# Tech & Media Fair Compensation Frameworks

**Australia**

**Status:** Enacted (February 2021)

**Initiative:** News Media and Digital Platforms Mandatory Bargaining Code

**Highlights:**

The Code governs commercial relationships between Australian news publishers and ‘designated’ digital platforms that benefit from a significant bargaining power imbalance. It establishes an arbitration process that would allow news publishers to collectively bargain with platforms and forcing platforms to negotiate fairly. News publishers of all formats that distribute content online are eligible – no revenue or headcount thresholds are required. Covered digital platforms are any that benefit from a bargaining power imbalance, but they are only designated as such if they fail to voluntarily reach deals with news publishers during an initial mediation period.

Additionally, the Code requires ‘designated’ digital platforms to notify registered news businesses of changes in their algorithms that may impact traffic referrals.

The Code does not explicitly include language to broker deals for the use of news content to train “generative AI” or “large language models.” Some news publishers have called for new regulation to address this issue. This could also imply a revision of Australian copyright law, per some reports. Amidst the debate, the former chairman of Australian Competition and Consumer Commission considers news publishers should use the Code to enforce such deals instead of copyright laws.

**Comments on status:**

The Code came into effect in March 2021. As part of the negotiations that secured final passage, Meta and Google won a concession that allows them to voluntarily enter commercial negotiations with news publishers before being designated by the Treasurer as entities subject to arbitration. As of December 2023, no platform has been officially designated.

However, the looming threat of designation has been enough to prompt Google, and to a lesser extent Meta, to make deals with news publishers estimated at A$220 million a year since the law was enacted. Although most of it has gone to big publishers, the Code has allowed a more diverse group of media to access negotiations (e.g., public media broadcaster ABC and small publishers that joined the negotiating entity Public Interest Publishers Alliance - PIPA). But not all small news publishers have benefited from the law as no digital platform has been yet designated.

In December 2023, the Australian government published a response to the Treasury’s review of the code’s first year of operation, expressing support for legislation that empowers the Australian Competition and Consumer Commission to gather information about the deals between platforms and publishers, and to periodically assess whether to expand the code to new digital platforms.

**Background on legal framework:**
The Code modified the Australian Competition and Consumer Act, which requires businesses to make independent decisions about pricing, terms and conditions, and with whom they do business. Generally, when such decisions are taken jointly by competitors in a collective bargaining negotiation or boycott, this conduct risks breaking Australian competition law. Negotiations about the methods of display or content-ranking are not covered by this modification.

### Digital platforms’ reaction:

As early as August 2020, Google launched an advertising campaign warning Australians that the Code would “dramatically worsen” both Google’s search engine and YouTube. By January 2021, Google had started “an experiment” to remove local news sites from search results in the country. The corporation defended the “experiment” arguing that access to news stories was still available in the Google News tab. But it soon changed course and moved to strike secret deals with the largest media companies in Australia, in anticipation of a concession in the Code that would allow voluntary dealings.

Meta, on the other hand, blocked not just news outlets but all sorts of Australian websites, including hospitals and emergency services, right before the rollout of the country’s COVID-19 vaccination program in February 2021. Although Meta characterized the blackout as a “mistake,” a Wall Street Journal report showed that it was a deliberate tactic to wreak havoc in the country. The ban was lifted after the Australian government amended the code to make the arbitration process mandatory only if digital platforms failed to cut deals directly with news outlets.

### Brazil

**Status:** In progress

**Initiative:** Copyright Law Reform (PL 2370/2019) [Portuguese]

**Highlights:**

The provisions enacting news media bargaining obligations were included in Article 21 of PL 2370, which proposes a reform of the Brazilian Copyright Law. The proposed legislation 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. The parameters to set the compensation would have to consider three elements: volume of content generated by the news publisher, audience size, and number of journalists hired on payroll.

Covered digital platforms will be those with at least two million users in Brazil, except for messaging services. News publishers eligible to enter negotiations are required to be at least one year old and have an editor for Brazilian news. Like the Bill C-18 in Canada, negotiations can happen on an individual or collective basis (forming associations). Excluded from these provisions is the sharing of news by users. But if links shared by users on digital platforms carry “elements provided by the platform that expand the original content,” news publishers will also get compensation for that.

