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From the Desk of:
Sen. Daniel Bonham

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SB 686: Prohibiting online platforms from accessing news in Oregon, potentially limiting Oregonians' access to news

- Per Oregon Legislative Counsel's comments to the Senate Rules Committee, the legality of SB 686 with the -9 amendment is largely novel and untested, especially in relation to potential violations of the First Amendment, due process rights, and the takings clauses of the Oregon Constitution and United States Constitution, the Dormant Commerce Clause of the U.S. Constitution, the federal Permanent Internet Tax Freedom Act and federal copyright law, which preempt related state laws.
- **No state has passed a bill remotely close to this law.** California considered and chose not to pass related legislation. Canada, with a different set of constitutional and federal laws, passed legislation requiring platforms to pay less than this bill for the entire country
- As a result of Canadian legislation, news links are not hosted on Meta's platforms, Facebook and Instagram. Newspaper [revenue plummeted](#), there was a [decrease in access to news](#), especially local news, and as [reported by the NYTimes](#), fake news further proliferated.
- Given the experience in Canada, many news publishers have expressed concerns about the impact of Oregon's bill, including Willamette Week, [Philomath News](#), [Eugene Local](#), and the [National Newspaper Publishers Association](#), the association of African American newspaper publishers from across the United States that represents more than 255 Black-owned media outlets — including historic publications like The Skanner, Portland Observer and the Portland Medium.

Specific to the -9 amendment adopted by the Senate Rules Committee:

- If a covered platform is working in good faith toward an agreement with the digital journalism provider, but does not have one in place, the bill prohibits the platform from accessing news. **Thus, to comply with the bill, the platform must remove news links.**
- Some digital journalism providers could reach agreement with platforms, while others may not, or at different times. Thus, to comply with the law, the platform could access and share links to some news but not others until agreements with all providers are reached. Thus, at certain points in time, you could have Breitbart news links on a platform if they have an agreement, but not NYTimes, because they don't have agreement. Or Vice Versa. The number of digital journalism providers is unknown and unlimited.



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- The amendment now pulls in other companies to the definition of covered platform, including but not limited to Apple, Microsoft, Amazon, and likely X.
- Nothing in the bill prohibits a platform from making agreements with some news providers and dropping links for other news providers. In fact, they are required to drop links to comply with the law, if there is not an agreement and they choose not to pay \$18 million or \$104 million annually.
- At the Senate Rules hearing, Legislative Counsel relayed that, while the -9 amendment alleviated many of LC's concerns about constitutionality, the bill likely still violates the Oregon Constitution's Article 1, section 17 right to trial by jury.
- The drafter of the bill relayed that the bill is a "presumption of an unfair trade practice." **At no point does a jury decide whether an unfair trade practice has occurred.** Under the amendment, the value a covered platform provides to a digital journalism provider is expressly forbidden to be taken into consideration, unless the platform drops news links or has an agreement: "Section 4: 7(a) May not take into consideration any value that the covered platform confers upon any of the digital journalism providers for aggregating, distributing, rendering or displaying the online content of the digital journalism providers, unless the covered platform does not automatically access the online content of the digital journalism provider"
- The arbiter does not decide the value of any monetary damage caused to the digital journalism provider - instead, they choose between the platform's compensation offer and the digital journalism provider's offer. Nothing in between is allowed.