

# Making Big Tech Pay for the News They Use

COURTNEY C. RADSCH, PhD

July 2022





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## Contents

Introduction .....	1
Journalism's AdTech Problem .....	3
Rebalancing the Relationship between News Media and Big Tech: Three Policy Options .....	5
The Link between Traffic and Revenue .....	12
Discussion and Recommendations: Overarching Challenges to Redressing Regulatory Disparity .....	14
Endnotes .....	17

## ABOUT THE AUTHOR

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# Introduction

As more people get their news online, journalism has become more dispersed and untethered from the institutions that produce it, the advertisers that fund it, and the public that needs it. Meanwhile, as tech companies have gotten bigger, wealthier, and more integrated into every aspect of daily life, journalism has struggled to adapt to shrinking newsrooms and budgets, leading many to wonder if Big Tech should subsidize the news they use.

The tenuous sustainability of news media outlets, especially in developing economies and emerging democracies, is not new. But the COVID-19 pandemic and democratic backsliding worldwide have made governments acutely aware of the vital need for local, fact-based journalism<sup>1</sup> and energized a global conversation about how public policy can be used to support independent media.<sup>2</sup> Widespread recognition that news media are operating on an uneven playing field has prompted countries around the world to consider redistributing some of the tech industry's profits to the news industry.

Over the past year, journalists and publishers globally have been inspired by bold new initiatives in developed economies to compel platforms to pay for the news they use. With the impetus provided by Australia's 2021 News Media Bargaining Code and the European Union's (EU's) 2021 Digital Copyright Directive, there is an opportunity to learn from these approaches and consider how they can be used to support independent media, particularly in developing countries and emerging democracies. These two laws have been pioneering in their efforts to force Big Tech to pay for news, and have created an opening for other countries to do the same. Press groups in Brazil, India, Indonesia, and southern Africa have launched campaigns to implement similar frameworks in their own countries.

The debate over what role tech companies should play in addressing imbalances in news marketplaces is wide-ranging but tends to focus on developed Western countries with large economies and regulatory expertise. These discussions seldom consider the constrained choices media face in countries around the world that are still struggling to transition to the digital age, particularly in developing countries.<sup>3</sup> "They [media in developing countries] have not really even had a chance to develop online businesses because Facebook came in and took it all before they even got a chance to get there," said Prue Clarke, executive director of the media development organization



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*Widespread recognition that news media are operating on an uneven playing field has prompted countries around the world to consider redistributing some of the tech industry's profits to the news industry.*



New Narratives.<sup>4</sup> Clarke works with media in Liberia where internet penetration remains stubbornly low and commercially viable independent news media are rare.

Currently, regulators and media globally are exploring how to renegotiate the relationship between tech platforms and the news industry given their roles in the information ecosystem and their inverse financial trajectories.<sup>5</sup> In these media-focused discussions the term Big Tech typically refers to Alphabet (which owns YouTube and dominates search) and Meta (which owns Facebook, Instagram, and WhatsApp), though the term is used as shorthand to also refer to other Silicon Valley companies that dominate the digital public sphere such as Amazon, Apple, Microsoft, and Twitter.

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## Policy Areas



Efforts to rebalance the relationships between journalism and Big Tech are focused primarily within three distinct, yet at times overlapping, policy areas: digital taxation, competition policy (also referred to as antitrust), and intellectual property. In all three cases the goal is to generate revenue or subsidies for news outlets to help sustain independent journalism. This report analyzes the evidence and justification for these various policies and examines the implications for news media in low-income and developing countries. It identifies the particular challenges that countries with small markets, weak currencies, less stability, and less press freedom face in pursuing the policies outlined in this report, underscoring the importance of a coordinated global approach.

# Journalism’s AdTech Problem

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. AdTech refers to the automated technologies and methods of buying and placing digital ads that enable programmatic advertising and microtargeting by advertisers and agencies that create, run, manage, and measure online advertising campaigns.<sup>6</sup>

Currently, the global digital advertising and publishing ecosystem is dominated by Google and Meta, which capture more than 60 percent of digital advertising revenue.<sup>7</sup> These two companies now sit between publishers and advertisers, and have created a complex and opaque digital advertising system.<sup>8</sup> Advertising revenue that once went directly to publishers and was used to support journalism now flows to the coffers of Big Tech.

