

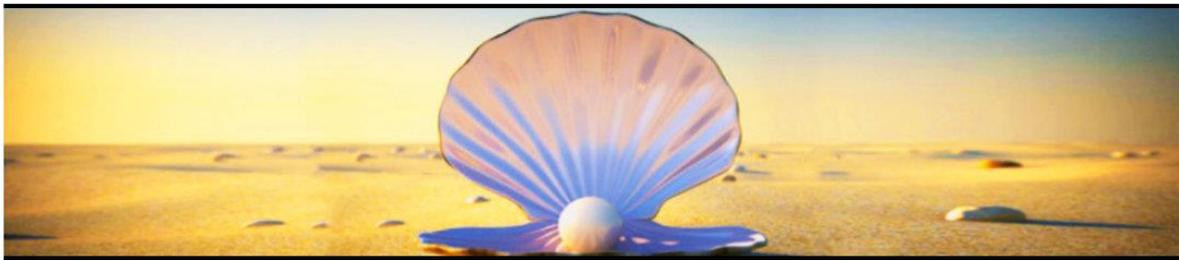
# *the*Independents

*real news and bold commentary*

**MICHAEL WEST MEDIA**  
Independent Journalists

## Pearls and Irritations

*Public policy journal*



August 28, 2020

### **RESPONSE TO THE ACCC PROPOSED “NEWS MEDIA AND DIGITAL PLATFORMS MANDATORY BARGAINING CODE”**

This response is from [theIndependents](https://theindependents.org.au) - a portal for independent media publishers in Australia, in conjunction with [Michael West Media](https://michaelwestmedia.com.au).

#### **theIndependents**

Website: [theindependents.org.au](https://theindependents.org.au)

*theIndependents* is an independent media portal and community initiative set up for the purposes of:

- Promoting and supporting independent media in all its (online) forms
- A place to promote information resources relevant to forth-coming elections, Government transparency and fairness and openness of the political discourse at large.
- A platform for open and inclusive news and commentary
- A portal for independent blogs

*theIndependents* is strictly non-aligned and non-partisan.

Qualification for inclusion is simply “not mainstream or corporate owned media”.

At the time of writing, *theIndependents* takes content feeds from 49 different sources, representing, publish short summaries from the sources and link back to the full story at origin.

A complete list of content contributors can be found [here](#)\*

In the month of July 2020 the 49 sites represented on our site had a total of **12.2 million**\* online visits according to data from Similarweb.com - a global online traffic measurement company.

### **Michael West Media**

Websites: michaelwest.com.au and johnmenadue.com (aka. Pearls & Irritations)

Michael West Media (MWM) is an independent media publisher covering the rising power of corporations over democracy. We are non-partisan, do not take advertising and are funded by readers.

Our investigations focus on big business, particularly multinational tax-avoiders, financial markets and the banking and energy sectors.

Michael West is the principal. A Walkley Award Winner who spent two decades as a journalist, editor and finance commentator for News Ltd and Fairfax.

### **Pearls & Irritations (P&I)**

P&I is a public policy journal. Its focus is on in-depth commentary on issues that matter to Australians and our place in the world. They publish new stories daily, covering politics and public policy, the economy, defence and security matters, climate change and the environment, as well as religion and faith, media and the arts.

John Menadue AO is the principal. Before starting P&I he had a distinguished career in public life in Australia; including General Manager for News Limited, head of the Dept. of Premier and Cabinet in both the Whitlam and Fraser Governments, ambassador to Japan, CEO of Qantas and on the board of Telstra.

In July 2020 MWM sites had combined online visitors of 241,000 and published a total of 330 original articles covering investigative journalism, analysis and commentary from more than 150 different contributors.

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\* Online traffic for sites listed here - *excluding* ABC, SBS, The Guardian and the international news sites on the list - filtered for traffic from Australian domiciled visitors only.

## Responses and commentary

All references are to the Q&A document as published on July 31.

### 1.6 ... other models

Although we understand taxation and government support programs is not within the ACCC's remit, we urge that the final report includes references to:

A) The inadequacy of tax regulation for global corporations operating in Australia in general and the digital platforms in particular..

