



AUSTRALIA

Submission by Free TV Australia

**Mandatory news media
bargaining code
Concepts Paper**

**Australian Competition
and Consumer
Commission**

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1. Executive Summary

- There has never been a more important time for news media businesses to receive fair remuneration for the content that they produce and that is relied upon by all Australians.
- Indeed, it is now urgent that a Code of Conduct be enacted by the end of the year that includes a collective fee to be paid by Google and Facebook for the use of news content in Australia, in relation to Google Search (and Google Assistant), Facebook Newsfeed and Instagram.
- These are core services where today, despite the significant benefits obtained by the platforms, there are no commercial arrangements in place to remunerate media businesses for the use of their content.
- Publicly available information suggests that in a competitive market, Google and Facebook would have paid 10 per cent of all their Australian based revenues across all of their products and services for the use of news and current affairs content.
- Under the model proposed by Free TV, this value would be collected and distributed to Australian news media businesses through a collecting society to enable the continued investment in local news media services.
- The distribution model we propose is based on the share of relevant news or current affairs production or publishing costs incurred by the news media business. This option was preferred over other approaches, such as clicks or interactions on digital platforms, given the significant opportunities for gaming inherent in other models.
- Our proposed distribution model would also set aside a proportion of the remuneration pool for regional news and small publishers.
- To ensure that the digital platforms do not respond to the remuneration model by changing their algorithms, the Code of Conduct and supporting legislation must make it illegal for the platforms to deindex or downrank content that is subject to the Code of Conduct.
- Outside of the core services of Google Search, Facebook Newsfeed and Instagram, the bargaining framework should establish rules for the bilateral negotiation between news media businesses for all other products and services, for example Google's YouTube and Facebook Watch. This bargaining framework would include a requirement to negotiate in good faith, with rules around fairness, information disclosure and non-discrimination.
- In relation to the collection of user data more broadly, the Code of Conduct should ensure that Google and Facebook are required to outline precisely the attributes they collect from users who engage with news media content.
- The ACCC needs strong powers to enforce the Code of Conduct, including the protections against punitive responses by Google and Facebook. The civil penalty framework needs to provide for the provision of compensation to news media businesses for any revenue lost as a result of non-compliance with the Code of Conduct.
- The Code of Conduct should be reviewed every five years to ensure the remuneration pool and distribution remains fair and is being applied to the relevant products and services.

2. Introduction

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Australia's commercial free-to-air broadcasters invest significantly in news, and local journalistic content production is a very important part of our businesses. Free TV members broadcast local news services into every State and Territory in Australia and produce news of specific local significance in around 40 separate markets.

Every week commercial free-to-air television networks create over 430 hours of news and current affairs programming. This programming plays a critical role in providing information to Australians. We employ hundreds of journalists and support staff to create this volume of news and current affairs content and play an important role in employing and training journalists throughout Australia.

These services are underpinned by the Commercial Television Industry Code of Practice, enforced by the ACMA. As we cover below, the Code requires that news programs be presented fairly and impartially, that factual information is presented accurately and ensures that viewpoints included in programming are not misrepresented.

To demonstrate the ongoing importance of these news and current affairs services, at the height of the coronavirus pandemic, our news and current affairs services reached over 14.5 million Australians per week.¹ The growth in average news audiences across this period has been led by the younger demographics, with the under-24 audience doubling between February and March.

This experience reminds us of the importance of our members in covering events of national significance, providing critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.

Free TV and its members were heavily involved during the ACCC's Digital Platforms (DPI) Inquiry process. It is likely that some members of Free TV will make individual submissions to the ACCC on the Code of Conduct that will provide further detail on the matters raised in this submission.

2.1 Why a bargaining framework is required

The ACCC DPI Final Report set out in clear terms the substantial market power enjoyed by Google and Facebook and the fact that they remain unavoidable trading partners for news media businesses.

¹ Source: OzTAM (Metro), RegionalTAM (Regional). Overnight | Metro and Combined Aggregate Markets (reduced by 4% to account for overlap) | Typology: News/Current Affairs | S-s 0600-2400 | Cumulative Reach 000s [1min TH.]

In the case of Facebook, the ACCC noted:

The ACCC remains of the view that Facebook is an unavoidable trading partner for many media businesses and in particular, for those seeking to engage with consumer groups that are of a specific demographic. (Page 220)

In respect of Google and in particular the value of content, the ACCC noted:

The ACCC considers Google's ability to attract consumers to its platform relies on the provision of a high quality search service and the inclusion of hyperlinks to news content that is accurate, current and relevant to users' search queries (as well as snippets of that content) is part of this service. Consumers that use Google Search to access news would likely be inclined to use Google Search for non-news related search queries. (Page 218)

The Government agreed with the ultimate recommendations of the ACCC that there was a need for a Code of Conduct to redress this bargaining imbalance and created a process for the parties to attempt to negotiate a voluntary Code in the first instance.

Free TV and its members engaged in good faith with the digital platforms. However, during those discussions and in particular the summary documentation that was later provided by way of a letter from Google and a blog post from Facebook, it became clear that no agreement was going to be reached on the core issue of remuneration for products like Google Search, Newsfeed and Instagram.

Given the urgency of the situation for news media businesses, Free TV fully supports the decision of the Government to move to the alternative mandatory process that it had outlined would be enacted in the event that no agreement could be voluntarily reached between the parties.

3. Coverage of the Code

3.1 Applicable media businesses

Relevant ACCC questions:

- 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?

We consider that the threshold for determining coverage of the bargaining Code should be linked to either being licensed under the *Broadcasting Services Act 1992* or through membership of a body that upholds editorial standards and has appropriate complaint handling mechanisms. This would include members of recognised industry bodies such as the Australian Press Council or the Independent Media Council.

The process of defining applicable news content is made more straightforward if there is a clear initial test for applicable media businesses, which then allows a simplified definition of news based on the output of the relevant media businesses. The definition of relevant content from these media businesses is discussed in the next section.

In framing our preferred approach, we have ensured that the bargaining framework appropriately caters for the diversity of media businesses that meet the above threshold. For that reason, we are proposing the use of both a collective fee and bilateral negotiation tools to create a cohesive bargaining framework that can be applied to all media businesses and that covers all products and services offered by the digital platforms.

3.2 Definition of news

Relevant ACCC questions:

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

The definition of news is important in two respects. Firstly, it determines the type of content that is covered by the Code of Conduct. In addition, our proposed distribution model determines shares based on the costs of producing news and current affairs content that meets this definition.

In the ACCC's Final Report there was a clear distinction between the recommendations that applied to a narrow sub-set of news, relating to public interest journalism, and the broader news definition

appropriately used in analysing the imbalance in bargaining power between media businesses and the digital platforms. In line with this definition, we consider that this Code should apply to all news and current affairs content that is written or produced (whether video, print or audio) with the purpose of informing Australians by media companies that meet the above threshold.

