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# Redirecting surveillance capitalism: Facebook and Australia's news media bargaining code

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'We need to do something. This is something. Therefore, we need to do it.'

Stilgherrian (2021)

### Abstract

Facebook's response to the draft News Media Bargaining Code (the Code) proposed by Australia's Morrison government in February 2021 made digital and corporate history. The Silicon Valley behemoth, with an operating rationale to manipulate and commodify human relations for profit, decided to make an example of a sovereign country. It did so by barring, blanking and scraping information broadly defined as news content from the pages of Australian organisations and entities hosted on the company's site. Along with Google, Facebook reasoned that the Code imposed an ill-conceived arbitration model to determine revenue for news organisations using their platforms. News organisations, hoping to recoup classified and ad revenue lost to the platforms, argued for greater bargaining powers in negotiating with Facebook and Google.

The Code is underpinned by erroneous assumptions regarding market practices pertaining to digital platforms, entrenching the very problems it claims to address. The developments suggested 'the curious role of the bargaining code: it's meant to operate as a legislative threat so arbitration only happens when platforms and news outlets can't agree. If Google keeps handing out money, this is unlikely to happen' (Meese, 2021). With agreed government amendments made to the Code on Facebook's 'refriending' of Australia (Frydenberg, 2021), two victorious parties emerged: the digital platforms and old news media.

### Introduction

On February 18, 2021, Australians woke up to find that the news pages of their various media and community organisations hosted on Facebook had been scrubbed. Posts had been removed and dedicated pages vacated of information. Facebook explained their move as follows:

In response to Australian government legislation, Facebook generally restricts the posting of news links and all posts from news pages in Australia. Globally, the posting and sharing of news links from Australian publications is restricted (Easton, 2021).

The reasons for this decision lay in the creation of the News Media Bargaining Code, a brainchild of the Australian Competition and Consumer Commission (ACCCa, 2020). While previous threats to withdraw search services from Australia had been issued by Google, it was the executives at Facebook who took the plunge. Despite the Code still being in draft form, the company adopted a wide definition of news. 'As the law does not provide clear guidance on the definition of news content, we have taken a broad definition in order to respect the law as drafted.' Immediate effects were felt in the public and private sector (Reality Check and BBC Monitoring, 2021). Various government agencies devoted to providing critical services – meteorology and health – found their pages scraped of news. Trade unions, Indigenous health and media groups, and homeless charities were also caught up. Welfare groups such as Women's Health Tasmania were prevented from sharing information. 'Clients use messages on Facebook to contact us when they don't have phone credit,' explained the body's chief executive Jo Flanagan. 'It was very disruptive' (Reality Check and BBC Monitoring, 2021).

On July 31, 2020, the draft News Media Bargaining Code developed by the Australian Competition and Consumer Commission (ACCC) was released for consultation and debate (ACCC, 2020a). The Code was duly incorporated into draft legislation known as the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020. It had arisen as a popular political move to challenge the changing media environment, which had seen the decline and closure of standard news outlets due to a dramatic fall of classified income revenue.

The Code was designed to grant news media businesses the power to individually, or collectively, bargain with Google and Facebook over revenue for news items run on their platforms. As the ACCC (2021) explained, digital platforms have tended to lord over conventional news outlets, imposing 'less favourable terms for the inclusion of news on digital platform services'. The Code sought to 'address the fundamental bargaining power imbalance between Australian news media businesses and major digital platforms' (ACCC, 2021). Disputes on the amount of revenue would then go to an arbitration body using a 'baseball arbitration' model: the sides who cannot reach a final agreement each submit a single final offer to the arbitrator, who makes the binding selection (Silva, 2020).

