

Submission to the Economics Legislation Committee

on the proposed

Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020

18 January 2021



Overview

Thank you for the opportunity to submit comments to the Committee concerning the Department of Treasury and ACCC's proposed *Treasury Laws Amendments (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*.¹

Digital Rights Watch first submitted comments in the consultation process in August 2020. We have been following the ACCC inquiry into Digital Platforms with great interest and we were encouraged by the final report's extensive emphasis on privacy and data protection in order to protect consumers in the digital era. There is a dire need to sensibly regulate digital platforms and ensure freedom, fairness, and privacy for all.

However, along with many civil society organisations we are concerned about the direction that the draft code has taken in serving the interests of large news providers at the expense of much needed reform and regulation. The Code as drafted perpetuates and capitalises on existing advertising-based models which aggregate massive amounts of personal data for profit.² The Code seeks to course-correct this behavior to redistribute capital among news providers, rather than to minimise the practice of collecting and reselling our behavior patterns and personal information online altogether.

We urge the Committee to consider the Code in the larger context of the digital economy, which is vibrant with local creators, artists, and thinkers—all of whom deserve an open, free, and fair internet in which to conduct their business, learn, and share with their communities.³

Since the introduction of the code, we have covered the developments between companies and the Australian government for our supporters and community. For reference, some of our work related to this submission:

- [The News Media Bargaining Code is not Fit for Any Purpose](#) (analysis)
- [The News Media Bargaining Code](#) (submission to ACCC)
- [The Privacy Act Review Could Shake-up Australia's Value Based Approach to Privacy](#) (analysis)
- [Tech Talks series with Australia at Home - Google Goes Postal](#) (video)

¹ The full text of the draft Bill:

<https://www.accc.gov.au/system/files/Exposure%20Draft%20Bill%20-%20TREASURY%20LAWS%20AMENDMENT%20%28NEWS%20MEDIA%20AND%20DIGITAL%20PLATFORMS%20MANDATORY%20BARGAINING%20CODE%29%20BILL%202020.pdf>

² Internet Health Report from Mozilla, 'The Good, The Bad and The Ugly Sides of Data Tracking', April 2018: <https://internethealthreport.org/2018/the-good-the-bad-and-the-ugly-sides-of-data-tracking/>

³ In 2021, at Digital Rights Watch we will focus on highlighting individual stories of the internet economy, with an emphasis on how decisions made by digital platforms end up impacting individuals and independent creators.

Digital Rights Watch

Digital Rights Watch is a charity organisation founded in 2016 whose mission is to ensure that people in Australia are equipped, empowered and enabled to uphold their digital rights. We stand for Privacy, Democracy, Fairness & Freedom in a digital age. We believe that digital rights are human rights which see their expression online. We educate, campaign, and advocate for a digital environment where individuals have the power to maintain their human rights.

General remarks

At Digital Rights Watch we have welcomed the findings of the ACCC Digital Platforms inquiry which made extensive recommendations regarding the need for a data protection framework and improved protections for privacy in order to protect Australian consumers.⁴ We also welcome the effort to “promote competition, enhance consumer protection and support a sustainable Australian media landscape in the digital age.”⁵ However, we do not believe that the draft code ensures this objective adequately. We are concerned that the first actionable outcome of the extensive ACCC inquiry does not focus on addressing the most pressing systematic data collection and exploitation models that digital platforms thrive on, rather, seeks to make sure that news corporations further benefit from them.

We are particularly concerned by the focus on Google and Facebook in the draft code and the lack of an objective way to nominate platforms in the future.⁶ Any legislation that targets a specific service risks inflicting damage on the competitiveness of the sector. By giving this sort of privileged access to digital platforms to news corporations, the draft code actually perpetuates the collection and abuse of user data by locking in the business model and making more parties fiscally reliant upon it. It is this act—the generation of extraordinary revenue through targeting of advertising based on data accumulated from users of ‘free’ services—that should be regulated, regardless of the organisation undertaking it. It also inadvertently privileges Google and Facebook in setting them up as the dominant players in this space—under the draft code news corporations will have a steady financial incentive not to diversify their online presence across smaller platforms and providers, or move away from these advertising services and practices.⁷

Furthermore, while these digital platforms have the most visible presence through which individuals and news corporations interact with the internet, there is a thriving industry of data brokers that aggregates and resells user data. **We iterate the need for a wholesale approach to address the need for data protection and stronger privacy protections for Australians.** Internationally, we are falling behind in addressing the harms caused by the business models of digital platforms.