B) The urgent need for substantial and long term Federal Government support for independent media.

### 2.1 Eligibility

We welcome the involvement of ACMA in the process.

The reference to 'editorial independence' needs to be much more prescriptive. An unambiguous definition of what constitutes and 'advocacy' group must be defined. It is paramount that such groups are specifically excluded to avoid any politically motivated preferencing - e.g. both GetUp and IPA must be excluded.

The arbitrary revenue threshold of \$150,000 is unnecessary. Although we recognise that there may be a minimum for practical reasons, we believe that this will be achieved by the other criteria by default.

Of the 50 sites represented on *theIndependents* we suggest that 80% would be disqualified based on the revenue criteria despite representing a large and diverse user base. These are publishers who operate on extremely limited budgets, get a disproportionately low share of any advertising revenue and need all the support they can get.

Finally, the exclusion of ABC and SBS news sites is deeply concerning for all independent media operators. We **strongly believe** this is discriminatory. ABC and SBS are both important to maintain the diversity of Australian media, especially in regional Australia. They compete directly with News Limited, Nine Entertainment and other mainstream media sites for traffic. Excluding ABC and SBS will *increase* the imbalances that the code is meant to address.

On that note, it is important to also draw attention to item 2.3, para. 3 mentioning **algorithm changes**. If this measure is put in place it would be discriminatory in the extreme to exclude ABC and SBS.

## **2.2 What type of news is covered**

We believe this definition needs to reflect journalism in a broader sense and be inclusive rather than exclusive. We recognise and support the exclusion of broadcast sports and entertainment and other commercial activities linked to business models not specific to online.

However we believe academic publications *should* be included as long as they otherwise meet the eligibility criteria related to controlling entities and advocacy.

Although YouTube is currently not mentioned as an included platform, Facebook video in effect is. Hence, we see no reason to exclude documentary film makers for whom digital distribution is extremely important. (And is an important driver of traffic for the Platforms).

## **2.3 How would the code benefit smaller, regional and rural news media businesses?**

The approach by the ACCC has been to address the imbalance between the Platforms and news media businesses. Independent media needs to be seen as a third participant, distinct from the mainstream/corporate media.

As a block, independent media publishers have no common body that can negotiate on its behalf, nor the collective resources to engage negotiators and lawyers (e.g. ref. 4.3) - unlike the Platforms and corporate media.

(In the absence of such a body), we propose that the legislation provides for a body to be established, possibly under the auspices of the ACMA, and that funding is made available for negotiations and arbitration on behalf of the independent media sectors. Participation in such a body must be voluntary and although its intent would be to support smaller media publishers, any publishers may chose to be included (in lieu of negotiating individually).

If this is not addressed, there is considerable risk that any reduction of the "imbalances" between the platforms and the corporate media results in *increasing* further the imbalance between those two "blocks" on the one hand, and independent media on the other, to the detriment of the media diversity the code seeks to address.

## **Algorithm changes**

The pre-release of algorithm changes must be addressed collectively for all media participants and we'd suggest this cannot be done within the proposed framework of discrete negotiations. It can only be done by separate legislation addressing the digital platforms specifically and the transparency of algorithm changes generally.

Alternatively, the status quo (where algorithm changes remains the absolute prerogative of the platforms without warning or consultation) must prevail to retain a level playing field.

*It is important to emphasise that smaller publishers often use search engine optimisation (making the most of the algorithms) much more actively than large publishers - as a necessity to compete for traffic.. We therefore understand why the corporate media is wanting this (notice period) to be included, but we suggest it may not be for the reasons stated.*

## **6. Non-discrimination**

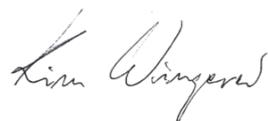
We believe this is paramount to the success of the legislation and emphasise again the need for a collective bargaining mechanism that ensures all publishers of online media (as defined herein) can take part if they want to.

## **IN CONCLUSION**

As representatives of a small, but fast growing media sector, we support the proposed code in general, provided it ensures a level playing field for all Australian online publishers.

We appreciate the opportunity to respond and would be happy to provide further input to the process.

On behalf of *theIndependents* and Michael West Media



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