

# News Corp Australia

## SUBMISSION TO THE HARPER COMPETITION POLICY REVIEW ISSUES PAPER

18 AUGUST 2014

### INTRODUCTION

News Corp Australia welcomes the opportunity to make a submission to the Competition Policy Review Issues Paper (the Paper).

As the members of the Review panel are well aware, the digital economy is delivering significant increases in competition and diversity in the media sector. Australians now have access to greater diversity of news and opinion than at any time in history. This means that rather than sector specific laws on media mergers, Australia's existing competition law is the most appropriate arbiter of transactions in this sector.

Such an approach to media policy encourages efficient investment and consumer welfare, moves away from the traditional 'wobbly table' approach to media policy in Australia, and is both fit for today's economy and resilient to any changes that may emerge.

We note that the Paper raises the matter of intellectual property, and asks if there are restrictions arising from IP laws that adversely impact competition. In response to this, some parties will advocate the watering down of copyright, including raising issues such as parallel imports. However, those parties ignore the rampant online infringement of creative material in Australia, and the undermining effect of this on incentives to invest in creativity and the livelihoods of Australian employed in sectors dependent on an effective copyright regime.

### OVERVIEW OF SUBMISSION

This submission is set out as follows:

**Section 1:** Transformative changes in the media sector driven by digital

**Section 2:** Online copyright infringement is a significant threat of the creative industries

## SECTION 1: TRANSFORMATIVE CHANGES IN THE MEDIA SECTOR DRIVEN BY DIGITAL

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Market and technological developments – particularly those arising from the digital economy – have delivered big increases in media diversity, including news and opinion. Moreover these changes have broken down the traditional distinctions between broadcast, print and radio which traditionally underpinned Australia’s regulatory settings.

### **WE ARE EXPERIENCING MEDIA DIVERSITY LIKE NEVER BEFORE, AND IT IS CONTINUALLY INCREASING**

There has been an explosion of media diversity, including news and opinion, driven by digital technologies and their constant evolution, and changing consumer behaviours.

- *Television news*

There are now 17 FTA channels including the ABC’s dedicated news channel, News 24. There are over 200 channels on Foxtel including 16 independent news channels.

Specifically, the diversity of news and current affairs voices on television (including multi-channels) are:

- The FTA networks – Seven; Nine; Ten; ABC including ABS News24, local television in each state and territory, and the international television service Australia Network; SBS; Southern Cross; Prime; WIN and NITV News; and
- STV channels – The 16 independent news voices on Foxtel are Sky (National) News; Sky Business; APAC; Sky Local Adelaide; Sky Local Brisbane; Sky Local Melbourne; Sky Local Perth; Sky Local Sydney; Sky UK; Fox News; CNN; BBC World News; Bloomberg; Al Jazeera; CNBC and CCTV. Foxtel exercises no editorial control over any of these services.

- *Radio news – public broadcasting*

- ABC Radio:
  - ABC Local Radio which comprises nine metropolitan radio stations and 51 regional radio stations throughout Australia;
  - Four national radio networks: ABC Radio National – with about 60 distinct radio programs each week, ABC NewsRadio, ABC Classic FM and triple J;
  - 11 digital radio channels in each mainland capital city including simulcasts of the four national networks and metropolitan Local Radio services plus digital only services ABC Dig Music, ABC Jazz, ABC Country, ABC Grandstand, triple j Unearthed, ABC Extra and a special events digital radio station;
  - Radio Australia, and international radio and online service broadcasting in eight languages is available in Asia and the Pacific; and
  - In 2012-13 a new radio app was launched, providing access to 10 Local Radio stations, the four national radio networks and the digital-only services. It also offers the ability the share via email and social media. <sup>1</sup>

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<sup>1</sup> <http://about.abc.net.au/wp-content/uploads/2013/10/ABC-Annual-Report-2013-lo-res.pdf>

- SBS Radio:
  - Broadcasts on both the AM and FM frequencies in Melbourne, Sydney Canberra and Newcastle, and on either an AM or FM frequencies in other major centres nationwide;
  - SBS offers 24/7 live online streaming of all language programs on SBS Radio 1, Radio 2 and Radio 3; and live streaming of special events and the BBC World Services on SBS Radio 4; and
  - There is also a SBS mobile app that allows people to listen to 74 SBS radio language programs, and also on demand.<sup>2</sup>
- *Radio news – Commercial radio*

According to Commercial Radio Australia<sup>3</sup> 147 commercial radio stations were transmitting across Australia as at December 2012:

- 11 in Sydney and 33 in regional NSW;
- 10 in Melbourne and 13 in regional Victoria;
- 8 in Brisbane and 22 in regional Queensland;
- 6 in Perth and 16 in regional WA;
- 6 in Adelaide and 6 on regional SA;
- 4 in Canberra;
- 3 in Hobart and 5 in Tasmania; and
- 2 in Darwin/Katherine and 2 in NT.

