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BREAKING THE NEWS?

Should digital platforms be required to fund news publishers?

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Contents

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Summary

- The internet has challenged the traditional news publisher business model by increasing competition for audiences and advertising revenue.
- Publishers have responded by seeking revenue transfers from the large, profitable digital platforms including Google and Meta’s Facebook.
- But the loser in an economic transformation facing competition is not intrinsically entitled to compensation.
- The UK government has proposed a system of mandatory negotiation between publishers and platforms, modelled on the Australian government’s *news media bargaining code*.
- However, such a system would be mistargeted, is built on a false premise, and could have many adverse unintended consequences.
- Firstly, the major digital platforms are not responsible for the problems faced by news publishers.
  - A broad range of digital content providers and the fall of classifieds advertising has undermined the traditional publisher business model.
  - Google and Meta did not take publishers’ money any more than Henry Ford stole from the horse and carriage industry. New technology emerged, consumer preferences changed, and the previous business models fell apart.

- Secondly, proponents mischaracterise the relationship between news publishers and digital platforms by claiming that the platforms are ‘free riding’ on journalism.
  - The digital platforms contain news links and snippets. Linking to third-party websites is entirely legal and, in fact, central to the nature of the internet. There is no reason this behaviour should be limited or require payment.
  - In any case, the value of news to digital platforms has been greatly exaggerated. News plays a relatively small part in digital platforms.
  - By contrast, publishers of varying sizes significantly benefit from search and social media. Digital platforms provide access to larger audiences, referring traffic to news sites and driving subscriptions and advertising revenue.
- Finally, a revenue transfer system could have numerous unintended consequences, such as inhibiting innovation, undermining journalistic quality, and discouraging news on the platforms.

Introduction

The internet has had a profound impact on journalism. It has enabled news organisations to reach wider audiences, accelerated the pace of reporting, and democratised access to information. In the process, the web has sent a shockwave through the news industry's business model. In the past, advertising and subscription revenue primarily funded news publications. But today, digital content has significantly increased competition for audiences and advertising revenue. This challenging environment for the news industry has fuelled claims that large, profitable digital platforms, most notably Google and Meta's Facebook who present news content in search and social feeds without payment to publishers, are free riding on journalism. This claim has been promoted by the News Media Association (NMA), who represent the news media industry in the United Kingdom, the Competition and Markets Authority (CMA) and communications regulator Ofcom (CMA and Ofcom 2022) and the government (DCMS and BEIS 2022). In response, policymakers have sought to provide news publishers with the ability to extract revenue from digital platforms.

The first approaches of this kind worked through new copyright rules requiring digital platforms to pay publishers to display a news snippet (a title, brief description, and hyperlink to an article). This model was introduced in Spain in 2014, followed by Germany, and a European Union-wide Copyright Directive passed in 2019 but has not yet been fully implemented across the bloc (European Commission 2022).

Governments have also shown interest in the idea of a news media bargaining code model, which would require digital platforms to reach agreements providing payments to publishers. This system is justified by claims that digital platforms exploit their market power to underpay news publishers, leading to underinvestment in journalism. In 2021, the Australian government pioneered this approach by legislating the power to force publishers and platforms into binding arbitration on terms favourable to the publishers.[1] This has led Google and Meta to hand over revenue to many publishers. The largest payments went to Australia's two main media conglomerates, News Corp Australia and Nine Entertainment.

There are now proposals to copy the news media bargaining code model in Canada, Indonesia, and South Africa, while the US Senate considered a bill last Congress.[2] The UK government has also indicated that the proposed Digital Markets Unit (DMU) of the CMA would have the power to force digital platforms into similar arrangements with publishers (DCMS and BEIS 2022: 22).[3] This paper considers whether such an approach would be appropriate.

1 Australia's *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* empowers Australia's Treasurer to require digital platforms to enter negotiations with news publishers under compulsory arbitration. The Treasurer has not formally designated any platform under the code. Nevertheless, the companies responded to the legislation by reaching their own deals, avoiding the need for formal designation. For a further discussion of how the code is operating in Australia see Sims (2022), a key advocate of the arrangements.

2 The Canadian Parliament is considering the Online News Bill (C-18). US Senator Amy Klobuchar has introduced a Journalism Competition and Preservation Act (JCPA) into the US Senate.

3 The UK government has not finalised what powers will be handed over to the proposed DMU. Nevertheless, under the proposals in the consultation, the DMU would have the power to issue codes of conduct requiring negotiations (DCMS and BEIS 2022). The government has sought advice from the competition regulator, the CMA, and the telecommunications regulator, Ofcom, about how such a code of conduct could apply to digital platforms and news publishers, premised on Australia's news media bargaining code (CMA and Ofcom 2022).

How has the internet disrupted the news business?