Responsibility for administering and policing the Code would fall to the ACCC itself; the Australian Communications and Media Authority (ACMA) would assess which media news businesses would qualify to be included in the scheme. News businesses, to qualify for registration with the ACMA, are required to 'predominantly produce 'core news', and publish this online'. This is problematic in of itself, as 'core news content' is defined as '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' (News Media and Digital Platforms Mandatory Bargaining Code, section 52A). This immediately precludes news outlets dedicated to other genres of information: entertainment and sports coverage, for instance, would seem to fall outside the Code's application. The Code also excludes individuals operating in an individual capacity. 'A solo investigative journalist doesn't get to play either, no matter how significant their work' (Stilgherrian, 2020).

Professional editorial standards and editorial 'independence from the subjects of their news coverage' are also enumerated elements, as is the need to 'operate primarily in Australia for the purpose of serving Australian audiences'. Annual revenue must exceed AU\$150,000 for the most recent financial year or three out of five most recent financial years (ACCC, 2020a).

## Threats and criticisms

In an open letter published on August 17, 2020, marked for all Australians, Google's Australasian managing director Mel Silva struck a menacing note in her assessment of the Code. Be suspicious, she argued, of new regulations being proposed by the Australian government. The Code would 'dramatically' worsen Google Search and YouTube. She also argued that it 'could lead to your data being handed over to big news businesses and would put the free service to use at risk in Australia' (Hayne, 2020). A statement by Silva (2021) excoriated the Bargaining Code for potentially undermining 'the benefits of the internet for millions of Australians'. The company took issue with having to pay publishers for links – not even the article itself – that would pop up in the search results. 'Right now, no website or search engine pays to connect people to other sites through links. This law would change that, making Google pay to provide links for the first time in our history.' Google, she argued, showed ample generosity to conventional news sites as it is, paying them millions of dollars and generating 'billions of free clicks every year.' The ACCC was seen as a distorting influence in the market, becoming a pseudo sponsor of big news outlets who would 'artificially inflate their ranking over everybody else, even when someone else provides a better result.'

The head of YouTube APAC, Gautam Anand, claimed that the Code would 'create an uneven playing field when it comes to who makes money on YouTube.' Only the 'big news businesses' would benefit, able to 'demand large amounts of money over and above what they earn on the platform' (Anand, 2020). The humble creators, numbering in their thousands and assisted by *YouTube*, would suffer.

On January 31, 2021, Google published 12 answers on questions pertaining to the Code. Market alternatives free of government interference were proposed. 'Instead of paying for links, we're proposing to pay publishers through Google News Showcase, our AU\$1.3 billion global investment in news partnerships over the next three years' (Google, 2021). A commercial arbitration model based on News Showcase was also pushed, 'one that would let arbitrators look at the comparable value of similar transactions, rather than an unpredictable process which looks at one side's costs and discounts the value Google provides publishers.'

In effectively excluding Australia from the news share function, Facebook argued that the draft legislation 'fundamentally misunderstands the relationship between our platform and publishers who use it to share news content' (Easton, 2021). Tech behemoths such as Google argued that this approach was ill-suited precisely because the value of the product or service was unclear, a defiance of 'commercial reality'. Baseball arbitration would only be useful where the parties were not essentially in dispute 'over the value of the product or service being discussed and the parties are already close in price' (Silva, 2020). In their submission on the merits of the Code to the Australian Senate committee, Americans for Tax Reform similarly argued that the arbitration model was 'biased' in not requiring the arbitrator 'to consider comparable market arrangements to determine a market price based on evidence' (Americans for Tax Reform, 2021, p. 2).

Numerous submissions to the ACCC in August 2020 focused on the problematic nature of the model. Of the 426 submissions made, Google smugly noted that over 80 per cent of them registered concerns. The American Bar Association's Antitrust Law Section and International Law Sections wrote of 'unforeseen and potentially competition stifling consequences' including engendering an imbalance favourable to 'a seller's cartel of news organisation'; chilling the incentive to invest and innovate on the part of the digital platforms by mandating minimum standards 'for sharing proprietary data and algorithm information'; and 'reducing [the incentive of] platforms' to optimise consumer experience and enhance consumer welfare by imposing a mandatory and untested non-discriminatory provision without sufficient protections to separate unlawful discrimination from lawful product-enhancing differentiation' (American Bar Association, 2020, p. 2). Flexible guidelines, not rigid mandatory provisions, were suggested as the wiser alternative.

