The information ecosystem, "online harms" and our recommendations for the media review

Introduction

The upcoming media review presents an opportunity for New Zealand to consider its place in the world and online. It is a chance for the Government to think about desired outcomes for the broader information ecosystem as a whole, including new issues that people and society are facing from conduct and content online. It's also a chance to identify what the core objectives of a modern media regime should be, and consider how to achieve those in a significantly changed context.

Successive governments have sought to update the media and communications policy and regulatory frameworks so that they are fit for purpose. In the most recent phase of this work since 2018, government (under the portfolios of the Minister of Internal Affairs and the Minister for Broadcasting, Communications and Digital Media) has been looking to scope a review to modernise New Zealand's media content regime ("the media review"). During that time, Cabinet decisions have identified an even broader range of policy problems as being potentially in scope for this review, including regulation of content on social media and electoral advertising on social media.

DIA and MCH are currently undertaking work on how to approach this review, including what its scope should be. We recommend taking a broad and inclusive approach to considering the scope of the review. This will give government the best

chance of achieving a flexible and future proof regime that also helps address harmful behaviours online.

This paper sets out our initial thinking on what this approach might look like.

A broad approach is necessary because the media landscape has changed significantly

In the last three decades, since New Zealand's regime for supporting and regulating information media was put in place, the Internet has caused dramatic changes in the media and mass communication landscape.

The current regime assumes people operate in the roles of a broadcaster or publisher on one end and a largely passive audience on the other, but through the Internet people can now interact with each other and with information in new and different ways. Some examples of the new dynamics in play are:

- The traditional communicative process has morphed from a largely linear, one way, one to many process; to a multi-point, multi-directional, many to many ecosystem.
- Consumers of content are now also creators and distributors.
- Content is content, regardless of the way it is accessed, or who has created it.
- The same technologies are used by ordinary people to hold conversations and build community and by corporate interests and traditional publishers to reach consumers.
- People can reach big audiences without engaging with traditional gatekeepers.
- With so much information available, influencing what gets attention can be more powerful than controlling who gets to express their ideas.
- Platforms and search engines serve as forums for public engagement, but have commercial incentives to mediate or moderate content for their own gain.
- "Broadcasters" can tailor their content individually to each individual receiving it. Algorithms on some platforms can shape people's media environment with little to no transparency or accountability.

The central purpose of the media review will be the provision of a regime that is fit for purpose in this changed and changing context. The current media regime is struggling to achieve its objectives because our regulatory tools and points of intervention are no longer fit for the new landscape. The objectives of the regime may also be out of date.

On top of an outmoded regime, there is increasing awareness and concern over the new harms that people and society are facing from various types of conduct and content online, including choice of business model and the content this incentivises. This includes issues such as:

- the radicalisation of vulnerable people
- the use of information about us to influence what we see and how we act
- the risk that people are drawn to misinformation rather than responsible journalism
- a possible lack of visibility of New Zealand culture and content
- the dissemination of mis/disinformation that undermines public health responses or trust in institutions.

There is an expectation that media regulation can address some of these issues, at least in part.

It will be tempting to scope the review within the parameters of existing legislation and departmental responsibilities, to consider the existing concepts of "media" and the traditional methods of regulating "content," and to focus narrowly on sorting out inconsistencies in treatment of content across the broadcasting and classification regimes, with a view to incorporating content disseminated through online media.

Instead, we recommend that government take this rare opportunity to consider the information ecosystem as a whole and take a broad approach to scoping the review. A range of options for scope should be considered before deciding on a terms of reference.

We advocate taking a first principles approach by:

- (i) **understanding the current information and communications landscape,** and
- (ii) **identifying** what **the key media, broadcasting and communications objectives** of a modern media system should be in that context, and supporting this approach, by
- (iii) **putting in place an inclusive and outward looking process** to ensure community buy in, technical effectiveness, cross agency support and international compatibility in setting the scope, identifying the objectives and crafting an ultimate response.

We discuss each of these points in turn below.

First understand the landscape — the 'information ecosystem'...

We think about the current media and mass communications landscape as an 'information ecosystem': **a complex and interconnected system** of actors, media and infrastructure **that creates, communicates, interacts with and consumes** all types of information (including but not limited to news, data, research, advertising, opinion, speech and conversation, and entertainment content such as films, music and memes) **under the influence and in the context of** business models, regulatory regimes, incentives, human psychology and so on.

