



**Submission for the Record from Dr. Courtney Radsch
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**U.S. Senate Committee on the Judiciary
Subcommittee on Privacy, Technology, and the Law
January 10, 2024
Oversight of A.I.: The Future of Journalism**

Chair Blumenthal, Ranking Member Hawley, and Members of the Subcommittee:

The Open Markets Institute’s Center for Journalism & Liberty (CJL), based in Washington, D.C., submits this comment with the goal of providing relevant information to the subcommittee’s work on ensuring a sustainable future for journalism in the era of generative artificial intelligence. At the CJL, we work to ensure that the news media industry of the 21st is robustly funded and suited to the needs of citizens of the world’s democracies.¹ In this comment, we will summarize our research and recommendations related to competition for advertising revenues and the commercial relationship between news media and relevant digital platforms because this is inextricably linked with AI and the future of journalism. Key to the future of journalism in the age of AI is how the United States updates and applies American copyright laws, as the current state of unlicensed and uncompensated use of news publisher and journalistic content will exacerbate the existing structural inequalities that undermine the viability of journalism and the news media industry and threaten the foundations of our democratic system.

Big Tech and the News Media Industry

The digital advertising market is dominated by three corporations: Google, Meta (formerly Facebook), and, more recently, Amazon. All three platforms act as publishers by selling advertising space to brands, large and small, while also providing intermediation services that connect news publishers to advertisers, known as “ad tech.” For such “ad tech”, all three platform charge fees to both or one of the parties involved in the transaction.² Globally, the three companies reportedly accounted for 74% of the digital ad spending in 2021 and were on their way to surpass that mark in 2022.³

Commercially supported news media is beholden to the dominance of mainly two corporations in the “ad tech” market: Google and Meta. The digital platforms’ terms and conditions, the way they tie or bundle services, and their handling of user data, have a deep impact on the

¹ <https://www.journalismliberty.org/>

² Google and Meta charge fees for serving ads to both publishers and advertisers. Amazon, through Amazon Publisher Services, handles web publishers inventory but charges service fees only to advertisers when they use the Amazon DSP platform (<https://advertising.amazon.com/blog/bringing-ad-buyers-and-sellers-together-with-amazon-publisher-services>). To learn about fees in programmatic advertising, see: <https://adalytics.io/blog/adtech-supply-fees>

³ <https://digiday.com/marketing/the-rundown-google-meta-and-amazon-are-on-track-to-absorb-more-than-50-of-all-ad-money-in-2022/>



predictability (or lack of thereof) of ad revenues sources for news publishers. This imbalance of power in advertising only worsens when paired with the algorithmically-driven display of news in search engines and social media platforms, which can prioritize or deprioritize news in any given moment – thus, impacting news publishers’ reach and their relationship with audiences.⁴

In this current landscape, digital advertising is rife with conflicts of interest that have distorted competition to the detriment of news publishers. Large digital platforms are effectively diverting digital advertising revenues away from news publishers because they compete against news publishers for the same eyeballs to generate revenue, *and* they control the “ad tech” services that serve ads across the web based on algorithmically driven systems built on vast troves of data that gives them an unfair advantage. This is the foundation of what has become widely known in the United States as “surveillance advertising.” To learn more about this system and its harms to news media and consumers, we recommend reviewing the following reports, articles, and testimonies:

- [Democracy, Journalism, and Democracy: How to Fund Independent News Media in the 21st Century \(November 2023, Center for Journalism & Liberty\).](#)
- [Scrutiny Over Google’s Ad Business Should Expand to the Entire Ad Tech Market \(June 21, 2023, Tech Policy Press\).](#)
- [How Google Manipulated Digital Ad Prices and Hurt Publishers, Per DOJ \(February 2, 2023, Tech Policy Press\).](#)
- [U.S. Senate Hearing on Competition in the Digital Advertising Ecosystem: Written Testimony of Dina Srinivasan, Thurman Arnold Project Fellow, before the Subcommittee on Competition Policy, Antitrust, and Consumer Rights \(May 3, 2023\)](#)
- [U.S. Senate Hearing on Competition in the Digital Advertising Ecosystem: Written Testimony of Barry Lynn, Executive Director of Open Markets Institute, before the Subcommittee on Competition Policy, Antitrust, and Consumer Rights \(May 3, 2023\).](#)

