

Is Australia's News Media Bargaining Code a Model for Saving Journalism?

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Abstract

Implemented in 2021, Australia's world-first news media bargaining code prompted payments of almost AU\$250m annually to flow from Meta and Google to Australian news media businesses. It also prompted international jurisdictions to work toward implementing similar schemes. In June 2024, however, Australia's largest news businesses announced widespread job cuts, blaming Meta's decision not to renew its deals under the code, worth an estimated AU\$70m annually. In this paper, we outline the code before summarizing findings from interviews with senior media representatives who negotiated deals on behalf of roughly 200 news businesses. These interviews address the code's success, its lack of transparency, its contribution to the public interest, and the prospect of Meta not renewing its deals. We then analyze five myths about the code: it is a link tax that will break the internet; it is all about Google News Showcase and Facebook News Tab; it does not support public interest journalism; it favors only big news companies; and it is the only viable option. Drawing on these findings and analysis, we argue that the code is a step toward a sustainable future, but it ought to do more to foster the public interest. This could be achieved by tying the code more closely to public interest journalism and by mandating some

transparency. In December 2024, the government affirmed its commitment to the code by announcing a "news bargaining incentive". Instead, we ask whether the code's aims could be better achieved by replacing it with a public interest journalism levy and must-carry obligations for news content.

1. Introduction

On 28 June 2024, Nine Entertainment announced it was going to cull 200 jobs, including 90 in editorial, marking a major round of cuts for the owner of a TV network, radio stations, and newspapers including *The Age* and *The Sydney Morning Herald* (Jaspan 2024a). This followed announcements of 150 job cuts at Seven West Media and 100 at News Corp, causing media writers at independent outlet *Crikey* to note, "Things are looking grim for the Australian news industry" (Saeed and Wilson 2024).

These cuts were somewhat surprising. Since 2021 a cautious optimism had prevailed in Australian newsrooms following the implementation of the news media bargaining code (the "code"), which saw almost AU\$250 million annually flow from Google and Meta to Australian news businesses (Sims 2024). The funds had seen scores, if not hundreds, of journalists hired by the Australian Broadcasting Corporation (ABC), News Corp, Nine, and many more news businesses, including small regional newsrooms (Treasury 2022). For its part, Meta had signed deals worth an estimated AU\$70 million annually (Draffin, Dickson, and Germano 2024), with Google's deals worth at least twice that, prompting jurisdictions internationally to begin implementing their own iterations of the code (Sims 2022).

In February 2024, however, Meta had announced that it would not be renewing the deals struck as a result of the code, which had an expiry date of mid-2024 (Roberts and Doran 2024).

Nor would Meta be renewing its deals in territories including France and Germany (Meta 2024). The Australian government was furious, describing Meta's move as a "dereliction of its commitment to the sustainability of Australian news media," saying it would take all steps available to make Meta keep paying (Roberts and Doran 2024). Four months later, Australian news bosses were quick to blame Meta's refusal to renew deals as a key reason for all the job cuts (Jaspan 2024b). As one, these businesses demanded that the government "designate" Meta under the code, thereby forcing the platform to negotiate deals. Then, in August, reports emerged that Google was slashing its deals by 40 percent and that these new deals would be for one year, not three years (Buckley 2024). Meanwhile, generative-AI companies had been busy signing deals. In July, Perplexity signed a revenue-sharing deal with six publishers (Davies 2024); in October, OpenAI struck a deal with Hearst, one of the biggest newspaper and magazine groups in the United States (Fischer 2024). One logical explanation is that they were trying to stave off being brought within the ambit of a code. And finally, in December, the Australian government announced its response to Meta's abandonment: a "news bargaining incentive", outlined below.

In this paper, we look at Australia's world-first code, three years on. First, we provide background about the code and its provisions. Next, we detail the findings of research for which we conducted eight interviews with representatives of about 200 news media businesses. Finally, we discuss the merits and shortcomings of the code by addressing five prevailing myths. From this analysis, we argue that the code is a step toward a sustainable future for journalism. It is flawed, but not fatally. Alternatively, it might be better still to jettison the code and replace it with a more straightforward and effective solution: a public interest journalism levy imposed on digital platforms.

