

## ACCC Options Paper



### Mandatory News Media Bargaining Code

The Media, Entertainment and Arts Alliance (MEAA) welcome the opportunity to respond to the Australian Consumer and Competition Commission's (ACCC's) Options Paper concerning the development of a Mandatory News Media Bargaining Code (the Code).

MEAA believe that the finalisation of a Code is urgent, given the critical state of the Australian news media.

Beyond the crushing job losses in the news media industry over the ten years following the global financial crisis<sup>1</sup>, the collapse of Australian news media resources continues unabated. Already in 2020,<sup>2</sup> over 150 mastheads have either suspended operations or been shuttered.<sup>3</sup> MEAA anticipate that many of these titles will not resume production.

As at the end of May 2020, [The Australian Newsroom Mapping Project](#), which tracks the health of Australia's news industry, reported that over 200 newsrooms (spanning newspapers and broadcast media) have closed temporarily or for good since January 2019.<sup>4</sup> MEAA estimate that media job losses (editorial and non-editorial positions) will easily exceed 1000 positions during 2020.

#### Ailing Newspapers and Booming Search and Social Media

The loss of employment and the corresponding fall in media coverage of critical events is fundamentally driven by falling revenues, particularly in advertising. It is also driven by the shift towards online news and the ease with which news content is accessed through digital platforms.

In PwC's *Entertainment and Media Outlook 2019* report, print newspaper advertising for 2019 was projected to be \$1.14 billion, down from \$2.25 billion in 2014. It is estimated to be \$450 million in 2023. Digital newspaper advertising is growing, with \$559 million booked for 2019 and growth to \$629 million expected in 2021.

The total value of the Australian newspaper market now stands at \$2.73 billion, down from \$3.9 billion in 2014.<sup>5</sup>

Against a background of falling revenues, Google and Facebook are boosting market share and income. Facebook's Australian revenue was \$674m<sup>6</sup> in the year to December 2019. Google's Australian revenue over the same period was \$4.8 billion,<sup>7</sup> \$4.3 billion of which was from

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<sup>1</sup> MEAA cited at least 3000 editorial job losses in its submission to the ACCC's Digital Platforms Inquiry

<sup>2</sup> especially during the period of COVID-19

<sup>3</sup> For example, ACM has closed or suspended operations at over 100 of its 160 titles. News Corp announced further substantial job losses on 28 May 2020 as it closed 36 titles and moved 76 other mastheads to digital-only production.

<sup>4</sup> See: <https://piji.com.au/research/the-australian-newsroom-mapping-project/> Among this number was the internet publisher *buzzfeed*, which has now ceased Australian operations. Another established online publication, Crikey, has also shed critical journalistic resources.

<sup>5</sup> Entertainment and Media Outlook 2019, PwC, newspaper chapter

<sup>6</sup> Facebook's Australian revenue soars 16pc to \$674m, Zoe Samios, Sydney Morning Herald, May 31, 2020

<sup>7</sup> Google's Australian revenue hits \$4.8b, Zoe Samios, Sydney Morning Herald, May 14, 2020

advertising. Both Google and Facebook's ad revenues increased by 16 per cent in 2019. As the Digital Platforms Final Report observed with respect Australia's online advertising industry, of every \$A100 spent by advertisers (excluding classifieds), \$47 goes to Google and \$24 goes to Facebook.<sup>8</sup>

Calculating how many Australians get their news via search (Google) or social media (Facebook) is less easily calculated. On one account, Eight to 14 per cent of Google searches yield news media stories in the results.<sup>9</sup> In the United States, the News Media Alliance stated that between 16% and 40% of Google search results are news content.<sup>10</sup>

In social media, MEAA's submission to the ACCC's Digital Platforms Inquiry made reference to Pew Centre Research in the United States that 'Facebook's news feed has become what the front page of the newspaper was for older generations of people; at least 66% of the social networks 2 billion users rely on it as a news source.<sup>11</sup> The Pew Centre also stated that, 'for the first time in the Center's (sic) surveys, more than half (55%) of Americans aged 50 or older report getting news on social media sites. That is 10 percentage points higher than the 45% who said so in 2016.<sup>12</sup>

In Australia, the University of Canberra's *Digital News Report* of 2019 reported that almost half of Gen Z<sup>13</sup> (47% - up from 43% in 2018) use social media as their main source of news, with one-third of Gen Y<sup>14</sup> (33%) doing likewise.<sup>15</sup>

Whichever data set is accurate, the trend towards more people accessing news through search and social media is evident. Although both Google<sup>16</sup> and Facebook<sup>17</sup> have invested considerable resources in assisting media companies operate in the rapidly changing digital world, such efforts represent a fraction of their contribution towards compromising the viability of the Australian news media sector.

