

Transcript



Title: Webinar: Regulating Facebook

Creator: Associate Professor Diana Bossio; Dr Belinda Barnet; Professor Terry Flew; Professor Tama Leaver; Dr James Meese

Year: 2021

Audio/video for this transcript available from: <http://commons.swinburne.edu.au>

DIANA BOSSIO

All right. Hi, everyone. I'm Diana Bossio. I am a researcher and academic here at Swinburne University in the Media and Comms Department. I am representing the Social Media Research Group today, and also the Social Innovation Research Institute, again, here at Swinburne. And happy to say that both groups are supporting this fantastic seminar about regulating Facebook today.

And before I start with proceedings, I'd just like to do an acknowledgment, and I'd like to acknowledge that I'm hosting this webinar from the lands of the Wurundjeri People of the Kulin Nation.

I also acknowledge the Traditional Custodians of the various lands on which you all work today and the Aboriginal and Torres Strait Islander people participating in this webinar. I pay my respects to elders past, present, and emerging, and celebrate the diversity of Aboriginal peoples and the ongoing cultures and connections to the lands and waters.

So thank you, everyone, for coming today, and for participating in this seminar about regulating Facebook. We only have an hour today, so I'm going to try and keep this introduction quite short. We have four brilliant speakers today who are going to talk about various aspects of regulation, not just of Facebook, but platforms more broadly.

And I think this is more than pertinent at the moment, particularly with what's been happening in Australia, both with the digital platforms inquiry and the recent stoush, I guess, between the federal government and Facebook in particular. So without further ado, I would like to introduce our first speaker.

Dr. Belinda Barnet is a senior lecturer in media and communication here at Swinburne University. I shouldn't say here, because we're everywhere right now on a webinar. She has research interests in digital cultures, social media, the app economy, data analytics, AI, data privacy, cyber stalking, and the history of digital media. And Dr. Barnet is going to discuss platform responses to the introduction of legislation in Australia. Thanks, Belinda?

BELINDA BARNET

OK. So this is going to be a bit of a history of what's happened over the last nine months to give context to our other brilliant speakers on the News Media Bargaining Code. So what's happened in Australia, perhaps what the rest of the world could learn, and what we could do next. So if we could go to the first slide.

So just to go back a little bit, when the ACCC announced its recommendations, which were as a result of the digital platforms inquiry, both Google and Facebook didn't like it. But what's interesting that Tama will address a bit further is that Google launched a PR campaign against-- or aimed at Australians, the likes of which we've really not seen before.

So they used their own platforms, their own very large platform in Australia to send a message to all Australians perhaps to get us to lobby the ACCC or to get us to lobby the government on their behalf. So it was really interesting. And Rod Sims, the ACCC chair called it a disinformation campaign. Now at that time, Facebook was really-- I don't know if anyone noticed, but conspicuously silent while Google was out in the fray like this, being really arguably hysterical about the code. So what I find interesting is that shortly before the code was passed, Google actually changed its tune quite considerably.

And we saw kind of-- we saw a flurry of deals coming out with news media outlets, quite lucrative deals. And we saw Google actually sitting down at the table with news media outlets and kind of negotiating fairly.

So what was this about face? Why did this about face happen? We can speculate it might be that Google got what it actually wanted. So I'll just talk about what the platforms wanted. I think that's the next slide.

So essentially, what the platforms wanted was for the code not to exist at all. But if the code did exist, and they were made to pay a fair price for news content, they wanted to not be subject to the code at all. So the technical term for that is 'not designated'.

So you have a piece of legislation which does not yet specifically apply to any one company or platform. And I think it's important we all acknowledge that at the moment is what both platforms have got. We've got a piece of legislation which is-- doesn't have a [pointy end?].

So the other thing they wanted is not to be designated, that they didn't want the code to pass as the ACCC had recommended it be formulated because it would set a global precedent. And we need to remember here that Australia is really small, not terribly important to either Google or Facebook in terms of their global market.

But because it's a democracy and a wealthy one, it would actually set a precedent if a code like this were to work, and to work for media outlets in this country, and for the media ecosystem, because it would say, well, regulation works. And making the platforms pay works. So larger markets like the United Kingdom or America might follow suit, and that would be much more costly for the platforms.

So the other thing that the platforms wanted was that if they were to be subject to the code, if they absolutely must be subject to it, they didn't want their main product to be what was included or what the code would apply to. So for Google Search, the product that people go there to use is the search function. So Google absolutely did not want content appearing as a result of searches to be subject to the code. So that if news articles came up, they didn't want to have to pay for it.

And so they'd already been through this argument with Spain and France. And they'd already created a whole new separate kind of quarantined product called Google News Showcase to be the product that these kinds of pieces of legislation could apply to. And importantly, this new product, new showcase, is quarantined from their main search results.

So it's kind of an insurance policy, as it were. If they lose the battle with a government, and they must pay for news content, then at least can we have that confined to the safety of a separate product? So it's the same with Facebook. They didn't want to have had their news feed subject to the code.

So they've created this separate product which has actually not been released in Australia yet called Facebook News, which is essentially a tab-- somewhere in Facebook, we don't know. And this separate product is what ultimately would be subject to the code.

