Stop the Presses? Newspapers in the Digital Age

Updated May 24, 2023
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During the past 20 years, more than 200 local daily newspapers have either reduced their publication frequency or ceased publishing altogether. Among those that survived, many employ a fraction of the journalists that they did at the turn of the 21st century, and many publish far fewer original, local, and investigative news stories than they did previously. As a result, in order to get local news, thousands of U.S. communities rely on “ghost newspapers” that are shells of their former selves and may rarely employ full-time professional local journalists. Researchers report that, among other societal effects, the lack of a daily newspaper to monitor local governments and publicly traded companies can lead to increased financing costs to make up for investors’ lack of trust.

In 2000, daily newspaper industry revenue peaked at $89 billion, adjusted for inflation in 2020 dollars. Twenty years later, the revenue had fallen by 80%. Although some large, national newspapers continue to thrive, the newspaper industry as a whole has contracted. Websites and mobile apps enabling individuals to access news without a subscription have increased competition for readers and advertising. Between that 20-year period, revenue gains from online newspaper advertisements (from $0 to $3.1 billion) have not replaced revenue losses from print newspaper advertisements.

Some technology companies both compete and collaborate with newspaper publishers for online advertising revenue. For example, in addition to competing with newspapers’ websites for display advertising revenue, Google sells ad spaces (i.e., areas on websites/mobile apps set aside for online advertisements) on behalf of online publishers. Likewise, Google buys ad spaces on behalf of companies seeking to market goods or services to consumers with advertising (i.e., advertisers). For each step of the process—known as the ad tech stack—Google earns commissions from both buyers and sellers. In January 2023, the U.S. Department of Justice joined eight states in filing a lawsuit against Google, alleging that the company is violating antitrust laws by engaging in unlawful conduct to monopolize the ad tech stack. An additional 16 states and the Commonwealth of Puerto Rico filed a similar suit in 2021. In January 2021, a judicial panel combined this suit with multiple suits filed by newspaper publishers, advertisers, and others. Google claims these allegations mischaracterize its business and the degree of competition within the ad tech stack.

In addition, some online platforms—such as news aggregators (e.g., Apple News and Google News) and social media (e.g., Facebook)—can both enhance and diminish the ability of newspaper publishers to reach viewers. By acting as intermediaries between newspapers and their readers, these online platforms may increase consumers’ awareness of newspapers’ websites and prompt consumers to visit them. Alternatively, the headlines, snippets (small portions) of articles, and photographs displayed by these online platforms may dissuade consumers from visiting newspaper publishers’ own websites. This may impede the newspapers’ ability to collect data about their readers and generate revenues from their websites/mobile apps via subscriptions and advertising.

The Copyright Act generally prohibits online platforms from distributing full articles from newspaper publishers without their express consent. Courts determine whether a third party’s use of copyright material violates this law on a case-by-case basis. In June 2022, the U.S. Copyright Office published a report titled Copyright Protections for Publishers at the request of several members from the U.S. Senate Committee on the Judiciary. The report assessed the viability of establishing “ancillary copyright” protections for press publishers that would require online news aggregators to pay publishers for using excerpts of their content. The Copyright Office did not recommend amending copyright laws for this purpose, noting that stakeholders who filed comments with the office emphasized that the publishers’ challenges were due more to competition issues rather than copyright issues.

Some Members of 118th Congress have introduced bills that may help newspaper publishers. For example, the Advertising Middlemen Endangering Rigorous Internet Competition Accountability Act (S. 1073) would impose certain restrictions related to the ad tech stack. Online advertising revenues that would otherwise accrue to advertising technology firms could flow to the newspaper publishers who sell advertising on their papers’ websites. The Journalism Competition and Preservation Act of 2023 (S. 1094) would potentially increase the relative bargaining power of newspaper publishers.
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Introduction

Digital communication has made it easier for individuals to access a wide range of information, including news and upcoming events, from multiple sources. For example, residents suffering from a local weather disaster can obtain critical information about recovery efforts from a local newspaper article, a local government authority’s website, or an alert from friends via social media platforms.1 This digital transformation has changed the consumption and production of news and reduced revenues at local newspapers.

Some Members of Congress have expressed concern about the decline of newspapers and have introduced bills to support newspapers and journalists. This report provides an overview of trends in the newspaper industry, discusses newspapers’ relationships with online platforms,2 and examines how the structure of online advertising affects newspapers’ funding.

Changing Patterns of News Consumption

The majority of Americans get at least some of their news—including content from newspapers—from digital devices, according to a 2022 survey conducted by the Pew Research Center.3 Among those surveyed about their sources for online news, most age groups preferred news websites and apps,4 but respondents aged 18 to 29 listed social media platforms (e.g., Facebook) as their preferred source of news.5

When asked about which form of media they use to “often get news,” 8% of respondents cited print publications, compared with 23% who cited social media platforms, 14% who cited search engines (e.g., Google), and 25% who cited news websites or apps (see Figure 1). Some of these

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2 In this report, the Congressional Research Service (CRS) uses the term online platform as defined by the Organisation for Economic Co-operation and Development (OECD): “a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the internet.” Examples include search engines, social media, and app stores. OCED, An Introduction to Online Platforms and Their Role in the Digital Transformation (Paris: OECD Publishing, 2019), p. 20, at https://doi.org/10.1787/53e5f593-en.


4 The term app refers to type of application software designed to run on a mobile device, such as a smartphone or tablet computer. Apps—while small, individual units with limited functions—frequently serve to provide users with services similar to those accessed on personal computers. Apps are divided into two broad categories: web apps, which run through browsers, and native apps. Native apps are built for a specific mobile operating system, usually Apple’s iOS or Google’s Android. Margaret Rouse, “Dictionary: Privacy and Compliance: Mobile Application,” Techopedia, August 7, 2020, at https://www.techopedia.com/definition/2953/mobile-application-mobile-app. Apple and Google offer app “stores” that enable users to download native apps. See CRS Legal Sidebar LSB10752, The Open App Markets Act, by Jay B. Sykes.

news websites and apps are operated by traditional media outlets, such as newspapers, cable television networks, radio networks, and broadcast stations.

Figure 1. News Consumption, by Medium, 2022

Percentage of Respondents Who “Often” Get News from Each Media Platform


Note: Results based on self-reported responses to survey questions.

Newspapers have been offering their articles online since at least January 1994, when the Palo Alto Weekly published the first online newspaper.6 While some local print newspapers successfully made the transition to digital media, others struggled to adapt.7

Digital media has increased consumers’ access to news stories, but it has also decreased news publishers’ ability to distinguish themselves with exclusive content. Although publishers distribute daily print newspapers only at set times, they can post and update online news content throughout the day.8 One study in 2020 found that about one-fourth of online news stories are republished on a different website within four minutes of their original publication.9

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Many news publishers that started in other forms of media, such as newspapers, television broadcasting, and radio, now offer their content online.\textsuperscript{10} The online content both replicates and supplements the news content featured in paper editions of newspapers and on on-air broadcasts of radio and television stations.\textsuperscript{11} The emergence of digital-native news publications has further increased the number of outlets providing news,\textsuperscript{12} some of which have become substitutes for print newspapers.\textsuperscript{13}

The digitization of news can affect local news coverage. Some news publishers may not have an incentive to report on all topics covered by local newspapers. Moreover, some publishers may not have an incentive to conduct in-depth investigations of local affairs, which can be costly and time-consuming, especially if it might not be of interest to current and potential readers.\textsuperscript{14} In addition, some national news publishers have been able to attract readers from across the country by selling subscriptions to their digital products, which may affect users’ engagement with local issues.\textsuperscript{15}

**Newspaper Revenue Trends**

Traditionally, the primary sources of revenue for daily print newspaper publishers have been print subscriptions and print advertising. Competition from online platforms and websites for readers and advertisers, however, in conjunction with business decisions by both newspaper publishers and online platforms’ parent organizations, have led to newspaper industry revenue declines.