Submissions by the Business Council of Australia (2020) and Momentum Studies also focused on the algorithm notification system. There was a danger that it could be 'applied more broadly', thereby creating 'a major disincentive to investment across a range of sectors that use similar systems to rank or display content' (Business Council of Australia, 2020, p. 5).

Atlassian, one of Australia's most successful tech exports, saw the Code as part of 'a worrying trend of hasty, heavy-handed regulation of the technology sector in Australia' that would damage the country's 'global reputation for technology business and investment' (Farquhar & Cannon-Brookes, 2020, p. 1). The submission from the Australian Industry (Ai) Group echoed similar points in their assessment, calling the Code 'an extreme instance of regulatory overreach, full of potential unintended consequences' including impairing competition and consumer welfare. The group, echoing the concerns of

other submissions, also took issue with the ACCC being asked to develop a mandatory code, as opposed to letting the 'relevant parties' in the market determine the terms. Specifically, the Code lacked a definition of 'bargaining power imbalances'. The former Australian Treasurer, argued the submission, would be able to make a determination irrespective of whether there was an actual bargaining imbalance (Ai Group, 2020, p. 3)

The directors of YouTube creator Sheet Music Boss bluntly suggested in their submission to the regulatory body that news companies were being needlessly, even irrationally privileged. 'Why should additional money be paid to news media for their content on Google's platforms when no other type of creator is given such a privilege?' (Wrangell & Dickenson, 2020). Revenue that would have otherwise gone into independent creators would find its way to news outlets. News outlets might also be algorithmically benefited in terms of prominence of content. The Code would 'create drastic power imbalance between such news media businesses and all creators of all other types of content' (Wrangell & Dickenson, 2020). News media, rather than all other creators, was the estate that needed to adapt.

The Code was also condemned as challenging the central Netizen premise articulated by the inventor of the World Wide Web, Sir Tim Berners-Lee. In his submission to the Senate Standing Committee on Economics, Berners-Lee explained that it was a breach of 'a fundamental principle of the web [to require] payment for linking between certain content online. Free linking, 'meaning without limitations regarding the content of the linked site and without monetary fees – is fundamental to how the web operates' (Berners-Lee, 2021).

American groups in their submissions to the Australian Senate trained their criticism upon what they argued was a linking tax, claiming that it unduly discriminated against US technology companies. Organisations such as Americans for Tax Reform made the claim that the notion of a 'bargaining imbalance' is simply not 'demonstrable', given that companies such as Google do not monetise Google News searches. Many clicks to news links and searches in Australia on the platform 'aren't from advertisements' (Americans for Tax Reform, 2021). The US Chamber of Commerce went so far as to argue that the proposed legislation would breach the provisions the Australia-United States Free Trade Agreement and the World Trade Organisation's General Agreement on Trade and Services.

## The Code's defenders

The conduct of the digital platforms, both actual and threatened, gave the media conglomerates a chance to sharpen their narrative about the information ecosystem and the dangers posed by the Silicon Valley stranglehold. One of the loudest proved to be Rupert Murdoch's News Corporation (News Corp). In the words of Robert Thomson, chief executive of News Corporation: 'This has been a passionate cause for our company for well over a decade and I am gratified that the terms of trade are changing, not just for News Corp, but for every publisher' (News Corp, 2021). Before members of the Economics Legislation Committee, media representatives were not shy in berating Facebook and Google for their 'almost unimaginable scale and dominance' (Janz, 2021, p. 26). While representatives positioned themselves as guardians of 'accurate, informed local news on the internet' the advertising revenue stream that had been re-directed from the old media model, such that the giants collected '81 cents in every digital advertising dollar in Australia' (Janz, 2021, p. 26).

