free tv

Submission by Free TV Australia

Digital Platform Services Inquiry – Issues paper on search services

Australian Competition and Consumer Commission

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1. Executive Summary

- The ACCC should conduct a market study of the impact of generative AI on the creative sector

- There should be a broad definition of 'search services' as any gateway for information, including AI, social media platforms and app stores

- Legal reforms should prioritise and accelerate prohibitions on self-preferencing in search results and mandatory codes for designated digital platforms

- Transparency about the materials used to inform ingestion of training data must be embedded into the framework

- Materials input into AI models, as well as the outputs, should be protected by copyright

- Creative industries must be properly attributed as originators of content and fairly remunerated

- Privacy reforms must address the immense data holdings of large search engines and their data advantage, and not impede the ability of others to compete.

For the reasons outlined in this submission, the ACCC's ninth report for the Inquiry should give due consideration to the following:

- Large digital platforms operating search engines do so at phenomenal scale and have an unparalleled competitive advantage, particularly in using AI-powered technology.

- By their very nature, search engines are privy to the most informative, valuable and comprehensive data derived from search queries. In particular, Google has entrenched its market position through its access to consumer and business data, direct access to advertising inventory and vertical integration across its ad tech services, entrenching it not only as the dominant search engine in the world, but as a powerful data house and both competitor and supplier in the advertising market.

- Web-scraping of original content to inform large language models for AI driven search results should give proper attribution and fair compensation to original publishers, and there should be transparency for both the publisher and consumer about how and when such content is used.

- Copyright laws must protect original content from web-scraping. AI deployers and developers are able to ingest into AI models significant volumes of original works, without seeking permission, potentially with reliance on 'fair dealing' exceptions and uncertainties about whether copying occurs.

- Given the rapid pace of change in how search services are used and the contexts in which they are employed, the scope of what is meant by 'search services' should extend to any online gateway to information, including social media platforms and AI-powered search results.

- Search engine optimization should be configured to preference high quality search results, particularly when the subject of the source is news. This is necessary to ensure that viewers receive context, detail and well-researched news, which has been fact-checked and meets robust editorial standards.

- This in turn will avoid promotion of misinformation and will additionally support a sustainable local news industry that is able to benefit from click-through revenue generation.

- Transparency of paid search results should be embedded, making it easy for consumers to discern paid results from organic ones.

- There should be mandatory service specific codes for designated search services, which include a prohibition against self-preferencing in search results.

- It is critical that the potential anti-competitive harms that may be caused by search services unfairly preferencing their own content is addressed through an ex ante framework.

- Privacy reforms must recognise the volume and scope of data collected by large digital platforms and ensure other market participants with less data advantage are able to compete.

2.   Introduction

Free TV Australia and its members welcome the opportunity to provide our views on the ACCC's *Issues Paper – Digital Platform Services Inquiry – September 2024 report revisiting general search services* (Issues Paper), to inform its ninth report of the Australian Competition and Consumer Commission's (ACCC) 5-year inquiry into digital platform services (the Inquiry).

By way of background, commercial free-to-air television (FTA) plays a crucial role in making Australian content available, through both broadcast and online, thereby supporting the Government's social and cultural policy objectives to ensure that Australians can freely access quality local content such as entertainment, drama, live sport and trusted news.

Free TV Australia is the peak industry body for Australia's commercial television 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 FTA television makes to Australia's culture and economy.

Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent. Free TV members provide vital local services to all Australians. Commercial television networks spend more than $1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia,* highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of $2.5 billion into the local economy. Further, advertising on commercial TV contributed $161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. 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.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

3. Key issues

3.1 AI-powered search

The technological shift brought about by conversational-style AI search engines has significant implications for our members and their audiences, particularly with respect to original journalistic content.

Chatbots engage with users in a conversational style, generate single answers to search terms from multiple sources, and in many cases fail to give proper attribution to the original source. Under the classic search engine model, users are offered a variety of sources and invited to visit each and arrive at their own answer through a process of critical analysis. In those circumstances, trusted news sources, such as those offered by our members, are clearly apparent to the user and are capable of being distinguished from sources of unknown or dubious credibility.