2. Australia's code

Origins

Australia's news media bargaining code has been described as “the first successful legislative attempt to compel digital platforms to pay news media organisations for third party news content” (Bossio and Barnett 2023). It has prompted payments worth nearly AU\$250m annually to news media businesses, with Google alone paying an estimated \$70 million to News Corp, \$30 million to Nine, \$30 million to Seven West, and \$12 million to the ABC, Australia's main public broadcaster (Meese 2023, 68). Still, it remains highly controversial. Detractors have described it as a platform “shakedown” (Thompson 2020) and as a deal with the devil in the guise of Rupert Murdoch (Jarvis 2021).

The code is a competition law intervention. Its origins lie in an inquiry by Australia's competition regulator, the Australian Competition and Consumer Commission (ACCC). In December 2017, under pressure from senators concerned about the future of public interest journalism, the government directed the ACCC:

... to hold an inquiry into the impact of online search engines, social media and other digital content aggregation platforms (platform services) on the state of competition in media and advertising services markets, in particular in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers. (ACCC 2019, 538)

Eighteen months later, in mid-2019, the ACCC published the Final Report of its “Digital Platforms Inquiry,” finding that both Facebook (as it then was, before rebranding as Meta in late 2021) and Google had substantial market power and derived the vast bulk of their income from

advertising (ACCC 2019, 7–12). The ACCC also documented newsroom shutdowns and journalist job losses (ACCC 2019, 17–22). And crucially, the ACCC found there was “a fundamental bargaining power imbalance between media businesses and Google and Facebook” (ACCC 2019, 226–27). The report then recommended that “designated digital platforms ... provide codes of conduct governing relationships between digital platforms and media businesses” and:

... where the digital platform obtains value, directly or indirectly, from content produced by news media businesses, that the digital platform will fairly negotiate with news media businesses as to how that revenue should be shared, or how the news media businesses should be compensated. (ACCC 2019, 32)

Work soon began on the voluntary code, but in April 2020 the government announced it wanted to expedite the process and make the code mandatory (Lee and Molitorisz 2021). In July, the ACCC released an Exposure Draft of the new law; and in December, the draft law was introduced to Federal Parliament as the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Code) Bill 2020. However, Google and Facebook fought back with a blitz of PR and threats to leave. In January 2021, after running a six-month campaign of anti-code publicity and an “experiment” in which users received older and less relevant news, Google Australia released a video in which director Mel Silva said the code “would break how Google search works” (Leaver 2021a). Facebook went further. On February 18, Facebook Australia withdrew news altogether, meaning users in Australia could not see any news, and users in other countries could not see Australian news (Leaver 2021a). This sparked frantic negotiations between the government, Meta and Google, leading to last-minute amendments to the law, which passed through Parliament on February 25, and commenced on March 3.

Provisions

The code is an innovative and complex piece of law (Lee and Molitorisz 2021), which inserted a new part (Part IVBA) into the Competition and Consumer Act 2010 (Cth). However, most of the code's provisions have not been activated, given that no digital platform or service has been “designated” as of October 2024.

The determination about designation is made by the Treasurer. Under s 52E of the code (that is, the Competition and Consumer Act), the Treasurer must consider two factors before designating a digital platform or service. The first is whether a significant power imbalance exists between Australian news businesses and the relevant digital platform. The second factor, introduced following last-minute negotiations in February 2021, is whether the digital platform has made “a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses (including agreements to remunerate those businesses for the news content).” Meta's failure to renew its deals has led to persistent calls for designation (Roberts and Doran 2024).

If a digital platform or service is designated, it must adhere to minimum standards that include sharing data with news media businesses about how users engage with the news content produced by each business; giving 14 days' notice of future algorithmic changes likely to significantly affect news media businesses; and surfacing original news content. If a designated digital platform is notified by a “registered” news business that it wishes to bargain over issues regarding its “covered” news content (which is defined relatively broadly), the platform must negotiate in good faith. If parties can't agree within three months, they must then mediate in good faith, with a mediator appointed by the Australian Communications and Media Authority (ACMA). If mediation is unsuccessful, the law mandates “final offer arbitration,” a controversial

mechanism by which the news media business and the digital platform each submit a final offer to an arbitral panel appointed by the ACCC. The arbitral panel decides which offer is better (unless neither is in the public interest). There is no right to appeal.

