

ACMA DISCUSSION PAPER
ARTIFICIAL INTELLIGENCE IN COMMUNICATIONS AND MEDIA
SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

November 2019

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the ACMA's initial Discussion Paper on *Artificial Intelligence in Communications and Media* (**Discussion Paper**).

Radio's unique product and direct, personal engagement with every individual listener will always remain core to its business model. At present, this is maintained without great reliance on artificial intelligence (**AI**). However, more extensive use of AI in the future may provide the radio industry with further opportunities to strengthen its existing relationship with listeners.

This submission covers four key areas:

Use of AI by the commercial radio industry. There are limited current uses of AI within the commercial radio industry. Applications of AI may expand over the years but are not expected to replace the direct and personal relationship that radio has with each individual listener.

Use of AI by monopoly players. The subject matter of the Discussion Paper appears to overlap to some extent with the ACCC's Digital Platforms Inquiry, which is now being considered by the Federal Government. The ability of dominant players to exploit AI for their own disproportionate benefit, at the expense of other businesses, must be addressed in any analysis of AI technology.

Modernisation of local presence regulations. The increasing use of AI highlights the need to modernise regulation that restricts the use of new technologies in media. Most strikingly, regional commercial radio licensees are currently obliged to maintain local staffing and facilities for a period of 24 months following a 'trigger event'. This prevents regional radio stations from adopting labour saving technology such as AI. The existence of local presence regulation operates as a regulatory barrier to enabling AI innovation.

Spectrum management. The commercial radio industry does not consider spectrum sharing within the broadcasting services bands to be a viable proposition. The use of AI would not address CRA's concerns regarding dynamic spectrum access in the broadcasting services bands or any other type of spectrum sharing arrangement.

1. Use of AI by the commercial radio industry

CRA broadly agrees the 'layers' within the conceptual model set out at Figure 2 of the Discussion Paper.¹

Applications/content layer

AI enabled technologies providing automated content are not commonly used in commercial radio at present. The strength of radio is that it engages on a personal level with its listeners, rather than relying on automated decision making processes.

For example, music playlists are chosen carefully by experienced, specialist Music or Content Directors, who carefully analyse listener feedback - through direct contact, comments and focus groups - in order to choose music playlists. Consideration is also given to the over-arching branding of the station and program.

Spotify and similar services are not substitutable services for radio. Radio is dialogue based and connects people to their communities, provides localism, news and emergency services. Services like Spotify are replacing personally curated CD and MP3 libraries and are insular platforms, when people "want to get away from the world". Live radio offers a very different, socially inclusive and interactive experience.

There is scope for some AI driven personalised content to complement station generated content, particularly on voice activated platforms, but this is unlikely to take over human decision-making processes in the short to medium term.

Devices layer

CRA is working with global technology companies including Amazon Alexa to enable Australian radio to work effectively with voice technology on smart speakers.

CRA launched RadioApp skills for Amazon Alexa in October 2018, which effectively made RadioApp the default radio player in Australia for Alexa enabled devices. This allows listeners to ask Alexa to play stations on RadioApp using their voice.

The Infinite Dial study by Edison puts Australian household ownership of smart speakers at 13%, up from 5% a year earlier.² It is vital that the commercial radio industry continues to

¹ Page 9, Discussion Paper.

² Infinite Dial Australia, Edison Research, May 2019

work with these new technologies to support its broadcast content. CRA is continuing to work with other players, including Google and Apple, to ensure that Australian radio is easily discoverable on smart speakers.

Voice control lends itself perfectly to radio in cars and significantly minimises driver distraction. Voice assistants – whether they are Amazon Alexa, Google or others – can potentially provide accurate search results for all radio stations without the driver touching buttons or dials. CRA is working with several third parties on the testing and development of voice activation systems that can integrate broadcast and online technology to enhance radio in the car.

Transport layer

The commercial radio industry would have concerns regarding any ‘automated network management’ if such automation eroded in any way the commercial radio industry’s entitlement to exclusive use of its spectrum within the broadcasting services bands. This is discussed in further detail below.

Infrastructure layer

Commercial radio stations would be willing to increase its use of AI in identifying and addressing equipment failures, if more technologies become available.

For example, one of our member networks has a proprietary AI software that makes predictions about the likelihood of rain and can raise an alarm if heavy rainfall is expected. This enables the network to protect its equipment.

2. Use of AI by monopoly players

The dominance of huge, US based technology companies, such as Google, Amazon, Facebook and Apple, make the increasing use of AI by dominant market players potentially problematic.

The ability of dominant players to exploit AI for their own disproportionate benefit, at the expense of other businesses, must be addressed in any analysis of AI technology regulation.

The ACCC concluded in its Digital Platforms Inquiry that Google and Facebook both have substantial market power in a number of markets and ‘*this power is unlikely to erode in the short to medium term*’.³ Such companies are able to invest in, develop and implement AI in a way that provides them with disproportionate benefit and threatens to erode quality news gathering and reporting.

These issues have recently been considered by the ACCC in its Digital Platforms Inquiry and are currently being considered by Federal Government.

³ Pages 8 and 9, ACCC Digital Platforms Inquiry Final Report (**ACCC Final Report**).

We suggest that the ACMA waits until the findings of the Federal Government's report before issuing a further consultation on AI regulation. Responses to a consultation on the regulation of AI are likely to be shaped by any new regulatory framework proposed by the Government to address the concerns raised by the ACCC in its Digital Platforms Inquiry.

