September 2020

Levelling the Digital Playing Field

NEWS MEDIA CANADA

MÉDIAS D'INFO CANADA

News Media Canada
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Briefing Notes

The Value of Journalism and Historical Background

- **Credible news continues to be in high demand and of value to Canadian society.**
- High-quality journalism provides Canadians with ongoing awareness of issues affecting communities, government, industry, the environment, healthcare, education, the criminal justice system, and other topics. **Credible news is central to ensuring accountable politics, successful elections, and is essential to democracy.**
- Historically, news publishers have been the primary providers of original news, and they remain poised to continue to be so – more than radio and television.
- In the past, the main revenues for newspapers were subscriptions and paid ads. Digital ads began appearing in the 1990s, and they became an increasing source of revenue after the Great Recession and the decline of traditional revenues sources.
- Newspaper publishers pivoted to digital, and they achieved initial success with online advertisements and electronic subscriptions as revenues sources.
- **Independently, across-the-board digital information platforms began to emerge. They transformed the digital advertising world while the dominant digital platforms, led chiefly by Google and Facebook, came to grip the market.**

Market Failures and Digital Platforms

- **Google and Facebook have an effective duopoly in the market for digital ads, segmented between search (Google) and social media (Facebook).**
- **Their dominance gives them market power** – they dictate unfair terms to publishers on the use of their content, including anticompetitive outcomes and accessing the publishers' content, audience, and data without transparency or compensation.
- Consequently, the Canadian news media faces unaddressed market failure conditions, ones threatening the competitive supply and distribution of news in Canada. The market power and practices of the dominant platforms have caused this failure.
  - The dominant digital platforms, with entrenched network effects, control 60% to 90% of the digital advertising market – which gives them market power to impose unfair and anticompetitive terms on news publishers.
  - Google controls the "ad tech stack" to intermediate between ad buyers and sellers. It dictates the prices and keeps and difference for itself through its control of the exchanges in advertising markets on both sides of the transaction.
  - To cement its market power, Google has made its ad tech stack inoperable with other potential intermediaries, shielding them from competition.
- **The Canadian and global news industry faces these anticompetitive practices, resulting in market failure conditions threatening access to credible news. Canada's peer nations are moving to address these issues in their media ecosystems.**

Solutions and Pathways Forward

- To address these market failures and anticompetitive behavior by the duopoly, Australia has developed and is in the process of implementing policy solutions.
- **Our recommendation is to follow the lessons learned and path outlined in Australia to restore competitive balance in market conditions, which includes:**
  - Expanding the intellectual property rights publishers have over their content (and user data) and requiring platforms license such content before using it.
  - Ordering platforms and publishers to negotiate and set fair market prices for licenses, including **allowing publishers to collectively bargain against platform market power, and arbitration if no voluntary deal is reached.**
  - Require digital platforms to disclose to publishers' data on the publishers' audience and prohibiting retaliation against publishers, such as by blocking their content, with the legal authority to impose large fines for such violations.
- **We have estimated the Australian code, if brought to Canada, would permit publishers to recover $620 million in annual revenues as competitive compensation for supplying news content.** We have estimated the potential decrease in Canadian publishers' revenues between 2019 and 2023 to be between $500 million and $600 million per year, implying such a pathway would make up for much of this revenue decrease.
- Our findings show the Australian example has the strongest potential for supporting the supply of journalism demanded in Canada, of improving the Canadian economy, and the most robust process for bringing the dominant digital platforms and the publishers to a competitive and fair negotiating table with one another.

Economic Impact Analysis

- Based on data submitted by publishers and other economic data, we have estimated there are currently approximately 3,100 print journalists in Canada.
- Implementing a similar code to Australia in Canada would maintain the viability of roughly 700 journalists' jobs – **and not just their jobs, but the content they produce and that is in demand by Canadian citizens on developments in their communities.**
- Maintaining the viability of those 700 journalists' jobs would have further positive knock-on effects for the Canadian economy, which would include:
  - Maintains the viability of 2,100 jobs in news publishing (the additional 1,400 includes the supporting personnel working at news publishers in management, administration, sales, printing, binding, and various distribution activities).
  - Supports 6,900 jobs in total. The 4,800 jobs supported outside of news publishing includes its suppliers (e.g., paper manufacturing and IT services) and employment supported by consumer expenditures (e.g., in the retail sector).
  - Supports $715 million in annual GDP and $236 million in annual federal taxes.

Introduction

Digital advertising first appeared in the 1990s with simple banner advertisements. During this era, news media publishers[1] monetized their content to pay for their costs through the sale of and ads within print products. Multiple news media companies operated and competed across Canada and its metropolitan areas. The Great Recession brought change when sales of print advertisements, and particularly of classifieds, began to decline. Conversely, because of technology, uneven regulatory environments, and network effects, digital ads recovered much quicker than the subscriptions and print advertisements traditionally supporting news publishers.

With the slow recovery in classified advertisements after the Great Recession, publishers pivoted to digital advertising and subscriptions. Publishers began to see some success, including double-digit year-over-year digital advertising growth. However, with the benefit of insurmountable network effects, the digital advertising market reached a tipping point where the dominance of technology platforms,[2] chiefly Google and Facebook, became entrenched. The dominant digital platforms exercise monopoly power. This creates a market where news publishers are coerced to accept anticompetitive and unfair terms regarding the use of their content.

This report will describe the issues facing the Canadian news publishing industry and demand for high-quality and independent journalism. Furthermore, we will describe the risk news consumers have of losing access to the same because of the dominant platforms.

We have organized this report into several chapters on different topics. The first chapter discusses market failures created by the technology firms' dominance of digital advertisements, abuse of publishers' intellectual property rights, and the failure of the market to take account of the positive effects on Canadian politics, society, and culture of high-quality journalism.

The situation is a serious and problematic one for the state of the Canadian news ecosystem, but potential solutions exist. The second chapter of the report describes the potential pathways to sustainability and competitiveness for Canadian news publishers through changes to government policy. Some of Canada's peer nations, especially Australia and France, are already moving forward with these policies to address the same set of market failures.

The third chapter examines the economic impacts of the potential pathways. Economic impact analysis studies if the pathways would accomplish their policy goals. These include supporting a substantial number of journalists producing original Canadian content, supporting the support personnel (e.g., IT and customer support) journalists need to deliver their content to the public, supporting Canadian jobs generally, and supporting federal tax revenues.

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[1] Defined as newspapers and related print and online media producing original journalistic content

[2] For a discussion of the differences between a "publisher" and a "platform" with Facebook as an example, please see Sam Levin, "Is Facebook a publisher," *The Guardian*, 3 July 2018, https://www.theguardian.com/technology/2018/jul/02/facebook-mark-zuckerberg-platform-publisher-lawsuit

Executive Summary

Preserving a Functioning Journalism Industry

Citizens globally are continuing to demand high-quality journalism and investigative reporting. Nonetheless, the ability of news publishers to continue providing such critical information is under threat by the market power and preferential regulatory treatment of the dominant platforms for digital information. Democratic governments are recognizing the market failures in the market for news, and they are working now to implement policies to address them.

France, Spain, the U.K., and Australia have already passed regulations to level the playing field, reduce the effects of platforms' market power, and to restore balance and fairness in the markets for digital advertising and digital news distribution. Other countries, including the U.S., are analyzing the market dominance of digital platforms. They are developing regulatory reforms, legislation, or beginning antitrust proceedings to rectify platforms' market dominance.

We bring a discussion of these global trends to the Canadian context.

Consumer Demand for News Remains High

Demand for credible and professional news remains as strong as ever in Canada. The function of independent journalism underpins democracy. It holds government and business leadership to account, informs the citizenry before and after elections about matters of public interest, helps to connect local communities, and provides valuable cultural content.

Figure 1 – Estimated news publisher unique digital visitors by year (millions)

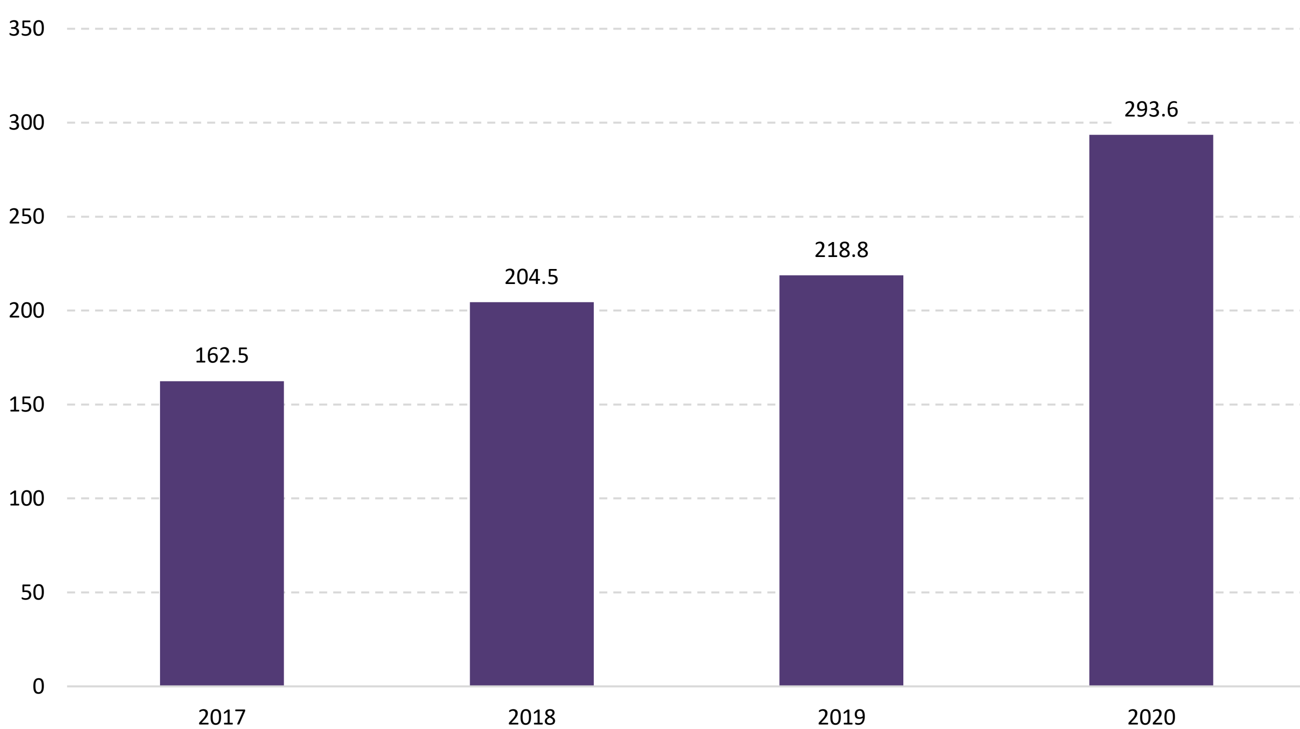


Figure 1 substantiates this point about growing demand for digital news. In 2017, news publishers had an estimated 162.5 million unique digital visitors. We project an 81% increase between 2017 and 2020 with unique digital visitors of 293.6 million by the end of this year.

Canadian news publishers have a large digital audience with rapid year-over-year growth, but it is no match for the market power enjoyed by digital platforms. Digital platforms dominate distribution of digital news because of the sheer number of eyeballs they attract and their control of advertising exchanges. Consequently, they extract unfair terms from news publishers without offering fair compensation for the utilization of the publishers' news content.

Despite the demand for and the value of news content, the suppliers of that content (newspaper publishers) face anticompetitive market conditions threatening the sector. Market failures such as these warrant necessary interventions to level the playing field and allow markets to function in competitive ways. These market failures are present in both the technical sense but also in the "common sense" way that a product desired by consumers – see the demand for digital news in Figure 1 – might see its supply greatly jeopardized or eliminated.