Digital platforms are an easy scapegoat for the difficulties faced by traditional media. However, the challenges to publisher business models are much broader. It is not simply that advertising revenue went straight from newspapers to digital platforms. Rather, the rise of the internet led to extensive competition for audiences and advertisers, undermined previous business models, and created entirely new opportunities.

The great unbundling

The internet has resulted in an unbundling of information. Newspapers traditionally contain a mixture of politics, sports, and business news, along with the likes of classifieds, dating ads, weather, and event listings. This information was printed, distributed, and sold to consumers as a single package. Newspapers had a mixture of highly profitable (e.g. classified advertisements) and expensive to produce (e.g. investigative journalism) content. Publishers faced relatively limited competition, typically only from other locally available newspapers and, from the mid-twentieth century, broadcast media.[4] Newspapers were effectively in an oligopolistic market position.

The internet significantly reduced the cost of publishing and distributing, leading to the development of a plethora of new content providers, from blogs to podcasts and video sites. The reduced cost has significantly increased access to information, much to the benefit of the public, who

4 The decline in newspaper circulation began in the second half of the twentieth century in the face of competition from radio and television, long before the emergence of the internet.

has access to a greater diversity of news at a lower cost than ever before.[5] There are the innovative digital-only publishers, such as Buzzfeed or the Huffington Post, expanding the definition of journalism, international publishers, such as the *New York Times* or the *Wall Street Journal*, along with ‘free’ real-time reporting from the BBC website.[6] Tinder, Hinge, and other dating websites have replaced personal classifieds. Sports coverage is accessible on specialist sites, discussion forums, and team websites. Facebook Groups and local social networks such as Nextdoor contain community titbits. Live weather updates from every corner of the planet are freely available from many providers. These new information sources often provide more depth and better quantity than newspapers ever could. They provide this without being encumbered by large overheads such as a newsroom, printing and distribution costs, or legacy pension commitments.

There has been an equivalent unbundling of advertising. Advertisers historically had relatively few outlets and focused a large proportion of their spending on newspapers. Thus, newspapers had market power over the advertising industry. Today businesses can advertise online across thousands of content providers. There is intense competition for users’ time and attention (and associated advertising spend) that extends from news and information to such things as streaming sites and video games. Digital advertising can follow a specific user across the web and target specific interests or demographics, rather than paying a large amount of money for untargeted mass advertising in a newspaper. Thus, the internet offers a better product to advertisers than do newspapers. Advertising budgets are spent thinly across various online content providers. This greater competition leaves significantly less revenue for traditional news publishers.

The result of this greater competition for information and advertising is fewer people purchasing newspapers and less advertising revenue for publishers. As a result, the circulation and revenues of newspapers have declined. In one study, Horsman, Fleming, and Genovese (2018) found that daily newspaper circulation declined from 11.2 million to 6.1 million between 2007 and 2017 across the UK, along with a corresponding decline in advertising and circulation revenue from £6.8 billion to £3.6 billion. The same authors found that newspapers responded through significant

5 Ofcom’s (2022) news consumption report suggests the average adult receives news from over 6 sources across all platforms including four online. The BBC remains the most common news source in the UK.

6 The BBC is ‘free’ in the sense that the cost of visiting the BBC News website is zero.

consolidation, cost-cutting, and retrenchment – with over 300 local and regional newspapers ceasing to operate over the same period.

Entirely new business models

This means that news publishers face severe competition for both readers and advertisers due to the rise of the internet. Meanwhile, digital platforms and many other content providers benefited from technological change and new market dynamics. But this does not represent a straightforward transfer of revenue from news publishers to large digital platforms such as Google and Meta. According to Accenture (2021), a majority (55%) of the loss in publisher revenue is associated with the collapse in *classified advertising revenue* – from £2.5 billion to £0.4 billion between 2003 and 2018. Online classifieds are associated with such websites as eBay, Craigslist, Gumtree, Autotrader, and Zoopla – not the large digital platforms that are often blamed for journalism's struggles.

A significant proportion of digital revenue growth comes from advertising that would not otherwise have been viable offline. Small to medium businesses can purchase low-cost, highly-targeted product advertising that mass-market newspapers could not provide. In the aforementioned study, Accenture found that about half of online advertising comes from new sources rather than displacing the previous markets. These revenues accrue to online platforms but are not revenues lost by traditional media.

More generally, just because digital platforms have benefited from the digital revolution does not make them responsible for newspapers' struggles. Google and Meta did not take publishers' money any more than Henry Ford stole from the horse and carriage industry. New technology emerged, consumer preferences changed, and the previous business models fell apart. This transformation is a case of what Joseph Schumpeter (1942) called 'creative destruction': the 'process of industrial mutation… that incessantly revolutionizes the economic structure *from within*, incessantly destroying the old one, incessantly creating a new one'. This disruptive process, of innovation and change, is precisely what drives human progress.

What is the relationship between news publishers and digital platforms?

