

## **Levelling the Digital Playing Field**

### **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)

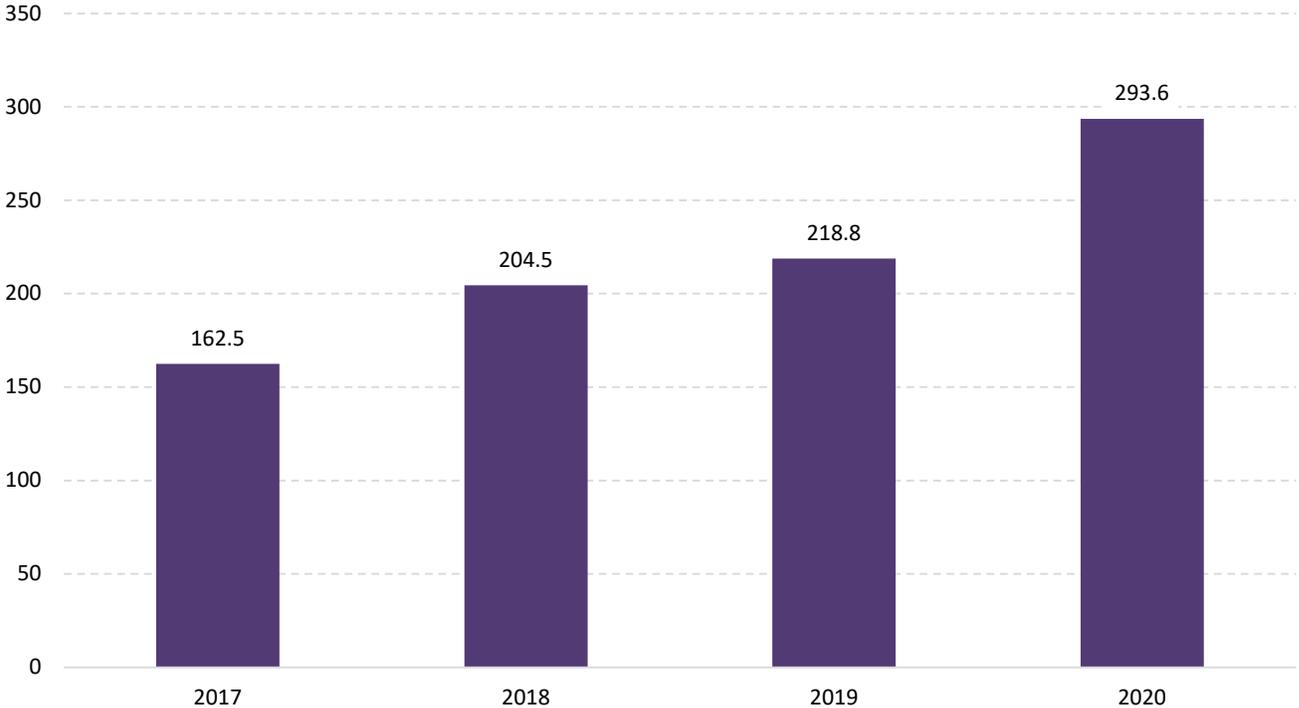


Figure 1 substantiates this point about growing demand for digital news. In 2017, news publishers had an estimated 162.5 million unique digital visitors. We project an 81% increase between 2017 and 2020 with unique digital visitors of 293.6 million by the end of this year.

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
<b>Journalists</b>	700 journalists (23% of total)
<b>Print Media Jobs</b>	2,100
<b>Canadian Jobs</b>	6,900
<b>Canadian GDP</b>	\$715 million per year
<b>Federal Revenues</b>	\$236 million per year <sup>1</sup>

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.

