

How Australia's competition regulator is supporting news, but not quality

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On August 15 2018, Australia's competition watchdog held an evening forum as part of its Digital Platforms Inquiry for journalists in Sydney. On stage were three of the statutory office-holders with the Australian Competition and Consumer Commission (ACCC): chair Rod Sims; deputy chair Delia Rickard; and commissioner Roger Featherston. Among other things, the evening's agenda was to ask, 'Is government intervention needed to support quality journalism in Australia? If so, what initiatives or measures could government (or others) consider to support the provision of quality journalism in Australia?' One attendee suggested a better-funded public broadcaster, while another suggested that the government ought to fund quality journalism directly (ACCC, 2018). However, the most telling exchange came when one senior journalist stood up to challenge the difficulty of defining quality. Is this, he asked, what the ACCC was aiming to do – to define quality journalism, and then to support it? In response, the ACCC was succinct and unequivocal. The Digital Platforms Inquiry (the Inquiry) would not be limiting itself to quality journalism. And so it has played out. Passed into law in February 2021, Australia's News Media Bargaining Code (the Code) seeks to force digital platforms to pay media businesses for news content, but the notion of 'quality' is almost entirely absent.

The importance of quality news is not in dispute. In economic terms, it is a 'merit good' with 'an inherent value for society that extends beyond what can be measured or expressed in market terms' (Doyle, 2013, 94). As the ACCC explained in 2020:

... intervention is necessary to address the bargaining power imbalance because of the public benefit provided by the production and dissemination of news and the importance of a strong independent media in a well-functioning democracy (ACCC, 2020a, 3).

In other words, the ACCC found that digital platforms make money from news content but the news providers do not receive a commensurate payment for the effort put into the production. Missing from this scheme is a method of quantifying the value of news to platforms, and to the public; neither is there a mechanism for calculating the value to publishers of referrals from platforms to their news sites. Instead, the Code proceeds on the understanding that Google and Facebook 'use' the news content of publishers and imposes a compulsory arbitration process to determine how much Google and Facebook must pay for this use of news content.

During development of the Code, Google and Facebook were deeply unhappy (Google, 2020; Facebook, 2020a). They waged a public relations war against it, with Google threatening to remove its search engine from Australia, and Facebook removing news from its platform at the eleventh hour (Leaver, 2021). The development of the legislation also raised the vexatious prospect of putting into black letter law exactly what it was the government was trying to protect. Nonetheless, by early 2022, the new law had resulted in a significant redistribution of revenue from platforms to publishers – even though the underlying uncertainty concerning the value of news remained.

In this chapter, we describe the Digital Platforms Inquiry, in which Australia’s competition regulator identified an unfair value exchange between news media businesses, on the one hand, and Google and Facebook on the other. We also describe the law and the Code that ensued. Despite sustained pressure from Google and Facebook, the Australian legislation looks likely to set a global precedent, with Canada and the UK contemplating similar reforms. We analyse the Code to show that although it aims to promote public interest journalism (including by prompting payments from Google and Facebook), the notion of quality journalism is largely absent. Drawing on our previous research commissioned by the ACCC for the Inquiry, we take an expansive approach to the concept of ‘quality’ that recognises traditional news standards such as accuracy, fairness, transparency and the protection of privacy, but also encompasses aspects such as originality, geographic relevance, civic function and social diversity (Wilding et. al., 2018). Unfortunately, as it stands, the Code has the potential to incentivise journalism that is inaccurate, misleading or otherwise of poor quality. In this regard, the Code’s professional standards test, under which news media businesses must adhere to professional news standards, is a missed opportunity. Ultimately, we note that such a Code for journalism developed by a competition regulator can only ever be limited in impact. What is needed is a more thorough accounting of the social value of news. By using social utility as a metric of quality, we will be better placed to protect quality journalism.

