

Submission to Joint Select Committee on Social Media and Australian Society

4 July 2024

Our submission focuses on 'the decision of Meta to abandon deals under the News Media Bargaining Code' (paragraph [b] of the terms of reference).

In summary:

- We echo the concerns of people working in Australia's news media, many of whom are our members, that Meta's decision to abandon deals under the News Media Bargaining Code will have negative consequences for the sustainability and diversity of Australian news.
- Meta's apparent use of Australians' content for its AI development is yet another example of its use of other people's content to develop its business without fair compensation, and with limited recourse for the people whose content it has used.

Consequences of Meta abandoning the News Media Bargaining Code

The experience in Canada indicates what the consequences may be for Australia.¹ They include:

- Reduction in investment in Australian news media content, including as a result of users sharing infringing screenshots of news content. Canadian research has shown that screenshots of news articles and journalism tripled after Meta banned the sharing of links to news articles on Facebook.
- Depriving Australian news providers of core channels to readers that generate revenue. This will impact all Australian news publishers but is likely to have a disproportionate effect on small publishers whose businesses have been intentionally built around social media platforms to drive traffic to websites, or to reach readers directly. This includes publications like the Daily Aus which currently uses Instagram as its primary channel to readers.

Meta's apparent use of Australians' content for AI training

Meta changed its terms of use for Australian users in December 2023, and has apparently been using Australians' content for AI training.² Even if Australian users were aware that that was Meta's plan, they had very limited options to prevent their content being used. Meta's proposal to make the same change in Europe is affected by Europe's General Data Protection Regulation (GDPR), but the process for opting out is ridiculously complicated, particularly for individuals.³

The Government should look at mechanisms that would:

- render purported licences to Meta to use its customers' content for AI training and other purposes, via non-negotiable changes in its terms of use, ineffectual;
- make Australians aware of how Meta is using their content, and may use their content in the future;

¹ Media Ecosystem Observatory *Preliminary Findings on the Effects of Meta's News Ban in Canada - April 2024*, https://static1.squarespace.com/static/6450265301129e5dbabfe8a2/t/667da210372dab2a0cda62f0/1719509521003/Whe njournalism%2Bis%2Bturned%2BOff_Preliminary%2BReport.pdf

² <https://www.artslaw.com.au/meta-ai-training/>. See also the reference to this issue in the submission to this inquiry from the Attorney-General's Department.

³ See, for example, information for artists from Design and Artists Copyright Society (UK) here:

<https://www.dacs.org.uk/news-events/what-artists-and-their-beneficiaries-need-to-know-about-metas-new-privacy-policy>

- enable Australians to be compensated for the use of their content by Meta, if they choose to allow it to be used; and
- require Meta to disclose the third party content that it has used.⁴

Mechanisms for fair compensation to content creators for uses of their content

Content creators should be fairly compensated for uses of their content, including when it is used to develop products and services such as online search, social media services, and artificial intelligence (AI) products and services.

Australia's copyright system is one mechanism that enables uses of other people's content in ways that are ethical and equitable, including via copyright licensing arrangements. This includes ethical uses for AI-related development in Australia. Arguments made by multinational companies to water down Australia's copyright system should be resisted, as that is not in the best interests of Australians. This and other copyright-related issues are being addressed by the Copyright and Artificial Intelligence Reference Group (CAIRG), referred to in the submission from the Attorney-General's Department. We are a participant in CAIRG, and have found the process to be thorough, and well-coordinated with AI-related activities in other portfolios.

The news media bargaining code is another mechanism intended to ensure fair compensation for news content, and investment in the public good of local journalism. Its limitations have, however, been highlighted by Meta's recent actions.

The Government also needs to look at other mechanisms for fair compensation, particularly to address the use of Australians' content offshore to develop products and services that are available in Australia. This includes the use of Australians' content in the training of foundation large language models (LLMs). This is urgent, as the failure to address the issue is undermining public confidence in local AI-related development that could deliver benefits to Australians.

About us and our members

We are a not-for-profit organisation with 40,000 members, who are primarily writers (including journalists), artists (including photographers, illustrators and cartoonists) and publishers (including in the educational, academic and news media publishing sectors).

We are appointed by the Australian government to manage special schemes in the Copyright Act that allow uses of content for education and government purposes, as they apply to text and images. These schemes apply to any content, from anywhere in the world, in any format (including print and online).

We also manage licensing arrangements for the business sector that allow uses of content, including news media content.

⁴ See reference to this issue in the submission to this inquiry from the Attorney-General's Department. See also the Bill introduced in the US: <https://www.copyright.com.au/2024/04/us-bill-requiring-transparency-by-ai-developers-introduced/>