



**FreeTV**  
Australia

## **Submission by Free TV Australia**

Artificial Intelligence  
Australia's ethics framework

*Department of Industry, Innovation and Science*

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May 2019

## 1 Summary

- The use of Artificial Intelligence (AI) has a growing level of importance for the lives of all Australians.
- In this submission we highlight how the use of AI is playing a significant role in how the community is served news and current affairs content.
- Millions of Australians continue to receive their news and current affairs content through platforms such as commercial free-to-air television that have strong and effective regulatory regimes that require accuracy and impartiality. However, consumers are increasingly supplementing this with news gathered through sources that are dependent on AI.
- In our view it is critical for our democracy that the AI core principles set out in the discussion paper are applied to the surfacing of content through the digital platforms and content aggregators such as Google Search, Google News, Facebook Newsfeed and Apple News.
- The toolkit proposed in the discussion paper can be used to guide policy makers in the appropriate regulatory regime that should be applied to AI use cases, depending on the outcome of a risk-based assessment.
- We have set out two regulatory regimes that could be applied to the use of AI. First is an output-based model that sets the AI core principles in legislation and then tasks an independent regulator with ensuring that the outputs of the algorithms are consistent with these principles.
- Secondly, in situations where AI is used in competitive markets, we highlight how the AI principles can be used to underpin market rules that would again be enforced by an independent regulator.
- We trust that these examples of practical implementation of the core AI principles will be useful for the Department and its research partners.
- This is very important consultation process and we would encourage the Department to engage across government to ensure that the expertise developed in this area can be used in other policy processes—such as the Government’s response to the ACCC digital platform inquiry that will be delivered in June 2019.

## 2 Introduction

Free TV Australia thanks the Department of Industry, Innovation and Science for the opportunity to submit the views of our members on the proposed ethics framework for AI.

Free TV represents all of Australia’s commercial free-to-air television broadcasters. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. Free-to-air television delivers high-quality Australian programmes including news, current affairs, sports and culture to all Australians for free. 98% of Australian households receive digital terrestrial television.

The commercial free-to-air broadcasting industry also delivers important public policy outcomes for all Australians and achieves important social and cultural objectives. We operate under the Commercial Television Industry Code of Practice. The Code is developed by Free TV in consultation with the public and registered with the Australian Communications and Media Authority (ACMA). Before registering the Code, the ACMA must be satisfied that it:

- provides appropriate community safeguards for the matters it covers;
- is endorsed by a majority of commercial television stations; and

- members of the public were given adequate opportunity to comment.

Particularly relevant for the matters that we wish to draw to the attention of the Department are the requirements set out in the Code for accuracy and fairness in news and current affairs programming. The Code requires that commercial free-to-air broadcasters present factual information accurately and ensures that viewpoints included in new and current affairs programming are not misrepresented. Our Code of Practice also requires that news programs be presented fairly and impartially.

In practice this is achieved by news and current affairs directors across the country exercising judgement and making editorial decisions every day about the content that is broadcast to Australians. Human judgement is crucial to ensuring that the community standards that are enshrined in our Code of Practice are upheld. This is analogous to both the humans in the loop and society in the loop concepts noted in the discussion paper.

The ACMA is an independent compliance and enforcement body that is able to investigate complaints about alleged breaches of the Code. In the event it does find a breach of the Code, the ACMA has an extensive range of enforcement options available to it. This is an open and transparent process with ACMA investigation reports published on its website.

This contrasts starkly to the editorial decisions that are made by the algorithms written by digital platforms and content aggregators, for example Facebook Newsfeed, Google Search, Google News and Apple News.

Free TV supports the core AI principles set out in the discussion paper. Using these principles as a starting point, this submission highlights the impacts that opaque algorithms are currently having on public policy discourse in Australia. We also propose an expansion of the toolkit detailed in the discussion paper to guide policy makers in the formation of compliance and enforcement frameworks that enshrine the AI principles.

## **3 AI Governing our access to information**

### **3.1 Dominance of Google Search and Facebook Newsfeed**

The Australian Competition and Consumer Commission (ACCC) is currently undertaking an inquiry regarding the impact of the digital platforms (primarily Google and Facebook) on traditional media companies.

In its preliminary report, the ACCC made a number of key findings relevant to the commercial free-to-air sector. It found that Google and Facebook both have substantial market power in their respective markets and that the widespread and frequent use of Google and Facebook means that these platforms occupy a key position for businesses looking to reach Australian consumers, including advertisers and news media businesses.

