

Response to the Department of Canadian Heritage's [Consultation](#) on fair revenue sharing between digital platforms and news media.

May 12, 2021

This submission responds to questions outlined in the Department of Canadian Heritage's consultation on the potential creation of a mandatory requirement that news media organizations be compensated by digital platforms such as Google and Facebook when the latter include the content of the former in their search and social media services, respectively. The consultation was structure around two sets of questions, as set out below:

Economic Questions:

1. Based upon any research you have done, what is the direct benefit of news published online to platforms, in terms of revenues or otherwise?
2. Based upon any research you have done, what is the indirect benefit of news published online to platforms, whether through revenues, profile optimization, data, etc.?

Policy Questions:

1. As you may be aware, the Australian government is in the process of implementing a mandatory code that dictates the rules for negotiations between platforms and publishers to ensure publishers are fairly compensated for their work. In addition, the Code introduces minimum standards for digital platforms to meet in their dealings with news media businesses, such as transparency regarding algorithm changes, facilitating open communication and non-differentiation requirements. Where parties cannot come to a negotiated agreement, the parties proceed to final offer arbitration where an arbitral panel makes a binding decision upon both parties.
 - a. What criteria should determine which platforms should fall under this regime? What criteria should determine which news media businesses can avail themselves of the regime?
 - b. If an arbitration model were in place, should collective bargaining be allowed and for whom?
2. What are your thoughts on a funding scheme that would require mandatory financial contributions from online platforms? Similar to how TV distributors (cable and satellite companies) are required to contribute to Canadian content within the broadcasting regulatory framework, platforms would be required to make financial contributions to news, as a percentage of their overall Canadian revenues to be paid to an independent fund. These financial contributions would be structured to incentivize online platforms to look for new ways to support Canadian news and a healthy information ecosystem.
 - a. If the government were to set up an independent third party fund to support news and journalism, who should be required to contribute to it and why? Similarly, who should be entitled to access it and why?
3. Which of the two approaches presented above do you prefer and why?
4. What should the government be focusing on in bringing forward legislation to address news media remuneration? Rate each priority below, based on how important they are to your organization, using a scale of 0 (not important) to 10 (very important)?
5. Are there other views, challenges and circumstances that the Government should understand as it moves forward on this issue?

Responses

Economic Questions:

1. Based upon any research you have done, what is the direct benefit of news published online to platforms, in terms of revenues or otherwise?

I am reading this question as asking about the direct benefits of news published online for both news media and the platforms.

The value proposition for news distributed and accessed by way of digital platforms likely goes both ways. In terms of the value of the platforms for news media, the benefits are in some ways obvious but in other ways they are unclear. Either way, they are extremely hard to sign a specific dollar value to—a condition that is as much true today as it has been throughout the history of the news ([John & Loeb-Silberstein, 2016](#); [Pickard, 2019](#); [Baldasty, 1992](#); [Sotiron, 2005](#); [CMCRP, 2020a](#), pp. 62-65).

Digital platforms provide an important benefit to news media insofar that they have become important pathways to the news ([Shearer & Mitchell, 2020](#); [Shearer & Matsa, 2018](#)). The economic benefit of this role, however, appears to be tiny, as we will see below ([Myllylahti, 2018](#)).

For news publishers, increased traffic generated for their own websites and bigger audiences are direct benefits. As far as I am aware, there are no really good Canadian studies on this topic. There are some reports, however, by think tanks such as the Public Policy Forum ([2017](#)) and the Ryerson Leadership Lab ([2021](#)) as well as the Broadcasting and Telecommunications Legislative Review (BTLR) panel's (2020) [report](#) that strongly imply that platforms dominate how Canadians get their news. They also tend to the view that the current situation is a bad deal for news media organizations and bad for Canadians and democracy and that policy makers should take stern steps to redress this imbalance of power in favour of news organizations and the Canadian public. The quality of these reports, at least on this point, however, are questionable, for reasons that will become clearer below.

A recent report by the Ryerson Leadership Lab ([2021](#)) is of this type. Its two page, eight-point bullet point executive summary, for instance, sets the tone early on by pointing to how a third to half of all Canadians—depending on the specific platform or the age of the respondent—share political or news posts and access news and information via Facebook, Twitter, YouTube, etc (p. 2). Later, we are told that one-in-four Canadians “stay up to date with the news on Facebook” and that the more people follow the news, the more they “consume news online” (p. 27).

The text from this point on, and the preponderance of images and commentary, further bolster the impression that the platforms dominate where Canadians get their news and information from. This line continues as the language shifts from references to news to the question of where Canadians “get information” from—an extremely vague concept to base a survey on. There is also a subtheme running underneath the report as a whole: the digital platforms are not to be trusted and, in fact, Canadians don't trust them. In fact, that's the lead point in the executive summary of the report (p. 2).

Throughout the report the impression is conveyed that social media, search and content sharing services such as Youtube, Reddit, etc. have become important sources of news—if not the dominant sources—for Canadians. A similar impression is given in other reports that have played a policy agenda setting role over the past few years in Canada, including the Public Policy Forum's (2017) *Shattered Mirror* and blue ribbon BTLR panel's (2020). [Canada's Communication Future: Time to Act](#) (see, especially, pp. 118-128 but chapter 3 overall). Seen from this angle, the value proposition is highly

skewed in favour of the platforms; they get access to the news for little or nothing and the news—and society—get little in return. It's a raw deal.

There is no doubt that social media, search and online sources have become important pathways to and for the circulation of news. However, a closer read of the Ryerson report, for example, reveals that “traditional sources of information—television, radio, and print newspapers and magazines—remain in relatively frequent use” (p. 18). In fact, the report indicates that more Canadians get news from television news, news websites, news radio, print newspapers and print magazines than from either Facebook Newsfeed or Google News (p. 19). Stripped of its leading narrative, the report also shows that after turning to television, news websites, search engines and radio for news, some Canadians (25%) turn to Facebook for news (p. 28). In other words, a careful read reveals that the platforms play a far more modest role in providing access to and the distribution of the news.

In our own research based on data from ComScore, the Canadian Media Concentration Research Project (CMCRP) shows that, in terms of online news sources, people get their news from a wide range of sources, including familiar news media organizations such as the CBC, CTV, Postmedia, Torstar, the *Globe and Mail* and *Quebecor*, along with weather reporting services, news aggregators like the Huffington Post (now defunct in Canada), as well as mainstream US and UK outlets such as the BBC, NBC, *The New York Times*, CBS, *The Guardian*, etc. We also show that the diversity of online news sources over the last decade has increased. In other words, Canadians access the news in relatively high numbers and do so from a very diverse—relative to *any other media sector in Canada*—range of well-established and new sources and both domestic and international ([CMCRP, 2020b](#), pp. 86-87).

That said, we need better research in Canada on this topic. However, we can turn to the United States where the annual PEW studies offer some interesting observations that help put things in perspective. According to the most recent iteration of this study, seven-out-of-ten American adults get *some of their news* from social media often (23%), sometimes (30%), rarely (18%) or not at all (28%). Among people who get some news from social media, about one-third get *some* of their news from Facebook, 23% from YouTube, 15% from Twitter, 11% from Twitter and Instagram, 6% from Reddit and 4% or less from LinkedIn, Snapchat, WhatsApp, TikTok, etc. ([Shearer & Mitchell, 2020](#); [Shearer & Matsu, 2018](#)).