As Figure 2 indicates, in the 20 years since newspaper industry revenues, adjusted for inflation, peaked at $89 billion in 2000, they declined approximately 80%.\textsuperscript{16} Two sources of newspaper revenue declined, and one source increased. Revenues from print advertising declined 92%, from $73.2 billion in 2000 to $6 billion in 2023. Subscription revenues declined by more than 50%, from $15.8 billion in 2000 to $7.8 billion. According to research firm S&P Global, the newspaper industry did not generate any online advertising revenue in 2000 and generated $3.3 billion in advertising revenues in 2020. Thus, advertising revenues from newspapers’ websites and apps...

\textsuperscript{10} For example, National Public Radio started as a network of public radio stations, and Fox News started as a cable television news channel; both now publish content on their own websites and apps.


\textsuperscript{12} This report uses the term digital-native news publishers to refer to news publishers that offer their content online only or those that started online; some may also be referred to as online media companies or other similar terms. Some of these publishers specialize in specific subject areas (e.g., TechCrunch, which focuses on the tech industry and startup companies), some provide broader coverage of national events (e.g., Business Insider, HuffPost, and Breitbart), while others focus exclusively on local community news (e.g., MinnPost [focusing on Minnesota news] and Patch).


have grown in importance but not by enough to prevent a sharp overall decline in industry revenues.

**Figure 2. Sources of Daily Newspaper Industry Revenue**

Adjusted for Inflation in 2020 Dollars

![Graph showing sources of daily newspaper industry revenue](image)


Notes: Advertising revenue includes both national and local advertising. In nominal terms, newspaper publishers generated $48.2 billion in 2004. S&P Global ceased tracking these data in 2021; figures are the most recent available. Historical data through 2012 come from the News Media Alliance, or NMA. From 2013 on, S&P’s estimates are based on analysis of financial statements from publicly traded U.S. newspaper publishing companies.

**Online Competition for Readers: Free Versus Paid Subscriptions**

The decline in daily circulation revenue coincided with a decline in daily circulation, including both print and online subscriptions. Pew Research Center reports that in 2000, U.S. newspapers collectively had an average weekday (Monday-Friday) circulation of 55.8 million in the United States and an average Sunday circulation of 59.4 million.\(^{17}\) Pew estimates that in 2020, these figures had dropped by about 56%, to an average weekday circulation of 24.3 million and an average Sunday circulation of 25.8 million.\(^{18}\) During that same period, however, newspaper subscription prices increased. Adjusted for inflation in 2020 dollars, the average revenue per subscriber grew from $279/subscriber in 2000 to $309/subscriber in 2020.\(^{19}\)

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\(^{17}\) “Newspapers Fact Sheet,” Pew Research Center, June 29, 2021, at https://www.pewresearch.org/journalism/fact-sheet/newspapers/. Pew bases its 2000 circulation figures on data reported by the trade publication *Editor and Publisher*.

\(^{18}\) Ibid. The estimates for 2020 are based on Pew’s analysis of data from the Alliance for Audited Media, which exclude figures from the *New York Times*, the *Wall Street Journal*, and the *Washington Post*.

\(^{19}\) CRS analysis of data from S&P Global Market Intelligence. Inflation adjustment based on the BLS Consumer Price Index for All Urban Consumers.
Meanwhile, newspaper publishers weighed how many news stories, if any, to make available online at no cost. In 1996, when The Wall Street Journal launched its online edition, its publisher Dow Jones & Company opted to charge readers. The New York Times Company’s strategy has evolved. After initially beginning a subscription program in 2005, the publisher opted in 2007 to make the website of its namesake newspaper available at no charge. In reaching its decision, executives stated that the value of online advertising generated from readers finding New York Times articles via search engines and links on other sites outweighed the potential of lost online subscription revenue. In 2011, the New York Times Company began to limit monthly access to free articles on the New York Times website to 20 per month.

A 2017 article in the Columbia Journalism Review found that most of the 25 most popular U.S. daily newspapers enabled visitors to access some or all of their online news stories at no charge, especially visitors from online platforms and social media.

Also according to that 2017 article, citing an interview with the senior vice president for digital marketing at Tribune Publishing (formerly called “Tronc”), “[t]he reason Tronc publications make an exception for search referrals ... was to comply with Google’s First Click Free program. Google normally only indexes publically-available Web pages, that is, those not behind paywalls.” Likewise, Tribune opted to enable users referred from social media platforms to access stories at no charge. In October 2017, Google ended its policy that led some media outlets with strict paywalls to appear lower in its search engine results, enabling publishers to select the number of articles a Google user could read without paying. In March 2018, it launched a “Subscribe with Google” feature aiming to make it easier for Google users to subscribe to news publications.

Trade publication Digiday reported that as of December 2022, news publishers’ online subscription strategies continued to vary. Some require subscriptions to access certain or all stories; some allow readers to access a limited number of articles at no charge, while others offer a combination. In its analysis of these strategies, Digiday stated

> The L.A. Times, Boston Globe and Chicago Tribune are regionally focused publications that offer some of the fewest member-exclusive benefits in the news cohort, excluding philanthropically supported publications, while also having some of the most expensive

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base annual subscription prices, only surpassed by The Wall Street Journal and rivaled by The New York Times.\textsuperscript{29}

Both the Wall Street Journal and the New York Times use “data and machine learning” to tailor the number of free articles available individually to nonsubscribers.\textsuperscript{30} According to Digiday, the New York Times limits access to some content, which it makes exclusively available to subscribers.\textsuperscript{31} The Wall Street Journal allows nonsubscribers to access any and all content up to a certain number of articles within a set time.\textsuperscript{32}

### Online Competition for Advertising

The internet transformed the local advertising market for newspapers, unleashing competition from online platforms and websites. The launch of the free online-classified advertising website Craigslist in 1996\textsuperscript{33} coincided with the falloff in newspapers’ revenue from print classified advertising.\textsuperscript{34} In addition, some newspaper publishers invested in online-classified services such as Cars.com, Apartments.com, Autotrader.com, and CareerBuilder.com, which siphoned off classified advertising from newspapers.\textsuperscript{35} As described in “Digital Advertising Formats/Types of Expenditures,” compared with other formats, classified advertising represents a relatively small proportion of online advertising spending.

In 2000, print newspapers generated 40% of their total advertising from classified ads. In 2020, print classified advertising generated 15% of total advertising revenue.\textsuperscript{36}

Likewise, display advertisers, such as retailers and consumer products manufacturers, shifted their budgets from print newspapers to online platforms and websites as the internet enabled them to target potential customers in new ways.\textsuperscript{37} Newspapers typically offer the same advertisement (or ad) to all print readers. In contrast, online platforms, particularly Google and Facebook, can target ads precisely to potential consumers based on the platforms’ access to data about individuals.\textsuperscript{38}

\textsuperscript{29} Ibid.


\textsuperscript{32} Ibid.


\textsuperscript{35} Ibid.

\textsuperscript{36} CRS analysis of data from S&P Global Market Intelligence. Figures not adjusted for inflation.

\textsuperscript{37} Display advertisements appear alongside editorial content. They often contain graphics or other artwork to promote products and/or services.

As of October 2021, Google and Facebook collectively received 52.7% of online advertising revenue nationwide. In particular, these two companies benefited from a self-reinforcing cycle of attracting users and advertisers. The more users Google and Facebook attract, the more data they can collect, and the easier it is to provide the users with targeted advertisements, thereby enabling those companies to maintain a competitive advantage vis-à-vis other online media outlets in generating online advertising revenues.

As Figure 3 illustrates, printed newspapers’ share of overall advertising spending has plummeted over the past 20 years. The share was 53% of the $142 billion spent in 2000 (adjusted for inflation in 2020); it was 5% of the $93 billion spent in 2020. In contrast, online media’s share increased from 1% in 2000 to 63% in 2020. Thus, while newspaper publishers rely on online platforms to reach readers and advertisers, the publishers also compete with those platforms, either directly or indirectly, for access to their readers’ data and revenues from advertisers.

**Figure 3. Advertising Revenue Shares, by Medium**

Figures in $ Billions, Adjusted for Inflation in 2020 Dollars

<table>
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<th>Year</th>
<th>Daily Print Newspaper</th>
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**Source:** CRS analysis of data from Magna Global via S&P Global Market Intelligence and the BLS Consumer Price Index for All Urban Consumers.

