

Response to Inquiry on Legislation

Computer & Communications Industry Association Comments to Australia's Consultation on the News Bargaining Incentive

I. Introduction

The Computer & Communications Industry Association (CCIA)¹ welcomes the opportunity to submit comments in response to selected questions from the recent consultation on the News Bargaining Incentive (“the incentive”).²

CCIA previously submitted comments on Australia's News Media Bargaining Code³ and has consistently highlighted concerns with the proposed incentive, given its essential characteristic as a discriminatory tax.⁴ The Association recognizes the importance of community newsrooms and journalism, and advocates for policy options that provide appropriate support for public interest news content. However, these solutions must be evidence-based to have a lasting impact that both uplifts local publications without harming the fundamental mechanics of information sharing online. As traditional publisher business models transform, seeking alternative, more sustainable means of funding is essential for the preservation of local news.

Furthermore, the incentive does not account for the ever-changing technological landscape, including the recent boom in artificial intelligence. The news industry has experienced transformative new technologies that disrupted business models and created new opportunities before the internet, including the introduction of radio and television broadcasts. Any policy that affects the digital economy, including the proposed incentive, must be future-proof and technology neutral to avoid deterring innovation.

Despite remarks from government officials that the incentive is “not intended to raise revenue for the Government,”⁵ the proposal operates as a *de facto* retroactive tax on a handful of U.S. companies applied as a percentage of those firms' attributable revenue from Australia. The intent of the Australian Government to target only U.S. companies is further evidenced by the

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than fifty years, CCIA has promoted open markets, open systems, and open networks. For more, visit www.ccianet.org.

² Referred to herein as “the consultation”, available at:

https://storage.googleapis.com/files-au-treasury/treasury/p/prj38f28c23f2accd6993e91/page/c2025_718159.pdf

³ CCIA Comments to the Australian Parliament on the News Media and Digital Platforms Mandatory Bargaining Code (Jan. 17, 2021),

<https://ccianet.org/library/ccia-comments-to-the-australian-parliaments-inquiry-on-the-news-media-and-digital-platforms-mandatory-bargaining-code/>.

⁴ *News Media Bargaining “Incentive” A Coercive and Discriminatory Digital Tax*, Computer & Comm'ns Indus. Ass'n (Dec. 19, 2024),

<https://ccianet.org/library/news-media-bargaining-incentive-a-coercive-and-discriminatory-digital-tax/>.

⁵ Press Release, News Bargaining Incentive consultation paper released, Australia Treasury (Nov. 13, 2025),

<https://ministers.treasury.gov.au/ministers/daniel-mulino-2025/media-releases/news-bargaining-incentive-consultation-paper-released>.

fact that the Australian Treasury’s November 2025 consultation paper⁶ named only Meta and Google, and no other company. Based on the information available, the incentive raises multiple concerns, as detailed below. The incentive would have long-term impacts on journalistic independence and independent publishers, while also failing to account for the evolving global news landscape and shifting consumer preferences.

Therefore, the Australian Government must reconsider this approach to “reinforcing” the News Media Bargaining Code and addressing its “limitations” as noted in a 2024 Parliamentary report.⁷ Hyper-targeted, gross-based taxes are a flawed solution to this problem as they discriminate against a few companies with limited policy justification.

For this reason, the Association responds to the consultation questions that are directly relevant to explaining the structural, definitional, and economic flaws of this approach, including questions one through six.

II. The Incentive Is Discriminatory, Regardless of Name

Although labeled an “incentive,” the scheme operates as a discriminatory measure that pressures a small set of companies into entering commercial arrangements with publishing companies. It is the regulatory design and substance, rather than branding and semantics, that determine how a law would operate. The proposal makes abstaining from government-preferred deals just another thing taxed by the government. Regardless of rebranding the measure as an incentive, it functions mechanically as a tax.

The proposed charge at the center of the News Bargaining Incentive exhibits many of the same structural features seen in taxes. It is mandatory for certain entities, applies only to a narrowly defined group, and is created to compel behavior rather than raise general public revenue. This is the hallmark of a discriminatory industry-specific tax. Mislabeling a levy as an incentive obscures its economic and legal consequences and undermines trust in the transparency of the policymaking process.

Overall, a policy targeted at a small number of U.S. digital services, requires forthright acknowledgment of what it is: a discriminatory revenue-raising instrument attached to a coercive behavioral condition. The proposed incentive creates a structure designed to compel digital services to enter into deals with Australian news organizations. Under the scheme, designated services must pay a tax if they do not enter into said agreements. The framework ultimately pressures services to pay for news content at a “given level or percentage” to avoid paying the government.