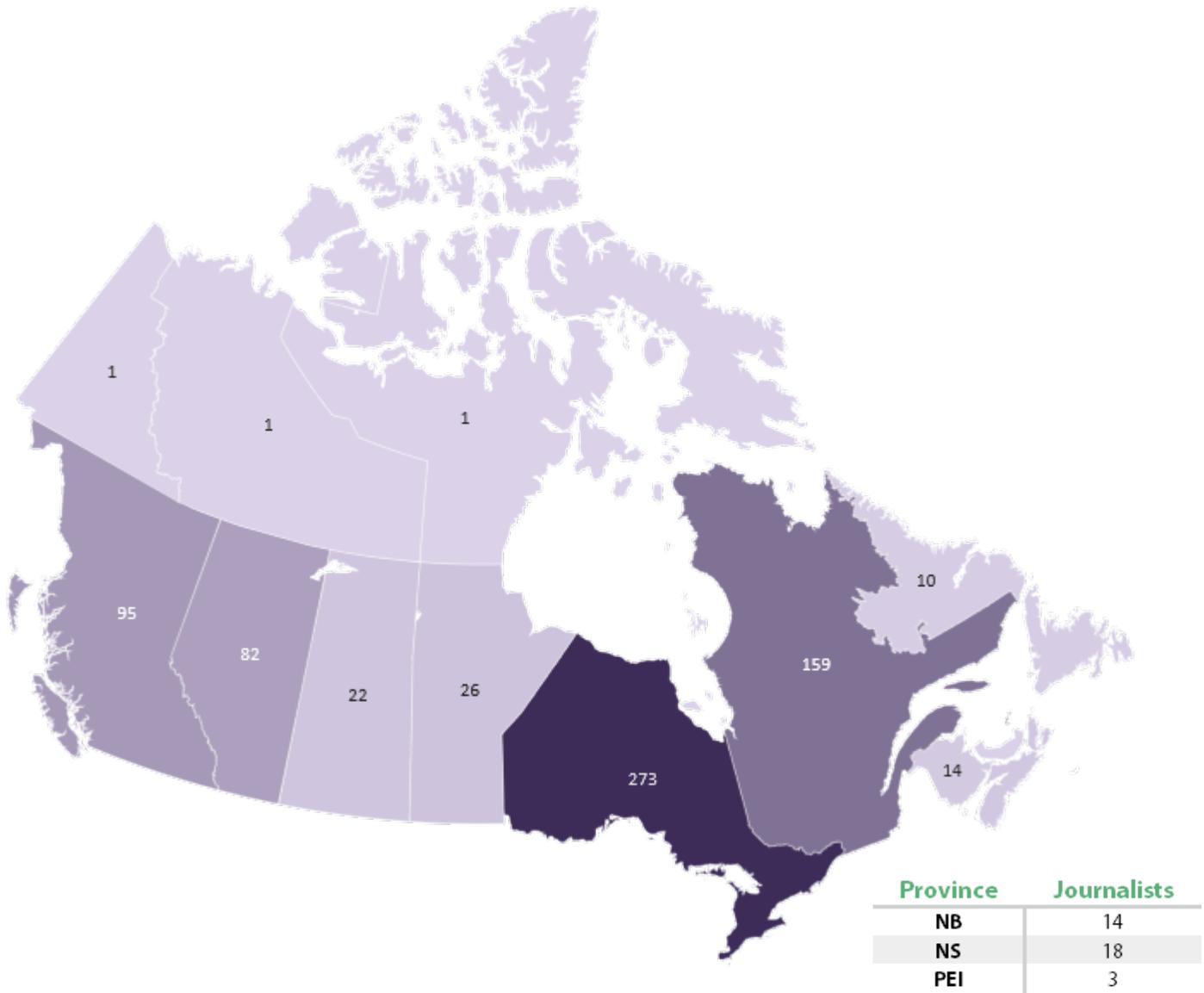
Figure 2 shows the estimated number of journalists supported by the Australian code by province and territory. We have allocated the national results between subnational regions based on each region's share of population. Adopting the Australian process in Canada would support over 250 print journalists 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.

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<sup>1</sup> Includes only revenues from increased economic activity

Figure 2 – Map of journalists supported by the Australian code



To access the full report please visit [www.levellingthedigitalplayingfield.ca](http://www.levellingthedigitalplayingfield.ca).