**Notes:** “Newspapers” revenues include those generated by paper-based circulation. “Online” includes advertising revenues generated by advertising over the internet and over mobile, including the websites and mobile apps of newspapers. “Other” includes advertising revenues generated by broadcast and radio television stations and networks, cable and satellite operators and networks, magazines, movie theaters and other out-of-home media, and outdoor media (e.g., billboards).

The few daily newspapers with national and international readership—such as the New York Times, the Wall Street Journal, USA Today, and the Washington Post—have experienced different advertising trends than those with primarily local or regional readership. Journalism professor Penelope Muse Abernathy wrote in a June 2020 report that national newspapers “have a journalistic mandate and a business model, which rely on scale and reach that are very different from that of either the state and metro papers or smaller community papers.”


40 Penelope Abernathy, News Deserts and Ghost Newspapers: Will Local News Survive?, Center for Innovation and
reach enable the national papers to attract national advertisers in addition to local advertisers, thereby generating more advertising revenue than their local counterparts. National advertisers, in order to reach readers nationwide, prefer to negotiate a “seamless and turnkey” arrangement rather than engage in multiple negotiations with various local newspaper publishers. In addition, as described below, large publishers are less reliant on advertising technology intermediaries, such as Google, and are therefore able to retain a greater share of online advertising revenues than small publishers. For example, the New York Times generated approximately 62% of its advertising revenue from online advertising in 2021. In contrast, that same year, two leading publishers of local daily newspapers—Lee Enterprises Inc. and Dallas News Corp.—generated 37.6% and 35.2%, respectively, of their total advertising revenue from online advertising.

**Effects of Revenue Declines**

Declining revenue prompted some news publishers to close or reduce publication frequency, resulting in staff layoffs. According to one count, between 2004 and 2022, 242 daily newspapers in the United States ceased publication. As of July 2022, 42 of the 100 largest newspapers delivered print editions six or fewer times per week, including 11 that publish print editions one or two times per week.

The widespread economic and social impact of the Coronavirus Disease 2019 (COVID-19) pandemic in 2020 led to a further decline in the number of daily newspapers, as advertisers cut back spending. In July 2020, Wyoming became the first state without a daily printed newspaper on Monday mornings. New owners of newspaper publishers—in many cases private equity firms, hedge funds, or other investment groups—took on debt to acquire the newspapers, promising investors that they would earn a return on their investments by cutting costs. In some instances, such cost cutting involved selling real estate and equipment and laying off employees.

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43 Lee Enterprises Inc., SEC Form 10-K for the fiscal year ended September 26, 2021, p. 16.


45 Penny Abernathy, *The State of Local News*, Medill Center, Northwestern University, June 29, 2022, at https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/#local-news. The loss includes more than 100 dailies that shifted to weekly publications.


50 McKay Coppins, “A Secretive Hedge Fund Is Gutting Newsrooms,” *The Atlantic*, October 14, 2021, at...
Despite their declining revenues, newspaper publishers continue to employ more news analysts, reporters, and journalists than their online counterparts do. In 2022, newspaper publishers employed about 13,500 news analysts, reporters, and journalists, or about 28.7% of the 47,100 employed across industries. Among different types of media, this amount is second only to television broadcasters, which employ about 14,500 (30.8%). Online-only publishers employed about 3,800 (8.0%).

Research indicates that local newspaper closures and employee layoffs can increase the financing costs of both local governments and private corporations. A study published in 2020 found that because “local newspapers hold their governments accountable, keeping municipal borrowing costs low and ultimately saving local taxpayers money,” closures can “have a significantly adverse impact on municipal borrowing costs in the long run.” Likewise, a study published in 2021 found that newspapers play an important role in enabling shareholders to monitor publicly traded firms.

Newspaper Publishers’ Relationship with Online Platforms

Some online platforms allow consumers to access news articles, or portions of news articles, without a direct subscription to the newspaper. This section discusses how two types of online platforms—news aggregators and social media platforms—can both benefit and harm local newspapers.

News Aggregators

News aggregators (e.g., Google News, Apple News, and SmartNews) curate content from various news publishers, including local and digital-native newspapers; some aggregators also publish original content. Some aggregators link only to headlines of the news articles, while others include multiple sentences or photographs. Aggregators rely on online advertising and


52 BLS’s industry subsector category of “Other Information Services” includes “group establishments … operating Web sites that use search engines to allow for searching information on the Internet, or publishing and/or broadcasting content exclusively on the Internet.” BLS, “Industries at a Glance; Other Information Services: NAICS 519,” at https://www.bls.gov/iag/tgs/iag519.htm.


55 Although this report focuses on news aggregators and social media platforms, some of these issues may be applicable to other online platforms.

56 For example, Yahoo News publishes original content; see https://news.yahoo.com/originals/.

subscriptions for their revenue.\textsuperscript{58} They bundle articles and display them in a particular order, often using proprietary algorithms that weigh factors such as relevance, freshness, and authoritativeness of the content.\textsuperscript{59} Details about each aggregator’s ranking process, such as the weight given to each factor used to prioritize certain news articles, are not publicly disclosed by the companies.

Some newspapers have attracted readers by working with aggregators, particularly popular ones.\textsuperscript{60} Limiting aggregators’ access to a newspaper’s content can reduce overall news consumption, including on the newspaper publisher’s own websites and apps.\textsuperscript{61} However, aggregators can make it difficult for newspaper publishers to create direct relationships with their readers, potentially resulting in newspapers having fewer subscribers and limited data about their readers.\textsuperscript{62} The National Media Association has asserted that widespread aggregation may significantly impede the ability of press publishers to obtain payments from potential subscribers.\textsuperscript{63} One study found that when an aggregator displayed more information about a news article, such as longer snippets or accompanying images, readers were less likely to click through to the original article on the publisher’s platform.\textsuperscript{64} However, the same study found that when choosing among several related articles, readers tended to pick the one with more information displayed.

The visibility of each publisher’s content can depend on the aggregator. Newspaper editors may have little or no control over the visibility of articles on an aggregator’s website, including where the aggregator lists content on its main page or in response to a user’s search. In an effort to obtain a more prominent position on aggregators’ platforms, some newspapers might focus on producing content that they expect will be ranked higher by the aggregators’ algorithms.\textsuperscript{65}

\begin{itemize}
\item For example, Google News and SmartNews obtain their revenue from online advertising, while Apple News+ is subscription-based.
\item For example, Robert Thomson, CEO of News Corporation, the publisher of the Wall Street Journal, stated that the “Apple News partnership allows us to ... bring in a significantly new audience that we would hope to graduate to a paid WSJ subscription over time.” See “Q4 2020 News Corp. Earnings Call—Final,” CQ-Roll Call, Inc., August 6, 2020.
Some aggregators have created sections dedicated to local news. One study found that after Google News was redesigned to place links to geo-targeted local news content on its Home Page, local news consumption among heavy Google News users rose by 25%, with no evidence that consumers were visiting Google News rather than directly visiting the publishers’ platforms. However, another study found that Google’s algorithms might rank content from local newspapers lower than content from national newspapers, displaying local newspapers’ content less prominently.

Specific terms of each publisher’s agreement with an aggregator typically are not publicly available. Although some aggregators provide information on the amount of revenue they provide publishers, oftentimes details about an agreement between a specific publisher and aggregator are available only from news articles by individuals familiar with the negotiations. Popular newspapers with a large customer base may be able to negotiate more favorable terms with aggregators and receive a larger share of revenue than smaller newspapers.

Some news aggregators may be able to leverage greater bargaining power over newspaper publishers or obtain a greater share of the advertising revenue through their parent company’s other products and services. For example, Microsoft integrates its news aggregator in its web browsers; Microsoft and Google embed a preview of the news aggregator results in response to some news-related searches on their respective search engines; and Apple preinstalls Apple News on its hardware products. Integrating news aggregators into other platforms or devices may be convenient for some publishers and consumers, but this integration may make it difficult for news aggregators to attract users away from the websites of individual publishers.


