Artificial intelligence in communications and media

Submission to the Australian Communications and Media Authority

Draft Discussion Paper

December 2019

1   Summary

- Free TV thanks the ACMA for the opportunity to comment on the draft discussion paper on Artificial Intelligence (AI) in communications and the media.

- Consistent with the request from the ACMA, comments in this submission are on the coverage of the discussion paper and the questions raised, rather than seeking to answer the consultation questions at this point. Free TV looks forward to submitting to the final discussion paper in 2020.

- We consider that this discussion paper is timely and that the matters raised within it are broadly correct for the issues currently facing the use of AI in the communications and media sectors.

- However, given the recent work of other areas of Government, Free TV suggests that the paper should be adjusted to focus on the future regulatory roles that the ACMA will likely be responsible for undertaking.

- In our view, the key application of AI that should be the focus of the discussion paper is the use of AI in curating and surfacing news and journalistic content.

- As currently drafted, key issues such as the use of AI to curate and filter information for consumers and the risks posed unless the AI employed adheres to an ethical framework, are only briefly discussed.

- Specifically, we suggest that the discussion paper explore in greater detail the expected role for the ACMA in applying the Government's ethical framework and tools it would need to ensure compliance with this framework.

- In this submission, we highlight how the ethical framework could be applied in relation to the communications and media sectors and provide more detail on our suggested areas of focus.

2　Introduction

The ACMA is familiar with commercial television free-to-air broadcasters, the Commercial Television Industry Code of Practice and the compliance and enforcement framework that applies to our sector.

Amongst other matters, the Code requires that commercial free-to-air broadcasters present factual information accurately and ensures that viewpoints included in new and current affairs programming are not misrepresented. Our Code also requires that news programs be presented fairly and impartially.

In practice this is achieved by news and current affairs directors across the country exercising judgement and making editorial decisions every day about the content that is broadcast to Australians. Human judgement is crucial to ensuring that the community standards that are enshrined in the Code are upheld.

This is a world that is well understood, with mature frameworks that ensure high levels of compliance and the achievement of the Government's social and cultural objectives. However, increasingly consumers are supplementing their news viewing by consuming information from platforms where the editorial decisions described above are made by AI.

This is why this discussion paper will be timely.

In our view it is critical for our democracy that the AI ethical framework that the Government has adopted be applied to the surfacing of content through the digital platforms and content aggregators such as Google Search, Google News, Facebook Newsfeed and Apple News.

This discussion paper should form the basis for a meaningful consideration of the regulatory framework and tools needed to apply the Government's AI ethical principles. In many instances, these issues have already been covered in the draft discussion paper. However, we recommend that these applications be specifically referenced and become the focus of the paper.

3　Applications of AI in the communications and media sector

The draft discussion paper describes the communications stack in four layers: applications/ content, devices, transports and infrastructure. Our focus, as is the case with much of the discussion paper, is on the applications and content layer.

As set out in the introduction, we consider that the most material application of AI in the communications and media sector that is relevant to the future work of the ACMA are those that govern how Australians access information.

As currently drafted, the initial examples of AI applications in the communications sector are drawn from the well understood and compliant world of broadcast television. For example, when introducing applications/content layer on page 9, the paper notes that this layer includes "content delivered on subscription and free-to-air digital television or applications (such as Netflix or iView)." While figure 2 does note "personalised content", we consider that applications like Google search, Facebook newsfeed and other news aggregations services like Apple news, need to lead the discussion.

While the risks posed by AI being left to curate news content without reference to an ethical framework are briefly raised in the draft discussion paper on pages 16-17, this should be a particular focus. For example, we consider that the discussion paper should explore:

- What aspects of the Government's ethical framework should be applied to the communications and media sectors?

- How should they be applied?

- How would the regulatory toolkit need to evolve to ensure that the ACMA can ensure compliance with the ethical framework?

There are other uses of AI in the applications/content layer, for example the Netflix tool for classifying video content, in addition to the other examples noted in the draft discussion paper. However, we consider that the final discussion paper should focus on the areas of direct relevance to the ACMA's current or future regulatory roles.

4   The Government's ethical framework

The Government's final AI ethics framework contains eight key principles. The ethical design and use of AI section in the draft discussion paper appears to be based on either the draft version of these principles or a too narrow reading of the final version.

Below we set out the final eight principles, and how they are relevant to the applications that we have suggested should be the focus of the final discussion paper.

- **Human, social and environmental wellbeing**: Relevant as the applications noted relate directly to how society and individuals remain informed and ultimately relates directly to how voting intention is formed.

- **Human-centred values**: Relates to the potential risk of the creation of echo chambers and filter bubbles and to the need to ensure transparency around how AI is used to curate and filter information to enable individuals to have autonomy over the sources of their information.

- **Fairness**: Ranking and surfacing of content should be fair and non-discriminatory. Where content has been surfaced or ranked as a result of a commercial relationship with the platform, this should be clearly disclosed.

- **Privacy protection and security**: The data used by the AI to rank and surface content should be protected by compliance to all applicable Australian privacy law.

- **Reliability and safety**: AI used in the communications and media stack should perform in a consistent manner to enable regulatory oversight and to ensure compliance with these principles.

- **Transparency and explainability**: Regulators and individuals alike should be able to interrogate how and when and what data was used when AI is used in the ranking and surfacing of content.

