

Policy Submission

Final Draft of the News Media and Digital Platform Mandatory Bargaining Code

To: *Australian Competition and Consumer Commission*

From: *Responsible Technology Australia*

Responsible Technology Australia (RTA) would like to thank the Australian Competition and Consumer Commission (ACCC) for the opportunity to input on the final draft of the News Media and Digital Platform Mandatory Bargaining Code. We are excited to share our experience and perspective, specifically highlighting how this Code should

WHO WE ARE

RTA is an independent, non-partisan organisation committed to raising awareness and advocating for solutions to address the digital threats to democracy.

We seek to ensure the safety of Australian citizens online whilst advocating for a free business ecosystem that values innovation and competition. In particular, we are concerned with the unregulated environment in which digital platforms currently exist and advocate for a considered approach to address issues of safety and threats to democracy and social cohesion whilst ensuring economic prosperity.

EXECUTIVE SUMMARY

We commend the ACCC and the Government on putting forward a piece of world-first regulation.

Our submission on the final draft of the News Media and Digital Platform Mandatory Bargaining Code (the 'Code') will focus primarily on how this Code sits within the larger information landscape and the effect on our communities and democracy. This is because we recognise that the effects of this Code aren't purely commercial, but will have wider effects on our society and democracy. In particular we want to:

- Ensure that this Code works toward a pluralistic and diverse media landscape
- Work towards accurately classifying the digital platforms to reflect their true impact on Australian society in order to ensure that they work in the public interest

CONTEXT

Firstly, we welcome the ACCC and the Government's efforts to realise recommendations within the Digital Platforms Inquiry.

We recognise that this code is the first step in trying to address the bargaining power imbalance between Australian news media businesses and the digital platforms, specifically Facebook and Google, and encourage this process as a gateway to address the many harms this imbalance has wrought on our society, cohesion and democracy.

1.0 ENSURING A PLURALISTIC AND DIVERSE MEDIA AND INFORMATION LANDSCAPE

The intention of this Code is to remedy economic power imbalances between the digital platforms and news media companies, however it is important to assess this issue through more than only a lens of ensuring competition. The mechanisms this Code seeks to institute to rectify these imbalances will have real-world effects that go beyond the bottom line of these businesses, and it's these effects to society that should be of integral concern to the implementation, monitoring and iteration of this Code.

Whilst we welcome this Code, we implore the ACCC and the Government not to lose sight of the true goal, of ensuring a vibrant and pluralistic information landscape.

A diverse, independent and competitive news media landscape is vital for a functioning democracy, and we welcome any steps made to ensure that this plurality is continually fostered within our society. Whilst the negotiation, mediation and arbitration process laid out in the Code is promising, for the first time providing a platform for bargaining, they are limited in that they only concern commercial interests between commercial entities.

This alone will not ensure a pluralistic media landscape.

1.1 Algorithmic Audit

As evidenced by the Minimum Standards in Division 4 of the exposure draft, the ACCC believes that in order to even begin good-faith negotiations, there must be a transparent understanding of the system. Under this mandate, digital platforms must provide:

- a list and explanation of all types of data the digital platform service collects about the registered news business' users through their engagement with covered news content made available on the digital platform's services;
- a list and explanation of the products and services supplied by the digital platform service that collects the data;
- a list and explanation of the data that the digital platform service currently makes available to be shared with the registered news business;
- an explanation of how the form in which the data is shared with the news businesses differs from the user data collected by the digital platform; and
- information about how news businesses can access any of this data.

We posit that in order to ensure this Code benefits Australian society, the beneficiaries of these transparency provisions must be extended beyond commercial news media business to practitioners, officials and researchers that would assess wider societal effects.

There is an ‘attention economy’ fuelling the business models of the digital platforms that has a single objective: to capture and maintain user attention on their respective products, in order to maximise the advertisements served. As such, the algorithms which dictate the content and information we consume are optimised to fulfil this objective of increasing the amount of time users spend on these platforms. To do this, the platforms have built a system of unfettered and limitless personal data collection, in order to build comprehensive profiles of their users that encapsulate their interests, vices, triggers and vulnerabilities, which the algorithms use to feed tailored content that is predicted to have the greatest potential for keeping users engaged. This content has been shown to lean towards the extreme and sensational, as it is more likely to have higher engagement^{1,2}.

Whilst not the intended design, this system has had wide-ranging effects on our society. From the breakdown of public discourse due to targeted ‘filter bubble’ polarisation to the manipulation of this online architecture by malicious actors, the myriad of issues can be collectively characterised by their effective facilitation of the breakdown of our ‘public square’ - fracturing social cohesion, decreasing trust in government and halting productive civic debate.

As a tenet of a functioning democracy, independent media and quality journalism is one of the last bulwarks against this encroaching tide, however as demonstrated by this Code, is also under constant attack.

Recommendation: Open up the Minimum Standards to the regulator, and empower relevant public interest practitioners to undertake an algorithmic and data audit to assess societal impacts

The ‘black box’ of these digital platforms, where unfettered data collection, algorithmic curation and amplification prosper is the primary barrier to understanding the imbalances, effects and externalities of this system. At a minimum, these provisions would provide the initial basic levels of understanding of these systems in order for these harmful effects to be adequately addressed. Only through access to the underlying data, algorithmic drivers and designed systems might we begin to address the systematic roots that influenced the development of this Code in the first place.