66 For example, Google News has a section dedicated to local news where users can prioritize content from specific cities and zip codes, and SmartNews allows users to search for news in selected cities.


69 For example, according to Apple News, publishers keep all of the advertising revenue generated from ads sold by the publisher and 70% of the revenue from ads sold by Apple. In October 2020, Google stated that it would spend $1 billion investing in partnerships with newspaper publishers in a new platform, Google News Showcase. Google stated that it had signed partnerships with nearly 200 leading publications across Germany, Brazil, Argentina, Canada, the United Kingdom, and Australia; it currently is not available in the United States. Apple, “Publishing on Apple News,” Apple Developer, accessed on November 17, 2021, at https://developer.apple.com/news-publisher/; and Sundar Pichai, “Our $1 Billion Investment in Partnerships with News Publishers,” Google Blog, October 1, 2020, at https://blog.google/outreach-initiatives/google-news-initiative/google-news-showcase/.

70 For example, Apple was reportedly seeking to take 50% of the revenue generated through Apple News+, the subscription-based version of Apple News that provides additional content, and a Google spokesperson stated that publishers received over 70% of the ad revenue when they used Google tools to monetize their content. Lukas Alpert, “Facebook Chief Mark Zuckerberg Urges Tech Rivals to Pay for News,” Wall Street Journal, October 25, 2019, at https://www.wsj.com/articles/facebook-launches-news-service-for-select-users-11571997601; and Apple, “Apple News+,” accessed on January 14, 2022, at https://www.apple.com/apple-news/.


for news aggregators that do not operate similar access points to compete, increasing the market power of the integrated aggregators.

**Social Media Platforms**

Social media platforms distribute newspapers’ content in a variety of ways. Newspapers can create their own social media accounts, individual reporters can post information, and other users can post and share links to newspaper articles. In these cases, content from newspapers is intermixed with content from other sources. Some social media platforms have created sections of their platforms that provide news articles only from selected newspapers, including local ones.

Similarly to news aggregators, social media platforms can increase the visibility of some newspaper articles while diminishing it for others. These platforms have an incentive to amplify publishers’ content that they expect will increase user engagement, which could increase their revenue from online advertising. Some social media platforms recommend content, which can include newspaper content that increases user engagement, even if nobody in the user’s network directly shares the article. One study found that social media platforms could increase online news consumption, potentially reducing the amount of time readers spend on news publishers’ platforms. Some studies have found that when users are unable to access news content through social media, more individuals than not will go directly to the news publishers’ platform; other studies have found that fewer individuals will do so. Some social media platforms have developed technologies that make it possible for publishers to obtain more detailed information about their readers and target potential readers; some newspapers, particularly smaller ones, may not have direct access to these technologies.

The complexities of social media platforms’ relationship with newspapers mirror those of news aggregators. Detailed information about social media platforms’ agreements with newspaper publishers typically are not publicly available. For example, when Meta launched a news section on its platform Facebook, it reportedly paid licensing fees to only some of the publishers whose articles it republished, with the amount depending on the size of the publisher.

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74 News publishers can be affected by other aspects of social media, such as users posting information about an incident (e.g., car accident, shooting), particularly if it goes viral. These potential effects are beyond the scope of this report.


76 Online advertising is the primary source of revenue for most social media platforms. For example, in 2020, online advertising made up 98% of Facebook’s total revenue and 86% of Twitter’s. See Facebook Inc. SEC Form 10-K for the year ending December 31, 2020, and Twitter Inc. SEC Form 10-K for the year ending December 31, 2020.


80 For example, Facebook offers various tools, such as Page Insights, that provide information on the number of views and other metrics for each piece of content. Facebook, “The Journalist’s Guide to Facebook and Instagram,” Facebook Journalism Project, May 2021.

81 Lukas Alpert and Sahil Patel, “With Facebook’s Coming News Tab, Only Some Will Get Paid,” Wall Street Journal,
subsequently stated that it would pay $5 million to support local journalists to “regularly publish written, public-interest journalism focused on a local community,” with precedence given to areas that “are not currently served by an existing journalism entity.”\(^{82}\) Recent layoffs at Meta might affect its various news-related efforts.\(^ {83}\) Research firm eMarketer estimates that as of May 2023, 52.4% of the U.S. population uses Facebook at least once per month.\(^ {84}\)

**Role of Copyright Laws**

In the United States, several provisions of copyright law protect publishers’ news content. First, a publisher typically owns the copyright in the “collective work” of articles contained in its website or publication.\(^ {85}\) Second, publishers can assert rights in individual articles via the work-made-for-hire doctrine.\(^ {86}\) With respect to photographs, however, it is generally photographers, not publishers, who own the original rights to display those images to the public.\(^ {87}\) Although photographers may license or authorize others to sublicense those images to news publishers.\(^ {88}\)

The Copyright Act generally prohibits aggregators and other online platforms from distributing full articles without the express consent of the copyright owner (usually the publisher).\(^ {89}\) The extent of these legal protections, however, is not always clear.\(^ {90}\) For example, Google News

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\(^ {85}\) Ibid. The Copyright Act defines collective work as a work “in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. §101. In addition, the Copyright Act considers collective works as a type of compilation, which the act in turn is defined as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.”

\(^ {86}\) “Work made for hire” is a category of works created for an employer or commissioning party, for which, for copyright purposes, the individual(s) who create the work are not considered the author(s) or initial owner(s). Instead, the author is either (1) the employer of that individual, if the work is prepared within the scope of employment or (2) the entity who commissions or orders the creation of the work, provided that the work fits within one of nine specific categories and the parties expressly agree in a signed writing that “the work shall be considered a work made for hire.” 17 U.S.C. §101.

\(^ {87}\) 17 U.S.C. §101(5).


\(^ {89}\) 17 U.S.C. §106(3).

\(^ {90}\) In addition to immunity afforded by copyright laws, online platforms—including news aggregators—might receive federal immunity from liability for content provided by a third party (e.g., the news publisher) under §230 of the Communications Act of 1934. For more information, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.
provides snippets of news articles on its Home Page and in search results. While Google considers this fair use of publishers’ content, some newspaper publishers have claimed that the Copyright Act does not provide a clear-cut standard to determine what constitutes fair use.

In comments to the Copyright Office, publishers claimed that the majority of their content is distributed by Google and Facebook, who in turn collect, post, and disseminate newspaper publishers’ content without the publishers’ permission. As a result, the publishers claimed, the publishers are losing access to potential subscribers and advertisers, further depressing their revenues.

In June 2022, in response to a request from several members of the Senate Committee on the Judiciary, the U.S. Copyright Office published a report entitled Copyright Protections for Publishers. The report assessed the viability of establishing “ancillary copyright” protections for press publishers, similar to protections implemented in the European Union, which would require online news aggregators to pay publishers for excerpts of content they provide for others to view.

The Copyright Office did not recommend adopting additional copyright-like rights for publishers, concluding the following:

[A]ncillary copyright protections have not been shown to be necessary in light of publishers’ existing rights, and would likely be ineffective so long as publishers depend on news aggregators for discoverability. Moreover, to the extent that any ancillary copyright protections would lack traditional copyright limitations and exceptions, they would raise significant policy and Constitutional concerns.

Furthermore, the Copyright Office stated that the publishers and online platforms that commented on the report “emphasize[d] that they see the challenges publishers face as more a matter of competition policy than copyright.” In its 2021 annual report, newspaper publisher Gannett stated, “We generally are not compensated for the consumption of our original content on third-party digital products and social platforms.”