To be eligible to bargain under the code, a news media business must be registered with the ACMA. To register, a news media business must satisfy several criteria, including the following: its annual revenue must exceed \$150,000; its news sources must belong to a professional standards scheme that oversees journalistic quality; and its news sources must have as their primary purpose the creation of “core news content” (see Myth 3, below).

Scholarship

Aside from preexisting scholarship on issues such as final offer arbitration (e.g., Tulis 2010), the code itself has spawned a growing corpus of academic literature. One early analysis by academics involved in the code’s development articulated three “lessons” for other jurisdictions (Lee and Molitorisz 2021): first, implementing such a code will inevitably be fraught in the face of fierce resistance; second, additional measures will be needed to support smaller players; and third, such a code can never hope to be a panacea for all the challenges facing journalism (Lee and Molitorisz 2021, 50–53). The code’s idiosyncratic blend of direct regulation and co-regulation has also been analyzed. In 2021 Wilding argued that a self-regulatory scheme with a voluntary code would never have worked for news media bargaining, despite the flaws that have plagued co-regulatory schemes (Wilding 2021). At a higher level, in 2022 the code—and Australia’s approach to internet regulation generally—was assessed to be founded on three themes that “represent a uniquely Australian approach to regulation”: pragmatic harm reduction; fairness; and democratic security (Alexander 2022).

In 2022 Bossio and Barnet conducted interviews with news media businesses, one year on (Bossio and Barnet 2023); this paper supplements that research. Also in 2022, Bossio et al. asked “whether the reform is an effective regulatory model for other national governments to emulate” (Bossio et al. 2022). The authors concluded: the code is ostensibly successful due to the multi-million-dollar payments from Google and Facebook; however, there is little evidence whether this money goes directly to fund journalism, and specifically to fund public interest journalism; and the deals done may fuel a dependency on platforms by news organizations otherwise unable to find a sustainable business model (Bossio et al. 2022, 146–47). Further, Bossio et al. are among the scholars who draw on Habermas to describe a worrying “post-public sphere,” in which governments are adopting “neo-regulation” such as the code in a bid to stave off threats to democracy from platformization and digitalization (Bossio et al. 2022; Schlesinger 2024). In 2023 Dwyer, Flew, and Wilding argued that the code has been a success but is dogged by transparency and sustainability problems, suggesting that a better approach could involve funding public interest journalism via a levy imposed on the platforms (Dwyer, Flew, and Wilding 2023). Further academic references are integrated into this paper.

3. Our research

Methods

Between April and August 2023, we conducted eight semi-structured interviews on Zoom with nine representatives from Australian news media businesses. These interviewees had secured deals on behalf of approximately 200 news media businesses. Our interviews were with representatives from:

- News Corp Australia, which owns newspapers including *The Australian* and *The Daily Telegraph* and the pay TV broadcaster Sky News;
- Nine Entertainment, which owns the Nine TV network as well as newspapers including the *Sydney Morning Herald* and *The Age* and radio stations including 2GB and 2UE;
- *Guardian Australia*, a news masthead;
- The Australian Broadcasting Corporation (ABC), which is publicly funded;
- The Special Broadcasting Service (SBS), a publicly-funded broadcaster committed to multiculturalism and First Nations content;
- *The Conversation Australia*, which publishes news articles written by academics;
- Country Press Australia, which negotiated deals for approximately 160 mastheads; and
- Minderoo Foundation, which negotiated deals for 24 small to medium publishers.

All the interviewees had secured deals with Google; all but two (SBS and *The Conversation*) had also secured deals with Facebook/Meta. The participants thus represent a significant sample drawn from a small pool. In 2022 Treasury reported that Google had struck 23 commercial agreements, while Meta had made 13 deals (Treasury 2022, 5). This means we interviewed eight of the 23 organizations that had made deals with Google, and six of the 13 that had also made deals with Meta. Further, small samples are common in analogous research, with 20 or fewer interviewees the norm for qualitative research such as newsroom studies (Domingo 2008).

