

Australia to investigate market impact of Google and Facebook



Competition regulator launches inquiry into the effect of US online giants on news, media and advertising businesses

Australia's competition regulator has announced it will investigate the impact of online giants Google and Facebook on the news media market, and to what extent traditional publishers are being disadvantaged by US internet companies.

The Australian Competition and Consumer Commission (ACCC) was formally directed on 04 December by the federal government to commence an inquiry, as part of wider media reforms amid concern for the future of journalism and the state of competition in media and advertising. The ACCC is expected to produce its final report in 18 months.

Rod Sims, chairman of the ACCC, said: "As the media sector evolves, there are growing concerns that digital platforms are affecting traditional media's ability to fund the development of content."

Commenting on the inquiry, a Facebook spokesperson said: "While news is only a small part of the content shared on our services, we take our role in the media ecosystem very seriously and invest significantly in products that support publishers."

She added that the company is looking forward to "a thorough inquiry into the Australian media market." →

Proposal for radical change to Scottish defamation law

The Scottish Law Commission (SLC) has proposed changes to defamation law to account for the growth of the internet and social media, following a three-year study.

The SLC published a draft bill for MSPs to consider after completing its study investigating legislation that has not been updated for more than two decades.

According to the SLC, the proposed reform to defamation law is the most substantial in Scottish legal history.

Among its 49 recommendations, the SLC states that it should no longer be possible to sue where a defamatory statement is made only to the person who is the subject of it and no one else. Where a statement has not caused serious harm to reputation there should be no right to sue. The SLC also suggested ending the current three-year timescale to bring a defamation action, which is considered to be too long.

Lord Pentland said: "Defamation law potentially affects everyone and getting it right is crucial for the type of society we want to live in. With the phenomenal growth in use of the internet and social media it is possible for everyone to communicate far more easily and more widely than was the case in the past. But faster and easier ways of communicating have thrown up new challenges for the law."

A government spokesman said: "The Scottish Government is grateful for the work by the Scottish Law Commission in examining defamation law. We welcome the publication of the report and will now carefully consider the recommendations made." ■

What's inside

- 1-2 MEDIA MARKET NEWS COVERAGE
- 3 NORWAY: CONTROVERSY OVER RIGHTS OF FREELANCERS UNDER NEW NORWEGIAN COPYRIGHT ACT
- 4-7 CHINA: RESTRICTIONS ON FOREIGN INVESTMENT

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LEXISMEDIA

Canada's Groupe Lexis Media acquires 12 newspapers from TC Media in a multi-year deal

Groupe Lexis Media has acquired 12 newspapers, and their related web services, from TC Media in a multi-year agreement that includes printing and distribution of all titles.

The deal also includes the transfer of 75 employees from various publications and 16 employees from TC Media's production team.

In April this year, TC Media announced plans to sell its regional newspapers in Quebec and Ontario. It says 60 per cent of publications that are part of the sale process now have new local owners.

"It is with enthusiasm that we hand over our 12 publications in Abitibi-Témiscamingue, Lanaudière and Outaouais to Groupe Lexis

Média," said Mr François Olivier, President and Chief Executive Officer of TC Media.

He added: "These newspapers are well rooted in their communities thanks to the talent and dedication of their employees over the years...I am confident they will continue to help these local publications thrive with the Groupe Lexis Média team and its President Frédéric Couture."

A French language publisher based in Quebec, Groupe Lexis Média publishes four magazines, 13 community newspapers and runs a consumer event. The latest acquisition is expected to strengthen the company's scale and reach within Quebec. ■

Australia to assess impact of Google and Facebook continued from page 1

← As part of the investigation the FCCC will have the power to demand information from businesses and hold hearings.

Mr Sims explained that the inquiry would also examine how Facebook and Google operated to "fully understand their influence in Australia".

He said: "We will examine whether platforms are exercising market power in commercial dealings to the detriment of

consumers, media content creators and advertisers."