**Newspaper Websites: Flow of Advertising Revenue**

As discussed in “Newspaper Revenue Trends,” online advertising has become a growing source of revenue for newspaper publishers (see Figure 2). Nevertheless, that revenue has been

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94 News Media Alliance Comments for 2022 Copyright Office Report, pp. 2-3. The News Media Alliance claims that the Journalism Competition and Preservation Act of 2022 (JCPA)—described in “Amending Clayton Act to Place Restrictions on Ad Tech Ownership: AMERICA Act”—by amending antitrust laws temporarily, would “allow press publishers to collectively negotiation with Facebook and Google for fair compensation for the use of their content.” Ibid., p. 23.
96 Ibid., p. 2.
97 Ibid.
98 Ibid.
insufficient to compensate for the decline in print advertising. More generally, a proliferation of options has constrained the prices media outlets can charge for online advertising.\textsuperscript{100}

To attract readers to their websites and sell online advertisements, newspaper publishers must rely on some of the companies that they compete with for advertising revenue. For example, newspapers rely on Google’s search engine and its Google News aggregation service to refer readers to their news sites. In addition, both advertisers and newspaper publishers rely on Google to supply the technology necessary to place online advertisements.

This section describes how the structure of the online advertising industry—particularly the structure of the automated, or \textit{programmatic}, advertising industry—affects the flow of advertising revenue to newspaper publishers, and the role of Google in the advertising technology supply chain.

**Digital Advertising Formats/Types of Expenditures**

Digital advertising typically appears in one of six forms:\textsuperscript{101}

- \textbf{Search advertising} is the term used to describe listings of advertisers returned in response to a consumer’s web search query. The advertisers pay to have their names and website links included or prioritized among the search results. Search accounted for an estimated 40.2\% of the $209.7 billion in U.S. digital advertising expenditures in 2022.

- \textbf{Digital display advertising} describes the boxes on websites, apps, or platforms that appear along the top of the screen as a banner ad or elsewhere on the screen of a desktop/laptop computer, mobile device, or television connected to the internet.\textsuperscript{102} Digital display represented an estimated 30.3\% of 2022 digital ad spending in the United States.

- \textbf{Video advertising} refers to online advertisements that contain video. These accounted for an estimated 22.9\% of 2022 U.S. digital advertising expenditures.\textsuperscript{103}

- \textbf{Classified advertisements} refers to online advertisements listing specific products or services (e.g., jobs and real estate listings).

- \textbf{Lead generation} fees refer to payments made by advertisers to website operators that refer qualified potential customers or provide information about consumers who have agreed to be contacted by advertisers. Combined, classified advertising and lead generation represented an estimated 4.2\% of 2022 U.S. digital advertising expenditures.

\textsuperscript{100} Gannett 2021 SEC Form 10-K, p. 18; and NYT 2021 SEC Form 10-K, p. 11.


\textsuperscript{102} eMarketer, \textit{Display Ad Spending by Device: U.S.}, 2023, March 2023 (describing display ad spending, by device) (available via subscription to Inside Intelligence eMarketer).

\textsuperscript{103} eMarketer estimates that in 2022, Meta (via its Facebook and Instagram social media platforms) had a 30.2\% share of video advertising spending, compared with an 8.9\% share of spending for YouTube and 62\% for TikTok. Sara Lebow, “TikTok Threatening YouTube in U.S. Video Ad Spend,” eMarketer, May 17, 2023. National newspaper publishers, such as \textit{New York Times} and the \textit{Wall Street Journal}, also sell online video advertising. Michael Sebastian, “Pressing Print’s Case at Digital NewFronts,” \textit{AdAge}, May 5, 2015.
• **Audio formats** are audio-only advertisements. Digital audio advertisements occur in streaming music services and podcasts, among other media. These represented an estimated 2.8% of 2022 U.S. digital advertising expenditures.¹⁰⁴

Thus, the most popular formats of digital advertising are digital search and display, which combined accounted for 70.5%, or $147.9 billion, of 2022 U.S. digital advertising expenditures. The companies with the largest share of advertising revenues in each format, Google and Meta, respectively, each rely to some extent on news stories and headlines produced by newspaper publishers to generate those revenues.

According to research firm eMarketer, 56.1% share of total search ad spending went to Google, 22.6% to Amazon, and 5.3% to Microsoft.¹⁰⁵ Google News, described in “News Aggregators,” relies on newspaper publishers’ stories and headlines to generate revenues from this format. eMarketer estimates that 36.3% of digital display advertising went to Meta, 9.8% to Google, 6.1% to Amazon, and 2.0% to Microsoft. Most of newspaper publishers’ online advertising revenues come from digital display advertising.¹⁰⁶ Thus, while newspaper publishers, as described in “Social Media Platforms,” rely on Meta’s Facebook and others to promote their websites to readers, the publishers also compete with Meta for display advertising revenues. In addition, Google, as described in “Advertising Technology Stack and Related Antitrust Lawsuits,” plays a significant role as an intermediary in the buying and selling of digital display advertising.

**Reliance on Technology Firms in Programmatic Advertising**

The process of purchasing and selling advertising in nondigital media (e.g., print editions of newspapers) has traditionally been relatively straightforward: advertisers or their advertising agencies contacted the media organization’s salespeople (or vice versa), and the parties would negotiate and agree on contracts concerning price, ad placement, and frequency, among other terms and conditions. In the early days of digital advertising, the process was similar, involving bilateral negotiations between representatives of buyers and sellers of advertising.¹⁰⁷ The process was based solely on contextual targeting tactics—the placement of an advertisement relevant to a user based on the similarity between the characteristics of the advertisement and the characteristics of the content next to it.¹⁰⁸ Figure 4 illustrates how a classified advertisement sold directly via a newspaper publisher, based on contextual targeting, appears to a visitor of the newspaper’s website.

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¹⁰⁴ Although the New York Times Company’s podcast “The Daily” is one of the most popular podcasts in the United States, with 2 million daily downloads as of January 2020, reports indicate that the most popular podcasts—in part because of the relatively high prices they charge compared with less popular podcasts—may be struggling to sell out their inventory as advertisers’ budgets shrink. Daniel Kostantinovic, “While Top Podcasts Like ‘The Daily’ Struggle to Sell ad Space, Smaller Shows Thrive,” eMarketer, May 9, 2023.


¹⁰⁶ For example, of the total amount of online revenue Gannett generated from online advertising and marketing services in 2021, “display advertising either delivered on our products or off-platform on partner channels such as Facebook Instant Articles and Apple News” generated 66%, or $361 million. Gannett 2021 SEC Form 10-K, pp. 6, 44.


The buying and selling of digital advertising has become more automated and complex, with algorithmic computer software used to buy and sell advertising on newspapers’ websites via intermediaries. The term programmatic refers to this automated process of buying and selling advertisements. Research firm eMarketer estimates that as of 2023, programmatic transactions represent 91.1% of digital display advertisement spending in the United States.\footnote{Evelyn Mitchell et al. \textit{Programmatic Ad Spending Forecast Q1 2023}, Insider Intelligence, eMarketer, February 2023, p. 2. In contrast to the Internet Advertising Bureau, eMarketer includes video advertising, as well as banners, rich media, sponsorships, and advertisements that appear within social media fees in its estimates of display advertising. Insider Intelligence, eMarketer, \textit{“Display Ad Spending US, 2022 – 2024,”} March 2023 (available on eMarketer website via subscription).}

Regardless of whether online publishers sell their online display advertising inventory directly to advertisers or indirectly (via intermediaries), the advertisements target specific users at specific times and locations.\footnote{Texas, et al. v. Google, January 2022 3rd Amended Complaint, p.17. For more information about this lawsuit, see \textit{“U.S. Allegations Regarding Google’s Conduct.”} The states originally filed their third amended complaint in November 2021, Third Amended Complaint, The State of Texas, et al. v. Google, LLC, 1:21-CV-06841 (S.D.N.Y. November 12, 2021). The Southern District of New York released a version in January 2022 with fewer redactions. This report references the January 2022 version.} Instead of purchasing inventory based on the content of a newspaper’s online articles, advertisers purchase the inventory based on the ability to reach a specific user. Behavioral targeting tactics refers to the placement of an advertisement to a user based on a user’s online browsing activity and purchase history.\footnote{Evelyn Mitchell et al. \textit{Programmatic Ad Spending Forecast Q1 2023}, Insider Intelligence, eMarketer, February 2023, p. 2.} Because online ads are targeted at individual users, a website with three different ad slots on a page with 1 million views has 3 million unique ad units to sell.
Direct Programmatic Sales Process: Large Publishers

Large publishers, including publishers of major national newspapers such as the New York Times and the Wall Street Journal, can sell their advertising inventory directly to advertisers. In a process called programmatic direct, large publishers conduct automated private auctions of advertising space or employ salespeople to negotiate longer-term placements with advertisers. Programmatic direct transactions involve one seller and one buyer. The publishers’ own ad servers manage the inventory of available advertising spaces and are responsible for the decision logic underlying the final choice of which ad to serve, based on the direct deals reached between the publisher and advertisers. According to Google’s internal analysis, large news publishers keep 95% of the revenue when they sell advertisements in this way. eMarketer estimates that programmatic direct represents about three-quarters of programmatic digital display advertising, due primarily to the prominence of social media websites, which account for just over half of all programmatic display advertising spending.

