

Shane Dowling – Publisher Kangaroo Court of Australia website
Submissions for the ACCC Mandatory news media
bargaining code

5th June 2020

Dear Sir/Madam

Thank you for the opportunity to make submissions.

Before answering the questions in the concept paper, I would like to raise some issues that I feel are important which some are outlined in the concept paper.

Any mandatory news media bargaining code that is introduced has to be focused on the future of media not just trying to protect the old media otherwise it will fail to achieve much and will be ridiculed far and wide as being a Murdoch Tax or something along those lines to protect the legacy media players.

While legacy media companies are contracting at an ever-increasing pace it is vital that new media players enter the market and the new media players that are already in the market need to become sustainable.

I am an independent journalist and have published my website Kangaroo Court of Australia since January 2011. Over the last 5 years I have averaged over 1 million-page views per year. Last year I had 1,454,466 page views and as of writing this (4/6/20) I have had 803,825 this year.

In the last 12 months, from today, I have had 1,116,503 referrals from Facebook by people clicking on links to my articles on Facebook. I have had 152,783 referrals from Google in the last 12 months.

Depending on how you rate sites I would be on the 3rd or 4th tier and I suspect based on my knowledge I would easily be in the top 100 independent journalists in Australia, traffic wise, who publish their own website and possibly in the top 10.

While I am not a member of the Media, Entertainment & Arts Alliance and I don't have a journalism degree I am treated the same as other journalists by many and I have dealt with the media departments of Prime Ministers, federal and state MP's, federal and state police forces and I have regularly sat in the media rooms of Royal Commissions and the NSW ICAC etc.

As the legacy media contract, it is vital people like me become sustainable and grow. At the moment there are no independent journalist that I know of that are financially sustainable, but I believe that will change in the future as more people become accepting of paying for digital journalism but it's not there yet.

I am not sitting idle waiting though and I am almost finished my second book which is leveraging off material on my website and I plan on writing another 2 books in the next 12

months, which will also have content already on my website, to try and become financially viable. I know other small websites are trying different things as well.

But the mandatory news media bargaining code could be a real game changer for independent journalists if done right.

There are already a lot of independent journalists who punch well above their weight and legacy media quite often get stories by stealing from independent journalists, but you wouldn't know because they never reference them.

There obviously needs to be a cut off of some type to determine who qualifies. My viewpoint is it should be someone who publishes regular and who has a certain amount of page views per month. It should also be at a level where new journalists can see a future.

I would suggest someone who publishes at least once a week and someone who receives at least 30,000 page views a month. These are the people who will eventually start getting over a million page views a year and hopefully grow to where they can employ other journalists.

If you look at the SMH they received about 10 million views for the month of April 2020 which is 120 million views a year, although I believe it was a lot less in 2019. Take out the sport, travel and fashion etc and they are probably down to 60 million views or less a year. So, when you look at the 1,454,466 page views I received in 2019 it shows that I am doing ok and if I can start making a full-time income from the website then I will do a lot better.

Collective bargaining? Or what?

The legacy media have no interest to help independent journalists because they see us as competition, which we are, and their agenda for the mandatory news media bargaining code is to help themselves, so I don't see collective bargaining working.

The only way I see it working given Google and Facebook are not too keen to negotiate is if there is a levy/tax on Google/Facebook which has already been suggested in recent days. I read where it was suggested it should be 10% of their revenue which would be roughly \$600 million. Whether it be 10% or another amount that is the only way I think it will work. That could then be divided up amongst all media that met a certain standard which I have addressed above to some degree.

At the moment Google do have grants for journalists but independent journalists are exempt. In the model I propose it would not be Google or others deciding which independent journalists get funding it would be the public by their support for those websites by reading them regularly.

I have only answered the questions relevant to me in the Concept Paper below.

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

I do not have a firm view as I publish a website that focuses on judicial and government corruption so my website and articles would fall into the category of ‘hard’ news content and would be covered no matter what the definition was.

2. How can a bargaining code ensure that both news media businesses and digital platforms can easily and objectively identify the content subject to the code?

I personally lean to whole websites being defined to as whether they are or aren’t news websites and so all their content is either eligible or not. I think it would be too hard for the likes of Google and Facebook set up their systems to cherry pick what is or isn’t news.

3. Would it be appropriate for the bargaining code’s definition of ‘news content’ to capture material:
 - with the primary purpose of investigating, recording or providing commentary on issues of interest to Australians, and

Yes, I think this should be one element

- 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?

I think this is complex as there shouldn’t be government interference but if it the standards “set in a relevant media industry code” that would probably be ok.

4. Would a principles-based, or list-based approach be preferable in determining which digital platform services are captured by the bargaining code?

The digital platforms will have to be large which means they will not be hard to identify so list based is the easiest way.

5. If a list is referenced in the bargaining code, what amendments should be made to the list below?
 - Google Search
 - Google News
 - YouTube
 - AMP (cached on Google’s servers)
 - Google Assistant voice activation services and related services provided through ‘Google Home’ hardware and home automation devices
 - Android TV
 - Facebook News Feed

- Facebook Instant Articles
- Facebook Watch
- Instagram
- WhatsApp
- Facebook News Tab

No amendments at this point.

6. How might a bargaining code include mechanisms to incorporate newly emerging and newly relevant products and services in the future?

The media companies themselves will quickly identify any new products or services that should be captured so I would suggest a quarterly and half-yearly suggestion form sent to the media companies who qualify for their recommendations of any new services or products that think should be added to the bargaining code.

