

CATO

P O L I C Y

A N A L Y S I S

AUGUST 14, 2023 NUMBER 956

A Link Tax Won't Save the Newspaper Industry

The Journalism Competition and Preservation Act Will neither Promote Competition nor Preserve Newspapers

BY PAUL MATZKO

EXECUTIVE SUMMARY

In hopes of reviving the floundering newspaper industry, Congress is looking to an Australian-inspired system of mandatory bargaining that would force Big Tech to cross-subsidize Big Ink. However, the early returns from Australia's "link tax" regime—as well as the history of Congress's last attempt to protect newspapers from competition in 1970—show that the Journalism Competition and Preservation Act (JCPA) could have serious negative consequences for both newspapers and consumers. The JCPA would neither promote industry competition nor

preserve legacy newspapers. It would propel further industry consolidation and reward rent seeking from tech corporations and hedge funds. Furthermore, it would create a novel "quasi-property right" in information that could tear apart the internet, destroy much of the value of the online news ecosystem, and deprive consumers of access to news and information. Rather than creating perverse incentives, policymakers would better serve the public interest by looking to emergent forms of new news media as a substitute for legacy modes of journalism.



PAUL MATZKO is a historian, a research fellow for media studies at the Cato Institute, and the author of *The Radio Right* (Oxford University Press, 2020).

INTRODUCTION

The decline of the local newspaper industry in the 21st century has seemed as sudden as it has been inexorable. Daily newspaper circulation is down to less than half its peak in the 1990s, a fifth of all newspapers have shuttered or merged since 2004, and local newspaper advertising revenue has plummeted from \$51 billion in 2008 to a mere \$10 billion in 2020.¹

Although the ideal of journalism as a “fourth estate” holding government authorities to account for their bad behavior is often overstated, the decline of the local news industry is undeniably bad for civil society.² For example, when a local newspaper closes, it strongly correlates with higher municipal bond yields, a key indicator of financial corruption or civic mismanagement.³ Likewise, consider the fact that Rep. George Santos’s (R-NY) remarkable web of lies wasn’t exposed until after he took office. While a local *weekly* paper, the *North Shore Leader*, ran exposés on the problematic candidate, there was no local *daily* paper to pick up and amplify those stories. As a result, regional and national outlets would not latch on to his scandals until after the election had taken place.⁴ Those with an interest in small, efficient, and honest government have good reason to lament the decline of the local newspaper industry.

“Those with an interest in small, efficient, and honest government have good reason to lament the decline of the local newspaper industry.”

However, one of the policy proposals meant to arrest the decline of the local newspaper industry could, if enacted, worsen the crisis and delay the rise of innovative substitutes. The Journalism Competition and Preservation Act (JCPA) would cross-subsidize legacy news outlets by taking revenue from online news aggregators such as Google and Facebook. The law leans on a mandatory bargaining process borrowed from a similar policy enacted in Australia. It would allow news outlets to form cartels in order to better extract revenue from tech companies.

Yet the JCPA—and similar “link tax” legislation under consideration in California, Canada, and the European Union—would propel further industry consolidation by privileging large national newspapers at the expense of small local papers. In addition, the bill would be a massive giveaway to hedge funds that have specialized in buying failing newspapers, stripping them for parts, and using their mastheads as part of a lobbying effort in favor of the JCPA.

Furthermore, the JCPA would create a radical new property right in information that could have immense negative consequences for the future of the internet. And it does so based on a misunderstanding of the complementary relationship between news producers and news aggregators in the digital economy. The JCPA fundamentally misdiagnoses the problems confronting the newspaper industry and so proposes a fundamentally flawed solution.

THE BLAME GAME

Newspaper editorial boards and journalist guilds often blame the decline of the newspaper industry on “vulture capitalism,” specifically, “the market dominance of Facebook and Google.”⁵ The idea is that search engines and social media platforms—or news aggregators—are thieves, taking content generated by news organizations and serving it to internet visitors. Adding injury to insult, these news aggregators refuse to return any of their ill-begotten gains back to the hard-working journalists who produce it, despite making immense profits from placing ads next to news search results. As News Corporation Chairman Rupert Murdoch complained to the Federal Trade Commission in 2009, those who “take our news content and use it for their own purposes without contributing a penny to its production” are guilty of “theft.”⁶

However, the real problem is not aggregators sharing links to news content but the internet’s disruption of an older newspaper business model built on advertising revenue. In particular, it is the internet-induced hemorrhaging of print classified ads and the end of print newspapers’ geographical monopolization that have devastated the local newspaper industry.

The sheer amount of print space once devoted to ads in newspapers would make young digital natives marvel. As one critic put it in 1968, “Many dailies are 70 per cent advertising,

and the cynic might suggest that newspapers are not ‘news’ papers; rather they are ‘advertising’ papers with news features inserted here and there.”⁷ By the end of the 20th century, advertising revenue comprised an incredible 75 percent of the typical newspaper’s budget, and an outright majority of that share came from classified ads and legal notices.⁸

Newspapers knew full well how important this revenue was to their bottom line. They successfully lobbied Congress in 1980 to block AT&T from creating an electronic yellow pages that might have competed with newspapers for classified ad revenue. Squelching competition allowed newspapers to ratchet up the price of classified ads far beyond the rate of inflation throughout the 1980s and 1990s.⁹

“With the rise of the internet, newspapers could no longer shield either their borders or their rents. They were thrust into competition with every other newspaper in the nation and around the world for consumers’ finite attention.”

When the consumer internet came along, newspapers finally faced competition for classified ads from new online platforms such as Craigslist and eBay. One study found that from 2000 to 2007, consumers buying classified ads online saved \$5 billion relative to purchasing the same ads from newspapers, and they did so while enjoying a larger potential audience.¹⁰ This was an excellent deal for consumers but a devastating blow to the financial health of newspapers that had gotten fat and happy collecting hefty state-protected rents on classified ads.

Furthermore, local newspapers were once the beneficiaries of a system of highly lucrative, geographically defined, quasi-monopolies that commanded inflated prices because their readers had few alternatives. Berkshire Hathaway CEO Warren Buffett once said, “If you have a monopoly newspaper . . . your idiot nephew could run it,” and backed up his words by going on a newspaper acquisition spree in the 1970s.¹¹ By the mid-20th century, after a wave of consolidation, most communities had only a single local daily newspaper. Flush with classified ad revenue, some

papers could afford to spend more money—albeit only a dollop—on civically valuable Pulitzer-bait projects such as investigative journalism.

This also made newspapers a gold mine for investors, who were attracted to the combination of high returns and deep moats protecting daily newspapers from meaningful competition. News Corp CEO Rupert Murdoch once described classified ads as “rivers of gold,” and it was the foundation on which he built his multinational multimedia empire.¹²

But with the rise of the internet, newspapers could no longer shield either their borders or their rents. They were thrust into competition with every other newspaper in the nation and around the world for consumers’ finite attention. Although platforms such as Google and Facebook have greased that competitive process for the last two decades, they were merely the beneficiaries of a structural transformation that preceded the existence of either company. If one were able to magically snap one’s fingers and wish away Google and Facebook, other platforms would rush in to perform a similar function.

THUNDER FROM DOWN UNDER

The decline of the local newspaper industry has been somewhat offset by the good fortune of national newspapers. Although papers such as the *New York Times* and the *Wall Street Journal* endured a financial hangover in the late 2000s and early 2010s as the addiction to advertising revenue wore off, they have since partially compensated for that loss with increased subscription revenue. For example, by placing content behind a paywall and increasing digital subscribers from 1 million to 10 million, the *New York Times* flipped an operating loss of \$88 million in 2012 into a \$109 million profit by 2021 (although total revenue is still a billion dollars below its peak in the mid-2000s).¹³ By the early 2010s, the national newspapers had generally stopped hemorrhaging money and have since enjoyed steady growth.

