



MANDATORY NEWS MEDIA BARGAINING CODE

RESPONSE TO THE ACCC'S CONCEPTS PAPER

5 JUNE 2020

Google acknowledges that the Australian Government has directed the ACCC to develop a mandatory code of conduct (**Code**) to address a perceived bargaining power imbalance between Australian news media businesses (**NMBs**) and Google.

This submission addresses the various issues identified in the Concepts Paper in the same constructive spirit as we had previously engaged in the voluntary code process.

This submission should be read in the light of a number of overarching considerations, which are relevant to the fairness and objectivity of the Code. In particular, we submit that, in framing the Code, the following should be taken into account:

1. Consumer welfare lies at the heart of competition law. Any solutions to perceived market failures should seek to protect or further consumer welfare, rather than the interests of particular market participants. Each element of the proposed Code should be tested against the interests of users and of all other businesses that benefit from a search system that focuses on the relevance and quality of search results.
2. Google's platforms are not the cause of the inherent difficulties with monetising journalism or any market failure.¹ The changes in economics to news media businesses have primarily been driven by **increased competition** in both the supply of classifieds and the supply of news to Australians, including increased competition between existing news publishers. As the Digital Platforms Inquiry (**DPI**) Final Report found, "[a]dvances in technology, particularly the rapid growth and uptake of the internet" disrupted the news ecosystem by "significantly reducing the cost of publishing and distributing journalism" and prompting "the unbundling of classified advertising from print news".² Similarly, online weather providers prompted the unbundling of weather, sports sites of scores and data, finance sites of stock data, and online event calendars of event listings. There are thousands of new and innovative businesses enabled by the internet which have impacted news publishers' traditional hold on user attention. In this state of flux, the DPI Final Report concluded that a "a single universally effective solution for monetising journalism online has not yet emerged".³
3. We are nonetheless actively working on innovative solutions and partnerships that we believe can help NMBs better showcase and derive more revenue from their content. We have heard the feedback from the Government, regulators, and industry and are in discussions to license and pay to display or provide full access to news content. To be clear, there is no basis in law or economics for attaching payments to simple snippets and links on Google Search, where a fair value exchange already exists. We discuss this further in the section titled [C. Monetisation and sharing of revenue from the use of news](#), below.
4. Our planned approaches will be compatible with the long-standing, fundamental features of the relationships between Google, NMBs, and users, that were

¹ AlphaBeta Advisors, *Australian Media Landscape*, December 2019, p3.

² ACCC, *Digital Platforms Inquiry Final Report*, June 2019 (**DPI Final Report**), p.293, p.295.

³ DPI Final Report, p.293.

established when there was no possible imbalance between Google (at its founding) and NMBs. The Code should not seek to alter these fundamental features, which include: Google displays results for websites free of charge; users search free of charge; websites receive traffic free of charge.

5. It should not be assumed that the features of today's relationship between Google and NMBs are caused by any bargaining imbalance. For example, as detailed in this submission, we make available a great deal of data to NMBs. Many NMBs appear not to be aware of the scope of the data which are already available. There is no basis for concluding that our current disclosure of data is inadequate or the result of any bargaining imbalance. In discussions related to the voluntary code process NMBs have been generally unable, or unwilling, to identify data which we may have, which we can lawfully disclose to them, but which we have declined to disclose to them. Instead, to the extent they have identified any data they do not yet have access to, it is identifying information about our users that would violate users' privacy expectations and our privacy policy to disclose.
6. The Code should not require search engines to pay for crawling, indexing and displaying links and extracts of websites, or require publishers to pay us for these services. Such payments would, as described in detail in [Section C](#) below, introduce undesirable incentives into our and publishers' operations and could undermine users' trust in Google Search.
7. On the issue described in the Concepts Paper as the determination of "appropriate remuneration", we emphasise the following key considerations.
 - a. As noted in the Concepts Paper, negotiations should take into account the existing value that Google provides (p.12). Google already supplies substantial value to NMBs. The ACCC concluded, in the DPI Final Report, that we play an important role in delivering clicks to NMBs' websites.⁴ The ACCC found that NMBs would be likely to incur a significant loss of revenue, damaging their business, if they did not receive clicks from Google Search results.⁵ In other words, as the ACCC has recognised, we already supply a significant amount of value to NMBs. The value of this traffic must be properly quantified, based on relevant data, and taken into account in any negotiations contemplated by the Code.
 - b. If the Code requires that the direct *and indirect* "value" to Google is to be taken into account, the Code should base the determination of this value on evidence, not broad assertions. Indirect value to NMBs would also need to be considered. The determination of appropriate remuneration must take into account Google's contribution to the creation of value.

We provide more information on this in section [C. Monetisation and sharing of revenue from the use of news](#), including in our answers to Questions 13 and 15.

⁴ DPI Final Report, p.8.

⁵ DPI Final Report, p.8.

8. The objective of the Code identified in the Concepts Paper is to ensure commercial arrangements between Australian NMBs and Google do not undermine the ability of NMBs to produce news for Australians (p.1). Accordingly, the Code, and any obligations it imposes on Google, should be limited to those aspects of commercial arrangements which are necessary to achieving this objective.

The balance of these submissions address each of the issues raised by the Concepts Paper:

[A. Scope of the bargaining code - definition of news](#)

[B. Digital platform services to be covered by the code](#)

[C. Monetisation and sharing of revenue from use of news](#)

[D. Sharing of user data](#)

[E. Algorithmic curation of news](#)

[F. Prioritising original news content](#)

[G. Treatment of paywalled news content and alternative news media business models](#)

[H. Display and presentation of news on digital platforms](#)

[I. Control over advertising directly associated with news](#)

[J. Facilitating open communication between digital platforms and Australian news media businesses](#)

[K. Dispute resolution and enforcement](#)

[L. Review of the bargaining code](#)

A. Scope of the bargaining code - definition of news

Google's position: The Code should only cover news content published by code participants. NMBs must have a suitable nexus to Australia (including employing journalists in Australia), and be accountable to a recognised and enforceable code of ethics and complaints process to be eligible to be code participants.

1. How should 'news' be defined for the purpose of determining the type of content that will be subject to the bargaining code?

The Code should only apply to "news" of **public interest**.

The definition proposed in Question 3 encompasses recording and commentary on all "issues of interest to Australians". By omitting the word "public", it potentially captures all content created by NMBs, regardless of its journalistic value to society.⁶ This risks providing a subsidy to major corporations unrelated to the ACCC's goal of promoting access to news content.

In addition to journalism that contributes to public information on important issues, most NMBs also produce a variety of other content, such as recipes, buying guides, and television recaps. Some of this content serves to promote other parts of their own businesses e.g. streaming platforms owned by the NMB or television shows run on the Broadcast Networks owned by the NMBs.

If the definition proposed in Question 3 were adopted, the Code would apply to NMB content that is no different to significant proportions of other content on the Web. NMBs are able to monetise this type of content, which is already more attractive to advertisers than 'hard' news coverage. There is no basis on which to ask online platforms to subsidise such content (especially if it promotes NMBs' own platforms). It would distort competition in the supply of these other content types to subsidise, say, a guide to hotels in Morocco if it is published by a NMB, but not if it is published by a travel review site. Similarly it would distort advertising associated with Google's platform (e.g. if Google were required to pay NMBs for displaying links and short extracts of articles that provide content reviews for, or otherwise promote, their own streaming platforms, such as Stan, Kayo or Binge, when other streaming services have to pay for ads to get traffic).

In addition, the definition of "news" should exclude other types of content that NMBs produce, but which lacks analysis or insight of material public value, such as infotainment, lifestyle, personal, sports data and weather data, or commercial content.

To the extent that NMBs would become eligible to receive payments under the Code that are related to content they produce, these payments should only apply to news of public interest. Failure to do so would actually incentivise NMBs to shift resources away from public interest journalism to other, potentially lower-quality, content.

⁶ The ACCC describes the societal benefits of journalism in chapter 6.2.1 of the DPI Final Report.

2. How can a bargaining code ensure that both news media businesses and digital platforms can easily and objectively identify the content subject to the code?

Our view is that a mechanism by which NMBs can become Code participants will be important for identifying the content subject to the Code. This mechanism should be similar to mechanisms in other mandatory codes. That is, a NMB should apply to be subject to the Code by sending a notice to the organisation overseeing the Code and the relevant digital platforms. The notice should set out the basis on which the applicant considers it is eligible to be a Code participant and provide relevant contact information.

Including a mechanism by which a NMB can become a Code participant will also accommodate potential changes in the industry, such as the emergence of new publishers who in the future meet the Code's definition of a qualifying NMB.

The Code should also contain a mechanism by which digital platforms and Code participants can agree on the web addresses of the news content covered by the code. At a minimum, we suggest that NMBs be required to specify in their application the domains and subdomains that they consider contain predominantly news content. There may need to be a verifiable mechanism by which news content on each domain and subdomain is determined in the Code.

Otherwise, digital platforms and the organisation overseeing the Code would be faced with having to ascertain what websites are operated by NMBs, which is information NMBs already possess and can easily provide. Digital platforms might also be forced to develop a new Australia specific algorithm for the assessment of news as defined in the Code.

3. Would it be appropriate for the bargaining code's definition of 'news content' to capture material:

- **with the primary purpose of investigating, recording or providing commentary on issues of interest to Australians, and**
- **that is subject to the professional standards set by a relevant journalism industry body, journalistic standards set in a relevant media industry code, or equivalent journalistic standards set by an individual news media business?**

Please see our response to Question 1.

Additionally, Google agrees it is important that the Code only capture content produced by professional journalists and published by professional NMBs. To become Code participants, we propose that NMBs must demonstrate that they are accountable or adhere to at least one of the following:

- an Australian standards-setting body that is relevant to journalist, editorial or media practices such as the Australian Press Council (**APC**), or the Independent Media Council; or
- an Australian media industry code that is relevant to journalist, editorial or media practices such as the Australian Communications and Media Authority's industry codes of practice; or
- a recognised, Australian, internal journalistic standard that mandates equivalent high journalistic standards pertaining to ethics, reporting accuracy, and appropriate handling of complaints, in line with community expectations.

The final branch will capture NMBs such as The Guardian and The Conversation, which we understand use their own internal standards.

Google understands that the Media, Entertainment and Arts Alliance (**MEAA**) is not a standards-setting body. Therefore, we do not consider it appropriate for the definition of NMB to include membership of the MEAA as a criteria. Any member of the MEAA who does not otherwise satisfy one of the three branches set out above should not be eligible to participate in the Code.

In addition to the above criteria, the Code should only apply to NMBs with a sufficient nexus to Australia. The Concepts Paper provides that the Code is intended to address bargaining power imbalances between *Australian news media businesses* and digital platforms in order to ensure that commercial arrangements between them do not undermine the ability and incentives for NMBs to *produce news for Australians* (p.1). Having regard to this objective, we consider that the Code should only apply to NMBs that (i) carry on the business of initiating, creating and regularly publishing news content online in Australia (including government funded organisations) that reach a certain number of people in Australia or serves an identified community of readers, and (ii) have their central management and control in Australia.

In light of the above, we propose that the Code define “news media business” as follows:

News Media Business means an entity that:

- (i) *initiates, creates and regularly publishes under its editorial responsibility and control News that reaches:*
 - (A) *[#] people a month in Australia, where the News is primarily local or regional content;*
or
 - (B) *[#] people a month in Australia, where the News is not primarily local or regional content;*
- (ii) *is accountable or adheres to either:*
 - (A) *an Australian standards-setting body (that is relevant to journalistic, editorial or media practices);*
 - (B) *an Australian media industry code (that is relevant to journalistic, editorial or media practices); or*
 - (C) *a recognised, Australian, internal journalistic standard; and*
- (iii) *has its central management and control of editorial and sales functions in Australia.*

B. Digital platform services to be covered by the code

Google’s position: Google considers that the Code should apply to an industry and submits that Google, Facebook and news media businesses do not constitute an industry. We also consider that the Code should take a principles-based approach to determining the services to be covered. There is no basis for including YouTube, AMP (which is a content format, not a Google service), Google Assistant, ad tech intermediary services, or Android TV in the Code. If the Code applies to these services, it should also apply to their competitors and other more significant sources of traffic for news publishers in Australia.

4. Would a principles-based, or list-based approach be preferable in determining which digital platform services are captured by the bargaining code?

The Code should take a non-discriminatory approach in determining its application to any digital platform. Restricting the application of the Code to Google and Facebook would not lead to an industry-wide solution to the perceived market failure in the supply of news. It would not be an “industry code”. It would create an uneven playing field and could distort competition in markets relevant to digital platforms. Other significant sources of traffic for news publishers in Australia include Apple (in respect of Apple News), Bing, and Twitter.⁷

It is appropriate that the Code or its supplementary materials set out the principles on which the Code applies. This should be informed by public consultation.

5. If a list is referenced in the bargaining code, what amendments should be made to the list below?

- **Google Search**
- **Google News**
- **YouTube**
- **AMP (cached on Google’s servers)**
- **Google Assistant voice activation services and related services provided through ‘Google Home’ hardware and home automation devices**
- **Android TV**
- **Facebook News Feed**
- **Facebook Instant Articles**
- **Facebook Watch**
- **Instagram**
- **WhatsApp**
- **Facebook News Tab**

Insofar as our own services are concerned, any Code should, at most, apply to Google Search and Google News. These are the services which have been the subject of examination by the ACCC through the DPI. These are also the primary services through which Google connects users to news content from Australian NMBs.

There is no basis for including YouTube, AMP (which is not a Google service, and was designed to increase traffic for publishers for users of mobile devices), Google Assistant, or Android TV in the Code. The ACCC made no findings in the DPI that Google has market power in any of the markets in which these services are supplied, or that there is an imbalance in bargaining power in relation to those services. The theoretical potential for Google to leverage its perceived bargaining power in search services, search advertising, or so-called news referral services in the use of news on these other services does not justify

⁷ According to the DPI Final Report, p.42, as at February 2019:

- Apple News had a unique monthly audience in Australia of 5.5 million;
- Twitter had a unique monthly audience in Australia of 7.2 million; and
- Bing had a unique monthly audience in Australia of 6.0 million,

based on data from Nielsen Digital Panel, February 2019 (All demographics, PC, Smartphone and Tablet). By contrast, in the same period, based on the same data, Google News had a unique monthly audience in Australia of only 1.5 million. The DPI Final Report also indicated (on p 208) that between February 2018 and February 2019 Apple News grew its Australian audience by more than 25%.

their inclusion in the Code. It would put those services at a competitive disadvantage in their respective markets, in circumstances where there is no perceived bargaining imbalance and no clear benefit to be gained by NMBs or consumers.

Relevantly:

- **YouTube:** YouTube was not a significant discussion point in Google’s negotiations with Australian NMBs in relation to a voluntary code. There are many other ad-supported video platforms, such as TikTok and broadcaster video-on-demand services such as 9Now, 7plus, 10play and SBS On Demand. There is nothing to suggest that there is a bargaining imbalance to be corrected in respect of YouTube.

YouTube is a video hosting platform, on which users can access a broad range of content in full. NMBs may choose to upload their content to YouTube, in addition to broadcasting it and/or having it available on their own online video streaming apps and services, to achieve incremental discoverability and ad revenue. NMBs who choose to do so enter into agreements with YouTube. The agreements govern the terms on which publishers can make their content available on YouTube, how the content may be monetised, and how revenue is to be shared between YouTube and publishers. Under these agreements, publishers receive 55% of net ad revenue from Google-sold ads displayed on their content watch pages or on the YouTube video player in conjunction with streaming of their content. Additionally, publishers receive 55% of net subscription revenue that is attributable to the views or watchtime of their content as a percentage of participating content in the relevant content pool for the subscription offering.