In individual countries, the dominance of Google and Meta may be even greater. For example, the Australian Competition and Consumer Commission found that Google and Facebook (now Meta) accounted for more than 80 percent of the country’s digital advertising market.<sup>9</sup> In India, experts estimate that small publishers give upwards of 25 percent of ad revenue to Alphabet alone, though it’s hard to know since the platform is not required to share revenue or data with publishers.<sup>10</sup>

“Since Google is the majority stakeholder in the digital advertising space, they unilaterally decide the amount to be paid to the publishers for the content created by them [and] also the terms on which the amount has to be paid. The publisher does not even get paid for the snippets Google uses from their platform,” said Sujata Gupta, secretary general of the Digital News Publishers Association.<sup>11</sup> Similarly, when advertising generates a quarter of a media organization’s revenue, which is the case for independent digital media in Africa, Latin America, and Southeast Asia,<sup>12</sup>

KEY TERMS	
<b>Adtech</b>	Technologies that enable programmatic digital advertising. The software’s algorithm uses website and user data to automatically buy digital ad space that suits an advertiser’s campaign.
<b>Ad Network</b>	Platform that offers advertisers ad space on various websites.
<b>Ad Exchange</b>	Digital marketplace where advertisers bid on available ad space from various ad networks in real time auctions. These purchases are negotiated through adtech software whenever a visitor loads a website.
<b>Digital Services Tax</b>	Taxes on the revenues of companies offering digital services. For instance, social media companies’ advertising revenues.
<b>Competition Law (also known as anti-trust law)</b>	Laws regulating the conduct of companies to promote competition and ward against predatory business practices.
<b>Collective Bargaining</b>	Laws allowing publishers to negotiate collectively with tech platforms and set terms regarding use of and payment for their content.
<b>Ancillary Rights Law (also known as neighboring right law)</b>	Type of copyright law that, as applied to news media, would allow publishers to charge search engines and social media platforms a fee for using snippets of articles published on their websites.



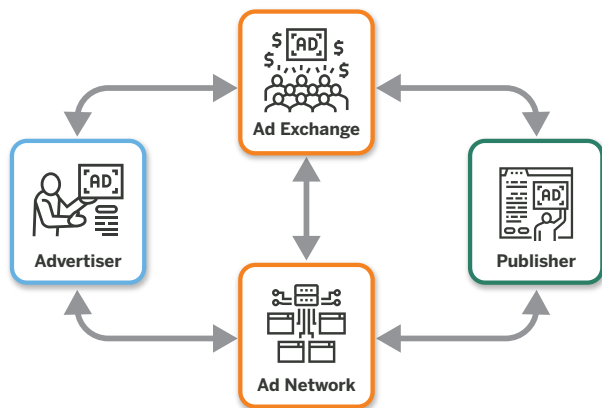
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diverting already limited advertising revenue compounds media sustainability challenges.

The complexity of the AdTech system also makes it exceedingly difficult for publishers to successfully navigate. It is so complex that it often requires publishers to hire dedicated technical teams to negotiate the system in order to take advantage of the programmatic advertising that does exist.<sup>13</sup> This is why many outlets in developing countries use Google AdSense, which is less complex than other advertising exchanges, though also a less lucrative advertising option for publishers.<sup>14</sup>

According to Wesley Gibbings, general secretary of the Association of Caribbean MediaWorkers, the revenue problem the new AdTech system has caused for publishers is especially acute “where you already have thin journalistic resources, and the material is basically just stolen and redistributed without any acknowledgement, without any kind of benefit to the creators.”<sup>15</sup> Any change in the system that makes it harder for news outlets to pay the bills is going to be more deeply felt in places where news media are already under severe financial stress.

## How Does AdTech Work?



In addition to the dominance of the duopoly, a labyrinth of data management platforms and exchanges means that publishers receive a significantly reduced portion of the money spent by advertisers. The lack of data and traceability in the AdTech system makes it difficult to know where the money goes, though a handful of efforts suggest that greater competition as well as transparency could help remedy this challenge. A benchmark study found that United Kingdom (UK) publishers received an average of just 51 percent of advertiser spend, with the remainder going to various intermediaries in the supply chain, with a third of this unaccounted for.<sup>16</sup> The UK’s regulator estimated that, on average, at least 35 percent of the value of advertising went to intermediaries rather than publishers.

In short, the rise of the digital AdTech system has resulted in a new advertising ecosystem that has effectively redirected ad revenue that in the past went directly to publishers.<sup>17</sup> Big Tech now dominates the digital advertising market **and** controls the infrastructure and market for digital advertising. The implications for news outlets around the world have been nothing short of dire as they seek to maintain revenue streams that can support journalism. This is why publishers and policymakers in many countries are now examining novel ways to fund independent journalism in a market that has been transformed by Big Tech.