It is important to understand this ecosystem as it is now, and the ways in which it has changed and continues to change. Who creates and interacts with information and why? How is public good information being incentivised or supported? What are the barriers to people accessing information? What are the ways in which people receive information, and what are the mechanisms and incentives behind that? What are people's experiences of harms and benefits within the system?

Where an understanding of the Internet is needed to help understand the workings of the ecosystem, we would be happy to help.

A proper understanding of the information ecosystem will inform scope and objectives, enable consideration of issues, and support effective responses. Some things that we think might become apparent when considering the ecosystem are:

1.   Content should not be the sole focus of the new regime

Online service providers are currently actively involved with how they can assist governments in the regulation of user-shared content that they carry, but it is important to recognise that content is only half the story. **The behaviour of the actors themselves (and the incentives behind that behaviour) is integral to how content gets created, distributed and engaged with.**

The actions and choices of certain online service providers influence and control the funding and distribution of information in the information ecosystem. Their market power allows them to direct revenue away from bodies and organisations that create content that is important for culture and democracy. They curate the feeds people see, design the interfaces through which people interact, and appear to have the ability through their vast data stores to micro target information to people at an individual level. In an ecosystem where it is attention rather than speech that is scarce, and therefore the new foundation of informational power, the online service providers are the gatekeepers that control and allocate this attention.

In terms of understanding key issues to be addressed in the media review, considering objectives to aim for, and in thinking about points of intervention to achieve those objectives, it will be crucial to consider the behavior and business models of the actors in the ecosystem and not just focus on the support and regulation of content.

This won't necessarily be easy[1]. Online service providers make their choices within a complex context that includes market incentives, domestic and overseas regulations, and technology options that change over time. There are many different types of online service providers, some more well known than others, some that are more cooperative than others, some brand new and emerging, and the way these actors operate and their incentives for doing so will vary widely.

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[1] Below, we talk about the importance of research and evidence.

But the media review must consider the conduct of relevant actors as well as the content people share online. **The distribution of harmful and illegal content is a symptom of an entire ecosystem of actors and incentives** - focussing on content alone will not produce a fit for purpose information media regime for today or the future.

2.   Understanding the information ecosystem includes understanding the harms New Zealanders are experiencing online

Online interactions are now a normal part of people's lives, and they reflect the full complexity of all social interactions. This trend is being accelerated by COVID-19 as more people need to go online for more reasons.

"Online harms" is a term some use to describe a diverse range of content and activity on the Internet that can cause harm to individuals and society[2]. These harms don't have any unifying characteristics except that they are enabled or magnified at least in part by the Internet and services or applications on it. **We think "online harms" are simply a diverse range of behaviours and impacts that result from normal social challenges in the context of a global many-to-many distribution system used by billions of people.**

As part of understanding the broader information ecosystem, it will be important to understand what harms New Zealanders and their families and communities are experiencing online, and to identify what part the media review can play in addressing them. The media regime is central to the support and regulation of information in the ecosystem and the actors who communicate it, therefore any government response to online harms will need to involve the media regime in some way.

3.   The review may need scope to consider wider government work and non-government work

A consideration of online harms is often complicated because of the lack of specificity as to what is exactly the problem to be solved with many of the "harms." For example, in the case of the Christchurch Terror Attacks, was the problem the role of social media in allowing the attack to be livestreamed? Or was it the role of social media in radicalising the gunman? In the case of radicalisation, is the problem that people are allowed to find a community of people who will encourage them to think a certain way? Or is it that some algorithms are designed to feed a viewer increasingly

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[2] The Online Harms paper from the UK government offers a broad list of online harms which include the spreading of propaganda designed to radicalise vulnerable people; advocacy of self harm and suicide; disinformation and misinformation about elections and pandemics; online harrassment and intimidation of women, minorities and public figures; and the manipulation of the public by using a combination of personal data collection and AI techniques to micro target individuals based on individual psychology.

'engaging' and longer content; designed that way because keeping a user engaged allows more opportunities to serve advertising to them?