Whether an action like this is described as an incentive, a charge, or a penalty, its effect is indistinguishable from a tax or other measures that discriminate against U.S. service providers, particularly as it informs Australia’s obligations under the Australia-United States Free Trade

⁶ News Bargaining Incentive consultation paper, Australia Treasury (Nov. 13, 2025), <https://consult.treasury.gov.au/c2025-718159>.

⁷ *Second interim report – Digital platforms and the traditional news media*, Parliament of Australia (May 15, 2024), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media_and_Australian_Society/SocialMedia/Final_report/.

Agreement (AUSFTA), which generally prohibits: discrimination against U.S. suppliers under its **national treatment** and **most-favored-nation** rules; discrimination against **digital products**; and **performance requirements**, including a requirement to “achieve a given level or percentage of domestic content”. With respect to all these provisions addressing discrimination (Articles 10.2 and 10.3 addressing Cross-border Services; Articles 11.3, 11.4 and 11.9 addressing Investment; and Article 16.4 addressing Electronic Commerce), the proposal would likely skew the competitive landscape against U.S. suppliers and non-Australian news content, while conferring relative advantages on Australian and third-country suppliers; the latter category of suppliers would either generally not be subject to the penalty or would be beneficiaries of this forced payment. Accordingly, this measure would clearly expose Australia to a *prima facie* claim of unjustified discrimination and potential retaliation if the measure is enacted.

The framework is thus inconsistent with AUSFTA’s chapters on investment, electronic commerce, and cross-border trade in services, a factor that is especially important as Australia considers responses to the consultation on the framework. Given its discriminatory nature as well as it being unreasonable due to only providing organizations the option to either enter into agreements with publishers or pay the charge, the United States Trade Representative would have a basis to take action against the incentive, either under AUSFTA or Section 301 of the Trade Act of 1974.

III. Responses to Selected Questions

Question 1: How do you think “social media” and “search services” should be defined for the purposes of the incentive?

As CCIA does not support the creation or implementation of the proposed incentive, our comments on this question are limited to identifying structural problems with definitional scope and how the framework risks sweeping in services that bear no rational relationship to the stated policy objective.

The consultation’s continued focus on both “search” and “social” services as the primary catalyst of bargaining obligations lacks a clear and contemporary policy rationale. This framing reflects an increasingly outdated understanding of how audiences consume, discover and even engage with news. News consumption and distribution has been undergoing a transition due to a far wider range of new and emerging technologies and services on and offline. Generative AI products, podcasts, short-form and long-form streaming and video services, newsletters and other subscription services, and emerging creator-driven applications increasingly serve as primary channels where audiences access news and information, and where journalists can build and sustain direct relationships with audiences.

Because of this, policymakers should instead let the free market determine what is valuable or sustainable in the long term. By singling out only search engines and social media, the incentive risks embedding an arbitrary and static market definition into law, one that does not reflect the dynamic and fast-evolving nature of the digital media environment. Successful policy must be functional and effective, and include how services interact with news and contribute to audience attention.

This narrow focus also weakens the policy justification overall. If the objective is to sustain public-interest journalism, the consultation does not sufficiently explain or acknowledge why similar dynamics that may arise from other services fall outside of the framework. Because of this, the code appears selective and undermines both its coherence and long-term durability. CCIA remains concerned that the proposal's design inherently risks distortionary outcomes and should not proceed.

Question 2: Is a gross annual Australian market revenue threshold appropriate for determining significance, or should a different measure be used?

CCIA does not believe any threshold, whether based on gross annual Australian revenue or an alternative metric, should be utilized when considering ways to address the limitations of the News Media Bargaining Code. The structure of the scheme is inherently discriminatory regardless of the threshold used, and changing the metric does not remedy the underlying defect of the framework.

Like digital services taxes (DSTs), which typically target only a handful of companies due to arbitrary revenue requirements and service definitions designed to scope in American companies, Australia's proposal will fall on select foreign companies and exempt numerous competing local services, including those that many Australians use to consume their news the most. The inclusion of a revenue threshold and a narrowly defined scope is discriminatory by nature for three reasons:

1. It creates an arbitrary and distortive tax burden unrelated to market power or conduct.
2. Revenue does not reflect a digital service's influence on news distribution or its role in the media ecosystem.
3. The threshold incentivizes companies to alter business patterns or models and creates market uncertainty.

If the government seeks to identify significant services, the only coherent approach would be to define significance based on demonstrable market impact relative to the policy objective. However, such a metric would not solve the broader problems facing the news industry and the potential harm to the online information ecosystem. Compelling payments for linking or indexing news content distorts the open internet and conflicts with globally accepted principles of multiple policy realms.

Question 3: If gross annual Australian market revenue is the appropriate threshold, what level of revenue should it be set at?

