

An Australian Version of the Press Publishers' Right: A Slow Start

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While EU Member States are trying to implement the press publishers' right (also known as 'link tax') that was recently introduced in Art 15 of the Directive on Copyright in the Digital Single Market (DSM Directive), Australia is only just starting its policy debate on this highly contested topic.



Australian media companies (or 'press publishers') have a similar problem to European ones: Facebook and Google are the main platforms from which readers access news. Many readers scroll through the titles of news articles and snippets that these digital platforms provide without clicking on the link and accessing the website of the news publisher. This clearly makes it difficult for Australian news publishers to monetize their content. This problem was recognized in the Final Report on the [Digital Platforms Inquiry](#) by the Australian Competition and Consumer Commission (ACCC), published on 26 July 2019.

The ACCC received a number of submissions suggesting that digital platforms should compensate media companies for the use of their news content to produce snippets: News Corp, Free TV and the Copyright Agency suggested that the ACCC recommend a licensing or other regime that requires digital platforms to pay media businesses for use of their content.

Despite these recommendations, the ACCC rejected the mandatory licensing proposal, arguing that 'past experience in other countries suggests that the regime may not work'. This presumably refers to the experience of European countries like Germany and Spain, where previously introduced press publishers' rights failed. The ACCC suggested that there is a broader problem of bargaining imbalances between digital platforms and news media businesses and instead recommended first addressing this problem through a code of conduct. This would arguably allow digital platforms and news media businesses to negotiate payments for snippets between themselves.

According to Recommendation 7 of the ACCC Digital Platforms Inquiry,

"Each platform's code of conduct should ensure that they treat news media businesses fairly, reasonably and transparently in their dealings with them, and contain at least the following commitments:

- the sharing of data with news media businesses
- the early notification of changes to the ranking or display of news content
- that the digital platform's actions will not impede news media businesses' opportunities to monetise their content appropriately on the digital platform's sites or apps, or on the media businesses' own sites or apps
- *where the digital platform obtains value, directly or indirectly, from content produced by news media businesses, that the digital platform will fairly negotiate with news media businesses as to how that revenue should be shared, or how the news media businesses should be compensated.*" (Italics - RM)

The last paragraph is most relevant here, and essentially suggests that digital platforms and media companies should negotiate how they share the revenues generated from online media articles.

Last month, the Australian Government published a [response](#) and implementation roadmap for the Digital Platforms Inquiry. Among other things, the Government supported the ACCC's recommendation on the codes of conduct. In particular, in its response the Government asks the ACCC to work with relevant parties to develop and implement a proposed voluntary code of conduct by November 2020. The code of conduct has to be developed in consultation with media companies and has to be approved by the Australian Communication and Media Authority (ACMA). The code will be binding for parties who elect to sign up to it. If an agreement is not forthcoming, the Government will develop alternative options to address the concerns raised in the Digital Platforms Inquiry. This may include the creation of a mandatory code.

Recent European experience shows that it is difficult to convince Google and Facebook to comply with binding laws requiring paying press publishers for linking to their content. It will be interesting to see whether Australia will be more successful in inviting digital platforms to voluntary negotiations and whether voluntary codes of conduct will be an effective soft-law measure for addressing the problems media companies are facing in their relationship with digital giants like Google and Facebook. A very slow start with slight chances of success...