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## Digital platforms and the future of news: regulating publisher-platform relations in Australia and Canada

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### ABSTRACT

This article provides an overview of news media bargaining codes as a way of regulating relations between digital platforms and news publishers. Taking the Codes developed in Australia and Canada as policy case studies, the paper discusses recent reforms which respond to the unequal bargaining power between digital platforms and news media publishers. Despite these reforms, there are few guarantees that funds received by news publishers will be reinvested into public interest journalism. The article asks whether the discourse surrounding digital platform regulation generally, and measures by nation-states to rebalance market relations to the benefit of news publishers, are likely to yield necessary safeguards required to sustain public interest journalism, promote reliable information, and stabilise democratic societies.

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### KEYWORDS

Digital platforms; news publishers; bargaining codes; platform governance; media regulation; future of news

### Introduction: who pays for news?

Historically, the production of news has been a joint product with advertising ... and so those ads have supported the production of the news that we all depend on ... But if advertising is going down, there won't be the production of news (Nobel Laureate economist Joseph Stiglitz, cited in Mason, 2020)

The advertising-supported financial model of news production, which dominated mass media in the 20th and early 21st centuries, is no longer sustainable. In 2023, digital advertising accounted for 65% of total global advertising expenditure, with newspapers and magazines now accounting for less than 5% of total ad spend (Navarro, 2023). The digital advertising market is dominated by search and social media giants such as Google and Meta. In Australia, to take one example, these two companies have accounted for almost 70% of all digital advertising revenue (Australian Competition & Consumer Commission [ACCC], 2019, p. 18).

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The effect of this concentration of market power on commercial news production has been stark. With the sharp decline in advertising revenue going to print media, there have been substantial layoffs of journalists throughout the world: in the first months of 2023 alone *The Washington Post* cut 20 journalists from their newsroom (Ellison & Izadi, 2023), Vox Media announced (7%) of jobs would be cut (Flynn & Fischer, 2023), News Corp stated it would reduce global headcount by (5%) in response to declining quarterly earnings across its Australian, UK and US mastheads (Mead, 2023), while UK publisher Reach said 420 roles will go, 192 of which would be from editorial positions (Corfield, 2023).

The relationship between the rise of digital platforms, the platformisation of the Internet and commercial news businesses has been widely discussed, both in various government reports from around the world (ACCC, 2019; Broadcasting and Telecommunications Legislative Review Panel et al., 2020; Cairncross, 2019) and in academic studies (Bossio et al., 2022; Flew, 2019, 2021; Flew & Wilding, 2021; Helmond, 2015; Meese, 2020; Schlesinger, 2020). Social media platforms have been particularly disruptive to commercial news business operations, having replaced traditional media channels as the main source of news and information for many news consumers. To illustrate, 49% of UK adults use social media to keep up with the latest news (Ofcom, 2022), 48% of US adults get news from social media 'often' or 'sometimes' (Walker & Matsa, 2021), and 46% of Australia's Generation Z use social media as their main source of news (Park et al., 2022). However, only 6% of people in the UK and 14% of people in the US trust the information on social media (Newman et al., 2022).

One response to these trends is to see them as part of an inevitable 'creative destruction' associated with technological change, and that one would no more protect incumbent media businesses from such trends than you would protect taxi companies from ride-sharing services, or travel agents from online travel booking services (Jarvis, 2021). However, news and journalism have been identified as having several public good attributes that present a case for some form of external support to maintain the journalists and news production infrastructure required for specific forms of news such as public interest journalism and local reporting (De Rosa & Burgess, 2019; Murschetz, 2020; Walters, 2022). Michael Schudson (2020) argues that 'the world will survive without a lot of the journalism we have today, but the absence of some kinds of journalism would be devastating to the prospects for building a good society, notably a good democratic political system' (p. 9).

From an institutional perspective, news and journalism have a second-order importance that goes beyond the commercial viability of individual brands and mastheads (Steininger, 2020; Williamson, 2000). They constitute central parts of the institutional environment through which all other agents make decisions, creating a need to preserve their viability and their capacity to deliver timely and accurate information to fulfil other social, economic, and political functions. An analogy can be drawn here with banking: individual banks may cease to be viable over time, however the banking system is integral to a capitalist money-based economy and needs to be institutionally safeguarded. Governments have increasingly been focused upon the need to secure the future viability of news and journalism to a democratic public sphere, and ancillary elements of this, such as institutional trust (Blöbaum, 2021).

