



AUSTRALIA

***Digital Platform
Services Inquiry –
March 2025 – Final
Report***

**Submission in response to the
Australian Competition and
Consumer Commission Issues
Paper**

August 2024

1. Introduction

Free TV Australia appreciates the opportunity to comment on the Australian Competition and Consumer Commission’s (ACCC) July 2024 *Digital Platform Services Inquiry – March 2025 – Final Report* Issues Paper (the **Issues Paper**).

The ACCC’s original Digital Platforms Inquiry, the subsequent Digital Advertising Services Inquiry (2020–21), and the Digital Platform Services Inquiry (2020–25), have been substantial evidence-based processes examining many facets of the way in which major digital platforms’ scale, market-power and vertical integration impacts Australian businesses, including local media businesses. As the latest inquiry draws to a close, Free TV acknowledges the depth and impact of the work of the ACCC throughout these processes, including with respect to the sustainability of local news and current affairs services and a competitive advertising market.

There is significant work to be done now by Government to give effect to key ACCC recommendations in a range of areas, as well as to maintain momentum in monitoring the impact of major digital platforms—both platforms with existing market power (such as Google and Meta), and those who are quickly gaining it (including those who own and operate systems powered by artificial intelligence (AI), especially large language models (LLMs)). This includes with respect to Meta’s refusal to continue to pay for news shared on its platform, which it is outside the scope of the Issues Paper.¹

It is acknowledged that the Issues Paper seeks input on a range of issues, including private messaging, mobile app marketplaces, gaming and cloud computing. However, Free TV’s submission focuses on two issues:

- **The need for an ex ante code framework**—where the ACCC should recommend that the Government expedite implementation of a framework for imposing ex ante obligations on digital platforms to address systemic or structural obstacles to effective competition.
- **Regulation of AI to provide transparency and remuneration to content creators**—where the ACCC should recommend that regulation be introduced as a matter of urgency in respect of key issues relating to transparency about the materials ingested by LLMs, protection by copyright of both inputs and outputs, and remuneration paid to local media businesses for the use of their content. Competition issues arising from the market advantages that immense data holdings confer on operators of AI systems, including in relation to generating advertising revenue, should also be considered.

2. About Free TV Australia

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. We proudly represent all of Australia’s commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



¹ Free TV called for designation of Meta under the News Media Bargaining Code when Meta announced in March 2024 its decision not to renew any of the deals struck with Australian media companies for use of news content on its platforms – more detail is at <https://www.freetv.com.au/free-tv-calls-on-government-to-designate-facebook-under-the-news-media-bargaining-code/>.

Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

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.

Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Free TV members provide vital local services to all Australians. In FY23, commercial television networks spent \$1.67 billion on Australian content, dedicating 87% of their content expenditure to local programming, an increase of 8% on the previous year. Commercial television networks spent more than \$400 million on accountable news and current affairs alone. This is a substantial investment in Australian, trusted and free television content which benefits our culture, democracy and local screen production industry.

3. Ex ante digital competition regime

As noted in the Issues Paper, in December 2023 the Government undertook to consult on the development of a new ex-ante digital competition regime and provided in-principle support for this and all other relevant ACCC recommendations.²

The framework would comprise of targeted rules that are placed upon digital platforms 'up-front' or 'ahead of time', through mandatory, service-specific codes (the **ex ante framework**). This ex ante framework would apply to digital platforms that meet designation criteria in respect of specific digital services they supply, in order to guide their future conduct, and would complement enforcement of existing competition laws.

In its response in December 2023, the Government noted that:

*The ACCC...presented a strong case for the development of a new ex ante digital competition regime to address anti-competitive behaviours of certain digital platforms. Treasury will consult on the design of a potential ex ante digital competition framework in 2024.*³

The *Competition and Consumer Act 2010* would be amended to allow the ACCC to make digital platform service-specific codes of conduct—effectively creating an ex-ante competition legal framework. This framework will be important to address concerns with conduct by digital platforms including that which amounts to self-preferencing, bundling and tying, conduct relating to data integration that benefits from a dominant market position, and restrictive terms of service.

This framework should be extended to address concerns about social media platforms engaging in practices that thwart the attempts of unequal bargaining partners to compete and create other harms. Concerns include restrictive terms of service, blocking content inappropriately, contributing to mis and disinformation and non-compliance with regulation designed to safeguard against harmful content.