# Rebalancing the Relationship between News Media and Big Tech: Three Policy Options

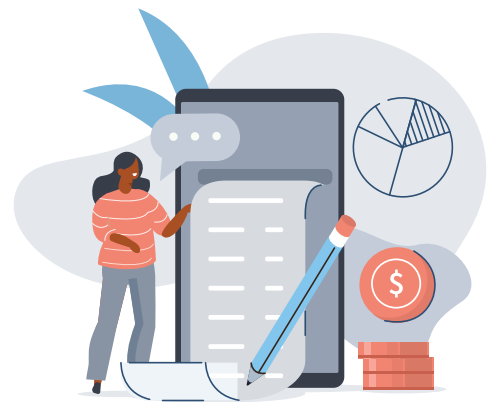
At present, there are three policy areas put forward as mechanisms to rebalance the relationship between news producers and Big Tech: digital taxation, competition policy (also referred to as antitrust), and intellectual property. Understanding the policy proposals is crucial to being able to evaluate the advantages and disadvantages of pursuing them in different country contexts.

## Taxing Digital Advertising to Support Journalism

Given that the digital advertising system has generated record-breaking profits for companies like Google and Meta and that many people use these platforms to access news content produced by publishers, the idea of taxing digital advertising has been gaining interest in recent years among publishers and policymakers.<sup>18</sup> It should be noted that there are also broader proposals to tax digital services gaining steam internationally, but these are not primarily aimed at supporting the news media. For example, Canada, the EU, India, Israel, and South Africa have proposed or adopted revenue-based taxes on digital advertising; however, the news industry is not a beneficiary of these plans.<sup>19</sup> For the purposes of the media development sector, however, interest is greatest in the proposals that channel taxation revenues to journalism.

In 2021, the National Association of Journalists in Brazil launched a campaign calling for taxes on digital platforms and the creation of a National Fund for the Support and Promotion of Journalism (Funajor).<sup>20</sup> The proposal would impose a graduated tax of up to 5 percent on large digital platforms based on gross revenue.<sup>21</sup> US-based Free Press has proposed that revenue generated from a new 3 percent tax on targeted advertising in the United States could be used to fund a public interest media system comprising diverse, local, independent, and noncommercial journalism, and news-distribution models that don't rely on data harvesting.<sup>22</sup> There would be a certain threshold imposed so that for-profit journalism outlets would not be affected and an independent endowment could use grantmaking to distribute funding.

Creating an independent endowment to distribute tax revenues to media presents its own challenges. Few emerging democracies



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have instructive experience in this area.<sup>23</sup> South Africa's Media Development and Diversity Agency—established by parliament to provide direct funding to community media—has been hampered by operational challenges and low resourcing.<sup>24</sup> Some countries also have prohibitions against assigning tax revenue to a specific issue area and would be prevented from using digital taxes to support media. In Chile, for example, there was chatter in the journalism and digital rights communities about adopting such a policy, but it would have required a constitutional amendment to allow tax revenue to be directly funneled to the news media.<sup>25</sup>

Furthermore, a lack of data and independent research into the effects of advertising approaches on traffic and revenue among media in different contexts means there is limited evidence to inform public policy. At this point it is unclear to what extent news content is actually driving advertising revenue. Improving transparency of this notoriously opaque market as well as competitiveness would help level the playing field and give the media a fighting chance to reclaim a share of the advertising pie. That's where competition policy and intellectual property regulations come in as well.

## **Leveling the Playing Field: Increasing News Media Bargaining Power**

Even as publishers struggle to make ends meet in the tech-dominated advertising era, they are also faced with the fact that much of their content appears on those same platforms without compensation or permission.

On the one hand, the headlines, photos, and snippets that show up in search results, social media feeds, and news aggregators may drive some traffic to publisher websites and potentially generate revenue. This is considered referral traffic, as opposed to direct or organic traffic. On the other hand, news improves the quality of content on tech platforms whose aim is to keep users in their walled gardens for as long as possible. Making platforms pay for the news they use could become a more attractive option than taxing digital advertising by forcing the companies to negotiate directly with publishers rather than putting the government in the middle.

Australia made headlines in 2021 when it passed legislation requiring Facebook and Google to share algorithmic information with and pay licensing fees to news organizations. The News Media and Digital Platforms Mandatory Bargaining Code<sup>26</sup> was enacted after a landmark report by the Australian Competition and Consumer



Commission (ACCC). The report highlighted that Big Tech platforms were benefiting from news content<sup>27</sup> without paying for it while controlling much of the advertising market that the news industry relies on.<sup>28</sup> The ACCC based its decision in part on the intrinsic value news provides to the platforms.<sup>29</sup>