So the interesting thing in terms of the history of it is that as the legislation was being debated in parliament-- so when important decisions were being made by politicians and lobby groups were in



the process of convincing them, Facebook actually pulled news. And that was quite shocking to Australians. It had ramifications that I'm sure my fellow panellists will talk through in more detail. The interesting thing about it as a tactic, though, is I think it actually worked. So both Facebook and Google-- we ended up with a legislation that didn't actually name them. So that's what we have at the moment. So if we go to the next slide.

So when the legislation was passed, the treasurer actually declined to name any of the platforms in the code, which is what both platforms wanted, a code that they weren't, strictly speaking, subject to. The interesting thing about it, though, is that the treasurer came out and said in a press conference immediately after the passage of the legislation, talking to the platforms, we want you to go out and make deals with news media outlets. And we want you to behave as though you're subject to the code.

He didn't actually say that in those words, but it was, we want you to make good, to negotiate in good faith with news media outlets including rural and regional outlets. So it was used as leverage, the fact that Frydenberg would at some point come back and revisit the legislation and possibly name either a platform or products in the code, is really all they've got in terms of making Facebook and Google go out and make deals with our media outlets.

So at the moment, right now, Facebook and Google, if they want to avoid being designated, are meant to be behaving as though they're subject to the code and negotiating in good faith with media outlets. And I understand Frydenberg is following this quite closely and making sure that the deals are good, which is interesting because we don't actually know what the totals-- what the value of many of these deals are. So we haven't got much of a way of following the progress of these deals. The sums are undisclosed. Can we get the PDF back?

UNKNOWN SPEAKER

Can you not see this, Belinda?

BELINDA BARNET

No.

SPEAKER

OK. Can the other people see this?



BELINDA BARNET

It's all right. I'll just pretend I can see it.

SPEAKER

OK.

BELINDA BARNET

So if we go to the next one-- OK. So the treasurer has a lot of power. For this reason, we need to also remember that this is all about impressing the treasurer. The platforms will currently be behaving in a way that impresses the treasurer, whatever that turns out to be.

So the platforms now are responding very differently. And that is quite interesting. So I was hoping we could have a discussion later about what we can do about this because the deals that Google have announced with media outlets have actually enriched our media industry and the ecosystem. So these funds are sorely needed now in particular, after COVID. And they can be used to employ journalists, and to kind of bolster newsrooms around the country. So potentially, this is quite beneficial for our media industry.

Now Facebook actually made what you might call the bare minimum of deals after the legislation was passed, that perhaps they perceived would impress Josh Frydenberg. So deals with the major media outlets-- News and Nine, and Seven West Media. But after that, by all reports, they seem to be freezing out rural and regional publishers and offering very low-ball deals to outlets, independent outlets and to rural and regional outlets.

This is the opposite of what Facebook has been doing. So-- sorry-- Google. So Google has been behaving as though it was subject to the code and negotiating quite fairly. So funding from Google has currently enriched over 55 media outlets around Australia. And that's not a small accomplishment.

It will impact the way the industry functions in Australia, and perhaps even the makeup of it. So some of these independent outlets like The Guardian, for example, have really benefited enormously in a game-changing way. So it could potentially strengthen independent and regional and rural outlets.

It would be nice if Facebook were doing that as well. But perhaps they're not-- we really need the outlets concerned to come out and explain to us how these negotiations are going rather than getting secondhand reports. If we could go to the next slide.

So I wanted us to have a discussion after everyone's presented about what we should do now. So we have a situation where-- to my mind, at least-- this code, or the presence of it, as a piece of legislation which may not be designated at the moment, but nonetheless it exists, has actually enriched the media industry.

So do we then designate Facebook because it's not negotiating fairly? Do we not designate any particular platform? What effect would that have if the legislation existed in potentia just undesignated? What would that mean for our media ecosystem and the way the platforms are behaving?

So these are just questions. I don't actually know the answer. I'm hoping we can discuss them today. And that's all I've got.

DIANA BOSSIO

Thank you very much, Bebe. All right. And that was Dr. Belinda Barnet. So coming up next is Professor Tama Leaver. And Professor Leaver is a professor of internet studies at Curtin University, in Perth, Western Australia. He's the vice president of the International Association of Internet Researchers, and he's the chief investigator of the ARC Centre of Excellence for the Digital Child-- that's a mouthful.

Professor Leaver's going to talk about broader relationships between platforms and government in Australia. Thank you, Tama.

TAMA LEAVER

Thanks, Diana. Thanks, Belinda, that did a great sort of scene setting, so I'll try and just pick the bits where I can sort of expand or, indeed, disagree a tiny bit, which is what makes these things interesting.

So one of the things I guess in talking about the PR campaign around this, is what perhaps we didn't all realise as this was going on is actually the PR campaign was probably more important than the



wording of the code. I think there was a lot of discussion about the exact nuance of the code, whether the definition of how linking, or displaying, or the way that news appeared on platforms was quite important.

There was a lot of debate about the mechanism of arbitration. So how much should news organisations be able to bring to the table? And what was the mechanism by which the disputes would be settled?