It is important to emphasize the word “some” because many commentators misleadingly present PEW's findings as if 70 percent of Americans get their news *primarily* from social media and one-in-three exclusively from Facebook. Both insinuations are untrue. It is also important to note that the growth phase of this phenomenon now seems to be over, with the last two years seeing the number of Americans getting news from social media and/or Facebook declining slightly. Critically, and similar to Canada, the PEW studies also show that traditional media continue to be important sources of news, with two-thirds of Americans often or sometimes getting news from television (68%), half from radio, and one-in-three people from print-based sources. One might also take heart in the fact that Americans and Canadians alike are alert to the reality of disinformation and misinformation online and take active measures to counter the potential to be duped, such as following up on stories via a Google search and checking one source against another ([Shearer, 2021](#); [Benkler, Faris & Roberts, 2018](#)).

It is also important to note that while the platform are important pathways to the news such attention is often shallow and fleeting. This has cross-cutting implications: first, this means that access to news via the platforms probably has less impact because engagement with news source via television, radio and print sources is more sustained and engaged. Second, because access to news via the platforms is fleeting and shallow, recall of the details of news stories accessed this way is poor. While this tempers

worries about the effects of such news use on perceptions, opinions and behaviour, poor recall is also linked to negative effect for news media organizations because the content of their journalistic efforts is uncoupled from its source, therefore diluting their “brand” (see, for example, Allcott and Gentzkow, 2017; Benkler, et. al., 2018; Dutton 2017; Warren, 2017). The shallow and fleeting nature of audience engagement also explains why increased traffic referrals from Facebook or Google to news websites does not translate into significant growth in subscriptions or revenue for news media organizations (see further below) (Myllylahti, 2018).

These observations also comport with the findings from probably the most important study to date of the role of online news and traditional mass media sources in the social circulation of information, news and disinformation in the context of the 2016 election that gave Donald Trump the presidency, i.e. Yochai Benkler, Rob Faris and Hal Roberts (2018) *Network propaganda* (Oxford University Press). As their study concludes, the reach of disinformation during the 2016 US presidential election was extensive but while Americans use social media a lot, only a small portion of people relied on Facebook, Twitter, etc. as their “most important source of news” during the election and fewer yet could remember anything specific about stories they did encounter. In sum, it is a mistake to confuse exposure to “fake news” with negative individual, political or social effects (also see Allcott & Gentzkow, 2017; Dutton, 2017).

Returning to a narrower conception of ‘economic value’, obviously, news is of some benefit to social media platforms insofar that their users find the ability to access and share news with others valuable to them. At the same time, however, it is hard to determine the direct value of this for the platforms because they serve a myriad of different functions in people’s lives—from staying in touch with friends and family, coordinating social activities, organizing work-related events and academic-study groups for university students, buying and selling things, cultivating an image to present to the world, engaging in political discussions, swapping cat videos, and so forth. While important, accessing news via Facebook accounts for only one such function and a tiny one at that. As Facebook itself is fond of saying, only about 4% of the content shared on its service consists of news and there is little reason to see that as being wide of the mark.

While digital platforms are important pathways to the news, their value for news media organizations is unclear. On the one hand, newspapers and other media companies are investing very substantial resources to make their services “platform ready”, i.e. searchable, linkable and ready for distribution by way of Facebook and other platforms. However, they often see those efforts frustrated by frequent, unannounced changes to the platforms’ operating logic and technical code as well as unreliable and proprietary audience metrics and valuation models (Myllylahti, 2018; Nieborg & Poell, 2018). On the other hand, their efforts are translating into very **few new subscriptions and only a trickle of new revenue despite increased traffic to their own websites**. New Zealand scholar and former *Financial Times* journalist Merja Myllylahti (2018) refers to news media companies’ increasing dependence on the platforms for meagre returns the “attention trap”. Nieborg & Poell (2018) refer to this as “platform dependence”.

Based on my own research in Canada, Myllylahti’s conclusions are supported by the fact that while people are increasingly getting *some* of their news online, online revenue for daily and community newspapers has grown only modestly. Online advertising revenue grew from basically zero before 2006 to \$325 million in 2018 before tapering off. Online advertising revenue for newspapers has hovered around \$300 million for the last decade, appears to have peaked two years ago at \$325 million, and has slid modestly since. As a share of all revenue, online advertising revenue reached just over 12.7% of all

revenue in 2018 before sliding slightly in 2019 ([CMCRP, 2020a](#), pp. 57-59). How much of this can be attributed to the role of the platforms in driving traffic to newspapers is unclear but if Myllyyahti's analysis is a guide, it is a fraction of 1%. Regardless of what the precise amount is, it is tiny and appears to have peaked.

Crucially, digital revenue overall has not been near enough to offset the decline in newspaper advertising revenue that has taken place since its height, circa 2004-2008, or the drop in subscription revenue since 2010. Since peaking, circa 2006-2008, total newspaper revenue has dropped by more than half from \$4.8 billion to \$2.2 billion. Circulation levels have been in decline in absolute terms for an even longer period. In absolute terms, the high point was the early 2000s but on a per capita basis the decline has been non-stop since the early 1980s and from the 1950s on a per household basis ([Winseck, 2017](#), pp. 9-11).

These details are important for three reasons: one, because they show that the problems facing news media organizations, especially newspapers, long predate the rise and consolidation of the role of the commercial Internet in our lives let alone the solidifying clout of Google and Facebook since, roughly, the 2010s; second, they provide a corrective to a field, especially in its policy aspects, that is littered with reports, briefs and non-peer reviewed papers put out by review panels, thinktanks, lobbyists, trade associations and others that are chock-a-block filled with cherry picked evidenced and stilted rhetoric to suggest otherwise and that things were fine until Google and Facebook came along and wrecked everything from around 2010 or shortly thereafter (see, for example, BTLR, 2020, chapter 3; [Public Policy Forum, 2017](#); [Ryerson Leadership Lab, 2020](#)).

Even the 'blue-ribbon' BTLR (2020) report stands as an example of this. Its most relevant passages on declining circulation, advertising and subscription revenue take place *after* 2010, as if *all of these indicators had not already showed clear signs of distress and decline long before then*. The x-axis on the charts in these passages all start in 2010 as if there was nothing of interest before that. The problem with that, however, is it *excludes from the get-go* the reality that the problems being described and visualized started before 2010. Having excluded everything before 2010, the BTLR report lays the blame for the desperate situation that it chronicles at the doorstep of Google, Facebook, etc. Not surprisingly, having misdiagnosed the problems, their causes and timing, the report offers policy recommendations that are now being pursued by policy makers but which are not trustworthy guides to what really needs to be done to deal with very real problem (pp. 152-155). The Public Policy Forum's *Shattered Mirror* does much the same thing.