Approaching Market Failure

In economic theory, a "market failure" occurs when participants in a market do not produce an economically and socially optimal outcome because of nonmarket factors. Examples might include regulatory barriers to entry or market power. Market failures can take several forms, and several of them are applicable to the market for digital ads and news in Canada.

The most pressing failure is the result of the market power of Google and Facebook. Google and Facebook are an effective duopoly over the market for digital advertising in Canada and its peer nations, and they have segmented the market between search (Google) and Facebook (social media), which limits the direct competition between the two.

Google and Facebook have profound economies of scale and interconnected networks valuable to users, which prevents effective competitors from arising. With their market power, they have control of the distribution of digital news and the market for digital advertising.

The estimated market share for Google and Facebook is over 75% of markets for digital advertising in Canada. This asymmetry in market power results in unfair terms imposed on news publishers who develop original journalism, engendering a decrease in the quantity and quality of the same and threatening the supply of the same to the Canadian people. Rectifying these market failures would require a new regulatory framework for the market for digital advertising, a fact recognized and being explored by several of the advanced democracies worldwide.

Potential Pathways Forward

One chapter of this report outlines various governmental pathways forward to a competitive and healthy newspaper sector. The chapter after that provides an economic impact analysis of the likely economic and fiscal consequences of implementing these pathways.

Our recommended pathways forward include the following:

- **Competitive Negotiating Framework** – Our strongest recommendation is adopting the process outlined in Australia. To summarize, Australia is expanding the intellectual property rights that publishers have over content. Australia is then requiring platforms and the publishers to negotiate, while allowing the publishers to band together to collectively bargain against the market power of the dominant platforms, the price of licensing the publishers' content. If voluntary negotiation fails, the Australia requires the platforms and publishers enter binding arbitration of a specified length.

  Australia would prohibit platforms retaliating against publishers before or after negotiations. This includes requiring digital platforms to disclose to publishers the data collected on their audience and preventing digital platforms from blocking or discriminating against publishers' content. Violations of these requirements would mean hefty fines.

  France has also expanded the intellectual property privileges of publishers with its Press Publishers' Right ("PPR"). France legislated PPR before Australia began its process, but the Australian process is a stronger approach to the market failures.

- **Governance Framework** – All these policy changes would require regulatory and legislative changes to bring them about. To ensure the proper implementation of these policies, we recommend the following regulatory changes in Canada:
  - Establish a federal digital media regulatory agency to oversee digital platforms and the digital economy on an ongoing basis.
  - In a similar way to Australia, require platforms to negotiate for licenses to publishers' content within 90 days. If voluntary negotiations fail during the 90 days, then bring each side to the table for binding arbitration lasting 45 days.
  - Allow publishers to collectively bargain (on a voluntary basis) to ensure balanced negotiations against the market power of the platforms.
  - Platforms must recognize and prioritize original news content.
  - Platforms must give 28 days' notice of any algorithm changes affecting publishers.
  - Publishers can control the moderation of user comments.
  - If necessary, breakup the ad tech stack and/or require interoperability for market entrants. This will help ensure the market for digital advertising becomes more competitive and thereby bring about fairer pricing.
  - **Significant** penalties for noncompliance with any of these regulations.

Economic Impact of the Pathways Forward

In our last chapter, we have assessed the potential economic impact of the pathways forward. We have used IMPLAN, a widely recognized economic model, which analyzes the effects of policy on the economy. IMPLAN reports results for specific industries, such as publishers, along with employment, gross domestic product ("GDP"), and federal tax revenues.

Table 1 summarizes the results of the economic impact analysis. At present, we estimate there are approximately 3,100 print journalists working in Canada. That is roughly one-third of the employees of the print media sector (the others being in operations and management).

Table 1 – Economic and fiscal impacts of the Australia Precedent

Category	Result
Journalists	700 journalists *(23% of total)*
Print Media Jobs	2,100
Canadian Jobs	6,900
Canadian GDP	$715 million per year
Federal Revenues	$236 million per year[3]

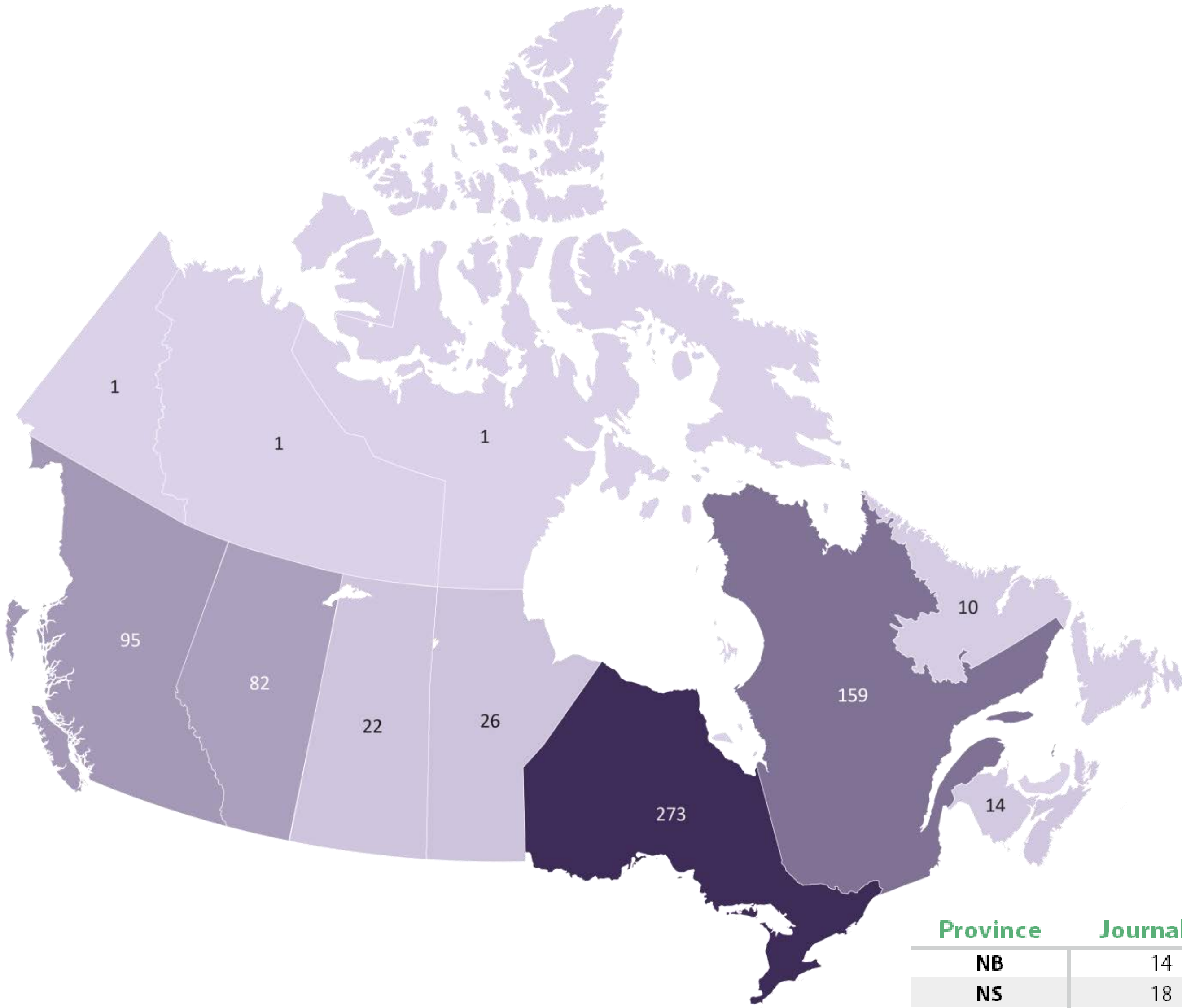
Adopting a set of solutions like the ones in Australia would have a significant and positive impact on the Canadian print media sector and the economy overall. According to Table 1, such measure would support 700 journalists' jobs, or roughly 23% of all print journalists nationally. The pathway would also support 6,900 jobs overall, $715 million in annual GDP, and $236 million in annual federal tax revenues through increased activity leading to higher tax collections.

Figure 2 shows the estimated number of journalists supported by the Australian code by province and territory. We have allocated the national results between subnational regions based on each region's share of population. Adopting the Australian process in Canada would support over 250 print journalists in Ontario covering regional and national politics, over 150 in Quebec covering its regional interests, and commensurate numbers in the others.

These journalists would divide between urban areas and their topics as well as rural areas and topics relevant to those audiences. For instance, in Alberta, a reasonable estimate would be 25 of the 82 would work in Calgary, another 25 of the 82 would work in Edmonton, and the remaining 32 would concentrate on subjects covering the news for the rest of the province.

[3] Includes only revenues from increased economic activity

Figure 2 – Map of journalists supported by the Australian code



Province	Journalists
NB	14
NS	18
PEI	3

Report Organization and Overview

Our report consists of several chapters. The first chapter addresses the nature of the market failure for digital advertising in Canada (and indeed, around the globe) at present. The second chapter then examines and discusses potential pathways forward and makes recommendations to follow the path and precedent set by government leaders in Australia. The last chapter summarizes the economic impact results, which we previewed and abridged in Table 1 and Figure 2. We have also included appendices with additional technical details, further descriptions of the market failures, and tables documenting the detailed sector-by-sector results from IMPLAN.

Failures in the Market for Digital Media

Status of the Canadian News Media Market

Canada is facing a set of issues very similar to those faced by all "developed nations"[4] – the digital advertising market and the distribution of online news is dominated by a small number of digital platforms. Australia, France, the U.K., and the U.S.[5] have already implemented or are seeking to implement policy changes to address the market failures, the dominance of digital platforms, and protect the publishing of credible news for the value it has to democracy.

News publishers are the largest source of original investigative reporting, newsgathering, and of factchecking in Canada. The dominant digital platforms use this content without providing a fair level of compensation to publishers. Platforms have no reporters and "free ride" on the content publishers create (at their expense) to bring users to their platforms. If this free riding continues, Canada's news media ecosystem might lose these vital and proven sources of reputable news. It is unclear who, if anyone, would enter the market in a timely and effective way to replace the news publishers and their value proposition for Canadian society.

- News publishers have a track record of providing Canadians with one of the major sources of comprehensive, timely, and credible news.
- Credible news is essential to inform the citizenry of a democracy about developments in government, business, and other important matters affecting daily life, such as the environment, healthcare, education, law, and criminal justice.
- Credible and independent news is essential for fair and informed elections. It is a foundation for the accountability necessary for democratic government.

To be clear, all news companies have dramatically shifted their business models to digital. A slow adaptation is not an issue nor is it related to market failures. Due to the market failures, news publishers are experiencing anticompetitive market conditions and face tremendous uncertainty. Simultaneously, digital platforms thrive by dominating the market for advertising spending in anticompetitive ways – most notably market power. Together, Google and Facebook have over a 75% share of the market for digital advertising in Canada.[6]

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[4] Typically defined as the members of the Organization for Economic Cooperation and Development ("OECD"), which includes high-income nations in North America, parts of South America, much of Western Europe and Northern Europe, as well as Japan, South Korea, Australia, and New Zealand, please see, "List of OECD members," *Organization for Economic Cooperation and Development*, https://www.oecd.org/about/document/list-oecd-member-countries.htm

[5] The U.S. Department of Justice and "about a dozen states" are proceeding with an antitrust lawsuit against Google's parent company, please see Ben Brody, David McLaughlin, and Naomi Nix, "U.S. Google Antitrust Case Set to Expand," *Bloomberg*, 11 September 2020, https://www.bloomberg.com/news/articles/2020-09-12/u-s-google-antitrust-case-set-to-expand-with-gop-states-joining

[6] "Media and Internet Concentration in Canada, 1984 – 2018," Canadian Media Concentration Research Project, December 2019, http://www.cmcrp.org/media-and-internet-concentration-in-canada-1984-2018/

Conditions for publishers have recently become worse because of plunging advertising revenues during the COVID-19 economic crisis. Overall, we forecast Canadian newspaper revenue will decline 40% from 2019 to the end of 2020 based on data from publishers.