- **AMP:** While Google initiated AMP as part of an engineering effort to respond to publisher concerns about reduced traffic from users of mobile devices, AMP is not a Google product. It is an open-source, collaborative initiative among publishers and technology providers to develop a web component framework to speed up mobile page loads and provide a better mobile experience for all users and sites. Google is a significant contributor to the AMP Project, but Google does not control AMP. AMP is governed by a 7-member [Technical Steering Committee](#) and an [Advisory Committee](#), of which Google has 3 members. Further, the AMP project is far along in the process of being transitioned to the OpenJS Foundation.

Unlike Facebook Instant Articles and Apple’s Apple News Format, which are proprietary and controlled entirely by those platforms, AMP is an open-source project. As of May 2020, there were approximately 240 different ad companies (only two of which were Google-specific), 80 analytics companies, and 75 embedded components available in AMP.

This means that, just as anyone can use the AMP format for their content, operate an AMP cache, or create an AMP viewer, so too can anyone propose changes to the AMP format itself through contributions to the open source project.⁸ There are no requirements that any AMP content creator or supporting vendor use any other particular service or vendor within the AMP ecosystem, whether Google or otherwise.

Google Search’s Top Stories carousel displays links and preview images of news stories published in the AMP format. It provides users who click on a link in the Top Stories Carousel with the ability to instantly swipe between other content linked in the

⁸ Over 1,000 developers have contributed to AMP so far, the vast majority of whom are not affiliated with Google.

Top Stories Carousel. For the avoidance of doubt, the Top Stories Carousel is part of Google Search, not AMP. Importantly, Google recently [announced](#) a shift in the eligibility criteria for the Top Stories Carousel. Since 2018 Google has been publicly working on web standards that will optimise user experience for non-AMP web content.⁹ On 28 May 2020, we announced that appearance in the Top Stories Carousel in Search will no longer be dependent on publishers using AMP, or any other specific technology.¹⁰ Instead, Top Stories Carousel will be open to any page; Google will use page experience metrics as a ranking factor to ensure Top Stories Carousel continues to provide a premier fresh content experience in Search.

Microsoft's Bing also relies on AMP, and has its own cache.

- **Google Assistant:** Google Assistant competes with other virtual assistants including Amazon Alexa, Apple Siri, Samsung's Bixby, and more. There is no evidence that it is a significant channel for accessing news. Nor is there any evidence of an imbalance in bargaining power between Google and NMBs in relation to Google Assistant.

Any NMB can choose to submit audio or video news feeds for news briefings on Google Assistant, and some Australian NMBs currently do so. NMBs' audio or video news can feature their advertising, and may feature calls to action to send traffic to their properties. Any revenue created with such embedded ads or promotions goes fully to the news provider, and thereby creates opportunities for additional monetisation schemes for publishers.¹¹

The usage of voice-activated speakers for news in Australia remains very low.¹² If Google Assistant is captured by the Code, then the Code should also apply to Amazon Alexa and Apple Siri, given their significant presence in Australia.

- **Android TV:** Android TV is an operating system, not a platform through which users access news. Users who wish to access news need to use installed apps on Android TV through which they can access news. Google licences Android TV to OEMs who build hardware for media companies (for example the Foxtel Now Box runs on Android TV). There is no exclusivity, and all media companies make their apps available through other operating systems / platforms. Android TV competes with many other TV operating systems in Australia, including Apple TV OS, Amazon Fire OS, Roku OS, Samsung Tizen and proprietary solutions (e.g. Fetch TV's OS).

If the Code applies to any of the above-mentioned services, then it should also apply to other digital platforms and services which may help users find and access NMBs' news content, including:

- Apple News, Apple Siri and AppleTV OS;
- Microsoft Bing;
- Twitter;
- Amazon Alexa, Fire TV, and Amazon Prime;

⁹ AMP, "Standardizing lessons learned from AMP," March 8, 2018, available at: <https://blog.amp.dev/2018/03/08/standardizing-lessons-learned-from-amp/>.

¹⁰ Google Webmaster Central blog, "Evaluating page experience for a better web," May 28, 2020, available at: <https://webmasters.googleblog.com/2020/05/evaluating-page-experience.html>.

¹¹ We also provide analytics to NMBs about how their audio content is being consumed.

¹² See Reuters Institute, "Digital News Report 2019," available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/inline-files/DNR_2019_FINAL.pdf, p.10, p.28. In Australia, the proportion of users that used a smart speaker for news was 3%. This is consistent with data cited in the DPI Final Report, p.511.

- Samsung’s Tizen, Bixby;
- Roku TV and Roku OS; and
- Fetch TV’s proprietary OS.

For example, Microsoft Bing likewise engages in crawling, indexing and/or displaying links and snippets of NMBs’ content on the same terms and conditions as Google Search – namely, the ability to link freely to web content, subject to a publisher’s ability to block or limit access. The fact that Microsoft Bing engages with publisher content on comparable terms demonstrates that there is no greater or lesser “imbalance in bargaining power” or “market distortion” for it, so it is not clear why it should be treated any differently under a Code.

Google’s Ad Tech intermediary services

It is not necessary nor appropriate for the Code to address issues relating to ad tech intermediary services. The Government has made clear its intent for the ACCC to address ad tech intermediary services through a separate process, namely the Digital Advertising Services Inquiry (**Ad Tech Inquiry**).

Google notes the ad tech industry comprises thousands of companies, large and small, working together and in competition with each other to power digital advertising, each with different specialties and technologies. Competition is flourishing, and publishers and marketers have significant choices.

The Ad Tech Inquiry, which will provide a thorough review of these matters is scheduled to conclude by August 2021, and the ACCC has not completed its fact-gathering efforts. It would therefore be premature to include ad tech commitments in the code. Accordingly, the Code should not address Google’s ad tech intermediary services at this time.

6. How might a bargaining code include mechanisms to incorporate newly emerging and newly relevant products and services in the future?

The Concepts Paper contemplates that the Code will be reviewed, either at a predetermined point in time or periodically (p.29). As part of the Code review process, the body responsible for administering the Code could conduct an inquiry into whether to add or remove digital platforms and services. It could also consider the continued utility of the Code. The Code should provide the considerations that would need to be taken into account in reaching any decision to conduct an inquiry, and this mechanism should include a requirement for public consultation.

C. Monetisation and sharing of revenue

Google’s position: There is no basis for a mandatory code to require payment from Google to NMBs with respect to crawling, indexing, and providing links and/or short extracts of their news content. Mandating such payments would be at odds with the value distribution associated with Google’s display of search results. Evidence from other countries demonstrates that it could hurt consumers by reducing the amount of news displayed and hurt small and emerging news publishers who gain visibility from the display of links to their stories in search results.

We believe the impact of imposing obligations on digital platforms relating to appropriate remuneration should be carefully explored and considered with respect to the impact on both large and small NMBs, Australian consumers, and digital platform services. The imposition of such an obligation may also set a troubling precedent for interfering in commercial arrangements and mandating payments that are not connected to a supply of goods or services.

Any outcome that reduces Australian consumers' access to a wide range of diverse and authoritative sources, preferences large incumbents over digital natives and smaller niche publishers, and/or leads to a decrease in the availability of Australian news should be considered a detrimental outcome, and weighed up against the potential financial benefit to a few large publishing conglomerates.

The value exchange between Google and NMBs with respect to NMBs' content is heavily weighted in favour of NMBs, as described below. We have also laid out reasons why a crude percentage of ad revenue metric, advocated by some NMBs, is wildly out of proportion to the benefit we obtain from displaying links and short extracts of news content, generally accepted valuation principles, and the operation of other arms-length commercial arrangements.

That said, we believe in the right of all Australians to have access to Australian news and are willing to enhance the way we financially support journalism and the news media in Australia.

In addition to providing NMBs with the right to choose whether or not they appear in Search for free (as we always have), we are proposing to make available a content licensing agreement for a new product partnership program designed to give Australians access to high quality news, while also benefiting news publishers. The content licensing agreement would clearly outline payment terms for elements such as curation.

There is no proper basis for a mandatory code of conduct to be imposed in relation to our services. In particular, there is no proper basis for a mandatory code of conduct to impose an obligation on Google to pay for links (a so-called "link tax") to content hosted by news publishers. No such obligation exists under antitrust law, copyright law, or any other legal framework.

Before responding to the ACCC's specific questions in relation to this concept, it is important to address the following issues.

First, Google's platforms are not the cause of the inherent difficulties with monetising journalism online, or any market failure in the supply of news. As the Final Report found, "[a]dvances in technology, particularly the rapid growth and uptake of the internet" disrupted the news ecosystem by "significantly reducing the cost of publishing and distributing journalism" and prompting "the unbundling of classified advertising from print news".¹³ Publishers accustomed to enjoying limited local competition in the supply of news and advertising now also compete directly with each other, increasing the supply of news available to consumers, but reducing the prices consumers are willing to pay. Publishers are also less able to "bundle" profitable with unprofitable content, as the internet permits consumers to obtain the content they most want without cross-subsidising other content. In this state of flux, "a single universally effective solution for monetising journalism online has

¹³ DPI Final Report, p.293, p.295.

not yet emerged”.¹⁴

Second, we are nonetheless actively working on innovative solutions and partnerships that we believe can help NMBs better showcase and derive more revenue from their content. We have heard the feedback from the Government, regulators, and industry and are in discussions to license and pay to display or provide full access to news content beyond mere snippets and links.

We are in active negotiations and product briefings with a range of local and national news publishers, both traditional and digital natives, to license content in order to build a new diverse news experience. Our intention is that these deals could be precisely the sorts of bilateral agreements contemplated by the Concepts Paper.

These commercial arrangements will be compatible with the long-standing, fundamental features of the relationships between Google, NMBs, and users, that were established when there was no possible imbalance between Google and NMBs. The Code should not seek to alter these fundamental features, which include: Google displays results for websites free of charge; users search free of charge; websites receive traffic free of charge.

Third, requiring Google to pay NMBs for crawling, indexing and/or displaying links and/or short extracts of websites in Search (a “link tax”) would lead to a number of detrimental outcomes:

- It would favor news publishers over other categories of sites such as retailers, local businesses, and medical journals, for no sound reason. Indeed, in the DPI Final Report, the ACCC rejected a mandatory licensing scheme for news publishers because it was “*unclear*” why news publishers should be favored over other sites.¹⁵
- It would create perverse incentives for publishers to create large volumes of low-quality content and for Google not to crawl, index and/or display links to and/or extracts of NMBs news content. The ACCC pointed to such “incentive problems” when rejecting a mandatory licensing scheme in the DPI Final Report.¹⁶ At the very least introducing considerations of payment for organic results, which Google has never charged or paid for, could undermine users’ trust in the independent and objective nature of our search engine.
- It would limit users’ access to information, because Google would be able to include in its results only those news publishers with whom it had reached an agreement.
- It would risk favoring major global media businesses over small Australian news companies because larger sites may be able to negotiate more favourable terms and lock in their incumbent status. And, as the experience of Spain shows, a reduction in the availability and visibility of news in online aggregation services like Google News particularly harms small and medium-sized publishers without established brands.¹⁷

¹⁴ DPI Final Report, p.293.

¹⁵ DPI Final Report, p.254.

¹⁶ DPI Final Report, p.254.

¹⁷ The Spanish Association of Publishers of Periodicals commissioned a study by economic consulting firm NERA, which showed that in the months following the passage of Spanish law requiring aggregators to pay for display of publisher content in online aggregation services, news publishers experienced an average traffic decline of more than 6%, and smaller publishers saw a drop of 14%. As well as finding that smaller publishers were disproportionately harmed by the changes, the study found that the overall amount of news consumed also decreased, because aggregation reduced

Again, the ACCC last year rejected a mandatory licensing regime because it would lead to “distortions” in the supply of news.¹⁸

- It would be contrary to the open-link structure of the Internet, in which the free exchange of information is made possible by websites’ ability to link to each other without requiring advance permission. Google’s search engine is premised on this same ethos of openness and inclusivity, where organic results are ranked based on quality and relevance, not commercial relationships.

If, despite the above considerations, the Code prohibits the Google search engine from continuing to display results for NMBs’ news content on the traditional basis, it should not distort competition in the supply of search services by applying this determination only to Google’s search engine. If crawling, indexing and/or displaying links and snippets of NMBs content are activities for which Google Search must pay, it is not clear why other search engines and digital platforms who undertake these activities on exactly the same basis should be treated any differently.

Finally, as recognised by both the ACCC in its DPI Final Report,¹⁹ and the Australian Government in its Response to the DPI,²⁰ Google already provides substantial value to NMBs in the form of the billions of free clicks it refers to them, which NMBs use to generate ad and subscription revenue. In contrast to this, the value to Google of linking to news content is low. Any negotiation about “appropriate remuneration” must take into account the value that NMBs derive from Google’s preview display of their content. We have provided more information about these topics in our answers to Question 13.

7. What are the necessary elements for a bargaining framework to effectively address the bargaining power imbalance between news media businesses and each of Google and Facebook?

We do not accept that the current value exchange with NMBs associated with search results reflects an imbalance in bargaining power.

A fundamental feature of the search engine business model is non-monetary value exchange between the search engine, publishers, and users. From the first launch of Google Search, we have never paid for crawling, indexing, or displaying links and snippets – the fact we don’t pay for these activities is not a result of any bargaining power imbalance.

To the extent that there is a bargaining power imbalance between NMBs and Google, the bargaining framework should seek to correct that imbalance by creating negotiating conditions that would exist between two arms’ length parties with equal bargaining power. It should not create a framework that creates a bargaining power imbalance or that requires Google to act against its commercial interests (for example, by requiring us to make

search times and therefore allowed for more news consumption. The NERA analysis concludes, at ix, that “there is no theoretical or empirical justification for the introduction of a fee paid by news aggregators to publishers for linking to their content”. See, Pedro Posada de la Concha et al., *Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual* (Spanish), Impact on Competition and Free Market of the Google Tax or AEDE Fee (English translation), NERA Economic Consulting, July 9 2015, available at: [https://www.aeepp.com/pdf/Informe_NERA_para_AEPP_\(INGLES\).pdf](https://www.aeepp.com/pdf/Informe_NERA_para_AEPP_(INGLES).pdf).

¹⁸ DPI Final Report, p.253.

¹⁹ DPI Final Report, p.8.

²⁰ Australian Government, “*Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry*,” December 2019, p.8.

payments for inputs that don't generate economic value).

The Code's bargaining framework should also not be designed in a way that is likely to lead to outcomes that harm consumers and small publishers. For example, a framework that requires Google to pay publishers to crawl, index, and display links and extracts of webpages in Search, or that NMBs be required to pay Google for these services, for the reasons outlined above under the introduction to this section.

Our responses to Questions 8-19 below describe the necessary elements for an effective bargaining framework relating to "monetisation and the sharing of revenue generated by news".