Third, by challenging the current orthodoxy, this line of inquiry also identifies other sources of the problems that both better explain the dire state now facing news media organizations and what to do about that. In so doing, the aim is to highlight better possible policy options, all without giving Google, Facebook and other digital platforms a free pass but, instead, directing policy remedies to the real problems do pose in their own right. In terms of highlighting other sources of the current woes facing the news media, a handful of things stand out:

1. Journalism and general news services display many characteristics of public goods. They cost more to produce than people are generally willing to pay for but their value to society is more than what the market and people's individual spending implies. In addition, the cost of reproducing a copy of each original news item is effectively zero and sharing is easy, while the cost of keeping free riders out is both expensive and damaging insofar that it limits access to socially useful knowledge that a free society and democracy need to ensure the knowledgeable citizen imagined by democratic

theory has the best chance possible of being achieved. Given these public good characteristics, journalism and general news services have historically been subsidized in liberal democracies by a mix of subsidies, including: advertising, governments and/or wealthy patrons. This is true today, and it is true historically ([John & Loeb-Silberstein, 2016](#); [John, 1998](#); [Pickard, 2019](#)). Advertising only became the core (i.e. accounted for more than half) of newspaper revenue sometime in the period between the 1890s in the United States and roughly three decades later in Canada, with European countries generally experiencing similar processes sometime in between—a mark of the different rates at which societies and their media were commercialized ([Baldasty, 1992](#); [Pickard, 2019](#); [Sotiron, 2005](#); [CMCRP, 2020a](#), pp. 62-65).

2. Over the last decade, the advertising subsidy has become unbundled from newspapers, broadcast radio and television and magazines. Consequently, those four media are in crisis from which they will not likely recover. Insofar that they fulfil important public obligations, especially in terms of supporting original journalism, they should be supported by public policy and public funding. In contrast, nearly all other media that rely on subscriber fees or direct purchase are thriving. In fact, the revenues for these latter “pay-per” media outstrip advertising-funded media by a 5:1 ratio in Canada and are the real core of the network media economy. They are *not* in crisis ([CMCRP, 2020a](#), pp. 27-28).
3. Total advertising spending in the Canadian economy has long hovered around .68% of GDP (and about 1% of GDP in the US economy). For roughly a decade after the financial crisis of 2008 advertising spending across all media and relative to GDP, however, fell significantly. As a result, “legacy media” firms relying primarily on advertising as the core of their business model have also been battling Google and Facebook for a stagnant or shrinking pool of ad dollars ([CMCRP, 2020a](#), pp. 29-32).¹ These trends trend reflect the fact that advertising spending hinges on the state of the economy (see Picard 2011). However, rather than focus on these structural realities and decline in advertising spending post-2008, a single-minded focus on Google and Facebook as the source of the crisis of journalism appears to have become orthodoxy amongst public inquiries, (many) academics and lobby groups ([ACCC, 2019](#); [BTLR, 2020](#); [PPF, 2017](#); [UK 2019](#); [US, 2020](#)).
4. A decade ago, however, when the Internet itself was blamed for killing the press, the charge was refuted by many scholars of very different persuasions and disciplinary backgrounds ([Downie & Schudson, 2009](#); McChesney & Nichols, 2010; Picard 2011). Instead, these authors emphasized self-inflicted wounds amongst legacy media firms that had been brought about by two decades of consolidation, excessive capitalization and bloated debts, hyper-commercialization, and the triumph of corporate values over journalistic norms (McChesney and Nichols 2010; Pickard 2020). Canada was no stranger to this, either, with the collapse of Canwest and Craig Media, Bell’s exit from its first run at media convergence after its attempt to own and operate CTV and the *Globe and Mail* ended in tears, and as other media firms did their best to weather the stormy economic, technological, social, political and cultural seas that have, in many ways, characterized Canada and much of the world ever since.
5. Finally, that Canada has allowed the fate of its audiovisual content media to be grafted on to the hulks of massively larger telecoms companies that realize operating margins of 30-40% on their mobile wireless and broadband Internet access services versus still healthy but relatively low margins of 20-25% for their content media divisions means that the latter have been subordinated to the vastly larger and more profitable mobile wireless and broadband Internet access parts of

¹ The ACCC’s (2019) *Digital Platform Inquiry* report shows that total advertising revenue peaked at \$17 billion (AU\$) in 2007 and remains below that level now (307). In per capita terms, advertising revenue dropped from an estimated \$817 per capita in 2007 to \$640 last year. The same trends apply to Canada and the US, with slight differences in each case.

these companies ([CMCRP, 2020b](#), pp. 20-23). As a matter of fact, the Canadian situation is unique insofar that all the major commercial TV services are owned by telecommunications firms whose operations span many aspects of the network media economy that go far beyond television and internet advertising. In other words, the very centres of our content media system have been the victims of neglect or, as in the case of the largest newspaper chain in the country, Postmedia as well as other newspapers and a few broadcast stations spun off to ease debt loads, left to struggle with the legacy of bankruptcy, high debt levels paid out at usurious levels of interest, and owned by private hedge funds.

The explanations above have distinctive Canadian features, but other than the exceptionally high levels of vertical integration between communications common carriers and content media operations they are not unique to Canada. That not one of these factors figures in the orthodox explanations of why contemporary ad-based media are in crisis should give serious cause for concern and raise doubts about explanations that single-mindedly blame the platforms for this present state-of-affairs. That none of the orthodox explanations even hint at the reality that ad-funded media make up a small and receding part of the media economy is another failure of analysis. All this should also give rise to serious questions about policy recommendations that flow out of such myopic and biased accounts of the state-of-the-media.

As I will indicate further below, however, none of this should be taken to mean that there is not a strong role for public policy and regulation in curbing the dominance that the global Internet/platforms have amassed. That need is pressing. In addition, there is also a pressing need for public policy and funding to support the undeniable, critically important public good character of original journalism and the news, especially in a democratic society like Canada.

2. Based upon any research you have done, what is the indirect benefit of news published online to platforms, whether through revenues, profile optimization, data, etc.?

I am reading this question as asking about the direct benefits of news published online for both news media and the platforms.

The primary indirect benefits to platforms and news media, again, cut in both directions. Probably the most important benefit in this respect flows out of the points made above with respect to the news media's dependence on the platforms. On this point, perhaps the key benefit to the platforms is that they gain insight into news media organization's audiences and, consequently, greater control over the currency that underpins how the online advertising system works: data about those audiences.

This is of particular importance to Google, which has acquired and assembled its own online advertising system ([CMCRP, 2020b](#), pp. 50-58). This means that the online behemoth owns and controls not only a suite of services that gain massive audiences in their own right (e.g. search, docs, maps, Chrome, etc.) but also the data derived from the use of all these services and as people use its iconic search engine to organize their experience of the Internet as well as from organizations, from businesses and data brokers to political parties, that depend on Google to buy and sell advertising and audiences. Given that Google own and controls the buy and sell side of its own online advertising exchange system, *and* the currency upon which all of those trades take place—personal/audience data, means that it derives a great deal of value from all those who use its system. That value is reflected in its fast-growing revenue and steadily tightening stranglehold over the online advertising market in Canada and countries around the world. This gives it enormous power over not just the online advertising market but all those who use the Internet, including third party providers of “content”, from user generated content to publicly

accessible data and commercial media content, including news media. It is this industrial organization, ownership and control of the online advertising ecosystem and the currency upon which that system is based (personal data), that probably accounts most for Google's dominance of that system, with Facebook in a distant but closing second place. It also accounts for the "attention trap" that Myllyahti (2018) outlines and explains, as discussed above, wherein news media reap very little by way of new revenue from this set-up.