Most "online harms" are complex and likely to involve issues that not only fall across a number of agencies but also that are not amenable to resolution using regulatory or government levers at all. It will be necessary to properly analyse the "harms" so as to identify the root issues, to consider whether any of those issues are or should sit within the ambit of government influence or regulation, and to understand whether the responsibility for those issues (in whole or in part) can be addressed through the media review.

We think it may be useful for the review to have scope to consider non-regulatory interventions, and ways to foster beneficial activity by both commercial and community-based actors to support social cohesion, digital media literacy, and other desired outcomes.

In scoping the review, it will also be important to understand what other work is going on elsewhere in government to respond to online harms as a whole, or to a specific online harm such as misinformation, so as to be clear what role the media review can or should play in that response. We talk about this more below.

4. The review will need to carefully consider whether the activities of individuals/user generated content fall inside the regime

In the information ecosystem we are seeing convergence of content, of the roles of actors, and of the channels that those actors use to disseminate that content. There is a blurring between what is "individual speech" and what is mass communication that could potentially come within the ambit of a media regime. Where a powerful individual or influencer "speaks", or where certain information is mass communicated through the mechanism of millions of individuals separately sharing it, it can have the same (or larger) reach as a mass media organisation. In this context, where should the line be drawn between content and conduct to be regulated, and the freedom of individuals to express themselves?

We advocate a careful and human rights centric approach[3] to this question.

People's ability to participate online is a core part of modern life, which supports wellbeing and reflects the exercise of important interests in a range of basic rights, such as free expression, privacy, and participation in social and economic life. The ability for people to participate fully online is not only a matter of direct regulation, but also depends on access to services from third-parties, such as providers of an Internet connection, an email address, or a social media platform.

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[3] Human Rights Impact Assessment (HRIA) is one approach that is available to assess the potential human rights impact of government policy.

Offline, people are generally free to talk without explicit regulation, and can do so privately and without relying on permission from commercial third-parties. Freedom of expression is a fundamental human right enshrined in the New Zealand Bill of Rights Act 1990. The Act specifies that freedom of expression "may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Where the law sets those limits is a reflection of our core values as a society. There is a question to be asked, as part of the media review, as to where that line should be drawn. **An exploration of values with New Zealanders will help to inform policy decisions about which speech and which actors are subject to regulation.** These limits may also need to be set in a way that recognises the increasing role of online services to enable participation in ordinary life.

5.   Access to data will be critical to provide evidence on the policy problems to be addressed and on the effectiveness of responses

We support the goal of evidence-based and evidence-informed policy as the gold standard. Evidence and research on how and why things happen in the information ecosystem will be critical, not only to scoping and shaping the media review and identifying effective responses to the problems identified, but also in terms of ongoing evaluation as to how effective those responses are, or in terms of compliance with any regulations.

However, the workings of the Internet are complex and, in places, opaque. Evidence can be gathered through a well designed engagement and consultation process and we talk more about this below. But useful data about (for example) how certain algorithms work, what content individuals are seeing, what data about individuals is being collected and what it is being used for, and so on, tends to be closely held by online service providers.[4]

If access to meaningful data is to be ensured, so as to build an evidence base to inform policy decisions and enable real oversight, the scope of the review should include considerations of how to ensure transparency and of which agencies are best placed to achieve that goal.

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[4] The EU is in the throes of introducing two new pieces of legislation - the Digital Services Act and the Digital Markets Act - that are designed to force tech companies to open their books, share information on how their algorithms work, allow regulators to see into the companies and their approach to managing content on their platforms.

…Then consider key objectives…

An understanding of how the information ecosystem works will support a first principles consideration of what the Government's key objectives might be in this changed and changing landscape.

While the current objectives of the media and broadcasting systems are well understood, it will be important to test that they are still valid. The objectives may need to be modified, or added to, because the values of New Zealand society have changed, because the ecosystem operates differently which necessitates a new focus, or because the online experiences of New Zealanders suggest new aspirations. For example, "the promotion of pluralism and serendipity in the algorithmic curation"[5] was not in view when the regulatory system was introduced but could be in scope for consideration now.

A first principles exercise may also spawn objectives that do not fit tidily inside the broadcasting and media basket. A goal of cultivating and improving media literacy and critical thinking skills in New Zealanders might implicate the education system and all the agencies involved in digital inclusion work. A goal involving algorithmic accountability might implicate agencies involved in privacy, data collection and competition issues. A goal of enabling fact-checking might require consideration of settings in copyright and privacy law and of open data regimes.