8. How effective would the following bargaining frameworks be in achieving appropriate remuneration for news media businesses for the use of news content by each of Google and Facebook:

- **bilateral negotiation, mediation and arbitration**
- **collective bargaining**
- **collective boycott or 'all in/none in'?**

Bilateral negotiation

Google considers that a bargaining framework that involves bilateral negotiation within the context of the Code would enable digital platforms to strike tailored commercial agreements acceptable to NMBs. It was clear from our consultations with NMBs on a draft voluntary code that large and small NMBs have different needs, objectives, and business models. Bilateral negotiations would enable outcomes that are attractive to the NMBs participating in those negotiations.

We are actively working on an innovative and more economically sound approach that we believe can help NMBs better showcase and derive more revenue from their content. We have heard the feedback from the Government, regulators, and industry and are in discussions to license and pay to display or provide full access to news content beyond mere snippets and links.

As noted above, we are in active bilateral negotiations and product briefings with publishers from selected local and national news publishers, both traditional and digital natives, to license content in order to build a new diverse news experience. Our intention is that these deals could be the bilateral agreements contemplated by the Concepts Paper.

Collective Negotiation and/or Collective Boycott

If the objective of the Code is to address the perceived imbalance in bargaining power between Google and NMBs, then authorising NMBs to negotiate collectively with Google (with or without the right to collectively boycott, which under most circumstances would constitute a violation of competition law) may further that objective. The perceived imbalance is said to arise from the fact that a search engine benefits from being able to link to large quantities of information, even though individually each link to a fact or piece of information may be fungible and represent only a negligible amount of value.

By adjusting the balance in bargaining power, a collective negotiation and/or boycott may obviate the need for prescribing in the Code negotiating principles, factors to be taken into account in the determination of value, and dispute-resolution mechanisms relating to the negotiation of value.

In our day-to-day dealings with NMBs, and in our consultations as part of the voluntary code of conduct process, we have observed significant differences in the priorities and needs of large multinational or cross-platform NMBs from local news organisations and digital natives or start ups. This would be a challenge to be taken into account in any collective negotiation process.

We otherwise agree with the concerns expressed in the Concepts Paper about a collective boycott / 'all in/none in' framework (p.10).

Collective Licensing

Collecting societies create, in our view, far more challenges than they solve, as a consequence of intermediating the relationships between licensors and licensees. Collecting societies can lack transparency in their operations and face little pressure to operate efficiently or offer their licensees the types of products and level of services they require. They may also favour the interests of larger players to the disadvantage of small, independent providers

The advantages of collective licensing and collecting societies in the copyright context would not apply in the context of digital platforms' links to news content.

The number of Australian NMBs is relatively small (in contrast to, for example, the industry served by APRA AMCOS, which has more than 100,000 members). The likelihood of infringement (and the need to monitor and enforce it) is trivial given that uses of news on Google Search and Google News do not infringe copyright under Australian law. We would therefore expect that, were a lump sum / blanket "license" fee to be paid to a collecting society, distribution from the collecting society to its NMB members would likely be complicated and costly in ways that may outweigh any transaction cost savings.

Moreover, the issues presented in the context of the Code are uniquely complex and likely to lead to disputes. For example, what makes one publication more or less valuable than another? How would a collecting society manage the difference between paywalled and non-paywalled content? What standard would apply if a subscribed versus a non-subscribed user is reviewing the publication? As a consequence, there would be significant potential for disputes around the distribution of fees.

9. Are there major practical issues involved in the implementation of any of the bargaining frameworks listed in Question 8 above? If so, how might such practical issues be overcome?

Please see our response to Question 8.

10. Are other bargaining frameworks more likely to effectively address the bargaining imbalance between news media businesses in Australia and each of Google and Facebook?

A more effective solution would be a framework that promotes bilateral licensing agreements for expanded paid uses of news content that go beyond the uses permitted by copyright law without payment.

Please see our response to Question 8.

11. Would it be useful for the bargaining code to include a requirement for parties to negotiate ‘in good faith’?

If a good faith requirement is included in the Code, the Code should also define good faith, to provide certainty as to its meaning and equal application to all parties. The following definition (based on the current state of the common law) could be adopted:

***Good Faith** means that a person has acted honestly and not arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives, but does not mean that a person:*

- A. *is under an obligation that is fiduciary in nature; or*
- B. *is required to act in the interests of the other party.*

While Google considers that it engages in good faith, the inclusion of a requirement to negotiate in good faith (and particularly one that does not define “good faith” or is not linked to the negotiation of an agreement) could give rise to unproductive disputes about the nature of negotiations.

12. Should the bargaining code include requirements (such as time limits) and/or guidance on how negotiations should be conducted? What requirements or guidance are likely to be productive? What requirements or guidance are likely to be counterproductive?

We consider that a period of six months to conduct negotiations once an NMB has become a Code participant would be appropriate. In many cases it may be possible to conclude negotiations more quickly. However, it would be preferable to give the parties a reasonable window in which to negotiate before dispute resolution is necessary.

To the extent that the Code includes information disclosure obligations that apply to negotiations between the parties, those obligations should apply to both parties. For example, NMBs should be required to provide data about the value they derive from Google (so as to enable an objective valuation of the value they attribute to referrals from Google services).

NMBs should also be required to disclose details of all payments they receive for licences or permitted uses of their content by other online service providers, so that consistency of valuation of that content can be assured.

13. How relevant are the following factors to determining appropriate remuneration for news media businesses:

- a. **the value of news to each digital platform**
- b. **the value a news media business derives from the presence of its news on each digital platform**
- c. **the value of the availability of news on each relevant digital platform to digital platform users?**

We maintain there is no basis for a mandatory code to require either payment from Google to NMBs with respect to displaying results for news content, or payment from NMBs to Google for the value of traffic provided to them. To determine the appropriate value exchange, both the value that the digital platform derives from that use, and the value that NMBs obtain, must be considered.

Content usage is not a one-way street, where the user obtains all the value and the content owner obtains none. The extent to which each party benefits from content usage depends on the nature of that usage and its particular economic context.

For example, a TV broadcaster that shows a full movie for consumption by its viewers will derive all the benefit from the content. However, if the TV broadcaster shows a short trailer to promote the viewing of the movie elsewhere, the content owner derives most or all of the benefit. The remuneration in these two scenarios is therefore different. In the first scenario, the TV broadcaster will pay license fees to the content owner. But in the second scenario, the content owner will typically pay the TV broadcaster.

The benefit that the content owner derives from that use must therefore be taken into account in any remuneration discussion. This represents a basic and fundamental valuation principle. Otherwise, any remuneration imposed would be abstract, arbitrary, economically unsound, and fundamentally unfair.

The benefit that *users* of the digital platform derive from the news content is not a separate, relevant valuation factor. Remuneration for content is calculated based on the respective value that the parties to the license derive from their arrangement. This calculation already reflects the nature of the value that the parties provide to their respective end users.

To use the same analogy as above, a TV broadcaster that displays full movies to its users pays royalties based on the value that it derives from that display. The fact that its users can consume the movie will already be factored into these payments—the broadcaster’s ability to provide this benefit to its users *is* the benefit that the broadcaster receives. Conversely, a TV broadcaster that shows promotional movie trailers will not pay for this usage simply because its users obtain a small benefit in the form of discovering new movies. Rather the value that users derive from the trailers is reflected in the value that the content owner achieves from attracting viewers to the movie.

In the present case, Google’s usage of NMB content is more akin to the movie trailer scenario than the display of full movies (except we don’t ask for payment to display the snippets). Google does not display full publisher content. Google displays short extracts of publisher content (text snippets and thumbnail images) as part of search results that link the user back to publisher sites if clicked. These short extracts operate as previews similar to movie trailers in directing users to publishers’ sites. News publishers therefore benefit in the form of the traffic that Google’s results generate and that publishers can monetise through ad and subscription revenue.

In short, it is necessary to assess the benefit that Google and news publishers separately derive from the use of news content, and then weigh those benefits against each other.

We discuss these off-setting factors below:

(a) *The value of news to each digital platform*

Google Search and Google News do not sell publisher content and therefore do not directly monetise publisher content.

Any revenue that Google generates from publisher content on these surfaces is revenue earned from displaying advertisements alongside search results for news-related queries.

In response to such queries, we display publisher content in the form of results that include a link to the referenced website together with a short text extract and/or preview image from

that website.

The value of news to Google, therefore, can only be measured by reference to the advertising revenue that would be lost to the platform if it were not able to show links and snippets of news content. An upper limit estimate for that value can be obtained by calculating the ad revenue that we derive from advertising on news-seeking search queries. (It is important to remember that Google Search generates revenue only when a user clicks on an ad. Google News does not include ads.)

In calculating the value of news to Google the following considerations are relevant:

- **News-seeking queries represent the most reliable metric for measuring the value that Google derives from news content.**

We can calculate the number of queries seeking news content that Google Search receives based on our query classification system, used in its normal course of business.

Once the total number of queries seeking news content is established, we can identify the ad revenue that we generate from the display of result pages for these queries. This ad revenue represents the upper bound of the revenue associated with Google's links to and preview display of NMB content. Even this upper limit would be far above the actual value attributable to the news results on the page, because it would attribute 100% of the value of the search to the news results, yet there are many other elements that comprise Google's search service: our proprietary ranking algorithms, for instance; the ads themselves; or licensed data on the search results page. But this extreme upper bound can give context and concreteness to the inquiry.

In 2019, news-seeking queries accounted for just over 1% of total queries on Google in Australia. The ad revenues associated with the result pages shown for these queries was less than AU\$10 million.²¹ This minor proportion of queries and ad revenues demonstrates that Google Search derives limited value from news content.

Other metrics are less well-suited for calculating the value that we derive from news content on Google Search. The ACCC has considered the display of the "Top Stories" Carousel as an alternative usage metric. This display however does not provide an accurate or meaningful metric for the value we derive from news content.

First, the Top Stories Carousel often does not display results for news content. It shows more generally results for which recency is important. For example, for the obviously non-news related query [Assassin's Creed], Google may show a Top Stories Carousel (down the page) with results for, e.g., "10 hidden areas you didn't know existed" in the computer game.

The Top Stories Carousel appears on a range of queries with different intents. The majority of queries which trigger a Top Stories Carousel are non news related, effectively generating additional traffic to NMBs from users who initially sought other types of information. Common non-news-seeking queries like [iphone] may display a

²¹ Note: this figure is based on management financial data, which is different from how we present revenues for local entity reporting, as those revenues are based on the address of the advertiser (customer). Furthermore, this data is at a level of granularity that is not reported publicly.

Top Stories carousel containing links to stories about iPhone-related developments that a user typically would never have looked for or discovered. Clicks on such results bring new readers to NMBs that otherwise would. Another example query is [gmail]. This is not a news related query, but a Top Story Carousel may trigger, providing additional opportunities for users to click through to a NMB's site.

Likewise, click or impression metrics are less well suited for measuring the value that we derive from links to news content. Actual clicks are a better reflection of the economic value that publishers derive from Google's content usage: the more often users click through to NMBs when Google shows results including news content, the more value NMBs obtain from Google.

It would be wrong to apply NMBs' click or impression share mechanically to Google's total search ad revenues. Such a calculation assumes that every result page generates the same amount of ad revenue, and every result is of equal weight on the page. A search result impression is an opportunity for a website to attract the interest of a user.

A better way to calculate value would be to consider the amount of ad revenue generated from queries that seek news content, not those that incidentally feature some news content interspersed with the other types of content that may be of more interest to the user.

The concept of user intent is in fact the basis on which Google monetises its search engine, and why intent is the proper measure of the value of a particular content type to Google. Advertisers bid on search queries, not proximity to particular results. Query intent is valuable to advertisers because it lets them meet users at the moment they express a desire the advertiser can fulfill. That's true regardless of whether that desire is for information to make a decision ([vacation destinations]) or to complete a commercial transaction ([where to buy vacuum]).

- **NMBs cannot claim participation in ad revenues generated by the display of non-news content.**

NMBs cannot claim participation in ad revenues simply due to the presence of links and snippets of news content on a search results page, and in particular generated by the display of non-news content.

There is no basis for claiming a crude share of advertising revenues generated simply because a Search results page may contain links and snippets of news content. This is particularly true when links and snippets of news content appear in response to a query that is not a news-intent query. For example, when a user is searching for broad/generic terms e.g. [Bunnings], the Search results page will ordinarily display a range of content including links to the Bunnings website, maps detailing Bunnings store locations, and possibly a Top Stories Carousel containing links to news content. If anything, those search results pages provide NMBs' with incremental opportunities for users to click through to their website. If, in fact, the user goes on to click on the ad (which generates revenue for Google), this is a clear signal that the links and snippets of news on the page were not of interest to the user.

Some NMBs demand that they should participate in ad revenue that is generated on pages on which Google does not in fact show results for news content because their

content supposedly contributes more generally to attracting users to Google. This is fanciful and there is no evidence to support it.

We are not aware of any evidence to support a claim that news content contributes in any meaningful way to attracting users to Google for other queries. It is not plausible to assume any material effect given the minimal share of news-seeking queries (amounting to slightly more than 1% of total queries). Our experience from various changes to Search display formats over the years is that adding news content does not increase revenues and can in fact reduce them, as users are diverted to other results rather than ads. To the contrary, it is far more plausible that the ability to search for non-news content helps attract users for news-related queries given the relative proportions of news to non-news queries.

The Concepts Paper also speculates about the value of additional user data that Google supposedly obtains from news content (p.12), as another possible basis for transferring revenue. This claim is erroneous for several reasons:

- The full benefit associated with any data generated from showing links to news content is already reflected in the ad revenue generated from pages that show results in response to news-seeking queries.
- Data gained from showing search results for news-seeking queries does not meaningfully increase ad revenue generated in connection with queries for non-news content. Given the small share of news queries (slightly more than 1% of total queries), any claims to the contrary are highly implausible.
- Finally, Google logs the same type of information regarding a user's search regardless of whether or not news results are displayed.

The notion that the availability of links and extracts of news content on Google Search results helps us attract or retain users, who then use Google Search to find other content, driving additional advertising revenue, is contrary to our experience and unsupported by the evidence.

(b) The value NMBs derive from the presence of their news on each digital platform

As noted above, NMBs, like other website publishers, benefit from inclusion in Google Search results. Through Google Search, publishers gain discoverability and access to users worldwide, for free. In the world of print, publishers pay news agents to display their content so readers can discover it. With Google Search, publishers obtain this benefit at no cost. The small extracts of news content that Google displays operate as previews (like the display of headlines in a news rack) that allow users to discover news content they can then read by clicking through to the NMB's site. This creates value for publishers as visits go to NMBs' websites via our services without NMBs paying for this traffic.²²

In practice, we refer billions of free clicks every year to Australian NMBs via queries for news content. These free clicks convey a monetary benefit on news publishers who use this traffic to generate ad and subscription revenues.

In addition to providing valuable referral traffic to NMBs, we also provide value in the form of data through free services such as Search Console and Publisher Center. These services let NMBs monitor and improve the performance of properties in Search and News.

²² Google blog, "How Google invests in news," September 25, 2019, available at: <https://www.blog.google/perspectives/richard-gingras/how-google-invests-news/>.

Google supports NMBs in a range of other ways including through commercial arrangements that help them more effectively monetise their content, and programs such as the Google News Initiative,²³ which includes digital journalism training programs and tools, direct investment through grants, and innovative monetisation models such as *Subscribe with Google*.

14. Would it be appropriate for commercial negotiations conducted under the bargaining code to have regard to the cost of producing news content?

It would not be appropriate or legitimate for the cost of producing news content to be factored into any negotiations about appropriate remuneration for links to that content. The basic economics of any market set the price of a good based on its value to buyers. A seller who overpays cannot look to the free market to make up the difference, as setting a price above the value to buyers will result in no purchasers.