Murdoch, whose media empire includes *The Times* (London), the *Wall Street Journal*, and the *New York Post*, was one of the first newspaper owners to make the transition to the new financial model. In a 2009 speech to the Federal Trade Commission, he acknowledged that “the old [newspaper] business model based on advertising-only

is dead. . . . The reason is simple arithmetic. . . . The old model was founded on quasi-monopolies such as classified advertising—which has been decimated by new and cheaper competitors.”¹⁴ He backed up his words with action, putting the *Wall Street Journal* behind a paywall years before most of its competitors had one.¹⁵

Although Murdoch was an early mover toward the subscription model, he remained determined to crack down on online news aggregators by restricting their ability to profit from his news stories without permission. “There’s no such thing as a free news story,” he enjoined, “and we are going to ensure that we get a fair but modest price for the value we provide.” To him, platforms such as Google and Facebook were parasites that “take our news content and use it for their own purposes without contributing a penny to its production.”¹⁶ Yet for years, Murdoch’s complaint had seemed like mere sour grapes, a belief that would eventually fade as, one-by-one, the national newspapers pivoted to a subscription business model and put themselves on a more sustainable financial basis.

“Within a few months of the Australian link tax’s passage in 2021, Google and Facebook had forked over \$200 million to news outlets, with 90 percent going to the three largest conglomerates.”

That changed in 2021, when Murdoch’s News Corp—joined by its two largest competitors, Seven West Media and Nine Entertainment—successfully pushed for the passage of a law in Australia that forced a major redistribution of income from Google and Facebook to Australian news outlets. The law, popularly known as a “link tax,” created a mandatory bargaining scheme. If news aggregators wanted to share links to news stories, they had an obligation to negotiate with news outlets for access. Should they fail to come to an agreement, the Australian secretary of the treasury could mandate arbitration.

Within a few months of the link tax’s passage, Google and Facebook had forked over \$200 million to news outlets, with 90 percent going to the three largest

conglomerates. According to estimates, News Corp won a nine-figure deal; Nine got \$50 million, and Seven gained at least \$30 million.¹⁷ A law that was first proposed by Murdoch himself, enacted with extensive editorial support from News Corp–owned outlets, had led to windfall profits for his conglomerate. Indeed, the head of the Australian Treasury’s Competition and Consumer Commission, which oversees the mandatory bargaining process, is a former director of the Murdoch family trust.¹⁸ Rupert Murdoch was both the driving force behind the passage of the link tax and its greatest—albeit not its only—beneficiary.

AMERICAN IMITATION IS THE SINCEREST FORM OF FLATTERY

Australia’s link tax system has inspired progressive politicians from around the world who are interested in finding ways of subsidizing their own newspaper industries and doing so without resorting to politically unpalatable options like direct taxpayer support. Multiple countries, including the United Kingdom, are actively considering link tax legislation; Canada passed its own version in June 2023. In December 2022, the United States nearly passed a link tax bill that, as one newspaper put it, was “tried and proven in Australia.”¹⁹ It has since been reintroduced in the Senate.

California may beat Congress to the punch with an alternate, cruder version of a link tax law that relies on direct per link payments. The California Journalism Preservation Act (CJPA) was passed by the California Assembly in early June 2023 and awaits consideration by the California Senate. The CJPA relies on a slightly different mechanism than its federal counterpart (despite a confusingly similar acronym: the JCPA), but both bills are fundamentally alike in that they would force Big Tech to cross-subsidize Big Ink. They would create similar flawed incentives and worsen the plight of the already struggling local newspaper industry. The problems of the JCPA as highlighted in this analysis can also be applied to the CJPA.

The JCPA legislation originated with progressive politicians, including Sen. Amy Klobuchar (D-MN), who are focused on preserving local newspapers (“to save local journalism”). But it has since attracted bipartisan support from Republicans, including Rep. Ken Buck (R-CO) and Sen. Ted Cruz (R-TX), who are more interested in

diminishing the power of tech companies (“to save news organizations crushed by Big Tech”).²⁰ Unsurprisingly, the bill is backed by many—though by no means all—newspapers, which often echo Murdoch’s complaint by accusing Google and Facebook of stealing local news content without “return[ing] value to news publishers.”²¹

Like the Aussie-style link tax, the JCPA would use a system of mandatory bargaining between news content producers and online news distributors to transfer additional money toward legacy newspapers and broadcasters. The rules only apply to the largest online platforms, those that share news links, have more than 50 million active monthly users, and have at least \$550 billion in market capitalization. That set of criteria makes it obvious that Google, Apple, and Facebook were the intended targets, since only those three companies hit those markers when the bill was first proposed.

The JCPA stipulates that any qualified distributor linking consumers to news content online has an obligation to negotiate for that access with the news outlets that produced it. The definition of what counts as “access” is broad, applying to “acquiring, crawling, or indexing content.”²² These are not synonyms:

- *Acquiring* roughly equates to obtaining the right of republication, taking an article written on one site and republishing it elsewhere, say in the Apple News app or the equivalent.
- *Crawling* refers to the way search engines send out an automated bot every couple of hours to assess whether new content has been added to a website. It is the equivalent of a person clicking on a website to see what is there, except the process is automated and operates at an inhuman scale and pace.
- *Indexing* is also performed by search engines, although it also applies more broadly to any organization of online data. An index is a preferential ranking of content. Since not all internet content is created equal, search engines use algorithms to evaluate what content searchers are most likely to be looking for. If you were to search for “Paris restaurants,” the algorithm would try to identify whether you are looking for a place to eat in Paris, France, or Paris, Texas, or whether you are a superfan of Paris Hilton wondering what her favorite dining spots are.²³

The JCPA applies to the core functions of the modern internet. There is no realistic way for distributors to link to news stories without in some way “acquiring, crawling, or indexing content,” and thus the act would affect everything from the explicit curation of news articles to the basic operation of internet search.

“The Journalism Competition and Preservation Act would affect everything from the explicit curation of news articles to the basic operation of internet search.”

News outlets whose content has been accessed would be able to form “joint negotiation entities” to negotiate with Google and other aggregators for financial compensation. After all, a group of newspapers has more bargaining power than an individual newspaper. Under normal circumstances, a group of competing organizations banding together into a cartel in order to raise prices would fall afoul of antitrust laws. But the JCPA stipulates a safe harbor that would exempt these joint negotiation entities from antitrust action.

Any news outlet with a significant online presence is qualified so long as it:

- generates “at least \$100,000 in annual revenue from its editorial content”;
- employs “professionals to create, edit, produce, and distribute” that content; and
- retains no more than 1,500 full-time employees.

These criteria qualify all but the smallest local newspapers, while excluding most emergent forms of online news media such as newsletters, bloggers, and social media creators.²⁴

Should “good faith” negotiations between news producers and distributors stall after 180 days, the JCPA stipulates an arbitration panel, with the costs of proceedings being split by both sides. The final awards from the negotiation process are distributed according to a five-year schedule, with 65 percent being apportioned according to the number of news journalists each outlet employs on either a half-time or full-time basis.

The basic structure of the JCPA is similar to that of the Australian link tax, although the U.S. law is more transparent than the Australian version and has different thresholds for action and awards. But both target the largest news aggregators, use the threat of mandatory bargaining to compel tech companies to negotiate with news outlets, and have significant negative implications for the future of the internet.

Should the JCPA or similar legislation be enacted, we should expect:

- concentration of the news industry favoring the largest incumbent firms;
- the abuse of the bargaining rules by rent seeking competitors;
- a loss of public access to news content and diminished consumer welfare; and
- a radical expansion of property rights threatening the internet.

RISKS: INDUSTRY CONCENTRATION

There is a basic irony at play in the fact that the JCPA would create a newspaper cartel to combat an ostensible tech monopoly: it treats trust formation as a tool in the antitrust toolbox. Advocates for the JCPA should be more concerned with how the legislation could fuel further concentration of legacy news industries. The law would create a series of disincentives that favor large incumbent firms over small emergent outlets.

By setting the threshold for qualified negotiation entities at \$100,000 in editorial revenue, and by favoring outlets that employ professional journalists working at least 20 hours a week, the JCPA excludes the smallest news outlets that often employ volunteer or other nonprofessional journalists. This is particularly true of weekly papers that are frequently owner-operated and rely on contributions from nonprofessional members of the local community.