It is worth noting that the Free TV Code of Practice contains specific requirements for news and current affairs reporting as distinct from other types of programming. Both news and current affairs programming (defined as a Program focusing on social, economic or political issues of current relevance to the community) are required to present factual information accurately and ensure that viewpoints are not misrepresented. News reporting has an additional requirement to be presented fairly and impartially. These types of programming are exempt from the classification requirement, which differentiates them from other forms of programming such as entertainment.

Our proposed definition would treat equally news and current affairs content that informed Australians through investigative journalism, local bulletins, sports and entertainment, finance and weather reporting. Importantly, this would include reporting and analysis of historical events (rather than being limited to news of the day), interviews, commentary and opinion, panel discussion, standalone special events and live breaking coverage. Without attempting to exhaustively list them in this submission, examples of the topics that could be reported under this definition include politics, world events, science and technology, arts, health and wellbeing, property, lifestyle and human-interest stories.

Our proposed definition implies a delineation between the underlying content and the reporting on that content or event. For example, an AFL match or entertainment programme itself would not meet this definition but entertainment or sports reporting would be covered. Similarly, there is some content that may be part of news websites (or newspapers) that would not meet our proposed definition, including quizzes, crosswords, horoscopes, classifieds and advertising.

We agree with the views put forward by Screenrights that such a definition also has support from previous copyright law cases that have considered the definition of news in relation to the fair dealing provisions.² Relevantly, the Court has previously considered that the definition of news reporting includes the matters defined as “news” in the Macquarie Dictionary:

1. A report of any recent event, situation;
2. The report of events published in a newspaper, journal, radio, television, or any other medium;
3. Information, events considered as suitable for reporting;
4. Information not previously known.

We note that applying a broader definition that captures all reporting undertaken by relevant news media businesses provides a clear understanding to all parties of the content that would be covered under the Code. We strongly caution against approaches that attempt to be too specific in the definition of news content or that attempt to subjectively imply some notion of quality. Such approaches would increase the complexity of administering the remuneration model and greatly increase the risk of protracted disputes between the parties.

² See for example, *De Garis v Neville Jeffress Pider* (1990) 37 FCR 99 at 109,

3.3 Applicable digital platform services

Relevant ACCC questions:

- Would a principles-based, or list-based approach be preferable in determining which digital platform services are captured by the bargaining code?
- If a list is referenced in the bargaining code, what amendments should be made to the list suggested in the concepts paper?

All products and services offered by Google and Facebook should be covered by the bargaining framework. As we elaborate on in section 4, we consider that that a collective fee remuneration model should apply for a listed set of core products, with rules governing good faith bilateral negotiations for the remaining products and services.

For the purposes of the collective fee model, the listed products should be:

- Google Search (and Google Assistant to the extent that it surfaces relevant content)
- Facebook Newsfeed
- Instagram.

The terms on which content is cached on Facebook Instant Articles or Google’s Accelerated Mobile Pages would be subject to the bilateral negotiation framework, but remuneration in respect of the accessing of that cached content by Google Search or Facebook Newsfeed would be covered under the collective fee.

As we set out in section 8, a periodic review process should be built into the Code to ensure that the products and services listed above remain appropriate and that all platforms with substantial market power are included.

3.4 Whether crawled or shared this applies to both platforms

It is worth noting that there is no difference in the policy rationale for the creation of a mandatory bargaining framework between Google—which indexes all content unless businesses opt out—and Facebook where the content has first to be uploaded or shared in order to be available to users.

As outlined above, both Google and Facebook are unavoidable trading partners and provide important distribution platforms for media content. This applies regardless of whether the content availability comes about through an “opt out” website code that is required to not be available on Google search (or via a “no snippets” tag) or an “opt in” process through the uploading of content such as the social media platforms operated by Facebook—Newsfeed and Instagram.

Owing to the unavoidable trading partner nature of the relationship, both arrangements lead to the same place, with the platforms benefitting substantially from the value of news content being available on their platforms, with no form of remuneration in place to ensure that the continued investment in creating that content can occur.

Further, we note that Facebook has complete control over how it treats content once it has been uploaded to its platform. It controls the signals used to determine when and why a user is served a piece of content and ultimately how many views the content will have. Accordingly, a mandatory bargaining framework is required for both Google and Facebook.

4. Proposed bargaining framework

4.1 A collective fee for core platform products

Relevant ACCC questions:

- 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?
- How effective would the bargaining frameworks set out in the concepts paper be in achieving appropriate remuneration for news media businesses for the use of news content by each of Google and Facebook?

As set out in the ACCC'S Final Report and agreed by the Government in its response, the principal reason for the creation of a Code of Conduct is to redress the bargaining imbalance between media businesses and the platforms. For the Code to achieve this aim, it must determine a fair level of remuneration for the use of news and current affairs content by Google and Facebook in their core products.

The experience of Free TV and its members in discussions with both Google and Facebook on a voluntary bargaining code in early 2020 is instructive in considering the appropriate remuneration model that should be adopted under the mandatory Code of Conduct. From those discussions, it was very clear that neither Facebook nor Google was prepared to discuss payment for the use of content on their core services. This was confirmed in both the Facebook blog post and a summary letter sent by Google to all media businesses. Neither piece of correspondence addressed the payment for content issue, although Google did briefly refer to the purported value exchange with media businesses.

Accordingly, we consider that it is essential that the bargaining framework include a collective fee approach to ensure fair remuneration for the use of news content on the core products and services provided by Google and Facebook. As we discuss in subsequent sections, it is highly likely that applying either bilateral or collective bargaining frameworks for these products will ultimately rely on a costly dispute resolution mechanism to ensure payment for content. It is therefore far more efficient and straightforward for a collective fee to be mandated through this Code of Conduct process.

We consider that this is the most efficient process for the determination of an amount that represents the direct and indirect value to the platforms from the use of the content created by relevant news media businesses. A collecting society should be appointed to administer the scheme and the distribution to applicable media businesses.

Free TV members are still considering the financial impact of including a provision for news media businesses to be able to opt-out of the collective fee model. Some members consider that an opt-out model would be an important part of the bargaining framework that would work alongside a collective fee distribution model based on investment in news and current affairs content, provided that there are strong protection measures are in place to ensure that those that remain in the pool are not disadvantaged.

4.2 Value of news on the platforms

Relevant ACCC questions:

- How relevant are the factors set out in the concepts paper to determining appropriate remuneration for news media business?
- How might any of the factors listed in the concepts paper be quantified and/or treated in the course of negotiations between parties?
- Are there any relevant 'market' benchmarks that may assist in the determination of appropriate remuneration?

News is extremely valuable to both Google and Facebook. This value is not necessarily created through a direct relationship between the provision of news content and selling advertising. Rather, the value is created by being able to offer a service to users as ubiquitous platforms, capable of having mission statements that include "to organize the world's information".³

Our previous submissions on this issue have highlighted the extent of the value of our content to the digital platforms, including the fact that our content is some of the most engaging content on social media platforms. Consistent with previous submissions, we note that in a workably competitive market, publishers and broadcasters would be able to negotiate with a provider of a digital platform to ensure that the content could be sustainably produced, while allowing both parties to share in the revenue derived from the value of the content.⁴ However, given the imbalance of bargaining position between the platforms and media businesses, all of this value is currently retained by Google and Facebook.