One interview lasted half an hour; the rest lasted roughly an hour. Our semistructured interviews covered topics including:

- General reflections on the code and deals done;
- Whether the code fostered public interest journalism;

- The pros and cons of designation;
- The lack of transparency in deals done;
- Specific provisions in the code, including about algorithms; and
- Whether generative-AI services, among others, should be included in the code.

Some interviewees were willing to be quoted; others contributed off the record. Accordingly, we have not attributed quotes.

We adopted a grounded theory approach, recognizing that our interviewees' responses were grounded in their own interpretations of the code and its context (Charmaz 2014). After checking transcripts for accuracy, we coded them manually using terms including “designa” (to capture “designate,” “designation,” and other variations), “algorithm,” “professional standards,” “public interest,” “transparency,” and “AI,” among others. Our method was a mix of inductive (drawing generalizations from responses) and deductive (e.g., testing the criticism that the code lacks transparency). Where appropriate, we verified interviewees' statements with reference to external yardsticks, including academic literature and publications by the ACCC and Treasury.

This research was approved by the UTS Human Research Ethics Committee (reference: ETH22-7112).

Assessments of the code

The interviewees generally regarded the code as a success. This stands to reason, given that all managed to strike deals with Google, and most were successful in striking deals with Meta. As one interviewee said:

We've hired extra people ... it has definitely helped on that front. If we didn't have the revenue hit from these deals ... we'd still be growing but not certainly not by as much and, you know, there'd be more pressure on costs. (Interview 3, May 1)

Even the interviewees who were unable to secure deals with Facebook/Meta agreed that the code had achieved significant good. As one said:

Definitely, the code is predominantly dominated by the concerns of the bigger media outlets, and has been shaped by those media outlets. But it has achieved significant good across many media organisations. I don't think you can fail to acknowledge that. (Interview 2, April 26).

However, several said that the code isn't a cure-all, and more interventions are needed:

There are other policy interventions that are needed to support news media, because it's so important to have people who will hold power to account and if you don't have media diversity, you risk losing those connections to community. That's really important. (Interview 5, July 4)

One curious element of the deals done as a result of the code is that they are specifically with Google News Showcase and the Facebook News Tab, rather than, say, Google Search and Facebook Australia. More than one interviewee remarked on the peculiarity of this arrangement. As one said:

One of the key things was, from the point of view of Google in particular, they didn't want to create a precedent of paying for links to news content. They were very concerned by that. So what they did with everyone is they pay to produce content that goes on this "news carousel", this special product, and that's really a way of saying, "We're giving you money, but we want it to be very clear, globally, that we're not keeping your money for links to content, because we think that should be free." (Interview 2, April 26)

Google News Showcase, Facebook News Tab, and the notion of a link tax are discussed below (see Myths 1 and 2).

Lack of transparency

The code places few reporting requirements on news media businesses (Dwyer, Flew, and Wilding 2023). This is particularly the case in the absence of designation, with the deals struck in 2021 containing strict confidentiality provisions (Bossio and Barnet 2023). Several interviewees said this lack of transparency is fair, given that the deals done involve commercial negotiations between companies. What's more, several interviewees said that they were able to strike better deals due to this lack of transparency. As one said:

We were happy with the process. Maybe there needs to be transparency into the future. I don't know. I wouldn't say that at this stage. Given the conditions, I think it was the perfect scenario. We were happy with what we got. (Interview 7, July 19)

Others, however, recognized that the lack of transparency, particularly in the absence of designation, makes it very hard to assess the impacts of the code, and specifically whether the code has benefited journalism, and public interest journalism specifically:

It's very hard to tell if it's succeeded in improving the ecosystem for quality public interest journalism ... The extent to which that money flowed through to actual journalism, and not just boosted the bottom line more generally, is incredibly opaque. And there's nothing really designed in the media bargaining code to make that more transparent. (Interview 2, April 26)

Several interviewees argued that the public interest would be better served with more transparency, which could take the form of news media businesses providing reports to

government about how they are using the benefits obtained under the code. As one interviewee said:

I think that lack of transparency is something that should be called out. And even if it's provided to the ACCC in confidence. Government should be able to know whether this measure was effective or not. (Interview 6, July 18)

Fostering public interest journalism

Several interviewees said that the code directly benefited public interest journalism by enabling more journalists to be hired, including 60 by the ABC in regional areas of Australia. This included establishing a presence in 10 new locations. Nine, Guardian Australia, and News Corp all hired new editorial employees. News Corp also noted that its deal with Google funded the Digital News Academy, which is run by the University of Melbourne Business School, and which has trained hundreds of journalists from a range of companies.