Failure to take audiences to original credible sources is prevalent in AI platforms such as Chat GPT, but even search engines such as Google are increasingly delivering AI-generated text in lieu of comprehensive lists of sources. These 'zero click' search models scrape information from websites to ingest into large language learning models in order to create the answers the end user receives. Without traffic flowing to the websites, that creator and host the original content, advertising revenue is forgone.

Essentially, this results in publishers' information being used and monetised by the owner of the AI without any benefit flowing to the publisher. In most cases, journalists and producers who invest time, money, and resources into producing quality information and content are not being fairly recognised or compensated in any way. Search engines operating in this manner should be required to prominently attribute and fairly compensate the originators of the information.

Further, there is a complete lack of transparency as to how the large search engines are in fact scraping content. There needs to be a requirement for them to notify originators of such practices, reach an agreement for fair remuneration and explain how their original content and information will be used, and fairly attributed.

3.2 Social media search

Consumers are increasingly turning to social media platforms to search for information, services, entertainment and news sources. Recent research of the ACMA reveals that 20 per cent of Australians nominated social media as their main source of news in 2023, increasing from 17 per cent in 2022. The change is most evident among younger Australians with 46 per cent of 18-24 year olds preferring social media as their primary news source, an increase from 28 per cent in 2022.[1]

These increased levels of news consumption on social media platforms is consistent with the international experience. For example, more than 40 per cent of people in the US use TikTok to search for information, with nearly 10 per cent of young people in the US using it as their search method of

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[1] The ACMA, *How we access news report*, February 2024 - https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news.

choice,[2] with nearly a third of 18-29 year olds in the US relying on TikTok as a news source.[3] In the UK, Ofcom notes similar trends, where around 71 per cent of 16–24 year olds in the UK now use social media to keep up with news, and this does not appear to change as they get older.[4]

The increasing levels of social media being used for search represents a significant change in news consumption patterns and modes of delivery. News has become atomised to the user, served in bite-sized pieces, without the need to view on the originating website. TikTok is emerging as a video search engine, with its short-form video 'story' format serving news in a fragmented way, whereby, in any one session, a viewer may engage with news pieces from multiple news media sources.

This has important implications for how people, particularly young people, engage with the news. For example, in Australia, while professionally produced news media outlets and reputable sources remain the most popular social media sources, they have declined in popularity in recent years.[5] Community groups as news sources have gained popularity, especially among younger demographics. Of particular note is that younger age groups rely more on celebrities and influencers (31%) and unknown sources (33%) for news content.[6]

Research in the UK recognises these trends in using social media for search and how these impact engagement with news:

- The ranking of news content articles in a social media feed has a substantial impact on the amount of time people spend viewing, reading and engaging with the content

- While social media platforms expose consumers to many different news outlets, they tend to serve a narrower range of topics than people might otherwise encounter on traditional news websites

- Consumers who access news via social media may see less diversity of viewpoints, as well as more polarising and false content, which tends to drive high user engagement

- Consumers generally have a limited understanding of the role they play in curating the news that appears on their feed.[7]

This trend runs in parallel to the proliferation of user-created content. This is particularly the case for user-generated news content, such as commentary and opinions, and its influence on shaping public opinion.

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[2] Adobe Express, Using TikTok as a Search Engine, 1 March 2024 - https://www.adobe.com/express/learn/blog/using-tiktok-as-a-search-engine.

[3] Pew Research Center, K Eva Matsa, *More Americans are getting news on TikTok, bucking the trend seen on most other social media sites,* 15 November 2023 - https://www.pewresearch.org/short-reads/2023/11/15/more-americans-are-getting-news-on-tiktok-bucking-the-trend-seen-on-most-other-social-media-sites/

[4] Ofcom, report, *Understanding the influence of social media as gateways to news,* 25 March 2024 - https://www.ofcom.org.uk/news-centre/2024/influence-of-social-media-gateways-to-news#:~:text=Understanding%20the%20influence%20of%20social%20media%20as%20gateways%20to%20news,-Phones%20and%20internet&text=Online%20intermediaries%2C%20such%20as%20social,according%20to%20new%20Ofcom%20research.

[5] Down to 69% in 2023 from 78% in 2022.

[6] The ACMA, *How we access news report*, February 2024, p 2 - https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news.

