



PASA Comments on Draft Terms of Reference: ‘Media and Digital Platforms Market Inquiry’
20 April 2023

TO: mdpmi@compcom.co.za

FOR ATTENTION: Ms Noluthando Jokazi, Senior Analyst (Case Manager)

Dear Ms Jokazi

Comments on Draft Terms of Reference: ‘Media and Digital Platforms Market Inquiry’

We appreciate your invitation to submit comments on the Draft Terms of Reference for the planned ‘Media and Digital Platforms Market Inquiry’.

As the Publishers’ Association of South Africa, PASA, we acknowledge that our members are not news media businesses. However, as we indicate below, we do have an interest in the potential threats posed by large digital platforms as outlined in the draft TOR. In addition, some of our members are partners in or subsidiaries of larger publishing houses which include news media businesses.

In support of our colleagues in the news media and as a representative of copyright holders that are concerned about the unregulated manner in which digital platforms can handle copyright protected published works, we align ourselves with the following statements in the draft TOR:

‘...independent journalism in the country is under threat as a result given that independent public interest journalism is one of the cornerstones of a healthy democracy...

‘This change in news consumption adds value to the search and social media platforms, allowing them to monetise data or advertising, and in so doing extract the benefits of copyright content from the publishers.’

PASA therefore wishes to be acknowledged as an interested party in the inquiry. We kindly request you to keep us informed about the proceedings.

PASA

The Publishers’ Association of South Africa (PASA; <http://www.publishsa.co.za/>) is the largest publishing industry body in South Africa. It represents book and journal publishers in South Africa. PASA’s membership comprises the majority of South African publishing houses, large and small, for-profit and non-profit, educational, trade, self-improvement, leisure, national literature, and tertiary scientific and social science education. PASA promotes the contribution of literature in all its forms to

cultural, social, and economic development, both of communities and individuals – that is, for the public good.

Concurrent themes relating to the Copyright Amendment Bill 2017

There is no doubt that there are aspects of the draft Terms of Reference that have common themes that relate to the manner in which digital platforms have and continue to treat copyright protected content of published books. PASA has been highlighting these themes in relation to the detrimental provisions of the Copyright Amendment Bill 2017 (<https://www.gov.za/documents/copyright-amendment-bill-b13d-2017-8-jun-2022-0000>). This Bill, in our view, is a policy option that gives the digital platforms a free pass to use copyright protected content without seeking permission or paying for it.

The Draft Terms of Reference: ‘Media and Digital Platforms Market Inquiry’: Comments

1. In view of the Copyright Amendment Bill now before Parliament, which has far-reaching implications for both us as book and journal publishers – and for news media – we foresee that the following quotes from the draft TOR potentially apply to our members as well:

‘2.6.4 ...protection over copyrighted content may be harder to enforce once this content is distributed and displayed online...the unequal bargaining power typically results in the platforms extracting most of the value from the trading relationship...

‘2.9 The integration of these generative AI based chatbots into search engines would allow users to obtain direct answers to questions or queries posed in the search results page without the need to necessarily obtain it through accessing publisher webpages.

‘2.10 ... Furthermore, South African news publishers’ content may also be used to train these AI systems without authorisation or compensation.

‘2.11 ... It is unclear the extent to which these systems may pose a threat to online content publishers, especially news publishers, in the form of significant competition and public interest concerns in South Africa. However, this should be investigated in these early stages such that appropriate remedies can be implemented to reduce or eradicate future competition and public interest harm to news media businesses.’

2. We associate ourselves with the following goal as stated in the draft TOR 3.4.3:

‘Evaluate whether the commercial relationship between news media businesses and relevant digital platforms is characterised by imbalances in bargaining power and the impact of such imbalances on competitive outcomes affecting the news media industry, including pricing and non-price outcomes...’

Conclusion

PASA supports the draft Terms of Reference. While we acknowledge that our members are not news media businesses, the longer-term implications of the concerns raised by the Publishers Support Services threaten our members as well.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mpuka Radinku', with a stylized flourish extending to the left.

Mpuka Radinku
Executive Director