Economists and media scholars in the United States have recently estimated the excess value that news content generates for Google search and the social network Facebook, which is not shared with news publishers. The study⁵, co-authored with researchers at Columbia University, concludes that in a scenario where Google and Facebook would share the excess value they obtain from the presence of news content in their search and social media platforms, respectively, news publishers could get up to \$14 billion annually. A similar study conducted on

⁴ <https://www.journalismliberty.org/publications/report-how-to-fund-independent-news-media-in-the-21st-century>; Courtney Radsch. [URGENT: Understanding and Responding to Global Emerging News Threats. Internews March 2023.](#)

⁵ <https://policydialogue.org/publications/working-papers/paying-for-news-what-google-and-meta-owe-us-publishers-draft-working-paper/>

behalf of the SWISS MEDIA publishers' association with oversight by leading academics⁶ found that the very presence of news on Google Search provided value to all users regardless of whether they clicked through or were even searching for news. It found that if Google did not have a dominant market position in web search and had to face competition, fair compensation for the value that media content provides to Google search would amount to about 40% of total revenue, or approximately \$176 million per year in Switzerland alone. To learn more about this methodology, we recommend reviewing the following articles:

- [The Value of News Content to Google is Way More Than You Think \(August 8, 2023, Tech Policy Press\).](#)
- [What Google and Meta owe publishers ... and democracy \(November 5, 2023, Daily Maverick\).](#)
- [Google and Meta Owe US Publishers \\$14 Billion a Year \(November 12, 2023, Tech Policy Press\).](#)
- [Paying for News: What Google and Meta Owe US Publishers — Draft Working Paper \(Working Paper, November 9, 2023, Initiative for Policy Dialogue at Columbia University in the City of New York\)](#)

As explained in a paper authored by CJL's director Dr. Courtney Radsch, titled "Making Big Tech Pay for the News They Use,"⁷ the combination of the decline of advertising revenue, the rise of 'AdTech,' and the tenuous sustainability of most independent news organizations have led to a decoupling of advertising and journalism "that threatens the very foundation of a commercial news model." From this article, we recommend examining Dr. Radsch's presentation of three policy areas:

- Taxing digital advertising to support journalism
- Increasing news media bargaining power
- Rethinking intellectual property rights with a focus on copyright and licensing for publishers

Up to this date, measures that increase news media bargaining power have rapidly risen across the globe as a key measure to correct some of the power and financial imbalances between large digital platforms and publishers. The CJL has been tracking such efforts in the **Tech &**

⁶ <https://fehradvice.com/valueofmedia/>

⁷ <https://www.cima.ned.org/publication/making-big-tech-pay-for-the-news-they-use/>

Media Fair Compensation Global Tracker⁸ — which is updated regularly as more countries seek to rebalance this relationship. While a global consensus on news media bargaining codes is forming, the United States has an exciting opportunity to drive the direction of global news remuneration policy by implementing reforms like the JCPA, introduced by subcommittee members Senators Klobuchar and Lee.

Dr. Radsch is a leading expert on media competition policy and platform regulation and has been consulted by governments and publishers including in Australia, Brazil, Canada, India, and South Africa. Earlier this year, she joined a group of fellow scholars and journalists in Johannesburg to establish global principles for fair compensation for news publishers⁹ that reflect lessons learned from legislative initiatives around news media bargaining codes. Her previous work¹⁰ has examined other efforts the South African government has taken to rebalance the aforementioned relationship between publishers and platforms, concluding that the centerpiece of an effective reform effort is a regulatory system that allows publishers to enter into informed negotiations with platforms over the use of their content. This should include use by companies who build AI systems using content scraped from news publisher websites, which is done without permission or compensation and in violation of intellectual property rights.