The Brazilian proposal does not explicitly include language to broker deals for the use of news content to train “generative AI” or “large language models.” Discussions about content use by generative AI tools in Brazil haven’t involved the scope of the bargaining framework for that purpose.
This bill was originally introduced to the Chamber of Deputies in 2019. The current text, which contains news media bargaining provisions and other definitions, was presented in August 2023. As of November 2023, the bill is stalled in Congress as there is stalemate between TV and digital content producers regarding streaming remuneration rights.

Background on legal framework:
The news media bargaining provisions were originally contained in another bill, Law of Freedom, Liability, and Transparency on the Internet (PL 2630/2020), also known as “Fake News Bill,” a sweeping media reform that sought to tackle dis- and misinformation on digital platforms. Now that the provisions have been transferred to PL 2370, they contain more details to guide its implementation. The bill overall would modify Brazilian Copyright Law (Lei 9610/98) and the Brazilian Civil Rights Framework for the Internet (Lei 12965/2014).

Digital platforms’ reaction:
The bill where the news media bargaining obligations were originally included, the “Fake News Bill,” faced fierce public opposition from Google, Meta, and other platforms like Telegram. They aggressively campaigned against the final passage of the legislation, which prompted sanctions from the Brazilian judiciary, accusing Google of undue interference in the legislative process. Brazilian legislators have also called for investigations into the platforms’ efforts to derail the bill. In comparison, after the “Fake News Bill” stalled in Congress, Big Tech’s opposition to the reform of Brazilian Copyright Law has been subdued.

California (US)
Status: In progress
Initiative: AB 886 - California Journalism Preservation Act (CJPA)
Highlights:
The CJPA would require covered digital platforms to pay a usage fee directly to news publishers for using their news content. The fee would be determined through a binding arbitration between the two parties. The bill sets many requirements for news publishers to qualify for compensation, among them, that they serve an audience in California and that at least 25 percent of editorial content should consist of public interest matters. Covered digital platforms should have at least 50 million U.S. monthly active users and revenues greater than $550 billion – the same definition as in the U.S. JCPA.

Unlike the U.S. JCPA, which allows news publishers to form “joint negotiation entities,” the California bill sets specific arbitration periods where platforms are compelled to negotiate with all newsrooms that give notice of their right to receive compensation.

A provision that sets the CJPA apart from other news media bargaining codes is that it includes spending requirements that explicitly benefit journalists. Depending on their size, news publishers would have to spend between 50 and 70 percent of the funds on employing journalists. Newsrooms would be required to publish an annual spending report. Additionally, the bill explicitly protects the platforms to enforce their content moderation policies as well.

The California bill does not explicitly include language on using news content to train “generative AI” or “large language models.” However, the bill defines “access” to news content by digital platforms as
“to acquire, to crawl, or to index content,” just like the U.S. JCPA. Thus, the same interpretation the News Media Alliance makes for the U.S. JCPA about compensation agreements in this regard would apply to the California bill.

**Comments on status:**
The State Assembly [greenlit](#) the bill in June 2023 with a 46-6 vote (including Republican support) and sent it to the state Senate for a final vote. A Senate hearing for such vote is expected to happen in 2024. In the meantime, the California Senate Judiciary Committee is holding an informational hearing tapping into the bill on December 5, 2023.

**Background on legal framework:**
The California bill does not create any exemptions in antitrust legislation. Since collective arbitration is permitted under current state law, AB 886 only adds another title to a specific section of the California Civil Code, which governs the general rights and obligations for individuals and businesses within the state.

**Digital platforms’ reaction:**
One day before the California Assembly greenlit the bill, Meta threatened to remove news content from California news media on Facebook and Instagram for users in that state. Google has not publicly opposed the California bill and has not started any tests to limit access to news in its search results. However, NetChoice and the Computer & Communications Industry Association, which represented both Google and Meta in lobbying efforts to prevent the U.S. JCPA from passing in Congress in 2022, have publicly opposed the CJPA as well.