There is also enormous diversity available via digital radio and services available online and to mobile devices via apps which has not previously been available.

- *Increase in on-line and mobile news and opinion sites*

There is also a rich diversity of online news options. Nielsen's news and information category data of May 2014 (Diagram 1 below) shows there are 37 websites with an average monthly audience of over 300,000 (unique audience), 21 of that 39 are local news sites, and the remaining 19 or 51% are international or global sites including *Mail Online*, *The Guardian*, *Huffington Post*, *CNN*, *BuzzFeed*, *Reddit* and *Forbes.com*; and also news aggregation sites such as Google News, and ninemsn and Yahoo!7 news Websites.

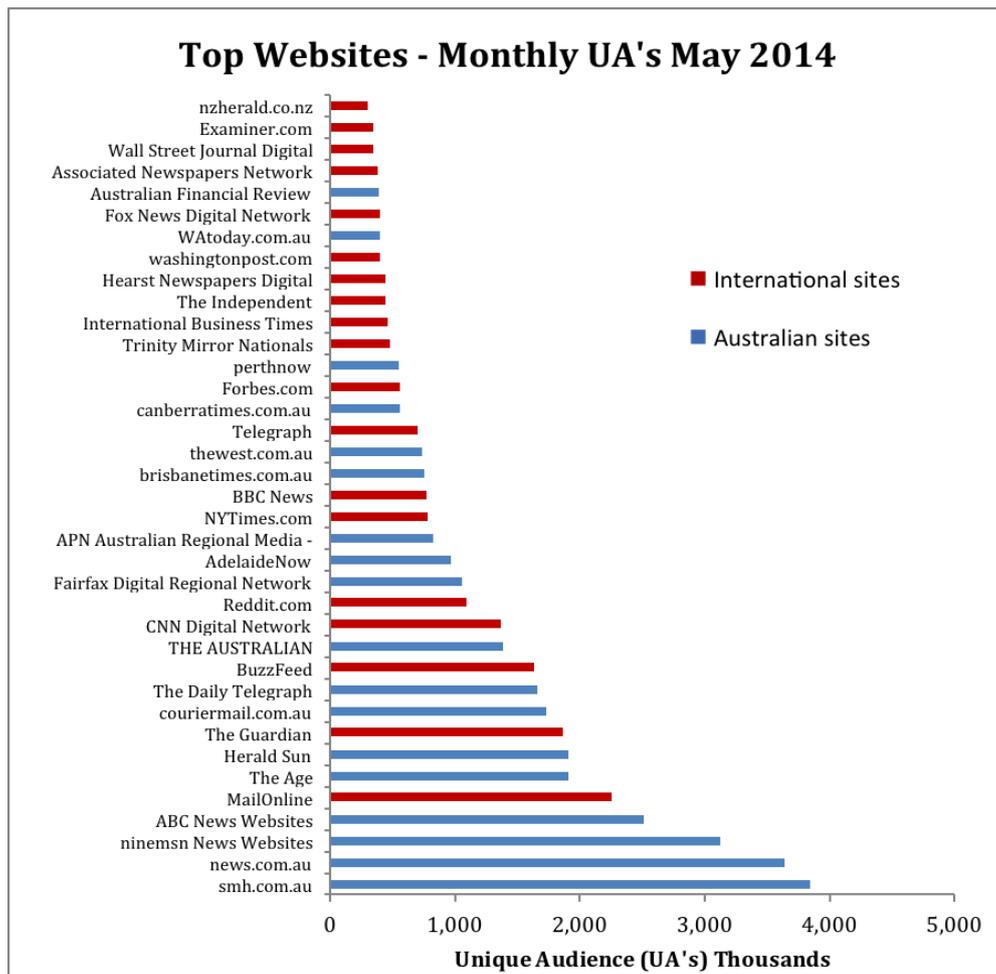
Interestingly, social newsfeed site *BuzzFeed* hit the list for the first time in September 2013 with a unique audience of 645,000, and now has 1,631,00; and *Reddit*, which first appeared on the list in August 2013 with a unique audience of 517,000, is now 1,088,000.