There's little doubt that news media are facing a crisis, but this is also partially of their own making, has unfolded over many decades and long predates the consolidation of the platforms' dominance over online advertising and associated aspects of today's "platformized web",² i.e. the apps market, which itself is dominated by Apple's App Store and Google Play. All of the direct and indirect benefits flowing to the different parties of the online news system also apply in this domain with the same force, albeit probably with not quite the same significance. In fact, this is hinted at in the Australian Competition and Consumers Commission's (2019) [Digital platforms inquiry. Final Report](#) and the focus of its just released [Digital Platforms Inquiry--Interim Report #2: App Marketplaces](#) (2021). The CMCR Project (2020a) estimated that, in 2019, the Canadian app marketplace had total revenue of \$979.1 million, with Apple accounting for 57% of those revenue and Google 43% (pp. 78-82).

Policy responses should target these areas where different actors possess "significant market status" (UK, 2019, pp. 55-64) and/or dominant market power and important levers of control that others must navigate to gain access to distribution opportunities, audiences and revenue, i.e. Google's vertically-integrated control over its services, audience data and the online advertising system. This would also apply to Facebook's control of a suite of inter-locking services, i.e. Facebook, Instagram and WhatsApp, as well as the data they generate (Germany, 2019a; Germany, 2019b). More generally, it would target the opacity of the online advertising system, rather than trying to simply transfer buckets of revenue from the platforms to news media organizations on the dubious grounds that it is the former that have precipitated the existential crisis of the latter.

Indeed, with respect to this latter point, the UK Information Commissioner's Office (2019b) condemned the industry for trading on key words and sensitive personal identifiers related to politics, religion, ethnic groups, mental health and physical health, among others, as well as device identifications, location data, cookie identifications, fraudulent representations and dirty data. In fact, according to the ICO's Director, Canadian ex pat and former assistant commissioner of the Office of the Privacy Commissioner in Canada, Elizabeth Denham, the entire set-up does not comply with the European Union's General Data Protection Rules.

The US Federal Trade Commission acknowledged similar such problems as early as 2011 but did nothing about them, although the very same issues recently came under review as Google and Facebook was grilled by the US House Judiciary Committee's [Digital Market Investigation](#) and the landmark lawsuits that have flowed out of that proceeding. Dina Srinivasan (2019) also refers to how Facebook's consolidation of its social media monopoly since 2014 has allowed it to systematically degrade the privacy and data protection qualities of its service over and against its users explicitly and long-expressed wishes. All of this is important to the question at hand because these are the indirect

² Helmond (2015) defines "the platformization of the web" as a process whereby a small number of Internet companies are said to be replacing the shared technical protocols that have defined the Internet for decades with proprietary interfaces and standards of their own. Through this process, this small group of firms—i.e. GAFAM—are seen as remaking the Internet in their image—a centralized Internet ruled by a few search engines, social media services, and digital media content aggregation platforms (Noam, 2016a).

benefits that are flowing to companies like Google and Facebook by having been permitted to build an online advertising system around third-party content and based on weak privacy and data protection rules that allow them to harvest people/audiences' data without meaningful limits and at the expense of the parties around which all of this is taking place, i.e. news media and other sources of expression, activities and content online that go well beyond them.

Policy Questions:

6. As you may be aware, the Australian government is in the process of implementing a mandatory code that dictates the rules for negotiations between platforms and publishers to ensure publishers are fairly compensated for their work. In addition, the Code introduces minimum standards for digital platforms to meet in their dealings with news media businesses, such as transparency regarding algorithm changes, facilitating open communication and non-differentiation requirements. Where parties cannot come to a negotiated agreement, the parties proceed to final offer arbitration where an arbitral panel makes a binding decision upon both parties.

a. What criteria should determine which platforms should fall under this regime? What criteria should determine which news media businesses can avail themselves of the regime?

Any attempt to adapt the Australian news bargaining code to conditions in Canada should start from the basic criteria of establishing basic thresholds with respect to reach in order to establish whether or not a platform is an important, perhaps even an "essential" pathway to the news. Based on the earlier review of the Ryerson Leadership Lab report and Pew studies, Facebook News as well as Google's search and Google's News Showcase would probably fit that designation.

Beyond thresholds based on the Internet traffic and audience size, designated entities could be determined based on two other criteria: dominant market power and/or significant market status. Conventional tools such as Concentration Ratios (CR) and the Herfindahl-Hirschman Index (HHI) can be used in this regard and take as its initial starting point companies' share of the online advertising market. The CR and HHI could be based on share of online advertising revenue and other important market segments such as search and social media, as the ACCC did in its inquiry. Other proxies for establishing the scale and scope of market power could also include, again as the ACCC used in its inquiry, a platform's share of people's time spent on the Internet (ACCC, 2019, p. 6). It could, and should, also look more broadly at people's time spent across all media, communication and information sources for reasons that will become clear in a moment.

Using basic concentration indicators, the ACCC establishes at the outset of its report, for example, that Google accounted for 95% of search queries in Australia in 2019, while it and Facebook combined took in 61% of the country's USD \$9.1 billion online advertising market, and that nearly two-fifths of the time Australians spent on the Internet in that year was on Google and Facebook. Doing so helped to set the footings for policy measures that it recommended to redress power imbalances in the news system and that were, at least in part, incorporated into the News Bargaining Code legislation.

By way of illustration, Google and Facebook collectively took in 80% of online advertising revenue in Canada in 2019 (the last year for which a full set of data is available), while their share of total ad spend across all media reached 45% ([CMCRP, 2020b](#), pp. 52, 59). The extent of their and the other platforms' share of the search engine, social media, app stores and browsers, for instance, are also relevant considerations. Of particular interest is the levels of vertical integration that Google has established

over some of those elements and its own online advertising system (CMCRP, 2020b, p. 57). For Facebook, the German Federal Cartel Office's ruling in 2019 to restrict the social media conglomerate's ability to share people's data between its flagship service and its WhatsApp and Instagram services by erecting a firewall between them suggest that an understanding of how these services interact with one another is relevant to understanding issues of market power and/or dominance (see Bundeskartellamt, 2019a and 2019b; [CMCRP, 2020b](#), p. 63).

Beyond just market shares, designated platforms would be covered by a new regulatory approach that should turn on whether a firm holds "strategic market status", that is, a firm that possesses "enduring market power over a strategic bottleneck market" and which serves as "a strategically important gateway to consumers", as the UK's ([2019c](#)) recent *Unlocking Digital Competition* report put it (p. 30). As that report puts it,

. . . Regardless of the route that many platforms have taken to achieve and cement their dominance, the result is that one, or in some cases two firms in certain digital markets have a high degree of control and influence over the relationship between buyers and sellers, or over access by advertisers to potential buyers. As these markets are frequently important routes to market, or gateways for other firms, such platforms are then able to act as a gatekeeper between businesses and their prospective customers. This gives the platforms three distinct forms of power: the ability to control access and charge high fees; the ability to manipulate rankings or prominence; and the ability to control reputations (p. 41).