Moreover, Google Search isn't even buying the product offered by NMBs. Google's search results consist of links to URLs, small extracts, and preview images, and are a tiny fraction of the full content displayed on NMBs' websites. The cost of producing news has no direct or indirect link with its value to Google Search or our users. Any remuneration payable by Google Search to NMBs under the Code should not be used to subsidise NMBs' investment in producing news content generally.

Finally, we have no control over NMBs' costs of producing news content. An NMB is under no obligation to ensure that its production is efficient and costs are minimised. A requirement for costs of production to be taken into account in any value exchange with Google would decrease NMBs' incentives to minimise costs and encourage inefficiencies. In these circumstances, a requirement for negotiations to take into account the cost of producing news would go well beyond restoring any perceived imbalance in bargaining power. Unsurprisingly, there is no precedent in any mandatory code in Australia for such costs to be taken into account in commercial negotiations.

15. How might any of the factors listed in Questions 13 and 14 above be quantified and/or treated in the course of negotiations between parties?

We have set out relevant factors for calculating the total value that both Google and NMBs derive from displaying results for news content on Google Search. Once that total value is established, it is necessary to assess the division of that total value between the two parties based on their relative contribution to that value.

Based on our calculations, NMBs already obtain the large majority of the revenues associated with Google's display of results for news. And yet, as described below, Google's contribution to those revenues greatly outweighs NMBs' contribution.

Google contributes all the work associated with the ads that generate the revenue in question and it takes responsibility for all the work associated with the search results that it displays alongside these ads. In particular:

²³ The Google News Initiative, launched in March 2018, is dedicated to supporting news organisations in their efforts to create quality reporting that displaces disinformation. Google committed USD\$300 million over a three and a half year period to the GNI. See Philipp Schindler, "The Google News Initiative: Building a stronger future for news," March 20, 2018, available at: <https://www.blog.google/outreach-initiatives/google-news-initiative/announcing-google-news-initiative/>.

- Google provides the infrastructure and technology for advertisers to create and manage ads on Google. This includes developing the systems that allow advertisers to set and optimise bids across thousands of different ad campaigns and the advanced reporting systems that give advertisers granular information on the performance of their ads.
- Google generates the ads that appear on Google. This includes developing and operating infrastructure and technology that enables Google to run ad auctions in real-time and select and display relevant and high-quality ads within milliseconds.
- Google protects the integrity of its ads systems against fraud and misuse, including maintaining large ads quality teams and developing and operating sophisticated ads quality monitoring systems.
- Google wins new and supports existing advertisers by maintaining large marketing and technical teams that promote Google's ads and provide advertisers with constant assistance and advice.
- Google invoices and collects the revenues generated from its ads.
- Google discovers and indexes search content that it displays alongside its ads. This includes developing and operating innovative crawling technology and indexing systems that enable Google to discover new web pages quickly and to organise information on trillions of different pages efficiently and reliably.
- Google generates the relevant and high-quality search results and formats that it displays alongside its ads. This includes developing and operating infrastructure and technology that enables Google to identify and display reliably relevant and high-quality results for each of the millions of queries that Google receives every day.
- Google hosts and runs the Google website on which the search results and ads in question are shown. This includes developing and operating large and sophisticated server and network infrastructure that enables Google to quickly and efficiently generate the result pages with ads and results that users see, and to keep its site operational around the world despite network fluctuations or outages, severe weather events, technical issues, and hostile attacks.

By contrast, NMBs' contribution to Google's search results consists of links, small extracts, and preview images that do not reproduce the full content that is available on their sites. Beyond their sunk costs of producing articles (which they would do for their core business in any event), their incremental costs in permitting Google to link to their articles are de minimis. Additionally, as described in the answer to Question 18, NMBs have control over how much (if any) of their content Google displays in snippets and preview images on Search result pages.

In short, NMBs contribution to the ad revenue that Google generates on its site is, at best, marginal. At the same time, Google's contribution to the ad and subscription revenue that publishers generate on their sites is significant. Google contributes to these revenues by promoting news publishers' sites in its results and referring billions of free clicks to these sites.

Taking these factors into account, we consider that the current division of the value associated with Google's preview display of news content represents a reasonable and fair distribution. NMBs already receive the large majority of this share even though they contribute only small fractions of their content to Google's results, while Google takes responsibility and bears the costs for all the work and investment associated with displaying ads and search results on Google's site.

16. What other factors may be relevant to determining appropriate remuneration for news media businesses?

Please see our response to question 13.

17. Are there any relevant 'market' benchmarks that may assist in the determination of appropriate remuneration?

There are two "market" benchmarks relevant in the current context.

First, the arrangements that existed between Google and news publishers when Google Search was founded provides a relevant benchmark because those arrangements could not possibly have been the result of any bargaining power imbalance to the advantage of Google.

From the very launch of Google Search, we have never paid for crawling, indexing, and displaying links and snippets. The fact we don't pay for these activities is not a result of any bargaining power imbalance. It is a feature of the search engine business model, a fundamental feature of which is non-monetary value exchange between search engines, publishers and users.

Second, arrangements between other search engines / aggregators / online services and NMBs provide another reference point. To our knowledge, no other search engine or online service in Australia (regardless of its size or bargaining power) provides payment to NMBs for crawling, indexing, and showing links and snippets of their content in its search results. This includes the search engines Bing, DuckDuckGo and Yahoo, as well as other search engines that have operated in Australia over time. This demonstrates that the current arrangements between Google and news publishers reflect a fair market outcome rather than any imbalance in bargaining power.

We consider that the ACCC should seek evidence from NMBs of any existing licenses of content to online service providers, and discount any revenues under such licenses for the difference between access to the full content of articles versus the de minimis snippet-plus-link use made by search engines.

18. How might the bargaining code define 'use' for the purpose of any mechanisms facilitating negotiation on payment for the use of news content?

The Concepts Paper lists a number of "uses" of news media content by digital platforms, including (p.14):

- a. featuring headlines of news articles;
- b. featuring hyperlinks to news content hosted on NMBs' own websites;
- c. featuring short extracts or snippets of news content;
- d. featuring images extracted from news content;
- e. fully reproducing news content in full in text, audio, video and image formats;
- f. scraping the content of news media websites in order to produce snippets and index content for later use in potential search results; and
- g. allowing the digital platform's users to "share", "like", comment on and discuss individual pieces of news content.

The "uses" in (a) to (d) and (f) are relevant to Google Search and Google News. Google

provides publishers significant controls over these “uses”. Such controls include the ability to choose to not have their websites crawled and indexed, to not have snippets, to choose the maximum length of snippets and select content to be excluded from snippets, and to exclude images from Search results. None of this use infringes copyright. In other words, NMBs have no legal basis to require Google to pay for these “uses”, which are of far less value than full access to or reproduction of content.

When Google is not helping users to locate content on third-party sites, and instead is providing users with informational or entertainment content to consume on Google’s own properties, we have a longstanding licensing program and compensate content owners and publishers fairly for licensed content we display. Where Google uses content in a way that would otherwise infringe on copyright, such as displaying content in full or in substantial part, we negotiate licences for such uses.

The Concepts Paper acknowledges that an amendment to Australian copyright law is not contemplated (p.11). Any requirement in the Code for Google to make payments to NMBs that are tied to all the “uses” listed above would be inconsistent with the Australian Copyright Act. It would be akin to using the Code to create a new copyright for NMBs.

In this context, we consider that it is not appropriate for the Code to define “uses” by reference to the list above, which largely consists of legal access under copyright law, or to link any requirement to negotiate appropriate remuneration to these uses. A commitment for negotiation of payment should be limited to the reproduction or public communication of news content in full or in substantial part by Google (which, absent a licence, would contravene the Copyright Act).

Finally, in any event, mere hyperlinks should not be considered a “use” of the linked content. A contrary ruling would reverse decades of international internet legal, business, and technical practice, creating liability for linking in other contexts that have never required the permission of the linked site.

19. How might any bargaining framework implemented by the bargaining code deal with the full range of businesses present in the Australian news media industry, including smaller, local and regional news media businesses and not-for-profit news media organisations?

The interests of smaller and regional NMBs are, in our view, best protected in a framework that enables them to negotiate bilaterally with Google, with the Code’s protections, to ensure a fair outcome. This will give them the opportunity to negotiate outcomes tailored to their needs and operations.

D. Sharing of user data

Google's position: NMBs, like other businesses, already have the ability to collect and use data about their customers and users' interaction with their websites. It would be improper, and potentially contrary to privacy laws, and trade secrets, to give them access to data collected and analysed by a digital platform about how users interact with that platform.

Google already makes available a substantial amount of data to NMBs (see our response to Question 21 for details). During our consultations with Australian NMBs in relation to a voluntary code, NMBs were unable to identify or describe any additional data that they wanted to access from Google. It was apparent from the initial phase of consultation that some NMBs are not fully aware of the scope of aggregated and anonymised data that Google currently makes available to them.

We believe that better use of existing data would benefit publishers. We believe training on how to access and use the data already available will have more impact and be more effective than an obligation to share more data. Better use of this existing data would put publishers in a stronger position to understand how to build their subscriber bases and sell more relevant and profitable ads against their content. The Code could contain an obligation on digital platforms to provide training on specified topics, including how to access and use data currently made available by platforms.

Better use of existing data would also be consistent with existing privacy protections. The DPI Final Report recognises that "consumers would not expect media businesses to have access to their browsing history, search queries or navigational history from a visit to the website of a news media business",²⁴ and accordingly does not recommend that digital platforms should be expected to share such data with news publishers. Google agrees that the sharing of data beyond aggregate audience metrics would run contrary to consumer expectations and raise significant privacy concerns. Google strongly opposes any commitment that would require it to share such personal data with NMBs.

Any provision of additional information would need to strike an appropriate balance between ensuring NMBs are given access to data that helps them expand subscriber databases and sell more useful ads, and the need to protect users' privacy, adhering to the terms of Google's privacy policies and privacy laws in Australia and around the world.

In the light of the significant amount of data already provided by Google to NMBs, a lack of clarity about what additional data may be useful and significant privacy concerns associated with sharing additional data, Google considers that the Code should not contain obligations that require Google to provide additional data to Australian NMBs.

²⁴ DPI Final Report, p.248.

20. What factors do Google or Facebook consider when determining the type or amount of user data that they share with third parties under their existing data-sharing policies?

An important factor that Google takes into account in sharing user data with third parties is user privacy.²⁵ Our services, and our existing data sharing practices are subject to our privacy policy as well as privacy laws around the world. Our privacy policy and many countries' privacy laws cover both personally identifiable information and pseudonymous data about users. We expressly commit to our users that we do not sell their personal information.

Any requirement to share, or negotiate about sharing, additional user data would be of immense concern to Google and its users. This is particularly the case given that Australian NMBs consulted in relation to a voluntary code were not able to identify or describe with any precision the additional data that they wanted to access from Google (aside from requests for information about individuals for the purposes of targeting subscription offers, which we would not disclose on the grounds that it violates users' privacy).

Any requests for additional data need to be justified by the context of the intended use for the data. As this is proprietary information gained from Google's users on Google platforms, and analysed by Google's proprietary systems, an entitlement to the data would require strong articulation and justification.

21. What specific user data do news media businesses already receive from each of Facebook or Google in relation to users' engagement with news media business content and what further user data would news media businesses like to receive from each of Facebook and Google?

Google makes a wide variety of data available that enables NMBs to make informed decisions about their site and business. This data is provided in different ways but is broadly passed on in three ways:

- a. Google tools that provide insight into how users interact with links and extracts of publisher content displayed in search results before they visit a news site (e.g. Google Search Console, Google Structured Data Testing Tool).
- b. By integrating Google products with popular analytics tools that allow publishers to understand the users that arrive on their site (e.g. through referral IDs or tracking pixels).
- c. Specific tools developed for the news industry (e.g. Google's *News Consumer Insights*).

Publishers also have a wide range of third party tools they can use to analyse their site and competitive position (e.g. Similarweb or App Annie).

Google Tools

Google currently provides publishers (including NMBs) with a variety of data about their own

²⁵ Google only shares user information in the circumstances outlined in our Privacy Policy. See Google, "Privacy Policy," March 31, 2020, available at: <https://policies.google.com/privacy#infosharing>.

Search experiences. For example, Google Search Console²⁶ contains a set of tools and reports any publisher can use to access data about their website's performance in Google Search. Using Google Search Console, a publisher can see how many impressions and clicks their site gets in organic search results every day, and understand their average position in search results for different search queries. They can also understand how their site appeared in Google Search, for example how many pages had valid markup. Publishers can also see which pages of their site are included in, and excluded from, the Google Search index.

Integrations with analytics tools

Publishers can also track news content performance on different Google surfaces with a range of analytics tools. For example, publishers can track the performance of their content on Google News using referrer IDs and tracking pixels²⁷ that can be easily integrated into popular analytics tools such as Adobe or Chartbeat. Publishers combine these referrer IDs with their own cookies and tracking pixels to build rich user profiles that can then be used to optimise their site for different cohorts and channels.

Google generally aims to provide data in industry-standard formats and has established integrations with major analytics platforms. This work is ongoing, however it would be impractical and unreasonable to require Google to reformat data outputs to meet the various unique requirements of different web publishers, who use a wide variety of independent tools to measure the performance of their content.

News-specific tools

As part of the Google News Initiative, Google has developed a number of tools aimed at specific needs of the news industry, for example:

- *News Consumer Insights* - a report that helps news organisations of all sizes understand and segment their audiences with a subscription strategy in mind.
- *Realtime Content Insights* - a free insights tool built to help newsrooms make quick, data-driven decisions on content creation and distribution. Journalists are able to identify which articles are the most popular across their audience and what broader topics are trending in their regions.
- *A Data Maturity Benchmark* - a collaboration with Deloitte to help news publishers assess their data maturity, compare themselves to other news publishers, and take steps to improve.²⁸

²⁶ See Google, "Google Search Console," available at:

<https://search.google.com/search-console/about>.

²⁷ Tracking pixels allow a publisher to track impressions, including for individual articles. See Google, "Use tracking pixels," available at:

https://support.google.com/news/publisher-center/answer/9603438?hl=en&ref_topic=9545240.

²⁸ Data maturity is a measure of a publisher's ability to responsibly collect, analyse and activate audience data to improve overall engagement, increase direct-paying relationships with readers, and drive revenue from advertisers. See Deloitte, "Deloitte releases global data maturity report in collaboration with the Google News initiative," March 25, 2019, available at:

<https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-releases-global-data-maturity-report-with-google-news-initiative.html?nc=1>.

Insights from these tools have driven strong business results for publishers internationally (e.g. Business Insider developed a set of optimisations that led to a 150% growth in subscription revenue in one quarter).²⁹ Feedback from publishers in our consultation on a voluntary code highlighted that many publishers were not aware of these tools. Prior to the announcement that a mandatory code would be developed, Google had been working towards the provision of training and publisher outreach in response to that feedback.

Data available from third parties

In addition to receiving data directly from Google and Facebook, NMBs can also easily access third party sources like Similarweb and App Annie that provide a wide range of market intelligence.³⁰ These tools allow NMBs to benchmark against their competitors and industry (e.g., understand how their traffic share compares to competitors), identify emerging trends (e.g., new traffic sources) and better understand consumer intent (e.g., new keywords).