And one thing that has sort of disappeared from the conversation altogether, but was actually, to some extent, the most important and interesting thing was that the code was supposed to force these platforms to tell news companies when they were going to change their algorithm. So when the algorithm was going to display, or categorise, or rank news differently.

And I think in this whole sort of PR discussion, that's been greatly minimised. And of course, that doesn't currently exist as a mechanism because as Belinda, said no news organisation is currently designated. And looking at this in retrospect, it feels very much to me like that was kind of the point all the way along. That actually, the wording of the code was a sort of a big, blunt hammer, and really what the government wanted was to see deals in place prior to the code.

And I'll be honest, I'd be quite surprised if this government ever uses the code. And for me, the interesting point will be when we have a change of government, and we have this quite complicated tool sitting in the treasurer's desk. Is a treasurer going to pull it out and start whacking social media and digital media platforms with it or not?

Because when you do, and it starts being tested in court, I have no idea what the nuances of that code would actually look like. So I think that's-- that's why I think the PR battle is actually at least as important as the code itself. And as Belinda said, the Google and Facebook, which were the two initial targets of this code, went very different directions.

Google-- I don't think anyone in Australia who uses Google could have missed the fact that Google had a position on this since August last year. And there have been popups, there have been YouTube campaigns. And certainly in the last month, where Google did sort of do the whole, we might just withdraw search from Australia, would you like that? I think we did see an awful lot of discussion in the press and elsewhere about what a 'searchless' Australia might look like.

And we sort of saw Microsoft's sort of edge out of the cupboard and go, we've got a Bing? Would you like to use a Bing? Which was an interesting sort of turf war between Microsoft and Google, and



the fact that after this process ended, one of the heads at Google wrote a very snarky blog post about how Microsoft went against the principles of the free web by supporting the Australian government in this way. So there's lots going on there, which is really interesting.

It's also really interesting that Google-- sorry, not Google-- Facebook is explicitly supporting the idea of more regulation in their campaigns in America. So there's a lot of different messages being put out here. And I guess I wanted to try and link up what's happened in Australia with what's actually happening more broadly in Facebook, which I'll get to, hopefully in the-- how long have I got? I've still got six minutes-- awesome.

But the core claim that I think is really interesting was that Facebook-- far more so than Google, I think Facebook tried to claim that news wasn't valuable. The news didn't really do anything for Facebook users in Australia. That it was a tiny fraction of what people shared on Facebook, that it didn't really matter, that doing away with news for them was a trivial concern compared to, say, Google, which uses Google News and other things where it's more important.

And I think that was the big furphy in the room. I think Facebook has really doubled down on saying that-- they've continued to say that it's not valuable. And we have very contrasting sort of points of view, because there's been research in Australia that suggests about half of Australians get significant amounts of their news from Facebook, from Google, from social media platforms. So there is that disconnect, but it's also this idea that all content on Facebook is of the same value. And one of the things I think that that was discussed very briefly, but I don't think really got the airtime it should have is that news is more valuable because we can tell more about what people think from what news they share.

One of the things that Facebook needs to know is what we like, what our taste profile is, because that's essentially what it sells advertisers. And I would suggest that news does a better job of telling-- or building that profile because what we share in terms of news tells a lot about our politics, about our tastes.

And so when Facebook says news doesn't really matter, what they're actually trying to say is, it's a small amount of the traffic, but actually, it matters a great deal. But we don't really want to talk about that. Let's not.

And I think there was-- hang on. I just want to find a quote which I love. Facebook said-- in their wrap up said, "Approximately 5.1 billion free referrals to Australian publishers worth an estimated \$407 million to the news industry happened in 2019."

So they are very much positioning themselves as this philanthropic entity that shares on behalf of news producers in Australia, and just gives one more really good Avenue by which news can be shared. They are doing this out of the goodness of their platform. That is their position.

But at the same time, as I've said, I think news is actually much more valuable than they're willing to admit. And I also think the way that they fought the code really could have worked a lot better. Had they actually just banned news as opposed to what they banned, which was anything vaguely like news. And perhaps that was the point. Perhaps they were trying to make the point that the news was worded too broadly in the code, which was one of the positions that they took.

But at the same time, in a context where part of Australia was facing bushfires, part was dealing with COVID, and other things were happening, to ban news but include emergency services, include a lot of health information, and a whole lot of other things. They lost that PR battle when they pressed that button.

There is no way that they could have recovered from that. And they started doing the whole, oh, we didn't mean to ban everything. We'll roll that back in the next few days. But the PR story became, what did they ban? Why can't we get the emergency services information in Western Australia when a significant part is dealing with bushfires? Why can't we get COVID information when that was what Facebook was good for?

And I think, as a number of people including Belinda pointed out, it was also a space where misinformation suddenly was what was going to fill the void. You take credible news away, what's left? And I think in a context where-- I think it was the same week, Facebook agreed to a misinformation code where they said they would battle misinformation.

And yet at the same time, what their actions were doing was simply creating a fertile ground for that to expand in Australia. That really didn't help. And so, for me, Facebook really lost that PR battle the day that they initiated the news ban.

And as we know, they really didn't pre-empt it very well. There wasn't a lot of warning to Facebook users in Australia. We didn't really know that that was going to happen, as opposed to Google, which had warned us for months in very heavy-handed and perhaps patronising ways, but we knew it was going to happen-- or it was a threat.