Given the important role that Google and Facebook, and maybe Apple's App Store and Google Play, play as "pathways to the news" and in terms of controlling key resources in the online advertising system, they would likely be designated as having "strategic market status". The first shoe to fall with that designation is that such firms are brought under government regulatory oversight, not on account of content considerations, but because of the structural conditions of the market that give them both the ability and the incentive to *potentially* act in anti-competitive ways. This also occurs because they have *some* aspects of infrastructure—i.e. they are a common input to a wide variety of many outputs—and, therefore, regulated public oversight is necessary to ensure that they do not abuse their gatekeeper power over these common inputs at the expense of those who depend on those inputs. The second shoe to fall from the strategic market status designation is an accompanying set of public obligations (Frischmann, 2012, pp. 4-5; Rahman, 2018, p. 1623).

Spelling out exactly what those public obligations would or should be is, of course, the challenge but also beyond the scope of this submission, other than a few broad brush strokes of what they might look like and the considerations and values that inform them.

One crucial consideration is that a framework that draws on concentration measures and indicators of strategic market status in the domains of communication and culture is not informed primarily by the history of broadcasting regulation from the 1920s but by the history of communications (or telecoms) regulation instead from the late-19th Century. While telecoms regulation and its central principles of common carriage and "mere conduits" are central to its history and current character, such things are often cast as resting on very narrow economic and technical conditions that are no longer tenable and unlikely to meet the task of fixing the broken Internet (Flew, Martin & Suzor, 2019).

Such views, however, I believe, are mistaken. This is so because they do not recognize, for example, that the history and framework of telecoms regulation was built in response to concerns about the strong tendency of telecoms markets to become highly concentrated or even monopolies, i.e. the same

concerns driving today's drive for platform regulation, albeit, of course, with unique considerations for each. This reality conferred upon those who owned such 'essential bottleneck facilities' the potential to act as gatekeepers over societies' vital flows of economic information, social communication and news.

The history of AT&T in the US and Bell in Canada highlights that both companies' dominance and control over markets, subscribers, technical standards, interfaces and terms of interoperability and interconnection gave them immense power to shape the evolution of news wire services, radio and television broadcasting and the film industry. Indeed, AT&T (as well as its equipment manufacturing subsidiary after 1925, Western Electric) and the "Radio and Electrical Group" (ie. GE, Westinghouse Electric and Manufacturing Company, RCA, etc) dominated the development of radio broadcasting services in the 1920s until exiting the field in 1926 under threat of government regulatory intervention (Barnouw, 1975; Danielian, 1939; Winseck, 2021).³

AT&T and the "Radio and Electrical Group" were also deeply involved in the film industry after they competed with one another to rewire the Hollywood film studios and movie theatres for sound in the late 1920s. AT&T in particular parlayed that technical experience into becoming one of the largest investors in Hollywood films throughout the next decade. AT&T in particular also parlayed this experience into becoming one of the largest investors in Hollywood films during the 1930s, giving it a direct commissioning and editorial role with respect to motion pictures. Remarkably, AT&T even had visions at this time of cable television to the home and a national chain of theatres tied together by its national telecoms network. Ultimately, AT&T exited the movie business, however, after coming under intense pressure from an emboldened FCC that was investigating the "monopoly problem" in the communication industries in the late 1930s (Danielian, 1939, p. 143).

Thereafter, a firewall between the common carrier on the one side and the media content industries on the other was fortified and locked into place for much of the rest of the century before becoming hostage to the whiplash politics of net neutrality under different Republican (anti-common carriage) and Democratic administrations (Democrats) to this day. The crucial point for now, though, is that while the industrial giants that constituted the "Telephone" and "Radio" groups, respectively, played leading roles in the creation of the early-20th Century media industries, at no time were they seen as broadcasters/media companies, or regulated as such. That's an important lesson for to think about in relation to the regulation of digital platforms today.

Beyond these considerations, the normative values of social and political inclusion and the expressive rights of citizens were also at the heart of the principle of universal affordable communication service, both for plain old telephone service in the past and for mobile wireless and broadband Internet access services today. That principle basically says that people's communication and correspondence matters, not just content produced and distributed by "the media".

Lastly, for illustrative purposes, common carriage (aka "net neutrality" in contemporary parlance) was built on a bedrock of normative values and informed by the perceived need for governments to control some of the most powerful corporate actors in a society—again, both then and now. This was necessary to ensure the free flow of information and personal correspondence, and that telecoms operators did not use their gatekeeper control over societies' communication pathways to "unjustly discriminate" between different speakers and sources of news and information. The common carrier principle also suppressed any claims that network operators (platforms) raised from time-to-time about *their* freedom

³ The following page or so draws heavily on Winseck, 2021 in a bid to relocate the ground for discussing platform regulation from broadcasting to telecommunications.

of expression in favour of end users'—people's—rights to speak, correspond and to access information and news sources freely and without undue discrimination.

This could serve as a powerful corrective today to platforms' attempts to claim that their "free speech" rights are a bulwark against government regulation, especially in relation to the "must carry" elements of Australia's News Bargaining Code. Similar thinking can be seen in Germany where platforms' claims to be able to moderate content and users on their services as they please is being counter-acted by an emerging legal principle that citizen's lawful expressions and interactions must stay up, unless a proper and just explanation of why it has been removed, and will stay down, is offered and defensible in court (Kettman & Tiedeke, 2020, 9-11). Germany has also proposed "platform neutrality" rules for large commercial audiovisual platforms (e.g. Netflix and Hulu, but not YouTube or those used for private ends) and for the ranking and sorting algorithms of the biggest social media services (e.g. Facebook). This effort will no doubt encounter hard cases where, instead of wanting the platforms to be neutral, some will want them to actively discriminate *against*, for instance, disinformation in favour of "quality journalism" (Helberger, Leerssen & van Drunen, 2019).

In sum, the industrial giants that constituted the "Telephone" and "Radio" groups, respectively, played leading roles in the creation of the early-20th Century media industries and offer instructive lessons for today. This is especially important insofar that this history foregrounds structural- and behaviourally-oriented telecoms regulation over the content-oriented focus of broadcasting regulation and the fact that the latter has been far less attuned to firms with strategic market status/dominant market power than telecoms regulation. Nonetheless, at no time, did the "Telephone" and "Radio" groups extensive roles in the broadcasting and movie businesses mean that they were seen as broadcasters/media companies, or regulated as such.

Instead, governments fashioned new regulatory tools fit for such realities. They broke apart the double-headed AT&T-Western Union monopoly in 1913 and AT&T in 1984. They imposed line of business restrictions (firewalls) that limited firms' ability to expand into adjacent markets while also establishing regulatory oversight with respect to information disclosure requirements, interconnection, technical interfaces, interoperability, service pricing and universal service mandates throughout the 20th Century. They also adopted common carrier and cross-ownership rules that prevented common carriers from controlling media content companies and from unjustly discriminating between people's expressions and speech. They also established social obligations that required common carriers to provide all citizens with universal affordable services wherever they live. As such, common carriage was all about competition, controlling power, communication, social obligations, democratic regulatory oversight *and* culture rather than the more narrow focus of broadcast regulation on content and culture that many lean on heavily to inform what a new generation of platform regulation might look like today.

