The Political Economy of Communication
9(1), 84–87
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Private Deals Between Digital and Media Lords to Save Journalism: The Case of the Australian News Media Bargaining Code

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The global pandemic has shown in striking terms the need for healthy media institutions to provide trustworthy information and to act as interrogators of power. However, the Covid 19 outbreak and consequent economic downturn has only accelerated the structural crisis of Western news institutions and their decline over the last two decades. This, in turn, has raised major concerns about the public sphere principles of western democracies.

For example, just before the pandemic, the number of US journalists had dropped by 60% from 2004 (Waldman, 2020). In Australia, 106 local and regional newspaper titles closed between 2008 and 2018, a 15 per cent decrease (Australian Competition Authority and Consumer [ACCC], 2019). Approximately 3,000–3,200 journalism jobs were lost in Australia between 2012 and late-2017 (Brevini, 2021a). As a result, news deserts proliferate throughout the US, UK, Australia and other countries. Specific rural regions have been harshly affected along with non-white communities and lower socio-economic neighbourhoods. Where public subsidies have been comprehensively employed, as in Norway, the Netherlands, Denmark and in Southern Europe (notably France), the local news sector has shown more stability (Foster and Bunting, 2019).

In countries where news deserts are spreading, the debate on how to support and sustain public interest journalism is gaining more traction. Some proposals consider public funding of informational resources. The US state of New Jersey, for example, created the *Civic Information Consortium* in 2018 in response to the growing news deficits affecting communities across the state's 21 counties (Pickard, 2020). There are underlying trends to consider here. Firstly, commercial news outlets have struggled to adjust their business models to the digital ecosystem. Secondly, the progressive media ownership of mastheads, following decades of deregulation, has sharply reduced jobs in the sector and left fewer resources for quality journalism (Brevini and Ward 2021). The report *News Deserts and Ghost Newspapers: Will Local News Survive?* (Abernathy, 2020) reaffirms the concerns raised by scholars that consolidated media markets negatively affect the quality of journalistic output in local communities (Brevini and Ward, 2020; Napoli, 2018). For big global conglomerates "the prioritization of profit suggests that the journalistic quality of these newspapers has become less important, and scholars have confirmed a perceived decrease in quality of the remaining newspapers serving local markets" (Abernathy, 2020: 16).

Leaving the issue of media concentration untouched, global public policy debates have focused on addressing another concurrent source of the crisis: the declining advertising revenues of commercial news outlets as opposed to the increasing digital advertising revenue accruing to the Digital Lords of Silicon Valley (Brevini and Swiatek, 2020). In the US only, Facebook and Google control 70% of local digital advertising, leaving fewer resources for commercial news outlets (Waldman, 2020). In a smaller market, the ACCC found that of every $100 spent on advertising, $53 went to Google, $28 to Facebook and $19 to all other websites (ACCC Digital Inquiry Report, 2019).

As a result, after two decades of non-regulation, the likes of Google and Facebook are more under scrutiny worldwide (Brevini and Swiatek, 2020). From the US to France, Spain, Germany and Canada, they are accused of being too big, too powerful and too unaccountable to the public. (Brevini, 2021b). There have been major calls to curb their unprecedented market power, for example, through antitrust interventions that are also designed to fragment their absolute ownership of data (see for example Brevini, 2021b). Thus far, the most tangible interventions have focused upon the advancement of journalism. The News Media Alliance, a lobbying group that represents 2,000 publishers, is currently arguing for a new US framework that will allow publishers to collectively negotiate with the Digital Lords. Meanwhile, the European Union has adopted a copyright reform that provides press publishers with the right to be remunerated for the use of their newspapers and magazines by online service providers (EU Copyright Directive, 2019). Implementing the directive, France ruled in September 2020 that Google should pay publishers to display snippets of news content (a similar ruling was implemented in March 2019) (Brevini, 2021c). Outside the European Union, in Canada, a legal framework is being developed which will allow media organisations to negotiate with the Digital Lords to gain financial support for their content. But the most internationally discussed policy intervention to make the Digital Lords contribute to journalism is certainly the Australian News Media Bargaining Code—Facebook and Google could post news content from Australian media companies if financial remuneration was offered in return (Brevini, 2021c).