News deserts and a legislative first

The ACCC is a federal statutory authority that administers both anti-trust law and consumer protection law. It shares responsibility for media mergers with the Australian Communications and Media Authority (ACMA), another federal statutory authority that is responsible for other media sector-specific regulation, including licensing and content regulation. In December 2017, the federal government directed the ACCC to begin an inquiry in the face of growing concerns that Google, Facebook and other digital platforms were affecting traditional media’s ability to fund journalism and that this was impacting the ‘level of choice and quality of news and content being produced by Australian journalists’ (see Flew and Wilding, 2020). This became known as the Digital Platforms Inquiry.

Australia has a relatively small but culturally diverse population of about 26 million across a large continent; at 7.69m sq km, Australia is the world’s sixth largest country (DFAT, 2020). However, Australians are not avid consumers of news: with a ‘news interest’ rating of 51% in the *Reuters Institute Digital News Report 2021*, Australia was below the 24-market average of 58%, with interest in news declining by 12 percentage points over the past five years (Newman et al, 2021, 13). And choice is limited. In terms of pluralism and ownership, Australia has one of the world’s most concentrated media markets (see: Dwyer, Wilding and Koskie, 2021; Brevini and Ward, 2021; Papandrea and Tiffen, 2016). The Australian commercial news landscape is dominated by two large players: Nine Entertainment (2021 revenue A\$2.3billion) and News Corp (Australian revenue unavailable: Burrowes, 2021a). Both own tabloid and broadsheet newspapers and their digital equivalents; and while Rupert Murdoch’s News Corp controls Australia’s only pay TV network, Nine controls a leading commercial free-to-air network as well as influential radio stations. A third commercial media company is Seven West Media (2021 revenue A\$1.3bn). Australia also has a large and relatively well-funded public broadcaster, the Australian Broadcasting Corporation, modelled on the UK’s BBC (2021 government funding \$1.1b).

In June 2019, the ACCC handed down the Final Report of its Inquiry. The ACCC identified, for the first time in Australia, news deserts. It found that the net total of unique Australian local and regional newspaper titles had declined by 15 per cent between 2008-09 and 2017-18, which translates to 106 papers. Closures during this period left 21 'local government areas' (that is, one of the 500-plus local areas under the control of a council) without a single local or regional newspaper, 16 of those in regional Australia. This key finding, echoing developments in countries including the US, confirmed long-held concerns about news provision. The ACCC found that public interest journalism was becoming scarce, with fewer reporters dedicated to full-time coverage of local government and fewer reporters dedicated to attending court proceedings. ACCC chair Rod Sims emphasised that 'public interest journalism is essential for a well-functioning society', and that 'costly investigative journalism, journalism that can take some months to put together, is often not rewarded as the algorithms don't prioritise original material' (Sims, 2019).

The ACCC concluded, 'There is not yet any indication of a business model that can effectively replace the advertiser model, which has historically funded the production of these types of journalism in Australia' (ACCC, 2019, 1). The ACCC proposed that Google and Facebook work with Australian news businesses to develop and implement a voluntary code of conduct. Over the next nine months, discussions between digital platforms and news media businesses revealed some goodwill, but also the difficulty of reaching consensus on the key question of how to value the benefits publishers receive from platforms, let alone the benefits platforms receive from publishers.

In April 2020, when the ACCC delivered a progress report to the Government, Australia had just emerged from a bushfire crisis to find itself in a global pandemic. Thirst for news was high, yet local and regional titles were continuing to fold: between March 2020 and September 2021, another 200 newsrooms closed or contracted (PIJI, 2021). The ACCC indicated that the core issue of payment for content was unlikely to be resolved through a voluntary process, due in part to the 'opacity' of the 'ad tech supply chain', which clouds the finances of digital platforms and makes it extremely difficult for advertisers to know where their dollars go (ACCC, 2019, 2). With news media businesses similarly unwilling to make their financial operations fully transparent, news media businesses and digital platforms started making wildly different claims. Google Australia managing director Mel Silva claimed that the value it received from news services per annum was A\$9.8 million (approximately US\$7 million) (Cheik-Hussein, 2020). By contrast, News Corp Australasia boss Michael Miller said revenue lost to the tech giants was up to A\$1 billion annually, and Nine chairman Peter Costello estimated lost revenue at A\$600 million (Mason 2020).

