

Submission to the ACCC Digital Platforms Inquiry

April 2018

Executive Summary

The Australian Press Council welcomes the invitation to make a submission to the ACCC Digital Platforms Inquiry.

The objects of the Press Council, as stated in its constitution, include promotion of freedom of speech through responsible and independent print and digital media, and adherence to high journalistic and editorial standards.

The Press Council is also the principal body with responsibility for setting and promoting high professional standards for publisher members and for dealing with complaints about Australian newspapers, magazines and associated digital outlets. The Press Council plays a pivotal role in promoting and upholding high standards of journalistic practice. This underpins the effective functioning of a free press, which is crucial for the proper functioning of democratic institutions.

The Press Council has for some time been concerned about the profound impact on public interest journalism of the technological and other changes faced by the media industry in Australia and overseas. The ACCC should consider carefully the question as to whether digital platforms must now be considered to be 'publishers' rather than simply aggregators and distributors of content, and how this situation is likely to evolve in the future. There are growing calls for greater editorial responsibility to be displayed by platforms in making decisions about what content is to be routinely available to consumers and what content is to be ignored or blocked.

The Press Council agrees with many observers that a major issue has been the growing power of digital platforms to influence a number of extremely important elements in the news media industry, including:

- choice of topics selected for news, and their format and presentation;
- distribution of news content;
- the potential narrowing of the range of news items accessed by many people as a result of the 'filtering effect' of aggregators;
- the fundamental business model and profitability of media industry players large and small;
 and
- the quality and scope of Australian public interest journalism itself.

The Press Council believes that while the digital platforms most relevant to this Inquiry, where distribution of news/features/opinion content is concerned, are Facebook, Google and Apple, the ACCC should also take into account other platforms, such as YouTube, with the capacity to facilitate such distribution and to disrupt or impinge upon the business model of content creators.

The Inquiry could also usefully consider other digital platforms that do not currently provide access to news and journalistic content in Australia but may provide such content in the future (eg, Amazon, some instant messaging applications, etc).

The Council recognises that technology and consumer preferences are changing rapidly and new sites will emerge to challenge some of the existing tech giants. Any recommendations from this ACCC inquiry need to take this into account while at the same time addressing issues specific to companies and sites.

As recently noted by the Senate Select Committee on the Future of Public Interest Journalism, although there is no universal definition of public interest journalism, "there are certain behaviours, institutions and principles that have been commonly cited when discussing its role and importance". For example, public interest journalism would include investigative reporting, 'accountability

¹ See Report of Senate Select Committee on Public Interest Journalism, 5 February 2018, Chapter 1, Definitions.

journalism' and journalism which ultimately contributes to the working of democracies. It can also include factual reporting that serves the public interest, for example, by providing a platform for debate. The Press Council contends that public interest journalism is necessarily underpinned by a commitment to accuracy, balance and fairness. Publishers that are members of the Press Council, which are the majority of publishers in Australia, agree to abide by the General Principles and Specific Standards as determined by the Council.

The Press Council is of the view that one of the key issues relevant to the quality of news and journalistic content that should be considered by the ACCC is the disruptive effects that the rise of the digital platforms such as Google and Facebook have had on the traditional journalism model because they are absorbing such massive amounts of digital advertising revenues—roughly 90 per cent of growth in digital advertising is thought to be going to these two companies alone.

At the same time, the original content created by Press Council members and other media companies that the public wants to read and see is an element making Google and Facebook popular in Australia. The platforms have access to this content but do not pay towards its creation. The Inquiry should address whether financial recognition by the big digital players for the content they aggregate and distribute is appropriate.

While loss of revenue to media organisations is not just the result of the emergence of Facebook and Google, its effect on producers of news content has led to fewer journalism jobs, and, some argue, a concomitant decline in public interest journalism in this country. This is notwithstanding the wider access to public audiences by producers of content (whether they be journalists, informed experts or bloggers) facilitated by the digital platforms.