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**Canada**

**Status:** Enacted (June 2023)

**Initiative:** [Online News Act, Bill C-18](#)

**Highlights:**
The Online News Act creates a temporary safe harbor to allow news publishers to individually and collectively bargain with large digital platforms and set compensation for the use of their news content. Publishers that produce news of “public interest,” employ two or more journalists in Canada, and follow a code of ethics are eligible for compensation. Covered digital platforms include search engines and social media services with prominent market positions and that benefit from a significant bargaining power imbalance – a list that will be determined by the Canadian Radio-Television and Telecommunications Commission. Messaging services are excluded.

Unlike the Australian code, covered digital platforms can be exempted only if the broker deals with news publishers that meet a list of criteria, such as making fair contributions to the Canadian news market, ensuring corporate influence does not undermine journalistic independence, and benefiting independent and language-minority news outlets. Additionally, the Act indicates that during the bargaining process, digital platforms can’t discriminate against news publishers’ content distribution or give preference to any bargaining entity, including itself.
The law does not explicitly include language on using news content to train “generative AI” or “large language models.” The text defines “access” to news content if covered digital platforms have used “any means, including an index, aggregation or ranking of news content.” Public opinion is divided over whether Bill C-18 would cover these new kinds of licensing agreements. While some publishers have made the case that the law would fully cover such agreements, other law experts see a narrow application that would leave companies like ChatGPT off the hook.

**Comments on status:**
The bill was passed by Royal Assent in June 2023. The law came into full force on December 19, 2023, following the government’s unveiling of final regulation that governs exemption criteria for covered platforms. Platforms have up to 180 days to notify the government that they fall under the scope of the law and wish to strike deals with news publishers that meet the exemption criteria.

After a series of public hearings with various stakeholders about proposed regulation to enforce the new law, in November 29th, 2023, the Canadian government reached a deal with Google to ensure it would contribute $73 million (C$100 million) annually through agreements it will broker with Canadian news outlets. This deal effectively exempts Google from a mandatory bargaining process.

**Background on legal framework:**
The safe harbor was necessary to modify the Canadian Competition Act, which prohibits businesses and individuals to enter into agreements that fix prices, control the supply of a product, or that are likely to substantially lessen competition. The safe harbor would last for five years, and it can be renewed.

**Digital platforms’ reaction:**
In August 2023, amid historic wildfires devastating British Columbia, Meta started blocking Canadian news links on Facebook and Instagram within Canada, arguing the legislation is “unworkable.” This prompted calls from news organizations for the Competition Bureau to investigate the legality of Meta’s behavior, and condemnation from Canadian Prime Minister Justin Trudeau. As of December 2023, after the deal the government reached with Google, Meta continues to be absent from the news market — which places the corporation outside the scope of the law.

Google also announced that it would block Canadian news on all its search products in the country at the end of 2023, unless changes were made to the law’s specific regulation. Google launched extensive public relations actions, which included public opinion polls, advertising, and seeking support from large news organizations. It also engaged independently in negotiations with the Canadian government, which led to the deal ensuring C$100 million from Google annually to the Canadian news market and Google’s continuation of making news available on its search engine.

Both corporations deployed early responses to block the passing of Bill C-18. Google first limited access to news results in Canada during a five-week test period in February 2023. The following month Meta threatened to do the same on Facebook and Instagram, but it only started testing such ability in June, a few days before the law was passed. In a Senate hearing in May 2023, representatives of the two corporations pushed back against the bill and requested amendments, among them, a ceiling for the amount of digital platforms’ total contribution to the news market, and getting Facebook removed from the bill.
European Union

**Status:** Enacted (2019)

**Initiative:** Directive on Copyright in the Digital Single Market

**Highlights:**
The Directive on Copyright in the Digital Single Market was a sweeping reform to the European Union’s copyright laws that created a suite of new rights for content creators of all kinds. As an EU directive, member states are required to transpose the directive’s contents into their own copyright laws. The directive applies to platforms with over 5 million monthly users, with exemptions for platforms in early development stages.

Article 15 of the reform created a right for news publishers to directly bargain with large tech platforms, like Google and Facebook, over the reuse of news content. This article requires that large platforms enter financial agreements with publishers over substantial reuses of their content — including snippets of articles, images and infographics, and videos produced by these publishers.