The crisis of the advertising-driven model of commercial news production, and the public good attributes associated with some forms of journalism, has drawn attention to the sources of value derived from news and journalism. In his pioneering study of this question, Robert Picard (2010) identified five entities that derive value from news:

- (1) Investors, including owners and publishers of commercial news businesses.
- (2) Audiences, who require timely and accurate information, as well as access to a diversity of views on topical issues.
- (3) Advertisers, who seek to reach consumers likely to purchase or consume their product or service.
- (4) Journalists and other media workers, who seek opportunities for paid employment.
- (5) Society, which benefits from a well-informed citizenry, a functioning polity, and social cohesion.

Picard observed that the Internet promoted a shift in value relations with regards to news. In what can be termed the ‘Golden Age’ of journalism, from the 1970s to the 1990s (Hallin, 1992), news publishers and journalists benefited from the ‘rivers of gold’ associated with classified advertising, as well as the existence of local monopolies which enabled news businesses to be highly profitable, with some of those profits invested into public interest and investigative journalism. From the 2000s, consumers and advertisers benefited from news online in terms of a proliferation of news sources, the capacity to tailor and unbundle news content based on personal preferences, and the lower cost and greater targeting of online display advertising as compared to print and broadcast media. This has, however, left the question of the sustainability of commercial news production unresolved. Both classified and display advertising migrated to the Internet, and the returns on digital advertising are a fraction of what these businesses had previously been used to.

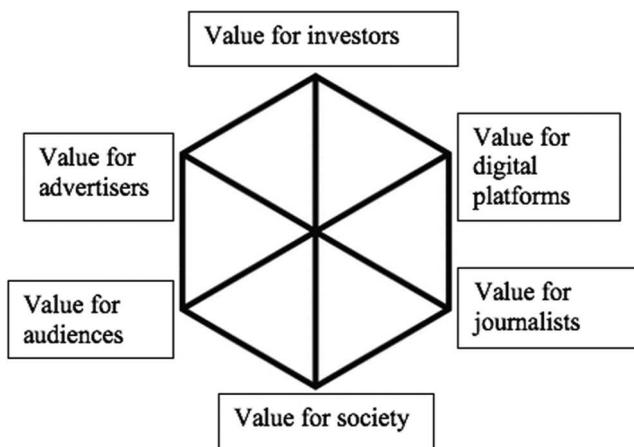
Picard’s model can be updated to incorporate digital platforms. Search platforms such as Google, and social media platforms such as Facebook, have offered news businesses the capacity to reach new audiences, have a greater understanding of their consumers through their online behaviour, and enable the social sharing of news content (Martin & Dwyer, 2019). But news businesses argue that they are providing ‘free content’ to digital platforms, who can then draw upon the availability of this content to drive their own traffic and out-compete them in digital advertising markets (Rashidian et al., 2019).

The market power of platform companies such as Meta and Google in part originates from this advertising revenue, especially online. The digital-advertising industry is growing strongly: according to Statista, ad spending in the digital advertising market reached \$616 billion, and is projected to reach over \$700 billion in 2023 (*Digital Advertising – Worldwide: Ad Spending*, 2022). In 2022 much of that growth (28%) went to Google, with Meta a very close competitor at 24.5%. Regulators also suggest that Meta (owners of Facebook, Instagram and WhatsApp) and Google (including the Google search engine and the YouTube video-sharing platform) hold significant market power as major sources of news for audiences, gaining audience attention through the availability of news content on their platforms (ACCC, 2019). Regulators have increasingly adopted the argument that as news visibility is determined by recommender systems on these platforms, news businesses are beholden to platform operators for audience reach at

the same time that they are in competition with them for digital advertising revenue (ACCC, 2019). Regardless of whether one agrees with the above contention (and there are strong arguments against such a position, see ANONYMOUS, forthcoming), it is evident that digital platforms derive at least some value from user consumption, engagement with, and sharing of news on their services. As a result, we can extend Picard's model to include them as a sixth entity in the value equation surrounding news (Figure 1).