[7] Ofcom, *Understanding the influence of social media as gateways to news*, 2024 - https://www.ofcom.org.uk/news-centre/2024/influence-of-social-media-gateways-to-news.

3.3 Search quality

The same indicators consumers rely upon to assess quality of search results are those they use to assess trustworthiness of news, including the source or outlet of a news piece. The ACMA has acknowledged that the operation of algorithms, the proliferation of sources and the dissociation of content from its source can make it challenging for consumers to assess quality and make informed decisions about which news to read and trust.[8]

An investigation by NewsGuard in 2022 found nearly 20 percent of videos presented as search results on prominent news topics contained misinformation. Topics included the Russian invasion of Ukraine, school shootings and COVID vaccines, involving false and misleading claims.[9]

As for how consumers will evaluate search quality in the future, there is a risk of consumers losing skills in discerning credible news sources from less credible ones, making them susceptible to false narratives. Given the increase of social media platforms as search engines for new sources, together with the rise of user-created content, search engine optimization and search results will become critical to ensuring that consumers can easily discern trusted news sources from those that contain misleading, inaccurate and false information.

While we appreciate that misinformation is being considered in other Government processes in parallel, and not part of this Inquiry, the accuracy and truthfulness of information is a significant issue affecting the quality of news search results and one that should be noted in the ACCC's consideration in how consumers evaluate the quality of a search service.

As for transparency of search results, clearly distinguishing between paid and organic results is an essential component of assisting consumers to determine quality. This is a practice that should be embedded in search services, including those that are AI-powered and social media platforms-based.

3.4 Television devices

To the extent that the consultation is considering the scope of 'search services', in order to be future-focussed, they should be defined broadly. As Free TV has stated in its submission to the Senate Environment and Communications Legislation Committee on the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023, the same self-preferencing issues explored in the ACCC's Digital Platforms Inquiry applies in the television context.[10] Search on regulated television devices will only gain more traction in the future, with the potential for all content to be accessed via search services rather than applications on an interface.

3.5 Recommendations and solutions

We strongly agree with the recommendation of the ACCC in its fifth interim report of the Digital Platform Services Inquiry, as referenced in the Issues Paper, to impose mandatory service-specific codes for certain designated digital platforms. In particular, these codes should include measures

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[8] The ACMA, *Misinformation and news quality on digital platforms in Australia A position paper to guide code development*, June 2020, p 1 - https://www.acma.gov.au/sites/default/files/2020-06/Misinformation%20and%20news%20quality%20position%20paper.pdf.
[9] https://www.newsguardtech.com/misinformation-monitor/september-2022/.
[10] See Free TV Australia's Submission to the Senate Committee – January 2024 at pages 13-14, file:///C:/Users/ccloudsdale/Downloads/10.%20Free%20TV%20Australia.pdf.

prohibiting designated platforms from self-preferencing their own products and services in ranking, indexing and crawling. For example, serving a video of a news clip in search results on a video platform owned by the search service, rather than the original clip on the news publisher's website.

These ex-ante measures need to be prioritised and implemented in an expedient manner if there is to be a reasonable opportunity to level the playing field to address the power imbalances between large digital platforms and those of our members, who create and generate content for all Australians, for free.

In addition, to ensure the creative endeavours of our producers, publishers, journalists and performers are not exploited through AI without commensurate benefits, the ACCC should conduct a market study of the impact of generative AI on the creative sector.

While the Government's establishment of the Copyright and AI Reference Group is commendable, work on copyright protections should be accelerated. AI deployment is moving at an incredible pace and legal frameworks must be modernised at a similar pace in order to address the consequences that flow from this transformation.

Legal reform should, as a priority ensure:

- A broad definition of 'search services' as any gateway for information, including AI, social media platforms and app stores

- Prohibitions on self-preferencing in search results

- Mandatory codes for designated digital platforms

- Transparency on the ingestion of training data

- The protection of copyright in works ingested into AI models as well as the outputs

- Attribution and fair compensation for creative industries.

Legal frameworks must be equipped to deal with issues of fairness that inevitably arise from the exponential volumes of material used to train AI models, lack of transparency of inputs and outputs, and the absence of copyright protection. They must also address the intrinsic data advantage of search engines. If not, the market power of dominant digital platforms will only become more entrenched, leading to poor outcomes for competition and for the Australian public.