Figure 3, Figure 4, and Figure 5 show this evolution in the Canadian market for digital advertising. Figure 3 shows the growing importance of digital advertising in the advertising market generally. Internet-based advertising revenue in Canada grew from $2.2 billion in 2010 to $8.6 billion in 2019, which is nearly a quadrupling in less than a decade. Figure 4 simplifies Figure 3 to show breakouts for Canadian newspapers, digital ads, and through other channels.

Figure 3 – Canadian advertising spending by media type ($ billions)

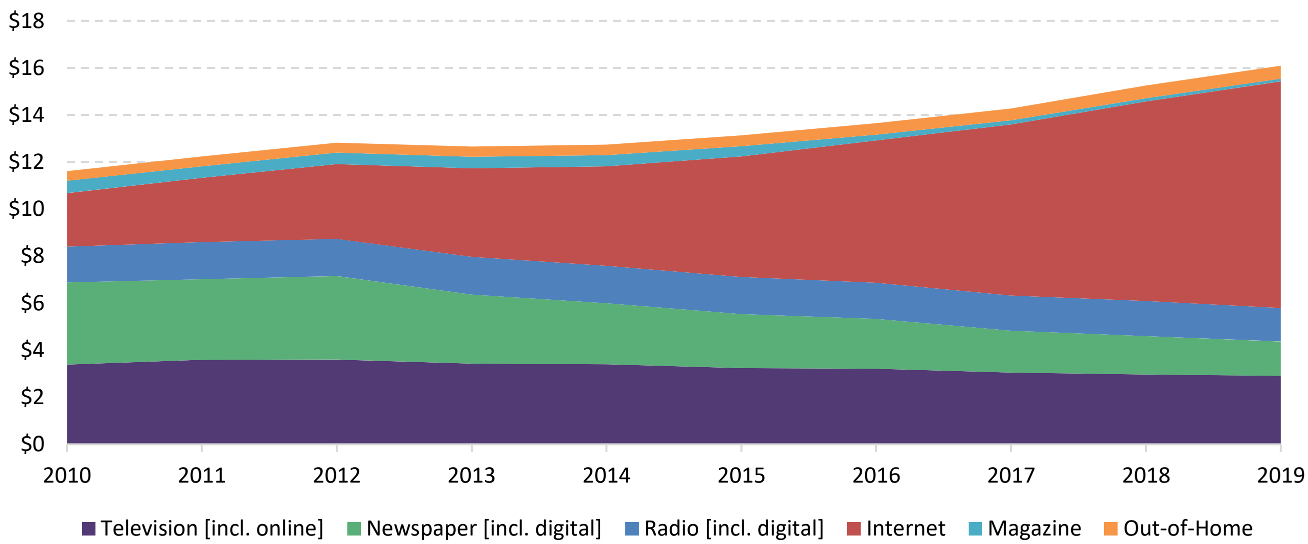


Figure 4 – Canadian advertising spending by advertising category ($ billions)

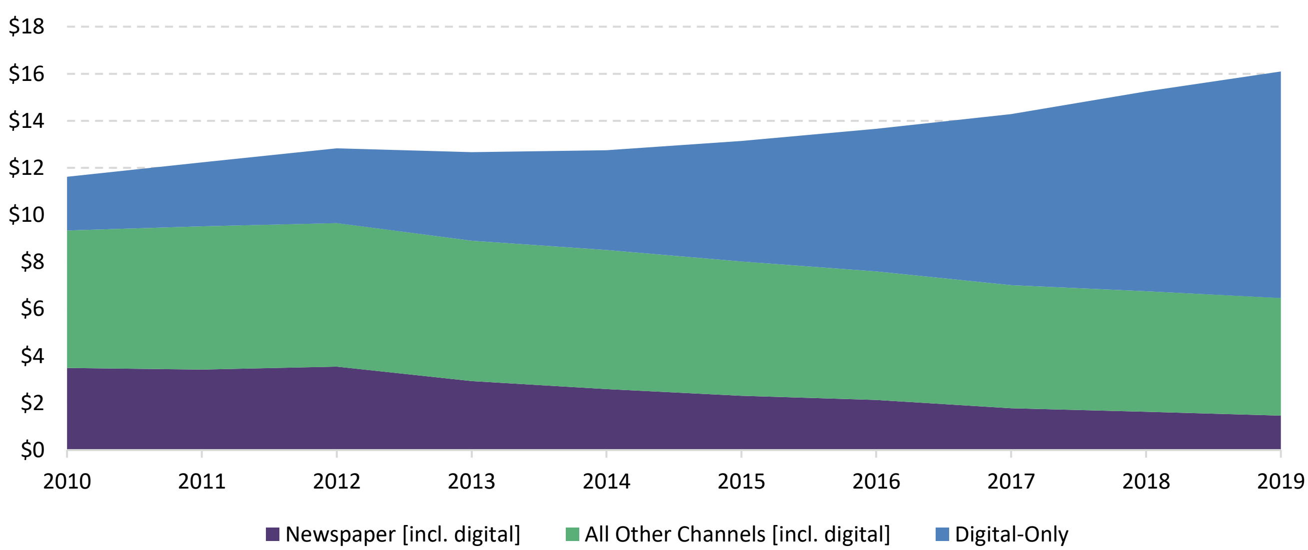
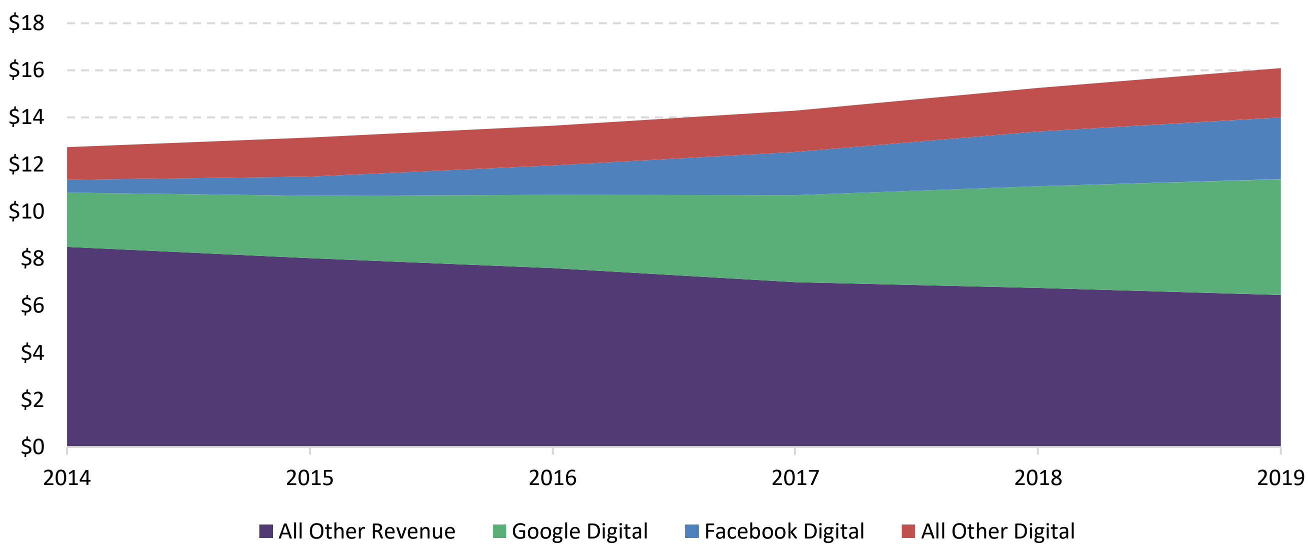


Figure 5 shows Google and Facebook's growing dominance of the Canadian digital ad market. In 2014, the two had combined revenues of $2.8 billion. By 2019, these revenues had grown to $7.5 billion, coinciding with decreasing market shares for news publishers.

Figure 5 – Google and Facebook's Canadian revenues and market dominance ($ billions)



Demand for news content from Canadians remains strong. Nonetheless, Canadian publishers have made significant reductions to their news-generating capacity by reducing the size of staff and of newsrooms. Despite these reductions, we estimate that journalists – as opposed to the support personnel to operate the business – are one-third of headcounts.

The digital platforms continue to grow their market share for digital advertising in Canada through unfair means. Examples of these means include dominance in search (Google) and social media (Facebook), their exclusive access to consumer data, their use of publishers' content to drive their audiences, monopoly in the "ad tech stack,"[7] and a lack of interoperability of Google's tech stack with other parties. We estimate newspaper revenues in Canada for 2020 will be $1.7 billion (with 60% of that from advertisements), $6 billion less than Google and Facebook.

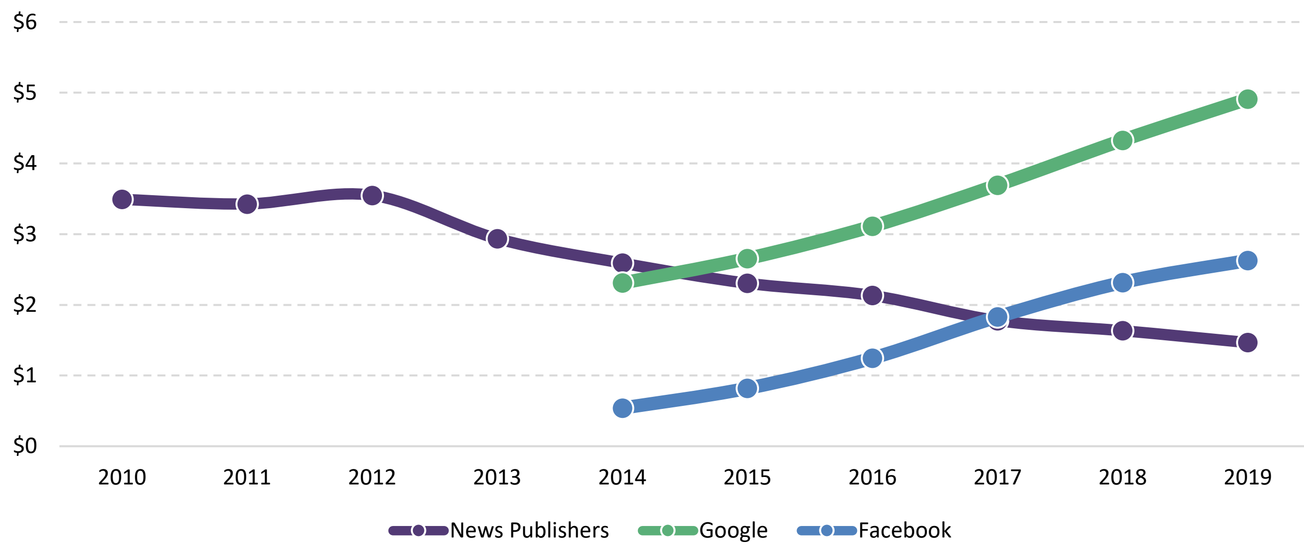
Figure 6 shows these trends counter to one another.[8] In 2012, advertising revenues for publishers peaked at $3.5 billion. They began a rapid decline in 2012, coinciding with the rapid increase in revenues for Google and Facebook in Canada. From 2014 through 2019, publishers' advertising

[7] "A variety of complementary services that, collectively, accomplish the task of matching advertisers with available space on webpages and arranging payment from the advertisers to the sites or applications supplying that advertising space," Fiona M. Scott Morton and David C. Dinielli, "Roadmap for a Digital Advertising Monopolization Case Against Google," *Omidyar Network*, May 2020, https://omidyar.com/wp-content/uploads/2020/09/Roadmap-for-a-Case-Against-Google.pdf, p. 8

[8] For the same chart as Figure 6 in the U.S. context, please see Thomas Baekdal, "What Killed the Newspapers," *Baekdal Plus*, September 2016, https://www.baekdal.com/thoughts/what-killed-the-newspapers-google-or-facebook-or/

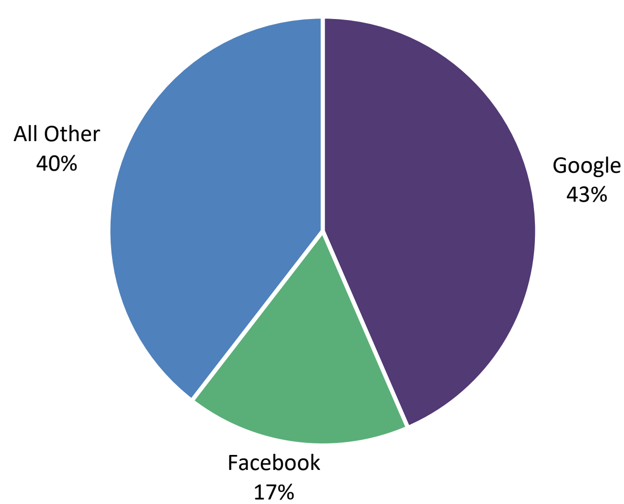
revenues declined 43% while Google's revenues grew 113%. Over the same increment, Facebook's revenues in Canada increased by 387% (nearly quintupling in five years).