The proponents of a news media bargaining code claim there is a power imbalance between platforms and publishers. The CMA and Ofcom (2022), in a study commissioned by the government, endorsed this underlying theory.[7] The CMA and Ofcom (2022: 22) believe an 'imbalance in bargaining power' is driven by publishers' reliance on Google and Facebook to reach audiences and drive traffic while the platforms do not rely on any individual publisher. This reliance is said to mean that the publishers cannot attain 'fair payment' for the value of their news content, and thus platforms are 'free riding' for publisher content. The CMA and Ofcom also raised concerns about changing content ranking systems and a lack of transparency in relation to algorithms and user data.

This logic requires there to be a significant benefit to platforms from news, for which they are only not paying (or not adequately paying) because of market power. This point, however, is not established by the CMA and Ofcom study – which does not assess whether in the absence of market power there would be payments, or the value of news content to digital

7 This echoes Australia's competition regulator, the Australian Competition and Consumer Commission (ACCC 2019), who claimed that news publishers are unable to 'individually negotiate terms over the use of their content by digital platforms'. This is because, according to the ACCC (2019), news publishers are dependent on referrals from these digital platforms while the platforms are not as dependent on individual pieces of news publisher content. Thus making the digital platforms 'critical and unavoidable partners' for the news publishers and creating a power imbalance.

platforms and *vice versa*.[8] The remainder of this section, firstly, outlines the nature of news links and snippets, highlighting that websites linking to each other without payment is entirely normal and legal behaviour on the internet. It is unprecedented to pay to link to a third website, whether or not there is market power. Secondly, the idea that social media and search are 'free riding' on news content is discussed, highlighting the minimal contribution of news to digital platforms and how news publishers substantially benefit from referral traffic and other tools from platforms.

How does news appear on platforms?

Digital platforms do not typically host news articles – they display an article's title, a short quotation, and an image selected by the publisher, also known as a snippet, along with a hyperlink to the full article. This is allowed under existing copyright law. (Publishers would have long since bought legal claims if digital platforms were exploiting copyrighted material.) It is possible for news websites to instruct digital platforms not to index their content or allow links (through a robots.txt).

In the case of search, snippets appear in a user's results in response to a relevant query. In the case of social media, they are posted by users and the publishers themselves, the latter of whom could cease if they believed it was not beneficial for their content to appear on social media. A user's feed is generated based on their activity and interests, including a mixture of content from their friends, groups they join, and pages they follow. This may or may not include news material. Therefore, the debate is really about whether the likes of Google and Meta's Facebook should be required to pay to show a snippet and provide a link to a news publisher.

There is no precedent for websites paying to link to each other. As technology analyst Benedict Evans (2021) points out, there is a 'wilful blindness' to the logic that platforms should pay publishers since:

> *No-one* has ever paid to link, regardless of their market power. No-one has ever asked me to pay to link to them, and if asked I would refuse, and I have no market power at all. You don't have to ask the hypothetical 'what would happen if Google and Facebook

8 The CMA and Ofcom (2022: 9) state that 'It is important to emphasise that we have not assessed whether the terms currently offered by large platforms are fair and reasonable; rather, we are suggesting ways in which the assessment might be made under a future code.' Thus they do not establish whether the status quo, in which there are no payments, is a fair and reasonable outcome. It may very well be.

> had less market power – would they pay for links?’ You can just look at, well, *every other site on the internet*.

Evans also makes the point that if digital platforms should have to pay to link to third parties, there is no reason payment-for-linking should only apply to news content. But if all links required payments, there would only be extremely small amounts available to each content creator, including for news.

Sir Tim Berners-Lee (2021), known as the inventor of the world wide web, explained to the Australian Parliament that ‘The ability to link freely – meaning without limitations regarding the content of the linked site and without monetary fees – is fundamental to how the web operates.’ This is a reflection of the foundational core of the world wide *web* (like a spider*web*): a series of interconnected *websites*. The sharing of news snippets and links is entirely normal and legal behaviour.