Channel Nine's Chief Digital and Publishing officer, Chris Janz, took issue with how Google controlled information, deprioritising search results while accepting 'significant commercial returns without paying a single cent for the creation of that journalism' (Janz, 2021, p. 26). Campbell Reid of News Corporation came to the defence of the Code as playing 'a vital role in securing the future of real news for all Australians' (Reid 2021, p. 27). Managing director of the *Guardian Australia* Daniel Stinton predicted, without adducing any evidence, that the Code would also assist media companies employ more journalists (Stinton, 2021, p. 28).

Digital companies with a smaller share of the market, including Microsoft's Bing, saw a market opportunity, siding with the Code and publicising that fact. With Google potentially pulling out of the market, a greater share would be in the offing for the company's modestly performing search engine. (Google's Australian share is 94.5 percent, Bing's a barely noticeable 3.6 percent). Company president Brad Smith and Microsoft CEO Satya Nadella were quick to approach Prime Minister Scott Morrison and Communications Minister Paul Fletcher. Smith was keen to butter up the officials, with Microsoft 'committed to Australia and the news publishers that are vital to the country's democracy.' Public interest journalism faced 'many challenges from the digital era' and supported the ACCC in its efforts to confront them. The proposed code 'reasonably attempts to address the bargaining power imbalance between digital platforms and Australian news businesses' (Smith, 2021). To sceptics dismissive of Microsoft's clout, Smith promised further investment 'to ensure Bing is comparable to our competitors'.

However implausible, the boastful message from Microsoft found a willing audience among members of the Australian government and an assortment of think tanks such as the Australia Institute's Centre for Responsible Technology. Admitting to having no expertise on the subject of Google's hefty influence on the search market, Australia's Communications Minister was still delighted by Microsoft's interest 'in the market opportunity in Australia' (Duckett & Pointer, 2021).

## Data surveillance and media concentration

Central to the Code is a failure to understand the functioning of digital platforms. It is undeniable that traditional media outlets are in sharp decline, diminishing before a critical loss of classified revenue. But this has as much to do with the obsolescence of an old market model as it does with the functions of Silicon Valley giants. The traditional bundle of print media with advertising has been unpackaged, with advertising revenue finding its way as traffic on digital platforms.

A more critical defect in the Code is that it does nothing to address the philosophical and functional nature of Big Tech. To understand their business model is to understand digital robber barons at work, nourished by harvesting the behavioural data of users. Their central, profit driven mechanism is surveillance capitalism, defined by Shoshana Zuboff 'as the unilateral claiming of private human experience as free raw material for translation into behavioural data' (Laidler, 2019). Such data is then 'computed and packaged as prediction products and sold into behavioural future markets – business customers with a commercial interest in knowing what we will do now, soon, and later' (Laidler, 2019).

Zuboff takes a withering view of these companies. In her keynote speech at the European Union Parliament's Science and Technology Options Assessment panel, she was adamant that they:

... are not publishers, they are not distributors, they are not merely adtech providers; they are indiscriminate, radically indifferent all-you-can-eat extractors of everything forever, all for the sake of prediction that become more lucrative as they approach certainty (Zuboff, 2020).

Such views are shared by the executive editor of *The Atlantic*, who characterises Facebook as a 'doomsday machine' in the nuclear megadeath tradition. It has done nothing to seek veracity, improve civic engagement, speak truth to power, 'or represent the interests of its users, though these phenomena may be occasional by-products of its existence.' The system the company has provided from its 'Disney inspired campus in Menlo Park, California' aids government propaganda, harassment, recruiting terrorists, and, just to round off the strident assertions, emotional manipulation (LaFrance, 2021).

At play in the Code is a tactical shifting of revenue in the media market rather than a genuine challenge towards the anti-democratic tendencies of the digital giants. Instead of encouraging a sustainable revenue model for members of the fourth estate, the former Morrison government saw a chance to shift the burden of subsidising a press model without either imposing a digital tax or challenging the establishment features of their business model. A digital tax might have furnished the government with options to underwrite journalism schemes such as the Public Interest News Gathering (PING) fund, established to ensure investment in journalism 'essential to informing local communities, particularly in relation to national and global events such as COVID-19' (Australian Government, 2020). (A modest value of AU\$50 million has, to date, been provided.)