In fact, in respect of search, such is the dominant position of the Google algorithm in the lives of Australians that approximately 94 per cent of online searches in Australia are currently performed through Google.

Not only did the ACCC find that Google and Facebook were dominant in their respective markets, it found that there is a lack of transparency in the operation of Google and Facebook's key algorithms, and the other factors influencing the display of results on Google's search engine results page, and the surfacing of content on Facebook's Newsfeed.

Given these findings, Free TV submits that the operation of the algorithms governing Australian's access to information should be a key focus of the work of the Department and its research partners. As we elaborate on below, this is an ideal area for joined-up policy making across Government.

In the context of the core AI principles contained in the discussion paper, the current operation of the digital platform algorithms would appear to conflict with:

- **Regulatory and legal compliance** – the opaque nature of the algorithms means that it is very difficult to assess compliance with the broader legal framework. There are a growing number of cases of allegations of anti-competitive conduct stemming from the use of the algorithms. The European Commission has issued significant penalties where this conduct has been able to be identified, albeit usually years after the conduct commenced.
- **Privacy protection** – as the discussion paper notes, the Cambridge Analytica scandal highlights the potential for wide-scale privacy breaches, at least in respect of Facebook.
- **Fairness** – Again the lack of transparency around the operation of the algorithms makes assessment of fairness problematic. However, what is clear is that unilateral changes in the design of algorithms can and do have a significant and potentially unfair impact on the organic reach achieved by Australian media businesses. Just as importantly, algorithms are also used in the buying and selling of advertising impressions through marketplaces dominated (and in many cases, operated) by Google and Facebook. The ACCC has received significant evidence regarding unfair terms and conditions imposed by the dominant digital players to unfairly preference their own businesses.
- **Transparency and “explainability”** – The ACCC has already found in its Preliminary Report that there is a lack of transparency around the operation of the dominant digital platform’s algorithms.
- **Contestability** – Unilateral changes in the algorithm that determines the content served in Facebook Newsfeed and Google search can and do have a significant impact on consumers and businesses. There is currently no process for these changes to be challenged.
- **Accountability** – Consistent with the conflict with the core principles of fairness, transparency and contestability, there is a lack of accountability for the impact that the algorithms can have on consumers and businesses.

In section 5 we set out two specific regulatory regimes that would ensure that the algorithms that govern the surfacing of content and the buying, selling and serving of online advertising operate consistently with the core AI principles.

### 3.2 The potential for echo chambers

The discussion paper steps through a number of case studies to support the need for governments to focus on the ethics of AI. Free TV submits that the role that AI plays in assisting citizens form policy judgements and ultimately voting intentions is also worthy of detailed consideration.

In our, it is vital for our democracy that the algorithms that govern our access to information online operate in a manner that is consistent with the core AI principles. In the introduction section we explained the regulatory enforcement and compliance process that applies to commercial free-to-air broadcasting editorial decisions. These days many people are choosing to supplement access to traditional news sources with news sourced online. For some people online news may be the predominant source of news and current affairs information that they then use to form voting intentions.

The free-to-air sector’s employment of high calibre, award winning investigative journalists plays a key role in providing important checks and balances on our political and legal processes by facilitating transparency and accountability. From matters such as challenging non-publication orders, reporting on court cases and investigating instances of alleged corruption, Australians rely on us to be their eyes and ears. In doing so, our public interest journalism plays a crucial role in a healthy functioning democracy.