From this perspective, we can see how different options can exist for aligning value among different stakeholders in news and journalism. Publishers can paywall content to drive growth in individual consumer subscription revenue, a challenge where news consumers are accustomed to accessing news content online for free, and potentially damaging to democratic principles where access to reliable information is only available to those who can afford to pay for it (Benson, 2019). Alternatively, governments can subsidise commercial news production in areas where it best aligns with public interest goals, as seen with programmes such as Australia's Public Interest News Gathering (PING) initiative, although this raises familiar concerns about the politicisation of news by governments, as well as the question of its relationship to existing investments in public service media (Murschetz, 2020; Walters, 2022). Extracting payment from the leading digital platforms to support news production has now emerged as another way of aligning value for news media businesses and society with the perceived value to the platforms themselves, albeit with the risk of those funds being captured by publishers and shareholders as profits and dividends rather than investment in new capacity. Each has been proposed as a means to ensure the continued economic viability of news businesses in a digital platform economy, where legacy news brands continue to grapple with advertiser spend decreasing at a faster rate than news consumers' willingness to pay increases (Newman et al., 2022).

The remainder of this paper assesses the ongoing reform effort being undertaken by governments to account for the role that digital platforms play in the wider news ecosystem and, in particular, the value exchange that occurs between stakeholders. We show



**Figure 1.** Stakeholders that derive value from news. Source: Adapted from Picard (2010).

how concerns about the role platform power plays in markets has influenced government activity and sparked further stakeholder pressure from the news media sector. The paper goes on to compare regulatory interventions from Canada and Australia, which attempt to directly respond to these issues. Finally, we offer a concluding discussion that (1) identifies a clear regulatory trend treating news content as distinctive and worthy of support and protection (in contrast to many other forms of online content) and (2) assesses the extent to which these interventions are able to support the ‘second-order’ importance of news and journalism, and broader efforts to ensure information reliability and stabilise democratic societies.

## Platform power

Entities such as Alphabet, Amazon, Apple, Meta, and Microsoft have created online platform-based markets and entire ecosystems that facilitate every-day life, including socialising, pursuing education, engaging in online commerce, and doing business. For instance, Google (owned by Alphabet) and Meta (Facebook’s parent company) provide specific products such as search and social media, as well as an infrastructure on which other platforms operate. Apple offers a suite of consumer cloud-based entertainment and storage services through Apple Music, Apple TV + and iCloud, among others. The lead cloud computing platform, Amazon Web Services (AWS), provides storage, networking, remote computing and mobile development, making Amazon both a retailer and marketplace. Microsoft, meanwhile, is fuelling digital transformation by offering computer software, consumer electronics, and PCs.

Together, these firms have built a data and digital ecology that scale up new digital services faster and at lower cost, displacing traditional corporate leaders from the banking, industrial and oil sectors. Their combined market capitalisation was US \$5.36 trillion in November 2022 (‘Big 5 Tech Giants Lost An Eye-Watering US\$1.5 Trillion In Just A Month!’, 2022), a figure higher than the collective GDP of France, Italy and the UK. Since the outbreak of the pandemic their market value has rocketed, as most people stayed indoors, communicated with each other, and accessed informative content via these platforms. The tech titans Baidu, Alibaba and Tencent are dominant in the Chinese market with a combined worth of over US \$1 trillion (‘Marketcap of Baidu, Alibaba, & Tencent ‘23’, 2022).

Economic factors relating to the size of large-scale business platforms, alongside their complex global structures, have brought about a revolution in digital communications technology and data networks. By setting up a platform-based business model, these companies have created value through connecting stakeholders’ needs at the point where participants interact and share, unlike traditional business models that depend on suppliers and customers. The platform model relies on positive network effects, customer loyalty, and market relevance to increase value through multifaceted processes and burgeoning socio-cultural power. Positive network effects result from a platform’s products and services becoming exponentially more useful when their user base grows, which are compounded through data collected from these users that can further improve their offerings. These network effects can undermine competition and increase a platform’s dominance, resulting in a winner-takes-all market. The search engine market is one such example of accumulated power. Google Search can be considered a *de facto*

natural monopoly with close to 85% market share of search in several contexts, with Microsoft Bing a distant second with a 9% market share in 2022 (Theuring & Barnard, 2023). Through its size and multifaceted network effects, Google Search enables its parent company, Alphabet, to move in vertical and horizontal directions, often cross-subsidising the costs required to establish itself in new spaces (Iosifidis & Nicoli, 2023).