Google and Facebook threatened to pull their services from the Australian market to stave off the law,<sup>30</sup> a threat that Facebook made good on when it shut down its service for nearly a week in 2021, just as the government was rolling out the COVID-19 vaccine. The shutdown had an outsized effect on small, nonprofit, regional, community, and rural media outlets, cutting them off from audiences that rely on social media for local news.<sup>31</sup> “Never has our media been more vital than during a global pandemic,” said Dot West, chair of First Nations Media Australia, underscoring the need to differentiate between commercial and community media. “[We] should not be negatively impacted by an industry-wide response to corporate interests.”<sup>32</sup>

The platforms and publishers eventually came to a compromise that included secret multimillion dollar deals with the country’s largest publishers while local news outlets got about \$20,000 to \$40,000 a year.<sup>33</sup> Other media outlets, including specialty news and a public service broadcaster, were denied deals and left wondering why they didn’t end up benefitting from the new framework, although they are lobbying the government to redress this inequity. “While deals have been made with media outlets owned by millionaires, true community publishers have been completely overlooked and ignored,” said Graeme Watson, co-owner of OUTinPerth.<sup>34</sup>

“Facebook has not provided us with clarity as to their rationale for not entering into an arrangement with us. We’ve attempted to elicit a response from Facebook about their rationale. We’re still a little in the dark,” James Taylor, managing director of public broadcaster SBS, told a parliamentary committee.<sup>35</sup>

The new legislation also recognized the massive financial and editorial impacts that major tweaks to platform algorithms or priorities can have on news organizations, including closures and layoffs.<sup>36</sup> For example, when Facebook decided to prioritize video in 2015, publishers pivoted to video, only to find out later that the company had inflated its metrics, according to a lawsuit.<sup>37</sup> When it decided in 2018 to de-prioritize professionally produced media content in favor of so-called meaningful content from friends, news organizations suffered.<sup>38</sup> In Indonesia, however, they are mindful of how bargaining code laws can privilege big media conglomerates.<sup>39</sup> This perception has dogged the Australian law and helped to scuttle the Brazilian law. As such, Indonesia will provide an



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important test case of whether a bargaining code policy can also benefit smaller, local outlets.

Australia's bargaining code legislation has inspired news media around the world to consider whether they could pursue a similar strategy in their own countries. For example, a media sustainability task force organized by the Press Council and other media organizations in Indonesia has drafted legislation modeled on Australia's that would create a mechanism for news media and tech platforms to negotiate licensing fees and provide greater algorithmic transparency.<sup>40</sup> But they're also trying to avoid privileging big media conglomerates at the expense of smaller local journalism, a criticism the Australian law faced and that enabled tech companies to align with independent media in tanking the Brazilian law.<sup>41</sup>



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In southern Africa, Alvin Ntibinyane, managing partner of the INK Centre for Investigative Journalism in Botswana, is trying to get support from the media development community to lobby regional policymakers to take a similar approach in the Southern African Development Community region. This approach doesn't yet have traction and Ntibinyane cites the lack of technical expertise on both technology and tax policy as limiting its efficacy.<sup>42</sup> In Latin America, media are taking a "wait and see approach, but also waiting for an opportunity to jump in," according to Juan Carlos Lara of Derechos Digitales.<sup>43</sup>

India is one of a handful of countries in the Global South that has both the expertise, user base, and regulatory influence to pursue the Australian strategy. In January 2022, publishers filed a complaint with India's competition authority claiming that Google unfairly dominates the news aggregator business and does not allow publishers to competitively earn revenue on ads due to a "lack of transparency and information asymmetry."<sup>44</sup> The investigation into whether Google's use of snippets is a result of imbalanced bargaining power hinges on whether the referral traffic to news publisher websites is affected, and then whether this impacts publishers' ability to make money. But the Digital News Publishers Association, which filed the suit, has been reticent to discuss the complaint and it has gotten little media coverage.<sup>45</sup>

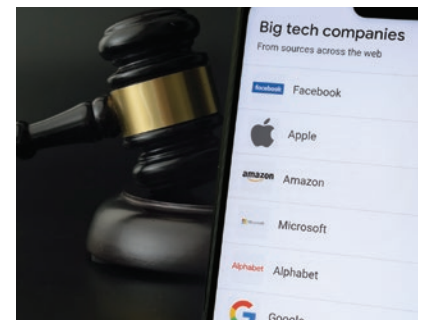
## Rethinking Intellectual Property Rights: Copyright and Licensing for Publishers

Lawmakers have also turned to intellectual property rights as they try to give publishers a leg up in the digital age. Search engines, timelines, and news aggregators are filled with news snippets and images that are culled from publishers and authors without permission or payment. The “fair use” exception in copyright law typically permits the use of small amounts of copyrighted material under certain conditions without prior permission of the copyright holder, but the question of whether this applies to online platforms, particularly when they are for-profit, remains unsettled. Currently, search engines and social media sites use headlines and short descriptions of websites, including news articles, on their platforms, but many publishers argue that this use allows Big Tech to profit from news content produced by others without having to pay for it.