The quality of news, following the rise of fake news, has also caused significant concern, as have years of declining profits and newsroom job cuts.

The ACCC will be responsible for identifying legislative breaches, assessing whether there is any misleading and deceptive conduct and making recommendations to the

US regulator loosens media ownership rules

The Federal Communications Commission (FCC) has announced plans to loosen media ownership restrictions in the US, a move that is expected to increase media market consolidation.

Voting on 16 November, the Republican-led FCC moved to eliminate a 42-year-old ban on cross-ownership of a newspaper and TV station in an individual market. The regulatory change will also make it easier for media companies to buy additional TV stations in the same market.

Although the new rules were passed in a 3-2 vote, they may be challenged in court. If implemented, the changes will be the most significant to media ownership regulation in a generation.

The cross-ownership ban was intended to protect market diversity but has since been criticised for being outdated given the rise of the internet and social media.

In a report issued on 16 November, Fitch Ratings analysts commented that the regulatory update could lead to deals in the market, including spin-offs and swaps that would allow TV stations to boost their presence in particular markets.

The report highlights content as a 'valuable asset' for TV broadcasters, adding that the new rules 'could spur more local TV broadcasters to acquire newspapers in the same market given the value of the local news content from the newspapers and potential cost synergies associated with that type of consolidation'. ■

government. The ACCC will also look closely at the effect of technological change.

Independent media analyst Peter Cox said it is unclear what measures can be recommended to the government, even if ACCC findings show that the country's media sector is increasingly anti-competitive.

Mr Cox commented: "You could see this as a stepping stone towards another type of reform, such as tax." ■

Norway: Controversy over new Copyright Act By Øystein Flagstad, Grette

Contention over freelancer rights amid changes to Copyright Act

Øystein Flagstad



Norwegian Ministry of Culture sparks conflict following draft bill on transfer of copyright

For a number of years, the Norwegian Ministry of Culture has been working on a new Norwegian copyright act. It is commonly agreed that the copyright legislation should strike a fair balance i.a. between the interests of the artists who create the copyright works and the production companies, broadcasters and distributors that exploit and distribute the works, however this balance is not always easy to find.

When the Ministry in April 2017 finally issued a draft new copyright act, freelance artists such as directors, film and television workers, screenwriters and musicians were outraged in a clause which had been added to the latest draft.

The draft clause sets out that the intellectual property rights in copyrighted works, created not only by employees but also by freelance workers, will be transferred to the production company in lieu of an explicit agreement to the contrary. The

controversy resulted in the parliament's decision to postpone the processing of the new act.

The background for the situation can be found in a dispute which went on for a number of years between the rights holder organisation Norwaco and the cable TV operators relating to retransmission rights.

The collection society Norwaco has exclusive representation of rights holders in retransmission of TV broadcasts, to the extent the retransmission rights have not been obtained under a direct agreement with the author. In relation to music copyrights in particular, where the public performance rights are managed exclusively by the collection society TONO and in the retransmission field by Norwaco, the argument was that none of the retransmission rights had been cleared, and that the cable TV operators therefore should pay remuneration to Norwaco.

The dispute ended in a 2016 ruling by the Norwegian Supreme Court.

The Supreme Court ruled that the distribution of certain commercial TV channels by the cable TV operator Get could not be considered as retransmission, but rather as an original broadcast for which Norwaco had no right to collect remuneration.

This was in part due to the fact that Get no longer obtained the TV signals from the original satellite broadcast, but rather through "direct injection" via a private internet connection from the TV broadcaster.

The Supreme Court ruling was followed by a recent judgment from the Court of Appeals from December 2017, where the court of appeals found that the distribution carried out by the TV distributor RiksTV was a separate communication to the public, meaning that RiksTV should have obtained consent from TONO, the collecting society representing composers and lyricists, and that RiksTV on the basis of this is liable for copyright breach.