It is unclear whether the law governs commercial relationships with artificial intelligence companies. The directive’s text does not directly address whether using news content to train artificial intelligence models opens corporations to legal action from publishers, but the directive does not foreclose member states from applying stricter news reuse negotiation laws.

**Comments on status:**
The copyright directive requires transposition into the governing laws of each member state. While the directive originally set a 2021 deadline for this transposition process, several member states have still not adopted some or all of the directive. The European Union has launched official infringement proceedings against members that have not transposed the directive, with many of those proceedings still ongoing.

However, key member states like Germany, Spain, and France have transposed the directive, and news publishers within those member states have entered hundreds of negotiated agreements with the platforms over news content reuse. Most member nations who have resisted transposition cite other articles of the directive, such as those requiring filters to detect uploads of copyrighted content, as the reason for their delays.

**Background on legal framework:**
Prior to the passage of the directive, the rights of news publishers to demand remuneration for reuse of their content was ambiguous under the European Union’s 2001 copyright directive, and the laws varied across member states. That ambiguity and fragmentation benefitted large digital platforms, who simply withheld some news services prior to the comprehensive directive. The copyright directive replaced that fragmented regime, giving news publishers substantially more leverage.

**Digital platforms’ reaction:**
After initially resisting passage of the directive, and refusing to negotiate with publishers in the years after the directive began being transposed, Big Tech corporations are largely complying with the directive’s order to negotiate. Google faced a fine of over half a billion in France — the nation that has most fiercely enforced the directive’s new negotiating rights — for the company’s initial intransigence, demonstrating that the platforms’ financial interests are better served by complying...
with the copyright regime. France’s news publishers were assisted by a national competition authority that ordered Google to continue displaying news content, barring them from simply turning off access to essential news services as they have done in Canada.

However, some platforms, like Elon Musk’s X, continue to fight the directive in member states that have transposed news reuse regulations. Musk has recently been sued by Agence France-Presse (AFP) over his company’s refusal to enter news reuse negotiations.

**Illinois (US)**

**Status:** In progress  
**Initiative:** Journalism Preservation Act (SB-3591)

**Highlights:**
The Illinois Journalism Preservation Act would require covered digital platforms to pay a usage fee directly to news publishers for using their content, regardless of such content being in English. Similar to the California Journalism Preservation Act, the fee would be determined through a final offer arbitration between the parties, based on digital advertising revenue generated by a given news outlet and the number of times the content is clicked on or display on the covered platforms.

Newsrooms with as little as five journalists and ethnic media are eligible news organizations to receive compensation. Additional qualifiers include that they serve an audience in Illinois, that at least 25 percent of editorial content covers public interest matters, and that there is an editorial process for error correction in place. Covered digital platforms should have at least 50 million U.S. monthly active users and revenues greater than $550 billion – the same definition as in the U.S. JCPA.

The funds received from the usage fee should be invested in both journalist and support staff (advertising and sales, technical support, human resources, etc.). Depending on their size, news publishers would have to spend between 50 and 70 percent of the funds in employing journalists. Newsrooms would be required to make public an annual spending report, and failure to do so enables the digital platforms to withhold payments until compliance with the Act is restored.

The Illinois bill does not explicitly include language on using news content to train “generative AI” or “large language models.” However, the bill defines “access” to news content as “to acquire, to crawl, or to index content,” like U.S. JCPA does. Thus, the same interpretation the News Media Alliance makes for the U.S. JCPA about compensation agreements in this regard would apply to the Illinois bill.

**Comments on status:**
The bill was introduced by State Sen. Steve Stadelman to the State Assembly in late February 2024 as part of a larger package that includes the Strengthening Community Media Act, which offers a broad array of tax credits and even scholarships for journalism students, with the goal of repopulating local newsrooms. There is no visibility about the bill moving forward in the legislature yet as budget talks don’t typically start until April or May.

**Background on legal framework:**
Similar to California, this bill does not create a collective bargaining process, but rather an arbitration process where news publishers can jointly participate, and that is governed by American Arbitration Association’s Commercial Arbitration Rules and Mediation Procedures. Thus, there is no carveout in antitrust state laws included in the proposal.