The Press Council notes the importance of local content and the sustainability of an Australian media industry for the healthy functioning of our domestic communities. The more the Australian media's viability is threatened, the more the Press Council and the high standards it asks members to adhere to are placed under strain. Another area which the ACCC's Inquiry could usefully examine is the responsibility and efficacy of digital platforms in verifying news and journalistic content before distributing it. There are growing concerns, among publishers and among consumers, about 'fake news'. If Press Council members are being held to high standards of practice as to the accuracy of materials they produce and distribute, it can be seen to be highly unfair that powerful players such as Facebook and Google are not also required to make some effort to reduce the adverse effects on public discourse and democracy of fake news being systematically and widely produced.

Introduction

The Australian Press Council welcomes the invitation to make a submission to the ACCC Digital Platforms Inquiry.

The objects of the Press Council, as stated in its constitution, include promotion of freedom of speech through responsible and independent print and digital media, and adherence to high journalistic and editorial standards.

The Press Council is also the principal body with responsibility for setting and promoting high professional standards for publisher members and for considering, dealing and responding to complaints about Australian newspapers, magazines and associated digital outlets. It seeks to meet those objectives by:

- a) encouraging and supporting initiatives by the print and digital media to address the causes for readers' complaints and concerns;
- keeping under review and, where appropriate, challenging political, legislative, commercial or other developments that may adversely affect the dissemination of information of public interest and consequently threaten the public's right to know;
- c) making representations to governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
- d) undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues;
- e) promoting an understanding of the objects and activities of the association especially among editors, journalists and journalism schools.

The Press Council currently covers cover more than 900 print and online mastheads. Constituent bodies include all but one (Seven West Media) of the major newspaper and magazine publishers in Australia.²

These include the mainstream publishers (such as Fairfax Media and News Corp Australia) and their associated online websites, hundreds of community newspapers and rural and regional newspapers, as well as the new generation of online-only publishers (such as nine.com.au, Daily Mail Australia, Mumbrella, The New Daily, New Matilda and Crikey). A significant number of the top-ranking news sites (in terms of reach and influence) are members of the Press Council.

The Press Council's governing body has 21 members, comprising 11 public members (including the Chair and two Vice-Chairs), eight publisher members and two independent journalist members. The Press Council has a secretariat headed by a Council-appointed Executive Director.

The Press Council considers complaints about print and online publications. Where appropriate, it seeks to achieve agreed remedies, issues letters of advice to publishers and publishes formal adjudications regarding certain complaints. In 2016–2017, the Council received 565 in-scope complaints.

The Press Council sets General Principles covering accuracy and clarity; fairness and balance; privacy and the avoidance of harm; and integrity and transparency. It has approved Specific Standards on the coverage of suicide and of contacting patients in care. It has also approved a Statement of Privacy Principles (in consultation with the Federal Privacy Commissioner) and Advisory Guidelines on a range of journalistic issues.

As a means of championing free speech and press freedom, the Press Council announced in 2016 that it would award Press Freedom Medals annually to individuals who, through their work as

4

² A list of the constituent bodies of the Press Council is set out in Annexure 1.

journalists, experts, advocates of press freedom or respected members of the community ensure that important issues are brought to public attention. The Press Council awarded Press Freedom Medals in 2016 and 2017 and is planning to do so again in 2018.

The Press Council also undertakes educational work to promote responsible journalism. It currently provides university journalism schools with teaching materials and case studies based on Press Council adjudications to promote learning about the Council's standards. In partnership with the Journalism Education and Research Association of Australia (JERAA), the Press Council funds prizes for outstanding work by journalism students at undergraduate and postgraduate level—as well as funding an award for the journalism student of the year.

The Inquiry and the terms of reference

The Press Council understands that the main purpose of the ACCC Digital Platforms Inquiry is to examine the impact of digital search engines, social media platforms and other digital content aggregation platforms on the state of competition in media and advertising services markets. The Inquiry is to look at the impact, in particular, in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.

The Council notes that the Terms of Reference for the Inquiry identify matters to be taken into consideration in the course of the Inquiry, which include but are not limited to:

- i. the extent to which platform service providers are exercising market power in commercial arrangements with the creators of journalistic content and advertisers;
- ii. the impact of platform service providers on the level of choice and quality of news and journalistic content to consumers;
- iii. the impact of platform service providers on media and advertising markets;
- iv. the impact of longer-term trends, including innovation and technological change, on competition in media and advertising markets, and
- v. the impact of information asymmetry between platform service providers, advertisers and consumers and the effect on competition in media and advertising markets.