Bear in mind that more than 80 percent of remaining local newspapers have a circulation of under 15,000. There are so many small struggling weekly papers that it has been possible to buy a paper for as little as \$40,000. LION Publishers, which represents more than 450 small newspapers in the United States and Canada, reports that 44 percent of its member papers make less than \$100,000

in annual revenue. The organization opposes the JCPA as a giveaway to the “largest legacy publishers” as well as the hedge funds that have been snapping up newspapers at fire-sale prices.²⁵

“There is a basic irony at play in the fact that the Journalism Competition and Preservation Act would create a newspaper cartel to combat an ostensible tech monopoly.”

Rather than ceasing operations entirely, publishers often consolidate their papers by selling them to regional paper conglomerates. Those conglomerates concentrate production in a central newsroom, cut journalistic staff, and then publish the same set of news stories under the banners of acquired newspapers. These are less newspapers than they are branding exercises, ghostly afterimages of a more vibrant journalistic past. It is the news equivalent of the car industry in the 1970s, when the Detroit Big Three manufacturers would release multiple reskinned versions of the same basic car body under the brands of previously acquired competitors. By setting a \$100,000 threshold and rewarding papers that employ professional journalists, the JCPA would place additional consolidation pressure on an industry that has already seen a significant decline in the number of owners.²⁶

Furthermore, the JCPA’s revenue and professionalism thresholds would likely have a disparate racial impact. The National Newspaper Publishers Association, formed in Washington, DC, in 1940, serves more than 200 black-owned newspapers, many of which have existed since the era when white-owned newspapers explicitly excluded black journalists and were generally disinterested in reaching black audiences. These papers skew small and independent, putting many below the \$100,000 qualification threshold. The National Newspaper Publishers Association’s CEO called the JCPA a “blank check for large corporate media” that “leaves small minority-owned news out in the cold.”²⁷ It would be perversely ironic if the JCPA, while seeking to preserve the newspaper industry, instead ends up preserving—or even deepening—the de facto segregation of the industry.

Beyond the \$100,000 threshold, the JCPA would also propel industry concentration through the award process. Since 65 percent of negotiated proceeds are distributed according to the number of professional journalists working at least 20 hours a week, the bargaining outcome privileges large outlets with traditional newsrooms over small independent outlets with few, if any, full-time employees. A single mid-tier newspaper with several hundred full-time employees could extract far more from the mandatory bargaining system than even hundreds of the smallest newspapers combined. Far from halting the decline of the local newspaper industry, this distribution formula will instead direct more funds to precisely those regional and national newspapers that are already back on a sustainable financial footing.

“The latest data from Australia in the two years since its link tax was imposed show that the rate at which smaller local news outlets close or merge has accelerated, while the largest urban news outlets grow even faster.”

In addition, the JCPA imposes a novel reporting system on news outlets that participate in the bargaining process. They are required to annually inform the Federal Trade Commission of how award funds are spent and what proportion is dedicated to supporting journalists who work 20 or more hours a week. This information would be publicly disclosed, although the meaning of these data will likely do little except to encourage creative accounting as companies shuffle funds around to maximize how much of the negotiation awards go to journalists’ salaries rather than other expenses. In any case, reporting requirements generate regulatory compliance costs, which will further favor larger media entities with substantial back-office personnel.

The JCPA does attempt to mitigate concerns about industry concentration by capping qualified publishers as companies with no more than 1,500 “exclusive full-time employees.”²⁸ That eliminates the Northeast Corridor’s “Big Three”—the *New York Times*, the *Wall Street Journal*, and the *Washington Post*—but still qualifies the tier of major regional papers such

as the *New York Post*, the *Los Angeles Times*, and the *Chicago Tribune*. The mid-major papers might not be enjoying quite the same degree of subscription and revenue growth as the top-tier papers, but their financial situation bears little resemblance to the dire straits of the truly local newspaper industry.

And as critics have noted, the employee cap applies only to newspapers and not to television broadcasters, meaning that even the largest broadcasting outfits, like Sinclair—with 13,000 total employees and billions in quarterly profits—could participate in the bargaining scheme. Yet television journalism has borne up relatively well in terms of viewers and revenue; indeed, broadcasting employs nearly as many journalists today as it did in the 1990s. The JCPA has a consistent pattern of claiming to benefit struggling local news outlets while simultaneously creating rules and definitions that actually favor regional and national outlets that are already thriving in the digital economy.²⁹

Concerns about further industry concentration are not hypothetical. The latest data from Australia in the two years since its link tax was imposed show that the rate at which smaller local news outlets close or merge has accelerated, while the largest urban news outlets grow even faster.³⁰ Even before the link tax was imposed, Australia was already one of the most concentrated media markets in the world. One study ranked it third out of 30 countries, behind only China and Egypt, which have nationalized news outlets and authoritarian governments.³¹

The early returns suggest that the link tax scheme has contributed to the further concentration of the news industry Down Under. That may be because the huge financial transfers from aggregators to producers disproportionately benefited the major networks—including Murdoch’s News Corp, the single largest beneficiary. Those networks then embarked on a journalist hiring spree, allowing them to hire journalists away from the smaller outlets that were unable to shoulder in at the link tax trough.³²

RISKS: RENT SEEKING

But it is not necessary to look across the Pacific Ocean for evidence that antitrust exemptions tend to propel news industry concentration while offering limited benefits for smaller organizations. In 1970, Congress responded to the ongoing consolidation of the newspaper industry by passing

the Newspaper Preservation Act. At the time, policymakers worried that the rise of television journalism threatened the finances of newspapers, which were closing or merging at unprecedented rates. (It is not hard to hear an echo of those concerns today with regard to the internet's effects on newspapers.) To help newspapers more efficiently compete for consumer attention with television broadcasters, Congress created an antitrust exemption that allowed previously competing local papers to combine operations in order to stave off bankruptcy.³³

In theory, the law allowed newspapers to streamline nonjournalist jobs in distribution and in the back office while maintaining independent newsrooms. But in practice, the law primarily benefited papers belonging to the largest newspaper conglomerates, including the Hearst Corp and Scripps-Howard, which increased profit margins via price-fixing agreements.

It was also a bald exercise in cronyism. The courts had consistently ruled that these profit-sharing agreements violated antitrust law, and both the Johnson and Nixon administrations had repeatedly refused to back an antitrust exemption. Finally, Hearst's CEO, Richard Berlin, privately wrote to President Richard Nixon and reminded him that "there was almost unanimous support of the Administration [in the 1968 election] by the newspapers who are proponents of the Newspaper Preservation Act" and it was only proper that they should "at the very least, receive a most friendly consideration."³⁴

Within a matter of weeks, the Nixon administration flip-flopped on the bill, which then sailed through Congress absent the threat of a presidential veto. Nixon received his earthly reward in 1972, when 93 percent of newspapers endorsing a presidential candidate picked Nixon, a ratio that is still unmatched in presidential history. They did so in large part because the executives of the largest conglomerates had ordered their individual newspaper editors to do so.

Later on, papers that had backed the Newspaper Preservation Act and Nixon's reelection were significantly less likely to cover the Watergate scandal and, when they did, they were more likely to bury their stories in the back pages. Meanwhile, small and independent newspapers, which had been more likely to oppose the Newspaper Preservation Act, were also more likely to hold the president to account for his crimes, including the *Washington Post*.³⁵

In other words, the most relevant historical example of Congress providing an antitrust exemption for news outlets suggests that doing so again will not only fail to accomplish the ostensible purpose of the exemption, but may also propel further industry concentration, reward the most well-connected and well-off firms, and provide oxygen for rent seeking companies and corrupt politicians.

“The Journalism Competition and Preservation Act will propel further industry concentration, reward the most well-connected and well-off firms, and provide oxygen for rent seeking companies and corrupt politicians.”

Proponents of the JCPA emphasize the theoretical value of the legislation for smaller, struggling, independent newspapers—or preserving the “heart and soul of journalism”—but the odds are that, just like with the Newspaper Preservation Act, it would primarily function as a bottom-line enhancer for newspapers that are not in financial peril.³⁶ And any additional funds may not ultimately end up reinvested in newspapers because 51 percent of existing newspapers are now owned by hedge funds, which have been buying up newspapers, loading them with debt, laying off journalists, and stripping the papers for parts, such as by selling off capital equipment and offices, before merging off the husks into a regional entity.³⁷ Increasing the ability of hedge-fund-owned papers to extract payouts from Google and Facebook will only encourage further hedge fund acquisition of newspapers and, ironically, may accelerate the decline of the local newspaper industry. But if the goal of the JCPA is to improve hedge fund returns for the next several years, then it might still be considered a success.