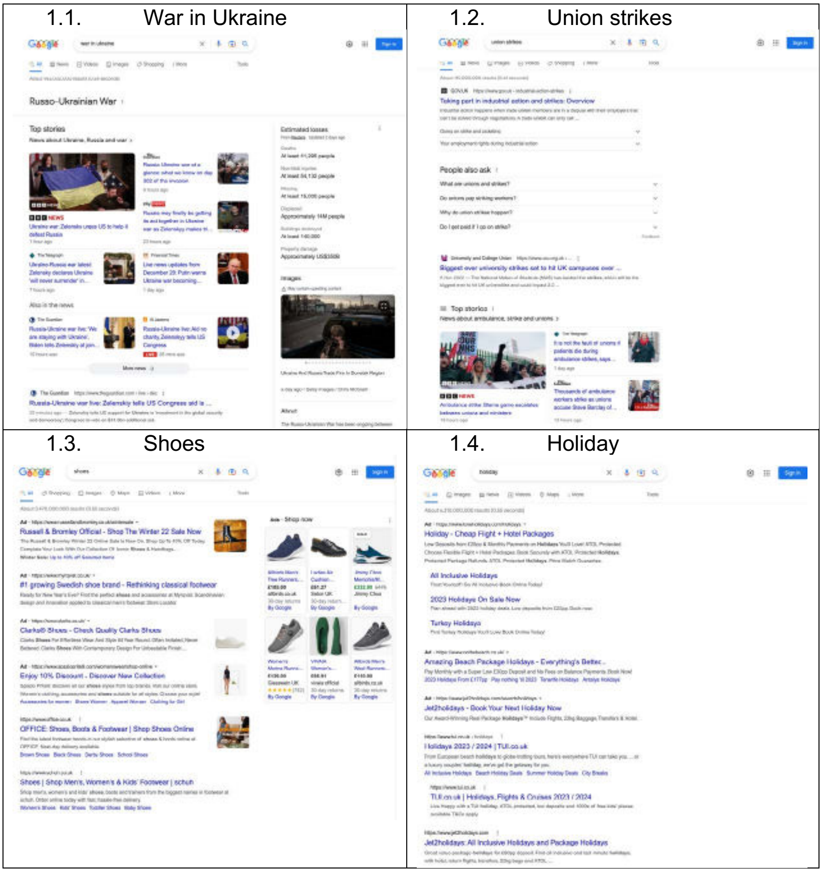
What is the value of news content to digital platforms?

Despite the ubiquity of free linking, for some there is still a concern about free riding. The idea is that platforms are exploiting news content without paying for it, and thus undermining investment in journalism. But even at this level the matter is not so clear.

A study commissioned by the UK’s NMA asserted that British publishers are responsible for £1 billion in revenues for Google and Meta’s Facebook every year (Elliott 2022). This figure is calculated on the basis that because news provides timely and reliable information it contributes to broader user engagement and data gathering and, thus, the advertising revenues of platforms. The NMA report asserts this is through direct monetisation, that is, advertising on news content, and indirectly, through the ability of news to keep users on the website and thus deliver further analytics and revenues. These claims, however, greatly overstate the importance of news to digital platforms.

The NMA report, for example, points to an Ofcom finding that British users spend 6 per cent of their *total online time on news* (i.e. visiting news websites) (Elliott 2022: 11). This finding is then inexplicitly extrapolated to claim that 6 per cent of time spent on Facebook relates to news content. The report then assumes that Facebook’s advertising revenue is directly proportional to the time spent engaging with any content type. Thus it assumes that all content is homogenous for advertisers. In fact, it is unlikely that news snippets are a substantial driver of digital platform revenues. News-related search queries and social media posts do not often contain advertising (see Figure 1: 1.1 and 1.2). Advertisers are not particularly interested in news. There is no advertising on Google News, the news aggregator service. Facebook does not allow advertisers to target any specific type of content, such as a news article, but rather enables the targeting of users based on their demographics and interests.

Figure 1. Examples of news and product search queries on Google.com, including ‘war in Ukraine,’ ‘union strikes,’ ‘shoes,’ and ‘holiday’. The first two are clearly news-related searches; the latter two are product-related. The contrast in the amount of advertising in the results is stark.



Advertisers typically target users looking to purchase a specific product, such as clothing, jewellery, or travel, based on their previous behaviour (e.g. visiting an online clothing outlet). They are not particularly interested in targeting users on the basis of news stories, as there is no associated product and money to be made. More broadly, Amazon has built an advertising business worth almost US$40 billion in annual revenue, growing significantly faster than Google and Meta (Kaziukenas 2022). Amazon's advertising business is focused on consumer products and entirely *without any news content* – indicating that news is not central to digital advertising. The fastest growing social networks in recent history, TikTok and Instagram, do not emphasise news, but rather user-generated images and videos. This indicates that news is not central to social media or digital advertising revenue generation. Thus, the NMA's claim that the percentage of news on the platform is proportionate to advertising revenues cannot be sustained.

In any case, news only makes up a small overall proportion of social posts and searches. As of 2022, the vast majority (92%) of content on the Facebook feed of a typical US user is organic items with no external links, such as a user's friends' text and photos (Meta 2022). Facebook (2019) claims that less than 5 per cent of a typical user's feed is made up of links from news publishers. The Reuters Institute for the Study of Journalism has also found evidence of declining use of social media for news in recent years: the proportion of British respondents who say Facebook is one of their sources for news has declined from 28 per cent to 19 per cent between 2016 and 2022 (Newman 2016; 2022). Google (2022) claims that news-related search queries generate less than £20 million a year in revenue in the UK. This would represent less than 1 per cent of Google's total British revenue.[9] These claims are confirmed by external analysis of user attention. According to a study from the Reuters Institute for the Study of Journalism, which tracked 1,711 people during the UK's 2019 election, just 3 per cent of online time (about 16 minutes a week) is spent looking at the news (Fletcher, Newman, and Schulz 2020). Users do not primarily share or search out news content, and thus it cannot be a central driver of advertising revenues.

