

5 December 2019

Mr Richard Bullock

Executive Manager
Research, Data and Regulation Branch
Australian Communications and Media Authority

Submitted via email only: richard.bullock@acma.gov.au; regfutures@acma.gov.au

Dear Richard,

RE: *Artificial intelligence in communications and media* Discussion Paper

Communications Alliance welcomes the opportunity to provide this submission in response to the Australian Communications and Media Authority's (ACMA) targeted consultation on its Discussion Paper *Artificial intelligence in communications and media*.

We commend the ACMA for seeking early input from the communications and media sectors to help ensure that the regulatory framework in our industry remains fit-for-purpose, in light of the increasing proliferation of artificial intelligence (AI).

In the following, we make some general comments on the Discussion Paper, its context and the issues it raises, rather than responding to each of the Issues for Comment highlighted in the Paper.

Ethical considerations

As highlighted in the Discussion Paper, AI, its benefits and anticipated policy and legislative/regulatory challenges have been the subject of numerous debates and discussion papers – nationally and in many developed countries overseas. Ethical considerations have – understandably – received particular attention, with ethical principles for AI having recently been released by the Australian Government, for example.

At this stage, it appears that these ethical principles may, by nature of their very general applicability, also be able to guide some ethical considerations in the communications and media sector. However, we note that these principles (or any other ethical principles, for that matter) may require sector-specific guidelines to assist with the translation and interpretation of the principles in specific industry verticals.

It might also be useful to test the practical application of principles against sector-specific use-cases – e.g. for the use of expert systems for network operations or transport logistics optimisation – and subsequently derive the need for guidance on, or adaptation of, the principles. As currently released, the Government principles appear so broad that it might be difficult to derive a lot of practical guidance from them.

In this context, we also point to the trial that some large organisations (including in our sector) have agreed to run with the aim to ensure that the ethical principles deliver practical benefits and translate into 'real world' solutions. We suggest that the ACMA give time for this trial to run its course prior to taking any actions on the development of sector-specific guidance.

Importantly, much more rigorous analysis ought to be undertaken to understand to what extent existing legislation and regulation can apply to AI, including in communications and media, where such legislation would require adaptation to make them fit for an 'AI world',

and which areas may require entirely new regulation. For example, it appears likely that significant parts of the *Competition and Consumer Act 2010* (and the Australian Consumer Law contained therein), *the Privacy Act 1988*, the *Age Discrimination Act 2014* and the *Sex Discrimination Act 2004* may be able to be applied to AI-related scenarios, or at least may be able to be amended in order to cater for issues brought about by AI.

Specific regulation for the communications and media sector ought only to be developed where absolutely necessary, to avoid duplication and regulatory overload.

Against this background, it is also important not to view ethical considerations as a necessary 'additional layer over the top', because ethical considerations should already have found their way into any relevant existing pieces of legislation and associated policies. Instead, specific ethical principles for AI ought to be used to test whether existing regulation can satisfy the demands of those principles; and if not, to identify the regulatory 'gaps'. This, however, will only be possible if those principles are sufficiently specific.

Overall, we are not convinced that, at this stage, there is a need for the ACMA to address ethical considerations for AI in the communications and media sector, or even to conduct a separate consultation. We are also not aware of any evidence that there is bias evident in AI used by the sector.

Relationship with other processes

The Paper discusses the potential or actual effects of AI on the content and news market and notes the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry (DPI) as an important process in this context. It also notes eSafety issues and initiatives currently pursued through the Office of the eSafety Commissioner.

However, it is not clear how the ACMA's Discussion Paper (and planned subsequent public consultation) relates to these processes. In particular, it would be useful to understand what questions the Discussion Paper seeks to address with respect to AI and its consequences on the content and news market that are not already being addressed through the DPI and the recommendations to create specific codes in the areas of personalised online content, copyright, disinformation and privacy.