The Press Council considers the Terms of Reference of the Inquiry are appropriate in scope and clearly stated. It is to be hoped that in addressing these Terms of Reference the Inquiry will be able to develop positions and recommendations that will cast light upon, and make recommendations to address, some very important problems facing the media industry in a time of great change.

The Council is conscious of the financial pressures on publishers of quality content and public interest journalism, but notes the complexity of the issues involved, including the impact of new technology; the advent and dominance of aggregators of content; and the pervasion of social media.

The impacts are not all negative, as the new technology is facilitating wider public participation and increased direct public involvement in the media. Nonetheless, the sharp reduction worldwide of revenues earned and journalists employed by major publishers is of concern because of the risk this poses to public interest journalism.

General observations

The Press Council has for some time been concerned about the impact on public interest journalism of the technological and other changes faced by the media industry in Australia and overseas.

The Council notes the growing power of digital platforms in digital advertising and the ability of the platforms to influence a number of extremely important elements in the news media industry, including:

- choice of topics selected for news, and their format and presentation;
- distribution of news content;
- the potential narrowing of the range of news items accessed by many people as a result of the 'filtering effect' of aggregators;
- the fundamental business model and profitability of media industry players large and small;
 and
- the quality and scope of Australian public interest journalism itself.

In 2016, the Press Council was concerned enough about one aspect of the increasing power of a major digital player to issue statements on what the Council considered a worrying lack of clear and public editorial polices at Facebook.

The then Chair of the Press Council, Professor David Wesibrot AM, said in a statement issued on 13 September 2016:

As more and more people get their news primarily, or even solely, based on what is 'trending' on Facebook and other social media platforms, the company's public interest responsibilities and accountability must increase accordingly. Facebook is no longer simply a passive aggregator and disseminator of news and other information. It is unacceptable for Facebook to rely on vague and inconsistently applied rules and a complex computer algorithm to shape the content featured and distributed by what is, in effect, a global news service.

Professor Weisbrot also said:

With great power comes great responsibility. Facebook is now a leading global publisher in all but name. The Australian Press Council calls on senior management at Facebook to review urgently the way it aggregates and disseminates the world's news and to make public the editorial policy, if there is one, which guides this work.³

The Press Council's concerns have not changed since those statements were made in 2016.

The Council's main concern is with the conditions, standards and procedures that facilitate production and broad access to the quality public interest journalism that is required in any well-functioning democratic society. More specifically, because the production and dissemination of quality public interest journalism is an expensive proposition, this must be adequately resourced. Anything that significantly and systemically reduces the independence, scope of operations and/or revenues necessary for media companies to produce such material must be considered a serious threat to a crucially important function.

The Press Council notes the importance of local content and the sustainability of an Australian media industry for our domestic communities. The more the Australian media's viability is threatened the more the Press Council and the high standards it asks members to adhere to are placed under strain.

The changing media landscape and the rise of the powerful digital platforms and social media channels have had a significant effect on the operation and concerns of the Press Council itself. Many of the Press Council's complaints relate to material accessed by readers via the major digital platforms, rather than in the hard-copy editions or the home pages of publishers' websites. Many readers come across material without ever having visited the home page of the publisher in question. This is a new phenomenon that the Press Council must increasingly address and one that is directly attributable to the growing popularity and power of the leading digital platforms.

³ See: http://www.presscouncil.org.au/media-release-3-november-2016/ and http://www.presscouncil.org.au/media-release-3-november-2016/

The Press Council has, as well, had to grapple with questions such as whether newspapers should be held responsible for the comments posted on their Facebook pages about articles they have published originally. As a rule, the Council does require its member publishers to take full responsibility for their Facebook pages. However, they cannot be held responsible for the way aggregators maintain the capacity for people to search for material no longer on the publisher's Facebook pages or other on-line publications, or that has since been corrected. Attempts have been made to address this concern, and Google and Facebook have at times taken suitable action, but neither the Press Council nor its publisher members have the ability to require such action to be taken.

