



Submission on

**ACCC: Digital Platforms Inquiry Final Report**

on behalf of

Australian Association of National Advertisers

September 2019

## Introduction

The AANA is the peak body for advertisers and has represented national advertising for 90 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The advertising, marketing and media industry plays a fundamental economic role in society - contributing approximately \$40 billion to the Australian economy and employing over 200,000 people<sup>1</sup>. It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs.

## Advertising Self-Regulation

Self-regulation is an essential part of the Australian business landscape and contemporary society. The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers' recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations.

The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. It provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The self-regulatory system, including complaints handling, operates at no cost to the consumer or to government. The AANA is funded by membership fees. Funding of Ad Standards and its secretariat support of the Ad Standards Community Panel and Ad Standards Industry Jury is provided through a voluntary levy on advertising spend.

The AANA self-regulatory system provides Codes that reflect community standards in relation to advertising. They are developed and have evolved with public and industry consultation. The Codes are technology and platform neutral, providing a uniform set of self-regulatory standards that apply to all advertisers, regardless of AANA membership.

The system is recognised and endorsed through inclusion in other self and co-regulatory systems, and all major media owners have agreed to support the decisions of the Ad Standards Community Panel.

Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform. The resulting commercial consequences of breaching the Codes include:

- the direct and indirect costs of withdrawing an advertisement; and
- the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

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<sup>1</sup> *Advertising Pays: the economic, employment and business value of advertising*, June 2016  
<http://www.advertisingpays.com.au/>

## Submission

The AANA supports the general aims of the ACCC's final report, particularly the call for measures to ensure that news media are appropriately acknowledged and remunerated for their content generation. We agree wholeheartedly with the ACCC that news journalism is a vital component of a properly functioning democracy so it is important that we have the right regulatory settings to allow it to flourish into the future.

The AANA also welcomes the ACCC's calls to improve the data literacy of Australians. Increasingly, data literacy is becoming a core skill required to empower and protect consumers and businesses in a data-driven world.

Further to our previous submissions, we would add the following:

### Recommendation 5: Inquiry into ad tech services and advertising agencies

AANA welcomes this inquiry, and notes that the advertising industry has also been active in this area, prior to and during the course of the Inquiry.

#### **AANA Media Contract**

In August 2019, the AANA released a revised edition of the Media Contract Template and the AANA Media Contract Guidance Notes to help advertisers obtain greater transparency over the return and effectiveness of their media investment. The Media Contract was designed for use between advertisers and their media agencies. The AANA believes that strong contractual relationships, together with capability development to manage ongoing media agency relationships, are the keys for advertisers to obtain greater transparency and build more trusting and enduring business partnerships.

The AANA Media Contract Guidance Notes support the template, providing marketers with a 'long-list' of considerations and questions that should be addressed, to enable them to reduce or eliminate ensure that all revenue earned by agencies and related parties is detailed in the contract, unless explicitly agreed otherwise.

There is no obligation on advertisers or AANA members to use the template. Advertisers are free to negotiate whatever terms and conditions they deem appropriate.

#### **Australian Digital Advertising Practices**

The AANA, Interactive Advertising Bureau (IAB) and Media Federation of Australia (MFA) have been working together to address areas of concern and lack of understanding within the digital advertising industry. This work, carried out in collaboration with a cross-industry team of advertisers, media agencies, digital publishers and subject matter experts, resulted in the Australian Digital Advertising Practices, which were launched in July 2018.

The Australian Digital Advertising Practices aim to facilitate better relationships between advertisers, agencies, publishers and digital platforms, and to foster shared responsibilities for digital ad spends and outcomes on five key areas:

1. Digital transparency;
2. Viewability;
3. Ad fraud;
4. Brand safety; and
5. Data transparency.

The Australian Digital Advertising Practices are designed to equip the industry with a checklist of questions and areas to consider so that informed decisions can be made. They are intended as an

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important first step in building trust and instilling confidence in the digital advertising value chain. The Practices do not solve all issues, rather, they act as a starting point for advertisers, agencies and digital platforms to resolve how they will operate together.

The Australian Digital Advertising Practices are currently being reviewed and updated to take into account rapid technological and regulatory change.

### **Uniform measuring system**

A key issue is that digital platforms do not facilitate a uniform measuring system. Some provide data to be assessed by the advertiser while others allow measuring tools to sit within their platforms. The result is that advertisers cannot compare like with like.

Advertisers would like full transparency in relation to the placement of online advertisements and their effectiveness assessed by an independent third party. However, in the current digital media landscape, this is not possible.

