

Refriended in Defeat: Australia Strikes a Deal with Facebook

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Global Research, February 24, 2021

Region: [Oceania](#)

Theme: [Media Disinformation](#)

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*The Australian Treasurer, **Josh Frydenberg**, was unconvincing in his efforts to summon up courage. The Australian government had been left reeling in the wake of Facebook’s [decision](#) to scrap and block Australians from sharing and posting news items on hosted pages. The company’s target of opprobrium: the [News Media Bargaining Code](#).*

The Code’s ostensible purpose is to address the inequalities in the news market place by pushing digital giants and news outlets into reaching commercial deals. Failing to do so will lead to final offer arbitration between the parties, where the independent arbitrator selects one of the deals on offer. That selection would be binding on both parties.

Facebook was having none of it, with its managing director for Facebook Australia and New Zealand **William Easton** [stating](#) that the scheme “fundamentally misunderstands the relationship between our platform and publishers who use it to share news content.” Left with “a stark choice” – to either comply with the law drafted in ignorance of such realities, “or stop allowing news content on our services in Australia”, Facebook preferred the latter option. The main objective, then, was for Facebook to press the Australian government to abandon the code altogether or, what was more likely, soften the terms of its application.

On February 23, after a five day digital siege [which saw outrage](#) from numerous community, charity, media and political organisations across the country, Frydenberg [announced](#) that Facebook had “re-friended” Australia. He was resolute on the point that the amendments did not take away from the Code’s central features: it remained mandatory, was “world leading” and “based on a two way value exchange.” It retained a final offer arbitration mechanism. The Treasurer also thanked Facebook CEO Mark Zuckerberg for “the constructive nature of the discussions” and asserted that the object of this whole exercise was “to sustain public interest journalism in this country.” For a government that has [encouraged the prosecution](#) of whistleblowers and threatened the prosecution of journalists for engaging in that very journalism, dark ironies continue to bubble.

Facebook would have been softly chuckling at the amendments or “clarifications”, as Frydenberg preferred to call them. The [joint press release](#) from the Treasurer and Paul Fletcher, the Minister for Communications, outlines what can only be regarded as capitulations. Whether the digital platform in question will be designated by the Treasurer as one needing to cough up the appropriate remuneration will depend on whether it “has

made a significant contribution to the sustainability of the Australian news industry through reaching commercial agreements with news media businesses". At this writing, Facebook is doing that very thing.

The platform will receive notification by the government that it has been designated prior to any final decision, with a one month notice period. 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". The brutal market knows best.

Finally, resort to final offer arbitration will only take place as a matter of "last resort where commercial deals cannot be reached by requiring mediation, in good faith" after a period of two months.

Whether expressed in a fit of delusion or disingenuousness, the ministers also make the unsubstantiated claim 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."

Sue Greenwood of York St. John University based in the UK [argues](#) that the opposite outcome is more likely, with the proposed law leaving "smaller or local news providers in a weaker position", disadvantaged relative to those who "deliver content which gets more clicks and shares on Facebook", thereby improving their negotiating position.

While the predatory practices of Big Tech are to be lamented and loathed, this Code is a sprawl of potential failings. It has [puzzled and alarmed](#) the inventor of the World Wide Web, Tim Berners-Lee for "breaching a fundamental principle of the web by requiring payment for linking between certain content online." Gratis linking, "meaning without limitations regarding the content of the linked site and without monetary fees - is fundamental to how the web operates."

It has induced much head scratching on the part of economists, not least because the Code seems to encourage failing industries and potentially benefit other media giants, such as Rupert Murdoch's unsavoury News Corp. This is the [unrepentant view](#) of former Australian Prime Minister, Kevin Rudd. "The problem with the government's current response to the challenges of the digital media marketing code is that it seeks to solve one problem ... by enhancing the power of the existing monopoly - that's Murdoch."

The Code has also caused consternation to digital activists for not addressing privacy concerns. It does nothing to counter the concentration of information and relentless data extraction known as surveillance capitalism, [defined](#) by Shoshana Zuboff "as the unilateral claiming of private human experience as free raw material for translation into behavioural data." That data is sold, in turn, to corporate players to target human behaviour in a predictive way.

The other digital giant no doubt doing a jig in light of these announcements will be Google, who, despite [bullying threats](#) to withdraw its search engine from the antipodes, preferred frenetic negotiations. To date, the company is boasting of striking deals with dozens of Australian media outlets as part of its [News Showcase](#). It can already make a good argument for not being "designated" for contributing to the sustainability of the Australian news industry.

A victory, then, for the digital giants. A tail-between-the-legs capitulation from Canberra, and a single, dagger directed blow at the barely breathing body of Australian democracy. And just to add appropriately salted insult to wounding injury, Facebook promises that it may well do it again. The digital brutes have been emboldened.

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