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Digital Platforms and Responding to the 'fake news' crisis



The ACCC's Final Report in the Digital Platforms Inquiry recommends that digital platforms with more than one million monthly active users in Australia should implement an industry code of conduct to govern the handling of complaints about disinformation in relation to news and journalism. Recommendation 15 suggests that such codes should be registered with and enforced by an independent regulator, such as the Australian Communications and Media Authority, that:

- is given information gathering powers to enable it to investigate and respond to systemic contraventions of code requirements;
- is able to impose sufficiently large sanctions to act as an effective deterrent against code breaches;
- provides frequent public reports on the nature, volume and handling of complaints received by digital platforms about disinformation; and
- reports annually to government on the efficacy of the code and compliance by digital platforms.

The EU Code

This recommendation echoes the EU Code of Practice on Disinformation (**EU Code**) implemented in September 2018. The EU Code is a non-binding, voluntary code setting out a list of commitments and principles that signatories agree to follow to protect users from disinformation.

The EU Code aims to improve transparency, trustworthiness and accountability of digital platforms. This is achieved by scrutinising advertisement placements to reduce monetisation incentives for purveyors of disinformation, ensuring transparency about political and issue-based advertising, monitoring and closing fake accounts, reducing the visibility of disinformation and providing access to data for fact-checking and research activities.

To date, the signatories to the EU Code include: Google, Facebook, Twitter, Mozilla, Microsoft, some additional members of the EDiMA trade association and an unnamed advertising group. A copy of the code can be found here [<https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>].

When considering a possible Australian code, it is useful to consider the operation of the EU Code.

Signatories of the EU Code commit to taking part in "contributing to solutions to the challenge posed by disinformation". There are no penalties for a breach of the EU Code or any ramifications if a signatory withdraws from the code.

The EU code defines disinformation as "verifiably false or misleading information which, cumulatively, (a) is created, presented and disseminated for economic gain or to intentionally deceive the public; and (b) may cause public harm, intended as threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizen's health, the environment or security."

A common concern is that this broad definition of disinformation may have the unintended effect of impairing freedom of speech. There are several aspects of this concern including that the use of words such as "harmful" or "false" is subjective and open to interpretation. This is problematic given that there are no prescribed methods to appeal a company's decision to classify content as disinformation. The use of algorithms and artificial intelligence to identify instances of disinformation online may also increase the risk of misidentification of disinformation that curbs freedom of speech.

The Australian approach

There are key differences between the proposed Australian Code and its EU counterpart.

First, the ACCC proposes a higher threshold of "serious public detriment" for the Australian Code. It considers that this threshold is appropriate in light of the "more significant enforcement and penalty provision" which are proposed.

Second, the ACCC proposes that the code should be registered with and enforced by a regulator such as the ACMA. It proposes that members of the public unsatisfied with the handling of complaints would be able to refer those complaints to the regulator which could investigate, make determinations and impose penalties for non-compliance. The Report contemplates legislative changes to endow the regulator (likely to be the ACMA) with those powers.

The precise content of the code is to be determined by industry. If the regulator does not consider that an acceptable code has been submitted within 9 months of an announced Government decision on this issue, then the regulator would introduce a mandatory industry standard.

Digital platforms are no doubt focussing on the key potential public interest and commercial impacts of a code so that they can engage effectively with legislators on the next stage of consultation on these issues.

For more information please contact:

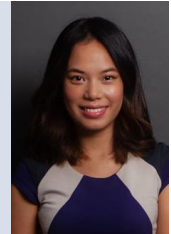
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