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<sup>2</sup> <http://www.sbs.com.au/radio/>

<sup>3</sup> <http://www.commercialradio.com.au/files/uploaded/file/2013%20calendar/2013%20station%20map.pdf>

Diagram 1



Source: Nielsen Online Ratings, Netview Hybrid Surfing Monthly Unique Audience (UAs), May 2014

It is worthwhile to note here that a number of services have set up shop in Australia recently, including:

- *The Conversation* – which, according to the website<sup>4</sup>, has 1.6 million visitors a month;
- *The Guardian Australia* – which has been operating since May 2013;
- *The New Daily* – which launched in November 2013, and according to reports<sup>5</sup> had 30,000 subscribers in November 2013;
- *Daily Mail* – a deal with Mi9 launched an online-only Australian version in 2014; and
- *The Saturday Paper* – a new weekly newspaper from the publisher of *The Monthly* – launched in February 2014.

The ALP is also establishing the *Labor Herald* – an online news service with a direct audience of about 500,000 via email and social media<sup>6</sup>.

<sup>4</sup> [http://theconversation.com/au/our\\_audience](http://theconversation.com/au/our_audience)

<sup>5</sup> <http://www.thenewspaperworks.com.au/new-daily-grabs-30000-subscribers/>

<sup>6</sup> [http://www.alp.org.au/position\\_wanted\\_senior\\_editor\\_labor\\_herald](http://www.alp.org.au/position_wanted_senior_editor_labor_herald)

- *Increase in social media*

There has also been an explosion of choice and access brought about by the internet and companies such as Google, Facebook and Twitter – to name but three of the multitude of sites that have proliferated over the last decade that consumers are interacting with – sharing, commenting and generating media content.

Political parties are also embracing digital communication channels and delivering ever more choice of material. In March 2013 the ALP posted a graph to Facebook regarding government net debt. According to a report in the *Australian Financial Review*<sup>7</sup>, the graphic was seen by more than 844,500 Facebook users in less than one week. Twitter is also used as a communication channel by people involved in making and reporting news and commentary across the world, and Australia is no exception.

There are also vast numbers of blogs and news sites – including specialist and niche blogs such as political blogs – that contain large amounts of diverse user generated content; all of which Australians have the ability to – and do – access and interact with, when, where and how they choose.

And along with publishers, bloggers and traditional media entities, activist groups such as GetUp! are embracing digital communication channels to communicate and influence the agenda.

It is undeniable that people are multi-sourcing their media consumption. The power is in the hands of consumers to decide their media consumption, including that of news and current affairs.

## **COMPETITION AND CONSUMER ACT APPROPRIATE TO ASSESS MEDIA TRANSACTIONS**

Given the above, we submit that Australia's existing competition law – in concert with the rules administered by the FIRB – is appropriate to assess transactions in the media sector in Australia, being fit for today's economy and adaptable and resilient to any changes that may emerge.

Specifically, the ACCC has extensive powers to preserve media diversity in its administration of pro-competition laws, namely section 50 of the *Competition and Consumer Act 2010*. In administering these pro-competition laws the ACCC effectively has powers that preserve media diversity.

- *Application of existing ACCC laws in media transactions*

The application – and outcome – of such provisions was evidenced by the ACCC's indication in October 2012 that it would have concerns with Seven West Media's application to acquire CMH shareholdings in Foxtel and Fox Sports. Regarding that decision, ACCC Chair, Mr Rod Sims, told the *Australian Financial Review*<sup>8</sup>:

*'Following our decision today to oppose Seven Group getting hold of 50 per cent of Fox Sports, that same logic would apply even more strongly to News seeking to acquire a free-to-air station.'*

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<sup>7</sup> [http://www.afr.com/p/national/politics/labor\\_debt\\_graphic\\_goes\\_viral\\_tqiOx612DXcFOkHXPhoc8I](http://www.afr.com/p/national/politics/labor_debt_graphic_goes_viral_tqiOx612DXcFOkHXPhoc8I)

<sup>8</sup> [http://www.afr.com/p/national/accc\\_warns\\_news\\_hands\\_off\\_free\\_to\\_G2vnJy2ISLBtvcMP5PnRaJ](http://www.afr.com/p/national/accc_warns_news_hands_off_free_to_G2vnJy2ISLBtvcMP5PnRaJ)