Another issue is the direct effect on the Australian Press Council, and other press councils around the world, of the financial situation of member publications. As revenues fall, the ability or interest of publishers in paying membership fees to press councils may wane. UNESCO research has shown that the financial independence and sustainability of press councils in Europe has been affected by the drop of the advertising revenues of print media. It showed also that, in European countries, concrete mechanisms to ensure long-term financial sustainability of press councils, in an era when publishers' revenues are declining, are rarely in place. Resources are further stretched by large number of complaints driven by social media campaigns originating from digital platforms.

A robust Press Council in Australia is an integral part of a strong and viable media industry. This is equally so outside of capital cities, where regional media play such a significant role informing smaller communities of news that matters to them and is important for their daily lives.

The Press Council's regional and community members and the group of quality smaller or 'niche' city publishers have been affected and have been struggling to continue to do quality journalistic work. There are real concerns for the sustainability of local or niche content and the role it plays in serving specific communities.

The Press Council notes the recent initiative by the federal government to introduce the Regional and Small Publishers Innovation Fund, a competitive grants program that will provide \$16 million per year over three years to support regional and small publishers to transition and compete more successfully in the evolving media environment. The stated objective of the Fund is to "encourage small and regional news publishers to develop and trial sustainable models for the provision of public interest journalism". The Press Council considers that development of such sustainable models cannot be carried out without taking into account the enormous power of the major digital platforms over revenue sources and distribution opportunities available to the Australian media.

Digital platforms

While the Press Council considers that the digital platforms most relevant to this Inquiry, where distribution of news/features/opinion content is concerned, are Facebook, Google and Apple, consideration should also be given to other digital platforms, such as YouTube, with the capacity to facilitate such distribution and to disrupt or impinge upon the business model of content creators.

The Inquiry could also usefully consider other digital platforms that do not currently provide access to news and journalistic content in Australia but may provide such content in the future (eg, Amazon, some instant messaging applications, etc). New research is showing that more and more people—around a quarter (23 per cent) of respondents to a recent worldwide Reuters survey—now find, share, or discuss news using one or more messaging applications like WhatsApp.

News and journalistic content

As recently noted by the Senate Select Committee on the Future of Public Interest Journalism, although there is no universal definition of public interest journalism, "there are certain behaviours, institutions and principles that have been commonly cited when discussing its role and importance".

For example, public interest journalism would include investigative reporting, 'accountability journalism' and journalism which ultimately contributes to the working of a democracy. ⁴ It can also include factual reporting that serves the public interest, for example, by providing a platform for debate.⁵

The Press Council contends that public interest journalism is necessarily underpinned by a commitment to accuracy, balance and fairness. Publishers that are members of the Press Council, which are the majority of publishers in Australia, agree to abide by the General Principles and Specific Standards as determined by the Council. Should publishers not maintain high standards of journalistic integrity as espoused in the General Principles and Specific Standards, they are open to having complaints made against them and can be held accountable via the Council's complaints-handling process.

The industry, more broadly, benefits from this focus on standards and also the Press Council's role in the public debate about journalistic standards in general and its development of standards on specific issues as they arise. In its work, the ACCC Inquiry should focus on the news and journalistic content supplied to consumers in Australia, as well as journalistic content produced in Australia. As noted earlier in this submission, with the advent of highly effective and extremely swift digital distribution channels the traditional boundary between 'Australian content' and content produced elsewhere is becoming increasingly blurred. The Press Council has been grappling with such questions. Should, for example, articles produced in the United Kingdom by a major international publisher, and distributed in Australia through that publisher's local operation, be the subject of complaints to the Australian Press Council or dealt with by a complaints-handling body in the origin country?

Distribution of content by major digital platforms has raised some extremely important, though equally complex, issues of 'jurisdiction' over the standard of content consumed by readers. It could be said that the advent and increasing power of major digital platforms, and the way news content is distributed, has also significantly disrupted certain regulatory and self-regulatory environments.

Choice and quality

On the issue of appropriate metrics for measuring the quality of news and journalistic content (as opposed to the available choice of such content), the Press Council considers an appropriate metric of a commitment by publishers to quality would be membership of the Australian Press Council, which includes binding agreement to comply by its Standards of Practice and complaints-handling requirements, or membership of an equivalent independent standards setting and monitoring body.

