

News Media Association—further supplementary written evidence (FOJ0116)

Communications and Digital Select Committee inquiry into the future of journalism

The News Media Association has raised with the committee the value to trusted journalism of measures to oblige online platforms to pay news publishers for the news content they use in search and social media, in light of the proposals put forward in Australia by the Australian Competition and Consumer Commission.

We have suggested this could be a very valuable component of the government's forthcoming online harms legislation, and indeed that online harms might prove to be an ideal vehicle for setting up the statutory framework for such legislation in the UK.

We thought it might be helpful if we set out our thinking in a little more detail.

Firstly, the fundamental purpose of online harms legislation is to make the internet a safer and better-informed environment for the public in general, and children in particular.

Much of the focus so far has been on how to prevent online platforms from facilitating harmful content, some of it criminal, some of it legal but nevertheless harmful and inaccurate, and most of it produced by people who have rapidly learned how to profit from exploiting human weakness.

However the speed with which the online platforms have monopolised advertising markets in the UK has had another less-well-publicised effect, equally damaging to the quality of information online.

Twenty years ago, the vast majority of advertising was placed with newspapers, broadcasters, and magazines, all of which took great pride in their news output, which was produced by trained journalists working under experience and responsible editors.

Today 80 per cent of UK advertising spend is online, and two-thirds of that goes to just two American-owned global businesses – Google and Facebook. Neither employs any journalists nor produces any news content, indeed both insist they are categorically not publishers.

The result has been that the business models which traditionally funded newspapers and broadcasters, and paid for quality journalism, have come under intense pressure. Titles are closing, jobs are being lost, and in many parts of the country the basic functions of the press – coverage of court cases and council meetings – are no longer being delivered.

News publishers recognise the digital revolution cannot be reversed, and they have embraced it by launching digital versions of their titles. But while they have great success in attracting traffic, the revenue follows very slowly indeed, and without the revenue, reporters and editors cannot be paid.

In part this is due to Google's monopolistic control of the digital advertising, where it is both buyer and seller in markets it controls. The CMA has analysed this forensically and we are very hopeful the government will set up robust codes of conduct to address the imbalance in commercial power between the platforms and the news publishing industry.

But this will require legislation and therefore take time, and with every month that passes the prospect of a substantial news publishing company going out of business increases.

Furthermore, it is regional and local publishers which are hardest hit, and although reform of the digital advertising market will help everyone in the long term, smaller local publishers will inevitably take longer to use the reforms to turn traffic into revenue.

What the industry desperately needs is a replacement for newspaper copy sales, where good journalism, in the form of a striking front page, would instantly generate more revenue by selling more copies.

We believe the Australian Competition and Consumer Commission has found the answer to this problem. The Australian government will shortly legislate to oblige the online platforms to pay for the news content they currently use for free.

Unlike unsuccessful attempts by the EU to achieve the same end, which have been based on copyright law, the Australian proposal is very simple. Its key elements are:

- An obligation on designated online platforms to enter into negotiations with news publishers to agree payment for news content.
- A simple, broad definition of what is news.
- A simple registration process for news publishers, restricted to those who show they follow a code of editorial practice.
- Time limits on negotiations between publishers and platforms.
- If negotiations fail, a mandatory arbitration process, with a 10-day time limit.
- Arbitration awards to be decided on the basis of final offers from each party, with most realistic offer being declared the winner.
- An obligation on platforms to provide the information necessary for publishers to determine the true value of their news content to the relevant platform.
- A mechanism to prevent platforms discriminating against publishers with whom they have agreed payment, to prevent them removing paid-for news content and replacing it with content from publishers which have no payment agreement.
- A requirement on platforms to give advance warning and explanation of algorithm changes, and advice to publishers on how to avoid damage to their traffic.
- A requirement on platforms supply news publishers with information about data they acquire from news content, but do not otherwise share with publishers.

The full draft legislation can be found here: <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/draft-legislation>

It seems to us that, unlike European legislation, the Australian proposal will leave the platforms with no alternative but to negotiate agreements to pay for content, and no means of avoiding that obligation by refusing to carry content with news publishers with whom they have made agreements.

It will deliver revenue quickly and efficiently to all publishers, including those who most need it and may find it most difficult to navigate complex digital advertising markets.

The legislation has been drawn up in a common law jurisdiction and therefore should translate without too much difficulty into British law. It involves no cost to the taxpayer at all – indeed the cost would be borne by companies which notoriously pay very little tax in the UK.

Clearly, given the pressures of Covid-19 and Brexit, it could be difficult to find Parliamentary time to legislate on this issue. That is where online harms presents a heaven-sent opportunity.

We know work on online harms is well-advanced. We are aware it is a measure which has widespread support from back-bench MPs. We would argue that there is a perfect logic in adding payment for content to the online harms bill, so it would not just eradicate harmful information from the internet, but actively support and sustain the dissemination of reliable, trusted information from responsible news publishers.

13 November 2020