On 20 April 2020, the Government intervened, announcing its intention to implement a mandatory code before the end of that year. Controversially, it prescribed mandatory 'final offer arbitration' if no agreement could be reached as to value exchange. That is: the digital platform makes an offer; the news media business makes an offer; the arbitrator picks the one that seems fairest. It also included a set of 'minimum standards' for digital platforms stipulating that: Google and Facebook share user data about how people interact with the content of news media businesses; Google and Facebook give advance notice of any upcoming changes to their algorithms that affect news; and Google and Facebook appropriately recognise original news content in ranking and in display. Google and Facebook responded diplomatically, then militantly (Google, 2020; Facebook, 2020a; Leaver, 2021; Lee and Molitorisz, 2021). For a week in late February, Facebook Australia raised the stakes by removing news from its platform for

Australian users, and removing news produced by Australian news media for all Facebook users internationally.

On February 25, 2021, the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* was voted into law. It retained provisions for final offer arbitration and minimum standards, but these were significantly diluted. And in the wake of threats from Google and Facebook, the biggest concessions destined the Code to a degree of irrelevance. Under the law, the Code applied to 'registered' news media businesses and 'designated' digital services. As of 17 February 2022, 28 news businesses had registered with the communications regulator to receive the benefits of the code (ACMA, 2022). However, the Treasurer has not designated a single digital platform or service as covered by the law. What's more this situation is likely to continue. The treasurer won't trigger the legislation by naming the digital platforms, as long as he is satisfied that, in the words of the legislation, the digital platform has made 'a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses (including agreements to remunerate those businesses for the news content)' (Lee and Molitorisz, 2021). In effect, then, the new law is a threat from the government to Google and Facebook: pay money to news media businesses, or else we'll activate the Code. So far, deals have been struck with the biggest news outlets, and with some medium and small outlets, which, according to ACCC chair Rod Sims, has led to 'well north of A\$200m a year' flowing to Australian news businesses (Butler, 2021). For some, this means the Code qualifies as a major success, even if it is effectively a big stick that may never be used; for others, the Code is a failure because it favours old established media and threatens to exclude small players and to stifle innovation, and also because it creates an opaque and secretive system of deals (Lee and Molitorisz, 2021). In September 2021, it emerged that Facebook was not negotiating with Australia's second national broadcaster, SBS, which specifically services Australia's diverse communities (Burrowes, 2021b).

Further criticisms include that the deals struck have been explicitly for the use of news content on Google News Showcase and Facebook News Tab, rather than across all Google's services and Facebook's services; it would seem that striking deals for the use of news content on Showcase and News Tab is a strategic move by which digital platforms are able to gloss over the value that news content brings to their best-known and best-used services. There is also no requirement, either under the Code or in the deals struck, for news media businesses to channel any money received directly into journalism.

Our specific concern here, however, is in the way the Code, as legislated, may go some way to promoting public interest journalism, but stands very little chance of promoting quality journalism, and may even work against it. To be clear: the provisions of the Code matter, even if they are not invoked. Presumably the digital platforms will seek to avoid being designated under the Code by taking steps to satisfy its provisions.

Can public interest journalism exist without quality?

Neither in public discourse nor in Australian law is the definition of news or journalism clear (Wilding et al., 2018, 16-17). Similarly, there is no accepted definition of 'public interest journalism' or 'quality journalism' or how they interact. In the Final Report of its Inquiry, the ACCC defined 'public interest journalism' as:

Journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision-making at all levels of government (ACCC, 2019, 283).

This definition didn't include quality as a necessary ingredient. That's perhaps surprising, given that a stated concern of the Inquiry was the potential for digital platform distribution to erode the ability of news organisations to produce quality journalism. Overall, despite the prominence of 'choice and quality' in the Inquiry's terms of reference, the ACCC's Final Report has few mentions of quality. However, it did explicitly address the difference between quality journalism and public interest journalism:

It is important to distinguish 'high quality journalism' from 'public interest journalism' ... journalism may be produced with the purpose of examining matters of public significance, meeting the definition of 'public interest journalism', without meeting minimum quality standards – for example by failing to be accurate or failing to clearly distinguish reporting from the presentation of opinion (ACCC, 2019, 287).