Indirect Programmatic Sales Process: Smaller Publishers

A publisher cannot forecast precisely how many of its ad spaces will be available to sell directly to advertisers because its inventory depends on how many users actually visit the publisher’s website. For this reason, a publisher may find itself with unsold surplus inventory. Enabling publishers to sell inventory that otherwise might be surplus was the original impetus for the development of a specialized indirect distribution channel, whereby publishers sell their ad inventory indirectly to advertisers via auctions. Real-time bidding (RTB) is an auction-based approach used to buy or sell advertising inventory.

Indirect sales, which account for about one-quarter of programmatic digital display advertising, occur via RTB through centralized electronic trading venues called ad exchanges and through networks of publishers and advertisers. Publishers that sell this way permit ad exchanges to auction off some or their entire inventory to advertisers in real time; in return, the ad exchange or network retains a portion of the proceeds. Figure 5 illustrates how a display advertisement sold via indirect advertising appears to certain readers of an online newspaper’s website. Based on individual behavioral data, different readers viewing the same article might see different digital display advertising.

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113 Evelyn Mitchell et al., Programmatic Advertising Explainer, Insider Intelligencer eMarketer, July 2022, p. 4.


Most online publishers in the United States sell at least some of their inventory to advertisers indirectly. However, smaller publishers, including those of local newspapers, are more likely than large publishers to rely exclusively on the indirect programmatic sales process. The Australian Competition and Consumer Commission (ACCC), in its December 2020 interim report, explained that

> "for many small advertisers and publishers that currently engage in the ad tech supply chain, the costs involved in relying on direct negotiation for a large proportion of their display advertising may be prohibitive.... [I]n comparison to selling via the ad tech supply chain, many publishers may not have the time, resources or expertise to sell all ad inventory on [their] website[s] via direct deals and programmatic direct. As such, publishers may lose potential revenue if they do not also sell inventory via the ad tech supply chain."

As of 2022, about 42% of indirect programmatic sales spending went to ad tech intermediaries in the form of fees. eMarketer notes that “fees vary greatly by partner, and not every ad tech intermediary is always upfront (or consistent) about how much they take.” The extreme complexity of the indirect programmatic advertising sales process contributes to what a British study describes as “a markedly opaque supply chain.”

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120 Evelyn Mitchell et al., Programmatic Advertising Explainer, Insider Intelligencer eMarketer, July 2022, p. 10.

121 Ibid.

122 ISBA and PwC May 2020 Study, p. 7.
According to the December 2020 ACCC Interim Report, “The opaque and complex nature of the ad tech supply chain can mean that ... [i]t may ... be difficult for stakeholders to know whether [ad-tech intermediaries are engaging in] conduct such as self-preferencing.”123 In an effort to enable newspaper publishers to keep more digital advertising revenue that would otherwise flow to ad tech intermediaries, an independent advertising agency launched a campaign in February 2021 to encourage U.S. companies to, among other actions, pledge to reallocate 20% of their programmatic advertising budgets directly to local news sources.124

Advertising Technology Stack and Related Antitrust Lawsuits

As Figure 6 illustrates, Google has a presence in each component of the tools and software that publishers and advertisers use to transmit online advertisements to users, also known as the advertising technology stack (ad tech stack). State and foreign government officials allege that Google’s various roles in the advertising technology stack incentivize and enable it to prioritize its own interests above those of its customers, including newspaper publishers and advertisers, and to generate higher fees than it could in a competitive market.

Figure 6. Google’s Presence in Advertising Technology Stack

Components of Advertising Technology Stack

Ad servers store and manage ads from a variety of advertisers and automate the process of selecting which ads to serve to which visitors on certain web pages. Ad servers also gather data about how users interact with the ads displayed to them. Publishers tend to focus on using ad servers to manage their ad inventory and reporting, while advertisers tend to focus on using them for managing the creative features of their advertising campaigns.

An ad exchange is a digital marketplace that enables advertisers and publishers to buy and sell display and mobile advertising inventory, often through real-time auctions. Ad exchanges that serve the interests of both publishers and advertisers are transparent and neutral when routing information about the parties’ asking and bidding prices.


Note: Some advertisers work with ad agencies to purchase online advertisements; others do not.


A supply side platform (SSP) is a piece of software used to sell publishers’ digital display advertising inventory.

Google integrates its publisher ad server and SSP in its “Ad Manager” product.127 Other companies integrate these two pieces of technology as well. Nevertheless, ad servers and SSPs perform separate functions. SSPs focus on allowing publishers to sell their remnant ad space conveniently, whereas ad servers are what ultimately allow an advertiser’s ads to be served to a publisher’s website.128

SSPs that act in publishers’ interests connect the publishers to multiple exchanges, allowing a range of potential buyers to purchase advertising space. As described in “U.S. Allegations Regarding Google’s Conduct,” the state attorneys general contend that by preventing publishers from doing this, Google enabled its Ad Manager product to prioritize its own interests over those of publishers.129

A demand-side platform (DSP) is a piece of software used by advertisers (or their agencies) to buy digital display advertising inventory in an automated fashion. DSPs allow advertisers to buy impressions targeted to specific users across a range of publisher sites, via multiple exchanges.130 DSPs acting in advertisers’ interests enable them to buy a wide range of ad inventory at the lowest possible price.131 Similarly to SSPs, many DSPs integrate advertiser ad server functions.132

An ad network is an aggregator that purchases display and mobile ad inventory from smaller publishers and then resells it to advertisers.133 The network enables advertisers to reach users across many publishing sites (e.g., local newspapers’ sites) that are not large enough to trade their inventory in an exchange. Examples of ad networks featuring newspapers include the USA TODAY Network, a joint venture of Gannett and McClatchy,134 and Zeus Prime, which includes newspaper websites owned by the Washington Post, the Dallas Morning News, Tribune Publishing, MediaNews Group, and McClatchy.135 Google operates its own network, called Google Display Network, which is composed of Google properties such as YouTube, Gmail, and millions of third-party publisher sites.136 AdMob is Google’s mobile ad network for apps.137

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128 March 2021 AdButler blog.
131 December 2020 ACCC Interim Report, p. 15.
132 March 2021 AdButler blog.
137 Google, Google AdMob, “Earn more revenue with your apps,” at https://admob.google.com/home/?gclid=EAIaIQobChMIImWXXIou9QIVVuhICslxQw5WEAAYASAAEgLHPDBwE&gclsrc=aw.ds.
U.S. Allegations Regarding Google’s Conduct

In 2023, the U.S. Department of Justice (DOJ) and attorneys general from 17 states filed a civil antitrust suit in the U.S. District Court for the Eastern District of Virginia against Google.138 The suit alleges that the company engaged in monopolization of markets and unlawful tying of several online advertising technology products in violation of Sections 1 and 2 of the Sherman Antitrust Act of 1890 (Sherman Act).139 Section 1 of the Sherman Act (26 Stat. 209, Ch. 647) prohibits contracts or conspiracies in restraint of trade or commerce; Section 2 prohibits monopolization or attempted monopolization.140 According to DOJ, “[a]s a result of its illegal monopoly, and by its own estimates, Google pockets on average more than 30% of the advertising dollars that flow through its digital advertising technology products; for some transactions and for certain publishers and advertisers, it takes far more.”141