In 2018, then treasurer Scott Morrison, proposed a tax on digital advertising that was projected to raise AU\$200 million for the coffers (Chenoweth, 2018). In 2019, the attitudes towards such a policy had cooled. The response from various businesses to a Treasury Discussion Paper attempting to reconcile the digital economy with Australia's corporate tax regime was one of warning (Treasury, 2018; AAP, 2019). A unilateral approach to digital taxation was abandoned in favour of a multilateral platform to be pursued through such fora as the Organisation for Economic Co-operation and Development and G20 (AAP, 2019). It was a view shared by the Tax and Transfer Policy Institute based at the Australian National University, which suggested that Australia could wait for the OECD to identify a uniform approach to digital taxation. 'This would help ensure a cohesive agreement that prevents double taxation and minimises trade tensions' (Hathorne & Bruenig, 2020, p. 21)

Crucially, the ACCC and the Morrison government went so far as to approve of the surveillance capitalism model by forcing the Silicon Valley giants to give a 28-day notice of any algorithm changes (this was then reduced to 14 days) and furnish 'information about how and when [they] make available user data collected through users' interactions with news content' (ACCC, 2021). According to a Google spokesperson, this would 'give all news media businesses advance notice of algorithm changes and explain how they can minimise the effects' (Barnet, 2020).

This aspect of the new law was picked up by Electronic Frontiers Australia (EFA). In its ACCC submission, the lobby group issued a sharp warning that the Code was a form of 'legislated preferential supply of digital surveillance data to specific businesses', with the government encouraging 'increased collection and dissemination of this data' (2020, p. 3). Such unfettered data surveillance posed considerable risks to cybersecurity, 'perplexing' given ongoing government concerns about the need to invest in cybersecurity (Electronic Frontiers Australia, 2020, p. 3). Should any such data be collected at all (as a matter of the principle, the organisation was against the practice), it should only be done with digital platforms and news businesses informing their users of that fact. Such 'fully informed consent should be ongoing and able to be withdrawn at any time' (Electronic Frontiers Australia, 2020, p. 4).

Genuine reform by any government of the social media and ecosystem created by the digital giants would entail challenging the governing philosophy by reconsidering users as citizens. Zuboff is unequivocal on this point. Surveillance capitalism must be confronted, not redirected towards specific actors, as Australian officials wished to do. 'Surveillance capitalists,' she argues, 'produce deeply anti-democratic asymmetries of knowledge and the power that accrues to knowledge. They know everything about us, while their operations are designed to be unknowable to us' (Zuboff, 2019). Samantha Floreani of Digital Rights Watch also opined that Australia needed 'regulation that does not attempt to align tech platforms and media organisations in exploiting users, but instead values human rights, and prioritises creating institutions that support democracy' (Floreani, 2021).

The Code also entrenches another practice: a regime that favours news media concentration rather than ecological diversity in the fourth estate. News behemoths such as News Corp become privileged bargain players in their dealings with Big Tech, prizing smaller news vendors out of the marketplace. The deal effectively strengthened, for an alarmed Christopher Warren, 'both old media and big tech monopolies, particularly their most socially malign elements in News Corp and Facebook' (Warren, 2021). As former Australian prime minister Kevin Rudd observed, the draft legislation 'seeks to solve one problem ... by enhancing the power of the existing monopoly - that's [Rupert] Murdoch' (Visentin, 2021). In views aired on YouTube, Rudd found the excitement from 'the Murdoch media' towards the media code 'suspicious'. 'I get doubly suspicious when Scotty from Marketing [Prime Minister Scott Morrison] produces legislation to make the Murdoch media feel really happy' (Waters, 2021).