It also observed that 'poor quality news and journalism is also seen and heard outside of digital platforms' (ACCC 2019, 354), and recorded the results of its commissioned survey that showed that 'around 92% of the respondents ... had some concern about the quality of news and journalism they were consuming' (ACCC, 2019, 355). However, the ACCC had little to say about ways of addressing quality of news and journalism *per se*. Instead, it discussed the dimensions of quality represented by practices such as fake news, atomisation (where news has been broken down into its constituent parts, so that it is distributed and consumed on a story-by-story basis rather than as part of a news package) and algorithmic presentation of extreme views, and settled on an approach based on helping 'consumers to evaluate the veracity, trustworthiness and quality of the news content they receive online' (ACCC, 2019, 358). This was how the ACCC arrived at its proposal for a disinformation code (Recommendation 15, 370) to be developed by Australia's media regulator; hence the development of a code of practice on disinformation and misinformation, along with the topic of 'flagging quality journalism', was to be overseen by the the Australian Communications and Media Authority (ACMA). In doing so, the ACCC explained that stakeholder responses to its Preliminary Report, released in December 2018, prompted it to abandon the suggestion of a regulatory requirement for 'badging' of all news and journalism by digital platforms, noting (among other reasons) that it would be difficult to apply disincentives to the inclusion of content that breached journalism standards (ACCC, 2019, 364). True to its comments to journalists in August 2018 as described at the start of this chapter, the ACCC ultimately gave quality little more than a cameo role in its Final Report.

The ACCC's lack of focus on quality carried through into the Code. The only element of quality in the ACCC's scheme is that journalists must meet minimum standards set out in the various media industry codes and standards administered by bodies such as the media regulator, ACMA. In Australia, unlike in the US, there are various sets of standards (such as the Commercial Television Industry Code of Practice) that are policed by bodies including the ACMA.

The ACCC (2019, 286, footnote omitted) noted:

These codes and standards almost universally require that journalism:

- presents factual material accurately
- corrects significant or material factual errors
- presents news fairly and impartially
- clearly distinguishes reporting from commentary and analysis.

Accordingly, s52P of the Bargaining Code prescribes a ‘professional standards test’ that must be satisfied for news businesses to be registered under the Code. Section 52P(1)(a)(iv) refers, rather obliquely, to ‘the provision of quality journalism’ as the basis for this professional standards requirement. This is the single time that the word ‘quality’ appears in the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*, an expansive piece of legislation that runs to 33 pages. We return to s52P below.

Instead, the definitions contained in the Code create two categories of news: ‘core news’ and ‘covered news’. With this approach, the ACCC adopted a definition of public interest news without ever invoking the phrase ‘public interest news’. Core news is a threshold concept, determining which companies get through the door and qualify to be covered by the legislation. According to s52A:

Core news content means content that reports, investigates or explains:

- (a) issues or events that are relevant in engaging Australians in public debate and in informing democratic decision-making; or
- (b) current issues or events of public significance for Australians at a local, regional or national level

This definition retains the essence of the ACCC’s 2019 definition of public interest journalism, chiefly in the phrase ‘informing democratic decision-making’. However, it also broadens out to include matters ‘of public significance ... at a local, regional or national level’. This a clear concession to arguments from local and regional news outlets that public interest journalism is about more than upholding democracy, but also about locally-significant matters. That includes the community-building function of news. There is recognition here by the ACCC of the twin functions of local news content widely acknowledged in both academic and policy literature (Wilding, Giotis and Koskie, 2020; ACMA, 2020b).

The legislation then complements ‘core news’ with a category of ‘covered news’, which encompasses a broader range of content. While ‘core’ content determines whether a business qualifies to be covered by the Code, ‘covered news’ designates the content that is recognised under the Code once a business has qualified. ‘Covered’ content is defined as ‘core content’, as well as ‘content that reports, investigates or explains current issues or events of interest to Australians.’