It may be no accident that the News Media Alliance, which has lobbied extensively for passage of the JCPA, has a representative from Alden Global Capital—the hedge fund with the largest portfolio of newspaper holdings—sitting on its board.³⁸ News Media Alliance members, at least 56 of which are owned by Alden, published pro-JCPA editorials en masse during the last push for the

bill's passage.³⁹ That included a canned editorial proffered by the News Media Alliance, for which a quick Google search—oh, the irony—returns hits from many dozens of papers.⁴⁰ As journalist and technologist Jeff Jarvis put it, there is nothing that “the big, old, failed, hedge-fund-owned news companies with lobbyists” would like more than to “get Google’s money under force.”⁴¹

In addition to hedge-fund hedging, some of Google and Facebook’s direct competitors in the tech sector have shown an interest in pushing for the passage of the JCPA. Both in Australia and in the United States, Microsoft threw its backing behind a link tax. The president of Microsoft, Brad Smith, testified in favor of the JCPA before the House of Representatives’ antitrust subcommittee, where he lambasted Google’s dominance in digital advertising while praising Bing, Microsoft’s competing search engine. Since, to quote Smith, “the problems that beset journalism today are caused in part by a fundamental lack of competition in the search and ad tech markets that are controlled by Google,” restoring journalism needs “new legislation and government support.”⁴²

“The Journalism Competition and Preservation Act assumes an adversarial relationship between competitors, when, in reality, news producers and aggregators are natural partners offering complementary services.”

Even if Microsoft were qualified alongside Google as a news distributor under the terms of the JCPA, Google stands to lose far more under the new regime. That is both because Google is so heavily dependent on digital advertising for revenue (unlike a legacy software company such as Microsoft, which makes most of its money on other products, including its Office suite) and because Google is the largest single player in digital advertising, at 29 percent, and Microsoft is a relatively small, albeit rising, player at 1.4 percent. If the goal of the JCPA is to improve the competitive edge of the second-largest tech company by market cap relative to that of the third-largest tech company, then it still might be considered a success.⁴³

RISKS: DIMINISHED CONSUMER WELFARE

At its core, the JCPA suffers from a common misunderstanding about the relationship between news producers and online aggregators in the digital age. It assumes that it is an adversarial relationship between competitors, when, in reality, news producers and aggregators are natural partners offering complementary services.

Pro-JCPA editorials often root their claims for compensation in how “digital giants” such as Google and Facebook “distribute the news industry’s journalism content on a major scale while paying little or nothing for that content.”⁴⁴ But that depicts a ledger in which news outlets do all the work while tech companies provide nothing of value. Nothing could be further from the truth because distribution is neither valueless nor costless.

In the pre-digital era, newspapers spent nearly as much on circulation expenses as they did on content, footing at least part of the bill for a sprawling network of newsstands, newsboys, and other distribution services.⁴⁵ In the digital era, platforms such as Google have taken over that distribution function, while individual readers reshare and amplify content on social media. Making it possible for consumers to access a newspapers’ content was once an expensive, arduous process; today it is a matter-of-fact function of the internet. Any newspaper with a website now has a global potential audience, with search engines and social media platforms performing a high-value, costless distribution function.

It is true that the loss of classified advertising revenue to the likes of Craigslist has outweighed the gains to newspapers from offloading distribution costs to platforms such as Google, but that does not make it a good idea for newspapers to try to legislatively extract additional revenue from online distributors. Indeed, the attempt to do so may end up returning little of value to newspapers while impairing this valuable distribution function to the detriment of both news outlets and consumers. That is because the value of display ads for news content specifically is a tiny fraction of total advertising revenue for companies such as Google. Advertising revenue has not flowed from offline news to online news. Rather, it has flowed from offline news to online everything.

Advertisers once poured incredible sums of money into the newspaper industry, not because they cared about

subsidizing the news per se, but because it was one of the only mechanisms for reaching a mass audience. That is why the beginning of the end for the ad-dependent financial model of newspapers was not the advent of the internet, but the rise of television, and thus the perceived need for the Newspaper Preservation Act of 1970. Only a small fraction of television ad spending was tied to news-related programming, with most ads pegged to various forms of entertainment content. The internet has merely exacerbated the trend that began with television. Newspapers now have to compete with every other form of content that is trawling for consumers' attention, from sponsored makeup tutorials on social media to underwritten livestreams from professional video gamers.

“Advertising revenue has not flowed from offline news to online news. Rather, it has flowed from offline news to online everything.”

Platforms such as Google and Facebook simply do not need news outlets as badly as news outlets need Google and Facebook. By Facebook's own estimate, news-related content comprises less than 4 percent of content shared by users, although that 4 percent is enough to drive billions of free referrals to news outlets.⁴⁶ In Australia, Facebook claimed that the value of its referrals was some \$407 million AUD, while Google claimed \$218 million.⁴⁷ Certainly, both companies have an incentive to exaggerate their contributions, but the fact that no major Australian news outlet has ever blocked website indexing—despite ostensibly being the victims of theft on a massive scale at the hands of aggregators—implies that the value of the service that aggregators provide is meaningful.

As it so happens, there has been a natural experiment revealing what happens when the mutually beneficial relationship between news producers and digital distributors is severed. In 2014, Spain passed a law requiring Google and other news aggregators to pay a “snippet tax” to newspapers for each news article they link to. The value of advertising revenue from news content was so low that Google News pulled out of the country entirely. As a result, all 84 major Spanish online newspapers lost both traffic and revenue.

Worse yet, the losses were most heavily concentrated among the smallest newspapers.⁴⁸ Spain's law meant that ordinary people accessed fewer news stories, thus imposing significant informational deadweight losses on newspapers and consumers alike.

The danger of something similar happening in the United States from the JCPA is implicitly acknowledged within the bill, which prohibits distributors from “refusing to index content or changing the ranking, identification, modification, branding or placement of the content” of news providers once the bargaining process begins.⁴⁹ However, this merely shifts the incentives forward in time. Instead of waiting for the results of negotiations to decide whether to pull out of the market, the JCPA would encourage online aggregators to preemptively remove access to news content before negotiations even start. Facebook has already threatened to do so should the JCPA (or the CJPA) pass.⁵⁰

In addition, the JCPA could hurt consumers by subsidizing and protecting the spread of hate speech and misinformation.⁵¹ By necessity, the JCPA has to remain content neutral, not favoring any one flavor of news outlet over any other. Were it otherwise, the federal government could find itself in the messy and unconstitutional position of selecting which news outlets are eligible to negotiate with aggregators based on ideological criteria.

As a result, a news source that frequently promotes hate speech or medical misinformation would be just as qualified for negotiating rights as any other. And platforms such as Google or Facebook would lose the right—which they currently possess—to refuse to index, rank, identify, or alter the placement of such content. While many well-intentioned JCPA supporters, such as Rep. Jerry Nadler (D-NY), see the bill as combatting online “widespread misinformation,” the JCPA would likely do the opposite, boosting the amount of problematic online news and information.⁵²

RISKS: UNRAVELING THE WORLD WIDE WEB

The JCPA creates a novel property right that challenges the fundamental structure of the internet. Think for a second about what a news aggregator does. It takes the location information of a news article—its hyperlink—and shares it with consumers. That location, by definition, is publicly

available information. The newspaper or broadcaster created an online address so that users of the World Wide Web could find and read their news content (and either see a few ads or perhaps decide to pay for a subscription). The aggregator merely brings that address to the attention of a larger pool of people than would otherwise directly find the website by typing the address in the browser bar.

An aggregator is no more a pirate for sharing the location of a news article than a bookstore is a pirate for placing a book on its shelves for consumers to thumb through and potentially purchase. And just as a book's author benefits from a bookstore making the book's title and dust jacket description more visible to consumers, so too does a news outlet benefit when a platform such as Google or Facebook uses a hyperlink or snippet to help consumers find articles of interest.