We are concerned that such a concrete definition of “*news content*” as presented in the draft code excludes countless actors in the news ecosystem (consolidating power with traditional news media players) and will damage press freedom in the future. This is particularly concerning for small enterprises, commentators or independent investigative journalists. Without access to the same sort of understanding of the digital landscape that news

⁴ The ACCC Digital platforms final report provides several recommendations on how to strengthen the rights of consumers in the digital space, including stronger privacy protections and data rights: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

⁵As described in the explanatory memorandum to the draft Bill: <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/draft-legislation>

⁶ This seems to be at the discretion of the Treasury in the draft Bill.

⁷ We have attached explanatory materials we used to communicate this to our supporters and community in ANNEX I at the end of this submission.

corporations would get under the draft code as well as the remuneration large news will be able to negotiate, it is likely to force smaller actors to integrate into large outlets or remain under-funded and under-represented.

This concentration of negotiation power is particularly worrying when it comes to “original covered news content.” At the very least, any such list should be maintained and updated through a multistakeholder advisory model—not at the discretion of the largest players as is the case in the draft code.

Finally, in terms of creating a sustainable media landscape, we would like to draw attention to the recommendations from the Senate Select Committee on the Future of Public Interest Journalism which presented its final report in February 2018.⁸ There are structural challenges to the Australian media landscape which remain unaddressed, including highly concentrated media ownership, a sustainable and adequate funding model for community broadcast services (which we recommend including as a beneficiary from any sort of negotiations with digital platforms in our recommendations below), and protection for investigative journalists and whistleblowers.

Recommendations

- **Prioritise addressing the harmful business model of digital platforms by focusing on consumer protection.** There are several key recommendations regarding data protection and privacy in the ACCC Digital platforms inquiry final report including the need to strengthen the protections in the Privacy Act.⁹ The final report correctly noted that consumers are left at the mercy of predatory data collection practices and that a regulatory framework would incentivise innovation which protects, rather than exploits, user data.
- **Focus on creating a systemic solution which supports a diverse and dynamic space for all types of journalism in Australia** such as the Independent Future Fund for Journalism.¹⁰ The Australian news ecosystem will continue to deteriorate and suffer if independent journalists, small, local, & community radio and publishing, as well as POC or queer content-creators aren’t included in the solution. Established news corporations do not represent these communities and their viewpoints adequately.¹¹

⁸ The final report as well as summarized recommendations are available here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism/PublicInterestJournalism/Report

⁹ The ACCC Digital platforms final report provides countless recommendations about strengthening consumer rights in the digital space: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

¹⁰ Proposal for an Independent Future Fund for Journalism by Andrew Jaspan can be viewed here: <https://www.accc.gov.au/system/files/Andrew%20Jaspan%20%28March%202019%29.pdf>

¹¹ Australian audiences are let down by TV networks’ lack of diversity: <https://www.news.com.au/entertainment/tv/australian-audiences-are-let-down-by-tv-networks-lack-of-diversity/news-story/53ca210f589f0e7bc01af4b3c27e1205>