And the fact that they didn't go through work out really well for them because they got incredibly good pats on the back from the treasurer, just as he were saying, "Facebook has unfriended

Australia. Google is wonderful." And that's very valuable in and of itself, but the last point I really want to make is how this fits into the broader idea of Facebook and embracing regulation globally. And I think Facebook has realised that rather than being responsible for all regulation of its platform, it wants someone else to have that problem. It very much wants the American government or even the Australian government to take the lion's share of working out what the rules are so it can point to those rules to go, we're beholden to them. It's not our fault anymore.

But they also want every other platform to have to invest the same amount of money to make those things work. And I think what Facebook is saying in its current campaigning-- there was a full-page ad in The New York Times on the weekend-- that basically said, we support regulation.

Here are the four things we do. We want everyone else to have to do that, too. It's really hard, costs a lot of money. And if everybody else was doing it, we'd have a much better internet. But also, it wouldn't be our problem.

And I think that's where, for me, that PR discussion has sort of ended. And it will be genuinely interesting to see if there was an Australian variation of that that emerges or not. But at the same time, I think Facebook has definitely lost face, effectively, through this battle.

But at the same time, it's the global positioning of news is now valuable. Facebook has admitted it will pay for news. And we've seen lots of other countries go, you know what? We'll have a piece of that, too. And I think that's where I'll stop. Thanks.

DIANA BOSSIO

Thanks so much, Tama. All right. So our third speaker is Terry Flew. Terry Flew is the professor of digital communication and culture at the University of Sydney. And my notes are gone. He's the author of 14 books, including Understanding Global Media, Politics, Media and Democracy in Australia, Media Economics, and Global Creative Industries.

His newest book, Regulating Platforms, will be out through Polity very, very soon, I think, in October. And Professor Flew is going to focus on the question of policy futures for digital platforms and the balance of state law, civil society actions, and corporate self-regulation-- just a few small things. Thanks, Terry.

TERRY FLEW

Thanks. Thanks very much, Diana. And thanks for everyone for making this event possible. I, too, would like to acknowledge the Gadigal people of the Eora Nation, where I currently present from,

and also the ongoing work and achievements of First Nations people here at the University of Sydney as academic students, administrators, and support staff.

I won't comment at length on the mandatory News Media and Digital Platforms Bargaining Code, except just to make a couple of points. First of all, what finally transpired was the outcome of an 18-month deliberative policy process led by the ACCC. So I think it's important that we don't just see this as a back-pocket deal that was generated out of nowhere.

It's also quite different to take a paper that Phil [INAUDIBLE] will have published shortly, the sort of symbolic policymaking or policy by threat, which characterised the Trump administration's approach to platforms. At the same time, the ACCC inquiry notably had only very limited civil society input, and Fiona Martin and I have published a paper looking at why that might be.

But I think it remains an interesting ongoing question. Personally, I disagree with the baddies versus baddies scenario, to take Tony Abbott's famous description of combatants in the conflict in Syria. This is the UK Daily Telegraph depicting it as baddies versus baddies. Sometimes that might be Mark Zuckerberg versus Rupert Murdoch instead of Scott Morrison.

I think the issues around the sustainability of commercial news production in the 21st century go well beyond News Corporation. And countries without a significant News Corporation presence, looking at the Australian legislation and possible similar arrangements-- France, Germany, and Canada coming to mind.

Also, I think progressives can support measures that involve greater digital platform regulation. I know note here Peter Lewis, the director of the Centre for Responsible Technology, with the Australia Institute. His statement to Chair Sarah Hanson-Young, to the Senate economics legislation committee, that this-- he wouldn't usually find himself backing in legislation from a conservative government with the support of News Limited, but argued that there is a bigger picture here. And there is a sense that our legislation passed in one space becomes then the condition for legislation passed in other spaces. So issues such as data and privacy, which the ACCC certainly flagged, should become ongoing issues. This is framed in what I'd describe as, following Jonathan Zittrain, as the three stages of internet governance.

That we've had the stage of the open internet, and perhaps the emblematic symbol of the open internet was Wikipedia. The blind spot of open internet discourse, in retrospect, was political economy. That the movement from web 2.0 to what's now been called the platformised internet is

clearly a characteristic of our times, that we have increasingly centralised top-down economic, political, and communications power.

The symbol of our current era-- well, one would be Cambridge Analytica. The other would be The Social Dilemma, where it turned out that Pete from Mad Men was in fact behind the whole show all along.

I think that one of the issues that will come up with this dilemma-- with this dilemma, if you like-- is a term I've used, *akrasia*, which is a great term that translates to a lack of self-control or the state of acting against one's better judgement. I can see we're going to go through a cycle here from the propaganda model to the active audience and back and forth.

So I think we're entering or have entered a third stage, which I'm calling that as the regulated internet, where increasingly, we're going to be talking about governance questions as we are today, which will raise issues around state capacities, policy options, and the balance between state regulation, civil society, and corporate self-regulation.

So those three eras, we now see one where nation states are increasingly seeking to develop laws to regulate digital platforms and tame the flows of internet content. And we can see with Mark Zuckerberg's 2018 appearance before the US Congress the start of what is now become an ongoing process.