Figure 6 – Canadian advertising revenue trends ($ billions)



Publishers have few alternative choices of distribution besides Google and Facebook. The duopoly has an overwhelming audience scale and insurmountable "network effects."[9] Figure 7 shows the market share of Google and Facebook for programmatic ads. Google and Facebook's self-reinforcing practices continue to entrench their market power in Canada.

Figure 7 – Estimated programmatic advertising market share for Canadian news publishers (2018)



[9] "Network effects" are when the ubiquity and interconnectivity of a system, such as the phone network, being a barrier to entry for any potential competitors who are unable to immediately replicate such interconnectivity

A Competitive Market for Digital News Distribution Does Not Exist

The conduct of the dominant duopoly of Google and Facebook creates an anticompetitive market for digital ads and news distribution. Throughout the world, these anticompetitive conditions have prevented news publishers from developing a sustainable and competitive business model.[10,11] These outcomes are not the result of an evolving and competitive market.

With legacy print-related revenues in secular decline, the duopoly's control of digital advertising sales and digital news distribution leaves a shrinking playing field for publishers. The dominant technology platforms have taken control of an increasing share of Canadian (and global) ad sales from publishers, which creates several examples of market failures.

Despite a growing audience for digital news, the dominant platforms have effectively become the unofficial regulators of the digital economy in Canada.

- Digital platforms have an effective duopoly (segmented between search and social media) in digital advertising and news distribution. Their anticompetitive practices have resulted in unfair, nonmarket, and coercive supply terms to news publishers.
- News publishers have no effective choice but to allow search inquiries linked to their news content be displayed by the dominant platforms through search results and newsfeeds. These drive revenues for platforms through keywords while "free riding" and paying nothing to the publishers for the content they originally generated.
- Through algorithms and negotiating leverage, the platforms can determine which business models they prefer survive. They have no incentive as monopolies to any other model than "free riding" because this model allows them to grow while using publishers' content without competitively compensating them for utilizing the same.

Specific instances of anticompetitive behavior by the platforms include the following examples. Examples in this list derive from the Scott Morton and Dinielli study cited in Footnote 7 and the report by the U.K. Competition and Markets Authority cited in Footnote 10.

- Platforms service both advertising "buyers" (e.g., industries seeking to reach potential customers) and advertising "sellers" (such as newspapers). The platforms collect the difference of payments from ad buyers and payments to ad sellers. The platforms have market power over both sides of the transaction. The situation is comparable to a stock exchange except, instead of having multiple brokerage houses competing with one another on price and quality, the exchange itself can dictate high prices to buyers and low prices to

[10] "Online platforms and digital advertising," *U.K. Competition and Markets Authority*, 1 July 2020, https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf
[11] In the U.S. context, see, for instance, Clara Hendrickson, "Local journalism in crisis," *Brookings Institute*, 12 November 2019, https://www.brookings.edu/research/local-journalism-in-crisis-why-america-must-revive-its-local-newsrooms/

sellers, collecting the substantial difference in price for itself. We document the estimated market share for Google along the ad tech stack in the appendix.

- Google does not allow for interoperability with its tech stack. To quote Scott Morton and Dinielli, "Google then deployed a number of additional anticompetitive levers, such as exclusive contracts and denial of interoperability to exclude and prevent entry by ad tech competitors and/or raise their costs, cementing its place as the dominant provider of digital advertising in both search and display for most publishers and advertisers."[12]
- Google and Facebook have unassailable competitive positions through advantages relating to market power, including network effects, economies of scale,[13] consumer inertia when choosing search or social media services,[14] unequal access to consumer data, and a lack of transparency with their pricing and value generated for customers.[15] Their advantages derive from their dominant market positions, not their services' quality.

Platforms Have an Anticompetitive Cost Advantage

From a regulatory standpoint, one of the core issues around the world is the dominant platforms do not offer competitive terms to publishers. To illustrate, they flatly refuse to pay for content, traffic, or data. Because of their monopolistic market positions, digital platforms have coerced free access to publishers' content, traffic, and user data. This is an extreme extension of "buying power" (i.e., a market dominated by a single buyer, monopsony, the demand-side equivalent to the domination of supply by a monopoly). The platforms offer not a low price, like most monopsonies,[16] but refuse to offer compensation. This market distortion threatens suppliers with being unable to cover their costs and will, over time, result in news content, otherwise strongly demanded by Canadian consumers, disappearing from the market purely for anticompetitive reasons.

Unlike publishers, digital platforms are not subject to regulations holding them liable for the content, traffic, and the user data from which they generate revenue. This provides platforms with a cost advantage over publishers selling advertising. Initially, platforms were viewed as "channels" that should not be held liable for their content because **they pointed to content rather than producing content of their own**. An analogy to this philosophy would be a telecom company not being held liable when criminals plan illegal acts using the phone system.

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[12] Fiona M. Scott Morton and David C. Dinielli, "Roadmap for a Digital Advertising Monopolization Case Against Google," *Omidyar Network*, May 2020, https://omidyar.com/wp-content/uploads/2020/09/Roadmap-for-a-Case-Against-Google.pdf, p. 2

[13] "Economies of scale" are when the large initial investments needed to compete with a monopoly, such as building a second railway between cities, are so large that they discourage potential competitors

[14] That is, a search engine or social media network retaining users simply because they have always used it

[15] "Online platforms and digital advertising," *U.K. Competition and Markets Authority*, 1 July 2020, https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf, p. 11

[16] A classic example from economic textbooks would include a mining town with only one employer – the mine company itself – offering meager wages to work, who must accept for a lack of other buyers of their labor

This analogy fails, however, because telecom companies do not generate revenue from the content of the conversations on their systems. Facebook and Google generate advertising revenues from content they do not vet for authenticity or legality. In fact, the more contentious the content, the more traffic and thus profits the platforms might enjoy.

This situation creates "moral hazard"[17] by incentivizing platforms to display provocative and even incendiary content because it attracts numerous eyeballs and revenues. Such revenues would come without the concomitant costs such a strategy would impose on publishers, who must take account of civil liability over libelous content or reputational damage. The cost of any increase to social disharmony is paid by society while the platforms continue to profit from increased eyeballs, privatizing the profits but socializing the costs on society generally.[18]

The outcome of the market dominance and anticompetitive practices of the platform duopoly is professional and credible news continues to decrease in quantity throughout Canada and the developed world. It will continue to do so unless competitive balance comes to these markets. Canadians' interest in high-quality news content (as judged by readership and pageviews) remains high, but publishers' advertising revenues continue to decrease.

Publishers have become less and less able to employ the reporters, investigative journalists, or the editors and factcheckers required to generate high-quality news coverage and moderate audience comments – even though demand for their services remains strong. This paradox of news content being in demand yet news publishers struggling is central to these issues.

Urgent Action Needed

Governments around the world are recognizing these market failures – and acting. Australia, Spain, France, the U.K., and the U.S. have implemented or are seeking changes to level the playing field to maintain the competitive publication of credible news and the value it provides to society. The general goals of these measure are to accomplish the following:

1. Create conditions to encourage or force the platforms to negotiate and offer fair and competitive terms to publishers, including paying for the economic benefits generated from content and the related audience data; and,
2. Create a balanced framework of government regulatory enforcement and bargaining fairness that will cause the platform providers to negotiate and implement competitive practices in a fair and timely basis. These would help resolve the market failures.

[17] An economic concept of parties taking unreasonable risks because they are shielded from potential downsides
[18] Costs imposed on parties that are not directly part of a transaction is oftentimes called a "negative externality"

Pathways Forward

To address these market failures, we have analyzed potential pathways forward to foster long-term sustainability and market competition for Canadian journalism. We have focused on France and on Australia as precedents. Though the two have similarities, notably an expansion of the intellectual property rights for publishers, the Australia Precedent has key advantages:

- The Australia Precedent would be "faster to market."
- Australia includes mechanics, including collective bargaining and binding arbitration, which force platforms and publishers to take serious action, to negotiate in good faith, and to come to a resolution and fair outcome in a compact timeframe.
- The Australian code includes other mechanics to drive a competitive and fair outcome for news publishers and disallows retaliation against publishers.

First, we describe the France Precedent for informational purposes, to lay the groundwork for the role that intellectual property plays in the Australia Precedent, and to contrast the French approach with the more robust and comprehensive approach out of Canberra.

France Precedent

With the Act of 24 July 2019, France became the first European nation to implement a system of Press Publishers' Rights ("PPR") as a part of its intellectual property law. PPR expands the control publishers exert over their content and provides avenues for fair compensation from the digital platforms for the use of their news content to draw an audience.

The France Precedent[19] has three main aspects:

1. Platforms must obtain authorization or acquire licenses from publishers, which France defines to include both online publishers and press agencies, before any reproduction or communication of the publishers' work in a digital format.
2. Online publishers and press agencies have the right to control their content, to license it to publishers, and to delegate its management to outside organizations.
3. Compensation for such content derives from the direct and indirect revenues associated with the utilization such rights on a fixed-fee basis.

Implementing a similar PPR policy in Canada as the one in France would give publishers more control over their content and prevent its display without a licensing agreement. According to French law, PPR lasts for two years after January 1 of the following year on which the content first appeared publicly, meaning PPR lasts between 24 and 36 months.

[19] "France: Law No. 2019-775 of July 24, 2019, on the Creation of Neighboring Rights for the Benefit of Press Agencies and Publishers," *World Intellectual Property Organization*, 24 October 2019, https://www.wipo.int/news/en/wipolex/2019/article_0013.html

French PPR would increase the revenues from digital advertising afforded to publishers who create the actual journalistic content. Australia is currently in the process of implementing a system built around the same ideas of expanding intellectual property rights.

Australia Precedent

Australia has become a leader internationally in addressing the market failures with digital news content and digital advertising. Their precedent combines elements of French PPR, the collective bargaining of publishers' licensing against the market power of publishers, as well as a novel process for the negotiation and, if necessary, arbitration of prices.