The collective fee model described above would share the direct and indirect value accruing to Google and Facebook from the use of news content with applicable media businesses. The Code of Conduct therefore needs to determine either a specific value or a clear and directive process for the estimation of that value.

We consider that there is sufficient publicly available information to establish a sound basis for estimating the value of news and current affairs content on the digital platforms. Our approach to determining the appropriate proxy for the value of news on the platforms is to use the Australian based revenues of Google and Facebook and examining the proportion of news content on the platform, as outlined in the next section.

The ACCC may find it useful to examine other regulatory frameworks that have information disclosure requirements that could be used to verify our estimation approach and address the information asymmetries inherent in any dealings with the digital platforms.

4.2.1 Public information on the value of news

The existing public evidence points to a value of news to both Google and Facebook of 10 per cent of their Australian based revenues across all their products and services. In the case of Google, we base this estimate on the mid-point of the 8 to 14 per cent of searches found by the ACCC to return news results.

³ <https://www.google.com/search/howsearchworks/mission/>

⁴ See for example, Free TV Submission to The Treasury, DPI Implementation, Pg 9

As the ACCC Final Report noted:

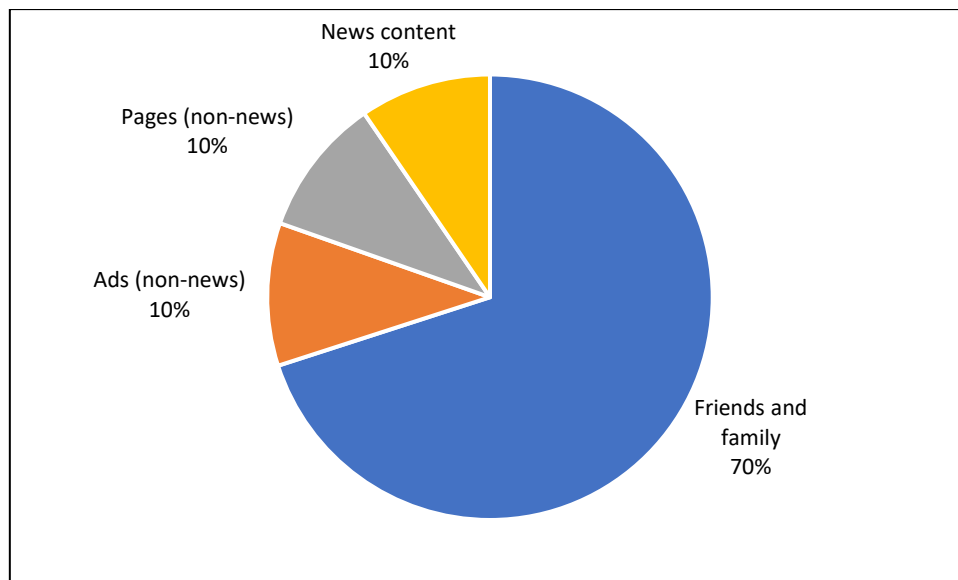
This is a relatively significant proportion of search queries and may indicate the value to Google of surfacing news content in response to user queries. (Page 218)

As explained above, while not directly monetised, these contribute to the utility of Google’s service which leads to direct monetisation opportunities.

Reliable public information on the extent of news on Facebook is less readily available. We note that the ACCC Final Report cited a public post by Facebook from January 2018, which estimated that 4 per cent of Newsfeed content is news. As a global figure, it is not clear how representative it is of the amount of news contained in the Newsfeed product in Australia.

The value of news to a social platform necessarily includes news that is shared directly from a media business and when that content reaches users through being shared with family and friends. A Nieman Foundation (Harvard) analysis has previously found that news content made up to 10 per cent of the first 10 posts on survey respondents’ Newsfeeds.

Nieman Foundation: Survey of users news content on Facebook Newsfeed



Source: Wang, S, Nieman Foundation

This analysis is likely an under-estimate of the totality of news as it was only a sample review of the first 10 posts and there was likely additional news beyond these posts. In any event, as highlighted in the Nine Entertainment submission, even if there is a range of news content between 4 and 10 percent, the more direct monetisation of content on Newsfeed would support the adoption of an estimate at the top of this range. This is because news content (like all content on Newsfeed) is directly monetised by Facebook by the placement of advertisements in the Newsfeed.

In addition, in a similar fashion to Google, it enables Facebook to offer ubiquitous social platforms (Newsfeed and Instagram) with high quality content that attracts users, maintains their time and attention on the platform and provides Facebook with valuable user data.

4.3 Clicks are not a substitute for fair remuneration

The digital platforms and in particular Google will often refer to the “value exchange” that purportedly occurs when a user clicks-through to the digital property of a media company. However, Free TV considers that such claims have more in connection with their dominant position as the gateways to the internet, rather than an indication of a genuine value exchange between the parties.

At the most base level, if that value exchange was genuinely sufficient to maintain investment in news content, there would not be the level of concern that is currently being expressed worldwide regarding the impact of Google and Facebook on news media businesses.

However, beyond that basic point, we reject the premise of the click-through fair value exchange suggested by the digital platforms. It is clear that there is far greater value extracted by the platforms for that user interaction than is possible via an atomised page view of a particular piece of news content.

4.3.1 Competitive market would not price click-throughs

The primary reason why there is a need for this bargaining framework is because Google and Facebook have significant market shares in the search and social markets respectively. It is therefore a statement of fact that news media businesses are reliant on these companies for any referral traffic and we recognise that there is some value associated with the traffic that comes from Google and Facebook.

However, in a hypothetical model in which there were multiple competing platforms for search and social media, this would not be a material factor in determining a fair remuneration for the use of the content.

Take for example, a market with a number of competing digital platforms and a small number of significant news content producers. In such a scenario, each search platform would have an incentive to seek an agreement for the use of the content of all (or at least a majority) of the major news providers on their platform to be able to offer a wholistic search engine. They would be in effect price takers and the potential value associated with referral traffic would not be determinative. The only reason why the value of referral traffic is raised by the digital platforms is because of the gateway position enjoyed by Google and Facebook.

This proposition is well known to television networks, where the costs of discrete content often exceeds the ability for direct monetisation, but networks still purchase the broadcast rights because the indirect value to the network exceeds the costs. This is sometimes referred to as the “halo effect” where the value of a piece of content includes the impact on how your network is viewed, because of the availability of particular content. It has the potential to attract additional audience across all content forms, with a commensurate increase in monetisation opportunities.