And we note at that hearing Mark Zuckerberg himself said, the real question is what the right regulation should be, not whether there should be or not. In here, I am reminded-- and this is a shout-out to the Catholics in the audience-- Saint Augustine's statement, "Lord, make me chaste, but not yet."

I fear with these discussions, we sometimes get, yes, there should be regulation, but not that regulation. And I'd welcome some comment on whether we are going to continue to go through a cycle where the perfect is always going to get in the way of much more experimental approaches. A typology of reports on platform regulation and internet governance broadly points to those that focus on competition issues, such as the ACCC inquiry, or the 2020 US antitrust report. Those that focus on content issues, misinformation, fake news, online harms, et cetera, and those focusing on questions of data and rights.

Looking at this differently, Robert Gorwa's notion of a platform governance triangle, and some examples within that. I think what we see in this to correct the Gorwa framework slightly is that we see that-- what we might call intercapitalist competition is a factor here, that the category of the

firm, or the industry, I think clearly needs to be disaggregated around the quite different business models of platform industries and more traditional media and creative industries-- indeed, differences between the platform businesses themselves. So the current Apple positioning, vis-a-vis Facebook, I think is definitely one to watch in that regard.

And we're also seeing different policy scenarios emerging. And what we've seen in Australia is what we might call nation state regulation, high state involvement, low civil society involvement. Other models include third-party regulation. The biggest example of that being the Facebook Operating Board, debates around transnational rights-based approaches, and those that focus on stakeholder capitalism, diversity hiring, and so forth.

I think, for those to be sustainable over the long term-- and there is a lot of momentum around this, particularly in the United States. The early stages of the Biden administration indicate a preparedness to regulate big tech, which is quite different to the Clinton or Obama administration. So I think the sustainability of that over time will depend on the backing of nation-states.

I've been, in recent times, citing the late Tony Benn, the British MP and socialist-- used to go around Britain writing on white boards, blackboards, these five questions for power. And you can see the questions there. The one that I think is most interesting in this respect is the last one, how do we get rid of you?

And I think it points, to my mind, to some limitations in the civil society-centred model, or something like the Facebook Operating Board, that whatever the limitations of nation-states as regulatory agencies, at least in liberal democratic societies, we can get rid of them. We can change legislation through the political process. It's less clear to me that civil society or partnership-driven models have that capability.

And just some concluding observations on this, I'm picking up here on some recent work by the Canadian writer, Blayne Haggart, who makes this point that simply invoking civil society does not in itself address accountability and transparency issues.

A point from Fred Turner, the historian of internet culture, that one of the myths-- and I think it is still an issue we push up against, particularly if we try and counterpose the platformised internet to return to the open internet along the lines of Tim Berners-Lee's contract for the web, that we have come to this notion, or at least this notion has operated that the state itself is inherently bad, and tech companies can substitute for the state because they better understand the people through the

data that they gather on them through search engines and social media. Turner indicates that is something we have to wrestle with.

And finally, I cite Julie Cohen, who makes the point that one of the features of recent years has been what Steve Bannon referred to as the deconstruction of the administrative state. That is, to sow the seeds of doubt about the capacity of government to do anything.

And Cohen makes the point that while the picture of what a regulatory state for the information age would look like, there will be a great deal of experimentation around it. And that the kind of modelling that we're going to see is going to have its limitations, but it's only through the processes of such legislation being in existence that we're going to start to get to these models.

And my concern there is that we pre-empt these discussions by basically taking a nation-state bad, or perhaps, say, a populist anti-elitism around these things. So there are my remarks, and thanks very much.

DIANA BOSSIO

Thank you very much, Terry. OK, our last speaker today is Dr. James Meese. And Dr. Meese is a senior lecturer in media and communication at RMIT University. Dr. Meese researches media law and policy, and currently holds an early career research fellowship from the Australian Research Council to study the algorithmic distribution of news.

And he's going to talk about the limited scope, I guess, of news-oriented regulation like Australia's NMBC and going to talk a little bit about alternative regulatory interventions. Thanks, James.

JAMES MEESE

Thanks, Diana. And thanks to the panel for a really fascinating discussion so far. I'm looking forward to adding to it. Well, yeah. So what I want to talk to today is basically whether the crisis in journalism and platform regulation should be tied together.

Obviously, as we know from the other talks, the horse has already bolted. I also take Terry's point that the perfect is the enemy of the good. I think the public has a right to test regulation on private platforms. We're not always going to get it right the first time. But I think I want these remarks just to be a note of caution or perhaps just an alternative take on where we've ended up with the News Media Bargaining Code.

The core justification for the code is that Google and Facebook have significant market power in the market for news referral services to many businesses, that's which the ACCC claims probably exists. So this idea that platforms send traffic to news organisations, news websites. And the ACCC argues that-- and I quote, "A significant number of media businesses rely on news referral services," to such a degree that Google and Facebook are basically unavoidable trading partners.

This idea of platform dependency-- so the idea that news organisations are dependent on Google and Facebook, I think is somewhat undercooked, particularly in regards to Facebook. And I think there's a stronger argument for news organisations being dependent on Google.