News outlets' complaints about piracy from the likes of Google and Facebook are not merely self-defeating, as previously discussed, but would, if codified in the JCPA, create a novel, value-destroying property right. Property rights do not exist for their own sake. They are invented or formalized for their utility and for how they encourage exchange, production, and innovation. A property right can be extended over ideas and information to the public benefit, as with copyright and patents, which give creators an additional incentive to innovate.

But formalizing certain rights of property can instead destroy the value of the underlying object by impairing its utility. Excessive "proprietyization" of ideas and information can impair growth and stymie innovation while enriching a few at the expense of the many. Those who are dissatisfied with the bland studio formulas of Disney-owned franchises such as Marvel and Star Wars can blame the way Disney has successfully lobbied Congress to extend copyright terms whenever the copyrights to their valuable back catalog are set to expire.⁵³

Advocates for the JCPA will sometimes frame it as a matter of copyright protection, or what has been termed "ancillary copyright." Rep. David Cicilline (R-NY), head of the House antitrust subcommittee, compares what Google and Facebook do with online news to a video platform "stream[ing] movies without paying a film's creators."⁵⁴ But that particular copyright metaphor breaks down upon closer consideration. After all, the news stories were posted online by news outlets, not stolen from them.

A more apt metaphor would be that of a filmmaker planning a public showing of a movie at a local park, then complaining when a local newspaper simply informed the public about where and when the film would be shown. No copyright would be violated by the newspapers' action; indeed, the public notice would benefit the filmmaker.

"An aggregator is no more a pirate for sharing the location of a news article than a bookstore is a pirate for placing a book on its shelves."

Hyperlinking is no different. Online news outlets publish their articles and videos on websites with the express purpose of attracting readers and viewers. News aggregators are not copyright pirates; they merely take information that has been made public and funnel more people's attention toward it.

And if, for whatever reason, a news outlet does not like an aggregator driving people toward their content, they can insert a simple text file (robots.txt) into the back end of their website that tells internet crawlers to skip over indexing that website. It is so easy to do that U.S. courts have recognized that the failure to implement such code grants an "implied license" to aggregators to index a website and to link to it.⁵⁵

On the surface, mandatory bargaining between news producers and online aggregators might not seem to have a property right component beyond copyright. However, it also introduces what might be termed a "quasi-property right," to use the terminology of the U.S. Supreme Court case that gave rise to Justice Louis Brandeis's famous quote about ideas and information being "free as the air to common use."⁵⁶ The ability to legally compel a party to pay for access to something that was previously in the public domain introduces a key quality of property.⁵⁷

Link taxes are a form of enclosure, taking something from the commons and making it private property. It is an echo of how rentiers in early modern Europe turned previously common pasture, open to the use of all, into private property by erecting fences and establishing legal boundaries. Similarly, as legal scholar Yochai Benkler wrote in 1999, "We are in the midst of an enclosure movement in our information environment" as "our society is making a series of decisions

that will subject more of the ways in which each of us uses information to someone else's exclusive control."⁵⁸

The invention of the internet had undermined the rents extracted by a class of newsgatherers that had created geographically defined regional semi-monopolies, and which were thus able to charge consumers higher rents for news information and for access to the classifieds marketplace. As those news distribution monopolies have been threatened with digital disruption, newspapers have responded by trying to enclose their little corners of the World Wide Web. If they can erect a high regulatory fence to keep out the aggregators who would graze on their news without permission, they can continue to extract rents (even if the amounts involved are lower than in the pre-digital era). Traditional news outlets have recognized, to quote from the famous early internet manifesto *The Cluetrain Manifesto*, that "hyperlinks subvert hierarchy," and a very valuable hierarchy at that.⁵⁹

This kind of informational enclosure can be destructive and not merely a transfer of wealth. Compare a news website to the house you occupy: both require significant expense and effort to construct and furnish. However, owning the property title to a house at a particular location does not give you ownership of its street address. There is significant social and civil benefit derived from that address remaining public information, or "free as the air." Its non-ownership is a well-established communal norm and is useful for taxing authorities, commercial entities, and social connectedness. In the pre-digital age, it was what allowed companies to compile address information and distribute the phone book at no direct cost to consumers.⁶⁰ And in the internet age, it is a vital part of services, such as Google Maps, that benefit travelers.

Turning street addresses into a form of quasi-property could have potential upsides, such as helping shield celebrities from stalking fans or helping shield domestic abuse survivors from former partners. Perhaps it could even generate rents for those holding these novel rights in street addresses by forcing address registries to pay for listing rights. More likely, however, enclosure of street addresses would simply destroy these kinds of socially beneficial networks without returning any monetary benefit to the owner.

Indeed, this is why Germany, alone among Western European countries, has very little Google Street View coverage. Based on an understandable historical fear of

government surveillance and an emphasis on personal privacy rights, German courts have upheld "informational self-determination" and prohibited corporations from using images of people's homes and even their street addresses without obtaining express permission. Enclosing this category of information—which is generally in the commons elsewhere in the world—destroyed the social utility Germans could have derived from Google Street View and did so without returning any kind of monetary benefit. Given the value that Germans place on privacy, it appears to be a price they are willing to pay, but it is a reminder that the decision to enclose a commons can generate distributed social costs and informational deadweight losses.⁶¹

“The Journalism Competition and Preservation Act would mean fewer news articles from fewer newspapers reaching fewer consumers.”

Policymakers should consider the potential that creating a quasi-property right over hyperlinks might do the same. Even if mid-tier newspapers are able to extract new rents from online aggregators as a result of the JCPA, it will have a cost: fewer news articles from fewer newspapers reaching fewer consumers.

The JCPA and other link taxes also introduce an “if everybody did it” problem that could reshape the future of the internet. That is because hyperlinking is foundational to how we use the internet; it puts the “Web” in “World Wide Web.” The modern internet began in 1980 with Tim Berners-Lee creating hypertext links between previously isolated websites. Such links imposed no claim of ownership; they merely directed Web users to view content owned and posted by others.

For that reason, Berners-Lee has come out in strong opposition to link taxes, citing the ability of websites to “link freely . . . without limitations regarding the content of the linked site and without monetary fees” as “fundamental to how the web operates, how it has flourished till present, and how it will continue to grow.”⁶² By contrast, a link tax is predicated on the assumption that merely linking to a

website creates a kind of ownership claim, an imposition on the creator that is worthy of compensation.

The JCPA and other link taxes would take a pair of scissors to the World Wide Web, threatening to snip away the invisible threads that connect one category of information—news—to the rest of the internet. In extreme cases, as in Spain, a link tax functionally removes that category from the Web altogether, reverting online news to an atavistic echo of the pre-Web internet. In other countries, a link tax regime would merely inhibit how much, how often, and how widely that content is distributed to consumers. Link taxes undo the linkages that make the World Wide Web truly worldwide.

California’s proposed link tax, the CJPA, would cause that fragmentation to run even deeper. Not only would we see the further devolution of the World Wide Web into various Nation Wide Webs, but the internet in the United States might end up being fractured into 50 different instances, some with aggregated access to news and some without, and 50 different compensation schemes. Were this kind of state-by-state regulation of the internet to pass muster under the Commerce Clause—which remains to be seen—it would create a precedent for additional transfers from tech companies to favored local industries. Such a patchwork approach to internet regulation would be a recipe for disaster for American predominance in online innovation. It would be ironic if California, the home of Silicon Valley and a birthplace of the modern internet, were ultimately responsible for that failure.

A BETTER WAY: NEW NEWS MEDIA

Although the JCPA is a fundamentally flawed piece of legislation, it is popular in part because it promises to do something about a very real crisis confronting the traditional news industry. Those apprehensions will not disappear even if the bill does. As long as there is a perceived need for government to do something—anything!—bad legislative ideas will continue to crop up. The good news is that there are emerging alternatives that will not merely substitute for traditional news outlets but promise to surpass them.

To understand what that future may look like, consider what the core function of a traditional media outlet is. Consumers demand news and information about current events. The problem is that knowledge about events—from

moments as small as winning a high school football game to events of national importance like a natural disaster or a presidential election—is widely distributed. The public once needed intermediaries—centrally organized newsrooms—to send out journalists to gather information and solicit opinions, which are then brought back, fashioned into news, bundled together in a generic package, and sold to the end consumer.

