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**Testimony to the California Senate Judiciary Committee:**
**Information Hearing on issues facing digital news**

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Thank you for the invitation to appear before the Committee today. Having spent my career as a journalist, scholar, and practitioner writing, speaking, and working on tech policy and news media sustainability around the world, I am grateful to have the opportunity to bring my expertise to this informational hearing on issues facing digital news.

As the director of the Center for Journalism and Liberty at Open Markets Institute and a fellow at the UCLA Institute for Technology, Law and Policy, I research the way that technology policy impacts the information ecosystem with a focus on public interest journalism. Over my two decades of experience in the media sector and academia, I have never received funding from a tech platform for my research and Open Markets Institute does not accept *any* funding from technology companies, making us a rare independent voice on technology policy and journalism.

In my remarks I will explain the infrastructural role played by tech companies in the journalism field, lay out the policy approaches in specific countries to address the challenges of platformization and the importance of news media bargaining codes, and finally reconceptualize how we establish the value of news to platforms *and to* generative AI companies/large language models (LLMs).

First, the crisis facing journalism is not a problem of the news industry's own making, and it affects *all* news outlets, not only digital ones. The crisis is a result of legal regulatory frameworks that privilege tech platforms over the press *and* give the former unfettered power to set the rules.

Big Tech platforms like Google and Meta play an "integral and inescapable" role throughout the entire news value chain. Asking the news industry to "opt out" of using these platforms is not realistic or feasible for the following reasons:

- They set publishing protocols — such as Facebook's Instant Articles or Google's Accelerated Mobile Pages, which publishers must adapt to and which can be changed on a whim by the platform, adding significant implementation costs to publishers as well as leading to repercussions for visibility and monetization of their product.
- Big Tech platforms own and control the tools and services journalists use to do their jobs, including email, web hosting, massaging, archiving, cloud storage, and cybersecurity services (like Google's Project Galileo).
- These platforms determine the rules for reaching audiences while also controlling the most popular online spaces those audiences use, such as Facebook, Instagram, YouTube, and Search. That is to say, they shape the business models, editorial strategies, production, and dissemination throughout the news industry.
- Big Tech monopolizes the entire digital advertising ecosystem, from ad servers to ad exchanges to auctions as well as the app stores where news outlets around the world, like other businesses, sell their product.
    - And they have hollowed out local businesses that once supported advertising in local news. They have also failed to pay their fair share of taxes in the countries where they operate.
- Publishers faced a coerced choice set when it comes to platforms, one that is compounded by a **lack of interoperability** and **data portability** between platforms even where alternatives exist.
    - The challenge of switching platforms, from rebuilding followers to developing technical expertise to rebuilding content libraries, creates path dependency for journalists and news organizations alike.

Despite the fact that a handful of American Big Tech monopolies are infrastructural to news media *around the world*, our laws and regulations have not caught up with this reality. Unlike the information and communication technologies of prior eras, today's tech corporations enjoy unprecedented exemptions from US libel law *and* anti-discrimination requirements *and* privacy constraints, nor do they pay their fair share of taxes in the countries where they are headquartered much less where they operate.

And perhaps most consequentially for the news media globally, platforms claim unparalleled rights to use copyright-protected material, like journalism, without license or compensation under the guise of fair use.

However, policymakers around the world are *finally* waking up to the fact that these tech monopolies form the backbone of the modern media system — and that the generative AI revolution could further exacerbate the crisis facing news — and are exploring ways to make Big Tech pay for the news they use.

Globally there are four possible types of policy interventions that seek to address the dynamics of the current platform intermediated information ecosystem.