The ACCC obviously has a lot of data available to it, and their arguments are detailed. I think the position is not unassailable. But there are other options or perhaps potential other avenues for other countries to explore.

So data from analytics company Parse.ly shows that social media, which includes Facebook, only accounts for 14% of referrals during last year. That's a trend that more or less continues throughout the year. Another example of that, New Zealand itself decided to just leave Facebook entirely, and are kind of doing OK.

We've also got some data that's yet to be released that's longitudinal data of the Australian-- major Australian news companies on Facebook. And we can see that news content is performing worse on Facebook generally, from the early 2010s up to now. So as a result, I think this narrative of dependency on referrals removes a lot of agency from obviously struggling, but still relatively well-resourced news outlets, and doesn't paint a truly accurate picture, at least in regards to Facebook.

Now conversely, I think news media companies are slightly more dependent on Google. They receive a lot more traffic from the search giant [INAUDIBLE] That's a trend evident in a range of data sets. I think as a result, considering that this panel is about regulating Facebook, I wonder when we think about the economics of news, or where we're looking to-- we kind of have to ask, to what extent is Facebook a problem when it comes to the media business, excluding things like misinformation, et cetera? It may well be that Google recognised this was one motivation for engaging in so many deal making opportunities.

There's also a risk and I think it's just worth raising that-- does payments from platforms actually challenge any dependencies which might exist? So to borrow the words of the director of the Tow

Centre for Digital Journalism, Emily Bell, the code does draw together tech companies and their journalism beneficiaries around a kind of obscure bargain.

I think there are kind of some strong arguments to be made for advocating for some more transparency, at least, around what these deals are and how they're being made. Tama's already pointed out I think the other core problem with the law as it stands, which is that there's a lot of really great stuff in there that's bundled up under this kind of bargaining premise.

And we've got this wonderful venture into algorithmic transparency, which gives news outlets some guidance or some information when Google or Facebook change their algorithm. But because there's been no designation, nothing's to come of that at the moment. But it could be a useful attempt to introduce some algorithmic transparency.

There's also an interesting non-discrimination provision that requires designated platforms to not choose between news outlets. So basically requiring Google and Facebook to give their focus on imports, and ensure that all forms of news have at least a chance to be read by online publics. So this is another useful reform that starts to treat platforms and their distribution mechanisms as kind of public-private infrastructures, like Google and Facebook don't get to set completely independently the rules of the road. But again until the treasurer designates Google or Facebook, none of these are enforced.

So in both of these cases, we might even think about, what else can we do? My main kind of point today is whether there's some sort of logic-- and obviously the horse has bolted in Australia, but in other countries-- of separating these discussions around platform regulation from the ongoing journalism process, which is a crisis that needs to be addressed.

We have a lot of really interesting regulatory interventions tied to a specific debate occurring between platforms and publishers, and obviously, the broader public are keen to receive the public good that is news. So an alternative approach would be to address a range of current concerns associated with platform dominance kind of separately.

So we'd attach some novel regulatory interventions from news. So for example, to take this algorithmic transparency argument, there's no real logical reason why algorithmic transparency is tied to news organisations alone. Obviously, there's a range of good reasons why we want to make sure that news is made visible to the wider public. There's a reason why news is included.

But a range of other important businesses are equally impacted by the vagaries of the algorithm, and public organisations as well. So this one regulation which is buried in the minimum standards of the News Media Bargaining Code could form part of a wider transparency effort.

The other element involves recognising that you don't need to directly regulate as a sustainable business model into existence. I think we can look at a number of alternative regulatory paths that could provide-- not for sustained benefits, but some small downstream benefits to journalism. I think it's important to recognise, as other people on the panel have, that the News Media Bargaining Code is just one part of a substantive and rigorous process that the ACCC has undergone.

They're doing a lot of ongoing work around advertising supply chains. Now obviously, to this day, despite the changes that have gone on, advertising is declining, but still important economic source of revenue for journalism. And there's a lot of murkiness around those supply chains, a lot a clipping of the ticket, up to 50% of revenue that goes through the supply chain online is unaccounted for. So work that does that and maybe gets more money that comes from advertisers to news is really important. And that's stuff that the ACCC is following through. Parallel work around privacy, which may well disrupt some of these business models that have set up around behavioural advertising, which has really been the fuel for revenue, particularly for social media platforms like Facebook, which are-- were still working out how to make money up to the early 2010s.

These might offer more fruitful regulatory pathways. So interventions in these areas which may disrupt platform economies more broadly, or even just provide more revenue through advertising, I suggest will have really significant downstream impacts in a new sector, which is kind of operating at one removed, or still struggling to engage with the modern data-driven advertising economy. It obviously goes without saying that further work around competition law and antitrust, working out exactly how much power these transnational companies should have will also help in this regard. This also opens more space for the direct funding of news. The public interest journalism initiative is doing great work here, reaching out the philanthropic community to assess what sources may be available. There's also more direct funding efforts through the Australian government, most notably the Public Interest News Gathering Programme for regional or remote outlets and the Regional and Small Publishers Innovation fund.