Integrating GAI Oversight into Efforts to Sustain Publishers

Generative AI (GAI) depends on vast amounts of data. This means that underpinning all of GAI is – in a play on the title of Justice Louis Brandeis’s well-known book describing how monopolists concentrate power, *Other People’s Money* – other people’s content.¹¹ Without the scraping and cataloging of the words and images that authors, performers, journalists, and artists have made available online, these GAI tools would not be possible.¹² They are merely digitized assemblies of infinitely complex forms of human expression that exploit the labor of hundreds of millions of people without consent, attribution, or fair compensation for private profit.

Consumer-facing GAI requires enormous energy, resources, technological infrastructure, and, most importantly, data.¹³¹⁴¹⁵¹⁶ As such, only the most dominant technology corporations, such as Microsoft, Amazon, Apple, Google, and Meta – with trillions of dollars in market capitalization – are able to develop and deploy the foundational models upon which GAI tools are built and the cloud infrastructure on which they depend. For example, the latest publicly available GAI

⁸ <https://www.journalismliberty.org/tech-media-fair-compensation-frameworks>

⁹ <https://www.gibs.co.za/news-events/news/pages/big-tech-and-journalism-principles.aspx>

¹⁰ <https://www.cima.ned.org/publication/making-big-tech-pay-for-the-news-they-use/>

¹¹ LOUIS BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* (1914).

¹² <https://www.hollywoodreporter.com/business/business-news/ftc-hearing-ai-sagafta-wga-1235609247/>

¹³ <https://www.washington.edu/news/2023/07/27/how-much-energy-does-chatgpt-use/>

¹⁴ <https://apnews.com/article/chatgpt-gpt4-iowa-ai-water-consumption-microsoft-f551fde98083d17a7e8d904f8be822c4>

¹⁵ <https://www.sciencefocus.com/future-technology/gpt-3>

¹⁶ <https://www.newyorker.com/science/annals-of-artificial-intelligence/how-will-ai-learn-next>

model for ChatGPT reportedly cost more than \$100 million to develop and requires almost a million dollars a day to operate.¹⁷

News and media, specifically, are among the most important sources of information for training models¹⁸¹⁹ and are critical for real-time AI-powered searches.²⁰ In an important Google dataset that is used to train some of the most popular large language models (LLMs), including some by Google and Meta, news makes up half of the top 10 sites in the training data. GAI foundation models include content that was put behind paywalls and intended to be restricted to paid users. In September, ChatGPT and Bing had to stop a new product partnership because users were able to bypass publisher paywalls.²¹²²

Should the current rollout of GAI applications continue in this legally uncertain environment, or were copyright protections granted to these models and/or their outputs, it will create perverse incentives that will further accelerate the dominance of Big Tech over core components of AI infrastructure. Moreover, given these corporations' ability to rapidly integrate AI into the vast array of products and services they already own, GAI is already becoming yet another way for Microsoft, Amazon, Apple, Google, and Meta to extend and entrench their already dominant market positions.²³ This will make it difficult, if not impossible, for sectors like journalism or the creative industries to remain independent, much less to maintain a public interest orientation in the case of the news industry.

The current implementation of GAI also furthers efforts by the platform monopolists to extend their dominance over our information channels and our public discourse. This in turn will exacerbate the ways in which these corporations are already threatening and cheapening real journalism and exploiting the labor of millions of journalists and politically engaged individuals⁴ to build their models and develop valuable applications. This includes by harming publishers' revenues and worsening disinformation.²⁴²⁵

The ultimate effect will be to amplify and accelerate the many ways in which the concentration of power and control by the platform monopolists are disrupting and undermining democratic debate and democratic institutions in the U.S. and around the world.²⁶²⁷²⁸

¹⁷ <https://www.wired.com/story/openai-ceo-sam-altman-the-age-of-giant-ai-models-is-already-over/>

¹⁸ <https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>

¹⁹ <https://arxiv.org/abs/2104.08758>

²⁰ <https://searchengineland.com/content-creators-are-concerned-with-the-new-ai-features-in-bing-and-google-393052>

²¹ <https://digiday.com/media/why-protecting-paywalled-content-from-ai-bots-is-difficult-business/>

²² <https://www.mediapost.com/publications/article/386924/browse-with-bing-in-chatgpt-integration-disabled-b.html>

²³ Daniel A. Hanley, A Topology of Multisided Digital Platforms, 19 CONN. PUB. INT. L.J. 271, 346 (2020)

(detailing the market shares of technology companies across 17 markets).