Likewise, in 2021, attorneys general from 16 states and the Commonwealth of Puerto Rico, led by Texas Attorney General Ken Paxton, filed suit against Google LLC, alleging the company’s conduct in the advertising technology stack violated antitrust laws.142 In January 2022, Google filed a motion to dismiss the lawsuit, claiming that (1) the regulators failed to plausibly allege anticompetitive conduct, and (2) the regulators waited too long to file suit.143

In September 2022, U.S. District Court Judge P. Kevin Castel issued an opinion and order finding that several of the states’ allegations against Google were plausible and permitting their lawsuit to go forward. Specifically, Judge Castel found that the state plausibly alleged that Google violated the Sherman Act (15 U.S.C. §§1-2) by, among other actions, engaging in anticompetitive conduct to

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140 DOJ January 2023 Complaint.
141 DOJ January 2023 Complaint.
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- willfully acquire or maintain monopoly power in the markets for ad exchanges, publisher ad servers, and demand-side platforms (also called ad-buying tools) for small advertisers (Count I, alleging violation of §2 of the Sherman Act);
- attempt to monopolize the markets for ad exchanges, demand-side platforms for small advertisers, and demand-side platforms for large advertisers (Count II, also alleging violation of §2 of the Sherman Act); and
- use its market power in the ad exchange market to coerce publishers to use its publisher ad server, thereby unlawfully tying two separate and distinct products (Count III, alleging violations of §1 and §2 of the Sherman Act).\footnote{Google Digit. Advert. Antitrust Litig., No. 21-md-3010 (PKC), (S.D.N.Y. Sep. 13, 2022). The judge dismissed a fourth count, in which the states alleged that Google had reached an unlawful agreement with Facebook to thwart competition in the ad exchange market, in violation of Section 1.}

In March 2023, a federal judge refused to permit Google to transfer DOJ’s case from Virginia to New York, where Google is defending itself against antitrust allegations from Texas, et al. and private plaintiffs.\footnote{Brian Koenig, “Google Can’t Transfer DOJ Ad Case from Va. to NY,” Law360, March 10, 2023.} DOJ and the states are seeking to convince the courts to require Google to divest its publisher ad server and ad exchange, enjoin the company from engaging in anticompetitive practices, reimburse them for legal fees, and pay fines.\footnote{DOJ January 2023 Complaint, pp. 139-140. Texas, et al. v. Google, January 2022 3rd Amended Complaint, pp. 208-216.}

**International Allegations Regarding Google’s Conduct**

International government authorities have also alleged or are investigating allegations that Google has leveraged market power in the advertising technology stack to thwart competition.

The United Kingdom’s Competition and Markets Authority estimated that large publishers using Ad Manager (a Google ad server) retain, on average, 70%-80% of advertising revenue received by Google, whereas small publishers using AdSense (another Google ad server) for content retain, on average, 60%-70% “of the revenues earned by Google from advertisers.”\footnote{July 2020 CMA Report, Appendix R, p. R14.}

The authority’s July 2020 report stated, “In acting simultaneously on behalf of publishers and advertisers, Google faces strong conflicts of interest. It has been able to leverage the market power from its owned-and-operated advertising inventory [e.g., on YouTube] into the open display market and within the ad tech stack, making it harder for third-party intermediaries to compete.”\footnote{Ibid., p. 211.}

The Australian Competition and Consumer Commission, in its August 2021 final report, stated

> Google has engaged in conduct which has had the cumulative effect of restricting or limiting the ability of its rivals to compete in the supply of ad tech services. Google has also engaged in conduct in the supply of ad tech services that promotes its own interests ahead of the parties it serves (advertisers and publishers). Google has been able to do this given its dominance in key parts of the ad tech supply chain, and its control of key services.”\footnote{ACCC, Digital Advertising Services Inquiry: Final Report, August 2021, p. 132, at https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf.}

\footnote{144 Google Digit. Advert. Antitrust Litig., No. 21-md-3010 (PKC), (S.D.N.Y. Sep. 13, 2022). The judge dismissed a fourth count, in which the states alleged that Google had reached an unlawful agreement with Facebook to thwart competition in the ad exchange market, in violation of Section 1.
148 Ibid., p. 211.
In June 2021, France’s Autorité de la concurrence, following referrals from several newspaper publishers, issued a decision sanctioning Google, up to 220 million euros, for having abused its dominant position in the advertising server market for website and mobile applications publishers. The press groups—including those who were at the origin of the referral to the Autorité—were affected even though their economic model is also strongly weakened by the decline in sales of print subscriptions and the decline in associated advertising revenue.150

Also in June 2021, the European Union’s European Commission opened a formal antitrust investigation to assess whether Google has violated [European Union] competition rules by favouring its own online display advertising technology services in the so called “ad tech” [stack], to the detriment of competing providers of advertising technology services, advertisers and online publishers. The formal investigation will notably examine whether Google is distorting competition by restricting access by third parties to user data for advertising purposes on websites and apps, while reserving such data for its own use.151

Google’s Response to U.S. Lawsuits

Google claims these allegations mischaracterize both its role and the degree of competition in the ad tech market. First, Google states that DOJ and state attorneys general are attempting to reverse U.S. antitrust agencies’ prior approvals of Google’s acquisition of ad tech firms in 2008 and 2011. In addition, Google states that it does not condition publishers’ access to its exchange on their use of its ad server. Third, Google states that competing firms—including Amazon, Comcast, and Microsoft—operate integrated ad tech stacks. Fourth, Google states that it sought to improve upon, rather than shut out, competing technologies. Google also states that its tools “help advertisers bid more efficiently and help publishers make more money.” Finally, Google states, “we don’t have a duty to bid on rival auctions.”152

Additional Antitrust Lawsuits Against Technology Firms

Additional antitrust lawsuits do not specifically mention newspaper publishers but may affect their revenue through licensing and subscriptions. This section briefly discusses a selection of these lawsuits.


Facebook: Alleged Monopolization of Social Media

The Federal Trade Commission (FTC), in an ongoing lawsuit, alleges that Meta engaged in anticompetitive conduct to monopolize personal social networking services. In January 2022, the U.S. District Court for the District of Columbia denied Meta’s motion to dismiss the case and allowed the FTC to continue with its allegation that Facebook maintained monopoly power through Meta’s anticompetitive acquisitions, such as WhatsApp and Instagram. One of the remedies proposed by the FTC is requiring Meta to divest its assets, including Instagram and WhatsApp.

Increasing competition among personal social networking services might reduce Facebook’s relative bargaining power in negotiations with newspaper publishers, such as if and how much revenue publishers receive.

Apple and Google: App Store Policies

Apple and Google charge a 30% commission for apps sold on their respective app stores, as well as in-app purchases, if the owner of the app earns more than $1 million in annual revenue; businesses that generate less than $1 million in annual revenue pay a 15% fee. For subscription-based apps, Apple collects a 30% commission during the first year on its App Store and a 15% commission thereafter. News publishers that participate in the Apple News app and meet certain requirements pay 15% for the first year, rather than 30%, since September 2021. Google charges a 15% commission for automatically renewing subscription products, regardless of the revenue earned by the developer, and 15% or less for developers that qualify under certain programs.

Apple and Google have been engaged in multiple lawsuits for their app store policies. For example, Epic Games—the producer of the video game Fortnite—filed separate lawsuits against Apple and Google, claiming that the companies are monopolists engaging in anticompetitive behavior with their app store policies. On September 10, 2021, a federal district court ruled that although Apple had a “considerable market share of over 55% and extraordinarily high profit

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159 Motion for Temporary Restraining Order, Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640 (N.D. Cal. August 17, 2020); Complaint for Injunctive Relief, Epic Games, Inc. v. Google LLC et al., No. 3:20-cv-05671 (N.D. Cal August 13, 2020).
margins,” Epic Games “failed in its burden to demonstrate Apple is an illegal monopolist.”

However, the court found that Apple engaged in anticompetitive conduct through its anti-steering provisions—a violation of California competition law—and ruled that Apple cannot prohibit developers from providing external links and other actions that allow customers to make purchases outside of the app within 90 days. Apple and Epic Games appealed the decision, and on April 24, 2023, the U.S. Ninth Circuit Court of Appeals upheld the ruling from the federal district court. The lawsuit against Google is ongoing.