For ‘covered news’, the distinction is the focus on ‘of interest’ to the public, whereas ‘core news’ can be considered closer to journalism that is *in* the public interest. The explanatory materials released with the draft legislation in July 2020 showed the ACCC accepted an understanding of news business economics that includes cross-subsidy of democracy/community-enhancing news through more commercial/popular news products:

Many news businesses use other news content to cross-subsidise the production of core news content. This means it is important that registered news businesses receive information relating

to, and can bargain over, a broader range of content than just their core news content (ACCC, 2020b, 14).

By designating both core and covered content as subject to the benefits of the legislation, without including an explicit requirement for quality, the legislation opens the possibility of incentivising poor quality journalism, including poor quality public interest journalism. For instance, news about a major new housing development is clearly in the public interest. However, if the reporting merely regurgitates a rapacious developer's press release, or if it is discussed in an emotive, partial and misleading way to provoke reactions and be favoured by algorithms, does such journalism deserve regulatory intervention and financial support? The answer at this point would seem to be yes, because it satisfies the definition of 'core news'. On politics, a news outlet might choose only to cover volatile and divisive issues. Or a news outlet might focus on issues that are racially divisive, as occurred with the dubious reporting of crime said to be perpetrated by African-Australian 'gangs' in Melbourne in 2018, in a way that stretched the truth and inflamed tensions (*Media Watch*, 2018). These issues are all in the public interest, and they all satisfy the definition of 'core news', but they would fail to meet important criteria of *quality*.

One way quality could be rewarded under the Code is in s52X, which states digital services 'designated' under the Code are required to develop 'a proposal ... to recognise original covered news content when it makes available and distributes that content.' As Wilding (2021, 34) notes, this requirement is somewhat inconsistent with the ACCC's previously stated position (noted above) that 'flagging quality journalism' was to be left to the disinformation code overseen by the ACMA. This intervention by the ACCC was likely in response to the arguments made by publishers during the Inquiry that they did not receive significant recognition for their original content, with re-purposed stories by their competitors often ranking higher than their original investigative pieces. During the development of the Code, however, Google and Facebook fiercely resisted any attempts to enforce algorithmic oversight or transparency (Google, 2020; Facebook, 2020a). In its Preliminary Report in late 2018, the ACCC recommended that a regulator ought to oversee the ranking of news and advertising; the ACCC's Final Report, however, dispensed with this recommendation. And, again, given that no digital service has been designated, s52X is not in effect, just like the rest of the Code.

In any case, even before the Code passed into law, Google and Facebook had announced moves to prioritise original reporting. In 2019, soon after the ACCC handed down its Final Report, Google announced it was 'elevating original reporting in Search' (Gingras, 2019). And in 2020, Facebook announced that its algorithm would favour original news content in its News Feed; this has subsequently been updated with further commitments to originality (Brown and Levin, 2020). However, we cannot know the extent or effectiveness of these commitments, given that Google and Facebook ensure there is very little transparency about their algorithms and their impacts.

Standards as a missed opportunity

At this point in our analysis, it is important to make explicit why we believe there is value in some regulatory mechanism to encourage quality, and how this would be consistent with other aspects of media regulation in Australia, as it would in some other countries, such as Canada and the UK, although not the US. In Australia specifically, much of media content regulation, including news standards, is achieved by way of 'co-regulation' (Lee and Wilding 2021). In brief, this means that industry associations draft the rules that appear in codes of practice, but the regulator (the ACMA) accepts unresolved

complaints and can take enforcement action. It is also important to understand that Australia's system of media oversight is highly fragmented, consisting of 14 different media standards schemes (Wilding et al, 2018, 88). It is not just different media platforms that have their own scheme. Rather, each category of broadcasting (commercial radio, commercial television) has its own code of practice, as does each of the two publicly funded broadcasters, the ABC and SBS.