The NMA's report also claims that news helps keep users engaged on social media and search (Elliott 2022). But much of the evidence points in the opposite direction. Facebook's advertising revenues continued to

9 Google's last reported revenue in the UK was £3.4 billion for the 18 month period from July 2020 to December 2021. This would equate to £2.27 billion on an annualised basis, divided by £20 million equals 0.88%.

increase after it reduced news content on the platform in favour of content from family and friends during 2018. Similarly, Google (2020: 21) claims that previous changes to search have shown that ‘adding news content does not increase revenues and can in fact reduce them, as users are diverted to other results rather than ads.’ It is also unlikely that a news search provides data that is subsequently marketable to advertisers – for example, demonstrating an interest in the Ukraine–Russia war news does not provide information that is likely to lead to profitable advertising.

What is the value of digital platforms for news publishers?

The proponents of a news media bargaining code system often downplay or entirely ignore the significant value that digital platforms provide to news publishers. It may well be that far from benefiting from ‘free riding’ on news, the digital platforms are providing free benefits to the traditional publishers. The aforementioned study from the news publishing industry, the NMA, did not even attempt to calculate the benefits to publishers from digital platforms.

Journalists use social media and search engines to discover and research stories, contact sources, find topical stories, build personal brands, and engage with audiences. Digital platforms enable users to discover news content and direct them to publisher websites. This is not simply a matter of users scanning news snippets but not actually visiting the associated publisher website. Chiou and Tucker (2017) used the natural experiment of the removal of Associated Press content from Google News in a dispute in 2010. They found evidence of a ‘traffic effect,’ that is, Google News was driving traffic to news websites, rather than being a substitute for visiting such sites. This has been confirmed by other studies. Calzada and Gil (2018) find evidence from Spanish and German case studies that ‘news aggregators increase consumers’ awareness of news outlets’ contents, thereby increasing their number of visits.’ This, according to Athey, Mobius and Pál (2017) is particularly beneficial in exposing users to smaller publishers, which users would struggle to discover without digital platforms.

Therefore, it is perhaps unsurprising that publishers actively post news content on social media platforms and optimise their stories to appear higher in search results. They benefit from access to large audiences from across the globe, enabling economies of scale and network effects. The digital platforms also provide analytics tools, allowing publishers to tailor content and improve outreach and engagement with readers. Publishers are constantly experimenting with and optimising for social media – and thus its importance is likely to continue to increase. Social media sites also feature news content on their platforms, including in the likes of Twitter's 'Trends' feature. Publishers keep the entity of the advertising and subscription revenue associated with social media and search referrals.

Digital platforms also generate additional value for news publishers by facilitating subscriptions, providing advertising tools, revenue sharing (e.g. Facebook provides revenue to publishers from in-stream adverts on publisher videos), branded content, and commercial deals. Google's News Showcase and Facebook's News tab licence content from hundreds of regional and local news publishers across the UK. Meta and Google also provide direct funding to publishers through the Google News Initiative (GNI) and the Community News Project.[10] Digital platforms also serve as intermediaries in the supply chain for display advertising on news websites, that is, the platforms match publishers with advertisers.

Publishers appear to derive significant value from free traffic to their websites. In the Australian context, Facebook (2020) claimed to have provided 2.3 billion organic referrals to news publishers over five months in 2020, which they estimate is worth AU$195.8 million. In Canada, Facebook claims to have sent news publishers 1.9 billion referrals valued at C$230 million a year (Chan 2022). Google also provides billions of referrals to news media websites that are, in turn, used to generate advertising and subscription revenues. A study by Deloitte found that Google provided referral traffic estimated to be worth over £455 million a year to UK publishers in 2018 (Aguilar 2019). The CMA found that around 40 per cent of traffic to large UK news publishers comes from Google and Facebook (CMA 2020: 17). A Reuters Institute for the Study of Journalism survey found that half of news traffic comes from social media (26%) and search (25%) (Newman 2021: 26). The importance of social media to news websites has been explicitly confirmed by publishers. *The Times*' Head of Digital, Edward Roussel, for example, has said that around 15 per cent to 17 per cent of their web traffic comes from social media. 'So it's important in terms of the growth of our total audience. It's important also for our journalism,' Roussel said (Kersley 2022). These findings suggest traditional news publishers benefit from their interaction with digital

10 These particular initiatives may partly reflect a response to regulatory pressure from policymakers. But, even without direct transfers, there is still significant value represented in the traffic provided to news websites from the digital platforms and other tools. Therefore, the argument in this section is not dependent on the existence of existing direct transfers.

platforms, and the benefits they receive may well be greater than any reasonable valuation of the news snippets they provide to those platforms.