To continue the analogy, what the platforms are asking policy makers to accept is that in our example, television networks would refuse to pay producers more than what could be directly sold against the content, even if the majority of the benefit was in the indirect value to the network. In a competitive market, this would fail as the producer (or sports rights holder) would simply negotiate with a rival network to supply the content for a price that includes the total value of the content to the network.

In the case of Google and Facebook, there is no competing network and they are seeking to retain all of the value associated with news content. Clearly this “value exchange” is not sustainable and a new bargaining framework is required to address the imbalance in market power.

4.3.2 Arguments for referral value fail to include lost revenue

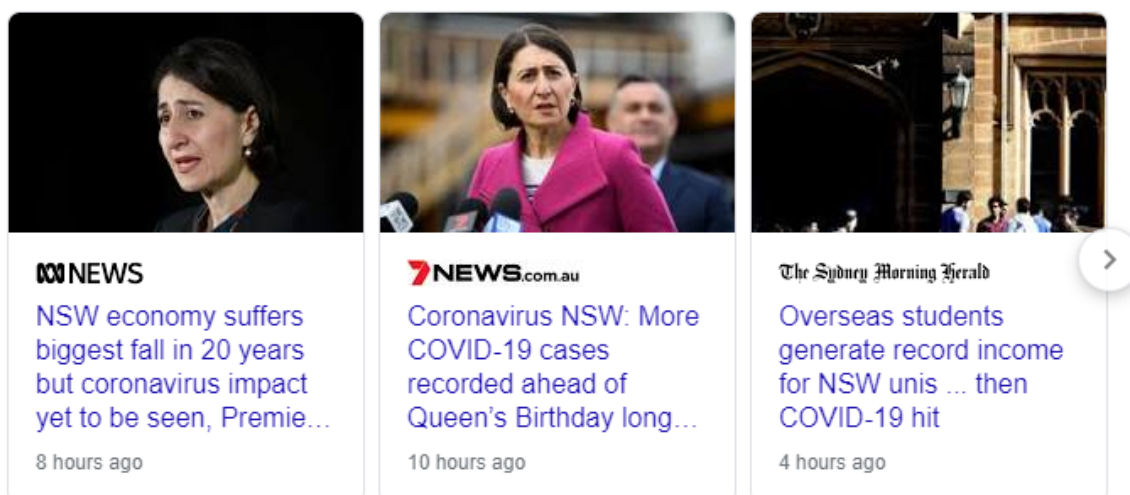
The value exchange proposition also fails to capture the full extent of the value transfers between digital platforms and news media businesses. Significantly, they make no allowance for the loss of revenue associated with the growth in digital consumption of news and the broken link that now exists between advertising revenue and content creation.

If the search and social media markets were contestable then commercial media would have only provided platforms with access to news content if the remuneration sufficiently compensated this loss. However, given that they are unavoidable trading partners, news media businesses have had little choice but to make their content available across these platforms.

4.3.3 Opportunity for monetisation limited to single click

In the case of search, a number of different news media outlets will contribute content in the form of rich search results or snippets which have a value to both the platform and the user, as per the example below.

Local news



However, if a click-through occurs, the opportunity for further monetisation, if any, is retained by the single news media business.

4.3.4 Value of news clicks already shared with digital platforms

It is worth noting that any revenue raised through the monetisation of click-throughs from search are largely captured by Google as the dominant ad-tech service provider. Recent studies have shown that up to half of advertising expenditure is retained by ad tech suppliers, of which Google has a significant market share (for more information on this matter, please see our recent [submission](#) to the ACCC's ad tech inquiry). That is, to the extent that a user can be monetised via a referral, up to half of that value has already been shared with ad tech suppliers, predominantly Google, before any money is received by the publisher.

It is also worth noting that news media businesses' ability to monetise the digital audience is coming under increasing pressure from changes being made by Google themselves. As we expand on in our ad tech inquiry submission, Google is phasing out support for third party cookies on Chrome, the

dominant internet browser. This will make it harder for publishers who operate networks with multiple websites to monetise cross-domain user profiles.

4.4 Distribution model

Relevant ACCC questions:

- What other factors may be relevant to determining appropriate remuneration for news media businesses?
- Would it be appropriate for commercial negotiations conducted under the bargaining code to have regard to the cost of producing news content?

As outlined above, Free TV considers that the collective fee model should be administered by a collecting society. We note that organisations such as the Copyright Agency already have significant experience in operating schemes where fees are paid for the use of news media content such as by media monitoring organisations.

We have considered various models for how the distribution of funds could occur. In assessing options for the distribution model, we have been guided by a key principle that the model should directly relate to the public policy problem—the leakage of revenue from the advertising market to platforms that do not create or materially invest in news and current affairs despite the value they accrue from this content.

This leads to the desirability of certain characteristics from a remuneration model:

- Focusses on news media businesses that are exposed to the commercial impact of Google and Facebook
- Incentivises ongoing investment in news and current affairs content creation
- minimises the incentives for gaming behaviour or wasteful investment of resources in non-creative pursuits such as audience or click buying.

The models we have considered would base distribution on:

- **Investment** - the proportion of total investment in news content made by relevant news media businesses. This option has the least potential for gaming and provides a direct reward for increasing investment in news content, including incentivising high cost investigative journalism. Appropriately structured, it can both focus on the commercial impact of Google and Facebook while also encouraging further investment by small and regional based publishers.
- **Share of audience** – the proportion of the audience gained by the news media business as measured by Nielsen Digital Ratings and/or other services. This measure has the potential to increase the rewards from gaming activity such as audience buying and the optimisation of clickbait style headlines. Accordingly, it is likely that this option would lead to an increase in investment in non-creative pursuits such as search engine optimisation.
- **Clicks** – the proportion of clicks or interactions with news media content on the digital platforms. It is likely that this option is most open to gaming, with investment likely to be incentivised on search engine/social interaction optimisation. This model also raises information asymmetry concerns as all the data required is retained by the digital platforms, with the associated potential for favouring particular publishers.
- **Article count** – the proportion of the quantity of news related content produced by a relevant media business. While the ACCC used quantity of output as one measure of the impact of the

digital platforms on the news media sector, the potential for this model to reward republishing articles as opposed to investing in original content means that this option is unlikely to achieve the policy objectives.

Free TV is currently minded towards basing distribution to news media businesses based on their investment in news and current affairs content production and publication/broadcasting. As set out above, this option creates the least incentives for gaming behaviour and most directly relates to the stated public policy intention.

While recognising that this model does not directly relate to the size of the digital footprint of a news media business, we consider that the most important nexus in the distribution model is to the costs of the underlying content production. Increasingly, the delineation between “digital news costs” and “broadcast/print costs” is artificial. With the same journalists producing stories across platforms, it is appropriate that the distribution model be based on all costs of production.

Further, we are concerned that any option that relies on a digital presence metric is susceptible to gaming behaviour. It would be a disappointing result of the creation of this Code of Conduct if a by-product was a significant increase in the use of limited news media business resources on activities that optimised the search engine rankings, or appearances on Facebook Newsfeed. Conversely, the share of investment approach only creates incentives for spending on news and current affairs content.