Another area which the ACCC's Inquiry could usefully examine is the responsibility and efficacy of digital platforms in verifying news and journalistic content before distributing it. There are growing concerns, among publishers and among consumers, about 'fake news'. If Press Council members are being held to high standards of practice as to the accuracy of materials they produce and distribute, it can be seen to be unfair that these platforms are not also required to make some effort to reduce the damaging effects on public discourse and democracy of fake news being systematically and widely produced.

This is, nevertheless, not in itself an adequate solution. Quality journalism and media self-regulation is actually not a question of retrospective fact checking or merely correcting or removing erroneous articles. Standards of practice as promulgated by the Australian Press Council and other press councils around the world require that information is checked before and not after, publishing, as well as requiring that publications take reasonable steps to provide corrections or remedial actions if published material is significantly inaccurate or misleading.

⁴ See Report of Senate Select Committee on Public Interest Journalism, 5 February 2018, Chapter 1, Definitions.

⁵ Explainer: what is public interest journalism?, The Conversation: <u>Andrea Carson</u> June 15, 2017 http://theconversation.com/explainer-what-is-public-interest-journalism-78996

The Reuters Institute Digital News Report (2017) found in its survey of news consumers in 36 markets around the world that only a quarter of respondents think social media do a good job in separating fact from fiction, compared to 40 per cent for the news media. Other data suggest that users feel the combination of algorithms and a lack of rules is allowing low quality material and fake news to spread quickly.

Consideration should be given as to whether the major platforms should be subject to the same editorial standards as other participants in the media as to news and journalistic content. That is, they should not be permitted to distribute, or fail to check adequately for, erroneous or seriously misleading content, particularly in election periods or on other matters of important public debate, such as, for example, immigration, refugees, same sex marriage and gun control.

The ACCC should examine the question of, and/or request that the major digital platforms make public more information as to their self-regulatory codes, guidelines or standards of practice. Evidence is required that the digital platforms are taking such matters seriously and devoting personnel and financial resources to address some of the fake-news-related problems noted in this submission and in the ACCC's Issues Paper.

Market power of digital platforms

The Press Council agrees with the contention that the major digital platforms have exceptional market power and have engaged in behaviours that indicate clearly the exercise of such market power.

From a competition perspective, one of the issues the ACCC could address is the extent to which digital platforms can impede the legitimate competition of other businesses through their monopoly. To what extent should platforms be required to give access to other companies needing the platform?

In the case of Google for example, it is impossible for publishers not to be on that platform. Google has, along with Facebook and Apple, extraordinary power over consumer access to news and feature material (what is accessed and how it is accessed). It is now essential for journalism to be 'discoverable' to the public via these channels. This can be seen as an inappropriate level of market power by digital platforms *vis a vis* the ability of content providers to negotiate terms that are fair and commercially viable.

In the opinion of some commentators, Facebook retains people on the platform by showing them articles that reinforce their own points of view, rather than promoting diversity of opinion, which is essential for a functioning democracy. The ACCC Inquiry could examine the issue of the 'filtering effect' of how the digital platforms aggregate and distribute news and the potential dangers this poses for public interest journalism and a properly-informed community.

It is suggested that the digital platforms also need to better support publishers with paywalls so that publishers can have a sustainable revenue stream to fund journalism. Both Google and Facebook have often worked against sites with paywalls because they make their money from advertising and not subscriptions. The Press Council notes that Google has recently indicated its willingness to sell digital subscriptions to newspapers in its Play store for the first time.

In Australia, Fairfax is partnering with Google across several areas of its publishing business, including advertising, subscriptions and product development.

The Press Council notes that the algorithms used by digital platforms, particularly Facebook, change frequently and can effectively make companies 'disappear digitally' or cause harm through the exercise of considerable power over how and where publishers appear on their platforms. There needs to be better transparency and consultation as how these algorithms work, and how and why they are being changed, because these decisions can have immediate effects on publishers' operations and revenues. The production of quality public interest journalism in Australia must be well

resourced. Digital platforms have changed the price, quality and choice of media content for Australian consumers and, in doing so, have caused a drop in revenue for media players large and small that at times appears to be of crisis proportions.