To its credit, the BTLR (2020) report also proposes such telecoms-based public obligations in relation to the concept of *electronic communications services* for services such as WhatsApp, Skype, Facetime and Wechat that are functionally similar to telecoms services. To this end, it recommends that such services be required to carry all legal content and prohibited from unjustly controlling or influencing the content or meaning of messages discriminating between different classes of speakers and users. The BTLR report also proposes that such services be required to adopt non-discriminatory inter-operability and interconnection practices and to protect the privacy of individual users based on the standards set down by common carrier rules and privacy law. It is remarkable the extent to which the first half of the BTLR report that focuses on telecoms/electronic communications services differs from the last half that was criticized above for its questionable analysis and recommendations related to Canadian content

and culture. A complementary Canadian starting point to the ‘telecom-half’ of the BTLR report that is already on the books can be found in the CRTC’s specification of what constitutes an “essential service” and the obligations and regulatory requirements they face (CRTC, 2008). The UK’s (2019c) *Unlocking Digital Competition* also goes a long way to spelling out what such a regime would look like.

These are all useful paths to consider in terms of fleshing out a structural approach to platform regulation. They are paths consistent with the Australian News Bargaining Code’s emphasis on addressing imbalanced power relations and ensuring that the digital platforms’ control over technical interfaces, standards and conditions of interoperability do not put news media at the disadvantage of the platforms. They are all about bringing these “hidden levers” of control under public regulation and giving news media services a heads-up period to adjust as needed to changes in the platforms’ business models and technology. They are also about creating a limited “must carry” regime for designated news services in order to prevent unjust discrimination by the platforms. Lastly, telecoms regulation has a strong core of robust privacy and data protection rules, and this approach addresses the unequal power relations between the platforms and news that flow from, and are reinforced, by asymmetric information/knowledge.

b. If an arbitration model were in place, should collective bargaining be allowed and for whom?

The issue of collective bargaining is a more difficult one to answer, especially given this author’s firm belief that issues of media concentration and market dominance are at least as much of a concern with respect to communication and media companies in Canada as they are for digital platforms. As will also be seen below, I am also of the view that the issues should not be limited to subjecting whatever power imbalances exist between these two groups but about making power across the digital media ecology more open, accountable and subject to democratic oversight on behalf of Canadian citizens. I will also suggest that more concrete steps should be taken to maximize the participation of public interest groups, academics and individuals in whatever regulatory arrangements are put in place. In fact, a big flaw of the Australian News Bargaining Code is that, rather than trying to undo the power wielded by Google and Facebook in Australia, it seeks to create a corporatist-style arrangement between them and Australian media companies, with no room for public participation in such processes. This is akin to what communications and broadcasting regulation in Canada looked like before 1976, after which the CRTC opened up regulatory proceedings to greater public participation on the grounds that in order for the Commission to effectively regulate in the public interest, members of the public had to be in the room so that commissioners and staff could hear what their interests are.

That said, looking beyond the relationship between these two industrial groups of actors to consider, for example, the new generation of ‘creators’ emerging around platforms like YouTube, it would be a good idea to allow freelance journalists and YouTube creators to collectively organize and negotiate with the platforms—under the oversight of a digital platform regulator, as Concordia University’s Fenwick Mckelvey (2020) suggests.

In your view, how will this type of approach impact the availability of news content online to Canadians?

The experience of the Australian News Code also highlights how Google and Facebook will fight such moves tooth-and-nail, despite their pretense of welcoming public interest Internet regulation. As the bill came to a head in the Australian Parliament, both firms threatened to withdraw some of their services from Australia if the government went ahead with its plans. Google also ran “experiments” that effectively made certain Australian news stories vanish from its search results. Much of this was

bluster, however, and quickly dissipated once the bill became law. The experience also shows that the two companies will break ranks and pursue their interests on their own and as they see fit. Google made separate deals with the Australian news media companies before the bill passed. While Facebook temporarily withdrew its services for Australian news media organizations, that was brought to an end as it came to terms with the Australian government and news outlets. The real question is whether or not the alterations to the terms of the News Bargaining Code made by the government in the face of those threats resulted in defanging the code and Australian regulatory authorities?

It is unlikely that the digital platforms would withdraw services from Canada for two reasons. For one, having learned a lesson or two from Australia, they have probably realized that their threats were not well-received locally and ended up being a public relations disaster in the country and internationally. With trust in Facebook in particular already at rock bottom, it will likely want to avoid any further self-inflicted wounds (although its actions as of late cause one to wonder)

Second, while Australia and Canada are often cast as small markets, they are not, except in comparison to say the US, Japan or China. In any case, the Canadian media economy is larger than the Australian media economy. In fact, it is one of the top ten or so biggest media economies in the world (Noam, 2016). The digital platforms can only play their threat card so many times in the context of such a big market before incurring significant damage to their own bottom lines.

7. What are your thoughts on a funding scheme that would require mandatory financial contributions from online platforms? Similar to how TV distributors (cable and satellite companies) are required to contribute to Canadian content within the broadcasting regulatory framework, platforms would be required to make financial contributions to news, as a percentage of their overall Canadian revenues to be paid to an independent fund. These financial contributions would be structured to incentivize online platforms to look for new ways to support Canadian news and a healthy information ecosystem.

a. If the government were to set up an independent third party fund to support news and journalism, who should be required to contribute to it and why? Similarly, who should be entitled to access it and why?

This is a terrible idea for several reasons. For one, digital platforms are heterogenous, both across different platforms and within each platform. To put this another way, each of the big platforms serves a myriad of different functions in people's lives and in relation to third parties content providers, advertisers, marketers, political parties, data brokers, etc. Just from the point of view of end-users, people use a platform like Facebook to express themselves, to stay in touch with friends and family, to coordinate their social activities, share photos, organize work-related events, create academic-study groups, buy and sell things and otherwise make money, to engage in acts of public solidarity and/or protest, share information, announce deaths, and so on and so forth. The basic point here is while Facebook's claim about news only accounting for 4% of content on its service may be self-serving, there is no doubt that sharing news on the platform accounts for a tiny part of what people do when using Facebook, WhatsApp or Instagram. The same is true for Google, Reddit, Twitter, etc. Ditto for Google Play and Apple App Store, which are more about the distribution of and access to digital games, tv programs, film, music, books, podcasts, etc.

Building a levy scheme around news on any one of these platforms would be arbitrary. It would also be akin to the tail-wagging-the-dog. It also sets a very bad precedent for those who seek an ISP-levy for similar purposes—a problem that would be even worse in that context given that ISPs are common carriers whereas digital platforms are not. In other words, any measure that gives credence to the idea that broadcasting regulation is our closest analogue for what a new generation of Internet & platform regulation should look like should be rejected (except in relation to online audiovisual media services where something akin to a Canadian version of the EU's Audiovisual Media Services Directive would be welcome).

Also, as indicated earlier, it is very hard—indeed, impossible, or at least has proven intractable thus far in human history—to determine the economic value of news. Obviously, news is of some benefit to social media platforms insofar that their users find the ability to access news in this way of some value. However, what kind of underlying value could be established in order to peg the baseline levy that such a system contemplates seems to be a fool's errand.