Remuneration models that are based on digital presence are also most susceptible to punitive responses by Google and Facebook. In a later section we describe the need for protections against the punitive use of algorithms by the platforms in response to the imposition of this bargaining framework. However, we note that a first best public policy outcome would be to base distribution on investment costs as these are unable to be impacted by actions of Google and Facebook.

We have also considered the potential for rewarding inefficient expenditure in news and current affairs. While dependent on the proportion of individual business costs covered by the revenue from the collective fee, it is likely that the normal commercial business imperatives for cost minimisation would not be materially impacted. This is particularly the case if the distribution model is focussed on commercially exposed news media businesses, as discussed below.

4.4.1 Eligible costs

Our preliminary views on the costs that would be eligible to be counted towards investment in news and current affairs include measures of employment such as salaries or headcount for:

- Journalists, content creators and producers such as camera operators, chiefs of staff, columnists, correspondents, data journalists, designers, editorial cartoonists, editors, illustrators, news directors, photographers, producers, reporters, sound recordists, sub-editors and writers
- Roles primarily employed to provide audience-facing design and development of digital products or editorial tools for the production of journalism
- Editorial counsel primarily employed to provide pre-publication legal advice.

We have also considered what type of costs should be specifically excluded from being claimed. Generally, we consider that costs associated with occupancy, plant and equipment should be excluded, together with any post-publication legal fees or payments for interviews.

4.4.2 Reservation for small and regional publishers

As explained above, the focus of our proposed distribution model are the commercial news media businesses that have been directly impacted by the rise of Google and Facebook that has effectively broken or materially distorted the link between advertising revenue and content creation.

Therefore, while Free TV considers the bilateral negotiation parts of the bargaining framework should be available to all relevant news media businesses, there is a question regarding whether the wholly taxpayer funded broadcaster should be included in the collective fee distribution model.

The US retransmission agreements provide an example where there is a different approach for public broadcasters and commercial networks. Under the US retransmission arrangements, broadcasters can (and do) enter into commercial arrangements for the supply of network TV channels to cable providers. However, public television stations, which are non-commercial and are funded in part by the Corporation for Public Broadcasting, only operate in the must carry framework and do not receive cash for providing their channels to cable operators.⁵

As an alternative to the wholly taxpayer funded news media business (the ABC)⁶ earning a commercial return, it may be more appropriate for a minimum proportion of the collective fee to be set aside to disproportionately benefit the smallest quartile of eligible news media businesses. This model would see a minimum amount of the collective fee being distributed to small and regional publishers and broadcasters.

Alternatively, the fee could be retained by the Government to be allocated to a special fund to be used for the purposes of funding regional journalism or journalism cadetships.

4.5 Agreement to provide content for existing use

Relevant ACCC questions:

- How might a bargaining code include mechanisms to incorporate newly emerging and newly relevant products and services in the future?
- How might the bargaining code define 'use' for the purpose of any mechanisms facilitating negotiation on payment for the use of news content?

The collective fee model described above is predicated on news and current affairs content being used by Google and Facebook as it is today. To the extent that there is a need to define "use" in this model, it would be prescriptively based by reference to how platforms exploit this content today. For example, in the case of Google Search, use would be defined by the indexing of content and its display in all forms of search results, including snippets, rich results and the Google news tab. Provision would also need to be made for the use of news content in voice search driven results on products like Google Home. For Facebook, current use would be defined as the surfacing of content through the Newsfeed and Instagram products.

⁵ NERA Economic Consulting, Delivering for Television Viewers: Retransmission Consent and the US Market for Video Content, Jeffrey A Eisenach, July 2014, Pg. 5. Available [here](#)

⁶ We consider that SBS should be able to access the collective fee pool to the extent that it is commercially exposed

As we set out in section 8, if the platforms materially increase the use of news content in their products, or develop new products, there should be a provision in the Code for the collective fee to be reviewed to ensure that it is continuing to reflect the value of news content to Google and Facebook. Alternatively, in the first instance if a new use was envisaged the digital platform could seek to negotiate with the collecting society.

4.6 Bilateral negotiation for all other products and services

Relevant ACCC questions:

- Would it be useful for the bargaining code to include a requirement for parties to negotiate ‘in good faith’?
- What level of control do news media businesses have over how news is displayed on the services provided by each of Google and Facebook?
- What restrictions on the display and presentation of news content on digital platforms do you consider necessary, and why?
- Which specific digital platform policies and practices affecting the display of news have a negative impact on the business models of news media businesses and/or their ability to monetise content?
- How might a bargaining code strike the appropriate balance between:
 - providing news media businesses sufficient control over presentation and display of news content
 - providing consumers with easy access to news content, and
 - protecting the user experience on digital platforms, including providing digital platforms with the flexibility to improve this user experience?
- What specific controls do news organisations currently have over the use of advertising directly associated with news on the services provided by each of Google and Facebook?
- Which restrictions on advertising directly associated with news content are necessary for each of Google and Facebook to impose, and why are these restrictions necessary?
- Which restrictions on the use of advertising directly associated with news do news media businesses believe constrain their ability to monetise their content?
- Should a bargaining code include:
 - mechanisms requiring digital platforms to enter into good faith negotiations with individual news media businesses on the use of in-content advertising, and/or
 - mechanisms requiring digital platforms to provide news media businesses with advance notice of and/or consultation on changes to policies and practices affecting in-content advertising technical standards for formats such as AMP or Instant Articles, and/or
 - mechanisms setting out either principles-based or prescriptive requirements for digital platforms to grant news media businesses a greater degree of control over in-content advertising than is granted to other content creators?

Free TV proposes a cohesive bargaining framework that applies fit-for-purpose tools to the products and services offered by Google and Facebook to most effectively address the issues identified by the ACCC in its DPI Final Report.

As set out above, for a set of core services, a collective fee model should apply (similar to option D in the Concepts Paper). For all other services, a bilateral negotiation framework should apply. This ensures that all products and services can be covered, including any new products or services that may be developed or acquired over time.

Such an approach would create a cohesive bargaining framework, including a remuneration model for products and services where there is currently no realistic prospect of terms being bilaterally negotiated, and an enhanced bargaining framework for those products where there are already limited commercial arrangements.

Free TV agrees that it would be useful for the Code of Conduct to include a broad requirement for the parties to negotiate in good faith and for this requirement to apply to all interactions between media businesses and digital platforms. We expand on our justification for this approach in the next section.

4.6.1 Why a bilateral negotiation framework is required for other products and services

While there are some commercial arrangements in place for content surfaced through products such as YouTube and Facebook, these arrangements are still limited by the dominant position of the platforms.

As set out in previous submissions, our content is some of the most engaging and valuable content on the digital platforms.⁷ In a market environment where there was genuine competition between platforms, commercial terms could normally be agreed between media businesses and the digital platforms without the need for regulatory intervention.