David Powers of Flinders University, inventor of enabling technology for the Australian search company YourAmigo, agreed. In his ACCC submission, the computer scientist saw a scheme by which 'two large international corporations' were being singled out for 'unreasonable and unworkable demands' to the unfair advance of 'large Australian media corporations' (Powers, 2020). This unfairness was accentuated by the need to disclose proprietary and competitive algorithms. Electronic Frontiers Australia concurred in its assessment, noting that Australia already had one of the world's 'most highly concentrated media markets.' The Code reinforced such concentration 'by excluding (or at least hindering) smaller players and publicly owned entities from financial compensation' (Electronic Frontiers Australia, 2020).

The Star News Group singled out the arbitration process as a disincentive to smaller news proprietors. It was cumbersome in nature and potentially costly. The intimidating circumstances surrounding its application would discourage small media organisations from availing themselves of the Code's application. The absence of an upper limit of payment for digital platforms also risked sinking the Code, while the 'value exchange,' argued the group, 'should be calculated based on the

number of professionally trained journalists, who produce clearly defined news content.' Without alteration, the Code provided already dominant major media organisations a chance 'to dominate the media landscape even more' (Star News Group, 2020).

To illustrate this point, *RenewEconomy*, a news site dedicated to reporting on climate change policies and renewal energy, found itself facing Google's unqualified refusal to even hold discussions with it on sharing revenue despite having over 20 million page views over its publications in 2020. Instead, Google Showcase featured such youth-focused websites as *Junkee*, packed with stories on dating and infidelity, or 'News Corp and its toxic *Sky News Australia*, the source of the kind of lies and misinformation that *RenewEconomy* has been debunking for years' (Parkinson, 2021).

## Capitulation

On February 23, Facebook reached an arrangement with the Australian government to end the brief spell of digital ostracising it had inflicted upon Canberra. Former Australian treasurer Josh Frydenberg announced that Facebook had 're-friended' Australia (Frydenberg, 2021). Easton (2021) expressed satisfaction with 'a number of changes and guarantees' that addressed the company's main concerns 'about allowing commercial deals that recognise the value our platform provides to publishers relative to the value we receive from them.'

This proved to be an undignified capitulation to Facebook. Frydenberg preferred a different reading: the Code's cardinal features had been retained in the understanding reached with the company. The proposed law would remain mandatory, 'world leading' and 'based on a two-way value exchange' (Frydenberg, 2021). There had been no abandonment of the final offer arbitration mechanism. Facebook CEO Mark Zuckerberg was thanked for 'the constructive nature of the discussions' (Frydenberg, 2021).

The grounds the government yielded to Facebook were outlined in greater depth in a joint press release from the Treasurer and the Minister for Communications (Frydenberg & Fletcher, 2021). These are stated as clarifications and amendments but are more accurately described as generous concessions to the digital giants and their coarse brand of digital gunboat diplomacy. The first amendment covered instances when the Treasurer designates the digital platform as falling within the bargaining Code. Room for potential exemption for the platform will be granted, provided the company can show it 'has made a significant contribution to the sustainability of the Australian news industry through reaching commercial agreements with news media businesses' (Frydenberg & Fletcher, 2021).

Such concessions had the very clear outcome of benefitting that other digital giant, Google. While threatening the Morrison government with the sudden withdrawal of its search engine from Australia, the company busied itself reaching deals with dozens of Australian media outlets as part of its News Showcase. Doing so showed its interest in making a 'contribution to the sustainability of the Australian news industry'. According to Google's president of Global Partnerships, Don Harrison, the company had 'invested significantly to help news organizations, including the Google News initiative, our ad technology services, subscription tools, and our \$1bn for news partnerships through Google News Showcase that pays publishers to curate content for an enhanced online news experience' (Harrison, 2021). On February 18, an agreement was reached with Rupert Murdoch's News Corp, covering 26 Australian publications (Beddoe, 2021). It was little wonder that Paul Kelly of *The Australian*, a major News Corp publication, heaped praise upon Frydenberg as 'an irrepressible negotiator and talker' who refused 'to accept surrender as an acceptable result' (Kelly, 2021).