Recognising that other regulatory or policy regimes are implicated in the contemporary information ecosystem, and that those regimes may hold the levers to achieve key objectives, will support a consideration of whether the scope of the media review might need to be slightly broader and involve a wider range of agencies. At the minimum, it will clarify the limitations of the review in terms of achieving those out of scope objectives, and therefore support informed decision making on risk and scope. While it may not be possible to progress all the objectives at once, they should at least be identified, with scope to action them at a later time.

A first principles approach might also throw up objectives that should not be the remit of government at all. Some goals might be better achieved by the government supporting commercial or community-based actors in their work towards social cohesion or digital equity for example. As mentioned above, it may be useful for the review to have scope to consider ways to foster beneficial activity by non-government actors.

We think there is a conversation to be had with New Zealanders about what media is and what it should be, the problems (and benefits) they are experiencing online, whose activities should be regulated, and the values they wish to see reflected in a new regulatory system. We talk more about an inclusive process next.

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[5] https://informationdemocracy.org/principles/

…And don't underestimate the power of an inclusive and context aware process

The Internet operates through the interconnection and cooperation of diverse actors, who work together based on shared decisions made in a "multi-stakeholder" way. A multi-stakeholder approach is a practice where individuals and organisations that bring different perspectives and experiences participate alongside each other to share ideas and develop a consensus on policy problems or approaches. Multi stakeholder decision-making is effective: the more inclusive the process, the better the inputs; the better the outputs and their implementation. We have experience in multistakeholderism and a wide range of relevant contacts - we would be happy to help government with its engagement across the ecosystem.

We think that if the media review is to result in a fit for purpose and future proof regulatory regime that addresses key concerns of New Zealanders, help support important cross government work such as the fight against COVID-19, and create a basis on which New Zealand can be a world leader in this space, government must consciously and deliberately put in place an inclusive and context aware process.

New Zealanders should be included at every stage of the media review process, including at the scoping stage, and should especially include groups that are disproportionately affected by "online harms", and with experts including researchers who can provide evidence on what is happening in the ecosystem and why.

It will also be important to talk with other government agencies while scoping the review. As mentioned above, a consideration of the workings of the ecosystem and of the objectives of the review may raise the question of whether other agencies might need to be involved, whether centrally or peripherally. Other agencies may also be working on related issues, or be setting up a cross government approach to a specific online harm or to online harms broadly. It will be important for agencies to line up to ensure they are developing responses that work together, rather than against each other.

The borderless nature of the Internet means that information issues, including online harms, cannot always be solved domestically. We may need to work internationally to develop cohesive responses. New Zealand has an important role to play in setting the international standards and policies that govern and interface with the Internet, and a current international profile that would support leadership in this space. In developing an approach to the media review, or any particular "online harms" issue in which the review plays an important part, we should be thinking about how we might take New Zealand's approach to the world. This may require an understanding of what other countries are doing, especially those with which we might partner, to factor that into scope.

How we can help

The media review is an important piece of work and InternetNZ wants to support it.

We can help government understand how the Internet fits into all this, and can support government with engagement. Specifically:

- We have expertise on Internet issues as well as policy capabilities and deep experience working in and with government. We have a perspective that is independent from industry and special interests. We speak for the Internet and those that use it. We can help government understand the harms and benefits of the Internet and the mechanisms behind it.
- We have the ability to engage across the digital technology ecosystem, and have experience in bringing people together to discuss issues and provide a range of views. We could arrange events where government could seek the views of the Internet community, or where a variety of stakeholders could offer views on particular topics.
- We are looking at undertaking a project where we ask the question "what is an Internet for good"? Depending on the scope of this project and its ultimate outputs, this project may be useful as government seeks to understand the experiences of New Zealanders and the values they would like to see reflected.
- In June, we published a paper on [Regulatory Tools to Address Content and Conduct Online](#), which we shared with government at the time. We are continuing to think about the issue of appropriate responses to the issues that may be within scope of the media review, including a think piece on Duty of Care.

We support the commitment of officials to understanding the wider context of the media review, and exploring an approach that is practical and achievable but that also meets the challenges of a new context. We continue to be available to consult with and work alongside government on any issue where we can be useful.

InternetNZ
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