22. Should the bargaining code include minimum data-sharing obligations for each of Google and Facebook? If so, what should these minimum data-sharing obligations require?

For the reasons set out above in this section, Google does not support or consent to any inclusion of minimum data-sharing obligations in the Code.

23. How should data-sharing and revenue-sharing arrangements facilitated by the bargaining code interact, given both would be intended to recognise that digital platforms obtain a benefit from content produced by news media businesses?

For the reasons set out above in this section, Google does not support or consent to any inclusion of minimum data-sharing obligations in the Code.

If the ACCC nonetheless considers that a data sharing obligation must necessarily be included in the Code, it should establish flexibility in the Code that would enable Google and the NMB to negotiate about the type of data to be shared, and the terms on which the data would be shared. Any differences between digital platforms and NMBs could then be resolved through an appropriate dispute resolution process.

The Code should not require digital platforms to seek users' consent for the disclosure of their personal information to news publishers.

The Code should explicitly state that digital platforms have the right to refuse to share data if:

- it is personally identifiable information about users of Google products;
- it is data about users that Google does not have user consent to disclose to third parties;
- the sharing of the data would contravene privacy law or Google's privacy policy;

²⁹ See case studies at Google, "News Initiative," available at: <https://newsinitiative.withgoogle.com/training/datatools>.

³⁰ See Similar Web, "Analyse any Website or App," available at: <https://www.similarweb.com/>; App Annie, "The Mobile Performance Standard," available at: <https://www.appannie.com/en/>.

- the sharing of the data would be inconsistent with users' expectations; or
- the benefit to NMBs of accessing the data is likely to be outweighed by user harm if the data were disclosed.

24. How should costs incurred by digital platforms in collecting and sharing data with news media businesses be recognised in data-sharing arrangements facilitated by the bargaining code?

For the reasons outlined above, Google does not support any inclusion of data-sharing arrangements in the Code. To the extent the ACCC may nonetheless elect to include a data sharing obligation in the Code, and that obligation leads to Google needing to develop new product features for the benefit of news publishers to facilitate the sharing of additional data, the cost of that development should necessarily be borne by NMBs. Furthermore, these costs would reasonably be considered a relevant factor in Google's negotiations with NMBs.

25. Would it be appropriate for the bargaining code to address data sharing by putting in place commitments requiring 'good faith' negotiations on this subject between news media businesses and each of Google and Facebook?

For the reasons outlined above, Google does not support the inclusion of commitments in the Code requiring 'good faith' negotiations on the subject of data sharing between it and NMBs. In any case, Google's view is that good faith negotiations on this topic, bearing in mind user privacy concerns, would lead to no additional data sharing with publishers. We already provide NMBs a lot of privacy-respecting data, as outlined in our answer to Question 21, above.

26. Would it be appropriate for any data-sharing requirements in a bargaining code to be limited to data collected during the course of users' direct interaction with each news media business's content? Should this include data relating to aggregate audience numbers, audience demographics and audience interactions, such as how many and which users clicked on, 'liked', 'shared' or otherwise interacted with the content of that particular news media business? What other specific metrics might be relevant?

This question does not seem pertinent to Google Search and Google News as these products are not social in nature. For example, there is no function by which a user can 'like' a search result. Users can click on particular search results. Aggregated information about the number of impressions of and clicks on links to publishers' content is already provided to NMBs via Search Console, as described in our answer to Question 21.

Once a user lands on an NMB's webpage, the NMB can itself obtain data associated with individual users (based on anonymised user IDs) using cookies. Through their use of cookies, news publishers can keep track of the user's visits and activity on the website and deliver webpages and ads tailored specifically to that user. Using third party analytics tools, NMBs can understand audience characteristics including demographics and analyse these segments and their behaviour. Publishers also have the ability to identify repeat user interactions with their content over multiple sessions. Importantly, users themselves decide whether and to what extent these cookies can be used to track them, and can configure their browsers to accept or reject particular cookies or to delete them periodically.

There is no connection between any additional data that Google holds and specific publishers' content.

27. Would it be appropriate for each of Google and Facebook to provide news media businesses with access to additional data associated with individual users (based on anonymised user IDs), such as whether a visit to a news media business's website follows previous interaction with this business's content on a digital platform? If so, what steps should be taken to ensure an individual's privacy is protected?

Please see our response to Question 26 in relation to the data already available to NMBs.

For many reasons such as privacy, and other valid business reasons, it would not be appropriate for the Code to require Google to provide access to additional data associated with individual users. For example, it would be inappropriate to share user data about whether subsequent click on a search result by a user follows a previous interaction with the news business' content on its website. This would reveal private information about the user's search and browsing history conducted independently of that user's interaction with the NMB.

Nor should Google be required to ask users for consent to share this data with third parties. Such a requirement would materially interfere with the relationship between Google and its users in which users trust Google to maintain data securely on their behalf. If news publishers want to ask users for their data, they should do so directly.

Google currently provides this data on an aggregated basis, in the form of the number of clicks from Google Search and Google News. Disclosure of data on a granular, individual-level basis would raise significant privacy concerns.

28. Would it be appropriate for each of Google and Facebook to provide each news media business with a list of all types of user data they collect through users' engagement with their news content on their services, such as data collected on users accessing content published in the AMP and Instant Articles formats?

It would not be appropriate for Google to provide NMBs a list of all types of user data it collects. Insofar as the intention is for NMBs to be able to select the additional information they wish to receive, it would be inappropriate for Google to share the actual user data with NMBs, so sharing of data types would serve no purpose and create risks to user privacy. Please see our responses above in this regard.

Further, releasing a complete list of the data collected by our search engine about user behaviour metrics might pose a risk to our anti-fraud and anti-spam measures. This would degrade user experience and increase risks of fraud to both advertisers and publishers.

Google shares details about the personal information it collects in its privacy policy: <https://policies.google.com/privacy>. Users can see data Google holds about them in the My Activity section of their Google account: myactivity.google.com.

In relation to AMP, in most cases, the data that publishers are able to collect from pages served via the AMP cache is either substantially the same as the data they are able to collect on non-AMP pages, or the publisher could achieve substantially similar capabilities through

reasonable extensions to support new functionality via the AMP-analytics platform.

Importantly, AMP caches preserve user privacy throughout the pre-rendering process by ensuring that the AMP cache does not expose user request data to a publisher of content until and unless the user actually expresses intent to visit the page. Without this protection, publishers might receive signals and information about a user through the pre-rendering of the document, even if the user never indicates an intent to navigate to the publisher's page. As soon as a user does express intent to navigate to a pre-rendered page, the information is immediately shared with the publisher, so that the publishers have access to the same kind of data as with a non-pre-rendered navigation. In cases where the user saw a link to the publisher's content on Search, but did not navigate to the page, publishers would still be aware of this behaviour in aggregate through the impression and click metrics available in Search Console.

29. If the bargaining code were to include any commitments related to data sharing, which of the following services provided by Google and Facebook should those commitments apply to:

- **Google Search**
- **Google News**
- **YouTube**
- **AMP**
- **Google Assistant voice activation services and related services provided through 'Google Home' hardware and home automation devices**
- **Android TV**
- **Facebook News Feed**
- **Facebook Instant Articles**
- **Facebook Watch**
- **Instagram**
- **WhatsApp**
- **Facebook News Tab?**

For the reasons set out in the response to question 5 above, Google considers that YouTube, AMP, Google Assistant, Android TV and Google's ad tech products should not be subject to the Code. If the Code applies to these services, then it should also apply to other digital platforms and services that help users find and access NMBs' news content, including:

- Apple News, Apple Siri and AppleTV OS;
- Microsoft Bing, Cortana;
- Twitter;
- Amazon Alexa, Fire TV, and Amazon Prime;
- Samsung's Tizen, Bixby;
- Roku TV and Roku OS; and
- Fetch TV's proprietary operating system.

For the reasons set out in this section, Google considers that it would not be appropriate to include additional commitments related to data sharing in the Code in relation to Google Search or Google News.

E. Algorithmic curation of news

Google's position: We make changes to our algorithms to improve the quality of our products for the benefit of users. There is no basis for requiring digital platforms to treat NMBs more favourably than other publishers, in the design of algorithms or the provision of advance notice of changes, which may allow third-party gaming of our system and counter our ongoing efforts to provide high quality, reliable and relevant results to users. If a commitment that requires Google to provide advance notice of algorithm changes was regarded as necessary, it should be limited to reasonable public notice of *significant actionable* changes.

The exact way in which Google Search algorithms work is a trade secret. Disclosing too much about them could make search results vulnerable to spam, misinformation, malware, and other non-relevant and harmful material.

That said, Google currently has in place a variety of long-standing resources and tools to help publishers understand how Google Search and its ranking algorithms work, including the Search Rater Guidelines, the [How Search Works](#) webpage, the [How News Works](#) webpage, and the Search Console toolset. We describe these resources and tools in our response to Question 32.

We are constantly making changes to our algorithms to ensure we continue to return high quality and relevant results to users. Many of these changes are designed to address ongoing efforts by millions of websites to manipulate our Search results in order to promote the interests of individual websites at the expense of our goal of providing authoritative and relevant information.

We are concerned that a requirement to provide advance notice of even 'significant' algorithm changes (which would include updates designed to fight spam and other harmful material and abusive practices), and to provide details about those changes, would compromise our efforts to ensure that users get high quality, relevant results when they use our Search engine.

The complexity of the hundreds of factors in our algorithms and the constantly evolving nature of the Web make it effectively impossible to predict and evaluate all of the implications of any given algorithmic change on existing results, let alone to anticipate how it might impact future results (such as stories not yet written). An obligation to give notice and explain the detail of the change and its effect would in many cases be difficult or impossible to comply with, beyond offering a general overview of the types of results sought.

Moreover, we consider that such a mandatory requirement is unnecessary given our established practice.

If the Code imposes an obligation to notify algorithm changes, it should be limited to public notification of changes that are *actionable* and which Google considers (acting reasonably taking into consideration the information available to Google at that time) are likely to significantly impact the traffic Code participants as a collective will likely receive via Google Search in respect of news generally. We describe what we mean by "actionable" in our answer to Question 32. Any obligation should be subject to the exceptions described in the response to Question 35 below.

30. What would be an appropriate threshold for identifying a significant algorithm change which requires advance notice to be given by each of Google and Facebook, and what criteria should be used to determine this threshold?

Google has significant concerns about a requirement that it provide notification of all "significant" algorithm changes. "Significant" changes could include changes designed to counter spam, misinformation, malware, and other harmful material. Google does not provide notifications of these changes for the reasons explained in our response to Question 32.

The complexity of the hundreds of factors in our algorithms and the constantly evolving nature of the Web make it effectively impossible to predict and evaluate all of the implications of any given algorithmic change. This would be a particularly undesirable approach if a breach of the Code carries penalties.

If the Code does contain an obligation to notify algorithm changes, it should be limited to changes that are *actionable* and which Google considers (acting reasonably taking into consideration the information available to Google at that time) are likely to significantly impact the traffic Code participants as a collective will likely receive via Google Search in respect of News generally. We describe what we mean by "actionable" in our answer to Question 32.

Any obligation should be subject to exceptions described in the response to Question 35 below.

31. How much notice should be provided by each of Google and Facebook for significant algorithm changes? How can this notice period be set in order to not unreasonably limit digital platforms' flexibility to implement algorithm updates that may benefit consumers?

For the reasons provided above, Google considers that the Code should not contain an obligation to provide notice of algorithm changes, even "significant" ones, beyond what it already provides.

If the Code does contain such an obligation, a fixed notice period is not appropriate. Some changes require more lead time than others. Some are made urgently, to respond to significant risks of fraud, spam, disinformation, or other objectionable content posing a threat to consumers, businesses, or society. A 'reasonable' time would be required in each case and there should be exceptions to allow Google to implement urgent changes that are needed in the interests of its users, for the continuity of Google's operation, or because of an event, issue or error that is beyond the reasonable control of Google.

For example, following the outbreak of covid-19, Google rolled out a number of features in Search on an emergency basis, providing direct links to authoritative health information from local and national authorities. These features had the effect of pushing other content down the page, which could be characterised as a "demotion" of news content. If Google did not have the ability to implement these changes until it provided notice to publishers, and waited out a notification period, our users would lose the ability to readily find critical, relevant, authoritative information on the covid-19 pandemic.

Similar, temporary emergency features were introduced in Google Search in Australia during the catastrophic bushfires in late 2019 / early 2020.

32. What information do each of Google and Facebook currently provide to news media businesses about the ranking and display of news, particularly with respect to ranking algorithms for content and changes to these algorithms?

Information about the ranking and display of news

Google provides NMBs with a wealth of information and guidance on the operation of Search, Google News and their ranking algorithms. This includes the following (in addition to many of the resources outlined below, key information about updates to algorithms are shared in a number of fora to assist in making them easily discoverable to a broad audience):

- a. **Google's Webmaster Guidelines:**³¹ The Guidelines set out general principles for how websites can (a) help Google find their pages, (b) help Google understand their pages, and (c) help visitors use their pages.

The Guidelines describe common types of manipulative behavior that could lead to a website not ranking well in Google's results. An example includes displaying automatically generated content or participating in link schemes (where a site may pay another site to link to it as a way to manipulate PageRank artificially). The Guidelines include videos and links to other materials (such as the Search Console, described below) to help webmasters find out even more information about the operation of Google's ranking.

- b. **Google's Help Centre for Webmasters:**³² Google Help Centre for Webmasters provides news, resources, information and guidance to help publishers design their pages so that they can rank well on Google.
- c. **Webmasters Help Community:**³³ The Webmasters Help Community is a dedicated community forum where publishers can describe issues they face with their ranking and see posts and explanations providing answers. Publishers can search over tens of thousands of pre-existing posts and answers to find input on their questions. In addition, publishers can post new questions that will be answered by contributors to the community, including Google employees and other expert contributors. The respondents are graded with colored badges (for example, if they are Google employees or Google community specialists) to help website owners find information they seek more easily.
- d. **Troubleshooting results site:**³⁴ Google provides news media companies with a specific website to help them troubleshoot common problems. The troubleshooting results website helps answer questions such as:

- *Why did my site traffic drop?* The troubleshooting site provides the top

³¹Google, "Webmaster Guidelines," available at: https://support.google.com/webmasters/topic/9456575?hl=en&visit_id=637255697889292376-1678909868&rd=1.

³² Google, "You want to be found on the web. We want to help," available at: https://www.google.com/intl/en/webmasters/#?modal_active=none (last accessed 20.05.2020).

³³ Google, "Webmasters Help Community," available at: <https://support.google.com/webmasters/community> (last accessed: 20.05.2020).