On July 31, 2020, the Australian Competition and Consumer Commission ("ACCC") released a draft code on steps to take to address the market failures. It includes:

- Like with French PPR, an expansion of the intellectual property rights a publisher holds over content. Platforms would not be able to display publishers' content without first negotiating access to it – that is, payment for a license to the content.
- In addition to PPR, Australia is levelling the playing field in negotiations between platforms and publishers by creating a formalized process (one finite in its timespan) for setting the prices for licenses and, if necessary, binding arbitration.
    - Platforms and publishers would first enter a period of voluntary negotiations. These negotiations would last no longer than 90 days.
    - The ACCC would allow for publishers to "band together" and collectively bargain with each other for licenses to their content with the monopolistic platforms. This levels the playing field by dampening the effects of platform market dominance in negotiations with publishers to prevent unfair, coercive, and ultimately anticompetitive terms being imposed. Under normal circumstances, a group of publishers working to coordinate with each other could raise competition issues. However, the ACCC is allowing this coordination so publishers might collectively push back against market power held by the platforms. According to Rod Sims, chair of the ACCC, "We do not regard collective bargaining as anticompetitive when the party on the other side has superior bargaining power, has a lot of market power."[20]
    - If no voluntary agreement emerges, then the two sides would enter a compulsory arbitration lasting 45 days. If this fails, the platforms and publishers bring their best and final offer to the table for the arbitrator to consider. The arbitrator must select between one of the two (unless both are determined to be against the best interest of

[20] Robert Whitehead, "New Australian code of conduct locks in payments from Big Tech for content," *International News Media Association*, 2 August 2020, https://www.inma.org/blogs/Digital-Platform-Initiative/post.cfm/new-australian-code-of-conduct-locks-in-payments-from-big-tech-for-content

the Australian media ecosystem, in which case the arbitrator asks for modifications to the proposals).[21] Voluntary negotiations may continue "on the side" during the arbitration process. The arbitration provides a "fail-safe."

- To prevent the platforms from retaliating against Australian publishers during or after the negotiations, the ACCC includes measures to prevent discrimination against publishers' content. For instance, if Google or Facebook remove the content of one publisher, they must remove all news content in Australia or face fines. Google and Facebook have threatened to do so. Josh Frydenberg, the Treasurer of Australia and the cabinet minister overseeing the ACCC responded to this with, "Australia makes laws that advance our national interest. We don't respond to coercion or heavy-handed threats."[22]
- To provide fairness and transparency with respect to data related to publishers' content and audience, the code has measures requiring digital platforms disclose to publishers the data collected on publishers' audience. One of the key advantages that digital platforms have currently is the extent to which they have access to audience data that marketers need. They have this advantage, in part, by gaining access to publishers' content to attract eyeballs but not disclosing user data to the publishers creating the content.

Australia is proceeding with the code despite the presence of public broadcasting and journalism within its media ecosystem. The Australian Broadcasting Corporation ("the ABC") was founded in 1929 and provides news coverage and cultural content to the Australian people.[23] The ABC, like the Canadian Broadcasting Corporation, the British Broadcasting Corporation, or (in the U.S.) the Public Broadcasting System and National Public Radio, is an acknowledgement of an enduring national – and indeed international – consensus on the positive societal effects of high-quality and localized journalism. Factual journalism is necessary to inform citizens voting in elections and to keep them conversant of the issues affecting their local communities.

Nonetheless, the ACCC is proceeding with the code despite the presence of public broadcasting within the Australian media ecosystem. This is acknowledging the critical role that independent journalism plays in that ecosystem to hold the government accountable, to bring attention to a multitude of voices, and to foster a robust debate on public policy.

Nine Entertainment and News Corp, the two largest private media companies in Australia, "Have estimated the code will unlock annual fees from Google and Facebook to publishers in the range of

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[21] Sometimes called "baseball arbitration" for its use in professional sports, please see, "Understanding Baseball Arbitration," *Arbitration*, http://www.arbitration.com/articles/what-is-baseball-arbitration.aspx

[22] "'We don't respond to coercion': Josh Frydenberg stares down Facebook threat," *The Australian*, 1 September 2020, https://www.theaustralian.com.au/business/media/facebook-threat-to-block-news-sharing-over-accc-rules/news-story/30cf7871e094c21c3a8ec70e8150bc39

[23] "ABC," *Australian Broadcasting Corporation*, https://www.abc.net.au/

$500 million to $750 million,[24] or around 10% of platforms' regional revenues."[25] Upon scaling this estimate to the Canadian context, we find an impact of $620 million (CAD).[26]

Regulatory Governance Framework

Whichever the pathways forward chosen, there would need to be important regulatory changes to support them. Governments around the world have recognized that a legislated regulatory policy and enforcement framework is necessary for change to occur. The platforms have not evidenced a willingness to negotiate voluntarily with publishers and make the required changes to allow a fair, competitive, and viable news industry to exist. Urgency is required to address market failures and impacts on publishers, all exacerbated by the COVID-19 pandemic.

As stated, Australia and France (along with the U.K., U.S., and Spain) have or are implementing regulatory changes to protect the publishing of credible and independent news. Without this enforcement framework, change will not happen sufficiency and in a timely enough manner to protect the capacity to generate high-quality, trustworthy news.

The proposed regulatory governance pathways include the following measures:

- Create a federal digital media regulatory agency to oversee digital platforms and the digital economy on an ongoing basis to ensure market fairness.
    - This will be necessary to monitor how the digital platforms respond to the required changes both initially and on an ongoing basis.
    - If not monitored, digital platforms may take harmful actions towards the publishers in the future. These would include technical changes to algorithms, access to content, and other retaliatory measures meant to punish the publishers.
    - This needs monitoring, and legislative tools must be available to prevent such actions and ensure a fair and competitive market continues to exist.
- Force platforms to negotiate payment for content with publishers within a set period. Enforce the arbitrated solution if a voluntary agreement does not come about.
- Allow collective bargaining for publishers.[27]
- Platforms must recognize and prioritize original news content.
- Platforms must give 28 days of notice for any algorithm changes affecting publishers.
- Publishers can control moderation of user comments.

[24] USD
[25] Footnote 20
[26] At current exchange rates
[27] This, as well as the other recommendations on this list, derive heavily from the Australian code

- If necessary, force the breakup of the ad tech stack and allow interoperability for new entrants. This would provide a more competitive market and prices.
- Significant fines incurred for not complying with regulations. **For instance, the draft code in Australia proposed the ACCC can impose a fine of up to 10% of a platform's revenues in Australia for each violation of the regulations.**

The next chapter presents the economic impact analysis. That is, it analyzes the likely effects of the pathways forward on the news sector and the economy overall.

International Trade Law

We are aware that our pathways forward might have implications regarding the newest free trade agreement Canada, the U.S., and Mexico ("CUSMA" or "USMCA"). CUSMA is the successor agreement to the North American Free Trade Agreement ("NAFTA") from 1994.

To examine these implications, we have sought the expertise of counsel specializing in fields related to international trade law and particularly related to NAFTA and CUSMA/USMCA. The expert is Barry Appleton,[28] managing partner of Appleton & Associates International Lawyers LP.[29] Mr. Appleton is codirector and distinguished senior fellow at the New York Law School Center of International Law. We now quote Mr. Appleton's expert opinion in its entirety, making small changes to his letter for consistency with the formatting of this report and to add emphasis:

You have requested our general views regarding the capacity of the Government of Canada to engage in legislative, regulatory, and public policy measures for the promotion and protection of Canadian cultural industries in light of the recent coming into force of the U.S.-Mexico-Canada free trade agreement. The USMCA is the successor to the North American Free Trade Agreement.

Mr. Appleton's Qualifications

I have been a scholar of North American trade policy for more than a quarter-century. I am the author of two books on NAFTA and have composed countless talks and articles about international economic law topics. I was an advisor to the Government of Ontario's Cabinet Committee on North American free trade when NAFTA was being negotiated, and later I acted as an advisor to Trade Ministers in other Canadian jurisdictions, as well as being trade advisor to a provincial premier. I have testified before committees of the House of Commons and the Senate as an expert on international trade topics.

I am the codirector of the New York Law School's Center of International Law. I am a distinguished senior fellow at the Center and an adjunct law professor at the New York Law School. I am also the managing partner of Appleton & Associates International Lawyers LP in Toronto. Over the last 25 years, I have been counsel in over a dozen NAFTA arbitrations, and I have also appeared in matters before the World Trade Organization ("WTO") in Geneva.

[28] "Barry Appleton," *Appleton & Associates*, http://www.appletonlaw.com/bappleton.html
[29] "About Us," *Appleton & Associates*, http://www.appletonlaw.com/about%20us.html

I am a member of the Bar of Ontario, the State of New York, and the District of Columbia. I am a member of the U.S. Court of International Trade. I am a fellow of the Chartered Institute of Arbitrators and serve as the cochair of the American Bar Association Section of International Law International Arbitration Committee. I hold a master's in law with specialization in international law from the University of Cambridge. My J.D. was completed at Queen's University.

Trade Agreements and News Media

While trade agreements impose general restrictions on government policymaking in certain areas, the Government of Canada retained an exceedingly wide ambit for the making of public policy concerning the news media in the USMCA. This wide ambit is contained within exceptions and reservations made throughout the USMCA obligations. These "carveouts" from the USMCA allow the government policy space for the protection and promotion of Canada's fragile cultural industries.

Canada set out its views on the exceptions to the USMCA in Canada's *Statement on Implementation*, saying:

> This Chapter sets out crosscutting exceptions and other provisions that generally apply to several chapters or the entire Agreement. These exceptions are designed to ensure Canada and the other Parties maintain the ability to take legitimate policy actions in the public interest, including with respect to health, the environment, indigenous rights, and national security; **and for Canada to take measures to promote and protect its cultural industries**. Action taken under the authority of the exceptions is permitted even if it otherwise would have violated obligations in the Agreement. The Chapter also sets out some other general provisions, primarily related to information protection and access.[30]

As a result of these exceptions and reservations, the Government of Canada has wide-ranging policymaking capacity. Besides, the USMCA contains an extensive cultural exemption. This exemption removes policies relating to the exemption from the terms of the USMCA.

> Article 32.6: Cultural Industries[31]
>
> 1. For the purposes of this Article, "cultural industry" means a person engaged in the following activities:
>
>   (a) **the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine-readable form** but not including the sole activity of printing or typesetting any of the foregoing;
>
>   (b) the production, distribution, sale, or exhibition of film or video recordings;
>
>   (c) the production, distribution, sale, or exhibition of audio or video music recordings;

[30] Canada's *Statement on Implementation* of the USCMA at Chapter 32, "Exceptions and General Provisions"
[31] "Annex J," http://www.sice.oas.org/Trade/CAN_EFTA_FTA/EFTA-AnnexJ-en.pdf

(d) the publication, distribution, or sale of music in print or machine-readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

2. This Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry, except as specifically provided in Article 2.4 (Treatment of Customs Duties) or Annex 15-D (Programming Services).

3. With respect to Canadian goods, services, and content, the U.S. and Mexico may adopt or maintain a measure that, were it adopted or maintained by Canada, would have been inconsistent with this Agreement but for paragraph 2. Notwithstanding any other provision of this Agreement, a Party may take a measure of equivalent commercial effect in response to an action by another Party that would have been inconsistent with this Agreement but for paragraph 2 or 3.

News media in Canada fit within the terms of paragraphs (a) and (c) of the list of protected cultural industries. The Government of Canada issued its views the government's broad powers contained within the USMCA cultural exemption in Canada's *Statement on Implementation*. In this official government statement of its views on the meaning of the USMCA, the Government of Canada stated:

> Article 32.6 maintains the general cultural industries exception from CUSMA and NAFTA that ensures the Agreement leaves unimpaired Canada's ability to pursue objectives related to cultural industries. This exception preserves Canada's flexibility to adopt and maintain the programs and policies that support the creation, distribution, and development of Canadian artistic expression and content, including in the online environment. It allows Canada to take measures with respect to its cultural industries without contravening the obligations in the Agreement, including in the digital space, except for obligations related to tariff treatment of imported goods under Article 2.4 (Treatment of Customs Duties) and certain programming commitments related to simultaneous substitution of advertising during the broadcast of the Super Bowl and access for the U.S. programming services specializing in home shopping to the Canadian market under Annex 15-D (Programming Services).

Thus, the cultural exception is designed to preserve, "Canada's flexibility to adopt and maintain programs and policies that support the creation, distribution, and development of Canadian artistic expression and content." **The promotion of Canada's news media would fit clearly within this broad reserved power.** A government policy measure could well fit within a "carveout" or reservation to the USMCA as well as fitting within the cultural exemption. In the event of a trade dispute, it would then be up to the government of Canada to decide upon which of these public policy protections to rely. The reliance on the cultural exemption does not need to be concluded when a policy is made. It is a justification that can be relied upon in a trade dispute after a policy comes into force.