### **MEAA's General Position on Mandatory Code**

With respect to the Code, MEAA support a clear and unambiguous timeframe in which collective negotiations between parties to agree upon a Code will expire before decisions are made for them, presumably by the ACCC.

MEAA believe the scope of the Code posited in the Options Paper is too broad. Our members support a more limited Code that is devoted to the most pressing issues:

1. settling on a common valuation of news content;
2. agreeing on mechanisms to measure this content's use on Google and Facebook platforms and services; and
3. developing efficient payment mechanisms, preferably through an 'honest broker' such as a collection agency.

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<sup>8</sup> ACCC Digital Platforms Inquiry, Final Report, 2018, page 122

<sup>9</sup> As Australia takes on Google and Facebook over news content, the world is watching, Margaret Simons, Guardian Australia, 21 Apr 2020

<sup>10</sup> Google made \$4.7bn from news sites in 2018, study claims, Edward Helmore, The Guardian, 10 June 2019

<sup>11</sup> *News Use Across Social Media Platforms 2017*, [Elisa Shearer](#) and [Jeffrey Gottfried](#), Pew Research Centre – Journalism and Media , 7 September 2017

<sup>12</sup> Those under 50 remain more likely than others to get news from these sites (78% do, unchanged from 2016).

<sup>13</sup> Generation Z - born after 1995

<sup>14</sup> Generation Y - born between 1980 and 1994

<sup>15</sup> *Digital News Report 2019*, University of Canberra, page 96

<sup>16</sup> For example: Google News Initiative

<sup>17</sup> For example: Facebook Journalism Project

MEAA acknowledge and support the Code covering data sharing and algorithmic practices, but in a second, separate phase of negotiations - after the matters in points 1 to 3 become operational.

### **Definition of News**

MEAA supports a broad definition of news content that exceeds the limiting term of 'public interest journalism'. MEAA believe that any content produced by an entity covered by the Code primarily for its Australian audience should be captured. For clarity, this should include content ranging from long-form investigative journalism to click-bait stories.

### **Valuation of News Content**

MEAA concur with the Options Paper's acknowledgement that news content providers also benefit from their presence on Google and Facebook, through referrals, the visibility of ads on news websites that these referrals facilitate and through the dissemination of user data to news organisations.

Although there is a 'value exchange' between digital platforms and news providers, MEAA submit that the carriage of Australian news content on Google and Facebook significantly increases the appeal of these platforms and their related services. Whether news items accessed on Google and Facebook carry advertising or not (the situation differs between these platform's services) is not especially relevant and extremely difficult to economically define.

It is the overall mass and reach (16 million active Australian Facebook users<sup>18</sup> and Google's 95 per cent of the search market<sup>19</sup>) of these platforms that, in large part, drives the appeal of advertising on these sites. There are direct and indirect benefits enjoyed by Google and Facebook from the carriage of news content.

### **Actual Value of News Content**

It is critical that news content be valued via a common framework rather than each party covered by the Code generating individual costings.

The Code's workability and success will depend on a common and agreed valuation of content, possibly by type of content – i.e. journalism that involves the significant deployment of resources being more valuable than brief updates.

Although it is MEAA's preference that content involving significant resources, such as public interest or long-form journalism, be given a greater weight and value than other content, we concede making such distinctions would be complex and perhaps become a ground of dispute between and within the parties covered by the Code.

Generally speaking, Australian news content generated by eligible news content providers covered by the Code that is then carried by Google and Facebook should be recognised and a form of compensation attached to it.

MEAA is otherwise not in a position to advance discrete values that should attach to each piece of content. News organisations fundamentally bear this responsibility.

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<sup>18</sup> Social Media Statistics Australia for April 2020, SocialMediaNews.com.au, April 2020

<sup>19</sup> Australian Internet and Social Media Statistics – 2019 Usage Data, Ewan Watt 21 June 2019

### **Coverage of Media Organisations**

The scale of a news organisation or news provider should not be a consideration for coverage by the Code. For example, if an established freelancer or blogger's content is accessed through Google and Facebook, it should attract payment.