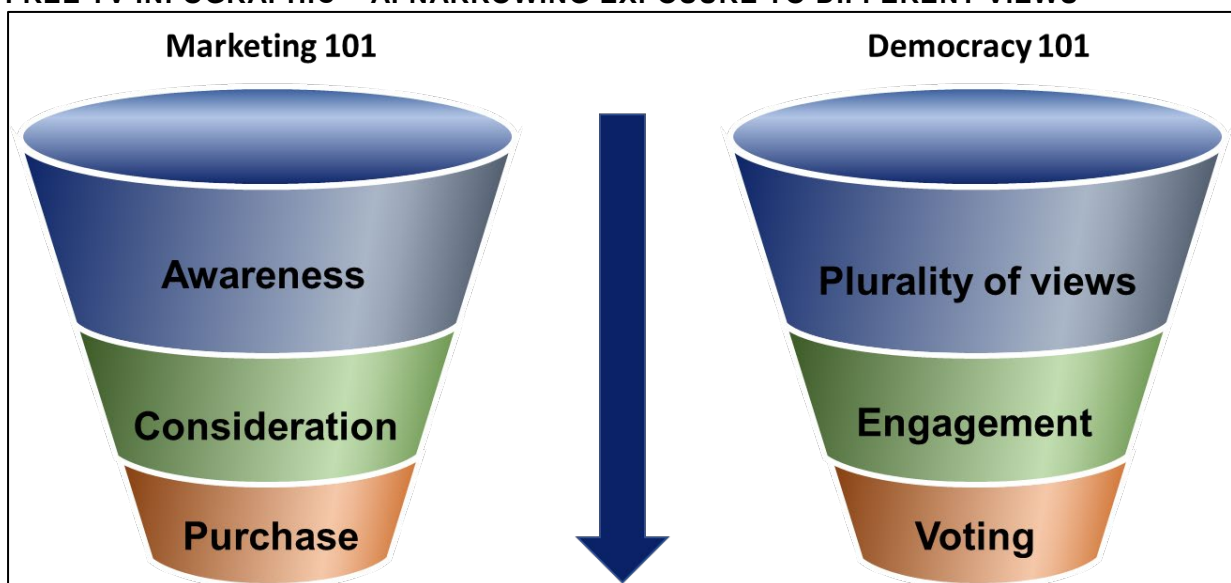
Importantly, the plurality of the news and current affairs services shown across the free-to-air networks provides a diversity of viewpoints to the community. This encourages public discourse by challenging pre-conceptions and has the potential to increase the acceptance of diversity across the community.

By contrast, information sourced via the algorithms that govern platforms such as Facebook Newsfeed and Google Search give prominence to news based on content that you or your friends network have previously engaged with.

For example, if you read an article suggesting that trade barriers should be increased, the algorithm may pigeon hole you into a group that has a trade protectionist leaning. From there, rather than being exposed to alternative viewpoints discussing the case for more liberal trading arrangements, you may be served articles based on the algorithm’s understanding of your political and policy beliefs. The result is a “filter-bubble” where users are only served articles that accord to one particular world view.

So rather than providing a platform for the discussion of a range of viewpoints, the operation of the algorithms has the potential to provide a series of segregated echo-chambers. There is a useful analogy that can be drawn here with the “marketing funnel” that describes the decision-making process of consumers from brand awareness through to purchase decision. Below we map out a similar funnel construct, but instead use it to describe the process of forming voting intention.

**FREE TV INFOGRAPHIC – AI NARROWING EXPOSURE TO DIFFERENT VIEWS**



In the same way that commercial television is exceptional at building brand awareness at the top of the marketing funnel, television provides a wide array of public policy viewpoints to the community. By contrast, the filter-bubble created by the operation of the online algorithms can only ever narrow the funnel.

Therefore, just as a reliance on digital advertising can lead to a loss of brand awareness, reliance on AI driven online algorithms for news dramatically narrows the funnel and your exposure to a plurality of viewpoints and encourages more extremist views that are more likely to generate a reaction. In this environment, it has never been more important to ensure the online algorithms are written and output results consistent with the AI core principles.

## 4 Practical implementation of ethical AI

Section 7 of the discussion paper seeks stakeholder feedback on how ethical AI frameworks should be implemented. This section of our submission discusses how the proposed toolkit could be used to guide governments in the implementation of ethical AI. Section 5 outlines how our proposed approach would be implemented in respect of the issues we have identified above.

### 4.1 Toolkit should provide graduated options for implementation

Free TV submits that the toolkit outlined in the discussion paper should start with the risk assessment outlined on page 59. The aim of this risk assessment would be to determine what level of regulatory oversight was justified with respect to the risks identified. The toolkit would then establish a spectrum of regulatory responses.

In some instances of the use of AI, the risks may be deemed to be low. In such cases, the toolkit should guide policy makers on the appropriate education, training and standards that should be implemented. In some moderate risk cases, the toolkit should guide the use of best practice guidelines and outline the role of monitoring against that guideline. Each stage should also include an appropriate recourse or dispute resolution mechanism.

However, where the risks of AI failing to meet the core principles are highly significant, the toolkit should guide policy makers to legislating the AI core principles and putting in place bespoke regulatory frameworks that are capable of enforcing those principles. Two such bespoke regulatory regimes are outlined in section 5 of this submission.

### 4.2 Opportunity for joined-up policy making

The process currently being undertaken the Department could be a critical input into other Government processes both now and into the future. For example, the ACCC is currently investigating the appropriate arrangements for improving the transparency of Google and Facebook's algorithms. There is a clear opportunity for 'joined-up' policy making by designing a compliance framework, drawing on the expertise residing within the Department and its research partners.