In addition to the general cultural industries exemption set out in Article 32.6 of the USMCA, there are other exemptions regarding subsidies, taxation, the making of policies regarding public education, public health, minorities, and indigenous persons that would also permit the taking of policies supporting to the Canadian news media and to news media capacity as a public good.

Mr. Appleton's Conclusions

The purpose of this letter is not to provide a detailed legal opinion on the international trade law consistency of specific policies. However, this legal letter confirms that exceptions and reservations abound within the USMCA that would permit the taking of many government policies in Canada to support the news media. Based on the preceding and having regard to the legal assumptions and considerations that we deem relevant; we can advise that:

1. The USMCA contains many exceptions and reservations made by governments permitting public policies that would otherwise conflict with USMCA trade obligations.
2. Canada's exception for cultural industries provides broad policy discretion for the Government of Canada for the taking of policies, "To support the creation, distribution, and development of Canadian artistic expression and content." The exception covers the activities of Canada's news media explicitly.
3. Within the USMCA, there are many other exceptions and "carveouts" that would permit policies to advance Canadian cultural industries, such as Canada's news media.

Economic Impact Analysis

This chapter describes the approach, methodology, and results of the economic impact analysis. Firstly, we define economic impact analysis and its purposes here. Secondly, we define our set of criteria for judging the results of the economic impact analysis.

Economic impact analysis is using quantitative models (in this case, IMPLAN) to answer, "What if?" questions regarding the economy. These questions often include what changes in public policy might mean for the economy broadly, measured by well-known metrics such as employment levels or GDP. Economic impact analysis often combines such modeling with other research, industry expertise, and other modeling to produce inputs into IMPLAN.

After answering the, "What if?" questions regarding the economy, the main purpose of economic impact analysis is seeing if a policy change has a reasonable chance of accomplishing its goals at a reasonable cost. Economic impact analysis can also show distribution of the impact across several dimensions and stakeholders, such as different provinces.

We have used economic impact analysis to judge our pathways forward on three criteria:

1. Would this pathway support a substantial number of journalists?[32] Would it, therefore, help ensure consumers receive the credible news they demand?
2. Would this pathway be supportive of Canadian jobs and GDP broadly?
3. Would this pathway potentially generate a net increase in revenues for the federal government, either through increased economic activity, reduced tax expenditures, or the introduction of new revenue sources themselves?

We next describe the IMPLAN model underlying the economic impact analysis. After that, we discuss our inputs into IMPLAN as well as the economic impact results.

IMPLAN Model Overview

IMPLAN is an input-output ("IO") model[33] of regional economies used to model the impacts of policy changes – the, "What if?" questions described earlier. IMPLAN is a "standard tool" with economic impact analysis. It sees wide application throughout academia, government, and consulting throughout the developed world. Versions of the model exist for all members of the OECD, and the foundational data for the IMPLAN model used came from the same.[34]

IMPLAN works by translating a direct change in spending into its total impacts. IMPLAN includes a series of "multipliers" describing the linkages between different sectors of the economy within

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[32] For context, we estimate there are approximately 3,100 print journalists working through Canada at present

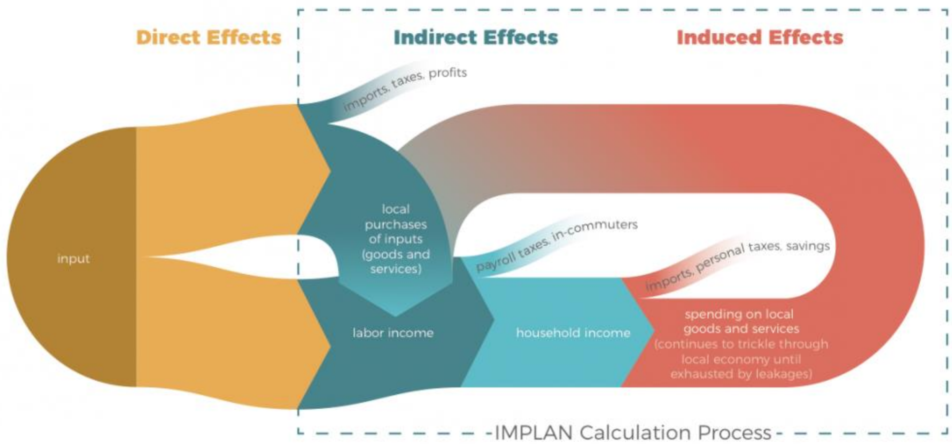
[33] Joseph Zamora, "Input-Output Analysis," *Pennsylvania State University*, https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.464.9310&rep=rep1&type=pdf

[34] "Input-Output Tables 2018 edition," *Organization for Economic Cooperative and Development*, https://stats.oecd.org/Index.aspx?DataSetCode=IOTSI4_2018

supply chains, between firms and households interacting on labor and commodity markets, and between the public and private economy through taxes and spending.

IMPLAN multipliers include four effects, which Figure 8 summarizes:

Figure 8 – IMPLAN model diagram



1. **Direct Effects** – *A direct change in the revenues or expenditures of an industry, such as revenues for news publishers in Canada.*

2. **Indirect Effects** – *The impacts on suppliers, such as a manufacturing company providing the equipment and materials to produce news products. This might include paper for printed newspapers and magazines as well as electronics for newsroom staff to record information, communicate with the world, and to present their findings.*

   Indirect effects also include services, such as attorneys serving as outside counsel to news publishers or accountants providing business services. Thus, the indirect effect is often called the "supply chain" associated with an economic sector.

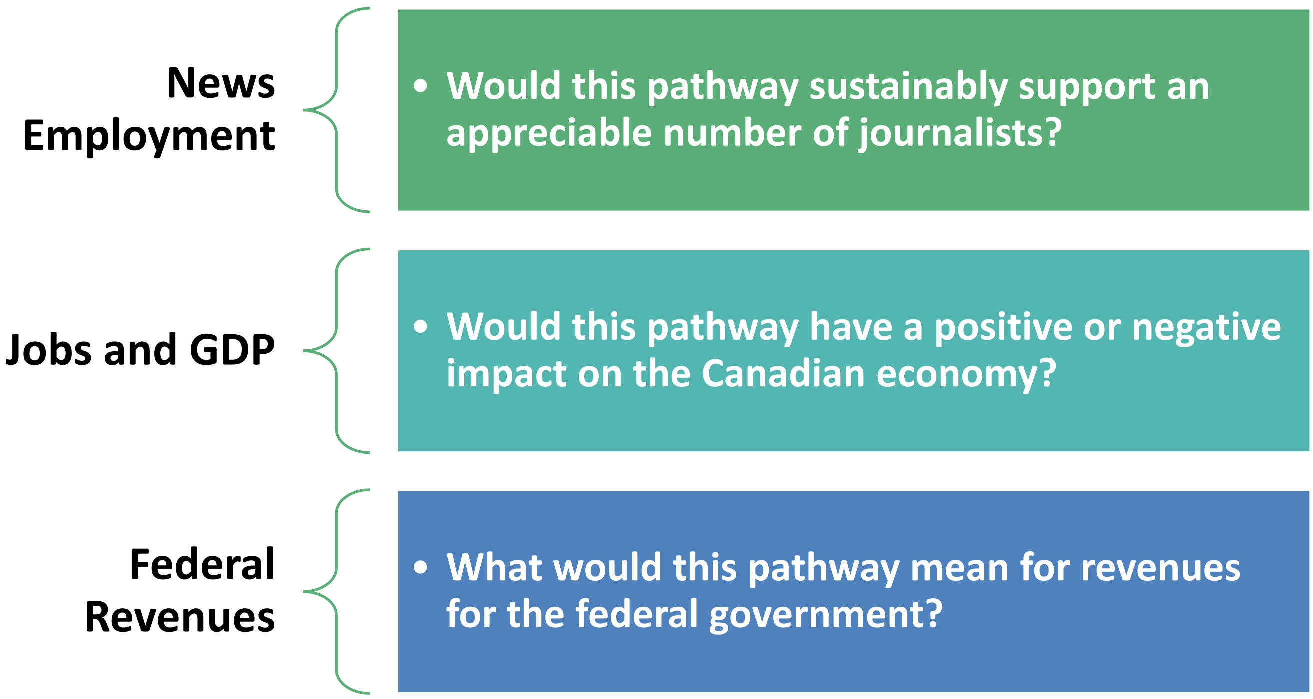
3. **Induced Effects** – *Impacts from consumer expenditures made by the employees of the direct sector and its indirect supply chain. Direct and indirect employees receive paychecks and spend them on the requirements of daily life, such as a home and retail products. This provides impacts for sectors perhaps outwardly unrelated to the direct sector and its suppliers, those such as construction, healthcare, or retailers.*

A concrete example of IMPLAN multipliers (on a discreet geographical basis) would include a classic factory town in the Great Lakes region. In such towns, a large manufacturing firm (the direct effect) forms the centerpiece of the regional economy and exports most of its production to markets away from the town. Such a factory usually has a series of suppliers and service firms nearby (the indirect effect), and spending by the employees of the former and the latter supports the service firms in the town and provides the local tax base for government. IMPLAN models these interconnections and effects, though nationally for Canada and not just for a single city.

Criteria for Assessment

We have analyzed the results from IMPLAN for the pathways forward for three criteria. Figure 9 summarizes these criteria for the results of the economic impact analysis.

Figure 9 – Three metrics from IMPLAN for the pathways to sustainability



Economic Impact Results

Our findings here are for implementing Australia's set of policies and regulatory governance framework in Canada. Australia has more stringent protections for publishers and a process for bringing the platforms and publishers to a fair negotiating table.

The Australian approach would have three main advantages over the French one: (1.) speed to market, (2.) the mechanics that force the need to take serious action and an outcome in a compact timeframe, and (3.) the mechanics to drive a competitive and fair outcome for news publishers and creators. Based on numbers from Australia, this pathway would bring about approximately $620 million per year (CAD) of additional revenues for Canadian publishers.

The $620 million per year estimate for Canada coincides closely with the projected decrease in revenues for news publishers projected between 2019 and 2023. This projection derives from data provided by participating publishers. The fact this decline in revenue and the estimate derived from Australia coincide with each other is an endorsement of the $620 million figures' veracity because it lines up with the revenue decreases facing Canadian publishers.

Table 2 shows the economic and fiscal impacts of the estimate adapted from Australia. That is, expanding intellectual property rights, collective bargaining, and a process for the platforms and publishers to negotiate licensing fees for content would increase the publishers' revenues by $620 million per year. Included are the results relevant to the criteria in Figure 9 regarding the effect on journalistic jobs, news media jobs, Canadian jobs, and federal tax revenues.