It is apparent that the platformisation of the internet (Flew, 2019; Helmond, 2015; Napoli, 2019) has led to the concentration of control over key functions of the digital economy by a relatively small number of companies with high market power, becoming de facto gatekeepers of the platform economy. On the one hand, platformisation has concentrated immense economic, political, and communicative power in the hands of these tech giants. On the other hand, the visibility of decision-making power in the platform economy has increased significantly compared to the days of the open Internet, as this power is tied to particular high-profile individuals, including contemporary tech barons such as CEOs Mark Zuckerberg, Jeff Bezos, and Elon Musk. In this respect, the platform-based model of capital accumulation looks less and less like the Silicon Valley ideal of 'free minds and free markets', and more like the monopolists of the early twentieth century (Wu, 2018), or indeed the archetypal 'media moguls' such as Rupert Murdoch or the fictitious Logan Roy of the TV series *Succession*.

What has emerged in response is a – somewhat belated – move in various jurisdictions around the world to undertake new forms of digital platform regulation to address platform power (Flew & Martin, 2022; Flew & Su, 2022; Schlesinger & Kretschmer 2021). Cioffi et al. (2022) have argued that this can be understood as a 'Polanyian' moment in the evolution of platform economies. Just as Karl Polanyi observed in *The Great Transformation* (Polanyi, 2001) that the societal consequences of the Industrial Revolution of the 18<sup>th</sup> and early 19<sup>th</sup> centuries triggered the demand for new forms of regulation to tame untrammelled private market power, Cioffi et. al. propose that the digital platform relation has entailed a combination of 'radical technological innovation and unchecked private market power [that] can trigger social and political mobilisation and resistance that reshapes the political economic order' (Cioffi et al., 2022, p. 821). They propose that at such historical inflection points:

Societies experience a 'double movement' dynamic in which the reorganizational power and prerogatives of private interests and organisations imposing a utopian ideal of the self-regulating market (the first movement) drive a reassertion of political authority and thus broader societal interests (the second movement). This engenders a struggle within which social forces attempt to create regulatory and governance mechanisms to constrain and potentially redirect political economic and social development in new ways and often along unexpected developmental trajectories. (Cioffi et al., 2022, p. 821)

The challenge at such 'historical inflection points' is to understand the relationship between what can appear as a series of discrete and relatively uncoordinated responses by nation-states to the challenges presented by a distinctive global political-economic phenomenon, and the wider question of how power relations between public and private actors are being reshaped and whose interests are served by such changes. In the case of the Australian News Media and Digital Platforms Bargaining Code (hereafter News Media Bargaining Code), it also needs to be acknowledged that these are not necessarily responses coming 'from below' as citizen demands for greater corporate accountability.

They are being fundamentally shaped by competing corporate interests, notably those of traditional news media publishers, whose own business models are being squeezed by the rise of platform capitalism, so these need to be seen through a framework that recognises inter-capitalist competition as well as demands for public interest regulation, and that such policies are assessed accordingly.

### **Australia's news media bargaining code**

A consensus is forming amongst legislators and policymakers across the world that platforms gain a significant amount of value from having news featured on their products, and so should pay news media companies for news content. This development represents something of a victory for the news media sector, which has argued that certain platforms (particularly Google and Facebook) should pay them for their news content for some time. The sector's predominant justification has been that news improves the overall value of a platform's product offerings. In the early 2010s, two governments legislated in support of the news media but they had mixed success: Germany and Spain attempted to intervene in this debate by reforming copyright law to target Google's Search and News products, which were of most concern during this period. Germany moved first by introducing a *leistungsschutzrecht* or 'link tax' in 2013, then Spain enacted legislation in 2015 that forced aggregation services to pay for the use of news content. However, these early efforts were ultimately ineffective. Google was able to secure zero-cost licensing agreements with German publishers who were afraid of losing valuable audience traffic, and simply shut down Google News in Spain (Wang & Keith, 2021).