³⁴ Google, "Troubleshooting results," available at: <https://support.google.com/webmasters/topic/9163961/?hl=en> (last accessed: 20.05.2020).

reasons for traffic drops and helps websites diagnose the problem and find a fix.³⁵

- *Why is my page missing from Google Search?* The troubleshooting site helps webmasters troubleshoot and fix the most common problems when their page is missing from Google Search results.³⁶
 - *Why is my site blocked from Google Search?* The troubleshooting site helps webmasters to understand why their site may have been blocked from Google Search (for example, because it shows dangerous or spammy material) and to fix that problem.³⁷
 - *Why does my search result look wrong?* Google allows websites to show special features like snippets or sitelinks in search results. The troubleshooting site helps webmasters if the appearance or text of their Google search results look different than they expect.³⁸
- e. **Web Fundamentals site:**³⁹ Google provides a dedicated site called Web Fundamentals, which sets out detailed advice on how to build a site valued by users that is likely to rank well. The Web Fundamentals site provides detailed information, resources, videos, code labs, and samples to help websites create a web experience that is (a) fast, (b) integrated, (c) reliable, and (d) engaging. These factors allow a website to rank well in Google's results.
- f. **SEO Starter Guide:**⁴⁰ Google publishes a detailed Search Engine Optimization (SEO) Starter Guide. The SEO Starter Guide sets out the best practices to follow to rank well on Google.
- g. **Google Webmasters Blog:**⁴¹ The Google Webmasters Blog contains thousands of posts on the operation of Google's algorithms, including information on upcoming algorithm changes.
- h. **Search blog:**⁴² Google provides a separate blog, called the Search Blog, where news media companies can find the latest news on Google's search ranking, screenshots

³⁵ Google, "Why did my site traffic drop?," available at: https://support.google.com/webmasters/answer/9079473?hl=en&ref_topic=9163961 (last accessed: 20.05.2020).

³⁶ Google, "Why is my page missing from Google Search?," available at: https://support.google.com/webmasters/answer/7474347?hl=en&ref_topic=9163961 (last accessed: 20.05.2020).

³⁷ Google, "Why is my site blocked from Google Search?," available at: https://support.google.com/webmasters/answer/6347750?hl=en&ref_topic=9163961 (last accessed: 20.05.2020).

³⁸ Google, "Why does my search result look wrong?," available at: https://support.google.com/webmasters/answer/9079920?hl=en&ref_topic=9163961 (last accessed: 20.05.2019).

³⁹ Google, "Web Fundamentals," available at: <https://developers.google.com/web/fundamentals/> (last accessed: 20.05.2020).

⁴⁰ Google, "Do You Need SEO?," available at: <https://support.google.com/webmasters/answer/35291?hl=en> (last accessed 20.05.2020).

⁴¹ Google, "Webmaster Central Blog," available at: <https://webmasters.googleblog.com/> (last accessed: 20.05.2020).

⁴² Google, "Official Blog: Search," available at: <https://www.blog.google/products/search/> (last accessed 20.05.2020).

of Google's newest features, and other multimedia resources. The Search Blog includes hundreds of blog posts relating to algorithms, ranking, and search quality. It provides public summaries and reports regarding many hundreds of algorithmic changes, updates, and improvements.

- i. **Search Quality Rater Guidelines:**⁴³ Google describes the relevance principles it uses to rank results in the guidelines it provides to external raters evaluating Google's search results (the Rating Guidelines). The Rater Guidelines define the relevance standard against which raters test changes in Google's results. The Rater Guidelines establish users as the central reference point for search result evaluation. They explain the concepts of topicality and quality. Google designs its algorithms to return results that are topical and high quality in the way described in the Rater Guidelines.

The Rater Guidelines are a comprehensive guide which sets out the criteria that Google uses to evaluate the quality of web pages. These are the actual instructions provided to Google's search quality raters, not merely a summary or description of the guidelines. The Rater Guidelines contain more than 160 pages of detailed and granular information that websites can use to design their sites in a way that is likely to rank well in Google's results. The Rater Guidelines explain that the three most important concepts for quality are: (a) Expertise (is the author an expert on the topic?); (b) Authoritativeness (is the webpage authoritative about the topic?); and (c) Trustworthiness (can you trust it?).

- j. **Google Webmasters & Search Liaison Twitter accounts:**⁴⁴ Through an account with over 409,000 followers, the Google Webmasters Twitter account provides free information about new launches and features, including algorithm updates. @searchliaison is the primary account Google uses for core updates to Google Search and other algorithm announcements.
- k. **Google Webmasters YouTube accounts:**⁴⁵ The dedicated Google Webmasters YouTube channel regularly broadcasts information covering, among other things, Google's algorithm updates, to over 360,000 subscribers.
- l. **Google Search Console:**⁴⁶ The Google Search Console provides webmasters with free tools and reports to help manage their performance in Google's results, as well as with step-by-step tips and short instructional videos. The Google Search Console allows news media companies to keep track of their websites' search traffic and performance. It also enables them to check indexing status and optimise the visibility of their websites.
- m. **How Search Works website:**⁴⁷ Google provides detailed information on the functioning of Google Search through a dedicated and free How Search Works site.

⁴³ Google, "General Guidelines," December 5, 2019, available at: <https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf>.

⁴⁴ Twitter, "Google Webmasters," available at: <https://twitter.com/googlewmc>; Twitter, "Google Search Liaison", available at: <https://twitter.com/searchliaison>.

⁴⁵ Youtube, "Google Webmasters," available at: <https://www.youtube.com/user/GoogleWebmasterHelp>.

⁴⁶ Google, "Search Console Help: How Can We Help You?," available at: <https://support.google.com/webmasters/?hl=en#topic=9128571> (last accessed: 20.05.2020).

⁴⁷ Google, "How Does Search Work?," available at: <https://www.google.com/search/howsearchworks/> (last accessed: 29.07.2019).

This site contains information on browsing and indexing, Google’s algorithms, Google’s efforts to provide users with useful answers, and Google’s approach to Search.⁴⁸

- n. **How News Works website:** Google provides detailed information on our approach to news, including how we organise, rank, present and build news experiences.⁴⁹
- o. **Office Hours:** The Google Webmasters team and community experts are available for free to answer and discuss webmaster topics during online webmasters office hours hangouts. These hangouts generally cover anything related to publishing content online and making it findable in web-search. Some topic examples include crawling, indexing, sitemaps, Search Console, duplicate content, and multi-lingual/multi-regional sites.⁵⁰ The Google Webmasters office hours are public and recorded on the Google Webmasters YouTube. Google Webmasters also reminds potential viewers of upcoming office hours and provides easily accessible information on how to join.
- p. **Testing features:** Google allows news media companies to perform tests for how well their website is designed on criteria that are important for Google’s ranking through the Search Console. Such criteria includes mobile-friendliness, page speed, and structured data. News media companies can receive recommendations on how to improve their websites based on the test results. This may improve their ranking in Google’s results.

For example, the *Mobile-Friendly Test Tool* provides news media companies with a screenshot of how their webpage looks to Google on a mobile device, as well as a list of any mobile usability problems that it finds.⁵¹

- q. **Research papers:** Google publishes hundreds of research papers each year and makes them available on an easily-accessible searchable database.⁵² Google has published over 750 research papers on the subject of algorithms.
- r. **Publisher Centre Help:** Outlines how Publishers can appear in Google News, relevant content policies and how content is ranked.⁵³

Information about changes to algorithms

As previously explained, Google constantly makes changes to our algorithms to ensure we are returning high quality and relevant results to users. These changes are commonly

⁴⁸ Google provides clear information on the functioning of its Search algorithms, including on results ranking. See Google Search, “*How Do Search Algorithms Work?*,” available at: <https://www.google.com/search/howsearchworks/algorithms/> (last accessed: 20.05.2020). See also Google, “*Maximize Access To Information*,” available at: <https://www.google.com/search/howsearchworks/mission/open-web/> (last accessed: 20.05.2020).

⁴⁹ Google News Initiative, “*How News Works on Google*,” available at: <https://newsinitiative.withgoogle.com/hownewsworks/mission> (last accessed: 20.05.2020).

⁵⁰ Google, “*Stay Connected and Updated*,” available at: <https://www.google.com/webmasters/connect/> (last accessed: 20.05.2020).

⁵¹ Google, “*Mobile-Friendly Test Tool*,” available at: <https://support.google.com/webmasters/answer/6352293> (last accessed: 20.05.2020).

⁵² Google Research, “*Publication Database*,” available at: <https://ai.google/research/pubs/> (last accessed: 20.05.2020).

⁵³ Google, “*Publisher Centre Help*,” available at: <https://support.google.com/news/publisher-center/?hl=en#topic=9603441> (last accessed: 20.05.2020).

referred to as “updates,” and they can be broadly categorised as follows:

- safety updates;
- minor updates, tests and experiments; and
- actionable updates.

Safety updates

Search faces intense efforts and attacks by those who seek to spam, spread misinformation, malware, use misleading “phishing” sites to trick users into giving up personal or financial information, and other harmful material. Google is engaged in a constant cat-and-mouse game with these bad actors, and our efforts include making algorithmic updates that seek to automatically detect and remediate the effects of these harmful efforts.

We do not notify sites about these algorithmic safety updates or describe them in detail. Notifying these changes would undermine their purpose, which is typically to address abuses that may harm consumers and the quality and integrity of search results. (By contrast, if we take an individualised, manual action against a particular site, we do notify the site operator of that action through Search Console.)

Any requirement to provide details or notification of safety updates would put consumers at risk. In this context, there should be no requirement to notify safety updates.

Minor updates, tests and experiments

In order to improve our results, it is necessary to test proposed updates. We are constantly running experiments to test proposed changes. Many of these experiments are limited in nature, such as involving only a tiny percent of searches. Many also never develop into formal updates.

Beyond experiments, Google usually releases on average one or more minor updates each day, designed to improve its search results. In lay terms, these could be considered equivalent to minor maintenance on a car engine, such as replacing a worn out part with a new one. They don’t typically significantly change our results, to the degree they are often unnoticed. But while minor, they help us improve and maintain our search engine, such as regular minor car maintenance does.

We do not generally provide notice or information about either experiments or minor updates for the same reasons. It would also not be administratively feasible or useful to do so. Many of them are largely immaterial to most NMBs. There is generally no actionable advice for publishers to follow in respect of these changes. Providing notice would produce noise that detracts from actual useful and actionable information they should consider.

For these reasons, we consider that it would be counterproductive to require notification of experiments or minor updates.

Actionable updates

Some of our algorithmic improvements are designed to address aspects of user experience. For example, users prefer to have pages that are fast-loading, or pages that are “mobile-friendly” so that they don’t have to pinch-and-zoom to view content on smartphones.

A good user experience doesn’t override having great, relevant content in our ranking

systems. However, in cases where there are multiple pages that have similar content, sites that take action to improve user experience in alignment with some of our algorithmic updates may have greater search success.

This is why we refer to such updates as “actionable” updates. There are clear, helpful actions that we recommend sites should undertake. This is also why we have a long history of regularly communicating about actionable updates, often with extensive notice, so that sites can prepare for them.

Here are some examples of major actionable updates we’ve communicated voluntarily:

- The “Page Experience” update was preannounced on 28 May 2020, with a guarantee that no changes would be made before 2021, and that once a launch date was finalised, publishers would receive six months’ notice before any changes were rolled out, giving them time to make whatever improvements they feel would be merited.⁵⁴
- Our “Speed Update” was pre-announced in January 2018, with six-months notice for sites to consider actionable advice about it.⁵⁵
- Our mobile-first indexing update was announced in November 2016, a year-and-a-half before it went live, with actionable advice for sites to consider.⁵⁶ In December 2017, we shared a further “get ready” post with advice, three months before it began.⁵⁷ In March 2018, we shared further advice, when the update began to go live.⁵⁸ The rollout process progressed carefully over a year, until it became (as we shared) our new indexing practice beginning in May 2019.⁵⁹
- Our mobile-friendly update was preannounced in February 2015 with actionable advice,⁶⁰ two months before it began in April 2015.⁶¹
- Broad core updates happen several times per year. They are designed to ensure that, overall, we are delivering on our mission to present relevant and authoritative content to users. They have been announced since March 2018,⁶² most recently in May 2020.

⁵⁴ Google Webmaster Central Blog, “*Evaluating page experience for a better web*,” May 28, 2020, available at: <https://webmasters.googleblog.com/2020/05/evaluating-page-experience.html>.

⁵⁵ Google Webmaster Central Blog, “*Using page speed in mobile search ranking*,” January 17, 2018, available at: <https://webmasters.googleblog.com/2018/01/using-page-speed-in-mobile-search.html>.

⁵⁶ Google Webmaster Central Blog, “*Mobile-first indexing*,” November 4, 2016, available at: <https://webmasters.googleblog.com/2016/11/mobile-first-indexing.html>.

⁵⁷ Google Webmaster Central Blog, “*Getting your site ready for mobile-first indexing*,” December 18, 2017, available at: <https://webmasters.googleblog.com/2017/12/getting-your-site-ready-for-mobile.html>.

⁵⁸ Google Webmaster Central Blog, “*Rolling out mobile-first indexing*,” March 26, 2018, available at: <https://webmasters.googleblog.com/2018/03/rolling-out-mobile-first-indexing.html>.

⁵⁹ Google Webmaster Central Blog, “*Mobile-First indexing by default for new domains*,” May 28, 2019, available at: <https://webmasters.googleblog.com/2019/05/mobile-first-indexing-by-default-for.html>.

⁶⁰ Google Webmaster Central Blog, “*Finding more mobile-friendly search results*,” February 26, 2015, available at: <https://webmasters.googleblog.com/2015/02/finding-more-mobile-friendly-search.html>.

⁶¹ Google Webmaster Central Blog, “*Rolling out the mobile-friendly update*,” April 21, 2015, available at: <https://webmasters.googleblog.com/2015/04/rolling-out-mobile-friendly-update.html>.

⁶² See Twitter, “*Google SearchLiaison*,” available at: <https://twitter.com/searchliaison/status/973241540486164480>.

⁶³ While there is no particular action that publishers should take in response to an individual core update, we nevertheless pre-announce these so that publishers can be aware that a change is coming. That way, they are less likely to misattribute a change to their ranking to any recent changes on their side; our notification thus saves them time and effort. We provide general advice for sites to consider for success with our systems overall; this advice can be acted on at any time.⁶⁴

As said, we regularly and voluntarily provide notice about actionable updates. We're already motivated for publishers to understand about these updates, because taking action helps them, helps us improve our results and ultimately ensures that together we're helping users connect to the best information. Given this, a mandatory requirement to notify these changes would introduce an unnecessary regulatory burden.

33. What type of information would help news media businesses better understand and adapt to significant changes to ranking and display algorithms?

As described in the answer to Question 32, Google already provides a wealth of information about how Google Search and Google News and their algorithms work. In addition to developing a good understanding of these resources, Google believes that NMBs with solid business practices around data and measurement will be able to best adapt to any changes to ranking and display algorithms. Publishers with analytics tools are well placed to quickly diagnose traffic fluctuations by channel, site, and audience. They can use this information to make any changes they deem necessary. All NMBs have access to the tools required to analyse their site performance, and Google believes that the additional training on existing data tools proposed in Section D is the best way to achieve this.

Google also provides public resources that help site owners diagnose traffic changes, for example the "why did my traffic drop" section of the Search Console help center.⁶⁵ It is important that no individual website owner receives specific advice from Google that could artificially improve their search ranking and create an uneven ranking environment. Because of this, Google always communicates such guidance through public channels.

If the Code does contain an obligation to notify algorithm changes, the obligation should not be prescriptive about the form and content of notice. The complexity of the hundreds of factors in our algorithms and the constantly evolving nature of the web make it effectively impossible to predict and evaluate all of the implications of any given algorithmic change on existing results, let alone to anticipate how it might impact future results (such as stories not yet written). In this context, any obligation to "explain" the effect of changes to our algorithms on websites would in many cases be difficult or impossible to comply with, beyond offering a general overview of the types of results sought. It would simply not be possible to provide any estimates of anticipated percentage drops in traffic to particular NMBs, or NMBs as a cohort. Providing specific guidance on the anticipated effect of changes to NMBs websites (or particular websites) would also be inconsistent with our longstanding policy to communicate information about ranking publicly, to ensure that no single website owner receives information that would allow them to artificially improve their

⁶³ See Twitter, "Google Search Liaison," available at: <https://twitter.com/searchliaison/status/973241540486164480>.