Among the mess of these 14 standards schemes, the Code imposes a 'professional standards test' in s52P. To be registered under the Code as a 'news media business', a news organisation needs to establish that each of its participating news outlets is subject to:

- one of two industry schemes established by the print/online news sector;
- one of two statutory codes of practice drafted by industry but enforced by the media regulator, the ACMA (not the ACCC); or
- 'rules substantially equivalent to those mentioned [above] regarding internal editorial standards that relate to the provision of quality journalism'.

While the ACCC has at least succeeded in incorporating some reference to media standards, there are two problems with this approach. First, it leaves intact – in fact, it endorses – the fragmentation of media standards. As it is entirely reasonable that the beneficiaries of a very substantive legislative intervention should themselves meet minimum standards, the development of the Code presented an opportunity – now a lost opportunity – to consolidate media standards through a requirement to participate in an independent standards scheme. To this end, both the competition regulator in developing the Code and the media regulator overseeing the development of the disinformation code have overlooked the potential for standards councils to combat 'fake news' through the promotion of trusted and accountable journalistic sources (Podger, 2019).

Second, by permitting *in-house* codes of ethics (via 'internal editorial standards') based on the undefined concept of 'quality journalism', with no requirement for independent complaint handling, it risks harming the very aspect it seeks to support. Under this approach, 14 schemes could become 28 or more. In this scenario, the leverage held by Australian governments over many years, and which underpins the industry scheme operated independently by the Australian Press Council (which oversees print and digital newspapers) – in effect, 'keep your house in order, and we'll leave you alone' would disappear. It could thus add to the risk that quality news will be disincentivised under the scheme. And while much of this last aspect is specific to Australian conditions, it may become increasingly relevant in a global media environment where national schemes come face-to-face with businesses operating across national borders. As part of its submission on the ACCC's Concepts Paper, Facebook suggested the idea of a new industry-based standards forum. The 'Australian Digital News Council' proposed by Facebook would:

exchange information about product roadmaps and industry trends, consider issues or concerns around dealings between publishers and platforms, and to air and mediate complaints and concerns from publishers about their relationship with digital platforms (Facebook, 2020b, 31).

Further, Facebook said it 'would welcome the opportunity to contribute funds towards this Council to support a secretariat that can resolve any complaints and concerns'. While Facebook's proposed council would not address issues of quality and standards in a comprehensive way, it's nevertheless interesting to see a digital platform propose to be involved in a standards forum.

How social accounting might promote quality

An omission from both the conceptual framework and legislative enactment of the Code is the recognition of the *social* value of news. The legislation underpinning the Code has been drafted as part of commercial and competition law and framed around bargaining power. But is commercial exchange all that should be on the bargaining table? In many areas of life social metrics have been developed specifically to acknowledge that value exchange need not be limited to financial consideration. In Australia, measurements of social value have already been used in different areas of public life. The state government of New South Wales created the first ‘social impact bond’ (Ahuri, 2020) whereby investors were encouraged to buy bonds that would support the development of new programs that reduce recidivism. The social value of this drop in repeat jailing was then calculated as a (dollar-proxy) cost benefit to the government and paid as a return to investors. Triple bottom line accounting has also been used to manage the crucial issue of distributing highly valuable water allocation across the three competing areas of farming, environmental and cultural/social needs – albeit not without difficulties and controversy (Simons, 2020, 57).

The underlying assumption here is that high quality journalism is more socially useful than poor quality journalism. This is borne out in the literature. An extensive review carried out as part of the Inquiry found that broader social functions is one of three key categories through which quality news is identified. The table (below) presents what the Centre for Media Transition identified (in 2018) as the most useful quality indicators discussed in the academic literature. It attempts to distill the most effective quality criteria into a manageable and organised list with content attributes sub-classified into:

- A. Core standards of practice
- B. Core professional practice indicators
- C. Broader social functions

The individual indicators should not be considered to necessarily carry equal weight; the table is a guide to factors that can be taken into account. This is because value to society is created through quality news which undertakes watchdog functions, services critical information needs, is geographically relevant, and represents social diversity.

