



Submission on

**ACCC: Digital Platforms Inquiry - Discussion Paper for
Interim Report 5**

on behalf of

Australian Association of National Advertisers

April 2022

Introduction

The AANA is the peak body for advertisers and has represented national advertising for 90 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The advertising, marketing and media industry plays a fundamental role in the digital economy by funding key services such as free news and entertainment, promoting competition, helps consumers get better value for money and stimulating economic growth and jobs.

Advertising Self-Regulation

The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers' recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations.

The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. It provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The self-regulatory system, including complaints handling, operates at no cost to the consumer or to government. The AANA is funded by membership fees. Funding of Ad Standards and its secretariat support of the Ad Standards Community Panel and Ad Standards Industry Jury is provided through a voluntary levy on advertising spend.

The AANA self-regulatory system provides Codes that reflect community standards in relation to advertising. They are developed and have evolved with public and industry consultation. The Codes are technology and platform neutral, providing a uniform set of self-regulatory standards that apply to all advertisers, regardless of AANA membership.

The system is recognised and endorsed through inclusion in other self and co-regulatory systems, and all major media owners have agreed to support the decisions of the Ad Standards Community Panel.

Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform. The resulting commercial consequences of breaching the Codes include:

- the direct and indirect costs of withdrawing an advertisement; and
- the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

Submission

The AANA notes the scope of this Discussion Paper is to assess and seek feedback on what tools and regulatory levers are appropriate to address competition or consumer harms which may arise in relation to digital platform services.

Our submission will focus on those questions most relevant to our advertiser members.

1. What competition and consumer harms, as well as key benefits, arise from digital platform services in Australia?

It is worth noting that many of the benefits that arise from digital platform services in Australia are funded by advertising. As with free-to-air television, advertising funds digital services so that they can be enjoyed for free or at a reduced rate by consumers. Such services include free email, social

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media, video and music content and search services. Many consumers actively choose these free services, understanding that they include advertisements, rather than pay a subscription for the 'ad free' delivery of such services.

As we move forward, the interconnectivity between advertising and digital services needs to be acknowledged so that any new regulatory measures do not unintentionally result in the loss of advertising revenue to services vital to a fully functioning society such as free news and independent journalism.

Here are some of the steps being taken by the AANA and its members to ensure that advertising is done responsibly in Australia:

- **Responsibility** - AANA and its advertiser members are very aware of the need for advertising to meet community standards and expectations in order to maintain the social licence to operate. Under the AANA *Food & Beverage Advertising Code*, advertising for occasional food and beverages (any food or beverage which does not meet the [FSANZ nutrient profile scoring criterion](#)) must not target children (anyone under 15 years of age). To do this, advertisers use data and targeting technology to avoid advertising to users who would fall into the restricted category. Likewise for alcohol advertising which must not be directed to anyone under 18 years of age. Advertisers utilise age restriction controls to exclude under 18s from viewing advertising for those products. It is vital that advertisers have continued access to these digital age-restriction tools and also transparency around where their advertising is appearing to continue to maintain high standards of social responsibility.
- **Disinformation** - The AANA is also mindful of the role advertisers can play in potentially funding disinformation and the power advertisers have to tackle this problem. The AANA is a member of the [Global Alliance for Responsible Media](#) (GARM), a cross-industry initiative established by the World Federation of Advertisers to address the challenge of harmful content on digital media platforms and its monetisation via advertising. The AANA is working with GARM to assist advertisers to understand what steps they can take proactively to ensure their advertising is not funding bad actors and disinformation. Advice from GARM on the measures which advertisers can take to de-fund disinformation include the following:
 - o Restricting where advertisers buy and how they buy. Indirect buying via programmatic should be scrutinised to the fullest extent. Indices within indices that can obscure outlets, where bad actors play a 'game of submarining' can and should be removed. Advertisers can ask partners what they are doing to chase misinformation off their platform, how they are managing their own inclusion and exclusions lists for monetisation.
 - o Protect ad buys at scale with lists and precision keywords and put in place an inclusion and exclusion list that is informed by trusted partners.
 - o Directly support good operators and preferred news outlets via an inclusion list.
 - o Undertake pre-bid screening based on the [GARM Safety Floor and Suitability Framework](#), in-stream blocking, post-buy transparency and post-campaign analysis.
- **Transparency** – as outlined in the Ad tech Inquiry Final Report, currently advertisers are unable to accurately trace, track and audit the delivery of digital advertising and therefore advertisers cannot always verify that they got what they paid for. This lack of transparency in the ad tech supply chain allows for bad actors and fraud to creep into the ad tech ecosystem. The AANA, together with the IAB and MFA, is currently steering a cross-industry working group tasked with developing solutions to these issues. This is dealt with in more detail below.