Even more contentious was a possible commercial arrangement with the publicly funded national broadcaster, the Australian Broadcasting Corporation. ABC Alumni saw the approach as one that would push the publicly funded body towards greater commercialisation:

The precedent set by the ABC entering into a contract to share Google's ad revenue will set the ABC on a commercial path and make it easier for any hostile federal government in future to demand more commerciality, not less (Meade, 2021).

Independent Senator Rex Patrick, taking note of Google's aggressive negotiation strategy with Australian news providers, was already sceptical about the Code's effectiveness, fearing that it was being rendered toothless ahead of time. 'The minister won't designate because the deals will have been done with the big guys, and the little guys are going to miss out and the regional guys are going to miss out' (qtd in Meade & Taylor, 2021). Labor Senator Deborah O'Neill also questioned the scope of the designation power vested in the Treasurer. 'This move for delegated legislation, giving all the power to one person, and taking away the scrutiny of this place [Parliament], the Australian people's place, where they send us to stand up for them, is just a signature move by this government; it's a concentration of power' (Sadler, 2021).

The second Code amendment set out how the digital platform would receive notification from the government of its designation prior to any final decision within a window of one month. Non-differentiation provisions will not be triggered where commercial agreements yielded 'different remuneration amounts or commercial outcomes that arose in the course of actual business practices' (Frydenberg & Fletcher, 2021). Such a statement revealed the government's permissiveness about letting the market players determine what constituted varying remuneration totals as long as they are accepted as part of 'actual business practices'.

Another government concession continued the theme of market non-interference, tinkering with the final offer of arbitration itself. Resort to it would only be had as a matter of 'last resort where commercial deals cannot be reached by requiring mediation, in good faith' after a period of two months (Frydenberg & Fletcher, 2021).

Without an iota of evidence, Frydenberg and Fletcher insisted that the amendments would 'strengthen the hand of regional and small publishers in obtaining appropriate remuneration for the use of their content by the digital platforms'. The evidence suggested the contrary: the Facebook business model, one that thrives on traffic generated by clicks and shares, is bound to benefit larger news providers over smaller ones, whose negotiating position would be relatively weak relative to larger market figures (Blinova, 2021).

A closer reading of the changes, as revealed in the memorandum, also involved another important concession: removing the need for digital platforms 'to give advance notice to registered news media businesses of changes to an algorithm or internal practice ... likely to have a significant effect on the referral traffic from a designated platform service to covered

news content' (Supplementary Explanatory Memorandum, 2021, p. 5). Nonetheless, amendments did include annual reviews and public reporting on the use of algorithms 'and their impact on the accessibility and availability of covered news content' (Patrick, 2021). For the digital giants, this was a telling victory, effectively dispensing with any genuine need to reform their own business practices.

## Things left untouched

'Three problems – monopoly, surveillance and disinformation – sum up what's gone wrong and what needs to be fought and fixed in order to have any hope of recovering the promise of the new technology' (Starr, 2019). The adoption of Australia's News Bargaining Code did little to address the three points enumerated by Starr; if anything, it did much in the way of affirming them, be it in terms of entrenching the power of traditional monopolies (media and digital); encouraging ongoing surveillance capitalism; and doing little by way of dealing with the quality of disseminated information.

Confronting surveillance capitalism as a broader project would have to involve improved privacy protections that restrict the commodification of behavioural data, with restrictions on the gathering of user data and regulations requiring informed consent from users. The Code retains a monetary, economic rationale in generating and sharing news content and leaves, intact, the exploitative model of relations with users and data harvesters while improving the financial position of old media oligopolies.

What unfolded in February 2021, according to Stilgherrian, was a crude ransoming exercise. 'The larger news businesses literally held Facebook and Google to ransom, demanding money or they'd withdraw their content and then – well, Facebook called that bluff' (Stilgherrian, 2021). As did the government, mandating that an agreement be reached between the news organisations and digital platforms. 'So, everyone's the bad guy,' concluded Stilgherrian – except the common citizen, who could hardly have hoped to feel a sense of victory in this.

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