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Australia's new law to include fines "large enough to matter"

Competition regulator introduces draft law with fines up to millions for tech companies failing to pay for content

The Australian Competition and Consumer Commission (ACCC) has released a draft code of conduct that introduces penalties of "up to hundreds of millions" for online media platforms that do not comply with new rules.

The ACCC published its final report on 31 July, three months after the government directed it to develop a mandatory code of conduct to address the 'bargaining power imbalance' between Australian news media businesses and digital platforms.

The country's competition regulator wrote in a statement: 'The draft code would allow news media businesses to bargain individually or collectively with Google and Facebook over payment for the inclusion of news on their services.'

The code also includes minimum standards for 'providing information about how and when Google and Facebook make available user data collected through users' interactions with news content'.

Google Australia has describted the code as a "heavy-handed intervention" that is deeply disappointing, and one that will impede Australia's digital economy.

Mel Silva, Google Australia and New Zealand Managing Director, said: "Our ➔

Morocco invests in media amid Covid challenges

Morocco's Minister of Culture, Youth and Sports, Othmane El Ferdaous, has announced plans to invest over USD5 million in media and arts industries to support growth amid challenges due to Covid-19.

Mr El Ferdaous announced the funding scheme on 30 June, with funds to be distributed across the publishing and book sectors, as well as visual and performing arts.

The government is also working with the Moroccan Cinematographic Centre to mitigate affects of the pandemic on the film segment, after operations ceased at 50 production houses.

As part of measures, the publishing and book sectors will receive financial support that is intended to reach authors, editors and other associated professionals.

Commenting on the initiative, Mr El Ferdaous said: "The sector support programme concerns the acquisition of books from libraries and publishers for distribution to school and public libraries, the publication and edition of cultural magazines, whether in paper or electronic version, as well as raising awareness of the importance of reading".

The government resorted to an emergency measures to provide a comprehensive package intended to secure the media industry after it reached a point of crisis following Covid-19.

Measures have been extended to include support for authors' rights. El Ferdaous explained that the Moroccan Copyright Office is working to support member authors and other creators through specific funds. ■

What's inside

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Qvest Media Group acquires digital agency, dimensional, expanding software solutions

Qvest Media Group has announced its acquisition of dimensional GmbH, a digital agency, as part of plans to expand its range of services in software development.

Qvest Media Group, which specialises in media and telecommunications, will acquire 100 per cent of shares in dimensional GmbH.

The company will continue to operate under its existing name, dimensional GmbH, and will retain all employees under terms of the agreement.

Peter Nöthen, CEO of Qvest Media Group, said: "Our corporate development has extended beyond the broadcast and media industry to any kind of digital environment and the sustainable implementation of digital transformation processes through individual software solutions."

The acquisition represents continued convergence in a rapidly diversifying global media market, with collaborations in media, television and technology.

André Schnitzler, Managing Director and co-founder of dimensional GmbH, commented: "The integration into the Qvest Media Group opens up great opportunities for us both geographically and in terms of clients and markets. It gives us access to an international network of branches, associated partners and sales organisations." ■

Turkey passes law extending control over social media

Turkey's parliament has passed a law regulating social that gives the authorities more control over content.

The ruling Justice and Development Party approved the law, which was also backed by the Nationalist Movement Party and came into force on 30 July.

Opposition parties have raised concerns that the new law will increase censorship.

The law requires social media platforms, such as Twitter and Facebook, to open offices in Turkey, appointing local representatives who would be responsible for responding to concerns about content. Representatives must be Turkish citizens.

Platforms will have 48 hours to remove content in question or could face fines of more than USD700,000.

Ahead of the bill being approved, a spokesperson for the UN High Commissioner for Human Rights said the law "would give the state powerful tools for asserting even more control over the media landscape."

In a statement, Tom Porteous, Deputy Program Director at Human Rights Watch, commented: "The new law will enable the government to control social media, to get content removed at will and to arbitrarily target individual users."