²⁴ <https://internews.org/wp-content/uploads/2023/03/29Mar-URGENT-Report-Final.pdf>

²⁵ https://digitallibrary.un.org/record/3927039/files/SM_misuse.pdf

²⁶ <https://freedomhouse.org/report/freedom-world/2023/markings-50-years>

²⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4466472

²⁸ https://v-dem.net/media/publications/dr_2022.pdf

Proposals to “allow” publishers to de-index their sites or pages from crawlers, as with Google’s recently announced robot.txt extender,²⁹ is not the answer to protecting their intellectual property, much less the broader public interest. De-indexing news from AI models and stripping journalism from training data undermines public interest goals by reducing the supply of quality information and making downstream applications less accurate and reliable. Furthermore, this approach puts the burden on publishers to protect against misappropriation of their content rather than requiring those corporations to obtain permission or license content. The multibillion-dollar companies at the forefront of tech innovation must be required to track their use of rights protected content, obtain a license, or provide compensation. We do that with most copyright materials and their creators – a radio station or streaming service is allowed to play a song or show a movie if they pay a licensing fee. Artists are not required to pull their materials from platforms to be compensated. This same spirit should animate how we treat copyright and GAI.

Additional considerations:

- Lack of transparency. Currently, there is no transparency in the source material of these models, the use of licensing of rights-protected materials, how companies “make decisions” to generate outputs, and the degree and extent of human control and monitoring. These GAI models operate entirely without oversight by either the public or federal or state administrative agencies, and unless they are required to respect copyright (and data privacy) laws, there is little incentive for companies to develop transparency mechanisms for source data. No regulatory regime can adequately advance the public interest without establishing proper mechanisms that enable oversight of how these tools are constructed.³⁰
- Exacerbation of mis/disinformation. GAI services are being used for illegal or other nefarious purposes. Consider that users continue to be able to circumvent imposed restrictions to generate explicit imagery and content, or to supercharge the ability to disseminate mis/disinformation into our communications channels.³¹³² As a result, GAI services are already being used at prolific rates to imitate and impersonate people, fabricate non-consensual pornographic images, and undermine democracy. For example, AI technologies are already being exploited to transform authentic images of lawmakers and interfere with the democratic process.³³³⁴ GAI’s ability to facilitate and exacerbate the impacts of influence campaigns is also a major concern. Independent journalists and media outlets are particularly vulnerable to these harms.³⁵

²⁹ <https://searchengineland.com/google-extended-crawler-432636>

³⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4416400

³¹ <https://thehill.com/policy/technology/4126647-researchers-find-multiple-ways-to-bypass-ai-chatbot-safety-rules/>

³² <https://www.nytimes.com/2023/02/08/technology/ai-chatbots-disinformation.html>

³³ <https://www.cnn.com/2023/09/07/politics/chinese-operatives-ai-images-social-media/index.html>

³⁴ <https://www.wired.com/story/chatbot-censorship-china-freedom-house/>

³⁵ <https://www.osce.org/files/f/documents/e/b/522166.pdf>

- Fast-spreading of consumer harms. GAI services are also already being used at prolific rates to imitate and impersonate ordinary people – again by creating images and videos that are not just false but also endanger their lives and livelihoods.³⁶ In particular, such actions are being weaponized against women as an escalated form of sexual harassment.³⁷ GAI services are even being used to replicate people’s voices to scam consumers and trick identity verification systems.³⁸³⁹

The rollout of GAI clearly embodies the worst aspects of the “move fast and break things” mantra of the U.S. technology industry. The aforementioned actions from users, although not always illegal, indicate that powerful technological tools are being rolled out by companies without adequate safeguards against misuse and abuse. Despite this circumstance, GAI are rapidly being integrated into numerous existing consumer products and services, such as our computer operating systems and various smartphone applications. Developers of these technologies, regulators, and Congress must establish guardrails to limit how these tools can be used.⁴⁰

The Open Markets Institute recommends that any policy recommendations, agency actions, or legislative proposals must incorporate at least the following:

- Grant copyright protection to the input side of GAI and not copyright protection to GAI output content, which is likely to entrench the monopoly power of Big Tech while continuing to undermine a range of industries that derive their value from creating original and artistic creations. One traditional policy that can help serve as a model was how the U.S. government for most of the 20th century sharply differentiated between individual innovators and large corporations in the enforcement of patent rights.⁴¹⁴²
- Any degree of copyright protection granted to GAI outputs must empower and protect human creators, publishers, and artists, by ensuring fair compensation to authors and clear attribution to the source material. Under this approach, we will acknowledge the fundamental power asymmetries between human creation and machine automation under the control of corporate giants.
- All GAI models should be required to provide “nutrition labels” of the input sources and must be subject to a comprehensive third-party review to ensure compliance with the

³⁶ <https://www.washingtonpost.com/technology/2023/10/13/ai-voice-cloning-deepfakes/>

³⁷ <https://www.pbs.org/newshour/show/women-face-new-sexual-harassment-with-deepfake-pornography>

³⁸ <https://theconversation.com/ai-scam-calls-imitating-familiar-voices-are-a-growing-problem-heres-how-they-work-208221>

³⁹ <https://www.cbsnews.com/news/scammers-ai-mimic-voices-loved-ones-in-distress/>

⁴⁰ <https://blogs.windows.com/windowsdeveloper/2023/05/23/bringing-the-power-of-ai-to-windows-11-unlocking-a-new-era-of-productivity-for-customers-and-developers-with-windows-copilot-and-dev-home/>

⁴¹ <https://washingtonmonthly.com/2013/07/04/estates-of-mind/>

⁴² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586770



aforementioned proposals. It will also give the public detailed information relating to the source material referenced for all outputs and the rights to that source material.⁴³

- Enact policies that facilitate the coordination between authors, artists, trade associations, and unions and developers of GAI technologies to establish fair agreements on the use of content.

The CJL team appreciates the opportunity to weigh in as the subcommittee continues its work on these issues, and we would be happy to provide further research or testimony to the committee and its members.

Sincerely,
Dr. Courtney Radsch

⁴³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4404252

SUGGESTED ADDITIONAL READING

- Public event: [“Protecting News to Preserve Democracy,” organized by CJL and News Media Alliance in Washington, D.C.](#), with remarks by the Minister of Canadian Heritage Pascale St-Onge about her work implementing Canada’s groundbreaking news media compensation law, the Online News Act, despite considerable pressure from tech giants Meta and Google to block such solutions (September 2023).
- [Open Markets Submits Public Comment on Artificial Intelligence & Copyright](#) (October 2023)
- Discussion paper: [“Platformization and Media Capture: A Framework for Regulatory Analysis of Media-Related Platform Regulations”](#) (Courtney Radsch, UCLA Journal of Law & Technology, Platforms and the Press, Winter 2023)
- Report: [Sustaining Journalism, Sustaining Democracy: A Policy Guide on Platforms and the Press](#) (Michael Karanicolas, Courtney Radsch, Akshat Agarwal and Nicholas Wilson, UCLA Information Policy Lab, April 2023)
- Commentary: [Frenemies: Global approaches to rebalance the Big Tech v journalism relationship](#) (Courtney Radsch, Brookings Institution, August 2022)
- Working Paper: [GPTS are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models](#) (Tyna Eloundou et al., August 2023)
- Discussion Paper: [Weaponizing Privacy and Copyright Law for Censorship](#) (Courtney Radsch, Centre for International Governance Innovation, May 2023)
- News Report: [Inside the Secret List of Websites That Make AI like ChatGPT Sound Smart](#) (Kevin Schaul, Szu Yu Chen, and Nitasha Tiku; Washington Post, April 2023)
- Report: [Artificial Intelligence and Disinformation: State-Aligned Information Operations and The Distortion of The Public Sphere](#) (Courtney Radsch, Prepared for the OCSE Representative on Freedom of the Media, July 2022)
- News Analysis: [Monopoly Power Is the Elephant in the Room in the AI Debate](#) (Max von Thun, Tech Policy Press, October 2023)