalistic practice.

(a) Digital platforms would be required to signal, in their display of content to consumers, content from news media businesses that have signed up to certain standards for the creation of news and journalistic content by complying with registered codes of journalistic practice. This signaling could be by way of a ‘badge’ on the news content as it appears in search results or a user’s news feed.

(b) The ACMA would recognise codes of journalistic practice from news media representative groups that contain principles and processes, including but not limited to accuracy (fact-checking), clarity, and avoidance of harm.

(c) Digital platforms would be required to inform consumers about the processes put in place to ensure accountability and to better inform consumers about how their news and journalistic content is curated and displayed to them (for example, via a badge or signal).

(d) The obligations on digital platforms to take these steps could be contained in separate ACMA approved code(s) submitted by the digital platforms, or mandated by the ACMA.

As discussed further in chapters 4 and 6, the ACCC recognises that many Australian news media businesses are already subject to sectoral specific regulation aimed at journalistic standards of accountability (or in the case of traditional print media, a degree of self-regulation via the Australian Press Council). The ACCC is interested in exploring whether the existing sector specific codes of conduct (including the codes administered by Free TV or the Australian Press Council) could be the type of codes to be recognised by the ACMA.

MEAA is very concerned that proposals such as these would, as the New York Times chief executive, Mark Thompson said, enable major digital platforms to set their companies up as ‘the internet’s editor-in-chief’. If digital platforms were to ‘badge’ quality news content, MEAA is concerned that commercial (and other) imperatives would guide what digital platforms classified as reliable and newsworthy and what they did not.

Although MEAA does not quibble with ACMA’s existing role in regulating media conduct and complaints – and support the extension of such processes to digital platforms – it is another question altogether for ACMA to make value judgments about matters such as MEAA’s Code of Ethics and/or the policies of the Australian Press Council.

2. Improve news literacy online

The ACCC is considering measures aimed at increasing news literacy and is considering recommending that the ACMA work with the leading digital platforms to develop a broad campaign targeted at all Australians, to improve their understanding of how news and journalism is curated and displayed on social media and other digital platforms.

Subject to appropriate consultation with news content producers and journalists, MEAA supports this proposal on an in-principle basis.

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

As set out above, news and journalism have broad public benefits to society and the ACCC is concerned at the risk of under-provision. Australia’s existing policy and regulatory arrangements support the production of news and journalism in a number of ways. The most obvious is the public funding of the ABC and SBS, which deliver quality, independent news and journalism and add plurality. Commercial broadcasters, both TV and radio, also receive a level of public support via access to spectrum at below-market rates.

The ACCC considers that traditional print media (now print/online media) also play an important role in providing diversity and quality news and journalism. The ACCC is therefore continuing to consider mechanisms to maintain the incentives on print/online news media businesses to invest in 16 Digital Platforms Inquiry—preliminary report news and journalism, particularly those types of news and journalism which may be at risk of being under-produced. At this stage, the ACCC has identified three potential options on which it would like feedback:

(a) A review of the impacts of the measures comprising the Regional and Small Publishers’ Jobs and Innovation Package in 2018–19 to determine whether the Package should be continued beyond its current three year funding profile (and potentially modified or expanded)

(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. The ACCC recognises the difficulties in determining the scope of such a subsidy and the risk of misappropriation or fraud

(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. The ACCC recognises that there can be concerns with implementing and proposing tax incentives and subsidies. Nevertheless, such arrangements can on occasion be a suitable option to achieve a particular objective.

The ACCC welcomes feedback and suggestions regarding these or other approaches, including potential Government grants, which may maintain the incentives on 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.

MEAA supports the proposals set out in (a), (b) and (c) above, subject to consultation.

Relevantly, MEAA’s submission to the 2017 Public Interest Journalism Inquiry supported the following measures:

Direct Support

- **Establishment of *Media Diversity Fund* for new media entities dedicated to in-depth public interest journalism. Funding at \$50 million per annum. Guidelines for funds distribution to be developed by representative industry working group.**
- **Freelance journalism taskforce directed at establishing enforceable minimum rates of payment and where relevant, collective bargaining rights.**

Indirect Support

- **Separate funding and tax concessions for not-for-profit public interest journalism outlets. Some adjustment may be required to the Register of Cultural Organisations (ROCO), as administered by the Department of Communications.**
- **Tax deductibility for news subscriptions.**

The forms of assistance discussed in the ACCC’s digital platforms report were similar to those proposed by a Canadian parliamentary committee in 2017. These included:

- Tax deductibility for digital advertising in Canadian-owned media platforms
- Five-year tax credits for print media companies to compensate for investing capital and labour in digital media
- Ensuring foreign news aggregators are subject to the same tax obligations as Canadian media
- Through expansion and an increased budget for the Canadian Periodical Fund (which provides assistance and rewards innovation and industry initiatives to Canadian publishers, magazines and non-daily newspapers to ensure the public has access to a range of Canadian publications), make daily and free newspapers eligible to participate in the fund, offer support for online distribution of magazines and newspapers including greater support for ethnic and indigenous media
- Apply a “diversity of voices” test to ensure there is no dominance in any media market, and
- Change the definition of a registered charity to include not-for-profit media and/or foundations.¹

MEAA’s support for any Government grant(s) or direct-funding model is qualified by the need for decisions about funding to be made independent of government so that editorial freedoms are not compromised.