- *Ability of ACCC's existing laws to be applied within the constantly evolving media landscape*  
In another report published on 6 March 2013 in the *Australian Financial Review*<sup>9</sup>, Mr Sims expressed a broader view of a potential transaction which included the diverse landscape of product and technology that constitutes a market, and not merely the platforms which were represented in such a transaction. He said:

*'If someone were to say, 'Is our media sector too concentrated with two newspaper groups?' because that's essentially what we've got, I would say, 'No, two newspaper groups does not cause me any concern.'*

*'If one wanted to take over the other we'd have concerns, but you've got competition from radio, television and the internet.'*

- *ACCC's existing laws applicable for a range of transactions, including media*

It was also reported that Mr Sims noted the role of technology in the evolution of the consideration of transactions across many sectors including the media sector.

*Mr Sims said that rapid evolution in new technology meant it was 'undeniably the case' that mergers that were once off limits for reducing competition might now be possible, and that this applied not just to the media sector<sup>10</sup>.*

He also acknowledged the significance of barriers to entry not necessarily being physical, again acknowledging the role of the internet in the dynamics and structure of markets. He said:

*'Nowadays, in various sectors, bricks and mortar won't be the barriers to entry...We'll look at the internet, and mergers you wouldn't have allowed, you possibly will.'<sup>11</sup>*

Lastly, to the extent that we have concerns about aspects of competition law, these are confined to the issues succinctly articulated in the Foxtel submission to the Paper, including regarding markets, mergers and misuse of market power.

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<sup>9</sup>[http://www.afr.com/p/business/companies/sims\\_opens\\_door\\_to\\_more\\_media\\_mergers\\_QK1rBX55S2227NLNzTphGL](http://www.afr.com/p/business/companies/sims_opens_door_to_more_media_mergers_QK1rBX55S2227NLNzTphGL)

<sup>10</sup> Ibid

<sup>11</sup> Ibid

## SECTION 2: ONLINE COPYRIGHT INFRINGEMENT IS A SIGNIFICANT THREAT OF THE CREATIVE INDUSTRIES

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We note that the Paper raises the matter of intellectual property and if there are restrictions arising from IP laws that adversely impact competition. As News Corp Australia has expressed in other fora, we believe that the balance between intellectual property rights and competition has in most part been struck appropriately.

Notwithstanding this, some parties will advocate the watering-down of copyright and raise matters such as parallel imports. However, what these parties overlook is the very real, significant and evidenced issue that is online copyright infringement. What is also overlooked, and often dismissed by those that posit for a watering-down of copyright, is the undermining of the creative industries that results from the erosion of the respect for the decisions of rights holders in exercising their rights within the law.

The matter of online copyright infringement is a very real issue – not merely a matter of conjecture. This manifests in increased business investment risk, which detrimentally impacts investment in new and innovative services, and therefore reduces benefits to consumers. In this context, creators and rights holders abilities to negotiate and enforce their rights is manifestly eroded, which in turn puts at risk the employment of over 900,000 people and the economic contribution of more than \$90 billion, including \$7 billion in exports, that the copyright industries make to Australia.<sup>12</sup>

Therefore, reform of this area of the copyright regime – which entails targeted legislative amendments to correct the unintended failings of the current *Copyright Act* – is long overdue.

As the Panel would be aware, the Government has issued a Discussion Paper, *Online Copyright Infringement*. The Discussion Paper includes two proposals to amend the current legal framework to facilitate workable approaches between multiple participants of the digital copyright eco-system to combat online copyright infringement. In doing so, the Government is cognisant of ‘*not creating competitive advantage (or disadvantage) for particular industry participants and of ensuring that industry and consumers can continue to take full advantage of the legitimate opportunities to create and enjoy content in a digital environment.*’<sup>13</sup> Submissions are due in September 2014.

It should be noted that other international jurisdictions have implemented measures to address these aspects of online copyright infringement. The opportunity available to Australia, which has not been available in other jurisdictions, is to combine a number of measures – enabled by legislative amendment – to address both supply and demand sides of online copyright infringement.

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<sup>12</sup> PwC Report, *The Economic Contribution of Australia’s Copyright Industries 1996-97 to 2010-11*, <http://www.copyright.org.au/pdf/PwC-Report-2012.pdf>

<sup>13</sup> Discussion Paper, Letter from Ministers, <http://www.ag.gov.au/Consultations/Pages/Onlinecopyrightinfringementpublicconsultation.aspx>