The Paper also indicates that the ACMA is currently undertaking research "into the news market and questions about the impact of digital platforms on the diversity of news available to Australians, including local news".¹ Without further explanation available at this point, it seems that this research ought to have been conducted by the ACCC in the course of the DPI (or indeed may already have been part of the DPI), rather than being undertaken by the ACMA in relation to its activities on AI.

Consequently, it appears that it might be more appropriate for the DPI to 'run its course' and, subsequently, to seek to identify any gaps in regulatory activity, if there are any.

Similarly, it would be useful to gain an understanding of how the ACMA's activities engage with the work of the eSafety Commissioner or the recommendations of the Australian Taskforce To Combat Terrorist And Extreme Violent Material Online to the extent those go to the use of AI to identify and remove such material on digital platforms.

The Paper also mentions the use of AI in the context of scams committed over telecommunications infrastructure. Again, it would assist to place these issues into the broader picture and existing work currently undertaken by the ACMA/Department of Communications and the Arts (DoCA) Scam Telecommunications Action Taskforce, of which Communications Alliance is a member.

¹ p.17, *Artificial intelligence in communications and media*, Discussion Paper, ACMA, Nov 2019

We suggest that the different research activities and AI-related work programs by various Government Departments (e.g. Department of Industry, Innovation and Science and DoCA), regulators (ACMA, ACCC, Office of the Australian Information Commissioner, other sector regulators) and other stakeholders, such as the Australian Human Rights Commission, be approached holistically and with a view to maximise coordination and cooperation at a very early stage to avoid duplication of efforts or, worse, inconsistent approaches to the development of policy and regulation in this space.

Regulatory Approach

We commend the ACMA for developing a conceptual model to describe the communications and media sector in a layered stack which, in principle, allows for a technology and platform neutral approach to AI regulation. The layers identified by the ACMA and their description appear reasonable and comprehensive.

We applaud the ACMA for identifying regulation that is focused on outcomes as playing a "valuable role" within the suite of regulatory tools. Indeed, we would go a step further and note that only outcomes-based regulation will be able to deliver a practical regulatory toolkit for industry and regulators alike.

The pace of technological change and the expertise required to develop rules around AI mean that self-regulation and co-regulation are far more likely to deliver flexibly adjustable rules that industry requires to successfully use AI technologies and to continue to innovate in this area.

Given the rapid evolution of technologies and the increasing convergence of areas such as privacy protections, consumer data rights, AI, cyber security, IoT etc. we believe that it would be wise to carefully analyse existing frameworks and regulations and how those might accommodate evolving new technologies, rather than defaulting to the creation of new (be they sector-specific or economy-wide) regulatory frameworks which might add unnecessary complexity and cost. Also, regulatory intervention ought to be contemplated only when there is a proven failure of markets to produce the desired outcome.

Consequently, it will be important for regulators to maintain their focus on outcomes-based self/co-regulation if/when the debate around AI becomes more politicised and 'quick action' may be sought to address a specific concern. Experience has shown that rigorous enforcement of existing regulation and legislation can be a more effective and efficient response than the development of prescriptive new regulation that is unable to keep pace with the rapidly evolving environment it operates in.

Spectrum Management

The ACMA's Paper addresses the effects of AI technologies on regulatory approaches to spectrum management. Indeed, we believe that the key focus of the ACMA's efforts at this stage ought to lie on the identification (and elimination) of regulatory barriers to AI adoption and innovation in communications and media, as well as consumer vulnerabilities, but only to the extent that those are specific to our sector.

With respect to approaches to spectrum sharing, such as dynamic spectrum access (DSA), we refer to the Communications Alliance Satellite Services Working Group (SSWG) recent [submission](#) to the ACMA's Information Paper *Spectrum sharing - Overview and new approaches*.

We look forward to further engaging with the ACMA and other relevant stakeholders over this important topic, including through the foreshadowed public consultation in 2020.

Please contact Christiane Gillespie-Jones (c.gillespiejones@commsalliance.com.au) if you have any questions or wish to discuss.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Stanton'.

John Stanton

**Chief Executive Officer
Communications Alliance**