The News Media Bargaining Code: More a threat than actual legislation

The News Media and Digital Platforms Mandatory Bargaining Code Bill was introduced to the Australian Parliament in December 2020, although it resulted from a three-year process of contestation among the ACCC, the Australian Government, Google and Facebook. The ACCC was specifically asked to conduct a Digital Platforms Inquiry and to consider the impact of digital platforms, social media and online search engines on competition in the media and advertising services markets. In December 2019, the ACCC recommended a voluntary code to redress bargaining power imbalances between major digital platforms (Facebook and Google) and media outlets (Flew and Wilding, 2021). After publication of the report, the Digital Lords and news publishers were asked to mutually develop codes of conduct for negotiating with news organisations. The idea was to create a framework for publishers and designated digital platforms to negotiate in good faith for financial remuneration over the use and reproduction of news content (News Media Bargaining Code, 2021). However, after the documented failure to reach a voluntary agreement, the ACCC drafted a mandatory code that constituted the basis for the News Media Bargaining Code Bill (Brevini, 2021c). This was tabled in December 2020 and sparked debate throughout the Australian media, international attention arose because the proposed policy intervention could influence the adoption of similar legislations in other countries (Brevini, 2021c; Leaver, 2021).

Specifically, Australian news entities can participate in the code only if they are registered by the Australian Communication and Media Authority and have annual revenues exceeding AUS$150,000 per year (News Media Bargaining Code, 2021). Additionally, publishers have to demonstrate that they can produce core news content that reports, investigates or explains:

- issues or events that are relevant in engaging Australians in public debate and in informing democratic decision-making or
- current issues or events of public significance for Australians at a local, regional or national level (News Media Bargaining Code, 2021).

News outlets will also need to demonstrate editorial independence, be subject to a professional standard and be operating predominantly in Australia.

During discussion of the bill, Google and Facebook, singled out as the principle Digital Lords that would have seen subject to the code, were involved in beneficial negotiations with the Australian Government. Evidently, before a digital platform is made subject to the code, the Treasurer must take into account whether it has reached commercial agreements with publishers. In other words, the Digital Lords, Facebook and Google, will not be subjected to the code if they strike deals with publishers before the code is applied. This gives platforms the power to negotiate behind closed doors with the publishers they select. It also means that the code might never be applied in practice. Furthermore, the law does not mandate how much Facebook and Google should be pay for the news. And, there is no guarantee that news outlets will use the money for public interest journalism.

Who are the winners?

So far, the most dominant Australian media companies have secured profitable deals with Facebook and Google. Rupert Murdoch's News Corporation has benefited the most, after having intensely campaigned for the code on the pages of their papers (Brevini and Ward, 2021: 36). His media empire has already gained impressive global deals with Google. News Corp titles such the US *New York Post*, *The Times*, *Sunday Times* and *The Sun* in Britain receive financial remuneration for making some content available on Google News. Overall, Australia's three biggest players in print media (News Corp, Nine and Seven West Media) scored hundreds of millions of dollars in payments from the Digital Lords. Estimates suggest that these entities will together gain around 90% of Facebook's and Google's total Australian contributions under the code (Brevini and Ward, 2021: 37).

So far, the code has not assisted smaller, local and independent media entities but has magnified the dominance of already powerful media corporations (in a country where one single, unchallengeable corporation owns a 59% share of the metropolitan and national print media markets by readership) (Brevini and Ward, 2021).

So, is Australia's new legislation an appropriate tool to address the continuing crisis of public interest journalism? With no guarantees that the dominant media players will invest the funds received into quality journalism and no guarantees that small, local publishers will even be able to negotiate with the Digital Lords, the News Media Bargaining Code looks more like a missed opportunity. Revitalising local, regional and national journalism requires a set of policy interventions that represent the public interest. Private negotiations between Digital and Media Lords could not be further apart from this objective.

Author bio

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