However, given the significant imbalance in the bargaining position, content produced by news media businesses is undervalued by the digital platforms and terms and conditions are presented on a “take it or leave it” basis. Under the current framework, when a piece of content is uploaded to a digital platform, the terms of how that content can be monetised are set by the digital platform. That is, rather than the content owner determining how the content is to be monetised, it is the terms and conditions of the platform that dictate the placement and pricing of advertising.

4.6.2 How a bilateral process can address these shortcomings

Under our proposed bargaining framework, rules would be introduced for the bilateral negotiation for services that sit outside the core search and social products.

Rules around these bilateral negotiations are required to establish:

- An expectation of fair remuneration for content on products and services not covered by the collective fee
- Commitments to non-discrimination and/or protection against punitive responses for the choice of technology partners
- A right of negotiation on terms and conditions of service that are currently presented on a take it or leave it basis, particularly in relation to monetisation terms
- A process for information disclosure and dispute resolution.

⁷ See for example, Free TV Submission to Treasury, Implementing the DPI recommendations, Pages 19-21

We consider that there is a need for the Code of Conduct to be reasonably directive in terms of setting an expectation for the matters that must be able to be negotiated. Free TV and its members have previously extensively submitted on the need for rules to be introduced to allow media businesses to have more control of the monetisation of content on these products and services.

In summary, the Code of Conduct should create specific expectations that media businesses will be able to negotiate how their content is displayed and monetised on the digital platforms, including terms and conditions such as price, placement and ad load.

As discussed in section 7, the bargaining framework should include a process for information disclosure and dispute resolution. While we are cautious about the over-reliance on dispute resolution mechanisms, as long as the matters that must be able to be negotiated are set out in the Code of Conduct, a dispute resolution process can lead to outcomes approaching those that could be achieved in a competitive marketplace.

Free TV also agrees with the suggestions included in the Concepts Paper regarding time limits on negotiations, before these dispute resolution provisions are enlivened.

We also note that by including provisions that apply broadly to all products and services, any new offerings from the digital platforms would automatically be included in the bargaining framework. The periodic review process discussed in section 8 would decide whether these new offerings should be brought into the collective fee model, or remain in the bilateral negotiation framework.

4.6.3 Bilateral negotiation will not address lack of remuneration on core services

As established at the introduction of this submission, this current mandatory Code of Conduct development process was preceded by a period of discussions with Google and Facebook on a voluntary Code. As noted, it was clear from those discussions that there was no prospect of negotiating a fee for the use of news content on the core services.

We consider that it is highly likely that any bargaining framework that relied on bilateral negotiation would ultimately fall back on any available mediation and arbitration process. As we outline below, such processes are slow and highly costly for the participants.

In total, we do not consider that sole reliance on Option A across all products and services would be a meaningful improvement on the current situation that is characterised by an imbalance in bargaining position and information asymmetries. Accordingly, this Code of Conduct either needs to determine an amount of the collective fee or be highly directive on how one is to be calculated.

4.7 Collective bargaining and boycott not preferred

Relevant ACCC questions:

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

- Should a bargaining code include:
 - mechanisms requiring digital platforms to enter into good faith negotiations with individual news media businesses on the display and presentation of their news content, and/or
 - mechanisms requiring digital platforms to provide news media businesses with advance notice of and/or consultation on changes to policies and practices affecting the display and presentation of news, and/or
 - mechanisms setting out either principles-based or prescriptive requirements for digital platforms to grant news media businesses a greater degree of control over display and presentation of content than is granted to other content creators?

The concepts paper sets out four broad bargaining framework models. In this submission we have outlined our preferred approach of a collective fee (option D) for core services, with a bilateral framework (A) applying for all remaining products and services. In this section we briefly assess the alternative options (B and C) presented in the concepts paper.

4.7.1 Collective bargaining

We do not consider that there is a realistic prospect that a collective bargaining process (Option B) could result in appropriate payment for the use of news media content. Again, the process would likely lead to reliance on mediation or dispute resolution.

In short, the best that process could achieve is the same result as would be mandated through adopting a collective fee (option D) in the first instance. We note, however, that a collective bargaining approach would remain an option at any stage for news media businesses, subject to authorisation by the ACCC.

4.7.2 Collective boycott

Of the options presented in the Concepts Paper, the only option that we consider to be completely unworkable is the collective boycott (option C) approach.

Under this approach, no platform could use news content from any media business until such time as all media businesses had reached agreement with Google and Facebook. This creates perverse incentives on participants to seek to be one of the last to sign any agreement in the hope of extracting the most value. This is analogous to homeowners attempting to be the last hold-out in a land purchase by property developers. These incentives are so strong, that it would render the process very slow and it is questionable whether an outcome would ever be achieved. Clearly a significant further issue would be the likelihood of an extended period in which news content would not be available on the platforms which would be detrimental for platform users.

The commentary in the concepts paper would tend to indicate that the issues with this model are well understood by the ACCC.

5. Operation of algorithms

5.1 Non-discrimination of applicable content

Relevant ACCC questions:

- Should the bargaining code contain any mechanisms requiring each of Google's and Facebook's ranking and display algorithms not to penalise the use news media business models that incorporate paywalls and subscription fees?
- How might any relevant mechanisms in the bargaining code ensure treatment of paywalled news content is fair, without interfering with the general operation of ranking algorithms or unreasonably limiting consumers' access to free news?

The requirement for protection against digital platforms deliberately disadvantaging types of content based on the form of remuneration goes far beyond the narrow paywalled subscriber only content issue. While paywall content is relevant, it is critical that the Code of Conduct and supporting legislation include strong protections against punitive responses by Google and/or Facebook to the operation of the remuneration model discussed above.

The Code of Conduct and its supporting legislation must require that any algorithm operated by Facebook or Google across all of their products is entirely agnostic to the bargaining framework. Specifically, the fact that a piece of content attracts a fee for its use must not be a signal used by any algorithm to determine its ranking or whether it is surfaced.

This is a critical anti-discrimination protection that will ensure that our investment in news content will not be undermined by the platforms' algorithms giving preference to free content. The experience from other jurisdictions—most recently France—is that the platforms will respond aggressively to any requirement to pay for the content they use.

Accordingly, the ACCC should review and recommend to Government any necessary changes to the civil penalty regime required so that non-compliance by either Google or Facebook results in substantial penalties being applied. These penalties should be used to compensate media businesses for the revenue lost as a result of the non-compliance.

5.2 Advance notice of changes to algorithms

Relevant ACCC questions:

- What would be an appropriate threshold for identifying a significant algorithm change which requires advance notice to be given by each of Google and Facebook, and what criteria should be used to determine this threshold?
- How much notice should be provided by each of Google and Facebook for significant algorithm changes? How can this notice period be set in order to not unreasonably limit digital platforms' flexibility to implement algorithm updates that may benefit consumers?
- What information do each of Google and Facebook currently provide to news media businesses about the ranking and display of news, particularly with respect to ranking algorithms for content and changes to these algorithms?
- What type of information would help news media businesses better understand and adapt to significant changes to ranking and display algorithms?