⁶⁴ Google Webmaster Central Blog, "What webmasters should know about Google's core updates," August 1, 2019, available at: <https://webmasters.googleblog.com/2019/08/core-updates.html>.

⁶⁵ Google Search Console Help Center, "Why did my site traffic drop?," available at: https://support.google.com/webmasters/answer/9079473?hl=en&ref_topic=9163961 (last accessed: 20.05.2020).

rank. Any notification requirement should accommodate public notification that is not specific to NMBs.

34. Under what circumstances might it be acceptable (or socially desirable) for each of Google and Facebook to not provide advance notice of significant algorithm changes?

Google tests hundreds of thousands of potential algorithmic changes each year, and implements several thousand. As described above, many of these changes are designed to address ongoing efforts by millions of websites to manipulate our Search results in order to promote the interests of individual websites at the expense of our goal of providing authoritative and relevant information.

Google's algorithms use various signals as an evolving proxy for how a wide cross-section of humans would determine quality. We go to extraordinary lengths to have knowledgeable raters assess the value of potential changes, and to maintain the confidentiality of those signals and how we weight them. If we were to reveal the specifics of these signals when they were changed or introduced, then sites would optimise for those signals without actually improving quality.

We constantly make changes designed to counter "black-hat spam" efforts to rank lower-quality and less-relevant content higher in search results. Detailed disclosure of precisely which factors influence search ranking may result in abuse that would harm consumers and the quality and integrity of Search results. It could also disproportionately favour larger news organisations that have the resources to hire dedicated search engine optimisation specialists to promote articles that are actually less relevant and useful to users than articles from smaller and less well resourced competing publishers.

Given how frequently bad actors implement new approaches designed to mislead and even defraud our users, a requirement that we provide notice of algorithmic changes would in many cases have the effect of prolonging how long innocent users were subject to such practices – or even invalidating our efforts to combat them by telling bad actors exactly how to escape our defenses. And because we typically roll out changes on a global basis, delays in Australia would effectively have harmful effects on users around the world. Creating extensive opportunities for any websites negatively impacted to contest a potential change in advance would inevitably slow the adoption of positive changes and degrade the overall search experience.

A core principle from our earliest days has been that "we build Google for users" – user value lies at the core of Google's business model and social utility. User value is maximised when we provide high quality, relevant results, and websites have the opportunity to succeed on the merits of their content. Any proposed commitment needs to protect the user, by striking the right balance between the interests of NMBs and Google's interest in preventing gaming of algorithms, preserving the quality and integrity of Search, and protecting its proprietary information / core trade secrets.

The ACCC acknowledged in the Concepts Paper that Google may need to roll out "urgent" algorithmic updates in response to fast moving news events, with the latest example being the COVID-19 pandemic (p.20). Any delay to these changes as a result of a mandatory notice period in the Code could have a negative impact on the quality of information provided to users with potential serious health ramifications. However, the logic that underpins the need for urgent changes also applies to other news events – delaying user

access to higher quality information so that established media businesses have more time to figure out how they can maintain market share could deprive Australian users of important information.

For the reasons described above, we are opposed to an obligation to provide advance notice of algorithm changes, even changes which may be “significant”.

35. Would it be appropriate for a bargaining code to include:

- **mechanisms requiring digital platforms to provide news media businesses with advance notice of algorithm changes that may significantly affect the ranking and display of news at least X days in advance of implementing these changes, and/or**
- **mechanisms requiring digital platforms to notify news media businesses of algorithm changes that may significantly affect the ranking and display of news within X days of making a decision to implement such changes, and/or**
- **relevant exemptions or flexibility in complying with any advance notification requirements where the digital platform considers urgent algorithm changes must be made in the interests of its users?**

For the reasons outlined above, Google considers that the Code should not include commitments requiring Google to give advance notice of its algorithm changes, including changes that may significantly affect the ranking and display of news.

As noted above, a commitment that requires Google to provide NMBs with information about how Google Search and Google News services seek to reward authoritative content, and the important website design and content characteristics that Google Search and Google News consider, would be more appropriate than any commitment requiring advance notification of algorithm changes. Such a commitment would be scalable and globally consistent and in line with current practice.

If the Code is to contain a commitment that requires advance notice of algorithm changes, the commitment should:

- be limited to actionable changes that Google reasonably anticipates would have a significant impact on referral traffic to NMBs as a collective;
- make clear that the interest to prevent search result manipulation and the interest to protect trade secrets are legitimate reasons to limit disclosure of information concerning algorithmic changes;
- contain exceptions to allow Google to implement urgent algorithm changes that must be made in the interests of its users without providing notice; and
- require notice to be given within a reasonable time, rather than a fixed time (recognising that not every case will be the same).

F. Prioritising original news content

Google’s position: Our focus is on providing our users with relevant, accurate, authoritative and timely information – this will sometimes (but not always) be original content. We recently improved our algorithms to better recognise original reporting, surface it more prominently in Search, and ensure it stays there longer. If the Code is to deal with original news content at all, it should require NMBs to cite and link to original work in their articles.

Google’s focus is on providing our users with relevant, accurate, authoritative, and timely information. The article that is published first is not necessarily the most relevant, accurate, authoritative, and up to date information in answer to a user’s query. There could be a more recent update that contains important additional detail. Further, a story appearing for the first time may not have been verified or be authoritative – in fact, it may be shown to be incorrect by following coverage. Whether or not other news organisations link to a story is something that we also look at in evaluating how authoritative it is.

We fundamentally object to any artificial requirement to prioritise original content in our Search results that is not driven by the above overarching focus on our users. Our algorithms are designed to promote high quality content that is relevant to a user’s query, and original content may not be high quality or the most relevant to the user’s query. Such an artificial requirement would also further incentivise a “race to publish” rather than thorough fact-checking and review.

We recognise, however, that provenance is an important issue for NMBs, and we have made changes to our search algorithm to better recognise original reporting, surface it more prominently in Search, and ensure it stays there longer.⁶⁶

In the DPI Final Report, the ACCC acknowledged the difficulties with requiring digital platforms to prioritise original content, and concluded that it was not appropriate to require digital platforms to include an originality signal in its algorithmic determinations:

“While it would appear reasonable for the original source of a news story to be a factor considered by a digital platform’s algorithm, the ACCC recognises that:

- *digital platforms would need clear signals as to which article is ‘original’, and these signals may not always exist*
- *originality may be difficult to establish in some cases, given that stories can develop and evolve, and may include a mix of original and attributed content and original analysis*
- *if originality were used as a signal for the algorithm for the purposes of ranking items of journalistic content, it may be considered alongside other factors, and may not necessarily be the deciding factor.*

In the absence of signals from media outlets as to which content was ‘original’, and in the absence of an agreed basis for defining and identifying ‘original’ news content, any attempts by digital platforms to unilaterally determine the originality of journalistic content for the purposes of ranking could be problematic. The ACCC does not consider it appropriate to require a digital platform to include such a signal in its algorithmic determinations.”⁶⁷

⁶⁶ Google, R Gingras, “*The Keyword: Elevating original reporting in Search*,” September 12, 2019, available at: <https://www.blog.google/products/search/original-reporting/>.

⁶⁷ DPI Final Report, p.250.

We consider that the challenges in identifying original content would not be overcome by a mechanism by which NMBs would have a role in providing a signal that particular stories meet the standard of being original. There would be nothing to prevent NMBs from tagging all of their content as original, rendering any signal or badging futile. It would also give rise to disputes about whether particular content that was tagged as original was appropriately prioritised compared to other content which may also have been tagged as original. Google would have no way to verify originality tagging by NMBs, and is not equipped to arbitrate which NMB's original tag should take precedence.

36. What benefits, if any, did Australian news media businesses experience following Google's adjustment to its ranking algorithm to prioritise original news in September 2019?

Since Google's adjustment to its ranking algorithm to prioritise original news in September 2019, we have not had any escalations by NMBs regarding a unique news story that they exclusively broke.

37. In order to prioritise original news content on each of Google and Facebook, would it be appropriate for the bargaining code to include:

- **mechanisms requiring news media companies to identify and advise platforms of material that is original news content, so that this could be taken into account by platforms in prioritising or communicating original content to users, and/or**
- **a set of broad principles governing how digital platforms prioritise original news content through their ranking and display algorithms, and/or**
- **mechanisms setting prescriptive requirements governing how digital platforms prioritise original news content?**

We have described above the complexity involved in identifying original content, the practical issues arising from relying on NMBs to identify original content, and the fundamental flaw in assuming that original content is the highest quality and most relevant content to show in response to a search query. In this context, it is not appropriate for the Code to contain any obligations requiring Google to prioritise original content.

If the Code seeks to address original content, it should be through a requirement for NMBs to cite (and include links to) original work in their articles. There would be benefit in introducing industry standards for news media organisations to assist with the identification of original content and consistency in citation and linking practices. Google's experience is that NMBs' current practices in this regard are variable.

38. How could 'original news content' be defined and identified under the bargaining code, and who should be responsible for defining or identifying this content?

For the reasons set out above, Google considers that it is not appropriate for the Code to deal with original news content.

39. Should any bargaining code requirement to prioritise original content

distinguish between original investigative journalism and other types of news content? If so, how could this distinction be drawn?

For the reasons set out above, Google considers that it is not appropriate for the Code to deal with original news content. The points made above apply equally to original investigative journalism.

G. Treatment of paywalled news content and alternative news media business models

Google's position: Google Search algorithms and Google News algorithms do not penalise paywalled news content in the ranking of search results. We object to any obligation in the Code which would require us to amend our ranking algorithms to artificially inflate the ranking of paywalled articles.

Google Search algorithms and Google News algorithms do not penalise paywalled news content in the ranking of search results. To the contrary, Google offers a special benefit to NMBs who operate paywalls: the ability to rank based on the full content behind the paywall even though that content is not available to the search user.

Google several years ago made a significant change to better support their subscription-based business models. NMBs are allowed to show full articles to Google's indexing and ranking systems and not to Google's users.⁶⁸ Google recommends, but does not require, that publishers give users some amount of free sampling of their content so that users can learn how valuable their content is.⁶⁹

While Google does not demote paywalled NMB content on the basis of its paywall, it is possible that sites who implement paywalls or severe user registration barriers could see a drop in traffic despite the fact they rank well. This can be because users might learn that particular publishers have barriers and deliberately choose not to select them, even if they are highly ranked for searches.

We object to any obligation in the Code that would require us to amend our ranking algorithms to artificially inflate the ranking of paywalled articles, which would have the effect of corresponding demotions for more accessible and affordable sites which users (especially low-income users) may prefer.

40. Should the bargaining code contain any mechanisms requiring each of Google's and Facebook's ranking and display algorithms not to penalise the use of news

⁶⁸ Google, "Subscription and paywalled content," available at:

<https://developers.google.com/search/docs/data-types/paywalled-content>.

⁶⁹ See Google Webmaster Central Blog, "Enabling more high quality content for users," available at:

<https://webmasters.googleblog.com/2017/10/enabling-more-high-quality-content.html>; See also

Google, Richard Gringas, "Driving the future of digital subscriptions," October 2, 2019, available at:

<https://www.blog.google/outreach-initiatives/google-news-initiative/driving-future-digital-subscriptions/>, which describes our Flexible Sampling Policy.

media business models that incorporate paywalls and subscription fees?

Our algorithms do not penalise paywalled news content, and we have no incentive to do so. To the contrary, we take special measures to support the use of paywalls by NMBs. There is simply no ground for introducing a bargaining code mechanism restricting this behaviour.

We also support NMBs that have subscription models through products such as *Subscribe with Google*. *Subscribe with Google* enables users to purchase subscriptions from their publication of choice using their Google account, and passes on 95% of the revenue to the publisher for web transactions, and 85% of the revenue for app transactions. As well as helping with subscription sales, *Subscribe with Google* reduces subscriber churn and increases reader engagement by maintaining a subscriber's logged-in state across devices and surfaces, which helps publishers with retention.

41. How might any relevant mechanisms in the bargaining code ensure treatment of paywalled news content is fair, without interfering with the general operation of ranking algorithms or unreasonably limiting consumers' access to free news?

The only mechanism that ensures fair treatment of paywalled news content, without interfering with the general operation of Google's Search ranking algorithms or unreasonably limiting consumers' access to free news, is a mechanism which reflects our current practices.

H. Display and presentation of news on digital platforms

Google's position: NMBs already have significant control over the presentation of their content on our platforms, including the ability to control snippet length and logos. Our services are carefully calibrated to optimise user experience. We object to the government mandating the display or presentation of news on our platforms, which would limit our ability to continue to adapt to users' evolving needs and set a dangerous precedent for government control of information distribution.

Our overriding interest is to help our users find what they are looking for from the wealth of information available on the Internet, including news content. How we provide preview displays of content, including news, is an extension of this. As the ACCC acknowledges in the Concepts Paper, we have a "legitimate interest in carefully calibrating the look and feel of content displayed on [our] services, in order to preserve the usability of [our] services for consumers" (p.24).

Preview display of content, including news, on our platforms, is determined by policies and practices with users at the front of mind. We do not accept that these policies have the effect of diminishing the value of NMBs' brands and associated content, or reducing traffic to news websites that can generate advertising or subscription revenue. We believe that our Search results formats increase traffic to publishers. This is borne out by experiments, including those showing that the removal of snippets results in declines in traffic, as well as

publisher behaviour.⁷⁰ Publishers have the ability to remove or limit preview content, but very few choose to do so.

Users of Google Search and Google News do not consume NMBs' content directly on those platforms; to read a story a user must click through to the NMB's website, which NMBs can brand and present as they see fit. Google gives NMBs tools to optimise the presentation of links to and extracts of their content on Google Search and Google News, including the ability to control snippet length and logos (see our response to question 42 below for details).

We agree that practical difficulties may arise in addressing preview displays of news on our platforms through the Code. As the ACCC notes, the policies and practices affecting presentation and display differ considerably between different types of multimedia content carried on digital platforms, and between individual digital platform services, each of which is influenced by different design and functionality considerations.

We also agree that any prescriptive and static requirements incorporated into the Code (e.g., to allow masthead branding of particular minimum dimensions) would be liable to become outdated as multimedia formats and platform services evolve over time.

In this context, we do not consider it appropriate to address the preview displays of news on our platforms through a bargaining code.

42. What level of control do news media businesses have over how news is displayed on the services provided by each of Google and Facebook?

Publishers can use structured data to influence how Google Search displays preview content about a page. Structured data is a standardised format for providing information about a page and classifying the page content; for example, a news article with the appropriate markup will receive enhanced features on search such as eligibility for in the Top Stories carousel and rich result features such as sitelinks and larger thumbnail images.

Publishers have significant control over their snippets on Search, including preventing all or certain parts of a webpage's content from being shown in a snippet. Publishers can also specify the maximum text length of a snippet for a page.⁷¹

Publishers can also curate their appearance in Google News using Publisher Center. For example major Australian Mastheads such as The Australian, news.com.au, Sydney Morning Herald and 7news.com.au all use Publisher Center to manage their presence in Google News to, for instance, upload high resolution logos and create content sections that are then displayed in Google News.⁷²

43. What restrictions on the display and presentation of news content on digital platforms do you consider necessary, and why?