Presidential spokesman Ibrahim Kalin explained that the bill would allow the country to establish commercial and legal ties with international social media platforms, not lead to censorship. ■

Australia's new law to include fines

continued from page 1

← hope was that the code would be forward thinking and the process would create incentives for both publishers and digital platforms to negotiate and innovate for a better future - so we are deeply disappointed and concerned the draft Code does not achieve this."

According to the ACCC, 'The code seeks to address the fundamental bargaining power imbalance between Australian news media businesses and major digital platforms. This imbalance has resulted in news media businesses accepting less favourable terms for the inclusion of news on digital platform services than they would otherwise agree to.'

On the day the code was published, Treasurer Josh Frydenberg said it became apparent to the government that progress was not being made in negotiations between parties on payment for content.

Under the new rules, Google and Facebook would be forced into a third-party arbitration with media companies if they fail to reach an agreement with.

Mr Frydenberg also commented: "We want Google and Facebook to continue to provide these services to the Australia community... but we want it to be on our terms. We want it to be in accordance with our law and we want it to be fair." ■

Parties oppose Supreme Court review of media ownership rules

Chérie R. Kiser

Parties comment on "unremarkable application of administrative law" by courts

17 April 2020 marked a potential turning point in the years-long saga of Prometheus Radio Project v. FCC, as the US Solicitor General and the National Association of Broadcasters (NAB) urged the Supreme Court to address how the FCC may revise its quadrennial media ownership rules.

At issue is Prometheus IV, a 2019 Third Circuit decision that struck down media ownership rule changes in the FCC's 2017 Order on Reconsideration. The court found that the FCC failed to adequately consider the changes' effect "on ownership of broadcastmedia by women and racial minorities." Since April, numerous parties have weighed in on this contentious issue.

On 22 May 2020, the nonpartisan International Center for Law & Economics filed an amicus brief describing Prometheus IV as "improper interference" with the FCC's revision of rules that even the court believes are no longer needed" to achieve their original purpose of promoting competition, localism, and diversity of viewpoints." The promotion of minority and female ownership is not found in the FCC's enabling statutes, and outdated regulations have wrought an "extinction-level crisis" among local broadcasters and newspapers.

Two other amicus briefs amplify this last point. Gray Television described how Prometheus IV had impeded the "investment and expansion of local news production in small and mid-sized markets," and cautioned that station acquisition deals predating Prometheus IV might be unwound.

A group of station affiliate associations from the nation's four largest broadcast networks contended that media ownership limits have reached a "critical juncture." Absent reform, local stations cannot "remain viable in today's highly competitive video marketplace;" absent these stations, "there will be no opportunities forwomen or racial minorities to own, operate, or investin local broadcast businesses at all."

On 21 July 2020, Prometheus Radio Project and other advocacy groups filed a brief opposing Supreme Court review, emphasising the Third Circuit's "unremarkable application of administrative law." It contrasted the FCC's historic embrace of race and gender ownership diversity "as an important policy goal" with its alleged failure to reasonably consider how the rule changes would affect that goal – an inconsistency that wholly justified Prometheus IV.

Previous bids for certiorari in this proceeding, were predicated on questions of constitutional error or statutory interpretation; their absence here, coupled with the fact that the 2018 Quadrennial Review is already underway, renders this matter unworthy of Supreme Court review.

Breaking free from a "revolving-door review of its own making" would merely require the FCC "to provide a reasoned explanation about how its rules meet its own clearly stated goals."

The Solicitor General filed a Reply Brief on 06 August 2020. It emphasised what it called the 17 years of "thwarted" media ownership reforms at the hands of the Third Circuit. Supreme Court review, the filing stated, is needed to redress the resulting "damage" that outmoded regulations have caused to "the Nation's broadcast markets and the Commission's ability to respond to market developments." The status quo, it concluded, "leaves the agency with no apparent path forward," given the Third Circuit's directive that the FCC engage in "additional empirical analysis of ownership diversity, while preventing the regulatory changes that would allow the agency to study the new rules' effects."

NAB intends to file a reply in support of its petition for certiorari on 19 August 2020. The Supreme Court is expected to act by October; should certiorari be granted, oral argument would likely be early in 2021. ■

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