Digital platforms’ reaction:
None reported yet.

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<th>India</th>
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<tr>
<td>Initiative:</td>
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<td>Highlights:</td>
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<td>There aren’t public details about the bargaining framework yet. But <a href="#">public remarks</a> by the head of the Ministry of Electronics and Information Technology (IT Ministry) show that the government supports the view that large digital platforms acting as aggregators of news content should pay their “fair share” of revenues to news publishers. In January 2023, the same official <a href="#">pointed out</a> to news media bargaining codes passed in Australia and Canada, which has created expectation among news media that the DIA would create a safe harbor for collective bargaining as well.</td>
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<td>Although the Indian proposal is not fully drafted, the outline draft does not explicitly include language to broker deals for the use of news content to train “generative AI” or “large language models.” However, the Digital News Publishers Association of India — which includes 10 of India’s biggest media organizations — <a href="#">expects</a> DIA 2023 and other changes to competition laws to address copyright protections for this type of content use.</td>
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Comments on status:
After more than one year in the works, the IT Ministry released the outline draft of the bill in March 2023 for consultation with legal and technology industry experts. In May, another round of public consultations started in Mumbai, and there was expectation that the full draft would be released in June. However, the breadth and scope of the DIA keeps growing with time, a process that will likely delay the release of a final draft.

For example, in July 2023, the head of the IT Ministry [announced](#) he was working with India’s administrative body for competition – the Ministry of Corporate Affairs – so that DIA would also prescribe an ex-ante approach to competition in digital markets, which means India would adopt legal guidelines to prevent anticompetitive practices, similar to the European Union’s Digital Markets Act.

Background on legal framework:
There are two different legal processes seeking to address power imbalances between the news industry and Big Tech. The first is the DIA, which would modify the IT Act of 2020 and potentially the Competition Act of 2002. Similar to the United States, India’s antitrust enforcement follows an *ex-post* approach, meaning that the Competition Commission of India takes action against an anticompetitive business practice once it has occurred.

The second process is a current investigation by the Competition Commission of India on alleged unfair revenue-sharing terms used by Google. The complaint, brought in October 2022 by the News Broadcasters & Digital Association, would be combined with two other ongoing lawsuits brought against Google on the same issue, according to news reports.

At the core of the complaint is that news publishers were compelled to give away content for products such as Google News, Google Discover and Google Accelerated Pages so that their web links would rank higher on Google’s general search results, which drove profits for Google that weren’t adequately shared with news publishers. The outcome of the probe may change business practices for Google.

**Digital platforms’ reaction:**
The Internet and Mobile Association of India (IAMAI), whose members include Google, Meta, and Microsoft, sent a letter to the Ministry of Corporate Affairs opposing *ex-ante* regulation for the sector, arguing it would “disincentivize companies from scaling beyond a particular limit.” According to media reports, other prominent local startups labeled the IAMAI’s views “propaganda” to protect Big Tech corporations.

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<td><strong>Status:</strong> Enacted (February 2024)</td>
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<td><strong>Initiative:</strong> Presidential Regulation on Publishers’ Rights</td>
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| **Highlights:** Also known as Presidential Regulation on Corporate Responsibility of Digital Platforms to Support Quality Journalism, the Publishers’ Rights law paves the way for news organizations across the country to negotiate with digital platforms a series of agreements covering paid licenses for use of news content by the platforms, profit-sharing, and other proposals, such as training of journalists. Government officials have characterized the law as a legal tool for a “clearer cooperation framework between them.”

Similar to the Australian and Canadian codes, Indonesia has enabled news publishers to receive compensation from digital platforms like Google and Meta, as well as other local news aggregators, for the use of their news content on search systems and social media. But aside from facilitating payments to news outlets, the regulation also requires covered platforms to prioritize news content produced by verified media outlets and curb the spread of disinformation and “fake news.”

An additional instruction from Indonesian President Joko Widodo, after passing the law, was for government agencies to redirect their advertising spending to news media firms instead of digital platforms.
The **enforcement** of the new regulation will be in the hands of a committee consisting of representatives from the Press Council – a self-regulatory body of the news media industry in the country – and the Communications and Information Ministry.