The court rulings in these cases may result in app stores reducing the fees charged to the owners of apps, including news publishers.

**Google: Alleged Monopolization of Search Engine**

In October 2020, DOJ, along with 11 state attorneys general, filed a lawsuit against Google in the U.S. District Court for the District of Columbia “to stop Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets and to remedy the competitive harms.” The lawsuit is ongoing.

The News Media Alliance, a trade organization representing newspaper publishers, has argued that Google uses its dominance in search to promote its news aggregator and that Google’s Accelerated Mobile Pages has made it difficult for publishers to form direct relationships with their readers.

**Potential Legislative Actions**

Bills introduced in the 117th and 118th Congresses to support newspaper publishers and journalists fall into two main categories: some would amend antitrust laws in ways that might enable newspaper publishers to generate more revenue, while others would support newspaper publishers with grant funding and tax breaks. Below are selected examples.

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164 Additional lawsuits have been filed subsequently (see, for example, Matthew Perlman, Google Hit with 3rd Monopoly Suit,” Law360, December 17, 2020, at https://www.law360.com/articles/1338900). For more information about the lawsuits, see CRS Legal Sidebar LSB10544, The Google Antitrust Lawsuit: Initial Observations, by Jay B. Sykes; and CRS Report R46875, Antitrust Reform and Big Tech Firms, by Jay B. Sykes.


166 Other bills have been introduced that would affect journalists; this report does not discuss those bills. For example, the Journalist Protection Act (S. 2528; H.R. 4857) from the 117th Congress would have implemented penalties for assaulting journalists, and the Protect Reporters from Exploitative State Spying Act (S. 2457; H.R. 4330) from the 117th Congress would have prohibited a federal entity from compelling a journalist or covered service provider to disclose protected information without a court-issued subpoena or other compulsory process.
Amending Antitrust Laws

Amending Clayton Act to Place Restrictions on Ad Tech Ownership: AMERICA Act

The Advertising Middlemen Endangering Rigorous Competition Accountability Act (AMERICA Act, S. 1073), introduced in March 2023, would amend the Clayton Act to prohibit entities with more than $20 billion in digital advertising revenue from “owning more than part of the digital ad ecosystem.” Specifically, the bill would prohibit such a company from (1) owning both an ad exchange and a supply-side brokerage or both an ad exchange and a demand-side brokerage, (2) owning both a supply-side brokerage and a demand-side brokerage; and (3) owning a supply-side or demand-side brokerage if the entity is also a buyer or seller of digital ads. In addition, the AMERICA Act would require firms that process more than $5 billion in digital ad transactions to act in the best interests of their clients and erect firewalls to prevent conflicts of interest. If enacted, the bill would likely require Google and Facebook to divest significant portions of their advertising businesses.

The bill would potentially affect the amount of revenue newspaper publishers are able to obtain from digital ads. The share of revenue publishers obtain may increase if competition among SSPs and ad exchanges were to increase. However, the total amount of revenue obtained from digital ads could also decrease, depending on the payment structure used. For example, if the digital ads were performance based (e.g., cost-per-click) and the ad exchanges were less effective at targeting ads, the total amount of revenue could decline, decreasing the amount of revenue obtained by newspapers publishers.

Temporary Exemption for Journalism Outlets to Collectively Negotiate: JCPA

The Journalism Competition and Preservation Act of 2023 (JCPA, S. 1094), introduced in March 2023, would provide a temporary safe harbor (i.e., a six-year antitrust exemption) for “eligible digital journalism providers” (e.g., broadcasters, cable networks, and publishers) to collectively negotiate with “covered platforms” (e.g., online platforms that meet certain criteria, discussed below) to distribute their news content.

Certain media outlets would be ineligible for inclusion, under the JCPA’s definition of “eligible entities.” For example, publications that generate less than $100,000 from editorial content or employ more than 1,500 exclusive full-time employees would be ineligible.

Although employee data for individual newspapers are not readily available publicly, reports indicate that this exclusion would apply to the three largest newspapers in the United States: the New York Times, the Wall Street Journal, and the Washington Post. However, the bill does not

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168 Supply-side and demand-side brokerages are essentially SSPs and DSPs, as discussed above in “Components of Advertising Technology Stack.”


include a similar employee limit for publications’ parent organizations.\footnote{As of June 30, 2022, News Corp. had about 25,000 employees, of whom about 9,000 were located within the United States. News Corporation, SEC Form 10-K for the fiscal year ended June 30, 2022, p. 14, at https://investors.newscorp.com/static-files/8c153e10-28ca-48c4-80d0-60e57c7a1c0b.} Thus, for example, other news publications owned by the \textit{Wall Street Journal}’s parent organization, News Corp., including the \textit{New York Post} and \textit{Barrons},\footnote{News Corp., “Our Businesses and Brands,” at https://newscorp.com/news-corp-businesses-and-brands/ (last visited May 21, 2023).} might be eligible.


Pursuant to the JCPA, media outlets eligible for the antitrust exemption would be able to negotiate only with “covered platforms” that meet several criteria. These criteria, measured
during the 12 months preceding the formation of a joint negotiation entity by broadcasters and publishers, would include but are not limited to the following:

- having a minimum of 50 million U.S.-based active users or subscribers;
- being owned or controlled by an entity with
  - U.S. net annual sales or a market capitalization greater than $550 billion, adjusted for inflation based on Consumer Price Index, or
  - at least 1 billion worldwide monthly active users; and
- is not a nonprofit.182

The JCPA would set forth a framework for eligible digital journalism providers to form a joint negotiation entity, including the provision that each eligible digital journalism provider shall be eligible to one vote on any matter submitted to a vote of the members.183 In addition, the bill would specify permitted and prohibited conduct for the joint negotiations, including a requirement that parties negotiate in good faith.184

Under the JCPA, parties would be required to file copies of the following with the FTC and the Assistant Attorney General in charge of DOJ’s Antitrust Division no later than 60 days after execution/issuance: (1) any written agreements and (2) any arbitration decisions.185 In addition, eligible digital journalism providers would be required to provide public transparency regarding the use of any funds to support operations to maintain or enhance news production and distribution, including public reporting regarding the amount of funds received each year under or related to each such agreement or decision.186 The bill would prohibit covered platforms and joint negotiating entities from discriminating on the basis of the eligible digital journalism provider’s size or views expressed by its content.187 Parties alleging a violation of the bill’s provisions related to negotiations, discrimination, and retaliation would be allowed to bring a civil action in an appropriate district court.

Support for News Publishers

Tax Breaks for News Publishers, Advertisers, and Subscribers

The Local Journalism Sustainability Act (H.R. 3940; S. 2434) from the 117th Congress would have allowed individual and business taxpayers to receive tax credits for supporting local newspapers and media. Specifically, individual taxpayers might claim an income tax credit of up to $250 for a local newspaper subscription. The bill would have also allowed local newspaper employers a payroll tax credit for wages paid to an employee for service as a local news journalist and certain small businesses a tax credit for local newspaper and media advertising expenses.

182 For example, Meta estimates that its worldwide monthly active users across its “Family of Apps” (i.e., Facebook, Instagram, and What’s App) collectively was 3.74 billion as of December 31, 2022, and Facebook’s worldwide monthly active users were 2.96 billion as of December 31, 2022. Meta Platforms, Inc., SEC Form 10-K for the fiscal year ended December 31, 2022, p. 56.
183 S. 1094, §3(a)(1)(D).
184 S. 1094, §3(b).
185 S. 1094, §5(c).
186 S. 1094, §6(c).
Establishment of Local News Committee

The Future of Local News Act of 2021 (H.R. 3169; S. 1601) from the 117th Congress would have created the Future of Local News Committee to examine the state of local news and make recommendations related to the ability of local news to meet information needs. The bill would have directed the committee to recommend mechanisms that the federal government could implement to support the production of local news, such as the creation of a national endowment for local journalism. The committee would have comprised 13 members, including eight appointed by congressional leadership.

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