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4. What are the benefits, risks, costs and other considerations (such as proportionality, flexibility, adaptability, certainty, procedural fairness, and potential impact on incentives for investment and innovation) relevant to the application of each of the following regulatory tools to competition and consumer harms from digital platform services in Australia?

a) prohibitions and obligations contained in legislation

b) the development of code(s) of practice

c) the conferral of rule-making powers on a regulatory authority

d) the introduction of pro-competition or pro-consumer measures following a finding of a competitive or consumer harm

e) the introduction of a third-party access regime, and

f) any other approaches not mentioned in chapter 7

The ACCC's Final Report recognised that the AANA self-regulatory advertising Codes have kept pace with technological change. This is the key benefit of industry-self-regulation – the ability to react swiftly and evolve rapidly to changing situations. The AANA believes that industry self-regulation is especially suitable in instances where there are rapidly changing conditions or there is some expertise or technical understanding required to regulate the sector. In relation to the digital platforms, the industry has expertise and understanding of the issues and the pros and cons of any solutions. The AANA is supportive of industry-led solutions in these instances. The industry through its representative bodies has a strong track record of working together on industry matters such as the self-regulation of advertising content.

Where industry-led solutions need some enforcement mechanism or where agreement cannot be reached, then it may be appropriate to have a Code of Practice registered with the appropriate regulator or the ability for the appropriate regulator to have rule-making powers. However, the AANA believes that these should only be used where the industry-led solution has failed to achieve the desired result, industry cannot agree to adopt a solution proactively or some enforcement mechanism is required. Power could be given to the ACCC to register and enforce Codes of Practice or issue rules but there should also be guardrails around when those powers would be used which would prioritise industry-led solutions in the first instance.

16. In what circumstances, and for which digital platform services or businesses, is there a case for increased transparency including in respect of price, the operation of key algorithms or policies, and key terms of service?

a) What additional information do consumers need?

b) What additional information do business users need?

c) What information might be required to monitor and enforce compliance with any new regulatory framework?.

The AANA continues to be supportive of the Ad Tech Inquiry Final Report Recommendation 2 and 4 that:

- Recommendation 2 - *“The ACCC should be given powers to develop sector specific rules to address conflicts of interest and competition issues in the ad tech supply chain. The rules*

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would apply to ad tech providers that meet certain criteria linked to their market power and/or strategic position”.

- Recommendation 4 - *“Industry should establish standards to require ad tech providers to publish average fees and take rates for ad tech services, and to enable full, independent verification of demand side platform services.”*

The AANA was also supportive of the ACCC’s Ad Tech Inquiry Interim Report Proposal 5 which called for the *“Implementation of a common transaction ID: Industry should implement a common system whereby each transaction in the ad tech supply chain is identified with a single identifier which allows a single transaction to be traced through the entire supply chain. This should be done in a way that protects the privacy of consumers”*. Unfortunately, this proposal did not carry through into a formal recommendation in the Final Report however Recommendation 6 did propose granting the ACCC powers to introduce a transaction ID.

Recommendation 2 – Conflicts and Self-preferencing

The AANA supports any initiative which would give an advertiser increased transparency over the ad tech supply chain. We believe that certain data fields such as a single User ID as outlined in Proposal 5 in the Interim Report would be a precondition to the successful achievement this proposal. The idea of a single User ID was not progressed in the Ad tech Inquiry Final Report however the AANA believes this may be something worthy of further consideration in order to achieve full transparency.

Increased transparency would provide advertisers with clear rationale as to why a bid was or was not successful during the transaction and ensure that any other criteria placed on publishers and SSPs, such as bid latency/throttling is clear and declared. This would also encourage better collaboration between publishers and advertisers to achieve mutually beneficial outcomes, programmatic or not.

Recommendation 4 – Demand-side transparency

The AANA, together with the IAB and MFA are steering a Working Group looking at implementing Recommendation 4. Work is well advanced and the Working Group aims to have an agreed solution shortly around a template for the disclosure of average fees and take rates as well as agreed processes for verification of demand-side platforms.

In terms of independent verification of DSPs, processes already exist at a global level to audit and accredit digital ad vendors. The Media Rating Council (MRC) undertakes audit and accreditation work and has compiled a [list of accredited operators](#) in the ad tech space. The next step would involve mandating such accreditation into the Australian ad tech landscape.