**Comments on status:**
Indonesia’s President signed the bill into law in **February 2024**, which is due to take full effect in August 2024. The bill had been ready for presidential approval since **August 2023**. The bill draft was first submitted to the government in **October 2021** by the Press Council. Before it was elevated to the presidency, the government conducted a consultation process with a variety of stakeholders, including news publishers and digital platforms Google and Facebook.

**Background on legal framework:**
In February 2022, reports showed the Indonesian government was very supportive of the Press Council’s proposal, but it was debating whether to issue the Publishers’ Rights as a new act – to be enacted by the People’s Representative Council, Congress’s lower house – or as a Presidential Regulation (perpres), which allows the president to execute acts and other policies. The Indonesian government eventually resolved to introduce the Publishers’ Rights as a perpres.

**Digital platforms’ reaction:**
After the bill was signed into law, Google told the Jakarta Post that “it had worked collaboratively with news publishers and the government to support and build a sustainable future for the news ecosystem in Indonesia.” Previously, though, in July 2023, Google announced that if the proposal was passed, it would be forced to assess the sustainability of various programs it runs in Indonesia, including the news aggregator it operates in the country. Similar to its arguments in other countries, Google complained then that this regulation would only benefit a small number of players, especially if the bargaining process would be overseen by the Press Council.

Meta has not made public comments after the passing of the bill into law. However, in the pass the corporation has said that it believes itself exempt from paying for news its users post on the platform, a stance that is likely to lead to litigation.

### Japan

**Status:** Inquiry

**Initiative:** Advisory Opinion

**Highlights:**
The Japan Fair Trade Commission (JFTC) issued an advisory opinion in June 2022 that paved the way for news organizations to collectively seek standardized contracts with large digital platforms that distribute news content, though it does not allow jointly negotiating the rates for carrying such content. The advisory opinion applies to U.S. tech giants like Meta and Google, as well as local tech titans that distribute news content like Yahoo Japan Corp.

**Comments on status:**
The advisory note currently guides the governance of commercial relationships between news publishers and large digital platforms. While this opens the door to potential negotiations, there is
little indication that Japanese news publishers currently have the leverage necessary to do absent further legislation.

In November 2022, the JFTC announced a probe of large digital platforms and their contracts with news publishers. The investigation will include Google, Yahoo, social media services LINE, and other news aggregators, with the goal to assess bargaining power imbalances in the news industry.

**Background on legal framework:**
No changes in the Japanese Antimonopoly Act have been reported.

**Digital platforms’ reaction:**
None reported.

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**New Zealand**

**Status:** In progress

**Initiative:** Fair Digital News Bargaining Bill

**Highlights:**
The Fair Digital News Bargaining Bill creates a safe harbor to allow news publishers to collectively bargain with large digital platforms and set compensation for the use of their news content. News publishers’ eligibility would be based on the kind of news they produce, including news relevant to ethnic communities as well as vulnerable communities. Covered digital platforms would be any search engine or social media service, local or foreign, that makes news content available in New Zealand.

Similar to the Canadian Online News Act, covered digital platforms are compelled to negotiate voluntary commercial deals with news publishers — unless such platforms meet a series of conditions that show they already benefit New Zealand news media. Only if no agreement is reached in this phase, the bargaining and arbitration process kicks in as a backstop to support news publishers.

Unlike the Australian Code, platforms don’t need to be “designated” for the bargaining obligations to kick in if voluntary commercial agreements don’t come to fruition. Additionally, the bill protects already existing agreements between news publishers and covered digital platforms, like news publishers’ participation in Google’s News Showcase.

The New Zealand proposal does not explicitly include language to broker deals for the use of news content to train “generative AI” or “large language models.” Discussions about content use by generative AI tools haven’t involved the scope of the bargaining framework for that purpose.

**Comments on status:**
The bill was introduced by the broadcasting minister to the Parliament at the end of August 2023. Although this officially sets the legislative process in motion, reports showed then there is little expectation the bill will be discussed or passed any time soon, as New Zealand is preparing for a general election in October 2023.