While Germany and Spain unsuccessfully attempted to get technology firms to pay for content in the 2010s, it is only recently that governments have seriously thought about addressing what was previously seen as an intractable policy challenge. This is largely thanks to Australia's competition authority, the Australian Competition and Consumer Commission (ACCC), who devised a novel regulatory approach that has proven to be (at least initially) successful. The reform, known as the News Media Bargaining Code (NMBC),<sup>1</sup> was enacted in 2021 after a voluntary bargaining code failed to gain traction with platform companies. Despite strong opposition from both Meta and Google, the Australian Government has secured an annual transfer of around \$200 million (AUD) from both companies directly to the Australian news media sector.<sup>2</sup>

The principal innovation of this reform is that it is oriented around bargaining power, a foundational concept in competition law (known as antitrust in the United States). The ACCC argued that while Google and Meta subsidiary Facebook did not need content from specific news outlets, they did need a general supply of news content to ensure that their products remained attractive to the market (ACCC, 2019). Conversely, news media businesses needed to put content on Google and Facebook to secure enough audience traffic to their websites, which they could sell advertising against (albeit a fraction of what they were previously able to command pre-platformisation). As the architect of the code and former chair of the ACCC Rod Sims sets out, Google and Facebook are a 'must have' for any news business operating online (Sims, 2022). The regulatory body went on to argue that while Google and Facebook have paid for content with selected news media outlets, there has always been a bargaining power imbalance between these parties. Google and Facebook can simply offer 'take it or leave it' deals, and news media companies have no

power or leverage to negotiate with. The ACCC also acknowledged that any attempt by Governments to force payment would most likely see these companies stop serving news entirely, as seen in Germany and Spain, further imperilling the financial viability of some news businesses if referral traffic from these platforms were to cease. Indeed, Facebook pre-emptively suspended access to news content in Australia before the then proposed NMBC had become law, restoring news to the platform after further negotiations with the Australian government (Bossio et al., 2022; Leaver, 2021; Meese, 2021; Meese and Hurcombe, 2021).

The News Media Bargaining Code responds to this issue by establishing a framework that forces platforms to do deals with news companies. It empowers the relevant minister (The Treasurer) to designate digital platforms and services making them subject to the code. The Treasurer can decide to not designate a platform or service, if they are satisfied that the company has established deals with enough news media organisations and in so doing, 'has made a significant contribution to the sustainability of the Australian news industry' (Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act [Treasury Act] 2021). If platforms and news media businesses are unable to reach agreement, and platforms do not make sufficient deals to satisfy The Treasurer, the platforms are designated and the parties will enter final offer arbitration. To be considered eligible for a deal, news businesses must have an annual revenue of above \$150,000 AUD, produce news that is subject to professional editorial standards, be editorially independent, targeted to Australian audiences, and produce 'core news content' (Treasury Act, 2021). As Dwyer et. al. observe, 'the underlying premise is that the prospect of the scheme coming into effect would be enough to force the platforms into separate agreements with news providers since, by doing so, they can escape formal designation under the Code' (Dwyer et al., 2023, p. 3).

The overarching aim of the reform is seemingly not to designate platforms, but rather to motivate platforms to do enough deals that the government is satisfied with their commitment to sustaining the Australian news media sector that they derive value from. The legislation was introduced by the centre-right Coalition government, who did not move to designate Meta or Google. At time of writing, Google has made deals with 37 outlets, from some of Australia's largest multi-platform news organisations to outlets focused on specific ethnic or cultural groups (such as *The Australian Chinese Daily* and *The Australian Jewish News*). In contrast, Meta has only secured deals with 14 media companies (Commonwealth of Australia, 2022). A centre-left Labor government now holds power in Australia, and while they have raised designation as a possible option for Meta, they have not made any serious moves to do so. Therefore, the current government seems to show a similar commitment to the NMBC as their predecessors and hopes that deals will be secured in the open market where possible.