In Europe, regulators have tried to renegotiate power dynamics to allow news outlets to be remunerated when online service providers use their content—even just headlines and news snippets—by applying the concept of “ancillary copyright” to news content. In practice, the adoption of ancillary copyright, sometimes referred to as “neighboring rights,” for news content could mean that some platforms and aggregators would need to pay publishers a fee anytime they posted a news headline or snippet.

The 2021 EU Digital Copyright Directive created a right for press publishers, not just authors, to claim copyright.<sup>46</sup> This approach emerged from experiments in Germany, Spain, and other European countries over the past decade, with mixed results. It creates a framework for negotiating licensing fees and distributing those back to publishers. Requiring each entity to negotiate and collect rights and payments is not feasible, so collective management organizations are needed to implement this type of approach. This requires digital rights management systems and collecting agencies to negotiate, monitor, collect, and distribute the licensing fees to copyright holders without requiring advance permission.<sup>47</sup> It also requires a significant degree of trust in addition to technical expertise.

Not everyone in the journalism sector is on board with this strategy. Some worry about the lack of transparency in commercial deals negotiated between publishers and platforms and that small outlets will get left out of deals negotiated between large publishing conglomerates and Big Tech. There is also a concern that journalists will not actually benefit from this arrangement and will be left behind.



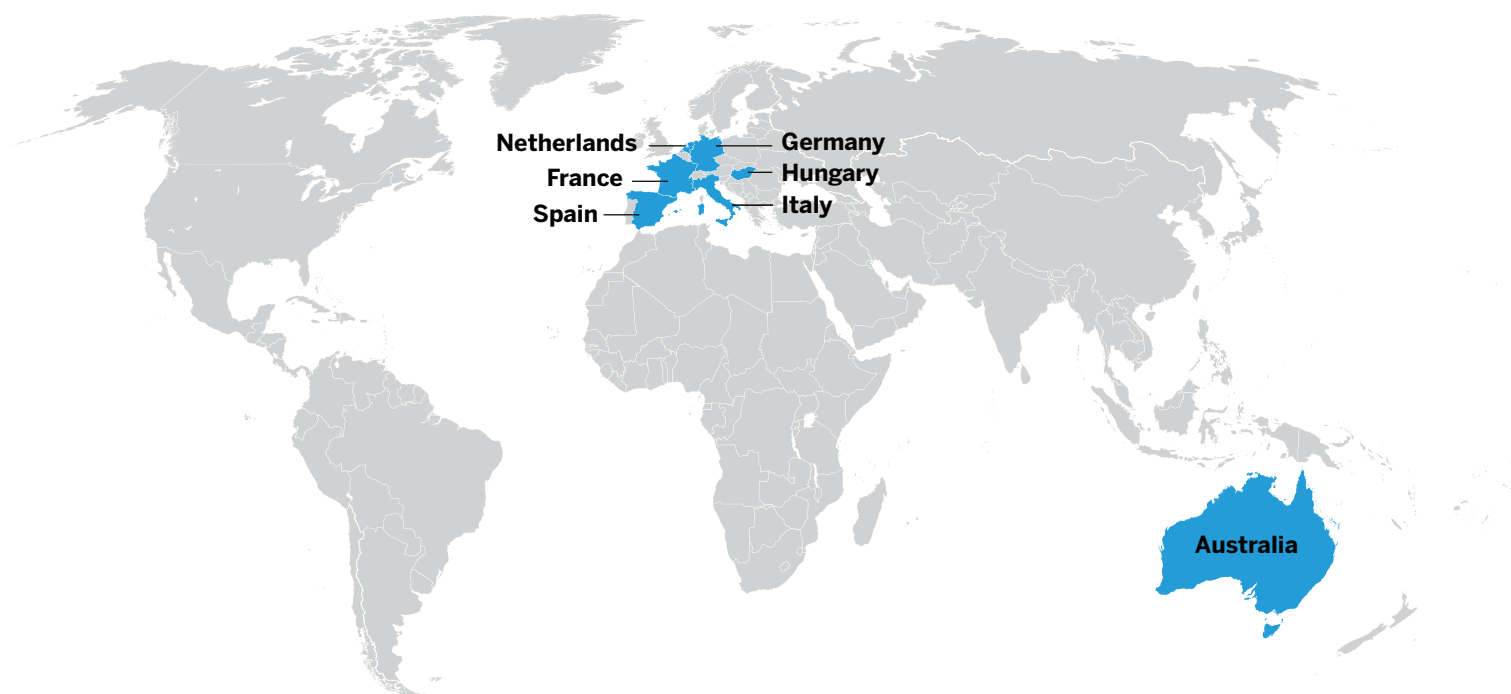
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Other observers warn that imposing a “link tax” would undermine the free flow of information online. The directive could provide a global template like those established by other major European digital legislation.<sup>48</sup>