Quality indicators – content attributes table

<i>Indicator</i>	<i>What it indicates</i>	<i>Indicator</i>	<i>What it indicates</i>
A. Core Standards of Practice		C. Broader Social Functions	
Accuracy	Content is factual, verified and not misleading; opinion is based on accurate information and does not omit facts; material presented in the body corresponds with the headline.	Power watchdog	Scrutinises the activities and conduct of powerful interests so they can be held democratically and socially accountable.
Clarity	Easy to understand; distinguishes fact from opinion.	Public sphere	Facilitates deliberative, rational and representative public discourse
Fairness	Material is fairly presented; persons or groups unfavourably portrayed given right of reply.	Critical Information Needs (CINs)	Gives details of emergencies, risks, health, welfare, education, transportation, economic opportunities,

			environment, civic information and political information.
Privacy and protection from harm	Respects privacy; avoids causing substantial offence, distress or risk to health or safety (unless it is in the public interest).	Geographic relevance	Provides original local news voice for local communities; reports on local institutions, decision making processes and events.
Balance	Presentation of contrasting information and viewpoints from different sources.	Usefulness	Provides citizens with information they can use to make effective decisions that benefit their personal and civic lives.
Integrity and transparency	Avoids or discloses potential conflicts of interest; content has not been produced via unethical or deceptive means.	Diversity (social)	Positive coverage of minority groups; variety of content appeals to a range of social groups; multicultural references.
B. Core Professional Practice Indicators			
Immediacy	Publication and updating of breaking news as soon as practicable (after fact-checking) for each given format.	Analysis	Rational, knowledgeable and insightful interpretation of events and issues that helps people make sense of their world.
Authority	Stories use the expertise of authoritative and reliable sources; corporate or partisan sources are clearly identified.	Originality	Content is produced in-house through original research, interviews, verification of information, self-taken photos.
Depth and breadth of coverage	Explaining background context, causes and consequences involved; range of content from range of genres.	Creativity	Written and illustrated with creative flair; innovative use of technology; evinces multimedia richness (websites).
Ethical conduct in newsgathering	Uses fair, honest, responsible means to gather material.	Presentation	Uses a gratifying narrative and layered information; format is captivating, aesthetically pleasing, well-illustrated, technically and textually error-free, and easy to navigate (e.g., websites).

(Wilding et. al., 2018, 86).

There is of course a danger in trying to reduce conceptual complexities to quantifiable variables (O'Donnell 2009), never-the-less this table of quality indicators helps to build a picture of overall quality factors. We acknowledge, however, that development of a more dynamic matrix to suit the contemporary environment requires separate research. For example, it is worth noting that impartiality is labelled in the table as a *professional* indicator of quality, however, in the current politically polarised media discourse it is instead being discussed by audiences as socially useful. A 2018 survey found that for 40% of adult Australians, the second most-mentioned reason for avoiding news was, 'I feel that news content is biased towards a particular ideology' (Roy Morgan, 2018, 21). Internationally, while the

Reuters Institute noted some variation in its recent examination of impartiality, it found that across the four markets of the US, the UK, Brazil and Germany, there was 72% support for the proposition that, when reporting social and political issues, news outlets should give equal time to all sides (Newman et al, 2021, 40).

The key point in introducing the table is to highlight that categories of news social utility exist and could be turned into metrics of quality. Metrics, relying on professional and public participation, have already been developed to measure quality in cultural products, with UK government funding tied to this demonstration of quality. These metrics include social utility aspects such as local impact and relevance (Arts Council England). Of course, this process is not without its critics (Phiddian et. al., 2017) and many obstacles would arise in translating the process to news.

First, Google and Facebook would need to recognise that having a greater quantum and variety of quality, socially useful information in their ecosystems is more valuable for the platforms than one populated by partisan poor quality information. Here the case may be made by the platforms themselves. Stray (2020) points to the ‘well-being’ metrics that both Facebook and YouTube have incorporated into their algorithmic decision-making. Of particular interest is the way YouTube incorporated changes to make tabloid content less readily accessible to ‘improve the quality of the product and the effects on users’ (p. 450). These initially had a negative impact on time spent on site; but within three months user watch time had not only recovered but increased. The same people spent more time on quality videos once tabloid products were less prominent in their feeds.