- Under what circumstances might it be acceptable (or socially desirable) for each of Google and Facebook to not provide advance notice of significant algorithm changes?
- Would it be appropriate for a bargaining code to include mechanisms such as those set out in the concepts paper that required digital platforms to provide news media businesses with advance notice of algorithm changes that may significantly affect the ranking and display of news at least X days in advance of implementing these changes?

Throughout this process, Free TV has endeavoured to be pragmatic and to only seek the minimum amount of algorithm intervention necessary to achieve the desired public policy outcome. In line with this approach, we have been very clear that we are not seeking for the algorithms of Facebook and Google to be published. This is because we recognise the potential for bad actors to use this information to undermine the efficacy of the algorithms, to the detriment of all other stakeholders.

Consistent with this approach, the Code of Conduct should require that advance warning be provided by the platforms to media businesses where there is likely to be a systematic and material impact on the ranking of news content (or particular types of news content). Minor changes that occur regularly where there is not likely to be an enduring or material impact on the ranking of news content would not be captured by this requirement.

Free TV has previously submitted that it would be appropriate for a minimum period of 28 days' notice to be provided of material changes to the algorithms that govern the ranking and surfacing of news media content. However, substantial changes that would require news media businesses to invest in new technology or otherwise make significant changes to business processes in order to maintain current levels of referral should be notified sufficiently in advance to allow those changes to occur.

It may be preferable for the Code of Conduct to establish an expectation that early warning will be provided to news media businesses and require the parties to work together to develop specific undertakings.

5.3 Identification of original content

Relevant ACCC questions:

- What benefits, if any, did Australian news media businesses experience following Google's adjustment to its ranking algorithm to prioritise original news in September 2019?
- In order to prioritise original news content on each of Google and Facebook, would it be appropriate for the bargaining code to include mechanisms such as those set in the concepts paper for the identification of original content?
- How could 'original news content' be defined and identified under the bargaining code, and who should be responsible for defining or identifying this content?
- Should any bargaining code requirement to prioritise original content distinguish between original investigative journalism and other types of news content? If so, how could this distinction be drawn?

The Code should set out principles for the promotion and protection of our investment in news content, including where possible identifying original news articles.

However, Free TV members recognise the challenges involved in identifying the original source and the need to ensure that legitimate story developments, counterpoints and reporting on new information are not inadvertently disadvantaged.

It may be appropriate for the Code to establish principles to guide further discussions between media businesses and the digital platforms on this issue as we recognise the challenges particularly for rapidly evolving news stories.

5.4 Other non-discriminatory requirements

Free TV members have a complex relationship with Google and Facebook. Aside from the competitive nature of our relationship in the advertising market, both Google and Facebook are advertising clients of Free TV members. Similarly, Free TV members advertise their own content across the digital platforms. In addition, both Google and Facebook are ad tech service providers to our members.

These complex relationships create the incentives for either Google or Facebook to operate their algorithms to favour their own commercial partners in related supply chains, for example the ad tech stack.

The Code of Conduct should ensure that the algorithms are not impacted by commercial or service provider relationships in other markets. For example, the choice to use (or not use) Google technology to serve advertisements should not have any impact on the ranking of content.

5.5 Monitoring of algorithm compliance

We again emphasise that these principles that we consider should be included in the Code focus on how outputs from the algorithms are determined and would not require either Google or Facebook to publish or provide access to the algorithms themselves.

However, Google and Facebook should be required to work with the ACCC to develop sufficient testing data and tools to ensure that the requirements on the operation of the algorithm imposed by the Code of Conduct can be enforced.

6. Data

Relevant ACCC questions:

- What specific user data do news media businesses already receive from each of Facebook or Google in relation to users' engagement with news media business content and what further user data would news media businesses like to receive from each of Facebook and Google?
- Should the bargaining code include minimum data-sharing obligations for each of Google and Facebook? If so, what should these minimum data-sharing obligations require?
- Would it be appropriate for the bargaining code to address data sharing by putting in place commitments requiring 'good faith' negotiations on this subject between news media businesses and each of Google and Facebook?
- Would it be appropriate for any data-sharing requirements in a bargaining code to be limited to data collected during the course of users' direct interaction with each news media business's content? Should this include data relating to aggregate audience numbers, audience demographics and audience interactions, such as how many and which users clicked on, 'liked', 'shared' or otherwise interacted with the content of that particular news media business? What other specific metrics might be relevant?
- Would it be appropriate for each of Google and Facebook to provide news media businesses with access to additional data associated with individual users (based on anonymised user IDs), such as whether a visit to a news media business's website follows previous interaction with this business's content on a digital platform? If so, what steps should be taken to ensure an individual's privacy is protected?
- Would it be appropriate for each of Google and Facebook to provide each news media business with a list of all types of user data they collect through users' engagement with their news content on their services, such as data collected on users accessing content published in the AMP and Instant Articles formats?
- If the bargaining code were to include any commitments related to data sharing, which of the services set out in the concepts paper provided by Google and Facebook should those commitments apply to?

Attached to this submission at Appendix A is a response to the ACCC's request for specific feedback on a document provided by Facebook.

6.1 Transparency of data collection

There are two main aims that the Code of Conduct should seek to address in respect to the provision of data. First, the Code of Conduct should require that Google and Facebook are transparent about all audience attributes that they collect from users who interact with our content across all products and services.

This is necessary to address the current unsatisfactory stalemate caused by the inherent information asymmetries in what data is actually collected by Google and Facebook. In short, in order to know what to ask for, you first need to understand what is available.

Second, Google and Facebook should ensure that where necessary, the consent they collect from users would enable them to share this data with media businesses. Media businesses should then be

able to access these individual user attributes from Google and Facebook on an anonymised basis, to the extent not addressed in the ad tech inquiry.

The digital platforms should also be precluded from using data they receive from news media businesses when acting as a service provider (for example, ad serving) for any other purpose, unless specifically agreed with the news media business. This is a necessary protection given the complex and multi-sided relationship between the parties.

7. Enforcement and dispute resolution

7.1 ACCC needs strong enforcement powers

Relevant ACCC questions:

- What enforcement mechanisms should be included in the code? Should the code include pecuniary penalties?

It is critical that the Code of Conduct and its supporting legislation provide the ACCC with strong enforcement powers. Such powers should include those required for the ACCC to be able to seek injunctions and orders for the platforms to take actions required to be compliant with the Code.

As already noted, this is particularly important to protect against punitive responses by Facebook and Google in response to the imposition of the bargaining framework.

7.2 Appropriate dispute resolution process

Relevant ACCC questions:

- What would be the most appropriate and effective mechanisms for resolving disputes about, and enforcing, compliance with the bargaining code?

7.2.1 Gas arbitration model is instructive

Free TV submits that the existing example of the arbitration framework under the National Gas Law and Rules (NGR) should be considered by the ACCC for use in resolving disputes under the news media bargaining framework.