- Subsidies: direct or indirect, to news orgs or to citizens to purchase subscriptions
- Platform Taxation: namely of digital services or adtech, with redistribution to news media
- Competition Policy: antitrust enforcement, treating platforms as common carriers, or breaking up the most dominant technology platforms in the advertising, publishing and cloud services sector — namely Google and Meta; and granting collective bargaining rights to news media and/or requiring tech platforms to negotiate with them
- Intellectual property: enforcing or reforming licensing and copyright for news publishers

Australia's pioneering 2021 News Media and Digital Platforms Mandatory Bargaining Code gave publishers the right to collectively negotiate while requiring designated platforms to negotiate with them for fair compensation by establishing an arbitration process. Although no platform has been designated, the mere existence of this legislation has resulted in Google and Meta paying more than $200 million to Australian news media, including small, local, and specialized media, leading to the creation of hundreds of new journalism jobs, with ads for these jobs rising 46 percent.

A dozen countries and EU members states are actively exploring or enacting legislation to address fair compensation, according to CJL's Technology and Media Fair Compensation Frameworks Global Tracker. These countries have primarily focused on trying to rebalance the playing field between Big Tech, namely Google and Meta, and news organizations by exempting publishers from antitrust restrictions on collective bargaining, requiring relevant platforms to come to the negotiating table and thus creating a forum for negotiations, or granting explicit ancillary copyrights to publishers. For example:

- Canada recently passed the Online News Act to allow publishers to collectively bargain with large digital platforms by providing a five-year safe harbor and has set a ceiling on the amount Google will be liable for (~USD $74M). Facebook has censored news in Canada rather than comply with this democratically enacted law.
- Brazil copyright law reform (Art. 21 of PL2370) seeks to tackle power imbalances between digital platforms — ranging from search engines and social media to streaming services — and artists and creators, including news publishers.
- EU Directive on Copyright in the Digital Single Market, which is being transposed into national law in all member states, creating a right for news publishers to receive remuneration from tech companies for scraping and reusing their content while leaving the specifics of how publishers can pursue those rights open to interpretation. In Denmark, where virtually every news publisher has joined a new collective, they are considering including the use of news content by AI companies and Large Language Models (LLMs) as well.
- In India, reforms to the IT Act, and possibly the Competition Act, are expected to include a news media bargaining framework, rescind overly broad intermediary liability exemptions for platform intermediaries, and address copyright protected uses of news content to train GAI and LLMs.
- New Zealand's Fair Digital News Bargaining Bill creates a safe harbor and compels platforms to negotiate, though it protects existing agreements between tech firms and publishers, such as Google News Showcase
- South Africa and Taiwan are both in initial exploratory phases of new bargaining frameworks.

Meanwhile, Google and Meta have tried to buy off news media around the world and head off regulation through direct assistance, grants, fellowships, factchecking "partnerships," inclusion in special news products, and scaring smaller publishers with the idea that they'll lose out on any crumbs of funding that they may have received from the platforms or be cut out of their products entirely if they pull out of news or the country, as Meta did in Canada and Australia and Google News previously did in Spain. These paltry sums not only undervalue news but also make journalism beholden to the "benevolence" of the tech platforms they must cover.

But collective bargaining and a regulatory framework increases the power of local and smaller news outlets. Importantly, this type of legislation creates a forum for negotiation to take place. This doesn't currently exist. There is *no* forum where tech companies and media can even come together to negotiate, other than in Australia. Creating a forum for negotiations is a critical yet often overlooked part of this type of legislation and is especially beneficial since publishers could also potentially use such a forum to negotiate for use of their data/content by AI companies.

Furthermore, the fact that large news organizations benefit is not a bad thing – they employ thousands of people, create jobs, conduct expensive investigations, and lobby on behalf of journalism. They also generate and receive the most traffic from Big Tech, so this is not surprising and the criticism of so-called link taxes misses the point of these types of bills.

This is particularly beneficial for local news outlets that have limited staff to engage in lobbying, or that lack access to affordable legal services. My research, based on interviews with hundreds of media leaders and journalists around the world, showed that a significant portion of independent, small, and niche news organizations lack access to the legal expertise they would like, much less need, nor are they able to get a response from Google or Meta when they have tried to reach out. This means collective approaches are crucial if they are to be viable.