In 2013, after extensive lobbying by Axel Springer, Germany’s largest publishing group, and other major German news outlets, Germany’s Copyright Act was amended to include an “ancillary right” that gives press publishers the exclusive right to commercially exploit their content for one year unless a third party obtained a license.<sup>49</sup> Publishers then sued Google for failing to negotiate payments for use of news snippets. In response, Google stopped using snippets unless a publisher opted in to the Google News aggregator. A number of German publishers opted in to the Google News aggregator without charging Google a licensing fee. However, Axel Springer refused to sign a free licensing deal and saw a 40 percent drop in traffic from search results and an 80 percent drop from Google News referrals.<sup>50</sup> After just two weeks, Axel Springer gave in and joined the other German news organizations in licensing its content for free rather than giving up referral traffic.<sup>51</sup>

## Countries That Have Implemented Ancillary Rights Laws



The following year, Spain adopted a new copyright law that similarly required news aggregators like Google to pay publishers for including snippets and headlines, but also tried to make sure that publishers wouldn't be compelled to let platforms use their content for free. Unlike in Germany, publishers were required to receive compensation and were prohibited from refusing the use of "non-significant fragments" of their articles.<sup>52</sup> By making compensation compulsory it foreclosed the option to opt out<sup>53</sup> but ended up splitting the publishing community.<sup>54</sup> The largest Spanish newspaper association and several digital-only publishers initially supported the law, but ultimately joined forces with Google and the main local news aggregator, Menéame, to lobby against it.

Before the law came into effect in 2014, Google News decided to shut down in Spain. Although a handful of empirical studies showed a general decline in traffic, the timeframes, types of traffic, and impact on different-size publishers varied,<sup>55</sup> and a longer-term study by Spanish publishers and a news industry group found that this reduction in traffic was low and temporary and offset by increased higher-quality organic traffic.<sup>56</sup>

The Spanish law seemed to be a failed experiment in revenue generation until 2017, when Spain's professional association for authors and publishers, CEDRO, proposed a rate of five cents per active user per day.<sup>57</sup> Upday, a news aggregator that comes pre-installed on most Samsung phones in many European countries, agreed to pay the licensing fees.<sup>58</sup> Owned by Axel Springer, Upday became the first, and only, publishing group to ink a deal with a news aggregator and in doing so it legitimized CEDRO's proposed rate and set a precedent for future agreements.<sup>59</sup> But in 2020, CEDRO unsuccessfully sued Google claiming that its Discover mobile service amounted to an aggregator and was therefore owed millions in unpaid licensing fees; it was instead forced to pay the tech behemoth's legal costs.<sup>60</sup>

Google News only reopened in Spain on June 22, 2022, after the country dropped the mandatory collective licensing fee and implemented the EU's copyright directive. The new legislation still requires Google to negotiate with directly with publishers, but it simply allows for licensing fees without requiring them.<sup>61</sup> While the deal with Upday demonstrated a glimmer of hope, Spain's experiment with mandated licensing fees ended before it could gain much traction. Any country seeking to implement similar measures will need to be prepared to meet steep resistance from tech giants.



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## The Link between Traffic and Revenue

A key assumption underpinning changes to existing intellectual property and competition law is the idea that platforms derive a benefit from news content and that publishers are not adequately compensated for use of their content. Search and social media are the main ways that people come across news if they don't go directly to the outlet's webpage, and relatively few people use news aggregators.<sup>62</sup> Direct traffic to a news website lets publishers collect revenue and data directly from their news consumers while improving brand recognition and potentially turning visitors into subscribers.



*At present, the research on the effects of news aggregators on news publishers is inconclusive... A better understanding of how referral versus organic traffic affects news publishers in terms of discoverability, visibility, and revenue generation would improve regulatory policy.*

The German and Spanish cases demonstrate that the link between referral traffic and revenue is not quite so clear cut. Making aggregators pay to feature publishers' content may create a new source of revenue, but it could also lead to less direct traffic to news sites and thus less brand recognition for publishers. This loss of visibility would be particularly problematic for smaller, less established news outlets. Even in cases where outlets receive more traffic from aggregators, visitors are more likely to be directed to individual article pages than a high-revenue landing page. At the same time, having a publisher's content removed from aggregators does not guarantee an increase in direct visits that would offset the loss of potentially less lucrative referral traffic. It is thus difficult to gauge the true impact of these laws on news outlets' bottom lines.