As the ACCC would be aware, the NGR requires an access dispute to be referred to arbitration following receipt of an access dispute notice. When making a final access determination, the arbitrator must take into account the need for services to be provided on reasonable terms and the legitimate business interests of the service provider.

Relevant to the products and services provided by Google and Facebook that would sit outside of the collective fee model, the objective of the NGR access dispute model is to facilitate the provision of the relevant services “on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market.” (NGR Rule 546)

Accordingly, we consider there is merit in establishing a similar framework for those services that are subject to bilateral negotiation.

7.2.2 Dispute resolution should not be relied upon to achieve desired outcome

We caution against creating a bargaining framework that places too high a reliance on achieving the stated objectives through dispute resolution. Dispute resolution processes, even models conducted through tribunal processes (for example the Copyright Tribunal) can still exhibit the same issues with bargaining power as bilateral negotiation.

Dispute resolution can be a time and resource intensive exercise, where the opportunity for success is often linked to the available resources. Clearly, given the imbalance in resourcing available to news

media businesses and either of Google or Facebook there is the potential for any dispute resolution process to lead to a maintenance of the status quo.

For this reason, Free TV submits that where dispute resolution processes are relied upon, the negotiation framework should be clearly established, including codification of a minimum set of matters to be negotiated. Ultimately, the first best approach is to agree the substantive matters through the initial Code development process and subsequent reviews.

7.3 Requirement for local point of contact

Relevant ACCC questions:

- 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?
- Would a point of contact outside of Australia be able to sufficiently address concerns of news media businesses in a timely manner?
- 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?
- What potential practical issues may arise from requiring contact points?
- Are there any other means of communication that might usefully be included in the provisions of a bargaining code?

Free TV considers that there is merit in requiring a local point of contact with media businesses. In many cases, relationships have been developed with local staff of Google and Facebook and Free TV members. However, what our members have found to be the key limitation is the lack of authority of the Australian based staff to negotiate on the terms and conditions of service. This is difficult to regulate against, but we note that merely appointing a local contact person will not address the bargaining issues discussed in this submission.

A local point of contact would be beneficial for quickly raising other matters, such as the need to ensure the quick takedown of material that impinges on the celebrity brand and copyright of our members' programming or talent.

8. Code review

Relevant ACCC questions:

- How might a bargaining code include mechanisms to incorporate newly emerging and newly relevant products and services in the future?
- Should the bargaining code include a compulsory review mechanism? If so, when and how often should this compulsory review occur?

8.1 Periodic review

There should be a requirement for the ACCC to undertake a review of the Code of Conduct every five years. This is necessary to ensure that the Code continues to achieve its objectives and can respond to changes in technology and product offerings over time.

The review process should include ensuring that the:

- Code of conduct still applies to all relevant digital platforms
- Products and services of the digital platforms are still correctly allocated between the collective fee model and the bilateral negotiation framework
- Size of the collective fee pool is still reflective of the value of news content to the platforms
- Distribution model continues to be efficient and effective at sharing the pool amongst applicable media businesses.

8.2 Reopener provision within the period

As set out in an earlier section, the collective fee proposed in our remuneration model reflects the value to the platforms derived from the use of news content under the existing products and services. The Code of Conduct should include a provision for news media businesses to apply to the ACCC to re-open the collective fee process in the event of a material increase in the use of news content by the platforms.

As an example, the ACCC noted in the Final Report an intention to monitor Facebook's growing interest in news media:

To the extent that Facebook's expansion into news media affects the balance of bargaining power it has with news media businesses, or raises competition concerns more broadly, the ACCC will monitor any developments through the specialist digital platforms branch proposed in recommendation 4. (Page 221)

Such a change in the use of news content would change the value of news to the platform and potentially require a reconsideration of the appropriate collective fee pool.

The use of a re-opener mechanism should be reserved for material changes in the use of news content and it would be appropriate for the Code to establish a high threshold before it could be triggered.

A. Specific comments in relation to Facebook data

Subsequent to issuing the Concepts Paper, the ACCC sought stakeholder feedback on a Facebook document that summarises the data that it says it provides to news media businesses. This section sets out some common responses across the Free TV membership to that document. More detailed responses are available direct from our members.

While we again note that it is difficult to comment on what they do provided without complete transparency as to what they collect and do not provide, in general there are three main themes:

- Lack of information regarding how content is distributed (before any data is created)
- Concerns regarding the inability to export data outside of the Facebook ecosystem
- Instant Articles can give a misleading impression of being served directly by the publisher, but no data is available to the publisher.

Ranking and distribution

Facebook does not disclose how the ranking and distribution process works. While appreciating that Facebook is not going to reveal its algorithm, Free TV members have no knowledge around distribution of content, and how our content is ranked, and therefore made visible to audiences. For example, if a piece of content has very low click rates, information on whether Facebook halted distribution would be valuable. In addition, more information on whether a 3 second video view is a user passively scrolling or actively clicking on the post would be valuable.

Free TV members would also like more clarity on what posts drive reach, engagement and views with particular demographics (and across time periods that are not limited to either 7 or 14 days). This information is not currently available to publishers.

Instant articles

Media businesses have had to spend money in order to integrate with Instant Articles—primarily as result of public Facebook commentary that this content would be given preference in the algorithm. However, while Instant Articles may give the impression of being served directly from the publisher, there is in fact no way to collect any information on the user despite the clear direct engagement of that user with the content. This leaves Facebook as the only party able to monetise the data from users engaging with content created by media businesses.

Page and domain insights

Page likes and clicking on posts of news media businesses is effectively reflective of user engagement with a news publisher, their content and IP. Any data created through these interactions should be made available to the publisher to export out of the Facebook ecosystem. If user agreement cannot be implicit, the terms and conditions of the page could be amended to allow this to happen.

Cross domain issues

News publishers that operate more than one Facebook property should be able to export cross channel behavioural data. For example, publishers should be able to identify (on an anonymised basis) user profiles that are common across different pages operated by the one media business.

Metrics around video

Completed Video Views data should be available at an organic level and quartile completion data.

Video retention should be provided by demographics, including what demographic group was retained for the greatest of period of time and what demographic group had the sharpest drop off.

Estimates

It is unclear why Facebook provides "estimates" of any metric. Information should be provided on why an estimate rather than an actual number is required. For example, Facebook lists these numbers as estimates:

- Page likes: The number of new people who liked the publisher's Page, broken down by paid and non-paid.
- Post reach: The number of people who had posts from the publisher's Page appear on their screen, broken down by total, organic and promotions.
- Page followers: The number of new people who followed the publisher's Page, broken down by paid and non-paid.

Earnings Insights

News publishers have no control over the advertising rate card.

Facebook marks content as "restricted monetisation" or with "violations" with no further information. This makes it very difficult to get this assessed, changed or clarified about why restricted monetisation was marked for some content.