Table 2 – Economic and fiscal impacts of the Australia Precedent

Category	Result
Journalists	700 journalists *(23% of total)*
Print Media Jobs	2,100
Canadian Jobs	6,900
Canadian GDP	$715 million per year
Federal Revenues	$236 million per year[35]

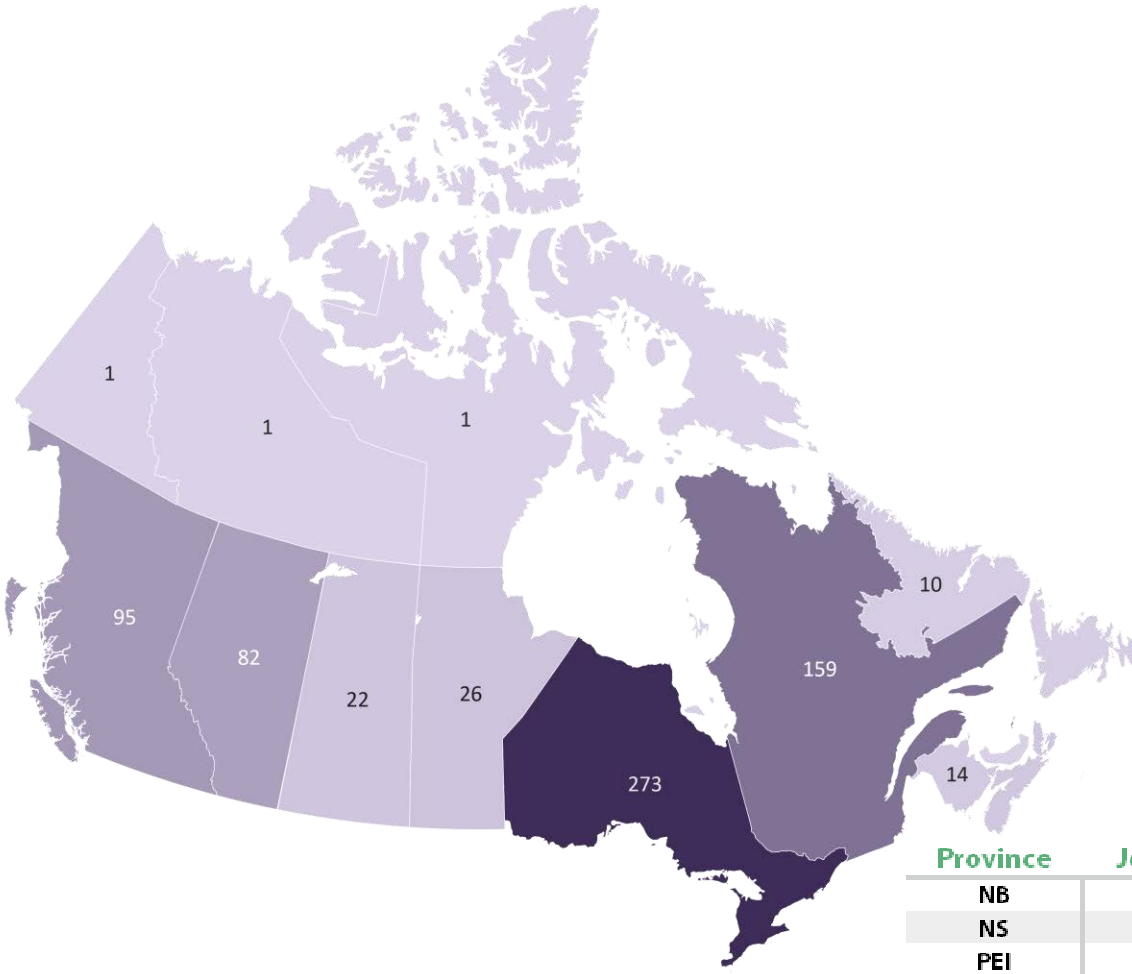
This pathway forward would support 700 journalists' jobs and 2,100 jobs in print media throughout Canada. We arrived at the ratio of one journalist for every two support personnel through a pair of methodologies. The first used data from participating publishers on the daily occupations of their employees.[36] The second was by analyzing the occupation-by-industry data published in the U.S. by the Bureau of Labor Statistics ("BLS").[37] The BLS data shows that one-third[38] of the employees of newspaper publishers work within occupations classifiable as "journalists."[39]

Compared with our estimate of 3,100 print journalists throughout Canada, the $620 million per year would have a weighty impact. A similar process to the Australia Precedent in Canada would support 700 print journalists nationally – or 23% of the present total of journalists.

To bring the results down to the local level, we have divided the 700 journalists throughout the provinces and territories based on each region's share of national population.[40] We have shown these results in Figure 10 in the form of a map and supplementary table.

[35] Includes only revenues from increased economic activity
[36] An "occupation" is the tasks performed by an employee regardless of their industry
[37] "Industry-occupation matrix data, by industry," *Bureau of Labor Statistics,* https://data.bls.gov/projections/nationalMatrix?queryParams=511110&ioType=i
[38] More precisely, 33.4%
[39] Includes "librarians and media collections specialists; art directors; fine artists, including painters, sculptors, and illustrators; special effects artists and animators; graphic designers; designers, all other; producers and directors; broadcast announcers and radio disc jockeys; news analysts, reporters, and journalists; public relations specialists; editors; writers and authors; media and communications workers, all others; photographers; camera operators, television, video, and film," and "film and video editors," with journalists and editors making up 72.9% of these occupations
[40] "Population estimates," *Statistics Canada*, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901

Figure 10 – Map of journalists supported by the Australia Precedent



Province	Journalists
NB	14
NS	18
PEI	3

To describe a set of results on the provincial level, take Alberta as an example. The 82 journalists supported in Alberta by this pathway could include roughly 25 more journalists working in Calgary, roughly 25 more in Edmonton, and the remaining 32 throughout the rest of the province. These journalists would increase the quantity and quality of coverage of the government, industry, and culture generally in Alberta, improving social conditions in the province.

According to Table 2, the impact of the Australian pathway on the Canadian economy would be positive. The pathway would support 6,900 jobs and $715 million per year in additional GDP. The increase in the impacts between the journalism sector (2,200) to the economy overall (a grand total of 6,900) comes from the multiplier described in Figure 8.

An increase in economic activity would also mean an increase in federal tax revenues. For this pathway, IMPLAN estimated this impact would be $236 million per year. **Revenues would come from increased economic activity, not through raising taxes.** Consequently, the revenues would come into the federal treasury without a direct earmark for the disbursement of the funds, and hence these revenues could go towards supporting other social priorities.

Main Takeaways of the Economic Impact Analysis

- **A few hundred print journalists might seem small in absolute terms, but relative to the total number of journalists in Canada, these numbers are substantial.** For example, with Table 2, 700 journalists supported by the Australia Precedent is 23% of all the print journalists currently working within the Canadian media ecosystem.
- **The main benefit to Canadian society of these journalists is not merely their employment and income, but the content they produce.** They would help to hold government to account and inform the citizenry.
- The Australia Precedent would have a generally positive impact on the Canadian economy, including more jobs, additional GDP, and more federal tax revenues.
- **The strongest pathway forward in terms of its impacts would be utilizing the policies and structures developed in Australia in the Canadian context. This would level the competitive playing field, support local journalism, ensure the continued supply of credible news content to Canadian consumers, and strengthen the national economy and federal finances through this pathway forward.**

Final Recommendations

- **The industry association strongly recommends implementing the Australia Precedent as a policy to address the market failures in digital advertising.**
- We recommend that Canada adopt the Australian code as quickly as possible, with as little change as possible, and implement its measures quickly.
- Canberra has already vetted its code through lobbying and comment. Because an input process has already occurred, adjustments have already been made. **We see no significant differences between the market failure circumstances in the media ecosystems of Canada and Australia to warrant significant modifications.**
- Australia and Canada track closely to each other. They have wide geographies, disparate population centers, a heterogeneous media ecosystem, and provinces with a strong sense of regional identity on top of national identity. Australia and Canada have a similar mixture of industries, and each grew from a common set of laws and customs.
- The process could be copied exactly – if replicated, it is a process lasting 90 days.
- The code would have a transformative effect on Canadian journalism after addressing the market failures identified throughout this report.

Appendix A – Overview of Digital Platforms' Market Dominance

Google Market Position

Google generates revenues related to publishers' content in two fundamental ways:

1. Selling advertising words associated with Google Search. Google has over an 85% market share for search functionality on the Internet.[41]
2. Sharing in the revenues from digital advertising transactions because Google operates the ad tech stack linking advertisers with a publishers' audience.[42]

The central issue of Google's market dominance in search relates to the following:

- **Google Search** – Google developed an effective and useful search engine that most people now use to search for information online (if not as a "gateway" to the Internet in its entirety for many users). Google is now leveraging that dominance for anticompetitive purposes. Google has an estimated 95% online audience reach, and an estimated 95% of Internet denizens use at least one Google product every month.[43]
- **Need to Opt-In** – Due to the large online audience using Google Search, publishers must "opt-in" to Google Search to access this large audience. Typically, 50% or more of publishers' digital traffic comes through Google Search. Publishers need this audience and the digital traffic it provides so they can sell advertising targeted to this audience. **This creates a situation of both needing Google but also being beholden.**
- **Access to Publisher Data** – By "opting-in," publishers are required to give Google access to critical data related to audience traffic (e.g., time spent on pages, type of information that users consume, etc.). Google does not actually "steal" content, but publishers have no other effective alternatives to using Google – giving Google audience data for free. Google has by far the most comprehensive access to web audience data, and they use this to maintain their position of market dominance and create their revenues.
- **Value of Data Collected** – The collection of mass data and the ability to monetize it gives Google a competitive advantage that no other contestants can match. The audience data they derive is of critical value to advertisers because it allows them to target the readers (or consumers) they want to reach to sell services and products.

  In a competitive market, Google should pay for this content – as would any other business in a competitive market using another businesses' product or service to generate revenues. The

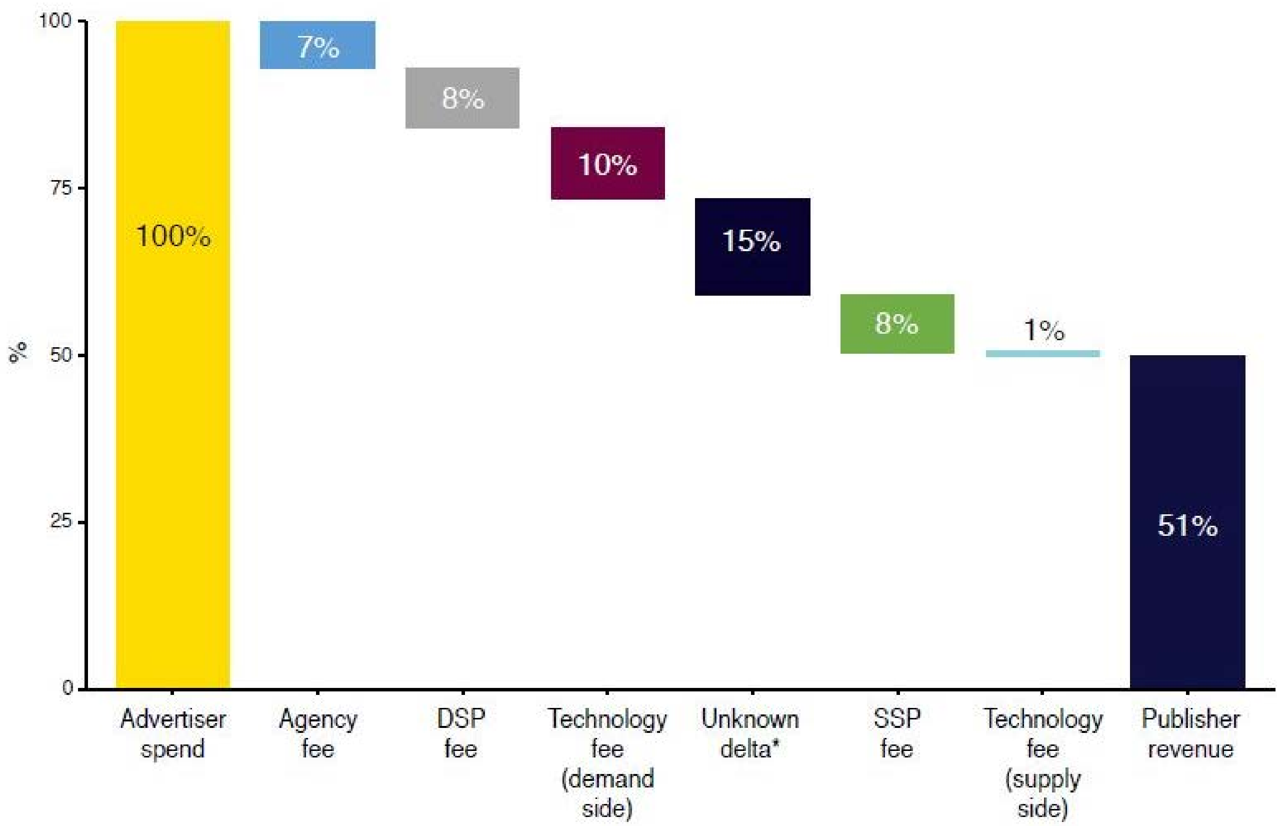
[41] "Worldwide desktop market share of leading search engines from January 2010 to July 2020," *Statista*, https://www.statista.com/statistics/216573/worldwide-market-share-of-search-engines/
[42] Controlling both the "supply" and "demand" of the market
[43] "Roadmap for a Case Against Google," *Omidyar,* May 2020, https://www.omidyar.com/news/roadmap-monopolization-case-against-google-regarding-search-market

situation in the market for digital ads is distorted by market power. This is at the heart of the changes undertaken by France, Australia, and being considered by other developed nations seeking fairness and compensation for publishers' news.