4. A digital platforms ombudsman

The ACCC considers that one effect of Google’s and Facebook’s substantial market power in the markets for search and display advertising respectively, is that some advertisers, particularly small businesses, are unable to negotiate the terms on which they do business with Google and Facebook. This can be evident in the difficulties businesses may encounter when attempting to seek effective dispute resolution.

The ACCC is considering whether an ombudsman could be established to deal with complaints about digital platforms from consumers, advertisers, media companies, and other business users of digital platforms. For example, an ombudsman may have the power to resolve some or all of the following:

(a) disputes from businesses that consider digital platforms’ representations as to the performance or likely performance of purchased advertising to be inaccurate or unsubstantiated

(b) disputes from consumers relating to scams and the removal of such content

(c) disputes from media companies relating to the surfacing and ranking of news content

(d) disputes from businesses relating to false or misleading advertising. An ombudsman could investigate complaints that are unable to be resolved by the internal dispute resolution mechanisms of digital platforms and make decisions that are binding on digital platforms. Terms of reference could set out the types of disputes the ombudsman can consider, how the ombudsman will resolve disputes and remedies the ombudsman can recommend or implement.

MEAA supports the concept of digital platforms being subject to external and independent complaints review and determination mechanisms.

¹ See: *Disruption: Change and Churning in Canada’s Media Landscape*, report of the Standing Committee on Canadian Heritage, June 2017 <http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6>

5. Monitoring of intermediary pricing

The ACCC considers that a regulatory authority could have the power to monitor the pricing of intermediary services supplied to advertisers or websites for the purpose of digital display advertising. To achieve this, businesses offering these services earning revenue exceeding a certain threshold (e.g. revenue in Australia greater than AUD 5million) could be required to provide a regulatory authority with details on:

- (a) the median price charged for each product offered
- (b) an explanation of how that price is determined
- (c) the revenue received for supplying each product or service
- (d) any discounts, rebates or other incentives offered to customers.

This information should be provided at least once a year, or as required by the regulatory authority. The regulatory authority could be required to report publicly on this information.

MEAA support independent monitoring and review of these practices.

6. Third party measurement of advertisements served on digital platforms

The ACCC is considering whether there is an ability for advertisers to verify whether advertisements on digital platforms, including Google and Facebook, are delivered to their intended audience and whether there may be instances where the performance of digital advertising is overstated; or advertisers are misled into thinking more consumers viewed their advertisements than actually did. The ACCC is examining the extent to which the current level of third party measurement overcomes these problems. The ACCC is seeking further feedback on the effectiveness of current mechanisms for verifying whether advertisements are served to their intended audience. If current mechanisms are not sufficient, the ACCC would be assisted by feedback and suggestions for mechanisms that are needed to address this issue.

From the perspective of improved transparency and consumer rights, MEAA supports credible analysis and reporting of these advertising practices.

7. Deletion of user data

The ACCC is considering whether there should be an explicit obligation to delete all user data associated with an Australian consumer once that user ceases to use the digital platform's services or whether user data should automatically be required to be deleted after a set period of time. This obligation would seek to go further than preliminary recommendation 8(d) as it would not require a user to actively request the deletion of the data and would prevent open-ended retention of data.

ACCC invites views on the feasibility of such an obligation, and the appropriate timeframe for such deletion.

MEAA is unable to comment on the feasibility of this proposal.

8. *Opt-in targeted advertising*

The ACCC is considering whether, in addition to proposed preliminary recommendation 8(c), consumer consents in relation to targeted advertising should be further strengthened by prohibiting entities from collecting, using, or disclosing personal information of Australians for targeted advertising purposes unless consumers have provided express, opt-in consent.

Under such a proposal, consumers receiving advertising-funded services (including via a social media platform or search engine) can still be required by the platform to consent to view advertisements but the user must not be required to consent to view targeted advertisements based on their user data or personal information in order to use the platform. Such a requirement would be proposed to apply beyond entities covered by the Privacy Act to ensure coverage of all entities which may collect data for this purpose.

MEAA generally supports greater consumer rights with respect to harvesting and use of user data. We support active consent measures where practicable. MEAA is not aware of consumer concerns where a news media provider assesses user data for the purpose of directing advertisements to their site's users where the news media company is directly engaged to display advertisements. We are more concerned about the on-sale of this data to external organisations where the consumer is not (or inadequately) informed of the sale and reuse of this information.

All Australian media companies of note have established privacy and data use policies. These policies will of course be subject to any general reforms to the *Privacy Act* and related statutory instruments.

9. *Prohibition against unfair practices*

In its 2017 review of the Australian Consumer Law, Consumer Affairs Australia and New Zealand recommended to governments that exploration be undertaken as to how an unfair trading prohibition could be adopted within the Australian context to address potentially unfair business practices.

The ACCC is considering whether its exposure to issues through this Inquiry considerably strengthens the need for a general prohibition against the use of unfair practices in the Australian Consumer Law. Such a prohibition could deter digital platforms and other businesses from engaging in conduct that falls short of societal norms, but which is not currently captured under the Australian Consumer Law.

As in overseas jurisdictions, such a prohibition could involve boundaries to ensure it is appropriately targeted, for example by applying to practices that: ²

- cause, or are likely to cause, substantial detriment to consumers,
- the substantial detriment is not reasonably avoidable by consumers themselves, and
- the detriments are not outweighed by countervailing benefits to consumers or to competition.

MEAA support this proposal.