¹ Vosoughi et al. (2018), ‘The spread of true and false news online’, *Science* found at <https://science.sciencemag.org/content/359/6380/1146>

² Nicas (2 Feb 2018), ‘How YouTube Drives People to the Internet’s Darkest Corners’, *Wall Street Journal* found at <https://www.wsj.com/articles/how-youtube-drives-viewers-to-the-internets-darkest-corners-1518020478>

1.2 Monitoring, Evaluation and Impact Analysis

The implication of this Code is that the level playing field afforded by this piece of legislation will strengthen the news and media landscape in Australia. Whilst we strongly support this intention, without the proper resourcing, design and attribution of responsibility to adequately monitor and evaluate this policy, the impacts of the Code will not be known.

Even putting aside our important concerns around adequately assessing the societal risks posed by the large online digital platforms (as detailed in section 1.1), we must ensure that we understand the impacts on the Australian media landscape regarding competition and subsequent quality. Questions that must be answered include:

- Has this Code increased the number of journalists, news media companies and news innovation?
- Has this Code increased the quality and objectivity of reporting?
- Has this Code increased diversity within the Australian news media landscape?
- Has this Code inadvertently concentrated bargaining power amongst a few news media outlets?
- How has this Code affected regional, minority and independent news media companies and journalists?

We recognise that this Code is world-leading, and if effective would set a valuable precedent, however, it's these innovative attributes that mean that the policy's impacts and externalities are unknown. In order to assess and iterate this Code to truly serve Australian companies and consumers, proper evaluation must be resourced.

Recommendation: Resource and delegate the ACCC to adequately monitor and evaluate the impacts of this Code to the Australian news media landscape and economy

1.3 Resource public interest journalism

Whilst outside the remit of this Code, it is important to understand and raise the significance of public broadcasting, public interest journalism and news media businesses that serve marginalised and rural/regional communities.

Even without the monopolistic domination by Google and Facebook, the current landscape in Australia is one of the most concentrated in the world. This highlights the importance of institutions like the ABC and SBS and their role in supporting Australian democracy. Whilst we support that these public institutions will have access to the Minimum Standards of the Code and recognise why these broadcasters are barred from bargaining, we must also raise the point of addressing and pursuing the full set of recommendations within the Digital Platforms Inquiry - in particular, Recommendations 9, 10 and 11.

Recommendation: Ensure and bolster the resourcing environment for public broadcasters, public interest journalism, independent journalism and journalism that serves marginalised communities

Please see Recommendations 9, 10 and 11 of the Digital Platforms Inquiry.

2.0 RECLASSIFICATION AS A UTILITY

It has become evident from this and other efforts, that the digital platforms are not only integral to the way Australians work, live, create and communicate, but their product offerings are not easily categorised into traditional fields, such as ‘news’ or ‘media. By Google’s own account, ‘just over 1% of total queries on Google Search in Australia were news-related’³, and Facebook stating that around 4% of its News Feed is actually news⁴.

How then, might we reconcile their immense influence, not just in news media, but in communications, entertainment and increasingly, democracy. Throughout history as new industries (from oil to telecommunications) have appeared and embedded themselves into our social fabric, wielding uncompromising power, governments and societies are forced to recognise their essential nature as utilities and implement the necessary regulation to secure their role in serving the community. The services in which these digital platforms deliver have well and truly surpassed this point, and whilst we are not calling for an organisational dismantling, we must ask ourselves the question-

- How might we classify these platforms and their services to accurately and authentically capture the value and indispensability of their products?

Recommendation: Undertake a process to understand the true influence these digital platforms have on Australian society in order to adequately classify and address their impacts, ultimately ensuring that they work in the public interest

³ Google Australia, (31 May 2020) ‘A fact-based discussion of news online’, Google Australia Blog. Found at: <https://australia.googleblog.com/2020/05/a-fact-based-discussion-about-news.html>

⁴ Editorial Board, (14 Aug 2020) ‘Facebook Shouldn’t Have to Pay Publishers for News’, Bloomberg Opinion. Found at: <https://www.bloomberg.com/opinion/articles/2020-08-14/australia-shouldn-t-make-facebook-and-google-pay-publishers-for-news>

3.0 CONTENT MODERATION INSTRUMENTS

Section 52S of this Code would give news media businesses more control over user comments by mandating flexible moderation tools that would allow for:

- removing or filtering user comments;
- disabling user comments against individual news items; and
- blocking user comments or accounts.

Whilst we recognise the intention and systems that potentially have lead to this, in particular the defamation liability that's faced by news media businesses and digital platforms, we are concerned with the implications this has for freedom of expression, speech and diversity of thought in media.

By giving these powers to the news media businesses without provisions for recourse, appeal or assessment, it not only sets a dangerous opportunity for these entities to abuse these powers for commercial and/or political gain, it also ignores smaller organisations that do not qualify under the Code the ability to access these provisions, even though they still face the same defamation liability risk.

Recommendation: Undertake a risk assessment of Section 52S User Comments to assess how these provisions might lead to an abuse of power. Ensure that the Section contains provisions for appeal and assessment from parties (both the user and digital platforms) to challenge news media company decisions under this Section.

4.0 CONCLUSION

We commend the ACCC and the Government on taking on this issue, actioning recommendations and delivery a piece of world-first regulation. Whilst we believe that the Code as it stands is a strong first step, we are excited about the next steps in ensuring that these digital platforms continue to innovate whilst serving all Australians.

We look forward to working together to ensure that we have transparency in order to drive our collective understanding of these issues and ultimately design effective solutions to these problems. Should the ACCC have any further questions or require further information, we are happy to engage further.

Regards,

Responsible Technology Australia

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