It is also important to consider the lessons learned from the template that is being held up here as a possible model for a platform-funded news fund: the Canadian Media Fund. For some time, and especially since the consolidation of the media industries around the big four vertically-integrated communications and media conglomerates—Bell, Rogers, Shaw and Quebecor—in the last decade-and-a-half, smaller players in the television market and the BDU-supported Canadian Media Fund in Canada have complained bitterly about how the “big four VI players” dominate the funding, administration and pay-outs of this fund. The system is unfair as a result. It further puts smaller players at a disadvantage while reinforcing the dominance of the biggest players and it, in essence, makes public policy processes and outcomes revolve around private actors with a minimally effective role for government regulators.

Adopting such a system as the centrepiece of supporting journalism and news media in Canada would likely have similar effects. In addition, instead of trying to counteract the consolidating clout of Google, Facebook and, potentially, Apple and Google's app stores in the news media ecology, such a system could further entrench their power. This, in turn, would lead to opaque and powerful corporatist arrangements between the platforms and domestic players, while relegating citizens and the public interest to the side-lines—much as the Canadian Media Fund has done and has Australia's News Bargaining Code seems set-up to do.

New, “digital native” news, information and commentary online sources in Canada are already very leery—often for misguided, historically ill-informed and ideological reasons, in my view—of public policy measures designed to shore up the faltering news media system in Canada. This proposal would likely only raise their ire and distrust even further.

If the government truly wants to support a robust and independent free press, it should do so using public funds from general taxation or by earmarking funds from a digital sales tax or tax on the digital platforms for such purposes. In some ways, the Digital Services Tax outlined in budget 2021 seems to have such an arrangement in mind. While I only have limited knowledge of this measure, it seems to be aimed at revenues generated from targeted advertising and the sale of data to third parties, i.e. the core elements of the online advertising system. If I understand this correctly, the idea behind this measure is to put a tax on the value of “public goods” that serve as valuable but unpriced inputs into Internet/digital service providers' services, i.e. user generated data and personal data that drive the online ad market. This is in line with some ideas floated two years ago by Philip Napoli, a US-based

communications scholar at Duke University ([Napoli, 2019](#)). This seems to be a worthwhile path to pursue.

This path also seems far more preferable than the kind of platform-funded online news support fund contemplated by this question. It also seems to be a good potential complement or additional support mechanism for the Liberal Government's journalism support program that it announced in its 2019 budget and worth \$595 million over five years. Perhaps the Digital Services Tax could be built on and made into a permanent funding mechanism for the Journalism Support Program in order to create more certainty beyond its initial five-year period?

3. Which of the two approaches presented above do you prefer and why?

If this question is about whether I prefer the regulated news bargaining framework in Q1 or the platform-supported news fund in Q2, the answer is hands down in favour of the first option, albeit with some very serious caveats and/or reservations, as outlined above.⁴

On first blush, Australia's news bargaining code can be read as response to Google and Facebook's outsized foothold in the country's Internet market, a situation that is similar to Canada, for reasons outlined earlier. In many ways, the new code has the potential to offer a viable model of what a new generation of social media, platform and Internet regulation for the public interest and democracy might look like. In other words, the Australian approach reveals a seriousness of effort and underscores the important role of the government in internet regulation and governance debates in the context of liberal democracies. As such, it marks a welcome watershed from the first quarter-of-a-century in the history of the commercial Internet where private interests and concentrated economic and technical power ruled the roost ([Flew, Gillett, Martin & Sunman, 2021](#)).

The 'crown jewel' of the code is that it enables the ACCC to compel Google and Facebook to carry designated Australian news services for a to-be-negotiated fee (i.e. it is a limited "must carry regime"), make these American companies give Australian news outlets fourteen days advance-notice of big changes that could up-end their operations, and get them to share more monetizable audience data with national news providers. Also, the bill would give the ACCC greater insight into how Google and Facebook's business models and algorithms actually work, with the prospect that it can be expanded to cover other platform players, with hints that Apple's App Store may be next in line.

There is much to commend about Australia's News Bargaining Code, as it seeks to ensure that the country's news media system is governed not just by laissez-faire global market interests, but by public interest policy and regulation.

Nonetheless, it is deeply flawed.

For one, rather than trying to undo the power wielded by Google and Facebook in Australia, the bill seeks to create a corporatist-style arrangement between them and Australian media companies, with little to no room for public participation in such processes. Also, instead of trying to disrupt Google and Facebook's data surveillance business model with stronger data protection and personal privacy rules for citizens, the bill aims to give big Australian news media companies a bigger slice of the country's 'big data' pie. Consequently, it reinforces the surveillance capitalism model at the heart of the global online

⁴ The following answer draws heavily on Winseck, D. (Feb. 17, 2021). Why Canada should take a critical look at Australia's internet regulations. *National Observer*.

advertising market with the aim of spreading its ill-gotten benefits to a few more Australian industry players. Similar dynamics are already at work here in Canada.

Furthermore, the analysis behind the bill also ignores the fact that the problems faced by *some* ad-funded Australian media companies go far beyond blaming the “vampire squids” from Silicon Valley. For instance, Australian ad-supported news media revenues peaked in 2006, long before Google and Facebook’s online ad market duopoly. In fact, the ACCC’s own evidence showed that ad spending across *all* media collapsed after the 2008 financial crisis and remains below 2008 levels even now. As a result, for over a decade, traditional ad-based media in Australia have been competing with the global Internet giants over stagnant/shrinking pool of advertising revenue—just as in Canada (and the US, and . . .), but nowhere does the ACCC pick up on its own evidence.

There are also multiple other instances in the ACCC report that give the impression that evidence and data is being cherry-picked to achieve a come-hell-or-high water policy outcome. For example, while highlighting how much time Australians spend using Google (20.5%) and Facebook’s (18.6%) services and three of the other big platform services, the ACCC’s *Digital Platform Inquiry Report* ignores how people spend the rest of their time online and the fact that they still spend twice as much time watching television and listening to the radio than they do using the Internet. The overall effect of such blind-spots and cherry-picked evidence is to inflate the perception of just how much the digital duopoly dominates people’s lives while neglecting alternative (and better) explanations of why some ad-funded media are in crisis in favour of placing the blame entirely on the vampire squids of Silicon Valley.

Moreover, given Australia’s very high levels of traditional media concentration, where Rupert Murdoch News Corp Australia, Sky News and Australia’s largest chain of newspapers and two other major media groups—Seven West Media and Fairfax Media-Nine Entertainment—dominate, we can surmise that a proper accounting of the time people spent using traditional media would reveal that those sources account for at least as much and probably more of Australian’s time than Google, Facebook, Apple, etc. Once again, however, that finding does not align, it seems, with the policy ends being sought, so it is left aside—all of which raises questions about the legitimacy of both the public inquiry and the new law that resulted from it.

Crucially, the ACCC’s report also ignores the effects that the recurring bouts of media consolidation that have led to Australia having one of the most concentrated media markets in the world and commercial media enterprises saddled with crippling debt loads (Noam, 2016). Moreover, the Digital Platforms Inquiry itself was born out of a questionable deal in 2016 between the right wing Liberal National government and Rupert Murdoch, the Australian media mogul behind News Corp Australia, Sky News and the largest chain of newspapers in the country (and Fox News in the US, amongst other media outlets). Murdoch blessed the government’s bill to *loosen* media ownership rules in return for a pledge from the government to examine the impact of the global Internet giants and public service Australian Broadcasting Corporation (ABC) and SBS, respectively, on Australia’s commercial media companies (Dwyer, 2017).