- **Adequately fund and support the public broadcasters.** Public broadcasters need not compromise the delivery of journalism in the public interest in response to lost advertisers or other revenue. The ABC and SBS are the only professional news sources accessible to many regions and communities. The ABC and SBS have long been the most trusted source of news for people in Australia, and are critical for countering the rise of misinformation. Addressing revenue challenges for privately-owned news corporations is an important step in protecting public interest journalism, but will be undermined by continued cuts to ABC and SBS.
- Broaden and fix the definition of news covered by the current proposal. It should be the responsibility of the ACCC (or perhaps ACMA) to provide broad access to better negotiating powers to many actors who do not qualify—in size or in scope—under the draft code. Individuals and organisations who engage in journalism and produce news content, or even those who provide commentary (including comedy and satire) all form a dynamic news media environment and should have access to the same remuneration and understanding as news corporations do under the draft code.
- Do not fixate the proposal to Google and Facebook, but broaden the scope of “*digital platform service*” to create a model which enables other platforms to emerge in this space with similar functionality (influence, advertising practices, impact on media providers, etc). As it stands, the draft code consolidates the market dominance that the platforms enjoy and de-incentivises the news corporations from extending their advertising and focus across other platforms.
- Do not allow individual news corporations to negotiate special terms with the platforms directly. Even if small producers of “*core news content*” coordinate, they will not be able to approach the bargaining table with the platforms with nearly as much weight as the established news corporations which have marketing and legal departments that smaller outlets often do not. This perpetuates and consolidates the inequity posed by digital platforms in this space. Having a unified approach for the entire sector would also allow for the inclusion for public interest journalism to be included without risking undue influence or impact on their work.

Contact

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ANNEX I

We have put together a series of social media tiles to explain the Code and our position on it. You can see the tiles below or on our Instagram Page.

WHAT'S UP WITH THE SHOWDOWN BETWEEN THE AUSTRALIAN GOVERNMENT AND GOOGLE / FACEBOOK?

and what's the deal with the **News Media Bargaining Code?**



WHAT happened when?

26 JULY 2019
The Australian Competition and Consumer Commission (ACCC) release the Digital Platforms Inquiry

31 JULY 2020
The ACCC + the Department of Treasury propose new Legislation including the News Media and Digital Platforms Mandatory Bargaining Code

17 AUGUST 2020
Google publishes an 'Open Letter to Australians' asserting that the Code would harm Google services and put individuals' data at risk

17 AUGUST 2020
ACCC responds to Google's open letter, saying it contains "misinformation"

01 SEPTEMBER 2020
Facebook threatens to ban all news on its platforms if the Code is made into law.

WHAT DOES THE CODE SAY?

The Code would require Google and Facebook to negotiate with and pay Australian media companies for news to appear on their platforms

this doesn't include the ABC or SBS because they are public broadcasters

IT WOULD ALSO REQUIRE GOOGLE + FACEBOOK TO tell news companies what data they collect about users who engage with the news, and let them know if algorithms change that could impact how news is ranked

If Google or Facebook don't comply, the ACCC would be able to issue infringement notices and \$\$\$ fines

OKAY so what does this mean?

The Code doesn't actually protect consumers nor improve how our data is collected, used and shared.

INSTEAD-
it allows news corporations to better profit from the exploitative data mining business models of Google and Facebook

that means gives news corporations a bigger slice of the \$\$\$ pie rather than challenging the underlying models to protect individuals as well as the quality and integrity of news and journalism

THE CODE ALSO LEAVES SMALL + INDEPENDENT CREATORS OUT OF THE GAME

THIS MEANS underrepresented groups including BIPOC, the LGBTQ+ community, and disabled activists and creators will continue to struggle to be seen and heard as power gets consolidated elsewhere

yep, that means a bigger platform and more power to the major news corporations, and even less space for diversity in the media

WHY IS THIS A DIGITAL RIGHTS ISSUE?

The way digital platforms do business impacts all of us- they collect, use and sell our data and influence what we see everyday

aside from being hugely privacy-invasive, these platforms have the power to shape social norms + change political outcomes

a thriving media is essential for a functioning democracy. how news media does business, (including healthy competition) affects how we understand the world

we need the media to challenge the practices + manipulative platforms rather than profit from them

DIGITAL PLATFORMS NEED TO DO BETTER

this means addressing the harms caused by their data mining business models + committing to protecting the privacy of people

NEWS CORPORATIONS NEED TO DO BETTER

this means major news corporations need to resist the urge to profit from harmful models at the expense of consumers *and* the quality, vibrancy and diversity of the media in general

THE CURRENT NEWS MEDIA BARGAINING CODE DOES NOT ACHIEVE THIS

@drwaus

ALRIGHT so what could be done to improve the News Media Bargaining Code?

WE WANT TO SEE

- the ACCC prioritise protecting consumers by addressing the harmful practices of digital platforms
- expand the focus beyond just Google and Facebook
- create a solution that supports a diverse and dynamic space for all types of journalism

@drwaus