For the reasons stated above, CCIA maintains that no threshold or metric, including revenue-based or otherwise, can justify proceeding with the incentive. The discriminatory structure of the framework cannot be resolved by altering the criteria for which companies are covered.

Question 4: What criteria should be used to determine the “significance” of a social media or search service?

Overall, no set of either broad or narrow criteria can transform what is effectively a discriminatory, tax-like framework into sound policy. Compelling a subset of digital services to subsidize certain publishers based on a government determination of significance conflicts with the principles of competitive neutrality and undermines an open internet. Additionally, these forced wealth transfers in the form of “agreements” operate as a stopgap measure and avoid finding a true and sustainable solution for newsrooms.

These kinds of initiatives also assume that the targeted companies operate in a static market, overlooking the fierce competition and dynamic nature of the technologies involved. The definition of news continues to evolve, including what qualifies as news and a newsroom, given the rise of technology and independent journalism. The proposal dismisses these shifting boundaries between traditional journalism and user-generated content, and remains falsely built on the premise that digital services somehow “siphon” revenue away from news websites by linking to them and referring traffic.

Efforts to determine “significance” take a dated and stagnant approach to an ever-evolving industry and ecosystem. CCIA maintains that no criteria can make the incentive workable, and that any definition of significance based on size or revenue would exacerbate the discriminatory impact of the scheme.

Question 5: What sources of data are best used to assess the size of companies and the significance of their services?

The proposed incentive is fundamentally misguided and should not proceed. Weight placed upon “size” or “significance” of digital services does not cure the core defect of the scheme, which compels government-selected digital services to subsidize particular news publishers. Any attempt to further measure these only reinforces the discriminatory nature of the framework. Furthermore, no single data source can reliably capture how Australians engage with news across digital services, as that relationship is constantly changing and evolving.

Even with the best available data, attempts to designate digital services will inevitably rest on arbitrary judgment and incomplete information. There is no reliable data framework that can justify a discriminatory incentive scheme. The government should not move forward with a model that hinges on subjective determinations of significance, regardless of the data sources used.

Question 6: What administrative costs are likely to be incurred by platforms that are potentially in scope?

Even a narrow interpretation of the proposed incentive framework would require digital services to incur significant, substantial, and unnecessary administrative costs that are disproportionate to both the goals of the consultation and its expected impact on news production. CCIA warns against the following categories of administrative costs:

- **Compliance and Reporting Systems:** Digital services would need to develop or expand internal systems that could track the application of credits or caps created by the framework, as well as Australia-specific revenue attributed to covered services. Building, auditing, and maintaining these systems represents a multi-year cost.
- **Legal Services:** The proposal’s complexity, especially around revenue attribution, deal eligibility, and deduction rules, would require substantial legal review, auditing, and documentation. If coverage were tied to significance, companies would need continued legal analysis to determine if and when they fall into scope.
- **Negotiation Costs:** By pushing digital services to enter or expand commercial deals due to the incentive, companies would need to develop and maintain the necessary labor and tools for these legal processes. This is essentially a mandatory layer introduced by regulation rather than market demand.
- **Potential Technical Modifications:** Depending on how “news” and “engagement” are defined in the legislation, some services may need to adapt product interfaces or measurement systems to capture information relevant to compliance. Even small changes could have substantial costs when applied across Australia’s technical ecosystem.

The nature of these costs highlights a core structural problem: the proposed incentive operates as a discriminatory tax wrapped in a compliance framework. Administrative burdens are not incidental, but rather stem from the fundamental design of obligating a small number of companies to subsidize selected news publishers. No amount of refinement will eliminate these costs or make the framework efficient and productive.

IV. Conclusion

CCIA appreciates the opportunity to respond to the consultation on the proposed News Bargaining Incentive. However, as our response makes clear, the framework is fundamentally misdirected and harmful. No set of definitions, thresholds, data sources, or other mechanisms can cure its core defect. That is, the proposal is a discriminatory tax regardless of the terminology applied that requires a small number of mostly American digital services to subsidize a select group of news producers.

As it stands, the structure of the incentive would impose significant compliance burdens and substitute government judgment for commercial negotiation. It greatly misunderstands market relationships. It risks chilling innovation and investment within Australia’s digital ecosystem, while offering no principled foundation for supporting public-interest journalism.

Moreover, the consultation questions themselves underscore the arbitrary nature of the proposal. This is not a stable regulatory framework, but rather a continually expanding administrative mechanism to justify a policy outcome without meaningful reassessment. For these reasons, CCIA urges the Treasury and Australian Government not to proceed with the proposed incentive. Any public policy approach intended to support journalism should be transparent, non-discriminatory, and technology-neutral. We appreciate the opportunity to provide input and remain available to engage further.