Many have already mentioned the difficulties of rural and regional outlets getting funded through the Bargaining Code, so we really have to work out-- it's kind of [INAUDIBLE] with time. Are we can actually use this code and get that funding to those outlets, particularly from Facebook? Or are we going to have to just sit down and say, well, this is actually a public expense that needs to be held publicly, despite the broader macroeconomic environment with COVID-19?

So I think as well, despite the best efforts of the News Media Bargaining Code, there's not going to be one silver bullet that will save news and introduce viable platform regulation all in one spot. I think it maybe tries to do so much. And I guess well raising the fact that perhaps more notably, the long-term role that Facebook plays in news distribution and referrals I think is at least open to question.

And that's not to ignore regulation, right? There are a lot of regulatory issues surrounding Facebook around algorithmic news distribution. There's risks around amplification of content, editorial decision making around algorithms, and misinformation. But again, with all of those issues, it's a reminder that many of these issues can sit outside of or work alongside a discussion about the long-term issues surrounding the future of journalism.

This is really more of a think piece. The code is here. It's not going to change. It's already in effect, as others have noted. Even without the designation, there's been acting as if the code is there and operating accordingly.

But I think even just as a kind of thought exercise, it's worth thinking about what we did-- it is an experiment-- and whether there are other avenues to take both in terms of funding journalism and in terms of regulating platforms. But I know we've probably got a lot of questions, so I'll leave it there.

DIANA BOSSIO

Thank you so much, James. And thank you to all the panellists for really fantastic and thought-provoking presentations. We have a little bit of time for questions. And before we go to the audience, there were two very keen as mustard people who present questions, so maybe we'll quickly answer those first.

The first one was for Terry from Tristan Williams. And it was a slight deviation, but basically asking about whether the Facebook kind of government-- and he called it a debacle, so we'll call it a debacle, too-- has hit their job choices or the positions being offered in kind of traditional or journalism, copywriting media-type jobs, I guess?

TERRY FLEW



Yeah, thanks. Thanks, Diana, and thanks, Tristan, for the question, and hope you're well. Insofar as I understood the question, to put it differently, it's the question of whether regulatory risk has led to a cut in investment. So an example of this would be, say, concerns about investing in renewable energy in Australia because of uncertainty about the future shape of government policy.

I would say that I have not heard evidence that regulatory risk has been a factor in investment in the sectors that we're talking about. I would say if we're thinking about 2020, by far, the biggest factor shaping industries and employment opportunities around the country was COVID.

If we're talking about jobs in journalism, well, 2020 is one thing, but let's look at the decade prior to then, where jobs in journalism fell by somewhere between 30% to 50% for the sort of reasons James alluded to in his presentation. And I think just to pick up on something James said there, the inquiry into ad tech is potentially more significant and potentially has wider implications than news. But if you-- Tristan, if you're thinking about a job, what I would note is that Facebook is definitely hiring a lot more people around policy and regulatory issues in Australia partly as a result of legislation like this. So that might be somewhere to look. Thanks.

DIANA BOSSIO

Thank you. And the second question was from Ryan and Carolyn. So talking basically about whether - or the question, I guess, is not the whole effort to regulate a public good the problem here? So many people now believe that these places-- Facebook, Twitter-- constitute the new public sphere, and this is an institution essential for democracy to function.

If the government really cares about journalism and the public good it serves, and not just protecting a couple of mates from free competition, would it make sense to argue that Facebook has to be made public based on the idea that political communication is a human right? There's [INAUDIBLE] in that question, and I'm happy for any of the panellists to start off answering.

JAMES MEESE

I can give it a bash. I'll just be really quickly, Facebook is a transnational company and a lot of public regulation focuses on nation-states. We also have a lot of transnational organisations, like the International Telecommunications Union, or even the United Nations, which end up becoming large bureaucracies. And a large bureaucracy may not be the most agile way to regulate or manage a large social platform.

I think what we are seeing, though, is like a range of other private organisations from the energy market to banks, government taking a stronger role in these private companies and their activities, as they should. So it may not be a question in my mind of making Facebook public, but ensuring government has a strong active role in managing platforms.

DIANA BOSSIO:

Did anyone else want to jump in?

TERRY FLEW

Only to just make the observation that the global nature of the platforms and largely national nature of regulations are things that are going to continue to bump up against one another.

DIANA BOSSIO

OK. I've noticed that the chat-- holy guacamole-- you are a lively bunch. I'm going to pick a few questions for the panellists to answer with the time that we've got left. The first one that I'm seeing is from Fiona Martin, and she's asking, to what extent is platform accountability to government and society a core concern?

Governments and civil society say they find it hard to get an audience with platform representatives and difficult to get verifiable data on key factors. These certainly came up with India's new intermediary guidelines. So did anyone want to take up that question around platform accountability?

TAMA LEAVER

I might jump in, just because I think this also ties to what's happening elsewhere in the world. I think the fact that we're seeing antitrust legislation being pushed through, especially in the US, really does get to this point that even the biggest governments don't really understand how these platforms work. They're terrified about the power that they have, and they'd like things to change, but they're not really sure how.

And every time they drag CEOs in front of Congress in the US, it's a terribly embarrassing exercise in most people asking questions clearly having no idea what they're talking about. But that being the

case then, I think we just see that fear enacted. We do see lots of attempts across the world to try and deal with that somehow, and this is one of those attempts.