However, one interviewee questioned the extent to which the code directly benefited public interest journalism, saying: "The code itself doesn't necessarily advocate for that sort of journalism to get more prominence" (Interview 4, June 23).

Several interviewees also noted that there were strings attached to the funding received by news media businesses. Specifically, news media businesses needed to commit to digital transformation elements, which includes putting their content online. For some publishers, this is a welcome way to expand the reach of their public interest journalism:

One of the things we did is establish a video and audio department. That is taking our existing journalism and producing it for different media and taking it to new audiences. (Interview 1, April 18)

For smaller, print-only publishers, however, these digital transformation requirements can be onerous and work against sustainability, and thus against public interest journalism. As one said,

Publishers don't just get the money, we've got to do things for it ... The focus is on you innovating rather than being sustainable. And that then has an impact potentially on public interest journalism. (Interview 7, July 19)

The code's future

Our interviews were conducted in 2023, before Meta announced in February 2024 that it would not be renewing its deals. Even so, there was already speculation that Meta might not renew. This was a serious concern for many interviewees. As one said, “Absolutely massive impact if that's what happened. Yeah, I think you'd see a crisis in Australian media” (Interview 7, July 19).

Several interviewees said that one of the strengths of the legislation is that it gives the government the power to “designate” digital services, thereby forcing them to the negotiating table. These interviewees said that in 2021 the *threat* of designation had successfully done the job of prompting deals to be done, but that *actual* designation might be required if Meta withdrew. As one said:

The great thing about the legislation is that potential to designate. Parties like ourselves can go to government and say, “Hey, look, they're not playing ball. You need to look at this and designate them so that they are forced to play ball.” (Interview 7, July 19)

All of the interviewees agreed that the code needed to adapt in order to accommodate new technologies, particularly generative AI, but also social media services such as TikTok and news aggregators such as Apple News. As one interviewee said:

Now that the legislation is in place and operating effectively, it should be evolved by the government of the day to keep pace with the evolution in the market. And probably the two biggest evolutions, since the enactment of the laws, is generative AI and short-form video, TikTok. Neither of these were contemplated within the code that really focused primarily on the distribution of primarily text-based public interest journalism. (Interview 8, August 7)

As noted above, generative-AI companies are striking deals: in May 2024 News Corp signed a multiyear, multijurisdiction deal for the use of its news content with OpenAI, following similar deals struck by news media businesses including Axel Springer and the Associated Press (Robertson 2024). These deals are being struck in the absence of an applicable code; it is possible that they are being struck by OpenAI in a bid to avoid being brought within the ambit of a code.

One interviewee also noted the significance of the global precedent set by Australia's code. While Google and Meta may not be particularly troubled by the money they have committed to pay in Australia, they are concerned about larger jurisdictions following suit. As the interviewee said: "Australia is one thing. Australia's a little country. They are worried [by] the spectre of the EU, who don't muck around" (Interview 6, July 18).

4. Discussion

The code is a complicated piece of law that is poorly understood. What's more, the code's lack of transparency, particularly in the absence of designation, hinders a thorough assessment of its impacts. In this section, we seek to illuminate and assess the code and our interviews with reference to five myths.

Myth 1: The code is a link tax that will break the internet

In January 2021, during its final flurry of resistance to the code, Google Australia released a video in which managing director Mel Silva said the code “would break how Google search works” (Google Australia 2021). That same month, the inventor of the World Wide Web, Tim Berners-Lee, submitted to the Australian Parliament that the code had the potential to break the internet as we know it, writing, “I am concerned that the Code risks breaching a fundamental principle of the web by requiring payment for linking between certain content online” (Berners-Lee 2021).