**Background on legal framework:**
There bill introduces a modification to the Commerce Act to allow news publishers to form new entities and engage in collective bargaining. Before the introduction of the bill, the New Zealand News Publishers Association obtained in 2022 an authorization from the Commerce Commission to negotiate compensation with Google and Meta on behalf of its members.

According to a Cabinet Paper on the proposal, it was due to this authorization process that the Commerce Commission found evidence of power imbalances between digital platforms and New Zealand news media that substantiated the introduction of the bill.

**Digital platforms’ reaction:**
Meta’s representative in New Zealand have complained that the government didn’t consult with the corporation on the bill, and also said the proposal misunderstands the relationship between Facebook and news. Similarly, Google’s New Zealand manager complained that a standard consultation practice had not been followed for the bill. Both corporations claimed to have already reached agreements with local news publishers even before the government surfaced the idea of the bill in 2022.

### South Africa

**Status:** Inquiry

**Initiative:** Media and Digital Platforms Market Inquiry

**Highlights:**

The Competition Commission of South Africa launched an investigation into the creation of a news media bargaining framework in September 2023. The Media and Digital Platforms Market Inquiry will focus on identifying whether the relationship between digital platforms and news publishers distorts or undermines competition in ways that negatively affect the sustainability of the South African media sector and its ability to provide credible news to consumers.

The news media sector included in the investigation spans news publishers, broadcasters (public and private), as well as small, local, and community news organizations. Digital platforms considered in the study include search engines, social media services, news aggregators, video-sharing platforms, and advertising technology (ad tech) companies.

Given several comment submissions the Commission received from large and small news publishers, academics, and large digital platforms, the terms of reference of the inquiry already identify several issues. For example, that as “dominant gateways” to consumers, Google and Meta use their power to “effectively extract copyright news snippet content for free by demoting news articles that lack snippets on search engine results or exclude them from social media feeds.”

Additionally, the inquiry’s terms of reference also identify Google and Meta as dominant players in the ad tech market who would use their dominance in such a way that news publishers “may receive a lower proportion of the fee paid by advertisers than they would in a competitive market.” In terms of generative AI services, the inquiry will investigate both stand-alone applications (e.g. ChatGPT) and chatbots integrated with other large digital platforms (e.g., Google’s Bard or Microsoft’s Bing), and the threats they pose for news publishers’ revenues and copyright compensation.
Comments on Status:
There is little indication where the authority might ultimately land on which platforms would be subject to any potential code, and how bargaining and arbitration processes may be structured. The inquiry started in October 2023, following the Commission’s timetable for this process, which includes public comments, information requests to stakeholders, and public hearings. The first round of submissions ended on November 14, 2023. A second round of submissions will start in December and close on January 14, 2024. A final report is expected to be published in January 2025.

Background on legal framework:
At this stage, there is little indication on how the authority might ultimately structure the bargaining and arbitration processes. Nevertheless, it is expected that any regulation decision recommended will require modifications to the 1998 Competition Act of South Africa.

A proxy to the thinking of the Commission in this issue can be seen in its recently released report in the Online Intermediation Platforms Market Inquiry, which was launched in May 2019 and included a broader scope of online services. Among the Commission’s findings, Google is identified as holding a de facto monopoly in online search that distorts competition in this market.

To address competition distortion in search, the Commission has recommended Google create a South African platform search filter to help users identify local digital platforms that challenge global ones; as well as provide R180 million ($9.6 million) in advertising credit to small platforms for consumer acquisition, and an additional R150 million ($8 million) in training and product support for small- and medium-size enterprises and Black-owned online firms.

Digital Platforms’ Reaction:
Similar to other parts of the world, Google and Meta have engaged differently with news publishers since their complaints caught the attention of the Commission. Google, for example, has engaged directly with the Publisher Support Services (PSS), a trade association that represents large legacy media publishers with digital presence and which made the petition to the Commission that eventually led to the Media and Digital Platforms Market Inquiry.

A spokesperson for the PSS recently said that Google has shown more commitment to making commercial deals in good faith. But this has created divisions in the local news media market. A spokesperson for the South African National Editors Forum has also criticized the lack of transparency in the negotiations started by the PSS, which has left out a broader group of digital-only news platforms. Thus, there is the expectation that fair compensation dealings, if regulated by the Commission, are mandated to be more transparent.