“Link taxes would take a pair of scissors to the World Wide Web, threatening to snip away the invisible threads that connect one category of information—news—to the rest of the internet.”

This basic structure has served the public reasonably well, but it is subject to inherent limitations. Since knowledge and expertise are so widely distributed, journalists—subject to capital and time constraints—cannot interview everyone. They will, by necessity, fail to capture all existing local knowledge. The newsgathering process also tends to introduce lag into the dissemination of information, given the time required to travel to a site, conduct interviews, and then distribute the resulting product. Furthermore, the fact that newspapers were centralized entities with gatekeeping power over the flow of information made them targets of manipulation by rent seeking corporations, favor-pulling politicians, and other interest groups.

But there are new news media forms that mitigate those problems. News is no longer the exclusive reserve of centralized wage-earning journalists. The internet is enabling news production by decentralized, independent, and self-employed creators. These “sovereign writers”—as independent tech industry expert Ben Thompson calls them—may not only subsist but also thrive on the contributions of a relatively small pool of supporters, or what technologist and blogger Kevin Kelly describes as having “one thousand true fans.”⁶³

And while some of the new class of independent journalists have crossed over from traditional news outlets—like Matthew Yglesias or the team at the *Charlotte Ledger*—many

have come off the sidelines from nonjournalistic professions. For example, Heather Cox Richardson, whose newsletter turned her from an obscure but respected historian of 19th-century America into an expert analyst of the historical underpinnings of national politics, now earns more than a million dollars a year. In other words, even as the number of formal journalists employed at newspapers has declined, the number of nontraditional journalists has increased.⁶⁴

“The Journalism Competition and Preservation Act fails to account in any way for the emergence of new news media forms.”

Consider a hypothetical consumer who wants regular news updates about New Zealand housing policy, detailed analyses of police encounters with civilians in the United States, and the latest updates from the Russia-Ukraine war. Few newspapers can cover all those topics every week in any degree of depth. But by relying on new news media platforms such as TikTok, Substack, and YouTube, a consumer can assemble an à la carte bundle of news and information tailored to even so precise a set of preferences. Note, too, that the quality of news coverage in this bundle in many ways surpasses that which a consumer would have once gotten from their local newspaper even before industry decline.⁶⁵

The result is more journalism with more variety that is being produced by a larger number of more diverse people. To put the situation in theoretical terms, the new news media pushes back against the boundaries of what economist F. A. Hayek labeled the “knowledge problem,” his observation that knowledge is locally distributed and thus mostly inaccessible to centralized authorities. Hayek’s ideas

are commonly applied to governance, but his observation has meaning for all institutions, including the centralized production of journalism. The new news media is widely distributed, giving consumers broader access to previously discarded expertise and lost local knowledge.

Consider recent news coverage of a train derailment in eastern Ohio. While local newspaper and broadcast journalists initially regurgitated corporate press releases and government statements on the so-called controlled burn of spilled toxic chemicals, a host of TikTok creators with local knowledge and expertise sounded the alarm. For example, an engineer-turned-entrepreneur from Pittsburgh named Nick Drom, who happens to study industrial accident reports in his free time, contradicted the blasé attitude of local officials about the burn. His video reached 7.5 million people and turned him into a go-to source for people who were looking for deeper commentary on the disaster.⁶⁶ National press attention eventually provided more coverage of the derailment, but the event—and the gap in quantity and quality between the coverage provided by traditional news media and new news media—has been an inflection point for the news industry.⁶⁷

Yet legislation such as the JCPA fails to account in any way for the emergence of these new news media forms. Only legacy news outlets would be able to take advantage of the mandatory bargaining process. Newsletter authors and video creators—let alone TikTok creators—need not apply. The JCPA would prop up shambling zombie publications owned by hedge funds rather than encourage investment in new media forms that are a growing source of news. Clinging to the old financial model of newspapers will, at most, merely delay the rise of innovative alternatives that combine the best practices of traditional journalism with the new news media forms.⁶⁸

NOTES

1. Penelope Muse Abernathy, “The Loss of Newspapers and Readers,” in *The Expanding News Desert* (Chapel Hill, NC: Center for Innovation and Sustainability in Local Media, 2018); and “Newspapers Fact Sheet,” Pew Research Center, June 29, 2021.
2. Louis Menand, “When Americans Lost Faith in the News,” *New Yorker*, January 30, 2023; and Joshua Darr, “Local News Coverage Is Declining—and That Could Be Bad for American Politics,” *FiveThirtyEight*, June 2, 2021.
3. Kriston Capps, “The Hidden Costs of Losing Your City’s Newspaper,” Bloomberg, May 30, 2018.
4. Steve Israel, “The George Santos Debacle and the Local Newspaper that Can Say ‘I Told You So,’” *The Hill*, January 18, 2023.
5. “Proposed ‘Journalism Competition and Preservation Act’ Deserves Our Support,” Authors Guild, September 10, 2019.
6. Rupert Murdoch, “From Town Crier to Bloggers: How Will Journalism Survive the Internet Age?,” Federal Trade Commission Workshop, December 1, 2009.
7. John J. Flynn, “Antitrust and the Newspapers—A Comment on S. 1312,” *Vanderbilt Law Review* 22, no. 1 (December 1968): 103–25.
8. Andrey Mir, “The Press Now Depends on Readers for Revenue and That’s a Big Problem for Journalism,” *Discourse*, July 28, 2001.
9. Jack Shafer, “Don’t Blame Craigslist for the Decline of Newspapers,” *Politico Magazine*, December 13, 2016.
10. Carmel Lobello, “Craigslist Took Nearly \$1 Billion a Year Away from Dying Newspapers,” *The Week*, January 11, 2015.
11. “Transcript of Interview with Warren Buffett,” Financial Crisis Inquiry Commission, May 26, 2010.
12. “Classified Calamity,” *The Economist*, November 17, 2005; George Munster, *Rupert Murdoch: A Paper Prince* (New York: Viking, 1985); and William Shawcross, *Murdoch: The Making of a Media Empire* (New York: Simon and Schuster, 1997).
13. Amy Chozick, “New York Times Co. Posts \$88 Million Loss, Citing About.com Write-Down,” *New York Times*, July 26, 2012; and Alexandra Bruell, “New York Times Tops 10 Million Subscriptions as Profit Soars,” *Wall Street Journal*, February 2, 2022.
14. Rupert Murdoch, “From Town Crier to Bloggers: How Will Journalism Survive the Internet Age?,” Federal Trade Commission Workshop, December 1, 2009.
15. R. Johnson and A. Gutiérrez, “Reinventing the Business Model of the Newspaper Industry: Electronic Business Models and the Newspaper Industry, The Wall Street Journal as Case Study” (MBA thesis, Blekinge Institute of Technology, 2010).
16. Rupert Murdoch, “From Town Crier to Bloggers: How Will Journalism Survive the Internet Age?,” Federal Trade Commission Workshop, December 1, 2009.
17. Mathew Ingram, “Facebook and the News After Australia: What Happens Now?,” *Columbia Journalism Review*, February 25, 2021; Christopher Warren, “Diversity Hit Between the Eyes as Old Media Pockets About 90% of Big Tech Cash,” *Crikey*, February 24, 2021; and Mark Di Stefano and Edmund Tadros, “Google and Meta Win Support from Publishers before Landmark Review,” *Australian Financial Review*, November 14, 2022.
18. Mike Masnick, “Australian Official Admits That of Course Murdoch Came Up with Link Tax, But Insists the Bill Is Not a Favor to News Corp.,” *TechDirt*, June 17, 2021; and Hannah Wootton, “‘Go for your Life’: ACCC’s New Chief Hailed as a Win for All Sides,” *Australian Financial Review*, December 14, 2021; and Hannah Wootton and John Kehoe, “New ACCC Chairwoman Is Murdoch Family Insider,” *Australian Financial Review*, December 15, 2021.
19. “Strengthen Democracy: Pass the Journalism Competition and Preservation Act,” *Seattle Times*, December 9, 2022.
20. “Klobuchar Statement on Judiciary Committee Passage of Bipartisan Legislation to Save Local Journalism,” press release, office of Sen. Amy Klobuchar, September 22, 2022; and “Reps. Buck, Cicilline Fight to Save News Organizations Crushed by Big Tech,” press release, office of Rep. Ken Buck.
21. Enquirer Editorial Board, “Google, Facebook Profit from Local News Without Paying for It. That Must End,” *The Enquirer*, May 13, 2021.
22. “Journalism Competition and Preservation Act of 2022,” S. 673, 117th Congress (2022).
23. Molly Harris, “This Is Paris Hilton’s Favorite Fast Food Restaurant,” *Mashed*, August 12, 2021.
24. “Journalism Competition and Preservation Act of 2022,” S. 673, 117th Congress (2022).