Major advertisers are increasingly taking ownership of the relationships that they enter into, challenging existing commercial arrangements, building in-house models, and seeking third party involvement in measurement and audits. Advertisers support mechanisms to create open and transparent measurement.

As advertisers have increased their investment in digital advertising, many have ensured additional checks are in place to verify that digital platforms:

1. deliver impressions/advertisements to the intended target audience;
2. deliver impressions to the agreed volume and/or buying method as indicated on the insertion order; and
3. do not inflate their results and subsequently, their performance.

Many advertisers use the services of an independent third party to guard against ad fraud and monitor viewability and brand risk. Control over the context in which a brand is seen online is of utmost importance. However, some digital platforms do not allow these third parties to fully integrate with their platforms. Some only allow brands to monitor fraud and viewability, but not brand risk.

Essentially it has fallen on brands to either build in-house capability or engage third parties and be more responsible for their own brand safety, rather than merely relying on their media agencies or digital platforms. While some major brands have made the decision to stop using digital platforms until brand safety can be assured, many brands, despite these misgivings, continue to use such digital platforms in their advertising campaigns due to their scale and targeting capabilities.

Many small advertisers may not be aware of these issues, and for those who are, building in-house expertise, monitoring for ad fraud and tracking their brands' exposure to inappropriate content is simply not an option. For this reason, small advertisers are much more likely to be negatively impacted by these matters than large advertisers.

We believe that the ACCC's inquiry into this area, while of potential benefit to all advertisers, has particular potential to assist smaller advertisers in understanding the value chain and protecting their brands. Following this inquiry, an industry solution working together with media agencies, advertisers and ad tech platforms can do a lot to enable advertisers of all sizes to optimise the benefits of advertising on the digital platforms while providing transparency and tools to tackle the possible risks.

## Recommendation 6: Process to implement harmonised media regulatory framework

While the AANA supports the harmonisation of regulation, there needs to be a high degree of flexibility in any regulatory approach taken, otherwise the risk of swift obsolescence is high. The rapid pace of technological development suggests that new waves of market-changing technology will affect the industry in the near future, many AI-driven.

The AANA is pleased that the ACCC Final Report acknowledged that the technology-neutral AANA Codes have kept pace with technological change so that the Codes can continue to apply to all consumer-facing marketing communication, including advertising on digital platforms.

In relation to political advertising, the AANA supports the call for the harmonisation of political advertising regulation in line with our stated object that advertising should be prepared with a sense of responsibility to consumers and a sense of fairness to competitors.

## Recommendation 16: Strengthen protections in the Privacy Act

## Recommendation 17: Broader reform of Australian privacy law

## Recommendation 18: OAIC privacy code for digital platforms

As with free-to-air television, advertising funds digital services so that they can be enjoyed for free or at a reduced rate by consumers. Such services include free email, social media, video and music content and search services. Many consumers actively choose these free services, understanding that they include advertisements, rather than pay a subscription for the 'ad free' delivery of such services.

The AANA supports fully the objective of enabling users to have transparency, choice and control over how their personal information is used. We believe that the notion of 'value exchange' goes hand in hand with the requirement for consent to be freely given, specific, informed and unambiguous.

It should be borne in mind that the primary objective for brands may not be to identify individuals, but to segment online users on the basis of their browsing habits, in order to serve marketing communication that is more relevant to those segments' inferred interests. Data anonymisation techniques are frequently used without compromising the value of the data from an advertiser's perspective.

Whilst the AANA expressed some reservations around a number of aspects relating to these recommendations in our submission to the inquiry, we believe that, as proposed, the ACCC's objectives to ensure fair value exchange and consumer privacy can and should be achieved without unduly impinging on the ability to serve targeted advertising that is highly relevant to the recipient. Care should be taken in the implementation of these recommendations to ensure that they do meet those objectives with minimal disruption to the user experience and the ability of advertisers to personalise their content.

In particular, the AANA supports the call for globally consistent privacy and data transparency laws outlined in recommendation 17. Given the global nature of the digital economy, it makes sense for privacy and data transparency laws to transcend borders to provide a clear and consistent framework for both consumers and businesses. The AANA supports further consultation and analysis to ensure global consistency of data and privacy laws.

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### Further Consultation

The AANA would welcome an opportunity to discuss in more detail with Treasury and relevant departments the issues raised in the ACCC's final report. Please contact Megan McEwin on (02) 9221 8088 or [megan@aana.com.au](mailto:megan@aana.com.au) regarding opportunities for further consultation.