A core problem is that referral traffic doesn't necessarily translate into revenue. Google claimed in 2013 that it sent more than 10 billion visits to news publishers around the world, with publishers receiving more than \$9 billion through AdSense alone.<sup>63</sup> This rose to 24 billion visits to news websites each month in 2022, according to the company.<sup>64</sup> Amid this scale of volume, AdSense is indeed a leading source of advertising revenue for news sites but returns are often small. Despite claims by the tech companies, studies show that publishers are making less money even when traffic remains the same.<sup>65</sup> In other words, despite getting more visitors from tech platforms, news outlets are not necessarily earning more money.

At present, the research on the effects of news aggregators on news publishers is inconclusive.<sup>66</sup> An earlier study commissioned by Google estimated that referrals accounted for about 4 percent of publisher revenues in Europe.<sup>67</sup> Facebook claimed Australian news media

received “free” referrals from traffic generated on the platform that were worth \$350 million in 2020.<sup>68</sup> But independent research is needed to understand the medium- and long-term links between referral traffic and revenue, and how these links vary in different markets and countries. A better understanding of how referral versus organic traffic affects news publishers in terms of discoverability, visibility, and revenue generation would improve regulatory policy.

Nonetheless, the EU Digital Copyright Directive creates a common framework to harmonize regulation across Europe and could create a precedent that countries around the world will look to. But implementing this approach requires that specific institutions be in place to function properly. A designated third party must collect and distribute the licensing fees. Rights holders must be plugged into this system, and trust the collecting organizations, to benefit. But the question of who benefits and how to distribute fees to small publishers as well as to the journalists who actually author stories is a challenge even in advanced economies.

Spanish professional association CEDRO, which represents more than 30,000 authors and publishers, was mandated to collect the fees but was besieged by questions about how it would distribute to small rights holders, like blogs.<sup>69</sup> The International Federation of Journalists (IFJ) and its national members have argued that journalists should receive some remuneration as well as the actual creators of the copyright-protected works.<sup>70</sup>

“The fear is that a lot of small publications will lose out because they don’t have that commercial clout to do a deal, so it reinforces the big media companies,” said Jeremy Dear, deputy general secretary of the IFJ, which represents journalist unions and associations in more than 140 countries.<sup>71</sup> “The problem we have with the copyright directive, and also the Australian [News Media Bargaining Code] where you have these kind of closed commercial deals, is there is a lack of transparency for the creator to know how much money the company is making.”



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# Discussion and Recommendations: Overarching Challenges to Redressing Regulatory Disparity

**D**eveloping countries typically lack the influence, market share, and regulatory capacity to realistically impose new requirements on global technology firms. By and large, developed countries are at the forefront of creating new frameworks to address imbalances between the news media and Big Tech.

Moreover, implementing any of these approaches is not just about political will and standing up to Big Tech, but also about institutional design, legitimacy, and trust. As news media policymakers and advocates work to address this challenge in their own countries, it is important to examine the key elements that must be in place for any of these proposals to be effective.



*Implementing any of these approaches is not just about political will and standing up to Big Tech, but also about institutional design, legitimacy, and trust.*

Institutional design is a deciding factor influencing the likely success of pursuing any of these policies. A strong competition authority could pursue collective bargaining and licensing approaches; however, without a publishers' association with the legitimacy and trust to engage in collective bargaining on behalf of the news outlets in a country, this model will fail, or risk being captured by the government. Similarly, implementing a licensing or copyright model will require industry associations and collecting agencies that could implement a monitoring and payment distribution system, which requires transparency and trust to function. Even where there are adequate publishers' associations and existing royalty rights management organizations, there must be authorities with the competence and capacity to monitor and enforce compliance. Competition and copyright approaches require trust in the government and relevant regulators to determine who is protected, who benefits, and how that is decided in order for the system to operate effectively and fairly.

All of the countries that have pursued the policies outlined in this report have a robust ecosystem of existing legal frameworks, digital rights management entities, and organized civil societies that include independent professional associations, digital rights groups, and public interest lawyers. This “is very different from a developing country where there are individuals interested in these topics but who are not connected,” said Joon-Nie Lau, director of the World Association of News Publishers (WAN-IFRA) Asia.<sup>72</sup> Without solidarity and a collective approach, publishers cannot gain power in relation to tech platforms.

Intellectual property law is dominated by the United States and Europe, and in many cases developing countries have designed their intellectual property standards and regulations to respond to international trade agreement requirements.<sup>73</sup> But their copyright systems are often underdeveloped or focused

on other priorities.<sup>74</sup> In many countries, the institutions needed to implement these policies may not even exist, which could pose governance challenges.