⁷⁰ For details about these experiments, see blog post by Kent Walker, SVP, Global Affairs, "Now is the time to fix the EU copyright directive," February 7, 2019, available at:

<https://www.blog.google/around-the-globe/google-europe/now-time-fix-eu-copyright-directive/>.

⁷¹ Google Webmaster Central Blog, "More options to help websites preview their content on Google Search," September 24, 2019, available at:

<https://webmasters.googleblog.com/2019/09/more-controls-on-search.html>.

⁷² Google, Publisher Center Help, "Submit your content," available at:

https://support.google.com/news/publisher-center/answer/9606539?hl=en&ref_topic=9545396.

It is not appropriate for this issue to be dealt with in the Code, for reasons outlined above.

44. Which specific digital platform policies and practices affecting the display of news have a negative impact on the business models of news media businesses and/or their ability to monetise content?

N/A.

45. How might a bargaining code strike the appropriate balance between:

- **providing news media businesses sufficient control over presentation and display of news content**
- **providing consumers with easy access to news content, and**
- **protecting the user experience on digital platforms, including providing digital platforms with the flexibility to improve this user experience?**

It is not appropriate for this issue to be dealt with in the Code, for reasons outlined above.

46. Should a bargaining code include:

- **mechanisms requiring digital platforms to enter into good faith negotiations with individual news media businesses on the display and presentation of their news content, and/or**
- **mechanisms requiring digital platforms to provide news media businesses with advance notice of and/or consultation on changes to policies and practices affecting the display and presentation of news, and/or**
- **mechanisms setting out either principles-based or prescriptive requirements for digital platforms to grant news media businesses a greater degree of control over display and presentation of content than is granted to other content creators?**

It is not appropriate for this issue to be dealt with in the Code, for the reasons outlined above.

As the ACCC acknowledges in the Concepts Paper, we have a “legitimate interest in carefully calibrating the look and feel of content displayed on [our] services, in order to preserve the usability of [our] services for consumers” (p.24). Consistent with this interest, the preview displays of content on our platform is, and will continue to be, user-focussed. Any mechanisms in the Code that require prioritisation of the display and presentation needs of certain news publishers over those of users, would be an unwarranted interference with developers’ freedom to design and manage their own products.

Product design is an important dimension of competition. Regulatory interference in product design should be avoided because it “risks harming consumers”.⁷³

⁷³ This was acknowledged by the US FTC in *Statement of the Federal Trade Commission Regarding Google’s Search Practices, In the Matter of Google Inc.*, FTC File Number 111-0163, January 3, 2013, available at: https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commission-regarding-googles-search-practices/130103brillgooglesearchstmt.pdf.

I. Control over advertising directly associated with news

Google's position: Google News does not feature ads and Google Search does not have advertising associated with any one result. Our ads policies are designed to strike a careful balance between the interests of users, publishers, and advertisers. The subordination of the interests of users to that of NMBs is not warranted or legitimate.

Google's ads policies are designed to maintain and foster a healthy advertising ecosystem. They seek to ensure that users, advertisers, and publishers are protected from harm and get value from their relationship with Google. This requires a careful balance to be struck between the interests of users, publishers, and advertisers.

There is simply no reasonable basis to prioritise or favour NMBs' commercial interests in seeking additional flexibility around the use of sponsored content over the interests of users or other advertisers.

We also agree that prescriptive and static requirements incorporated into a code (for example, to allow minimum levels of flexibility around the inclusion of pre-roll, mid-roll, or post-roll advertising) would rapidly become outdated as multimedia formats and platforms services evolve over time.

47. What specific controls do news organisations currently have over the use of advertising directly associated with news on the services provided by each of Google and Facebook?

Google News does not display advertising. Google Search does not have advertising associated with any one result.

For completeness, NMBs who choose to publish their news content on YouTube are able to monetise that content through advertising, if they choose to do so, consistent with the terms of their agreement with YouTube and applicable policies. For the reasons outlined in section B, Google considers that it is not appropriate for YouTube to be captured by the Code.

48. Which restrictions on advertising directly associated with news content are necessary for each of Google and Facebook to impose, and why are these restrictions necessary?

It is not necessary or desirable to impose restrictions on Google's advertising policies specifically for news content.

Google News does not display advertising. Google Search does not have advertising associated with any one result.

As noted above in the response to Question 5, AMP and YouTube should not be covered by the Code. For completeness:

- AMP (which is not a Google product) aims to promote publisher monetisation by creating a good user experience. AMP seeks to integrate all ad-formats except those that result in poor user experience. AMP also integrates with many header bidding partners.⁷⁴
- YouTube does not have any restrictions or limitations specific to sponsored news content. YouTube has policies that apply to all paid promotion content on YouTube, including paid promotion news content.⁷⁵ There are also limitations and restrictions on the types and numbers of ads / ads formats that apply to all content (not just news) on YouTube. These limitations and restrictions seek to ensure a positive and consistent user experience.

Google has advertising policies that apply to all promotions on the Google Network: https://support.google.com/adspolicy/answer/6008942?visit_id=637256570818565226-2598797482&rd=1.

These policies are designed to promote a good experience for users, to assist publishers to be successful with their ads, and to help ensure that ads follow applicable laws in the countries where they appear. Ads that violate these policies are not allowed to run.

We also regularly review changes in online trends and practices, industry norms and regulations and ensure that these are reflected in our policies.

49. Which restrictions on the use of advertising directly associated with news do news media businesses believe constrain their ability to monetise their content?

N/A.

50. How might a bargaining code strike the appropriate balance between:

- **supporting the ability of news media businesses to monetise news through advertising directly associated with news**
- **consumers being adequately informed about the nature of sponsored content, and**
- **preserving the user experience of consumers accessing news through digital platforms?**

It is not appropriate for this issue to be dealt with in the Code, for the reasons outlined above.

⁷⁴ For details on these partner integrations see Github, “AMP Real Time Config,” available at: <https://github.com/ampproject/amphtml/blob/master/extensions/amp-a4a/rtc-documentation.md>.

⁷⁵ See Google, YouTube Help, “Paid product placements and endorsements,” available at: <https://support.google.com/youtube/answer/154235>.

51. Should a bargaining code include:

- mechanisms requiring digital platforms to enter into good faith negotiations with individual news media businesses on the use of in-content advertising, and/or
- mechanisms requiring digital platforms to provide news media businesses with advance notice of and/or consultation on changes to policies and practices affecting in-content advertising technical standards for formats such as AMP or Instant Articles, and/or
- mechanisms setting out either principles-based or prescriptive requirements for digital platforms to grant news media businesses a greater degree of control over in-content advertising than is granted to other content creators?

It is not appropriate for this issue to be dealt with in the Code, for the reasons outlined above.

J. Facilitating open communication between digital platforms and Australian news media businesses

Google's position: We agree that there is benefit in facilitating better open communication between digital platforms and NMBs. Points of contact could provide an "escalation" service, where already existing publicly available information cannot solve the publisher's issue. The Code should not require Google to resolve all issues or include a time limit for the resolution of issues, since some will necessarily take longer to investigate. Specified timeframes may discourage thorough troubleshooting and solutions.

Google recognises that publishers, particularly small NMBs, may seek support with implementing technical and other changes recommended for Google Search and Google News. This is why Google already provides a variety of resources to ensure publishers, businesses and websites of all sizes and capability have support.

Beyond our existing support channels, Google is open to making available to Code participants contact channels for Google Search and Google News, which they can use in relation to issues arising in connection with the Code.

Google envisages that new contact channels could provide an "escalation" service, where already existing publicly available information cannot solve the publisher's problem. This could include issues such as requests for additional product information (e.g., clarification of details in help center articles), reporting of technical issues (e.g., Search or News product is offline/not working), and questions about new product announcements (e.g., launch plans for Australia).

The support channel should be required to respond substantively to issues raised by NMBs who have provided sufficient detail for the nature of the issue to be understood.⁷⁶ It should

⁷⁶ This is consistent with industry codes regulated by the ACMA, such as the Commercial Radio Code of Practice or the Commercial Television Industry Code of Practice.

not be required to resolve all publisher escalations to publisher satisfaction. For example, algorithmic changes may result in traffic changes for an NMB – a point of contact may be able to help the NMB better understand the change, but would not be able to “fix” the traffic escalation. Similarly, a point of contact may, upon investigation, confirm that a product is working as intended. In that case, the point of contact would inform the NMB of this, but that may not necessarily resolve the issue to the NMB’s satisfaction.

Any commitments will need to bear in mind the potential number of Code participants and the broad range of requests that Google might receive from Code participants.

52. How could the bargaining code best ensure a contact point at a digital platform provides timely responses to issues and concerns communicated by news media businesses?

Google is willing to provide a point of contact (noting this may be a team rather than an individual). The point of contact should primarily be an escalation point where publishers have been unable to troubleshoot issues themselves using public resources, and no existing support channels are available.

An escalation path through a contact point will operate most effectively if:

- The scope of requests made by NMBs to the point of contact is limited to the products and news content covered in the Code.
- NMBs provide data or examples to illustrate their requests, e.g., impacted URLs, screenshots of Search Console reports.
- NMBs themselves nominate a central point of contact, and cc their point of contact in requests for support so they can identify if the problem has come up before and been resolved in the past.
- NMBs acknowledge and respect Google’s policies that are designed to ensure no website receives access to information that may bias or influence the independence of Google’s products. These policies will mean that in some cases NMBs may be referred back to publicly available information.
- NMBs actively commit to understanding Google’s products, by reading reference material and attending on demand or scheduled training.

The Code should not require Google to commit to address issues within specific time frames. This is because of the broad scope of issues that may be raised. Some issues may take extended periods of time to diagnose (for example, a publisher may be unwilling to produce a news sitemap, which may inhibit our ability to index the site). In addition, as noted in the response to Question 51, it may not be possible for all issues to be resolved to the publisher’s satisfaction.

There is nothing to suggest that Google is habitually slow or inefficient in resolving problems with its platforms. Rather, the concerns identified by the ACCC, which are met by the above proposal, concern the ability of NMBs to communicate with Google. If the Code is to include time frames, they should therefore be limited to requiring Google to acknowledge receipt of the request within a reasonable time frame.

53. Would a point of contact outside of Australia be able to sufficiently address concerns of news media businesses in a timely manner?

Google is willing to provide a point of contact who will be available during Australian business hours to assist NMBs.

Google operates globally and has significant product expertise sitting outside of Australia. Products such as Google News have existing support channels staffed by teams located overseas. In some instances, teams outside Australia may be better placed to support NMBs.

There will also be times when the point of contact is unavailable due to leave or non-working days. In these cases, teams located overseas may cover requests.

Google notes that many essential businesses in Australia such as banks and telecommunications companies use global teams for support and many news media operations in Australia have global operating models. There is no reason to suggest that contacts outside of Australia will not be able to sufficiently address concerns of Australian NMBs in a timely manner.

54. Aside from availability and responsiveness of points of contact, what other obligations or guidance should the bargaining code include about ensuring open communication between both Google and Facebook and news media businesses?

Google proposes to share a list of relevant resources (help centre websites, articles, training resources etc.) with NMBs. We will update the list annually to ensure a central repository of information relevant to the Code is available.

Google also proposes to run at least two live training sessions during the first year of the Code, covering key publisher tools (Search Console and Publisher Center), best practices on data and analytics, and an open question and answer session. These sessions will be recorded and made available to NMBs who cannot attend. If the sessions are well attended, Google proposes to repeat the training sessions annually. Note this training would supplement existing on-demand training already available, such as Search Console Training, Introduction to Search, and existing Webmaster Office Hours.⁷⁷

Google is prepared to commit to obligations to share relevant resources and run training sessions, as described, in the Code.

55. What potential practical issues may arise from requiring contact points?

Where support channels already exist (e.g., the Google News Help form), adding an additional step of requesting support from a Google point of contact may actually slow down and unnecessarily complicate the support process. Google proposes that its point of contact should primarily be an escalation point where NMBs have been unable to troubleshoot issues themselves using Google's publicly available resources and no existing support channels are available.

Given the occasionally complex nature of the issues where NMBs are requesting assistance

⁷⁷ These videos are housed on Google Webmasters Youtube Page. See Youtube, "Google Webmasters," available at: https://www.youtube.com/channel/UCWf2ZINsCGDS89VBF_awNvA.

not all support inquiries will be able to be serviced within Australia or within a particular time frame. Google can commit to a timeframe to acknowledge the request but the time it takes to substantively respond will be highly dependent on the specific circumstances.

56. Are there any other means of communication that might usefully be included in the provisions of a bargaining code?

Google already utilises a number of forms of public communication across Help Centers, Help Forums, Blog Posts etc. Many of these are outlined in Google's response to Question 32. The core feature of these communication channels is that they are all public, which ensures that no single website owner receives information that would allow them to artificially improve their ranking in Search or Google News.

Google believes these resources are sufficient for NMBs and no additional resources are needed. As mentioned in response to Question 54 Google is willing to create a list of existing resources and share it with NMBs. If NMBs cannot address their issues with publicly available information, they could escalate to the point of contact outlined in Question 52.

If the ACCC / Government determines additional means of communication are required, any information on Google's products communicated through those channels that wasn't already publicly available would also need to be communicated publicly, so that Code participants do not achieve any artificial advantage over other website owners.

K. Dispute resolution and enforcement

Google's position: There is no case for the inclusion of pecuniary penalties in the Code because there is no reason to suspect the parties will not comply with the Code.

57. What would be the most appropriate and effective mechanisms for resolving disputes about, and enforcing, compliance with the bargaining code?

As a general proposition, Google favours a dispute resolution mechanism that would provide an opportunity for disputes to be resolved informally, efficiently, and cost effectively. The appropriate dispute resolution mechanism for the Code will depend on the types of commitments included in the Code.

For example, if the Code requires bilateral negotiation, the parties might be given six months to reach a negotiated outcome. If they cannot reach agreement, the parties should be required to conduct an executive escalation, and then a mediation, before expert determination or arbitration becomes necessary. Once an agreement is entered into, any contractual breaches would then be a matter for resolution between the parties.

58. What enforcement mechanisms should be included in the code? Should the code include pecuniary penalties?

We believe that the Code should not set pecuniary penalties, in line with the operation of similar codes in other sectors in Australia and the Commonwealth. It is generally understood that the primary objective of pecuniary penalties is deterrence, both general and

specific. This is not a case where a party has contravened the law, voluntary codes have failed, or participants have not adhered to code provisions in ways that would suggest a need for expanded deterrence. In this context, imposing a Code that is subject to pecuniary penalties would be disproportionate and unjustified.

In the event that the Code does specify penalties, only its core provisions should be subject to penalties.

L. Review of the bargaining code

Google's position: The Code should have an initial term with a fixed expiry. The Code should be subject to a comprehensive review within a reasonable time after its commencement.

59. Should the bargaining code include a compulsory review mechanism? If so, when and how often should this compulsory review occur?

The Code should have an initial term with a fixed expiry. The fast pace of technological change would make it inappropriate for the Code to be evergreen. A reasonable initial term would be three years after commencement.

The Code should be subject to a comprehensive review in the lead up to its expiry. The review should involve consultation with stakeholders, and address, without limitation, the extent to which the Code has achieved its purpose, whether the Code should continue to be mandatory, and whether the Code should be extended or amended.

The review should also assess the role, impact, and operation of the Code as a whole, and include consultation with key stakeholders including digital platforms, NMBs, industry representative bodies, government agencies, and consumer organisations.