CRA will not repeat the detailed contents of its submissions to the ACCC and Government on the Digital Platforms Inquiry issue but asks the ACMA to consider the following in its public facing AI consultation:

- The use made of AI by dominant market players, such as voice search, customised content and algorithms. In particular, the way in which such technologies favour large players through scalability models, investment in research, discrimination in favour of related companies at the expense of Australian media, and development and distortion of the market.
- The absence of a harmonised regulatory framework applicable to online platforms and other media players, such as commercial radio. The ACCC recommended that '*a new platform-neutral regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms*'.⁴
- The commercial radio industry broadly supports the ACCC's recommendation for a platform neutral regulatory framework. Content created by AI must be subject to the same rules as that created by human beings. Any obligations to create fair, accurate, local, non-discriminatory and non-offensive content must apply equally to publishers, whether that content is published by an online platform using AI or by a radio broadcaster using journalists.
- The ACCC recommended that a mandatory industry code be implemented to govern the take-down processes of digital platforms operating in Australia.⁵ It is vital that any such regime is capable of covering content gathered by AI technologies.

3. Modernisation of local presence regulations

The increasing use of AI highlights the need to modernise regulation that restricts the use of new technologies in commercial radio.

Most strikingly, regional commercial radio licensees are currently obliged to maintain local staffing and facilities for a period of 24 months following a 'trigger event'. This prevents regional radio stations from adopting labour saving technology such as AI.

⁴ACCC Final Report: Recommendation 6, page 199.

⁵ ACCC Final Report, Recommendation 8, page 274.

The existence of local presence regulation operates as a regulatory barrier to enabling AI innovation.

Local presence obligations for regional licensees are contained in the:

- *Broadcasting Services Act 1992 (BSA)*; and
- *Broadcasting Services (Regional Commercial Radio –Local Presence) Licence Condition 2014 (Local Presence Licence Condition)*.

A trigger event is, broadly, a change in control of the licensee or registrable media group.⁶

The Local Presence Licence Condition provides that regional commercial radio licensees must maintain local staffing levels and facilities for a period of 24 months starting from the date of the trigger event.⁷

Specifically, there must be:

- (a) no material reduction in the average monthly staffing levels in the licence area for a two year period; and
- (b) no material reduction in the number of average monthly broadcast hours produced during the two year period, using studios and other production facilities in the licence area.⁸

These regulations clearly constrain the ability of the industry to operate its businesses in an efficient and profitable way, including by adopting new AI based technologies. This contrasts with the absence of technological restraint on other platforms.

The local presence requirements effectively freeze a regional commercial radio station in time and deny it the rights enjoyed by other enterprises – including the right to use AI technology to increase efficiencies in the business as it sees fit. For instance:

- (a) a requirement to maintain the number of studios and production facilities, by reference to a particular point in time, ignores the rapid advance of new technologies. Business processes must be able to change to take advantage of technological developments, including the application of AI;
- (b) the freezing of staff levels at a minimum number is commercially unjustifiable. Regional commercial radio licensees must be allowed to implement changes aimed at improving productivity. This may involve changes to staffing levels, particularly in bad economic climates, or when technological improvements, such as the

⁶ Section 43B of the BSA and the Local Presence Licence Condition.

⁷ Sections 6 and 7, Local Presence Licence Condition.

⁸ Section 9, Local Presence Licence Condition.

implementation of AI based technologies, permit a reduction in labour costs.

The local presence requirements operate to devalue existing regional commercial radio businesses.

Potential purchasers of regional radio businesses must take account of the fact that the Government has limited their adoption of new technologies by dictating how many production facilities and how many staff must be utilised in the business for a two year period, irrespective of whether this number is efficient or effective.

This has the potential to damage the long term future of regional commercial radio, particularly if labour saving technologies, such as AI, become more widely used in the commercial radio and wider media industry.

4. Spectrum management

The commercial radio industry understands the need for efficient use of spectrum and appreciates that there is potential for AI technologies to facilitate the sharing of some frequency bands.

Nevertheless, it is vital that the broadcasting service bands are not subject to any spectrum sharing arrangement.

Commercial radio is a vital part of the Australian media landscape, offering local, interactive and informative content. Of the 260 commercial radio stations in Australia, 218 are based in and serve regional and remote areas.

Commercial radio stations operate in 104 different licence areas, which are planned by the ACMA. The local content provided by regional commercial radio stations is local to each station's particular licence area. For example, a regional commercial radio station in an agricultural area might provide information on local wheat prices. No other media platform provides local content and news at such a granular level.

Local regional stations have minimum local content obligations of 3 hours per day during peak listening times. Commercial radio's focus on local issues within relatively small licence areas is unique within the media industry.

Metropolitan, regional and rural commercial radio stations contribute significantly to the Australian economy, by providing employment to around 5,000 people and support for local businesses. The availability of an affordable advertising platform, which penetrates deep into the local community, is vital for local business.

Commercial radio broadcasters require a high degree of certainty and reliability regarding their broadcast transmissions. The spectrum in the AM, FM and DAB+ bands is already congested and there would be insurmountable technical difficulties in attempting to share spectrum in the broadcasting service bands.

CRA's strongly held view is that AI should not be considered as a means of enabling spectrum sharing in the broadcasting service bands.

Accordingly, CRA urges the ACMA to make clear in its public facing paper that the use of Dynamic Spectrum Access will not be considered in relation to spectrum within the broadcasting services bands.

Please contact Joan Warner, on 02 9281 6577, for clarification on any aspect of this submission.

Commercial Radio Australia

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