In sum, the justifications for a news bargaining code system are flawed. Digital platforms are not exploiting news content and failing to pay their fair share – it is in fact entirely unprecedented to expect payment for someone linking to your site. Nor are publishers getting the short end of the stick in their value exchange with platforms. The platforms are not dependent on news for their revenues, while publishers benefit significantly from the traffic provided by social media and search. As technology writer Glyn Moody (2022: 115) explains, publishers are asking to be paid for free exposure and additional visitors. Thus, the claim that, if it were not for the platform's market power, digital platforms would pay for news links, finds no basis in these kinds of arguments.

What would be the effect of requiring digital platforms to pay publishers?

News media bargaining code proponents also typically argued that the system is necessary to promote journalism. In 2020, former Australian Treasurer Josh Frydenberg (2020) justified the introduction of the associated law on the basis that it would help ‘to sustain public interest journalism’. This is portrayed as necessary for political accountability, keeping the public informed, and sustaining a thriving democracy. But just because journalism is important does not mean that politicians should require a handful of digital platforms to pay for its production.[11] Nor is it clear that the proposed arrangements would have the effect of promoting journalism. In fact, as this section demonstrates, such a revenue transfer system would be counterproductive for access to news, publisher innovation, and journalistic independence.

Reducing news in search and social media

A news media bargaining system would entail providing revenue to news publishers from platforms in proportion to the quantity of news on the platforms.[12] This clearly raises the question of what is to count as ‘news’.

11 Ryan Bourne of the Cato Institute has called a news media bargaining code system a form of ‘industrial policy’. ‘This is about politicians taking money from businesses they don’t like and giving it to companies they consider virtuous,’ Bourne writes (2022).

12 The CMA and Ofcom, in their advice on how a code of conduct could operate, suggested that the methodology for determination should be based on a ‘fair and reasonable’ calculation (2022: 44-48). While they do not propose a specific methodology, the payments would be in some way proportionate to the alleged ‘incremental benefits’ accrued to the platforms from news, and thus the quantity of news on the platform.

If payments are to be made for its provision, it is natural to anticipate that what are really click-bait items and the like will be presented so as to meet the definition of ‘news’.

Social media is often held responsible for lowering journalistic quality by publishers seeking to maximise engagement. News media organisations have been known to develop hyperbolic ‘click bait’ headlines (Alves *et al.* 2016), emphasise negative and emotive words (Lamot, Kreutz, and Opgenhaffen 2022) and write shorter, lower-quality news articles (Bossio 2017: 76) for social media engagement. Linking publisher revenues directly to social media shareability, through a news media bargaining system, could aggravate these tendencies – encouraging the development of sensationalist or lower-quality journalism to maximise likes, shares, and comments and associated subsidy from platforms. This would certainly not reflect the objectives of the proponents of the news media bargaining code system.

Beyond that, the proposals could incentivise search engines and social media companies to remove or reduce news content on their services to reduce payment liability. This, like the promotion of click-bait, would have the counterproductive outcome of not only reducing the level of journalism available to the public, but it could also, as a result of fewer referrals, damage news publishers’ advertising and subscription revenues.

This is not just a theoretical danger. In a number of previous instances, news content has been removed from digital platforms. In 2005, Google removed Agence France Presse (AFP) content from Google News for two years after being sued over copyright infringement (Auchard 2007). This was repeated in 2006 in relation to Belgian news stories, which were removed from Google News after demands for payment (Meller 2006). In 2014, Google faced demands from a German media industry group, VG Media, for 11 per cent of gross worldwide revenue on any snippets. Again, Google removed these snippets from its search result (while leaving the title and link) (Tung 2014). VG Media subsequently granted a ‘free licence’ to use the snippets.

The Spanish Parliament passed a law in 2014 mandating payments to news publishers from websites that allow snippets. Google responded by entirely shutting down the Google News aggregator service in the country. A subsequent study for the Spanish Association of Publishers of Periodical Publications by NERA Economic Consulting (2015) found that there had been a decline in traffic of more than 6 per cent, impacting 84 Spanish online newspapers, with some smaller publishers facing declines of up to 14 per cent. In 2021, Facebook temporarily removed news content from its platform in Australia in response to the threat of a compulsory news media bargaining code system (BBC News 2021). This resulted in a 22 per cent decline in traffic to leading Australian news sites (Majid 2021).

The CMA and Ofcom (2022: 64) acknowledge that ‘compelling platforms to pay for content, e.g. snippets, could lead them to remove that service from their product (i.e. removing snippets that users might value).’ The study states, however, that if users value the snippets, news aggregators will continue to offer them and share the value with news publishers. This, of course, presumes that there is significant value – but the aforementioned cases and earlier discussion indicate that platforms may be willing to remove or reduce news content on their platforms precisely because news is not a significant revenue driver.