While there has been some criticism about the coverage of these deals, the Public Interest Journalism Initiative (an Australian news industry not-for-profit) estimates that 61% of Australian news organisations are covered by at least one deal (Public Interest Journalism Initiative, 2022). This data was published prior to a series of deals made between Google and 24 smaller publishers, so it is likely that an even greater portion of the sector is now covered by at least one deal. In terms of revenue, the amounts provided to news media outlets vary significantly, from \$31,000 to \$70 million per annum (see Table 1).<sup>3</sup> As deals are confidential, the following data is based on public material surfaced through reporting (Grueskin, 2022; Turvill, 2021). Alongside these numbers,

**Table 1.** Examples of payments secured by media companies against revenue.

Media organisation	Revenue FY 21–22 (m)	Revenue FY 21–22 (inc. broadcast)	Payment <i>p.a.</i> (m) <sup>[i]</sup>	Payment as percent of revenue	Platform
Nine	593.5 <sup>a</sup>	1964	30	5.95 <sup>a</sup>	Google
ABC	1183 <sup>[ii]</sup>	1183	25	2.11	Google
Seven West	169 <sup>a</sup>	1537	30	17.7 <sup>a</sup>	Google
News Corp	1,088 <sup>ab</sup>	4,449 <sup>b</sup>	70 <sup>[iii]</sup>	6.43 <sup>ab</sup>	Google

<sup>a</sup>Publishing revenue only.

<sup>b</sup>Australian revenue only.

[i] Reported, but not confirmed annual payments. The length of these deals also differ for each company.

[ii] ABC is a public service broadcaster, and so most of its revenue comes from the government.

[iii] These deals have been described as a global partnership, covering all of News Corp's content across the world. Select UK and US publishers will be given money, but the available detail specifically refers to the Australian content. With much of this money presumably being booked as revenue for Australian publications, revenue in the above table only refers to News Corp's Australian publishing arm.

a proxy analysis of journalism job numbers has revealed that there were '46% more ads for journalist jobs during the period the bargaining code has been in place than there were before the code was introduced' (Brown & Grudnoff, 2023). The Australian Treasury reviewed the legislation a year following its introduction and has been broadly positive about the reform. It will not reconsider the effectiveness of the legislation until the first deals start to expire after three years.

## Global regulatory responses

The success of this reform has seen a number of other jurisdictions adopt Australia's regulatory approach. The most advanced jurisdiction in this regard is Canada, which has enacted the Online News Act (C18).<sup>4</sup> While the legislation is also based around the threat of final offer arbitration, there are some notable changes to the initial Australian effort. One of the most common criticisms of the Australian reform is that deals are commercial in confidence and treated as purely commercial agreements, despite the significant government intervention required to secure value transfer to news publishers. This produces a lack of transparency among stakeholders around the value of news content. By contrast, the Canadian legislation enforces transparency through a yearly audit, which requires a report to detail 'the total commercial value of the agreements', 'information relating to the distribution of the commercial value', 'information relating to the effect of the agreements on those expenditures' and any additional information that may be relevant with respect to transparency (Act C-18, 2022).

Another change is replacing ministerial designation with a more streamlined relationship between platforms and the communications regulator.<sup>5</sup> The ministerial autonomy afforded to the Australian Treasurer is replaced by transferring responsibility onto digital platforms. Platforms that fall under broadly similar criteria to the NMBC with respect to market power must notify the Canadian Radio-television and Telecommunications Commission (CTRC). They can avoid being subject to arbitration by applying for an exemption on the basis that they have done sufficient deals in the market, in a similar manner to Australia. In another attempt to provide transparency, the Minister of Canadian Heritage is developing regulations that will clearly outline what platforms need to do in order to secure an exemption (Canadian Heritage, 2023). There are other differences between the two codes. These include deciding news business eligibility, which in Canada

is tied to either previous eligibility for an existing tax credit scheme, or the employment of a minimum of two journalists in Canada who produce news for a general audience. These changes gesture to an interesting difference between Australia and Canada around the overarching policy outcomes associated with the reform. The Australian Treasury's review explains that 'the objective of the Code is to address bargaining power imbalances' and should not be used to 'redistribute resources across the news sector or to guarantee that all news businesses receive funding'. While beneficial social externalities associated with public interest journalism clearly drove the reform, the Canadian Online News Act speaks to a broader remit more aligned with what media policy scholars would define as the public interest (see Napoli, 2019). The explicit inclusion of campus and community radio (as well as radio more generally), and greater transparency around deals are two clear examples in this regard (Act C-18, 2022). Language around whether the legislation (and arbitration requirements) comes into force is also quite different. The Australian legislation considers whether a digital platform 'has made a significant contribution to the sustainability of the Australian news industry' (Treasury Act, 2021), whereas in contrast the Canadian Act specifically notes that the CTRC should account for whether deals in the open market have 'diversity with respect to language, racialized groups, Indigenous communities, local news and business models' and 'ensure a significant portion of independent local news businesses benefit' before considering arbitration (Act C-18, 2022). Table 2 provides an overview of differences in regulatory approach in Australia and Canada, highlighting how the former has taken a market approach to commercial news media sustainability, while the latter is gearing towards the ongoing viability of public interest journalism within a commercial marketplace.