The central issues of market dominance related to the ad tech stack are the following:

- The "ad tax," as it is called, is the revenue taken by companies – mostly Google and its near monopoly – operating in their "ad stack" between advertisers and the publishers. For every dollar an advertiser spends on digital advertising, an estimated 49¢ goes to the platforms in the middle of the transaction, leaving only 51¢ for the publishers.[44]

Figure 11 – The industry waterfall on advertising spending[45]



- Google operates the entire ad tech stack of the advertising environment, which effectively ensures publishers and advertisers need to use their suite of products and services to reach Google's audience to place digital advertising on webpages.

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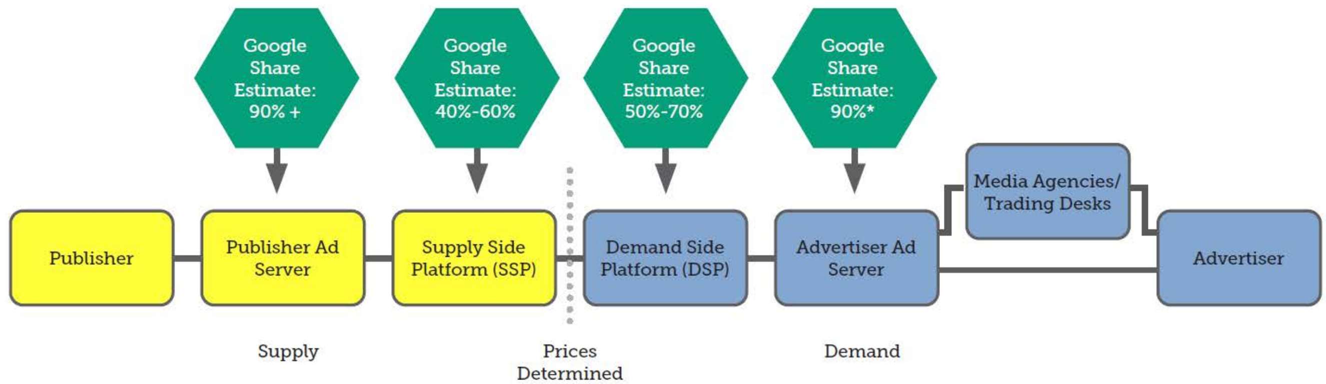
[44] "ISBA Programmatic Supply Chain Transparency Study," *ISBA*, May 2020, https://www.isba.org.uk/knowledge/digital-media/programmatic-supply-chain-transparency-study/

[45] Tim Cross, "A Third of Programmatic Supply Chain Costs End up in Unknown Hands finds ISBA Study," *Video Ad News*, 6 May 2020, https://videoadnews.com/2020/05/06/a-third-of-programmatic-supply-chain-costs-end-up-in-unknown-hands-finds-isba-study/

- Depending on the step in the ad tech stack, Google has an estimated 40% to 90% market share according to Scott Morton and Dinielli. These high market shares are the source of Google's market power over digital advertising worldwide.

Figure 12 – Google's roles in advertising intermediation



Through internal development and serial acquisitions (e.g., Double Click, YouTube, etc.), Google has achieved a position of market dominance. The U.K. Competition and Market Authority estimated Google takes 40% of the revenues from the ad tech stack. This has resulted in anticompetitive outcomes and contributed to the market failures in digital advertising.

Facebook Market Position

Facebook has achieved a position of market dominance through the size of its audience on social media. Facebook has achieved a "critical mass" of users, which raises barriers to entry and has been reinforced through the network effects present with social media. Facebook has gathered a trove of first-party data on consumer behavior during this process. Facebook uses this audience and data to sell advertisements on its platform but does not develop content.

Facebook achieved this position through internal development of its social media platform, which "locks" users in through network effects, and acquisitions of competing platforms. These include WhatsApp, Oculus VR, Instagram, Giphy, and RedKix.

Like with Google, publishers need to access the Facebook audience by posting access to their content through Facebook's newsfeeds to attract users to read content. Publishers in Canada often generate more than 30% of their audience through Facebook.

The presence of content, in turn, generates a larger audience for Facebook, which it then monetizes through advertising sales. **Facebook does not need to pay for content from the publishers, so its acquisition costs for the audience-generating content is zero.**

Appendix B – Newspaper Market Forecast Methodology

We aggregated historical financial information provided by participating publishers and compared it to public data regarding the Canadian newspaper industry. With these, we estimated the current size of the newspaper sector throughout Canada and made projections.

The forecast uses a combination of historical financial trends, industry projections, and internal forecasting models for fixed and variable costs. We then scaled the forecast model developed with publisher-provided data to the scope of the entire news publishing sector.

The impact of COVID-19 is included in the forecasting model.

When including restructuring expenses and capital expenditures, newspaper publishers (in an aggregate across Canada) have or will have declining revenues in the future. Revenues have declined, profitability has deteriorated, or even evaporated, and ongoing severance and shutdown costs add to costs for the industry. We find that the sector's annual revenues will decline between $500 million and $600 million between 2019 and 2023.

Appendix C – News Media Canada

News Media Canada is the voice of the print and digital media industry in Canada. Its membership includes a significant majority of news organizations nationwide.

News Media Canada first came about in 2016 when its members agreed to merge the Canadian Newspaper Association and the Canadian Community Newspaper Association. News Media Canada represents hundreds of trusted titles in every province and territory.

Appendix D – Detailed Economic Impact Results

Table 3 – Detailed employment impact for Australia Precedent (units)

Rank	Economic Sector	Direct	Indirect	Induced	Total
1	Publishing, audiovisual and broadcasting activities	2,112	69	8	2,189
2	Other business sector services	0	781	172	953
3	Arts, entertainment, recreation and other service activities	0	704	175	880
4	Wholesale and retail trade; repair of motor vehicles	0	352	354	706
5	Human health and social work	0	117	290	407
6	Accommodation and food services	0	47	234	281
7	Financial and insurance activities	0	154	124	278
8	Transportation and storage	0	161	97	258
9	Paper products and printing	0	206	11	217
10	Education	0	20	64	84
11	Telecommunications	0	51	31	82
12	Public administration and defense; compulsory social security	0	51	30	81
13	Real estate activities	0	17	60	77
14	Food products, beverages and tobacco	0	10	48	58
15	Agriculture, forestry and fishing	0	16	41	57
16	Electricity, gas, water supply, sewerage, waste and remediation	0	28	22	51
17	Repair and installation of machinery and equipment	0	11	39	50
18	Construction	0	29	21	50
19	IT and other information services	0	30	12	42
20	Computer, electronic and optical products	0	29	4	33
21	Chemicals and pharmaceutical products	0	6	8	14
22	Mining and extraction of energy producing products	0	6	6	12
23	Fabricated metal products, except machinery and equipment	0	5	6	12
24	Textiles, wearing apparel, leather and related products	0	1	9	10
25	Rubber and plastics products	0	5	4	9
26	Machinery and equipment n.e.c.	0	5	3	8
27	Motor vehicles, trailers and semi-trailers	0	1	6	7
28	Mining support service activities	0	3	2	5
29	Wood and of products of wood and cork (except furniture)	0	3	2	5
30	Other non-metallic mineral products	0	2	3	5
31	Electrical equipment	0	2	3	5
32	Manufacture of basic metals	0	2	2	4
33	Coke and refined petroleum products	0	1	1	3
34	Other transport equipment	0	1	1	2
35	Mining and quarrying of non-energy producing products	0	1	1	1
36	Private households with employed persons	0	0	0	0
37	Intermediate Taxes on Products	0	0	0	0
	TOTAL >>	**2,112**	**2,929**	**1,896**	**6,937**

Table 4 – Detailed GDP impact for Australia Precedent ($ millions)

Rank	Economic Sector	Direct	Indirect	Induced	Total
1	Publishing, audiovisual and broadcasting activities	$322.2	$10.5	$1.2	$333.9
2	Other business sector services	$0.0	$45.3	$10.0	$55.3
3	Real estate activities	$0.0	$10.5	$37.8	$48.3
4	Financial and insurance activities	$0.0	$22.3	$18.1	$40.4
5	Wholesale and retail trade; repair of motor vehicles	$0.0	$18.7	$18.8	$37.4
6	Human health and social work	$0.0	$7.5	$18.6	$26.1
7	Arts, entertainment, recreation and other service activities	$0.0	$19.9	$4.9	$24.8
8	Intermediate Taxes on Products	$0.0	$7.2	$16.4	$23.6
9	Transportation and storage	$0.0	$13.3	$8.0	$21.3
10	Telecommunications	$0.0	$8.8	$5.3	$14.1
11	Paper products and printing	$0.0	$13.3	$0.7	$14.0
12	Electricity, gas, water supply, sewerage, waste and remediation	$0.0	$7.1	$5.6	$12.8
13	Accommodation and food services	$0.0	$1.3	$6.4	$7.7
14	Food products, beverages and tobacco	$0.0	$1.3	$6.4	$7.7
15	Mining and extraction of energy producing products	$0.0	$3.7	$3.6	$7.2
16	Public administration and defense; compulsory social security	$0.0	$3.9	$2.2	$6.1
17	Education	$0.0	$1.3	$3.9	$5.2
18	Agriculture, forestry and fishing	$0.0	$1.3	$3.3	$4.6
19	Construction	$0.0	$2.4	$1.7	$4.1
20	IT and other information services	$0.0	$2.7	$1.1	$3.7
21	Chemicals and pharmaceutical products	$0.0	$1.2	$1.4	$2.6
22	Computer, electronic and optical products	$0.0	$2.3	$0.3	$2.6
23	Repair and installation of machinery and equipment	$0.0	$0.5	$1.6	$2.1
24	Coke and refined petroleum products	$0.0	$0.9	$0.9	$1.8
25	Fabricated metal products, except machinery and equipment	$0.0	$0.5	$0.6	$1.1
26	Machinery and equipment n.e.c.	$0.0	$0.6	$0.4	$1.0
27	Motor vehicles, trailers and semi-trailers	$0.0	$0.1	$0.9	$1.0
28	Mining support service activities	$0.0	$0.5	$0.4	$0.9
29	Private households with employed persons	$0.0	$0.0	$0.7	$0.7
30	Rubber and plastics products	$0.0	$0.3	$0.3	$0.7
31	Mining and quarrying of non-energy producing products	$0.0	$0.3	$0.2	$0.5
32	Wood and of products of wood and cork (except furniture)	$0.0	$0.3	$0.2	$0.5
33	Electrical equipment	$0.0	$0.2	$0.3	$0.5
34	Other non-metallic mineral products	$0.0	$0.2	$0.3	$0.5
35	Other transport equipment	$0.0	$0.1	$0.1	$0.3
36	Textiles, wearing apparel, leather and related products	$0.0	$0.0	$0.2	$0.3
37	Manufacture of basic metals	$0.0	$0.1	$0.1	$0.2
	TOTAL >>	**$322.2**	**$210.3**	**$183.0**	**$715.4**