25. Brad Adgate, “Newspapers Have Been Struggling and Then Came the Pandemic,” *Forbes*, August 20, 2021; and Gary Sosniecki, “Need a Great Job? Buy a Weekly Newspaper,” Wisconsin Newspaper Association, September 18, 2019; and Chris Krewson, “A Letter to LION Members about the Journalism Competition Preservation Act and the Online News Act,” LION Publishers, September 5, 2022.
26. Penelope Muse Abernathy, “Bigger and Bigger They Grow,” in *The Expanding News Desert* (Chapel Hill, NC: Center for Innovation and Sustainability in Local Media, 2018).
27. Benjamin F. Chavis, “Proposed Journalism Competition Preservation Act Negative Impact on Small Minority-Owned Newspapers,” BlackPressUSA, December 2, 2022.
28. “Journalism Competition and Preservation Act of 2022,” S. 673, 117th Congress (2022).
29. Harold Feld, “Stop the Presses! JCPA Favors Big Media Broadcasters Over Newspapers!,” Public Knowledge, September 6, 2022; and “Employment Trends in Newspaper Publishing and Other Media, 1990-2016,” U.S. Bureau of Labor Statistics, June 2, 2016.
30. Gary Dickson, “Australian News Data Report,” Public Interest Journalism Initiative, September 2022, p. 20.
31. Eli Noam, *Who Owns the World’s Media?: Media Concentration and Ownership Around the World* (New York: Oxford University Press, 2016); and Nick Evershed, “Australia’s Newspaper Ownership Is among the Most Concentrated in the World,” *The Guardian*, November 13, 2020.
32. Nic Fildes, “Australian Media Thrives after Forcing Big Tech to Pay for Content,” *Financial Times*, March 11, 2002.
33. For the full history of the Newspaper Preservation Act, see Ben Bagdikian, *The New Media Monopoly* (Boston, MA: Beacon Press, 2004). Also, John Busterna and Robert Picard, *Joint Operating Agreements: the Newspaper Preservation Act and Its Application* (Norwood, NJ: Ablex, 1993).
34. Ben Bagdikian, *The New Media Monopoly* (Boston, MA: Beacon Press, 2004), p. 212.
35. Ben Bagdikian, “The Fruits of Agnewism,” *Columbia Journalism Review* 11, no. 5 (January/February 1973): 9–23.
36. “Klobuchar, Kennedy, Cicilline, Buck, Durbin, Nadler Release Updated Bipartisan Journalism Bill,” press release, office of Sen. Amy Klobuchar, August 22, 2022.
37. Jeremy Littau, “Congress’ Best Idea to Save Local Journalism Would Actually Hurt It,” *Slate*, December 9, 2022; and McKay Coppins, “A Secretive Hedge Fund Is Gutting Newsrooms,” *The Atlantic*, October 14, 2021.
38. Joshua Lamel and Elliott Sangara, “The JCPA: A Hedge Fund Handout,” *Recreate*, August 4, 2022.
39. “Op-Eds and Editorials Supporting the JCPA,” News Media Alliance, November 11, 2022.
40. “Time Is Running Out to Save Local News,” direct document download link shared on News Media Alliance.
41. Jeff Jarvis (@jeffjarvis), “In that scenario, the big, old, failed, hedge-fund-owned news companies with lobbyists get Google’s money under force. Facebook already pulled its money for journalism and now threatens to pull news from the platform if #JCPA passes,” Twitter post, December 5, 2022, 3:54 p.m.
42. Audrey Conklin, “Microsoft, Google Have Nasty Exchange over Journalism Competition and Preservation Act,” *Fox Business*, March 12, 2021; and Brad Smith, president of Microsoft Corporation, “Technology and the Free Press: The Need for Healthy Journalism in a Healthy Democracy,” testimony before the House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, 117th Congress, March 12, 2021.
43. Megan Graham and Jennifer Elias, “How Google’s \$150 Billion Advertising Business Works,” CNBC, October 13, 2021; Ronan Shields, “Microsoft’s Ad Revenue Hit \$10B, and It’s Investing—Is It a Sleeping Giant About to Wake?,” *Digiday*, January 27, 2022; and “Largest American Companies by Market Capitalization,” CompaniesMarketcap.com, January 27, 2023.
44. “The Journalism Competition and Preservation Act Is Needed to Help Save Community Newspapers,” *Gwinnett Daily Post*, February 11, 2022.
45. Edward Hedland, *Newspaper Cost Accounting* (New York: National Association of Cost Accountants, 1926).
46. William Easton, “Changes to Sharing and Viewing News on Facebook in Australia,” *Meta*, February 17, 2021.
47. Richard Holden, “Australia’s News Media and Digital Platforms Bargaining Code Is Great Politics But Questionable Economics,” *Promarket*, September 21, 2020; and Bianca O’Neill, “Is the News Media Bargaining Code the Start of a New Internet Era?,” *Rolling Stone Australia*, February 18, 2021.
48. Mike Masnick, “Study of Spain’s ‘Google Tax’ on News Shows How Much Damage It Has Done,” *Techdirt*, July 29,

2015; and Paul Keller, “Research Confirms: New Spanish Ancillary Copyright Is Actually Good for No One,” *Communia*, September 9, 2015.

49. “Journalism Competition and Preservation Act of 2022,” S. 673, 117th Congress (2022).

50. “Facebook Parent Meta Threatens to Remove News from Platform over Proposal in Congress,” *CBS News*, December 6, 2022.

51. “Re: September 8, 2022 Markup: Journalism Competition & Preservation Act,” open letter, TechFreedom, September 7, 2022.

52. “Klobuchar, Kennedy, Cicilline, Buck, Durbin, Nadler Release Updated Bipartisan Journalism Bill,” press release, office of Sen. Amy Klobuchar, August 22, 2022.

53. Timothy Lee, “15 Years Ago, Congress Kept Mickey Mouse Out of the Public Domain. Will They Do It Again?,” *Washington Post*, October 25, 2013.

54. “Klobuchar, Kennedy, Cicilline, Buck, Durbin, Nadler Release Updated Bipartisan Journalism Bill,” press release, office of Sen. Amy Klobuchar, August 22, 2022.

55. Monika Jasiewicz, “Copyright Protection in an Opt-Out World: Implied License Doctrine and News Aggregators,” *Yale Law Journal* 122, no. 3 (2012): 837–50.

56. *International News Service v. Associated Press* (1918) 248 U.S. at 250. For more on the comparison between the U.S. hot news doctrine and the Australian link tax, see Paul Matzko, “From Hot News to Link Tax: The Dangers of a Quasi-Property Right in Information,” *Journal of Free Speech Law* 3, no. 1 (2023): 269–96.

57. Portions of this and several following paragraphs are pulled from Paul Matzko, “From Hot News to Link Tax: The Dangers of a Quasi-Property Right in Information,” *Journal of Free Speech Law* 3, no. 1 (2023): 269–96.

58. Yochai Benkler, “Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain,” *New York University Law Review* 74, no. 2 (1999): 354–55.

59. Rick Levine, Christopher Locke, Doc Sears, and David

Weinberger, *The Cluetrain Manifesto: The End of Business as Usual* (New York: Basic Books, 1999).

60. There is a deep, nuanced body of jurisprudence that evolved around the right of phone book companies to gather and distribute street addresses, including dispelling attempts by competing companies to exclude rivals based on copyright restrictions. See *Feist Publications, Inc. v. Rural Telephone Service Co.* 499 US 340 (1991).

61. Frank Jacobs, “Why Germany Is a Blank Spot on Google’s Street View,” *Big Think*, February 11, 2022.

62. Tim Berners-Lee, “Treasury Laws Amendment Bill 2020, Submission 46,” Senate Standing Committees on Economics, Parliament of the Commonwealth of Australia, January 18, 2021.