The judgment is likely to be appealed to the Supreme Court, however the judgment has good support in the obiter dictum found in the Norwaco judgment from 2016.

For freelance film and TV workers and screenwriters, where there is no mandatory collective management in place, the vacuum created by the Norwaco situation still exists, resulting in a struggle regarding who should be entitled to the remuneration which is no longer paid by the cable distributors and distributed through Norwaco.

These rights holders are of the opinion that these rights should be managed collectively through the rights holder organisations, whereas the production companies, broadcasters and distributors are of the opinion that they should receive all of the distribution rights in return for their financing of the productions.

The proposed provision on automatic transfer of rights is viewed by the artists as a direct intervention in this dispute.

The Norwegian Parliament will conduct an open hearing in February 2018, where there will certainly be further discussions on this topic. ■

Restrictions on Foreign Investment in China



Jeanette Chan, Partner at Paul, Weiss, Rifkind, Wharton & Garrison, highlights restrictions on foreign investment in online video services in China

China's economy has been steadily growing over the past decade, particularly in the internet services sector. With a growing middle class and high internet usage, there is great demand for premium media content, especially through the web.

While there is a strong demand for content, it is still difficult for foreign media and VOD online service providers to provide their services in China because of Chinese laws regulating online audiovisual content services.

The provision of online audiovisual content services in China is regulated under two main regulations, namely the Administrative Provisions on Internet Audiovisual Program Services (the "2015 Provisions") and the Administrative Provisions on Private Network and Targeted Communication Audiovisual Program Services (the "2016 Provisions").

The provision of audiovisual content to the public through the internet (including audiovisual websites and client software) is generally

governed by the 2015 Provisions. The 2016 Provisions impose additional requirements for "private network and targeted communication audiovisual program services", which mainly covers internet protocol television (IPTV), private network mobile TV, and Internet TV.

Both regulations require the service provider to obtain a permit for Audiovisual Program Dissemination via Information Networks ("IPTV Permit") and require that the service provider must be State-controlled.

Foreign investment in internet audiovisual program services is expressly prohibited by the 2016 Provisions and the 2017 version of the Catalog for the Guidance of Foreign Investment in Industries.

In addition to the above, to engage in any type of commercial online content services in China, the service provider must first obtain a value-added telecoms services ("VAT") permit covering internet information services from the Ministry of Industry and Information Technology.

If the content is deemed by the General Administration of Press and Publication, Radio, Film, and Television ("GAPPRFT") to be online publication, an Online Publishing Services Permit ("OPP") issued by GAPPRFT would be required.

Online publication is broadly defined to include any digitised work that embodies some form of editing, production or other type of publishing attributes and includes literature, works of art, games, animation, maps, audiovisual programs and other types of intellectual or thought provoking materials, etc.

If the content is deemed by the Ministry of Culture ("MOC") to be online cultural activities, an Online Culture Permit ("OCP") issued by MOC would be required. Neither an OPP or an OCP would be issued to a foreign-invested enterprise in China.

In light of the restrictions described above, a foreign service provider who wishes to enter the Chinese market will not be able to do so directly. It could cooperate with and license its content to a Chinese partner who has the relevant licenses to provide online audiovisual content services.

Alternatively, it could work with a licensed Chinese partner to set up a variable interest entity structure ("VIE Structure") to provide these services. A VIE Structure allows the foreign investor to exercise contractual control and to enjoy the economic benefits of the licensed domestic entity.

While VIE Structures are popular in the internet industry in China, there are governance and legal risks relating to the VIE Structures since the foreign investor does not have direct control over the domestic entity.

In addition, using VIE Structures in the delivery of online audiovisual content could be viewed by Chinese authorities as circumventing foreign investment prohibitions. Foreign investors must tread in this industry using such a structure with caution. ■

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The firm gains recognition for its work in reputation management and crisis communication matters. Further, our international professional and legal network allows us to assist clients in cross-border situations.

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