The news media bargaining system might therefore promote low-quality journalism, brought into existence by the availability of payments. To the extent that this does not happen, the position of traditional publishers might be harmed by the reaction of the platforms. And even these things leave entirely open the question of how any additional revenues they might receive would be used by the traditional publishers. There is nothing that guarantees it will actually be used for high-quality journalism.

News industry innovation and competition

Many news publishers have successfully innovated in response to the challenges presented to the industry by the rise of the internet. This includes paywalls and subscription models (e.g. *The Times and Sunday Times* and the *Financial Times*), crowdfunding from readers (e.g. *The Guardian*), producing a greater quantity of content (e.g. *The Independent*, *Daily Mail*), or focusing on local news and community reporting. Doyle (2013) highlights how British newspapers have responded to the loss of print circulation and advertising revenue by reinventing themselves as ‘digital multiplatform entities’. They produce and distribute rolling news coverage across websites, mobile, and social media, including text, audio and video content, to maximise digital subscription and advertising revenue. Publishers have also sought revenue from other sources such as events programmes, sponsored content, and increased use of wine and travel offerings, membership clubs, and competitions.

Many of these efforts have proven successful. *The Guardian*, after suffering large losses after 2009, has returned a profit in recent years. Times Newspapers, the publisher of *The Times and Sunday Times*, reached 400,000 paying digital subscribers in 2022 and has been returning a profit since 2018.[13] Meanwhile, Reach plc, which owns the *Daily Mirror*, the *Daily Express*, the *Daily Star* and over 100 local newspapers across the UK, has returned profits close to 10 per cent in recent years. The total number of journalists across newspapers, online and broadcast increased from 79,000 to 110,000 between 2017 and 2021. This indicates the industry has become healthier in recent years.

A news media bargaining system risks diminishing the pressure to innovate, increase audiences, and attract readers. Innovation emerges when businesses are struggling in cut-throat competition, not when they receive additional funds as a result of state action (Karlson, Sandström and Wennberg 2020; Ridley 2020) Under the news media bargaining code system, larger incumbent publishers will be well-placed to reach generous agreements compared to smaller publishers and start-ups, who would have little basis on which to make claims for revenues.

For example, a new entrant with innovative ideas about a new product may receive little for their appearances on search or social media since they would, by definition, not initially have much content. A freelance journalist, Substack blogger, YouTube video creator, or podcaster, would similarly struggle to be paid by digital platforms. It is likely the old, incumbent producers who would be favoured by the proposal, not the smaller, newer, and innovative competitors.[14] There would be less incentive to improve the quality of their content to attract more readers or to develop innovative new business models. It would risk leaving the industry stagnant.

In practice, Australia's system has been a boon for the largest existing publishers. Professor Bill Grueskin (2022) of Columbia Journalism School estimates that much of the revenue has gone into deals with Australia's two largest media conglomerates, namely, Nine Entertainment ($50 million/year) and News Corp Australia ($70 million/year). This would amount to around two-thirds of the $200 million in revenue provided under the code

13 There was significant scepticism when *The Times and Sunday Times* introduced a paywall in 2010, with many believing that internet users were too accustomed to free content to begin paying for news. This was, ultimately, not the case (Kersley 2022).

14 In an analysis of the policymaking process behind Australia's news media bargaining code system, Meese and Hurcombe (2022) highlight how the policy 'seems to preserve the status quo and does not look towards journalism's future'.

in its first year.[15] By comparison, Grueskin finds that a deal with smaller publishers resulted in $31,000 to $62,000 per year for each newspaper, while other news providers, such as SBS Australia and Croakey Health Media, have been entirely shut out of deals. There is also a lack of evidence that the code has ensured local news production, delivered for marginalised communities, or helped ensure news provision for the Australian public.

The losers in technological transformation often make claims for protection and compensation. But no entity, including news publishers, is entitled to revenue because they are incumbents or their business model has dominated in the past. In the same way, Facebook is not expected to compensate MySpace or, if chatbot ChatGPT displaces Google Search, OpenAI would not be expected to compensate Alphabet. To argue otherwise would be to seek to stifle all manner of beneficial product innovation.

The danger of regulatory or political influence on the media

A free and competitive media is an essential component of a free society. Any struggling business may seek some form of political support.[16] The bargaining code system threatens to bring regulators and politicians too close to the control of media and thereby leading to the distortion of media output. For example, the prospect of a media bargaining code could encourage struggling publishers to portray politicians favourable to their cause in a more positive light or, inversely, to be unfairly critical. Politicians may also be able to play favouritism by classifying certain outlets under a bargaining code system, entitling them to negotiate with publishers under an arbitration system. Indeed, Gilens and Hertzman (2000) find that newspaper coverage of policy issues can be heavily influenced by the financial interests of their proprietor. Media critics, such as Bernard Keane (2021), claimed that Australia's news media bargaining code debate was covered by the publishers in an unbalanced and uncritical manner – supporting the imposition of a system that would be financially beneficial to their proprietors.