Several countries are likely to follow Canada and Australia's lead and introduce similar legislation. In the US the Journalism Competition and Preservation Act promises to allow news businesses that have less than 1,500 employees to collectively bargain with platforms, and remains on the legislative agenda (Fischer & Gold, 2022). Other countries starting to prepare for similar reforms include the United Kingdom, New Zealand and India, as well as the state of California (Meese, 2020; Tobitt, 2021). As noted earlier, ancillary copyright provisions have been considered as a way of securing payments for the republishing of news (Furgal, 2021), but the Australian and Canadian policy measures have avoided a reliance upon copyright law, as these laws have themselves been identified as needing reform (ALRC, 2014). Some EU member states are starting to move from a copyright-based approach to one involving state-sanctioned bargaining, with Denmark allowing collective bargaining to secure better deals (Barsøe, 2021).

**Table 2.** Differences in regulatory approaches.

	Australia	Canada
Public auditing	No	Yes
Designation	Ministerial	Automatic (without an exemption)
Coverage	Print/Online/Radio	Print/Online/Radio
Eligibility of news media businesses	Revenue, produces news content, operates in Australia, subject to professional standards (although these are not considered in practice).	Is a qualified Canadian journalism organisation, an indigenous news organisation, or produces general news content of public interest that operates in Canada and is subject to professional standards
Accounting for diversity	No	Yes

## The distinctiveness of news

One argument against these types of regulatory interventions has been to position the future of legacy news businesses as being a part of what Joseph Schumpeter termed the ‘gales of creative destruction’ that are an inevitable feature of the capitalist system (McCraw, 2007; Schumpeter, 1950). The US academic and journalist Bill Grueskin has described the Australian Code as ‘a murky deal ... [to] force Big Tech to prop up suffering newsrooms’ (Grueskin, 2022), while the journalism academic Jeff Jarvis has argued that:

The code is built on a series of fallacies. First is the idea that Google and Facebook should owe publishers so much as a farthing for linking to their content ... In any rational market, publishers would owe platforms for this free marketing. The headlines and snippets the platforms quote are necessary to link to them, and if the publishers don’t want to be included, it is easy for them to opt out. (Jarvis, 2021)

These are also the arguments presented by Google and Meta in criticising such Codes: they entrench incumbent interests; they reward poor business practices; and they ignore the extent to which these companies do already provide support for news and journalism, but on their own terms. Perhaps in response to the perceived shortcomings within the Australian code, or to prove to the Australian government that they are still coming to the bargaining table, Meta announced its own Australian News Fund in late 2021, partnering with the Walkley Foundation to administer the three year, AUD\$15 million programme.

The Australian case certainly brought together unlikely partners, both for and against the Code. The Guardian journalist and labour movement activist Peter Lewis wondered how he came to be on the same side of the political fence as Rupert Murdoch and News Corporation (Lewis, 2022), while the veteran Marxist commentator Guy Rundle proposed that the left should in fact support Facebook against the Code, as the proliferation of free and shared media content would hasten the demise of informational capitalism based upon intellectual property (Rundle, 2021). However, the code’s architect, Rod Sims, rejected the creative destruction/new business model argument on the grounds that ‘While the platforms may have created a better advertising model they have not replaced journalism; they instead are a threat to it because they use and greatly benefit from the output without hitherto paying for it’ (Sims, 2022, p. 18). Related arguments about the importance of sustaining news have been made in the Canadian case, with Cultural Heritage Minister Pablo Rodriguez stating that ‘The news sector in Canada is in crisis [...] This contributes to the heightened public mistrust and the rise of harmful disinformation in our society’ (Blatchford, 2022).