The Press Council suggests the ACCC Inquiry gives careful consideration to all sides of the debate as to whether it would be appropriate for the powerful digital platforms to begin routinely providing some form of financial recognition for the publishers' content from which they derive significant value.

Implications for media content creators

The Press Council is of the view that one of the key issues relevant to the quality of news and journalistic content that should be considered by the ACCC is the profoundly disruptive effects that the rise of digital platforms have had on the traditional journalism model. These platforms are absorbing massive amounts of digital advertising revenues—roughly 90 per cent of growth in digital advertising is thought to be going to Google and Facebook alone.

At the same time, the original content created by Press Council members and other media companies that the public wants to read and see is one of the elements making them popular in Australia—content they have access to without having to pay towards its creation.

Richard Bean, former head of the Australian Communications and Media Authority, noted recently that "the reluctance of Australian consumers to pay for digital news can be contrasted with their attitude to digital entertainment to the extent that at December 2016, 30 per cent of Australians had subscribed to a video-on-demand service". In the journalism sphere, both broadcast and print players are under increasing pressure because not just distributors but the consumers of news seem to feel little obligation to pay for such content.

The Reuters Institute for the Study of Journalism noted in relation to a recent survey conducted in Australia:

Traditional print brands are still read online by half (49 per cent) of our Australian sample each week, but only around one in ten (13 per cent) are prepared to pay for online news. Although Internet advertising continues to move online—one PwC [PricewaterhouseCoopers] forecast sees it rising to 51 per cent of the total ad market spend by 2020—these revenues are not enough to compensate for accelerating loss of revenues from print.

The loss of revenues to producers of news content has led to fewer journalism jobs, and, some argue, a concomitant decline in the scope, depth and quality of public interest journalism in this country.

Margaret Simons, the then Director of the Centre for Advanced Journalism at University of Melbourne, noted in a commentary on the 2017 cuts to newsroom staff at Fairfax Media and News Corp Australia:

It is very hard to say how many Australian journalists have left the profession over the last 10 years.

This is partly because the nature of journalistic work has changed. Many now work aggregating or producing digital content, never leaving their desks. Institutions such as universities and NGOs are now producing journalistic content, published online, but the people employed to do this task rarely show up in the figures compiled by unions and the Australian Bureau of Statistics, because their employers are not classified as media organisations.

Nevertheless, the big newsrooms have shrunk beyond recognition. This week's announcements [of job cuts at Fairfax Media and News Corp] were the latest in a 15-year trend. In 2013, industry commentators estimated that more than 3000 Australian journalists had

10

⁶ The Digital News Report: Australia 2017; News & Media Research Centre, University of Canberra, June 2017.

lost their jobs in the previous five years. Since then, there have been further deep cuts, and last week's announcements were merely the latest. In the US, it is estimated that 15 per cent of journalistic jobs disappeared between 2005 and 2009, and the cuts haven't paused since then.⁷

Longer term trends

While there are of course major privacy concerns related to the compilation, storage and sharing of such data (witness the very recent controversy over Facebook's sharing of its members' data with Cambridge Analytica) there is merit is examining whether some types of data collected by the digital platforms could assist media companies in better servicing their readers' needs and preferences.

Access to or control over user data affects the power relationship between digital platforms and media content creators. Google is apparently preparing to share with media companies data that show which Internet users have a propensity to pay for online journalism. Such initiatives should be explored further and the ACCC Inquiry should consider such matters in its work, along with the major privacy issues they entail.

The ACCC should also consider carefully the question as to whether digital platforms must now be considered to be 'publishers' rather than simply aggregators and distributors of content, and how this situation is likely to evolve in the future. As noted previously, the Press Council, and other press councils, particularly in Europe, have expressed concern about how certain practices engaged in for example by Facebook amount, *de facto*, to editorial decisions. There are growing calls for greater editorial responsibility to be displayed by Facebook in making decisions about what content is to be routinely available to consumers, and what content is to be ignored or blocked.

Conclusion

The Press Council welcomes the ACCC's Inquiry and would be pleased to assist further. Please let us know if we may be able to do so. We look forward with interest to reading the ACCC's draft report.

John Pender Executive Director

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⁷ 'Journalism faces a crisis worldwide—we might be entering a new dark age'; Guardian Australia, 15 April 2017.