The intended outcome from the AANA is to give advertisers a clear understanding on what fees are charged within the transaction of media. The standardisation of mark-ups will help advertisers compare pricing and evaluate value when choosing partners

Proposal 5 – Supply-side transparency

Although this proposal did not flow through to any formal recommendation or call to action in the Final Report, the AANA/IAB/MFA Working Group is exploring possible solutions to the issue of supply-side transparency.

The [MMI Report](#) from March 2021 highlighted current opaque features of the supply-side, including:

- Persistent supply path measurement practice and tech was not apparent other than by proxy via DSP partners.
- Some tech stack partners were either unable or unwilling to support measurement.
- Data access, when available was often two-steps removed.

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- Many measurement practices are still cookie-dependent. With the move away from third-party cookies due to privacy concerns, the need to deliver a means to track ad delivery is even more important.
- Ad verification partners are mostly in place, but not offering 100% coverage.
- Not all tech stack partners were open to data shares.
- Ad verification partnerships are largely in place, but often at 'pre-bid' levels (vs after the bid is won) and/or not across 100% of impressions.
- Match rates (the ability to match impressions across different log files) were comparable to the ISBA/PwC test in the UK.
- There was little evidence of habitual combining of Ad Verification data and DSP logs.
- There was no evidence of any propensity to map and assess the quality of supply from exchanges, traffic sources, beyond the proxy assessment offered by DSP partners.
- Viewability was just under 54% dropping to a low of 42% for some Display & Mobile campaigns.
- Comparisons between DSP logs and Ad-Server logs remain a viable approach to Supply Path Optimization (see report for more details).
- IVT ad fraud rates at 4-5% are still an issue but are in line with previously reported rates for the Australian market (though they were as high as 8% in one instance in the context of this 4 week test)
- Use of programmatic buying bundles proved to be inherently non transparent and a barrier to unpacking of supply path insights.
- There is a disconnect between verification data and supply path workstreams, which is a prerequisite to supply path optimisation. It is not impossible, just not practiced regularly.

Various solutions were recommended in the MMI report including:

- Improve verification by bridging the disconnect between verification numbers being recorded and the application of these numbers to the supply chain operation.
- Regularly collect and receive DSP data transfer files to ensure access is open.
- Take advantage of techniques that exist to automate this process
- Regularly review supply path data to make sure programmatic buys are transparent and appear where expected.
- Advertisers should try and avoid extra layers of "proxy" buying and should seek full accountability gained through direct contractual agreements between the advertiser and the provider.
- Advertisers should evaluate buying partners based on their ability to interrogate datasets for transparency purposes and hold tech partners accountable for supply path pre-requisites.
- **Consistent data labelling and taxonomies need to be addressed. Ensure each DSP has its own site-ID in the ad server to ensure full supply path analysis can be implemented.**
- Advertisers need to understand the difference between paying for auctions won or ads served. The two are not the same, and represent material, and very significant, differences in payment terms.
- Gaining transparency means persistently knowing more than you want/need to know about what is happening, to ensure that nothing unacceptable is occurring.

The importance of having standardised data labelling and IDs is recognised as a global issue by our counterparts in the UK and US. UK's ISBA has led global work in this respect with the Cross Industry Programmatic Taskforce, established to address the findings of the [ISBA Programmatic Supply Chain Transparency Study](#) with AOP by PwC. ISBA most recently released a [Financial Audit Toolkit](#), consisting of the Data Fields List (DFL), the Audit Permission Letter (APL) and the Principles of use document. These tools facilitate data consistency and greater access to data during the audit

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process. While an excellent step forward towards transparency, audits are a costly exercise and not all advertisers can undertake that expense.

For this reason, the AANA remains of the opinion that a transaction ID solution is still required to give advertisers of all sizes the ability to more easily track and verify delivery of advertising. It is worth noting that ISBA's Data Fields List did include a Transaction ID however agreement could not be reached on making that field mandatory.

The AANA understands that an additional persistent Identifier included in the transaction could create privacy implications. The impact to privacy needs to be measured against what already exists within the current state, where publishers can still pass identifiers within some parts of the value chain and identity graph technologies are still commonplace in the ecosystem. The AANA believes that the impact to privacy is no less than what already exists, but the benefit in having a record of the transaction from buyer to seller will create a more transparent and accountable ecosystem.

Further Consultation

The AANA would welcome an opportunity to discuss in more detail issues raised in this submission. Please contact Megan McEwin at [REDACTED] regarding opportunities for further consultation.