The above analysis shows that regulators and governments have identified and sought to address two connected issues. First, they increasingly believe that news’ democratic value distinguishes it from other online content, creating a need for it to be accounted for in platform governance initiatives. With news treated as largely analogous to other forms of cultural or entertainment content on platforms up to this point, this growing regulatory consensus is notable. The approach resonates with longstanding formal and informal government interventions that have supported the press in the past, from press subsidies (Murschetz, 2020) to government advertising (Pickard, 2011). In so doing, these reforms establish similar regulatory terrain online and suggests that future

platform regulation may continue to treat news as a unique form of content, that is aligned with the broader public good.

Secondly, these stakeholders identify an unequal value exchange occurring between digital platforms and the news media and seek to rectify it by requiring digital platforms to pay news media companies. Of course, to adopt this view, one must believe that digital platforms at least secure some value from the presence of news media content on their site. Doing so requires an amendment of Picard's model (2010) to recognise the exchange of value that occurs between news media organisations and digital platforms. At a practical level, it also requires more detail about exactly how much news content is worth, both to society at large and in this specific example, to platforms. The Australian case has been defined by a lack of transparency, which means that despite deals being done there is little insight into the actual cost of news or indeed, the wider social benefits. The Canadian case stands to provide more insight into how news is valued economically by platforms and news organisations.

## Conclusion

The broader question is, as stated in our opening, whether these collective interventions effectively support the 'second order' importance of news and journalism, by promoting reliable information, and stabilising democratic societies. The immediate impact of the Australian intervention is apparent through a growth in job advertisements (Brown & Grudnoff, 2023), which at present is the best proxy for public interest journalism, and the transfer of funds to news media organisations. If one presumes, as Schudson (2020) does, that at least some of the journalism produced from these jobs and additional revenue supports democratically aligned outcomes, the reforms could be viewed as a success. However, such interventions are always going to be piece-meal. The codes will not be able to recapture the advertising revenue that has been lost to digital platforms, or support enough new jobs to reverse the significant losses that occurred across the 2010s (McChesney & Pickard, 2011). These initial results also do not tell us much about the long-term state of the relationship between the news media sector and platforms. There is little guidance about what would happen if digital platforms chose to stop serving news, such as Meta has now done in Canada (Meta, 2023). Nor is it clear how effective forced arbitration will be if digital platforms choose to let these existing deals lapse at the end of the contract, rather than re-sign.

Policy measures such as Australia's News Media Bargaining Code and Canada's Online News Act (Act C-18, 2022) have triggered a long overdue debate about who pays for news. For most of the twentieth century, and for the first two decades of the 21st, this was not a controversial issue. Public service media was largely funded by taxpayers, and commercial media was precariously funded by a mix of advertisers and subscribers. The platformisation of online news, and the dominance of the digital economy (particularly digital advertising) by a small number of platform monopolies and oligopolies, has fundamentally undercut these arrangements, at least for commercial news media. To the extent that public policy can rebalance the relations between platforms and commercial publishers, such policies will become the site of an ongoing tug of war between the news media publishers and the major digital platforms. Governments will need to balance inclinations to support the incumbent news organisations with

the difficulties of enforcing rules for global digital platforms at the level of nation-states. Moreover, market dominance within the traditional media industries means that there is always the risk of such policies supporting one group of monopoly corporate interests or another, rather than being primarily framed by public interest concerns and the expectations of citizens about news media ecosystems in a digital age. Indeed, the high likelihood of this occurring suggests the need for a wider set of policy interventions beyond commercial bargaining that can support this critical form of democratic infrastructure (Pickard, 2020), from targeted government support to stronger support for non-commercial models.

## Notes

1. It is not an industry code but rather an amendment to the Competition and Consumer Act 2010. Its official name is the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021, but the reform is commonly referred to as the News Media Bargaining Code.
2. As the deals made between platforms and news organisations remain commercial in confidence, the exact figure is unknown.
3. We have separated publishing and broadcast revenue as the bulk of these companies' broadcast content is not news oriented and relies heavily on entertainment. As a result, while accounting for revenue from broadcast and publishing is strictly accurate in one sense, it may not actually provide a clear picture of how much is actually being earned from news content alone. We have decided to give primacy to the publishing revenue, which gives a slightly better sense of the payments to news content ratio. It is not possible to breakdown revenue sources for the ABC as the bulk of their revenue comes directly from government.
4. The bill is currently under consideration in the Canadian Senate. This language will be updated if the legislation is enacted prior to the publication of this article.
5. Platforms are known as digital news intermediaries in the Canadian context.

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