One of the biggest challenges that this type of legislation faces is that small publishers feel like they won't benefit, which has allowed tech companies to divide publishers. And they are right if we acquiesce to how tech companies like Google and Meta have narrowed the discussion to focus on clickthrough rates and the value of the traffic they provide to publishers, haggling over figures and value amid vast information asymmetries. Unfortunately, publishers have bought into this narrow conception of value, which not only equates value with traffic metrics, but also excludes GAI companies that use news content to build and improve their models and services.

A myopic focus on the value of referral traffic disregards the ways that journalism improves the platform itself for all users, even if they don't click through on a headline. A recent study, for example, rightly hypothesized that people might engage in different types of behaviors if their search results didn't include information from publishers. Researchers in Switzerland found that the value of news is far higher than policymakers or publishers think it is, at least on Google Search, which accounts for the majority of Google's $280 billion annual revenue.

U.S. economists, applying a similar methodology and building on the well-established concept of the "additional value" created through complementary transactions between tech platforms and publishers, found that Google owes U.S. publishers more than $10 billion a year for the way snippets and headlines of news articles appear in its search, amounting to 17.5% of its search revenue annually. It found that Meta should owe 6.6% of its ad revenue, or just under $2 billion a year.

Furthermore, a narrow concept of value ignores the public interest served by journalism and the tax that Big Tech imposes on the public when local businesses can't survive, civic life is reduced to engagement metrics, and corruption proliferates because there is no watchdog holding those in power accountable. Establishing value and building trust between publishers and with the public require transparency. More effective policy interventions include transparency and data access requirements to data held by platforms or used in large language models that would allow news publishers to better ascertain value and thus develop more informed bargaining positions, as well as create some level of transparency for the deals themselves.

In July, a group of more than 100 practitioners and scholars from around the world adopted the Global Principles on Fair Compensation that lay out 10 principles that should inform any public policy aimed at ensuring fair compensation, including transparency, accountability, and collectivity. Shortly thereafter, publisher groups representing thousands of outlets around the world recently put out a complementary set of principles aimed specifically at AI that seek to ensure tech companies pay for the news they use on social media and to fuel machine learning and generative AI.

Meanwhile, competition authorities in India, Japan, South Africa, Taiwan, and the UK are investigating whether technology platforms like Google and Facebook have engaged in anti-competitive behavior, particularly with respect to digital advertising. Many more countries are considering legislation to address various aspects of the power asymmetries in the platform-press relationship, including burgeoning AI companies that have created their value in part through the uncompensated use of news content.

Journalism is a particularly valuable source of training data for large language models because, as ChatGPT explained when asked in a prompt, it is factual, includes language variation and cultural awareness, comprises complex sentence structures, includes quotes that convey real-world conversations, excels at summarization and condensation, and can help a model improve information retrieval.

In an important Google dataset that is used to train some of the most popular LLMs, including ones by Google and Facebook, news makes up *half* of the top 10 sites in the training data. And it includes content that was put behind paywalls and intended to be restricted to paid users. This fall (2023), ChatGPT and Bing had to stop a new product partnership because users were able to bypass publisher paywalls.

Yet journalism is facing an existential economic crisis amid technological shifts in the information ecosystem having never recovered its economic footing in the social media age. This siphoning off of valuable content by some of the wealthiest companies in the world without compensation is not fair use. It wasn't fair when the tech behemoths of the internet age took it, and it isn't fair in the era of generative AI. But more importantly, it isn't good for the health of information ecosystems anywhere in the world.

Platform monopolies have damaged journalism and democracy around the world by exploiting their dominance in digital advertising, using news content without fair compensation to journalists or publishers, and by algorithmically appropriating the role that diverse news editors used to play in influencing readers' attention. Now the same tech titans are once again redefining the economy through the deployment of generative AI. Without legal regulatory frameworks to shape what we, as democracies, want for our state and our country, much less the world, we are held hostage by the titans of tech who are at the forefront of the AI revolution.