63. Ben Thompson, “Sovereign Writers and Substack,” *Stratechery*, March 22, 2021; and Kevin Kelly, “1,000 True Fans,” *The Technium*, March 4, 2008.

64. Ben Smith, “Heather Cox Richardson Offers a Break from the Media Maelstrom. It’s Working,” *New York Times*, December 28, 2020.

65. Mia Sato, “Ukrainian Influencers Bring the Frontlines to TikTok,” *The Verge*, March 16, 2022; and John Lang (@AuditTheAudit), *AuditTheAudit*, YouTube channel; and “Engage: How Bernard Hickey Created a Newsroom in the Comments Section,” *On Substack*, November 16, 2022.

66. Nick Drom, “I’ve Been Away from TikTok Dealing with Some Family Things,” TikTok, February 6, 2023.

67. Paul Matzko, “TikTok and the ‘New News’ Media,” *Matzko Minute*, February 8, 2023; and Amanda Hoover, “The Ohio Train Derailment Created a Perfect TikTok Storm,” *Wired*, February 15, 2023; and Jeff Ihaza, “After the Ohio Train Derailment, TikTokers Say They Have a Place in Reporting News,” *Rolling Stone*, February 17, 2023.

68. Katerina Eva Matsa, “More Americans Are Getting News on TikTok, Bucking the Trend on Other Social Media Sites,” Pew Research Center, October 21, 2022. For example, in little over a year, the efforts of three low-ranking employees at the *Washington Post* have made it into the largest newspaper TikTok account, with 1.6 million followers as of April 2023.

RELATED PUBLICATIONS FROM THE CATO INSTITUTE

Unreliable Watchdog: The News Media and U.S. Foreign Policy by Ted Galen Carpenter (Washington: Cato Institute, November 2022)

The Dangerous Journalism Competition and Preservation Act Returns by Ryan Bourne and Rachel Chiu, *Cato at Liberty* (blog) (September 23, 2022)

The First Amendment Protects Independent Journalists by Thomas A. Berry, *Cato at Liberty* (blog) (November 29, 2021)

The Media Do Not Deserve a Government Bailout by Doug Bandow, commentary (June 23, 2020)

From Watergate to Wedgiegate by Gene Healy, commentary (May 14, 2012)

The Crisis in Journalism: What Should the Government Do? by Jim Harper, *Cato at Liberty* (blog) (February 17, 2010)

A Free Press Only Counts If It's on Dead Trees by Jason Kuznicki, *Cato at Liberty* (blog) (December 2, 2009)

Where Are the Muckrakers? by Andrew J. Coulson, *Cato at Liberty* (blog) (March 11, 2009)

So Many Reasons Government Shouldn't Fund Newspapers by Timothy B. Lee, *Cato at Liberty* (blog) (September 29, 2007)

The "Rathergate" Incident: Remembering Why Separation of Press and State Is Vital by Adam D. Thierer, *Techknowledge* no. 88 (September 30, 2004)

RECENT STUDIES IN THE CATO INSTITUTE POLICY ANALYSIS SERIES

- 955. Freeing American Families: Reforms to Make Family Life Easier and More Affordable** by Vanessa Brown Calder and Chelsea Follett (August 10, 2023)
- 954. Tax Expenditures and Tax Reform** by Chris Edwards (July 25, 2023)
- 953. 2022 Arms Sales Risk Index** by Jordan Cohen and A. Trevor Thrall (July 18, 2023)
- 952. Adverse Effects of Automatic Cost-of-Living Adjustments to Entitlement and Other Payments** by John F. Early (June 22, 2023)
- 951. Freeing American Families: Reforms to Make Family Life Easier and More Affordable** by Vanessa Brown Calder and Chelsea Follett (June 15, 2023)
- 950. Why Legal Immigration Is Nearly Impossible: U.S. Legal Immigration Rules Explained** by David J. Bier (June 13, 2023)
- 949. Global Inequality in Well-Being Has Decreased across Many Dimensions: Introducing the Inequality of Human Progress Index** by Chelsea Follett and Vincent Geloso (June 8, 2023)
- 948. The High Price of Buying American: The Harms of Domestic Content Mandates** by James Bacchus (June 6, 2023)
- 947. The Future of the WTO: Multilateral or Plurilateral?** by James Bacchus (May 25, 2023)
- 946. Course Correction: Charting a More Effective Approach to U.S.-China Trade** by Clark Packard and Scott Lincicome (May 9, 2023)
- 945. The Right to Financial Privacy: Crafting a Better Framework for Financial Privacy in the Digital Age** by Nicholas Anthony (May 2, 2023)
- 944. Balance of Trade, Balance of Power: How the Trade Deficit Reflects U.S. Influence in the World** by Daniel Griswold and Andreas Freytag (April 25, 2023)
- 943. Streamlining to End Immigration Backlogs** by David J. Bier (April 20, 2023)
- 942. Transforming the Internal Revenue Service** by Joseph Bishop-Henchman (April 11, 2023)
- 941. Central Bank Digital Currency: Assessing the Risks and Dispelling the Myths** by Nicholas Anthony and Norbert Michel (April 4, 2023)
- 940. Uncle Sucker: Why U.S. Efforts at Defense Burdensharing Fail** by Justin Logan (March 7, 2023)
- 939. A Shaky Foundation: The Myth of Authoritarian Stability in the Middle East** by Jon Hoffman (December 20, 2022)

- 938. Keeping North Carolina's Housing Affordable: A Free Market Solution** by Michael D. Tanner (December 7, 2022)
- 937. How Guest Workers Affect Illegal Immigration: Mexican Visas and Mexican Border Apprehensions, 1943–2022** by David J. Bier (December 1, 2022)
- 936. The Black Hole of National Security: Striking the Right Balance for the National Security Exception in International Trade** by James Bacchus (November 9, 2022)
- 935. Reining in the Unreasonable Executive: The Supreme Court Should Limit the President's Arbitrary Power as Regulator** by William Yeatman (November 1, 2022)
- 934. Jawboning against Speech: How Government Bullying Shapes the Rules of Social Media** by Will Duffield (September 12, 2022)
- 933. The Self-Imposed Blockade: Evaluating the Impact of Buy American Laws on U.S. National Security** by Colin Grabow (August 16, 2022)
- 932. Revising the Bank Secrecy Act to Protect Privacy and Deter Criminals** by Norbert Michel and Jennifer J. Schulp (July 26, 2022)
- 931. How to Pick a President: A Guide to Electoral Count Act Reform** by Andy Craig (June 28, 2022)
- 930. Unfair Trade or Unfair Protection? The Evolution and Abuse of Section 301** by Scott Lincicome, Inu Manak, and Alfredo Carrillo Obregon (June 14, 2022)
- 929. Drug Paraphernalia Laws Undermine Harm Reduction: To Reduce Overdoses and Disease, States Should Emulate Alaska** by Jeffrey A. Singer and Sophia Heimowitz (June 7, 2022)
- 928. End the Tax Exclusion for Employer-Sponsored Health Insurance: Return \$1 Trillion to the Workers Who Earned It** by Michael F. Cannon (May 24, 2022)
- 927. False Alarm over the Retreat of the Himalayan Glaciers** by Swaminathan S. Anklesaria Aiyar and Vijay K. Raina (May 3, 2022)
- 926. Biden and Trade at Year One: The Reign of Polite Protectionism** by James Bacchus (April 26, 2022)
- 925. The (Updated) Case for Free Trade** by Scott Lincicome and Alfredo Carrillo Obregon (April 19, 2022)

CITATION

Matzko, Paul. "A Link Tax Won't Save the Newspaper Industry: The Journalism Competition and Preservation Act Will neither Promote Competition nor Preserve Newspapers," Policy Analysis no. 956, Cato Institute, Washington, DC, August 14, 2023.



The views expressed in this paper are those of the author(s) and should not be attributed to the Cato Institute, its trustees, its Sponsors, or any other person or organization. Nothing in this paper should be construed as an attempt to aid or hinder the passage of any bill before Congress. Copyright © 2023 Cato Institute. This work by the Cato Institute is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.