



Digital Platform Services Inquiry – Final Report

Submission of the Media, Entertainment and Arts Alliance (MEAA)

The Media, Entertainment and Arts Alliance (MEAA) welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) Digital Platform Services Inquiry 2020-2025.

MEAA is the largest and most established union and industry advocate for workers in the media, entertainment and arts industries, with a history going back more than 110 years.

MEAA makes this submission in response to the Digital Platform Services Inquiry Final Report issues paper. In particular, this submission focusses on section *1.3.3 Potential competition issues in generative artificial intelligence*.

AI Ownership

The power imbalance between content creators and platforms like Meta, Google, Amazon and Spotify is increasingly unequal. As a result, these platforms are taking an increasingly large portion of the value created through the carriage of third-party content on their platforms. This is further eroding the already-tenuous financial position of publishers, artists, musicians, and creative workers in these industries.

MEAA is concerned that the emergence of Generative AI will further exacerbate this problem. Platforms are now foremost amongst the range of companies developing Large Language Models (LLMs). For example, Meta has developed a family of LLMs known as LLaMA, and Google has developed Gemini AI. Microsoft has taken a large stake in the for-profit side of Open AI.¹ Other platforms, including Amazon, are also investing heavily in AI.²

IoT Analytics research found that, of the Generative AI Foundational Models and Platforms market in 2023, OpenAI and Microsoft had a combined share of 69%, AWS had an 8% share and Google had a 7% share.³ That means that, collectively, just four companies controlled a staggering 84% of the market for LLMs and Platforms last year. These findings raise serious

concerns, not only about the level of market concentration developing in the Generative AI market – but also about the capture of this emerging market by already-established digital platforms, many of which already have outsized control over secondary markets (e.g. search, streaming, etc). As Meredith Whittaker, Amba Kak, and Sarah West wrote recently for the MIT Technology Review, “Without significant intervention...the AI market will only end up rewarding and entrenching [these] very same companies”.⁴

Overseas, the US Federal Trade Commission (FTC) has initiated several inquiries into multi-billion-dollar investments into AI by platform corporations including Microsoft, Google and Amazon.⁵ The FTC described the efforts as aiming to “shed light on whether investments and partnerships pursued by dominant companies risk distorting innovation and undermining fair competition”.⁶ In the UK also, regulators have begun investigating several of the same platforms for their AI acquisitions.⁷ Similar inquiries are being made in the EU.⁸ The MEAA urges the ACCC to similarly remain vigilant of potential anti-competitive behaviour arising as a result of platform investments in AI.

Exploitative Terms of Service

Platforms are using Terms of Service agreements to effectively work around any obligation to pay for the use of creators’ content to train AI. These terms effectively grant platforms the right to use creators’ content, including images and text, as a condition of use of that platform. This practice is problematic given the existing dependence of creators on platforms to promote their work and engage audiences. Opting out of such use therefore comes with enormous financial ramifications for creators, putting them in a lose-lose situation.

Take, for example, recent revelations that Meta is using data collected from Instagram and Facebook as far back as 2007 to train its AI.⁹ This data includes public posts and photos from creative sector workers. X (formerly Twitter) has also revised its terms of service to enable it to “use the information [they] collect...to help train [their] machine learning or artificial intelligence models”.¹⁰

The use of these kinds of clauses in terms and conditions constitutes a clear example of platforms using their market dominance to extract value from creators. In an otherwise competitive market – where commercial AI companies were not also monopolistic platforms

– creators would be able to leverage competition to take their business elsewhere.

However, given the stranglehold of the Generative AI industry by established platforms, this is simply not possible. As Chief Antitrust enforcer for the US Justice Department put it, “Absent competition to adequately compensate creators for their works, AI companies could exploit monopsony power on levels that we have never seen before, with devastating consequences”.¹¹

Indeed, while other jurisdictions – for example the EU – maintain the ability for users to opt-out of having their data used in such a way, there are currently no such protections in place in Australia.¹² This leaves creators with no choice but to leave the platform if they wish to maintain control over their work. Australian Illustrator Thomas Fitzpatrick, for example, has stated that his inability to opt out of Meta using his data means that he will “probably stop using Instagram”.¹³ However this decision will come at a hefty price. “For illustrators and creatives who are starting out”, he explains, “it’s going to take a lot of work away from them”.¹⁴ In short, creators are forced to face the significant financial repercussions of removing their work from online platforms or simply stand by as their work is used to train AI without compensation.

This is an equally significant problem for publishers in the news media industry. Google, for example, is using its significant market power to extract similar terms of service agreements from publishers, which allow them to use the publisher’s intellectual property in exchange for its services. Abroad, media organisations have raised concerns that the language of such terms are “sufficiently broad and unclear as to raise the question whether it gives Google the right to use the content...[for] artificial intelligence”.¹⁵ As a result, the US News Media Alliance is calling for the government to ensure that Google engages in “transparent and fair negotiations with news publishers regarding any uses of their content in....artificial intelligence”.¹⁶

Elsewhere, contracts between creators and platforms are increasingly including provisions that enable the use of content to train AI. Last year, it emerged that Spotify-acquired Findaway was found to be using its contract terms to licence Apple to use voice actors’ voices for the purposes of training its synthetic voice AI.¹⁷ In another example, Adobe has announced that any work uploaded to Adobe Stock marketplace can be used to train its Firefly AI product.¹⁸

It is crucial that the law is reformed in Australia to ensure that the exploitation of creative and cultural work is only possible with the informed consent and compensation of

producers. Key to this, governments must give users the power to opt-out of having their work used to train AI, legislate to force companies to compensate creative and media workers for the work that has been used to train AI, and enact rules around transparency forcing companies to publicly disclose what materials they've used to train AI.

It is crucial that competitiveness in the Generative AI sector is preserved so that creators of content – whether that be journalists, artists, musicians, and actors – are not subject to unfair monopsony conditions, and that any use of their content to train AI is properly compensated and subject to informed consent. To do otherwise will significantly undermine the incentives that underwrite creative and intellectual expression via film, journalism, writing, and other forms of cultural production.

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