Australia has one of the least diverse news media ecosystems anywhere in the world. It remains the case that approximately 90 per cent of all newspaper titles are controlled by three or four companies: Nine Entertainment, NewsCorp, SevenWest and Australian Community Media.

The Code should not only capture news media organisations of scale, but play a role in improving media diversity.

MEAA does not support coverage by a standards organisation as a basis upon which to determine Code coverage. Numerous organisations, including those of scale, do not submit to regulation by the Australian Press Council. It would be preferable that membership of a standards organisation or commitment to the MEAA Code of Ethics inform coverage decisions, rather than being a hard bar to inclusion.

The preferred means of determining eligible media organisations is one where media companies and smaller providers<sup>20</sup> are guided by transparent internal standards. The *Guardian* and former *Fairfax* (now Nine Entertainment) editorial charters are sound guides. We believe possession of and adherence to such instruments should be a prerequisite to inclusion and/or participation in the mandatory news Code.

### **New Entrants and Distribution of Fees**

The use of such standards or charters would also form a prerequisite to inclusion of new media companies while the Code is in force. The Code should include the facility for new media content providers to ensure that new or augmented digital media organisations, generally with less than 50 personnel, can share in the disbursement of fees.

It is not only critical that the Code apply to the breadth of the Australian news media sector, but that a set proportion of fees arising out of the Code be set aside for small to medium news content providers.

In addition, given the escalating decline of Australia's regional and rural media sector, special consideration should be given to diverting a proportion of funds to maintaining these invaluable local news providers.

### **Coverage of Digital Platforms**

MEAA accept that code should apply only to Google and Facebook during its first iteration. MEAA also support the list of Google and Facebook services listed in the options paper as being covered by the Code. We trust that the ACCC is alive to the ability of these companies to develop new assets and alter names or functions of existing services in a way that might jeopardise ongoing coverage under the Code.

### **Bargaining**

As stated above, MEAA support collective bargaining for the Code. For collective bargaining to have a chance, a requirement to negotiate in good faith is essential.

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<sup>20</sup> Including freelance journalists

With respect to the other approaches canvassed in the ACCC's Options Paper, MEAA believe that direct bilateral negotiations would generate disparate content fees and substantially delay the Code's commencement.

Irrespective of which bargaining model is progressed, strict, fixed timeframes must apply before the matter is arbitrated, with arbitration itself being time-limited, with no prospect of appeal from an arbitral decision.<sup>21</sup>

### **Administration of Code – Collection Agencies**

MEAA strongly support collective licensing of fee arrangements arising from the Code. We further support the relevant fee structure being incorporated in the Code.

MEAA is however firmly of the view that a collection agency would be best placed to regulate the Code's enforcement (if the ACCC does not have this role) and to dispassionately and fairly allocate fees to media organisations covered by the Code.

### **Data Access**

As stated above, MEAA believe that data access and algorithmic matters should be addressed in a separate, later phase of the Code's development.

That said, Google and Facebook do accumulate data from users accessing their sites and services for news content. This data would otherwise be unavailable to them in the absence of news content.

MEAA submit that, as a general principle, the Code:

1. should facilitate access to data captured from users of Google and Facebook who access news content; and
2. Provide minimum data-sharing obligations for each of Google and Facebook

### **Algorithms**

MEAA support for inclusion in the Code:

1. the provision of advance notice of significant algorithm changes to news media businesses;
2. clear recognition of the origins of the news content – i.e. the journalist and the publisher;
3. prioritisation of original news content (notwithstanding that there are definitional challenges in determining what constitutes 'original' content); and
4. news content providers using pay-walls should not be disadvantaged (i.e. ranked lower) than providers that charge no news access fees

Where disputes concerning data access or algorithmic practices arise, the concerned news content provider should have access to dedicated Google and Facebook contacts and resources. The parties must have the ability to triage or resolve concerns without escalating a matter to arbitration. A fixed period must be contained in the Code for all levels of dispute resolution.

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<sup>21</sup> MEAA accept that any mechanism in the Code seeking to oust judicial review may be rejected by the relevant court; we do however believe that the enforcement of any Code may be severely compromised by organisations seeking to engage in strategic legal actions