² Issues Paper, page 2.

³ 'Government's response to the ACCC's major competition and consumer recommendations for digital platforms', 8 December 2023 – available at <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/governments-response-accs-majorcompetition-and#:~:text=The%20ACCC%20also%20presented%20a,digital%20competition%20framework%20in%202024.>

New regulation should also include prohibitions on designated platforms 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.

Enacting the ability to use this regulatory tool, focussing on both preventative obligations as well as timely and effective take-down procedures, should be a key legislative priority in this term of Parliament.

Once the powers are in place, Free TV advocates prioritisation of an ex ante code of practice to regulate the supply of digital advertising technology services, a market about which the ACCC has already gathered significant evidence. This code should, among other things:

- prevent anti-competitive self-preferencing, tying and exclusive pre-installation arrangements;
- address data advantages;
- ensure fair treatment of business users; and
- improve switching, interoperability and transparency.

The use of the ex ante regulatory framework in this way will be important to address the challenges of media businesses competing for advertising revenue against vertically integrated behemoths like Google. These major digital platforms have an unfair data advantage against media companies and are unrestrained by the sector-specific ownership and control restrictions that apply to Australian media companies.

Creating a more competitive and fairer advertising market through ex ante regulation will support local media companies in generating revenue to deliver public goods like news, sport and entertainment, which are provided to the Australian public for free.

Recommendation

- A. The ACCC should recommend that the Government expedite enactment of a framework for imposing ex ante obligations on digital platforms to address systemic or structural obstacles to effective competition.
- B. The ACCC should recommend to Government that an ex ante code to regulate the supply of digital advertising technology services be prioritised.

4. AI regulation

AI technology has the potential to deliver substantial benefits, as well as creating potential risks and harms. As the ACCC notes:

...recent developments in, and adoption of, generative AI have been extensive, and this technology continues to expand and develop at a rapid pace. Generative AI products and services may present new opportunities, but also new challenges.⁴

One of the focus areas for the Issues Paper is identifying potential competition and consumer issues which relate to digital platform services. Free TV encourages the ACCC to identify risks arising from AI as one area for future monitoring, leveraging the experience and impact of changes in other jurisdictions relating to AI regulation.

⁴ Issues Paper, page 14.

Indeed, Free TV has previously recommended that the ACCC be directed to conduct a market study of the impact of generative AI on the creative and news media sectors. We encourage the ACCC to use the final report of this inquiry to provide the information required to underpin such a direction.

4.1 What are the risks with AI?

The Issues Paper cites the work of the Digital Platform Regulators Forum (**DP-Reg Forum**), which has identified that LLMs:

- are likely to have features common to digital platform services that make them tend towards concentration—including a positive feedback loop involving the collection and use of user data, economies of scale, and access to large volumes of high-quality user data; and
- could allow big digital platforms to strengthen and expand their market power by continuing to engage in anti-competitive practices the ACCC has previously observed. These include anti-competitive self-preferencing, tying and data access restrictions.⁵

While the DP-Reg Forum’s analysis focused on how these characteristics may impair the ability of new entrants to the AI market to compete with existing LLM providers, these features should also give rise to concerns about other risks.

The principal risks relating to LLMs about which Free TV members are concerned are:

- **Risks to democracy**—especially how they intermediate access to reliable news, risks of deep fakes, and risks of the spread of misinformation and disinformation, which can impair civic participation and undermines the health of Australia’s democracy.
- **Risk to the sustainability of the Australian media sector**—risks to the sustainability of news media and other content businesses whose content is used to train AI without transparency or remuneration.

4.1.1 Transparency and attribution

As it becomes easier for users to rely on AI-powered digital services to find information, there is a significant risk that citizens will consume AI-generated or AI-summarised news without transparency as to its source. They will not know if it is accurate and reliable and will not be able to assess if a diversity of viewpoints and sources have been used to train the AI. They may be exposed to misinformation and disinformation, including from AI-generated fakes, which will impair their ability to make informed decisions about public interest issues, and most concerningly when forming voting intentions.

As set out in Free TV’s recent submission to the Senate Select Committee on Adopting Artificial Intelligence,⁶ it is acknowledged that different LLMs take different approaches to transparency and attribution. However, regulatory guardrails are needed to ensure accountability and consistency in transparency standards. In particular, attribution should be prominent, cite the name of the website source and directly link to the content on the website, not just a landing page.