In fact, Murdoch’s media empire and Australia’s two other biggest media groups—Seven West Media and Fairfax Media-Nine Entertainment—have driven Australia’s platform regulation agenda from the get-go, although recent changes have brought the ABC and SBS into the fold. While the news code bill skirts such issues, two recent Australian Prime Ministers, Kevin Rudd (Labour) and Malcolm Turnbull (Liberal), are pushing hard for a new inquiry into media concentration and Murdoch’s News Corp in

particular on the grounds that both factors are having a more devastating impact on Australia's news media system, society and democracy than anything that Google and Facebook are currently up to.

In sum, as much as Australia's new platform governance effort flags the possibility of designing sovereign Internet policy and regulation that serves the public interest and democracy, it falls short of reaching that high bar. Of course, rather than Canada abandoning course because of this, or bending over backwards for Google or Facebook, the Australian case teaches us that the pursuit of Internet regulation for the public interest and democracy must be more ambitious in its goals *and* more circumspect of who has the power to define them. At this point in time, my biggest concern is that the policy agenda in Canada has given too much pride of place to the private interests of domestic media players and a few think tanks and lobbyists rather than fully embracing a wide range of input with the aim of fostering a new generation of public interest-oriented Internet regulation fit for a democracy.

4. What should the government be focusing on in bringing forward legislation to address news media remuneration? Rate each priority below, based on how important they are to your organization, using a scale of 0 (not important) to 10 (very important).

- I. Balance of negotiating power (between platforms, the press and the public)—10
- II. Sufficient financial support for news content—10
- III. Independence of the press—10
- IV. Transparency and access to data—10
- V. Business Innovation—8
- VI. Supporting the vitality of English and French linguistic minority communities in Canada and fostering the full recognition and use of English and French—8
- VII. Supporting local, regional and community sources of news—8
- VIII. Supporting news that serves diverse communities (e.g. Indigenous, Francophone, Official Language Minority Communities, racialized groups)—8
- IX. Other (please specify). I believe that if we create a proper structurally-oriented regulatory framework the issues listed will mostly fall into place on their own.

5. Are there other views, challenges and circumstances that the Government should understand as it moves forward on this issue?

To my mind, the government must go back to the drawing board on its current Internet policy and regulation agenda. I am extremely supportive of developing a new era of public interest-oriented Internet and platform regulation. This new generation of internet/platform regulation should be responsive to market forces, technological developments and Canadian's needs and guided by the normative goals of building a society based on equality, freedom of expression and democratic values.

The current policy agenda has, however, at least from my point of view, been captured and corrupted by a narrow range of private interests who have cloaked themselves in the flag and exploited real public concerns in a concerted bid to further their own private gains. Instead of focusing on structural issues whose common taproot is high levels of concentration up-and-down the Internet stack and across the communications and media universe, those who currently seem to be in command of the government's policy agenda have one-dimensionally organized something akin to a crusade against GAFAM and put questions of content and the alleged omnipotent effects of the media on people, politics and society at the top of their agenda. Those latter assumptions, however, are largely unsupported by over a half-century of research on media effects by communication and media scholars (Benkler, et. al, 2018; Dahlgren, 2021; Deuze, 2021; Kreiss, 2021; Vorderer, P., Park, D. & Lutz, S., 2021).

However, rather than displaying an honest interest in scholarly research on such issues, the intent seems to be more about fomenting a moral panic in order to push through a questionable policy agenda. This is how the regime of broadcasting regulation was locked into place around the world in the 1920s and 1930s—for better in many regards but in many ways wanting, especially in terms of its neglect of issues of social, market and political power—in the wake of the Great War and on the eve of the Great Depression, including in Canada. While concerns that we could wake up to find “democracy without journalism” (Pickard, 2020), and that disinformation and misinformation campaigns are having a corrosive impact on society and democracy, are real, we must also be vigilant to ensure that such legitimate concerns are not hijacked to further illegitimate private interests and a view of the Internet and digital platforms that few Canadians would be likely to support if fully appraised of what’s on offer.

The interests behind the current policy agenda largely revolve around a small number of Canada’s biggest and most influential communications and media companies and consists of a myriad of think tanks, lobby groups, trade associations and other special interests. Many participants in this group have sought to regulate the Internet as a subspecies of broadcasting since 1996. They have lost at each step of the way, albeit for no lack of trying. . . until now, when they seem closer than ever to realizing their hopes and dreams, a vision that will destroy the Internet and pose broader threats to society. They need to be put back in their place and a policy reset put into motion as quickly as possible.

As the recent [article](#) in *Macleans*, Attention web giants: “Recess is over”, observes, Canada is currently working with Australia, France, Finland and Germany in a bid to set new ground rules for the platforms. In that article, Castonguay observes that GAFAM have 43 lobbyists working around the clock to set the policy agenda and further their interests. What he doesn’t mention, though, is that the big 5 Canadian companies—Bell, Rogers, Telus, Shaw and Quebecor—have more than twice that number of lobbyists (101 altogether) between themselves who, in the last six months, have met with federal government officials 221 times for much the same reason ([Registry of Lobbyists, 2021](#)). They also maintain a stable of more than 100 lawyers to press their cases and shape existing and future laws in their interest. What is being squeezed between both groups in this Goliath versus Goliath battle over public policy and the soul of the Internet-centric communications and digital media universe that will be locked into place for much of the rest of the 21st Century are the interests of individual citizens and the public’s interests.

In short, in this battle over the future of the Internet-based communications and digital media universe, we must get things right. To do that, Canada must continue to learn from others like the Australians, but with a critical eye. It must also join forces with other countries to take on the global Internet giants, as it is doing with the four countries just mentioned and as is has done with a dozen other countries as part of the “International Grand Committee” struck in the wake of the Facebook/Cambridge Analytica data breach scandal that broke in 2018. We must do all this, moreover, without losing sight of the significant concentrations of corporate power at home that will go to the wall to protect their interests in the lucrative \$91.4 billion network media economy in Canada, three-quarters of which are in the hands of just five companies: Bell, Rogers, Telus, Shaw and Quebecor. Moreover, the Canadian media economy is one of the biggest such markets in the world and lucrative, with lush profits in the 20-40% range despite all the Cassandra calls of a general crisis of communications, culture and the media that is propelling so much of the policy agenda.

To be successful in this regard, Canada must reach beyond the “gang of five” countries mentioned in the *Macleans’* article and the International Grand Committee to draw on the rich experience and wisdom being accumulated from the nearly 100 public inquiries that have or are still being held by government bodies around the world, mostly in the past five years alone so, so as to not reinvent the

wheel. Only then will we be in the best position to figure out just what the future of Internet and digital platform regulation will and should look like and to put our own unique stamp on it (see the ongoing tally of such public inquiries compiled by Winseck & Puppis [here](#)).

Indeed, Canada can and should play a lead role in these efforts. However, in order to ensure the legitimacy of the outcomes from these processes now and in the long-term, and that we don't sacrifice people's interests in an open Internet to bring a small number of global Internet giants to heel but in a manner that primarily benefits private interests at home, it is imperative that we reset our own policy making process as soon as possible.

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