



## **Star News Group Mandatory News Media Bargaining Code Submission to the ACCC**

Star News Group Pty Ltd (Star) is an independent news media business with 110 years of experience and history in the production of important local news. Star welcomes the opportunity to provide a response to the ACCC's Mandatory News Media Bargaining Code: Concepts Paper (Concepts Paper) published on 19 May 2020.

Over the course of recent years, the traditional model for a sustainable local media has become more and more difficult as many revenue streams have moved to the digital platforms.

The power and strength of those platforms has made it difficult to compete.

Yet our communities desire and demand for quality, trusted, balanced and professionally written journalism has never been greater.

Most of our publications are provided free to the community, so a sustainable subscription model is not possible, and is not sustainable for a paid publication due to the restricted niche and hyper local audience our publications serve.

Our newspapers provide our communities with a voice, they provide balance and hold the powerful, including all tiers of government to account. They provide content that binds communities, including news about local sport, local groups and local associations.

Star believes that the mandatory code must consider that balance of power, the economies of scale, the diversity of voice and most importantly the significance of hyper local news and what that means to communities.

It is vital that this code considers the balance of media, the needs of the community and the diversity of media in the future.

News Corporation's decision last week to effectively strip away local news from hundreds of communities across Australia is an example of the impact ownership in the hands of a few can have on so many small communities. These communities rely heavily on these publications to provide them with quality, balanced and trusted news. Without them, there will be no way to hold the powerful to account, provide a voice for the voiceless, or steer decisions to benefit the community as a whole.

Ownership diversity and independent local news journalism is vital to the country's democracy. This was highlighted in the Concepts Paper by the ACCC: "Consideration should also be given to how any bargaining frameworks incorporated into the bargaining code would apply to the wide range of news media businesses in Australia. In particular, the implementation of bargaining frameworks should not unduly advantage larger news media

businesses at the expense of smaller news media businesses, including regional and local news outlets.”

## **Value Exchange**

Star believes the ACCC should consider a collective negotiation with the digital platforms on behalf of all publishers. The ACCC should consider establishing two tiers of funding. The total pool collectively negotiated should be allocated to two separate groups in line with the two-tier allocation.

The two tiers established would be:

1. The Independent Media Companies who comply with the independent media criteria.
  2. Large companies and companies who do not fit the criteria for the Independent Media tier.
- This approach will recognise the essential need to ensure long term media diversity. Star proposes consideration of the following seven independent media tier requirements. The independent media tier would require a publisher to fulfill all of the following:
1. Primarily publish news/public interest journalism;
  2. Primarily publish original news content;
  3. Have independent ownership under 30 million dollars turnover;
  4. Must have been operational for 12 months producing news/public interest journalism;
  5. Must adhere and submit to the standards of the Australian Press Council or similar independent code of conduct;
  6. Has paid employees, paying award wages and employing at a minimum one full time journalist under the Journalists Published Media Award 2010
  7. Primarily publish news related to the community in which that news is circulated.

The total pool should be allocated to two separate groups in line with the two-tier allocation described above. Funds from the value exchange would be negotiated as a group of publishers.

The total pool of funds would be divided into two groups:

1. Large companies and companies who do not fit the criteria for the Independent Media tier.
2. The Independent Media Companies who comply with the independent media criteria.

The total pool of funds available from those negotiations would be provided by the digital platforms to a fund established and run by the Copyright Agency or similar independent agency or auditor.

These funds would be allocated to the Independent Media tier based on a minimum total amount or a percentage of the total pool of funds available, whichever is greater.

The Copyright Agency or similar independent agency would provide these funds to publishers based on two elements:

1. 5% of funds collected by the Copyright Agency would be placed into a fund to be used to grant to organisations to use for specific projects relating to the production of news.
2. The remaining funds would be distributed to independent publishers. The distribution would be weighted according to:
  - a. The extent to which a publisher publishes news content on a regular basis to a news online environment;
  - b. The extent to which a publisher produces, prints and distributes a physical newspaper;
  - c. The extent to which a publisher publishes news content on a regular basis to social media;
  - d. The number of full-time equivalent journalists employed, including sub-editors, contributors and editors.

## **Definition of News to be covered by the Code**

Star supports the Concept Paper's proposition that the bargaining code incorporates a definition of news that focuses on the news content itself rather than the nature of the news media business producing the content.

Definition of News/Public Interest Journalism (courtesy Kristy Hess - Deakin):

News content is any type of information relevant to a geographic area in Australia (town, city, suburb, region, state, nation) where a clear investment in human capital is made to source, record, verify or provide detailed synthesis of that information or commentary in an original way in the interests of a public, common or shared social good. The producer of news must align with or adhere to a recognised professional code of conduct and standards. Individuals/institutions that prioritise self-interest, produce deliberately misleading or inaccurate information or promote personal views that may incite hatred or violence are not producers of news content under this definition.

Star notes that while the DPI Final Report did not define "news", it included a definition of 'public interest journalism';

"journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision making at all levels of government".

Star considers that if news were only defined in these terms, content of significant value produced to advance the interests of a public, common or shared social good, would be undervalued and potentially under resourced as result.