Meta, on the other hand, has taken a more defiant position. In December 2021, when the PSS request for an inquiry was made to the Commission, Meta downplayed the value it obtains from distributing news content on Facebook, rather than touting its support to non-profit organizations, which includes facilitating credible news production and training to journalists. Unlike in other countries, Meta has not yet voiced a hardline position that would block news distribution in South Africa – most likely because a news media bargaining code hasn’t been formally proposed by the government.
**Taiwan**

**Status:** Inquiry

**Initiative:** Research for legislative proposal

**Highlights:**
Following a directive from the Taiwanese legislature in May 2023, the Taiwan Ministry of Digital Affairs (MODA) announced that it would start research to draft its own potential model for a news media bargaining code. Government officials have expressed their desire for a code that would be based on three principles: news content has value, is related to public interests, and should not be treated as a mere commodity.

**Comments on status:**
MODA is expected to issue an initial report outlining the reforms necessary to establish this bargaining code by the end of August 2023.

**Background on legal framework:**
The legislation is expected to require substantial revisions to the nation’s copyright laws (much more so than in peer nations) if enacted, hence the need to have MODA (and its equivalent of the U.S. FTC) research the subject first before drafting Taiwan’s new media bargaining code proposal.

**Digital platforms’ reaction:**
In a bid to head off regulation, Google launched the Taiwan News Digital Co-Prosperity Fund in March 2023 with a pledge of about $9.8 million to be spent over the next three years to support the digital transformation of the news industry. This year, the amount disbursed would be only $3 million, which some legislators called “a public relations fund to appease local media.” Meta rejected participation in the initiative.

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**United States**

**Status:** In progress

**Initiative:** S. 1094 Journalism Competition and Preservation Act of 2023 – JCPA

**Highlights:**
The bill creates a temporary safe harbor in U.S. antitrust law to allow news publishers to form “joint negotiation entities” for the purposes of collective bargaining with large digital platforms and to set compensation for the use of their news content. The bill sets specific thresholds for both news publishers and digital platforms to enter a bargaining process. Among such thresholds, news publishers should meet an annual revenue and size requirement (at least $100,000 annually and no more than 1,500 full-time employees), while covered digital platforms should have at least 50 million monthly active users in the U.S. and revenues greater than $550 billion.

The JCPA does not explicitly include language on using news content to train “generative AI” or “large language models.” However, the bill defines “access” to news content by digital platforms as “to acquire, to crawl, or to index content,” which would apply to AI tools run only by covered platforms.
The News Media Alliance — one of the main promoters of the bill — considers that compensation agreements for this kind of access to news content fall under the scope of the JCPA.

**Comments on status:**
The bill was reintroduced to the Senate in March 2023 by Senators Amy Klobuchar (D-MN) and Mike Lee (R-UT). It has advanced out of committee and is awaiting a full floor vote, but currently lacks a House companion due to opposition within the chamber.

Bipartisan groups have previously attempted to pass the JCPA. While the initial bill came close to passage in 2022 as part of the National Defense Authorization Act, that effort was ultimately defeated after a lobbying blitz led by Big Tech corporations. In parallel, though, state-level efforts have sprung up that mirror the JCPA, most notably in California with the initiative AB 886 – California Journalism Preservation Act.

**Background on legal framework:**
The safe harbor is necessary within the framework of the U.S. Sherman Act, under which certain business practices that result in restraints on trade are prohibited, e.g., forming agreements with competitors to fix prices or divide markets. The safe harbor would last for six years since the date of its enactment. The bill also clarifies the safe harbor excludes any agreements related to the display, promotion, ranking, curation, filtering, or labeling of the news content by the digital platform.

**Digital platforms’ reaction:**
Meta threatened to remove news from Facebook and Instagram in the U.S. if the JCPA was passed — a retaliation tactic that was first used in Australia just before that country’s news media bargaining code was passed earlier that year. Google did not publicly announce any threats. However, two trade groups representing Google and Meta, NetChoice and the Computer & Communications Industry Association, deployed a six-figure lobbying campaign to influence Congressmembers, which included ads online and on broadcast mediums with messaging targeting Republicans and Democrats alike.