During its development, the code was also attacked as a “link tax” by Vint Cerf, a widely venerated internet pioneer. Cerf submitted to the Australian Parliament in January 2021:

The Internet and the open architecture it is founded upon have contributed to more diversity and diffusion of information and opinions than ever before possible with previous information media. It thus goes a long way to realising the age-old aspiration for public interest news to nurture a healthy, diverse democratic discourse and the sharing of knowledge across all of society ... I am concerned that this Bill in its current form would undermine the basic framework upon which the Internet was built ... Links are the cornerstones of open access to information online; requiring a search engine (or anyone else) to pay for them undermines one of the fundamental principles of the Internet as we know it today. (Cerf 2021)

The code explicitly mentions links in ss 52B and 52C of the Competition and Consumer Act. In section 52B(1), the code prescribes that “For the purposes of this Part, a service makes content available if: (a) the content is reproduced on the service, or is otherwise placed on the service; or (b) a link to the content is provided on the service; or (c) an extract of the content is provided on

the service.” This is significant, because if a service is designated under the code and it makes news content available, then it must bargain with registered news businesses, as described above.

It has been argued that s 52B(1)(b) should be excised, and so too the analogous provision in s 52C, in order to remove any references to links, and hence to avoid the code amounting to a form of link tax (Leaver 2021b). However, even in its present form, the code is not a link tax. First, ss 52B and 52C reference links, but also content and extracts. Any payment (not to mention other benefits and obligations for news media businesses) is not just for links but also potentially for something more: content, links, and extracts. Second, in making the decision about whether to designate a platform or service under s 52E(3), the Treasurer must consider:

- (a) whether there is a significant bargaining power imbalance between Australian news businesses and the group comprised of the corporation and all of its related bodies corporate; and
- (b) whether that group has made a significant contribution to the sustainability of the Australian news industry ...

As the word “group” signifies, the Treasurer must consider *the digital platform as a whole* when weighing up whether to designate. And third, in the absence of designation, deals done to date are explicitly with Google News Showcase and Facebook News Tab, and seemingly not simply for links.

The code has not broken the internet as we know it. Our interviewees regard it as a success. Further, it’s arguable that the free internet has already been seriously damaged, if not broken, by the data-driven commercialization of the web that monetizes clicks and rewards data brokers (Molitorisz 2020; Zuboff 2015).

Myth 2: The code is all about Google News Showcase and Facebook News Tab

As noted, deals done under Australia's code are specifically for the use of news content on Google News Showcase and Facebook News Tab.

Google News Showcase was launched by Google and Alphabet CEO Sundar Pichai in October 2020. A “news carousel,” it was designed to showcase the content produced by news publishers:

This financial commitment—our biggest to date—will pay publishers to create and curate high-quality content for a different kind of online news experience. Google News Showcase is a new product that will benefit both publishers and readers: It features the editorial curation of award-winning newsrooms to give readers more insight on the stories that matter, and in the process, helps publishers develop deeper relationships with their audiences. (Pichai 2020)

In Australia, Google News Showcase was launched on February 4, 2021, shortly before the code was legislated into being (Silva 2021). The launch of Google News Showcase coincided with Google starting to strike deals with news publishers to use their content on the new service.

Facebook News Tab, billed as Facebook's “dedicated tab for news content,” was launched in Australia in August 2021 (Meta 2021). Part of a global rollout of commitments by Meta seemingly in support of public interest journalism, it was billed as “a dedicated space where you can catch up on today's headlines and the topics you care about” (Meta, n.d.). In fact, Meta had been demoting news content since at least 2018, adjusting its algorithm to prioritize family and friends over news, leading to dramatic declines in traffic for some news sites (Meese 2023). And on February 29, 2024, Meta announced on a blog post that it was “deprecating”—or phasing out—Facebook News (Meta 2024). As Meta wrote:

This announcement does not impact the terms under our existing Facebook News agreements with publishers in Australia, France and Germany ... we will not enter into new commercial deals for traditional news content in these countries and will not offer new Facebook products specifically for news publishers in the future.

This was how Meta announced it was not renewing its deals under the code.

Both these services are little-known compared to Alphabet's and Meta's main offerings. Among journalists and academics, it is sometimes said that to find "News Showcase," you need to Google it. The launch of these services in 2020 and 2021 coincided with the development of the code, perhaps as a strategy to quarantine deals done and payments made.

