

15 February 2019



Australian Competition & Consumer Commission
Digital Platforms Inquiry
platforminquiry@accc.gov.au

Dear Sir / Madam,

RE: ACCC Digital Platforms Inquiry – Preliminary Report

Thank you for the opportunity to provide a submission to the ACCC's Digital Platforms Inquiry Preliminary Report.

Noting the preliminary status of the Report and the focus of the Report on online search engines, social media and digital platforms, we confine our feedback to some general remarks about the scope of the Inquiry and to a few Preliminary Recommendations (PR) that we believe may affect the majority of the telecommunications industry.

Our members take privacy seriously and support a privacy regime that protects personal information and data usage. It is, however, important that the regulations protecting these interests are clear and consistent and do not operate to the detriment of consumers and businesses.

General observations on the scope of the Inquiry and its Preliminary Recommendations:

The Report (and Ministerial Direction) state that the Inquiry is to consider “the impact of online search engines, social media and digital content aggregators (digital platforms) on competition in the media and advertising services markets” and to consider the “implications of these impacts for media content creators, advertisers and consumers and, in particular, to consider the impact on news and journalistic content.” Indeed, the majority of the Report focuses on those issues.

However, we are concerned that a number of the PRs are aimed at broader regulatory reform and changes to legislation, e.g. the *Privacy Act 1968*. These PRs may thereby impact the whole economy, i.e. numerous sectors which are not, or ought not be, the subject of the Inquiry. There is no guidance as to what particular ‘harm’ these changes propose to address in these sectors, nor is it clear what protective advantages the proposed changes would provide. We recommend further consultation on these issues, including the development of an Issues Paper and proposed recommendations for review.

Importantly, the Report does not provide a justification for its broader approach. It asserts, rather, that the purported problem is more general in nature and, therefore, warrants application to the wider economy. The Report does not provide any

specific analysis or evidence of these assertions.¹ Therefore, we are unable to support this approach or the resultant PRs.

Given that neither the necessity for the recommended changes on an economy-wide level has been demonstrated, nor their effects on other sectors considered, it appears that any recommendations that go beyond specifically addressing the identified policy question (digital platforms and their societal impact) are premature and would require significantly more evidence-based investigation and consultation.

Preliminary Recommendation 7 – take-down standard

Internet Service Providers (ISPs) are already required to comply with Part 6 of the *Copyright Regulations 2017* and the processes established for Federal Court orders to block websites in the context of online copyright infringements (s115 of the *Copyright Act 1968*). We also note that the 2018 amendments to the *Copyright Act 1968* now give copyright owners additional powers to seek Federal Court orders requiring search engines to demote or remove search results for infringing sites. Consequently, we consider that no changes nor additional regulations are required or, if deemed necessary, ought to be confined to digital platforms and only if equivalent requirements do not yet exist.

Preliminary Recommendation 8 – use and collection of personal information

PR 8 recommends amendments to the *Privacy Act 1988* and, therefore, if implemented, would impose new/changed requirements on all sectors of the economy.

It is not clear that far-reaching measures such as facilitating the erasure of personal information where consent has been withdrawn (PR 8(d)) are appropriate, useful and/or economically and technically feasible. Far more research and analysis in all sectors of the economy would be required before such a recommendation could reasonably be made. At this stage, we offer our preliminary opinion that such a requirement would not be appropriate nor indeed economically and/or technically feasible for our industry. It may also stand in conflict with existing and proposed data retention obligations in the *Telecommunications (Interception and Access) Act 1979* as well as the Consumer Data Right (CDR) regime that is currently under development by the Federal Government and the *Telecommunications Consumer Protection Code C628*.

For the reasons outlined above (i.e. unjustified whole-of-economy application of the suggested measures), we would also have significant concerns with a general increase of penalties for breach (PR 8(e)) or the introduction of direct rights of action for individuals (PR 9(f)).

¹ p. 223, ACCC Digital Platforms Inquiry, Preliminary Report, December 2018

Preliminary Recommendation 10 – serious invasions of privacy

This recommendation was proposed by the Australian Law Reform Commission most recently in 2014. This did not progress largely on the basis that it was recognised that the existing privacy and other laws in Australia provide significant consumer protections for serious invasions of privacy. In particular, since 2014 the Privacy Commissioner's enforcement powers include the power to impose significant civil penalties against organisations for breaches of privacy. Further, in addition to the *Privacy Act 1988*, carriers and carriage service providers are required to comply with Part 13 of the *Telecommunications Act 1979* in relation to their use and disclosure of personal information.

As we have previously submitted, Communications Alliance is also concerned that the introduction of a statutory cause of action is likely to have adverse consequences and to result in an additional and unnecessary regulatory burden on business. There is a risk that the introduction of a cause of action will encourage litigation, including spurious claims, causing uncertainty and additional expense for business.

We look forward to our continued engagement with the ACCC on this Inquiry. Please contact Christiane Gillespie-Jones (c.gillespiejones@commsalliance.com.au) if you have any questions or would like to discuss.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Stanton', written in a cursive style.

John Stanton

**Chief Executive Officer
Communications Alliance**