- **Contestability**: Unilateral changes in the algorithms that determine the content served to individuals can have a significant impact on consumers and businesses. The future regulatory regime should ensure there is a process to allow these changes to be contested

- **Accountability**: This is key for the achievement of the above principles. Ultimately, regulators need to be able to test compliance and hold platforms to account for the performance of their AI.

In our view, the discussion paper should introduce the full suite of AI ethical principles adopted by the Government and seek stakeholder feedback on the key questions listed in the previous section.

As currently drafted, the discussion paper places too little emphasis on the regulatory frameworks that will be needed to ensure compliance with this framework. For example, when discussing transparency and explainable outcomes, the paper notes that the ACMA intends to "monitor developments within the communications and media sector in order to identify if there is a need for specific measures dealing with transparency within our remit."

In our view, the purpose of this discussion paper should be to explore these issues with stakeholders explicitly. Currently, the paper closes this issue with reference to a non-descript

process of monitoring future developments. This is particularly important given the potential new regulatory roles for the ACMA with regard to the findings of the ACCC in their digital platforms inquiry, as discussed in the next section.

5   The ACCC's digital platforms inquiry and role for the ACMA

The Australian Competition and Consumer Commission (ACCC) has recently completed an inquiry regarding the impact of the digital platforms (primarily Google and Facebook) on traditional media companies.

Over the course of their inquiry, the ACCC found that there is a lack of transparency in the operation of Google and Facebook's key algorithms, and the other factors influencing the display of results on Google's search engine results page, and the surfacing of content on Facebook's Newsfeed.

As noted in the ACCC final report:

> *"accessing news and journalism through digital platforms may increase consumers' risk of exposure to less reliable and lower quality news. This is because news and journalism accessed via digital platforms has been de-coupled from the news media business, often limiting a consumer's familiarity with and knowledge of the original source of the story."*[1]

This led to the ACCC's recommendation 14 that suggested that an "independent regulator, such as the ACMA, should be directed to monitor the voluntary initiatives of digital platforms to enable users to identify the reliability, trustworthiness and source of news content featured on their services."

Given that an understanding of how the AI drives the surfacing of content on the digital platforms is inextricably linked to this regulatory role, how the ACMA intends to undertake this function should be canvassed in this discussion paper.

The discussion paper that led to the finalisation of the Government's AI ethics framework contained a good discussion on how such a regulatory role could be undertaken, even in relation to the most complex applications of AI:

> *"Full transparency is sometimes impossible, or undesirable (consider privacy breaches). But there are always ways to achieve a degree of transparency. Take neural nets, for example: they are too complex to explain, and very few people would have the expertise to understand anyway. However, the input data can be explained, the outcomes from the system can be monitored, and the impacts of the system can be reviewed internally or externally. Consider the system, and design a suitable framework for keeping it transparent and accountable. This is necessary for ensuring the system is operating fairly, in line with Australian norms and values."*[2]

In our view, there is an opportunity for 'joined-up' policy making across Government by designing a compliance framework, drawing on the expertise residing within the Department of Industry, Innovation and Science and its research partners.

For example, Free TV advocates an output-based approach to algorithm regulation for surfacing news and search content. The mechanics of how a regulator could check compliance with output principles was included in the Artificial Intelligence: Australia's Ethics Framework discussion paper, including using specialised professionals or groups to review AI, or even using AI itself to check for outputs.

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[1] ACCC Digital Platforms Inquiry – Final Report, pg 21
[2] Artificial Intelligence: Australia's Ethics Framework (A Discussion Paper), page 11

6   Other uses of AI in media and communications

There are some use cases for AI in the media and communications sector competitive markets where failure to meet the core AI principles may cause competition (and ultimately economic) harm that is so significant that legislating these principles in AI market rules is justified.

Key examples of this are the services offered by digital platforms that employ AI to match advertisers with publishers programmatically through the "ad-tech" stack. In regard to these services, the ACCC found that:

> *"… there is a lack of transparency in the online advertising markets. In particular, it is unclear how Google and Facebook rank and display advertisements and the extent to which each platform self preferences their own platforms or businesses in which they have interests.*
>
> *A lack of transparency makes it difficult for advertisers to understand the factors that influence the display of their advertising to consumers and, in particular, to identify whether Google or Facebook are favouring their own business interests at the expense of rival advertisers and consumers. While the ACCC appreciates the significance of minimising the opportunity for businesses to 'game' the key algorithms, it is not clear that the appropriate balance has been struck between avoiding this risk and ensuring advertisers are appropriately informed of the outcomes.*[3]

Primarily these competition concerns are a matter for the ACCC. However, given that the ACMA has highlighted the use of AI by Seven West Media through its 7CAP product, for completeness we consider the discussion paper should also note the use of AI in the ad-tech stack.

The ACCC's recommendations 4 and 5 suggest that there be greater investigation, monitoring and enforcement of issues in markets in which digital platforms operate and an inquiry into the supply of ad tech services and advertising agencies.

The discussion paper could usefully support this recommendation and consider what role there may be for the ACMA in supporting the competition regulator's understanding of this use of AI in the media and communications sector.

7   Next steps

We thank the ACMA for the opportunity to comment on this draft discussion paper. We understand that the public version of this paper will be published in 2020.

Free TV looks forward to further engagement with the ACMA on this important issue and making a submission to the final paper.

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[3] Ibid, pg 12