To redress a market imbalance, and in the context of digital platforms aggregating data across their services, what is relevant is the value of news to the digital platform *as a whole*. In Meta's case, that includes Facebook, Instagram, and WhatsApp. In Alphabet's case, that includes search and YouTube. It also includes the AI services that are becoming increasingly central for digital platforms. News content enriches users' experiences across services and also enables valuable data to be gathered about users across services. A person's engagement with news across services gives digital platforms precisely the type of understanding of a person that makes those platforms so attractive to advertisers.

Admittedly, calculating the value of news to digital platforms and services is difficult. So is calculating the value of news to society as a whole. Nonetheless, if a news media business is to be compensated by a digital platform for the use of its news content, then logically that value ought to be calculated across all the platform's services, and acknowledged as such.

Myth 3: The code does not support public interest journalism

The code has two aims: to redress a market imbalance between news businesses and digital platforms; and to foster public interest journalism. The aims of the code were summed up by Treasury, the government department that oversees the law:

The Code aims to address bargaining power imbalances to ensure that digital platforms fairly remunerate news businesses for the content they generate, thereby helping to sustain public interest journalism in Australia. (Treasury 2022, 3)

The code's commitment to public interest journalism is also evident in the definition of "core news," which news sources are required to produce if they are to be eligible for benefits under the code. In s 52A, "core news" is defined as content that:

... reports, investigates or explains: (a) issues or events that are relevant in engaging Australians in public debate and in informing democratic decision-making; or (b) current issues or events of public significance for Australians at a local, regional or national level.

This definition is centered on building democracy, informing citizens, and building community, which are key components of public interest journalism. The code also contains s 52P of the Competition and Consumer Act, which requires news media businesses to belong to a set of professional standards if they are to register for the code. Another provision, s 52X, requires designated digital services to develop a proposal to surface original content. These are commendable provisions; however, in the absence of designation, none of these provisions is in effect. What's more, the code's lack of transparency, particularly in the absence of designation, makes it difficult to gauge the impacts of deals done on public interest journalism. The code, or any mechanism that replaces it, ought to do more to foster public interest journalism and quality journalism, rather than journalism per se (Giotis, Molitorisz, and Wilding 2023).

Myth 4: The code supports only big, established players

As our interviewees acknowledged, and as the deals done attest, the code clearly favors big companies, with News Corp, Nine, SevenWest, and the ABC all securing sizeable deals. The revenue threshold for registering for the code is AU\$150,000 annually, which automatically excludes very small players. However, small- to medium-sized outlets did benefit too. Here, collective bargaining plays an important role. On behalf of Country Press Australia (CPA), one of our interviewees secured deals for 160 regional newsrooms. This was made possible after the ACCC gave interim permission in April 2021 for CPA to collectively bargain with Google and Facebook (Australian Competition and Consumer Commission 2021). Another interviewee secured deals with 24 small to medium publishers. It is fair to say the code favors the big, the traditional, and the established; it is similarly fair to say the code does not favor the small, the new, and the innovative. However, the deals done did benefit some small to medium businesses; and, as we have seen, the deals did require some digital innovation on the part of news media businesses.

Myth 5: The code is the only option

On 12 December 2024, nine months after Meta announced it would not renew its deals, the Australian government announced it would introduce a "news bargaining incentive" in order "to encourage digital platforms to enter into or renew commercial deals with news publishers" (Treasury 2024). The announcement was prompted by an acknowledgement of the code's limitations: platforms can avoid making deals simply by removing news altogether, as Meta has done in Canada and threatened to do in Australia. The incentive would include both a charge and an offset mechanism: platforms that do not make deals with news publishers would pay the

charge; platforms that do make deals would be able to offset their liability (Treasury 2024). The announcement was light on detail; a public consultation paper was due in early 2025.

As at December 2024, then, it is unclear whether the code will survive, and in what form. At the least, amendments and additions look likely. And indeed, if the code is to be retained, we propose that reforms are essential: to increase transparency; to support public interest journalism and quality journalism more effectively; and by transferring the power to designate from the Treasurer to a body such as the ACCC (Centre for Media Transition 2022).