Appropriate transparency and attribution means citizens can make their own assessments as to the original source of the information.

⁵ Issues Paper, page 15.

⁶ Available at <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Select-Committee-on-Adopting-Artificial-Intelligence-May-2024.pdf>. This submission includes examples of LLM results in summarising news, some of which included sources and others of which did not.

4.1.2 Remuneration and sustainability

Public interest journalism plays a critical role in our society. Robust, accountable and independent public interest journalism holds power to account and is an essential underpinning of a well-functioning democracy. That is why the sustainability of the Australian news media sector is so important.

The sustainability of news media and other content businesses will be at risk if content, the production of which they have funded, is used to train AI without transparency or remuneration.

Reliable and accountable news is expensive to make

Reliable news is labour-intensive and expensive to make and distribute—it requires people on the ground to gather Australian stories, persevere with investigative journalism that holds power to account, and curate the news that Australians would not otherwise get in social media echo chambers. As noted above, in FY23, Free TV’s members spent more than \$400 million on accountable news and current affairs.

Cost follows quality, with compliance costs being material in the production of accountable news. Therefore, media organisations must be compensated for their content being used to train large language models.

Revenue used to fund news and current affairs is at risk

News media organisations’ revenue is at risk—both from loss of audience exposure to advertising on their own digital properties (where the audience does not travel from the AI summary to the source), and circumvention of news media organisations’ subscription paywalls.

In a future where users stop at the AI generated news summary, and do not click through the source—either because it has not been provided, or they are satisfied with the AI-generated summary—news media organisations will not be able to generate their own advertising revenue and brand awareness and credibility benefits will be muted.

Public policy threads should be drawn together to regulate AI

Regulating AI is a multi-faceted issue which connects to a range of public policy and law reform processes, and it is noted that the Government has established a copyright and artificial intelligence reference group to better prepare for future copyright challenges emerging from AI. Free TV is an active participant of the copyright and artificial intelligence reference group, as it is in relation to the Government’s Privacy Act review process. Free TV notes that these processes are exploring issues such as the potential use by AI models of individuals’ personal information for training, which may be applicable to the ACCC’s recommendations in relation to regulating AI.

Concern across creative sectors – the APRA AMCOS AI and Music report

Concerns about the impact of AI exist across the creative sector as well as the news sector. For example, in August 2024, APRA AMCOS—the agency which grants licences for the live performance, broadcast, communication, public playing or reproduction of musical works—released its *AI and Music Report* (the **Report**).⁷

⁷ Available at [APRA AMCOS](#).

In terms of impact, the Report found that:

- By 2028, 23% of music creators' revenues will be at risk due to generative AI, an estimated cumulative total damage of half a billion (\$519 million).
- 82% of music creators are concerned that the use of AI in music could lead to them no longer being able to make a living from their work.

The Report noted there is no remuneration system that closes the AI-generated financial gap for music creators. It noted that while a good number of musicians use AI to assist with music creation, AI risks currently outweigh opportunities.

With more than 4,000 songwriters, composer and music publisher members responding to a survey underpinning the Report, there were also strong views about what should be done:

- 97% demanded that AI providers should be obliged to disclose when they use copyrighted works as training data.
- 95% claimed that copyright holders must be asked for permission before their works are used as input for AI systems.

4.2 What are the solutions?

As noted above, Free TV has called for an ACCC market study of the impact of generative AI on the creative sector. Among other things, the ACCC's market study should examine:

- transparency about the materials ingested by AI systems;
- protection by copyright of both inputs and outputs;
- remuneration; and
- competition issues arising from the market advantages that immense data holdings confer on operators of AI systems, including in relation to generating advertising revenue.

With the evidence of market impact gathered, and following passage of the ex ante framework, it would then be appropriate for designated AI operators to be subject to ex ante regulation.

Recommendation

- A. The ACCC should recommend to Government that it be directed to conduct a market study of the impact of generative AI on the creative and news media sectors. The ACCC should use the final report of this inquiry to provide the information required to underpin such a direction.
- B. The ACCC should recommend to Government that an ex ante framework should be applied to address AI-related risks set out in this submission, and as informed by the ACCC market study.