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?

As I said above I think only a tax/levy on Google and Facebook would work. Although one thing that I think would be a positive is if Google/Facebook were forced to give the top 50 or 100 independent journalists an annual grant of \$50k or \$100k. They could do that for maybe 2 or 3 years so those journalists could get established but after that the journalists would have to support themselves via donations/subscriptions etc.

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'?

I think Google and Facebook have played the same game in many countries and from what I have heard they have always avoided paying any substantial compensation so I don't think any will work.

9. Are there major practical issues involved in the implementation of any of the bargaining frameworks listed in Question 8 above? If so, how might such practical issues be overcome?

The issues are that the legacy media are contracting and they will continue to do so and new media players barely cover costs and to try and to get us to work together will be a huge struggle. But if a tax/levy was put on Google/ Facebook and then distributed equally and fairly, which includes small independent journalists, I think it would be a win/win all round and be supported by the public who could see future journalism being funded independently of government.

10. Are other bargaining frameworks more likely to effectively address the bargaining imbalance between news media businesses in Australia and each of Google and Facebook?

As I have already suggested a tax/levy. Also, Google/Facebook being forced to fund the top 50 or 100 independent journalists for a limited time to help them get established.

11. Would it be useful for the bargaining code to include a requirement for parties to negotiate 'in good faith'?

I think the term "in good faith" doesn't carry any weight and should be discarded.

12. Should the bargaining code include requirements (such as time limits) and/or guidance on how negotiations should be conducted? What requirements or guidance are likely to be productive? What requirements or guidance are likely to be counterproductive?

If one is introduced there should be strict time lines of no more than 4 to 6 weeks.

13. How relevant are the following factors to determining appropriate remuneration for news media business:
- the value of news to each digital platform
 - the value a news media business derives from the presence of its news on each digital platform
 - the value of the availability of news on each relevant digital platform to digital platform users?

I think it is almost impossible to determine any of those. I think the only way you can judge is by the number of clicks which is the public deciding how valuable they regard that particular story.

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

No. I regard that as crazy as it is the quality that counts. If someone does a 4 week investigation, publishes a story and no one reads it but someone else spends a day

investigating and writing a story and it gets 100,000 readers it is the most valuable even though it was a lot cheaper to produce at least time wise.

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?

They only real way to quantify it is by the number of clicks or views.

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

As per above the ACCC and government have to be looking to the future and make sure independent journalists are also included otherwise it will just be a cash grab by the legacy media and that is how the public will see it.

17. Are there any relevant 'market' benchmarks that may assist in the determination of appropriate remuneration?

Yes, Neilson publish a monthly list of page views for each of the major websites which may be of assistance moving forward if Google/Facebook are taxed/levied and that needs to be divided up amongst the media. Obviously they would have to also start monitoring smaller media as well.

18. How might the bargaining code define 'use' for the purpose of any mechanisms facilitating negotiation on payment for the use of news content?

Don't know.

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?

I will repeat as per above:

There are already a lot of independent journalists who punch well above their weight and legacy media quite often get stories by stealing from independent journalists, but you wouldn't know because they reference them.

There obviously needs to be a cut of some type to determine who qualifies. My viewpoint is it should be someone who publishes regular and who has a certain amount of page views per month. It should also be at a level were new journalists can see a future.

I would suggest someone who publishes at least once a week and someone who gets 30,000 page views a month. These are the people who will eventually start getting over a million page views a year and hopefully grow to where they can employ other journalists. If you look at the SMH they get about 10 million views a month which is 120 million views a year. Take out the sport, travel and fashion etc and they are probably down to 60 million views or less a year. So when you look at the 1,454,466 page views I did last year it shows that I am doing ok and If I can get to making a full-time income form the website that I will do a lot better.

I haven't addressed the data issues raised in questions 20 to 29 as they are not issues that I give much thought to as an independent journalist.

Algorithm and their changes are not issues that I give much consideration to so I have not answered the below questions as I focus on encouraging my readers to share my articles on social media, such as Facebook, which is not reliant on the algorithms

Independent journalists are at the end of the pecking order when it comes to the prioritisation of their news stories. How to identify original news content would be almost impossible and any system would be left open to abuse.

Given a choice I am sure the consumers want the free content first I don't think Google and Facebook should be forced to change to keep some media companies happy.

I have had major issues contacting Google in relation to content on my website that is blocked which shouldn't be blocked. Capilano Honey were granted suppression orders in 2016 which they used to contact Google to have articles on my website blocked. The suppression orders were lifted in 2018 but Google are still blocking the articles and my contact with them has failed to fix the issue. The bottom line is there needs to a direct contact point for all media.

52. How could the bargaining code best ensure a contact point at a digital platform provides timely responses to issues and concerns communicated by news media businesses?

Make Google and Facebook give a contact name and details to the media.

53. Would a point of contact outside of Australia be able to sufficiently address concerns of news media businesses in a timely manner?

No. Because they have a history of deliberately making it hard for people to contact them.

54. Aside from availability and responsiveness of points of contact, what other obligations or guidance should the bargaining code include about ensuring open communication between both Google and Facebook and news media businesses?

55. What potential practical issues may arise from requiring contact points?

None. It would help facilitate the resolution of issues.

56. Are there any other means of communication that might usefully be included in the provisions of a bargaining code?

Based on Google's current lack of eagerness to communicate maybe pigeons might be a good idea.

End of submissions

If you have any further questions or would like me to expand on an issue, please do not hesitate to contact me.

Regards

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