The next obstacle would be to put dollar proxies on the social utility of different types of news items. This means that, to be eligible for a bargaining credit of a certain amount under social accounting mechanisms, it must be demonstrated that the news item is socially useful and then shown that it is more socially useful than it would have otherwise been because it is of high quality. Setting the value of this bargaining credit is no easy proposition. Nor is it likely to be universally welcomed. In a 2015 article surveying the field of social metrics in journalism, Anya Schiffrin and Ethan Zuckerman wrote: ‘The task of “proving impact” doesn’t come naturally to most journalists. They reject a utilitarian view of their worth, preferring to believe that news is a public good that merits support for its own sake’ (p. 48). Yet with advertising and subscription dollars falling and more news organisations turning to philanthropic support, various tools to measure impact have had to be developed (Giller and Wroth, 2015). Some of these might prove useful to adapt for bargaining purposes. However, to be clear, the metrics needed for Australia’s Code (or overseas versions thereof) are very different than those developed for non-profit foundations. The task is to prove value to an information economy. The metric is not about social justice effects, but rather the output of quality news with the value of that quality tied to its social utility.

It is also worth highlighting that while geographic relevance is an aspect of quality news understood to provide social utility, this has been disadvantaged by the Code’s emphasis on bargaining. An A\$150,000 revenue threshold is needed for news media businesses to be covered by the legislation. The logic seems to be that news media businesses need to be of a sufficient size for digital platforms to gain some commercial benefit from their presence – which may be true. Yet it is also true that the size of a business is not necessarily a proxy for social utility, and size is a particularly vexed question for local news organisations disadvantaged in the online environment (Hindman, 2018).

Conclusion

The Code was never intended to be a silver bullet for the ills troubling news media businesses. Much less was it intended to single-handedly rescue public interest journalism. The Code had a specific goal: to redress an unfair value exchange between news media businesses and digital platforms. In the success of some ‘side deals’ struck to avoid the Code’s application, arguably that goal has been achieved. Furthermore, the Code as legislated has a clear focus on protecting public interest journalism in its definition of ‘core news’. The issue is that quality was handballed from one regulator to another (ACCC to ACMA) and, in the process, slipped into a regulatory crevice. It remains a missed opportunity, meaning that further policy measures are needed to shore up both public interest journalism and quality journalism.

Stronger arguments must be made for the value of an information ecosystem populated by diverse, quality news offerings. Social accounting may help, but there is much to work out in terms of creating these metrics. Further options might include: media business tax offsets for the costs incurred in the production of quality, public interest journalism; making subscriptions for certain types of news tax deductible for consumers; increasing funding for public broadcasters; and channelling money directly into public interest journalism and quality journalism (Lee and Molitorisz, 2021).

In giving an overall assessment of the Australian Code, we think a defining feature – and inherent limitation – is that despite its genesis in a far-ranging Inquiry that commenced in late 2017 and an implementation process that started in late 2019, the Code suffers from the decision to advance to the question of *how much digital platforms should pay news organisations* without having first decided *how to calculate the value of the benefit*. This is one reason why quality receives such scant attention. But in our view there is another, perhaps more fundamental, defining feature and inherent limitation, and one that may be of interest to other jurisdictions: the decision to use competition law – rather than media regulation – to support journalism. The genesis and location of the scheme within competition law defines the overall approach and objectives of this attempt to regulate bargaining. And yet, if the encouragement of quality news is also one of our goals (as it should be), then a competition regulator will necessarily need to approach the task in a roundabout manner. For holistic and lasting reform, it may be unreasonable to expect a competition regulator to judge the difference between quality news and non-quality news, and to take social utility into account. It is not unreasonable, however, to expect it to guard against arrangements that *undermine* the quality of news.

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