For example, Free TV advocates an output-based approach to algorithm regulation for surfacing news and search content. The mechanics of how a regulator could check compliance with output principles are included in the discussion paper, including using specialised professionals or groups to review AI, or even using AI itself to check for outputs.

Whichever model is eventually settled on, what is clear is that public policy would benefit from all arms of Government drawing from a growing knowledge base in this challenging area

## 5 Proposed principle-based output regulation

This section outlines two bespoke regulatory approaches to enshrining the core AI principles and an associated compliance and enforcement framework. These examples are based off the issues with the operation of the algorithms of the dominant digital platforms highlighted in the ACCC's digital platform inquiry preliminary report.

### 5.1 Output based regulation for surfacing content

The discussion paper makes the correct observation that sometimes full transparency is either impossible or undesirable:

*"Take neural nets, for example: they are too complex to explain, and very few people would have the expertise to understand anyway. However, the input data can be explained, the outcomes from the system can be monitored, and the impacts of the system can be reviewed internally or externally." (Page 11)*

With respect to search engine algorithms, Free TV has accepted that full transparency may lead to the potential for ‘gaming’ to occur. However, we consider that the best way to protect against this sort of gaming is to create an output-based regulatory model that sets out the principles that the digital platforms must abide by in writing their algorithms.

These principles should be set in legislation or delegated legislation by a regulator. The regulator would then be tasked with periodically confirming that the outputs of the algorithm were consistent with these principles. In the case of Google Search results, Free TV has previously submitted to the ACCC that the principles should include requirements:

- that rankings must be fair and impartial, and any impact of commercial arrangements must be clearly disclosed;
- that the availability and ranking of snippets or other forms of rich results must not be impacted by any requirement to remunerate the source content owner for the use of the content;
- to clearly identify news from Australian journalistic sources that meet a legislatively determined accreditation process; and
- to ensure that any material or related material that has previously been taken-down according to the Mandatory Take-down Standard is not be ranked.

## 5.2 Ex-ante regulation for AI used in competitive markets

There are some use cases for AI in competitive markets where failure to meet the core AI principles may cause competition (and ultimately economic) harm that is so significant that legislating these principles in AI market rules is justified. These principles are still consistent with those outlined in the discussion paper. The example below highlights how these principles can ‘come to life’ in a bespoke regulatory regime.

The dominant digital platforms offer a range of services across the digital advertising supply chain predominately using AI—referred to as the “ad-tech” supply chain. In this case, we consider that a bespoke regulatory regime should require the AI operators to submit terms and conditions to a regulator (such as the ACCC) who would assess them against the principles set in legislation (or delegated by legislation to be established by a regulator).

In our example, we consider that these minimum criteria should include:

- Strong and effective protections that ensure interoperability with third party vendors and mechanisms to ensure that the AI platform provider cannot unduly incentivise or lock participants into using the platform’s products or services as opposed to acting in the best interests of the participant’s customers;
- Effective mechanisms to ensure that no company can use its substantial market power in in one market to extend or leverage that power into other markets to the detriment of competitors;
- Industry participants must not favour their own advertising services or inventory by
  - Excluding rivals, or
  - Providing an undue advantage to their own services through rankings, access or other technical or commercial means
- In respect of AI used in auction processes, a transparent and unbiased market maker role that clearly sets out how and when buy and sell orders will be matched (including auction mechanics and other aspects); and
- Intermediary fees must be disclosed and accessible to buyers and sellers.

Crucially this example demonstrates how a regulatory regime can be used to enforce AI principles. In this case, if the regulator formed the view that the terms of conditions failed to

meet the principles, it would have the power to make its own determination on the terms and conditions of service, including how AI was used at various points of the supply chain.

By including a consultation process around the regulator's acceptance of the terms and conditions and requiring periodic reviews, we can design a framework that meets the core AI principles.

For example:

- **Do no harm** – negative impacts on the competitive environment can be ameliorated by ensuring that AI used in the supply chain is fair, impartial and non-discriminatory;
- **Regulatory and legal compliance** – the framework includes a strong role for a government regulator to establish rules ex-ante, which is far more efficient and effective than trying to assess compliance in highly opaque and technically complex markets ex-post;
- **Fairness** – Would be explicitly required by the principles set in legislation and reinforced through an open and transparent regulatory process;
- **Transparency** – the process outlined above is highly transparent with public consultation on an independent regulator's decision on whether AI market rules have been met;
- **Contestability** – the impact of the use of AI and consistency with the principles can be contested in front of an independent regulator, with the AI provider also given the opportunity to explain why it considers that its application is consistent.