As an example, in many local and regional communities, the local sporting club forms an integral part of the social fabric of the community. To exclude information of the weekend results, happenings around the club, and player or club milestones as "news", is to seriously undervalue "journalism of vital interest to our public", and would not advance social good.

## **Digital Platform Services to be covered by the code**

Star recognises the wide range of services offered by the digital platforms (predominantly Google and Facebook) that extends beyond their flagship consumer offerings.

We support the identification of any services operated by these, or any platform, being captured by the Code on a principle-based criteria.

If the service of any digital platform uses the defined news content of any member of our tier, that service will be included on the dynamic list referenced in the bargaining code.

## **Data Sharing and Algorithmic Transparency**

### ***Data Sharing***

Star considers that the Bargaining Code is not the appropriate instrument for addressing the use of personal and other data by digital platforms. The ACCC noted in the final report of its Digital Platforms Inquiry that the digital platforms' significant market power derives in part from the use of people's data.

Better regulation in the privacy arena will provide more transparency and integrity around issues of data use for all parties. Star supports the reform of privacy law to address such concerns.

### ***Algorithmic Transparency***

Star considers that increased transparency would better inform the questions around value exchange. At the moment, information asymmetry persists in favour of the digital platforms on this point. This inequity may be partially solved by an algorithmic explainer, rather than more extensive transparency, a solution that may be more practicable.

Underlying the specific concerns of our members that are the focus of the Bargaining Code, there is a wider social concern that the prioritisation of content viewed by users is currently determined in opaque ways.

Star notes that the ACCC's current Ad Tech Inquiry, to which we have provided a submission, is likely to shed more light on this issue and that the bargaining code may not be the most appropriate instrument for implementing and enforcing algorithmic transparency.

However, the code should include enforceable obligations on the digital platforms with regard to both notification of changes that significantly affect all news media organisations and algorithmic rankings.

Digital platforms should notify news media businesses of algorithmic changes that will have significant, detrimental impact upon the flow of traffic to their operations.

Bearing in mind the public good aspect of journalism, we suggest that the amount of notice required should turn on the percentage of a news media business's traffic that might be affected by an algorithmic change.

The precise threshold (eg 5 per cent) would require sensitivity analysis and should be agreed between the parties, especially as the impact of changes in traffic flow will vary for each news media business.

Star believe adequate notification of algorithmic change will be an important compliance requirement for the digital platforms within the code.

Furthermore, Star's general principle under the bargaining code, is that algorithmic rankings should favour original, local, trusted and reliable content. This conforms to the factors that we have outlined in our definition of news, and Independent Media Tier criteria.

### ***Originality***

Star believes it is vital original news content is prioritised on each of Google and Facebook.

Originality refers to content that is created by the news publication itself. While this can be a difficult quality to identify, it is possible to establish guidelines to distinguish original content that is not otherwise not materially different from other content.

It is important to give credit to content generated by publications for recognition under the Bargaining Code, it would be desirable to recognise publications that generate a high proportion of content that is researched or exclusively purchased by them. This would not preclude similar recognition for a follow up story by another publication where its own journalist pursued a new line, but it would mean that reports posted on the same day as a competitor's story breaks, which essentially inform readers of the subject covered by the competitor, are not recognised in the same way.

Rather than rehash, republish, replicate or rewrite, the production of original content requires not only a greater number of journalists, but better reporting, writing and investigative skills to perform the function of original content creation.

Recognition and incentive to generate original news via a mechanism to monetise this content on the digital platforms, will support the resourcing of journalists to generate diverse public interest journalism that is at the core of our democracy generally. More specifically for Star, their original news content is the glue that binds, informs and creates “community”. They are their communities (often only) journal of record.

### **Control over advertising directly associated with news**

Star is concerned that the digital platforms’ policies and practices affecting advertising directly associated with news restrict their ability to monetise content.

Such advertising commonly includes display advertising, text and image-based advertisements that appear alongside news content, and embedded video advertising: video advertising contained within video-format news content produced by news media businesses; this can often take the form of short advertisements before (‘pre-roll’), during (‘mid-roll’) or after (‘post-roll’) the news content.

Social media do not allow associated advertising to be used in their platforms.

An example of this related to Facebook posts. News content providers benefit from utilizing the Facebook news feed to amplify content to audiences accustomed to using the feed to keep up to date with news. In some cases, publishers wish to use this news feed to post integrated content (native) to the platform. Integrated content is intended to inform the public about business activity, innovation, openings and other news about activity in a community that relates to local business, products or services. However, in doing so a publisher places at risk their presence on Facebook as the platform may determine the activity of posting information that promotes a business is in breach of the platform’s policies around advertising. Where a publisher now relies on the news feed to engage audiences due to the dominant position, great care must be taken to avoid exclusion due to a platform policy restriction. Exclusion might mean the loss of the publishers’ page due to automated enforcement by the platform. The restriction for a publisher that limits the ability to choose what content is posted to the platform is very limiting and makes monetizing our content another obstacle in achieving sustainability. Star therefore would encourage a greater range of freedom to post content that at our determination is relevant to our audiences and the communities we serve without fear of retaliation from Facebook for displaying content that may otherwise be deemed as advertising.