But at the same time, it's hard to see what the future lies other than to say there are big questions and it depends who's in government as to how hard they'll push. And it depends a bit whether it gets wrapped up in other things. I think the stoush around TikTok ended up really being an argument about Trump versus China, rather than the platform, which was a shame because there were some really interesting questions in there. And so it's what other things intersect as well that sort of both pushes and sort of restrains these questions.

DIANA BOSSIO

Thank you. Does anyone else want to jump in before I move to the next? All right. OK. Let's move to the next.

The next is from Dylan, and I think Terry's already had a go at answering this, but asking in an age where digital platforms are increasingly criticised for what's seen as their monopoly status as well as surveillance capitalism practises that drive their business models, does not additional regulation just risk harming competition?

And I would add to that a question from someone else who wanted to ask about the kinds of implications for citizen and amateur journalism. So maybe we can sort of put those two things together, you know, crazy mishmash.

TERRY FLEW

And I'm happy to have a go at that. There's absolutely no question that there is a correlation between the concentration of ownership and control of the internet and the push for greater regulation. The two are dialectically related.

And one consequence of that is that it creates a tension within the regulatory field that is broadly the question about the relationship between competition policy issues and content policy issues. That if the aim is to demonopolize markets, then antitrust and competition policy are the way to go.

But the point there will be-- and I think we've had enough experience of Gab and Parler and so forth to suggest that creating many smaller platforms is not going to lead to a less toxic environment than having a few large ones. Indeed, it could well be the opposite.

At the same time, clearly the more we move in the direction of calling on platforms to regulate content, the more there is the risk of entrenching-- entrenching the dominance of incumbents because moderation will itself become a barrier to entry for new providers.

So there are real tensions in the current space. But there's absolutely no question that-- and ACCC goes through this at some length in the report-- that you are talking about Google because Google accounts for 90% of search. You're talking about Facebook because Facebook accounts for 70% of social. It is the rise of big tech that puts regulation on the agenda.

DIANA BOSSIO

Anyone else before I move on to probably the last question, actually? No? All right. So well, I think we have time for one more. And I just wanted to go to one that was right up the top here. And it was basically about-- ah, here we go-- will any of the companies that negotiated deals with Google or Facebook actually invest any money in new jobs or content production? What happens to smaller players after this-- now that this has gone through?

It was sort of a-- little a bit of a hash, but-- sorry. But if anyone wants to have a go?

TAMA LEAVER

The short answer is there's no guarantees at all. The only guarantee is there will be money flowing to the news companies. There is no rules about when that money then flows when it hits the company. Whether that goes into corporate profit or whether that actually gets invested in more journalism or not is entirely up to each of those companies. And I think that's one of the real shames about not having any stipulations about the way that that money flows, because it's unlikely the bulk of it will become more journalism.

TERRY FLEW

Yeah, in one of the stations, though-- and I think a number of us found ourselves on various media in the month in the month of February, which was very exciting. On one of the stations, this was what was the-- we can call it The Coonamble Times issue. Would the editor of The Coonamble Times see anything as a result of this?

And I think there's a negative answer. Which is to say that in the absence of this issue being on the agenda, you can be absolutely certain that the editor of The Coonamble Times would have

absolutely zero bargaining power with these companies. So it is the fact that it's on the agenda that creates the space.

At the same time-- and I'm aware that there have been discussions around similar legislation in other countries. Singapore is one that comes to mind. And they won't go down this path because one of the issues that the platforms raised, and I think it's an interesting one, is whether they should be allowed to invest in what they see as more innovative forms of content, rather than being, as they see it, obligated to prop up the status quo.

But an issue that's looming, and James alluded to it is that, alongside all of this, there are mechanisms emerging for growing public funding of journalism outside of the envelope of public service media. And aside from a number of the political issues that raises, it also raises an issue around, what actually is the value of news?

And I think Eric Beecher referred to this in one of the inquiries. What's a fair price for news, given that news is a very heterogeneous product itself? And I think that question will come up both in terms of whether measures along these lines are going to happen in other jurisdictions or in terms of any new forms of public [INAUDIBLE] of commercial media in light of what's happening in advertising markets.

DIANA BOSSIO

Thanks, Terry. Any other last comments before we let everyone go have their lunch? Bebe, did you want to say something about what you're noticing with journalism in particular, funding of journalism?

BELINDA BARNET

Just to say that I-- it's obviously not going to have any impact in saying this, but I would like to see the companies that are negotiating with Google and Facebook publicly declare what those deals are worth, because at the moment we're just guessing.

And I think it's in our interest to know how much money is being pledged to the media outlet, and further, whether or not the media outlets will use it on-- to employ more journalists and to create more newsrooms in local areas, for example.

DIANA BOSSIO



Thank you. Well, we've gone over time, of course. So I will say thank you very, very much to James, Tama, Belinda, and Terry for really fantastic presentations and very thoughtful answers to the 400,000 questions we've got in the chat.

And Thank you very much to everyone who asked a question, and participated in the chat, and came to this seminar. It's much appreciated. And also, thank you to Social Media Research Group and Social Innovation Research Institute for supporting this seminar Thanks, everyone.

[END OF TRANSCRIPT]