Technical training for lawmakers is needed in many countries.<sup>75</sup> A recent United Nations report on the digital economy noted that the “lack of appropriate skill sets in government directly results in insufficient representation of technical and analytical expertise in legislative and regulatory framework development processes.”<sup>76</sup> Furthermore, a lack of trust in authorities to regulate tech platforms can impede the adoption of new legislation.<sup>77</sup>

Policymakers also need better research on the effects of existing regulatory frameworks as well as how platform policies impact traffic, revenue generation, and the independence of media outlets. For example, although critics of the Australian and EU approaches have pointed to the potential negative impacts on media pluralism, information quality, and cultural diversity, there have been no empirical studies to determine whether these concerns have been borne out. Likewise, addressing the inequities in the AdTech market requires better data and research. However, the low levels of traffic and revenue generated by many news media in less developed countries mean that taxing AdTech may bring only limited benefits in these contexts.

- Policymakers should require the tech industry to provide more traffic data as well as how they relate to revenue and monetization for news content. Greater transparency would serve a broad range of goals including those related to strengthening media sustainability.<sup>78</sup>
- Media outlets need to improve their data collection and analysis so that they can better understand the links between traffic, advertising, and content monetization.
- Google should consider offering higher Google AdSense payments, which could lead to more immediate and meaningful support to smaller, less trafficked media, since it is far easier to use but less lucrative.<sup>79</sup>
- Policymakers and the donor community should support small media to “combine forces or join existing media marketplaces that aggregate traffic from multiple media companies.” This type of publisher-led news aggregator could similarly aid revenue growth without expecting them to develop the expertise or hire dedicated staff.<sup>80</sup>
- Direct unilateral support to media outlets by tech platforms should not be a replacement for legal regulatory frameworks that seek to create a level playing field and support independent media.

Policymaking that fails to recognize the broader economic context is bound to fail. Less developed countries face underlying economic conditions that limit access to AdTech infrastructure and pose obstacles to creating collective management organizations that can track, collect, and distribute economic gains to rights holders.



*Policymakers also need better research on the effects of existing regulatory frameworks as well as how platform policies impact traffic, revenue generation, and the independence of media outlets...Policymaking that fails to recognize the broader economic context is bound to fail.*



*Competition and copyright approaches require trust in the government and relevant regulators to determine who is protected, who benefits, and how that is decided in order for the system to operate effectively and fairly.*

The financial disruption to the journalism sector caused by transnational tech companies and their failure to pay taxes is of growing concern to media development advocates. Amid a slew of ad hoc approaches,<sup>81</sup> the Organisation for Economic Co-operation and Development and Group of Twenty (G20) have agreed to impose a global minimum corporate tax on the biggest multinational platforms that's aimed squarely at Big Tech.<sup>82</sup> Some smaller countries are concerned, however, that the rules set to go into effect in 2023 would disproportionately benefit large countries.<sup>83</sup> While details aren't yet fully agreed and momentum on this proposal seems to have stalled, national-level advocacy for specific digital taxes is picking up steam in many countries.

Governments should commit to diverting a part of any new tax revenue to support news media and public interest journalism. The news industry and publishers should vocally advocate that a portion of revenue from any new global taxation framework go to support independent and public interest journalism. Revenue-based national taxes should not be levied on individual consumers or citizens as they could negatively impact news consumption and connectivity more broadly.<sup>84</sup> Rather they should be imposed on the companies that profit from targeted advertising. These national taxes should also contain specific carve-outs for commercial journalism outlets since they also generate revenue from digital advertising, but would face an undue financial burden given the precarious state many news outlets find themselves in. And any scheme for subsidizing journalism through state tax revenue would require considerable support and attention for the design of an independent endowment or other democratically governed mechanism for distributing those resources.

Unfortunately, many governments have a long track record of using their budgetary influence—via taxation, subsidies, grants, and advertising—to unduly influence independent media or even media capture.<sup>85</sup> “Our headline issue in this pandemic era is the threat of media capture,” said Gibbings from the Association of Caribbean MediaWorkers. He noted that the threat was particularly acute in the Caribbean and microstates with small economic bases and thus a limited number of advertisers to complement governmental advertising.<sup>86</sup> As a result, it is imperative to create mechanisms to ensure that the funds reach their intended beneficiaries in a way that preserves editorial independence and minimizes influence peddling.<sup>87</sup>

Addressing the media sustainability challenge in the digital era is a paramount issue with worldwide implications. As the developed economies of the West consider how to rebalance the relationship between Big Tech and the news industry, it is imperative that they take a global view and consider the implications for independent news outlets based outside of Western power centers. Ultimately, implementing any of these approaches is not just about political will, but also about institutional design, legitimacy, and trust.



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