Alternatively, the code could be scrapped and replaced by something simpler and neater. The code has been described by some as a politically motivated “Band-Aid” solution unlikely to stand the test of time (Dwyer, Flew, and Wilding 2023, 453). An alternative would be a scheme that imposes a levy on digital platforms, to be distributed by an independent body; even Google has expressed some support for such an approach (Dwyer, Flew, and Wilding 2023, 453). The government seems increasingly open to such an approach. In October 2024, a parliamentary committee investigating “social media and Australian society” recommended that the government adopt a “digital platform levy ... to sustain public interest journalism over the longer term, and to support digital media literacy initiatives” (Joint Select Committee 2024). That said, the 2025 return of Donald Trump to the US White House may raise issues in the form of potential free trade implications (Burrowes 2024).

A public interest journalism levy would see relevant digital platforms pay a percentage of profits into a fund then distributed by an independent body in a way that best fosters public interest journalism. A public interest journalism levy might prove more effective at achieving the simultaneous aims of redressing a market imbalance and fostering public interest journalism. Such a levy would have the added benefit of loosening the nexus between news and advertising,

which saw editorial supported by advertisers. The time may have come to supplant this nexus, particularly in the context of a digital economy founded on the use and sometimes misuse of data in the pursuit of advertising revenue, a context where content and advertising are becoming increasingly intertwined. Research published in December 2024 explores what such a levy might look like, as well as the prospect of imposing must-carry provisions on digital platforms for news content (Eisenberg 2024).

The code could never hope to provide a comprehensive solution for all the financial and social challenges facing journalism. Whether or not it is retained, further policy interventions are needed, which might, for instance, involve tax incentives and deductions for publishers, investors, and consumers of public interest journalism. While general willingness to pay for public interest journalism has declined (Centre for International Economics 2024), philanthropy presents opportunities (Dickson 2021). And though the idea of forcing digital platforms to distribute news via ‘must-carry’ provisions is controversial, it warrants attention (Eisenberg 2024). The code is no panacea; it cannot save public interest journalism all on its own.

5. Conclusion

Australia’s news media bargaining code is a step toward a sustainable future. Having prompted almost AU\$250 million annually to flow from Google and Meta to news media businesses, the code is bold and innovative. However, it is also flawed.

Our interviewees successfully negotiated deals on behalf of approximately 200 news media businesses. They all, to varying degrees, regard the code as a success, but they also noted its flaws. They identified the absurdity of deals for Google News Showcase and Facebook News Tab, which seem established purely to quarantine and minimize any obligations to pay for news.

They identified issues with the lack of transparency—even if some credited the lack of transparency for their successful negotiations. And there was a consistent recognition that the code, if it hopes to serve the public interest into the future, needs to adapt to encompass more services and platforms, such as TikTok, Apple News, and generative AI.

Combining these interviews with the scholarship, we can hazard recommendations for improving the code. Perhaps most obviously, it lacks transparency, particularly in the absence of designation. At the least, it ought to require news media businesses to report to a regulator about the benefits received and how those benefits have been directed toward public interest journalism. Second, it ought also to do more to foster public interest journalism and quality journalism. In part, this could be achieved with a more stringent requirement for news media businesses to abide by professional standards (s 52P) and by requiring more of digital platforms' algorithms, including in the way they surface original, quality content (s 52X). And third, it ought to operate, with or without designation, in the recognition that deals done are in the light of the value of news to digital platforms as a whole, rather than to peripheral services such as Google News Showcase and Facebook News Tab. These recommendations, we suggest, align with our findings and the scholarship.

Ultimately, the code can only do so much. It cannot, for instance, regulate algorithms in the manner of the EU's Digital Services Act (Molitorisz 2024). The code is a competition law intervention that has two aims: to redress a market imbalance; and to foster public interest journalism. By itself, the code cannot possibly achieve both those aims. Further policy interventions are needed. And perhaps we can do better. Arguably the code should be discarded altogether in favor of a public interest journalism levy that sees platforms pay a mandated contribution to a fund for public interest journalism administered at arm's length. This would

loosen the media's dependence upon advertising, a dependence that can be problematic in newsrooms, let alone on digital platforms.

Competing Interests

The authors have no competing interests to declare.

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