Beyond these potential influences on politics and journalism, there are further questions about the role of the regulator, the CMA, in the UK's model. The CMA's Digital Markets Unit could be forced to make

15 Sims (2022) estimates that the system resulted in a $200 million revenue transfer in the first year.

16 The remarkable extent of it is disclosed by Gustafsson, Tingvall, and Halvarsson (2019).

determinations not just about which platforms are in-scope but also which publishers are entitled to receive revenue. This raises questions about what content counts as ‘news’. There is a risk of producers entering the market purely for the purposes of receiving a subsidy. Some low-quality publishers might succeed, to the detriment of quality journalism. There could be ideological biases, even if unintended, in the style or substance of journalism that receives support. There is a long record of public bodies making poor choices as to which producers to subsidise. The stakes are particularly high for news media and journalism, considering their acknowledged importance to democratic governance.

Furthermore, digital platforms may not ultimately prove a sustainable way to fund journalism. Despite the apparent size and profitability of the platforms, nothing is guaranteed in the future. In late 2022, as expected, as revenue declined and stock prices fell, technology companies began reducing staff by the tens of thousands (Peck 2022). The likes of Google and Facebook are facing stiff competition for advertising revenues and audience attention from Amazon and TikTok. If news publishers become dependent on companies that either cease to exist or have far fewer resources in the future, they could find themselves again in significant financial difficulties. The temporary sugar high, in the form of higher revenues, would distract from the necessary task of building a sustainable business model in the digital age.

An alternative to digital platforms’ funding publishers is direct grants from taxpayers to journalism, particularly in underserved regions.[17] A direct subsidy would certainly be more coherent than requiring payments from large digital platforms, but would have other disadvantages. It would inevitably support newspaper incumbents with larger payments over start-ups, disrupting competitive pressures in the industry or the development of sustainable commercial business models. It would also make publishers dependent on sympathetic politicians, risking journalistic independence and biased coverage. It is difficult to hold powerful actors to account when your existence is dependent on their largesse. Ultimately, thus, journalism should be funded through independent channels separate from the state.

17 This model already exists in the context of broadcasting through the licence fee, which funds BBC News, albeit with the disadvantage of crowding out commercial local news production.

Conclusion

The internet has transformed every facet of the news industry. It has made it possible for information to be disseminated to a wider audience more quickly and at a lower cost than traditional print or broadcast media. The internet has given individuals and organisations the ability to self-publish, allowing for a wider range of voices and perspectives to be heard. The general public has benefited from access to more information at a lower cost.

But, in the process, the internet has challenged the news publisher's business models. As more people have begun to get their news online, newspaper print circulation and advertising revenue have significantly declined. The publishers have been forced to innovate, attract new audiences, and discover new business models. There has been a shift towards the likes of digital subscriptions, crowdfunding, and sponsored content. Some have struggled with this and downsized, or ceased trading; but many have succeeded and are offering a modernised product.

In the context of this rapid transformation, some have sought to lay the blame for troubles on large, profitable digital platforms. In response, there have been arguments about the nature of copyright and allegations of power imbalances and free riding. This paper has argued that, in the first place, these large digital platforms are not necessarily responsible for the struggles faced by the news industry. It is the lowering of costs, the opening of the market, and consequently greater competition for information and advertising revenues that are at the heart of the difficulties. Nor is it true, as some claim, that digital platforms significantly benefit from enabling the discovery and sharing of news snippets. In fact, with a more important consideration appears to be that the news publishers themselves benefit from access to audiences provided by social media and search.

As a matter of general principle, news publishers should not be shielded from market disruptions caused by the rise of the internet. By placing its foot on the scales in a mandatory news media bargaining code, the government would clearly be favouring publisher incumbents. It would mean providing payments entirely disconnected from the supply of goods or services. It would set a bizarre precedent if a loser in an economic transformation were entitled to some form of reparations. Ultimately, it is the responsibility of news publishers to innovate, attract customers, and find sustainable revenue streams.

More than that, the transformation we are witnessing is an ongoing process. It may appear today that Google and Facebook have permanent power. But as Bourne (2019) highlights, many historical predictions about technology monopolies, from MySpace to Microsoft, have been proven wrong. Digital platforms exist in a relatively new industry with very uncertain developments. Equally, the possible outcomes for traditional media as they adapt to new technological opportunities cannot be known. In these circumstances, seeking to protect old arrangements with poorly-rationalised, state-mandated financial transfers appears to be a very poor policy.

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