To: The Committee on Rules
Oregon Senate

From: Jeff Jarvis

RE: Testimony on Senate Bill 686

April 10, 2025

I again thank Chair Jama and Vice-Chair Bonham and the members of the Committee for the opportunity and privilege to testify regarding SB686 on April 9, 2025.

As supplemental testimony and followup to questions, I am submitting an adaptation of a research report I wrote on similar legislation in California. That report was commissioned by the California Chamber of Commerce.

My report addresses some questions and points raised during testimony and discussion, including:

- examination of copyright and fair use,
- newspaper publishers' historic reception of new competition (especially radio and TV),
- issues with the present legislation,
- the experience in Canada, and
- suggestions for alternative approaches.

In addition, here is a link to a case study on the New Jersey Civic Information Consortium, which gives a detailed history of its establishment and an examination of its operations and work, alongside Montclair State University's Center for Cooperative Media (where I am a fellow). To be clear, I am not the author of this report, but it was requested during questioning so I am including it. (Apologies: I would attach it here, but the total file size exceeded the allowable limit.)

I would be happy to discuss any of this and answer questions from any Senator or staff member. The Committee has my contact information.

Jeff Jarvis

- Jeff Jarvis

Oregon Senate Bill 686: Analysis and Alternatives

Jeff Jarvis - April 2025

Executive summary

Oregon's Senate Bill 686 is the latest in a long line of efforts by the news industry — lobbying legislators in many countries — to expand copyright and diminish fair use for the exclusive benefit of news publishers and producers. SB686's stated intent is to address the deepening economic crisis in Oregon's news industry by requiring large online platforms to pay for the privilege of accessing and linking to news.

This paper will address a number of questions and issues relating to the legislation's likely impact and unintended consequences, its basis in law, its context in media history, and its economic presumptions. SB686 follows a number of similar efforts to establish what is known as an "ancillary copyright," starting in Germany in 2012, spreading to Spain and the rest of the European Union and then to Australia, and Canada. In Canada, while Google agreed to pay C$100 million (US$71.5 million) to publishers, Meta dropped all news content, links, and payment from Facebook and Instagram, leaving news providers arguably worse off than before the legislation.

Regarding the legislation, this paper offers the following findings:

- These mandated fees — perceived as taxes — on quotation of, comment on, and linking to news content violate copyright law by diminishing long-held principles of fair use.
- SB686 would benefit national corporations at the expense of Oregon-owned news outlets, and leave little for small, new, Black, Latino, and community outlets. Also, startups are greatly disadvantaged.
- As there are no clear journalistic standards set by the legislation, SB686's process could be manipulated to support extremist and propaganda outlets masquerading as news.
- The legislation carries no mechanisms for accountability regarding the use of funds.
- The legislation could, as in Canada, result in greater harm to the news ecosystem in the state and to the internet as a whole.
- One section of the legislation is said to be modeled after the New Jersey Civic Information Consortium, though there are key differences, beginning with the fact that New Jersey's Consortium relies first on state funding.
- The figure proposed for payment by platforms bears no basis in reality.

For context, this paper will examine the history of news and its relation to copyright and of the newspaper industry's reception of new technologies and competitors. History reveals clear patterns being played out again in regard to search engines and social media and most recently artificial intelligence: The newspaper industry has tried since the advent of radio to expand copyright beyond its intended bounds; the newspaper industry has accused competitors of antitrust or sought its own exemptions from it; news media have often used their influence to claim that new competitors are bad for news or democracy; and newspapers have lobbied for protectionist legislation and regulation to disadvantage newcomers in their field.

The paper ends with a catalog of many alternative frameworks and ideas for supporting Oregon's news and information ecosystem — not just the legacy news companies represented by the lobbyists that have campaigned for SB686. The paper does not set out to recommend a single alternative, but rather presents options and perspectives to stimulate more listening, learning, and debate about what the state needs and how those needs could best be met.

This paper will argue that linking to news does not harm but instead benefits publishers, and in any fair negotiation, the value of links must be accounted for. When search engines link to news sites and when readers, journalists, and publishers post links to articles on social media, the platforms are not stealing content, as publishers and their lobbyists assert. The platforms are instead sending readers to articles on publishers' sites; they are giving publishers free promotion. What happens once a reader arrives at a publisher's site is up to the publisher.

1. The legislation and its antecedents

Senate Bill 686 targets qualifying internet platforms — likely Google and Meta but not Apple (which is specifically excluded) — which would be required to pay publishers for the right and privilege of "accessing" news headlines to quote and link to their news sites. The bill does not consider the value to the publisher of the platforms' links in this exchange; in fact, it prohibits the reckoning of that value in any negotiation or arbitration.

It should be noted that these are activities intrinsic to the internet, undertaken by nearly everyone on the web, from news sites to bloggers to social-media users. These largest sites will be singled out and required to pay $122 million or submit to mandatory arbitration with publishers. To qualify fpr 90 percent of those funds, sites must generate at least $100,000 a year in revenue or go to the expense of becoming a 501(c)3 and must be at least two years old.

SB686 is similar to the Journalism Competition and Preservation Act (JCPA), federal legislation introduced by Sen. Amy Klobuchar (D, Minn.) in 2021 and in many ways identical legislation offered in California (the California Journalism Preservation Act or JCPA, which was not passed or enacted after Google negotiated a separate agreement) and Illinois and New York (where no action has yet been taken on the bills). Each is championed by the News/Media Alliance (NMA), a merger of two legacy publishing trade associations, the former American Newspaper Publishers Association (ANPA), dating back to 1887, and the Magazine Publishers Association (MPA), founded in 1919. The NMA began accepting digital publications into membership only in 2016. The next year, the association announced it would lobby Congress for an exemption from antitrust to allow its 2,000 members to form a cartel to negotiate collectively with online platforms for compensation for links to their content; that is JCPA.[1]

By demanding payment for accessing, quoting, and linking to content, publishers are seeking an extension of copyright and a diminishment of fair use — sometimes known as "ancillary copyright." As the Copyright Office explains: "Under the *fair use* doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the

[1] NMA press release: www.newsmediaalliance.org/release-digital-duopoly/.

circumstances."[2] Or as Harvard Law professor Lawrence Lessig famously said in his book *Free Culture* (Penguin, 2004), "fair use in America simply means the right to hire a lawyer to defend your right to create."[3] The international Berne Convention for the Protection of Literary and Artistic Works explicitly permits "quotations from newspaper articles and periodicals in the form of press summaries." In the opinion of the Computer & Communications Industry Association (CCIA), efforts to invent an ancillary copyright "contradict more than a century's worth of international copyright law, and disturb the harmony and balance within international copyright systems."[4]

Publishers' efforts to receive compensation for quotations and links began as early as 2006. Then, Belgian publishers sued Google, alleging copyright infringement. The publishers won a 2011 appeals court decision. Nonetheless, the next year, the publishers asked to be linked in Google News. In 2012, French publishers lobbied for a link tax. Google threatened to stop linking to news sites. In the end, France agreed not to pursue that law and Google agreed to create a €60 million Digital Publishing Innovation Fund.

Legislatively, the heritage of SB686 and its variants, including the federal JCPA, can be traced to the first link law, Germany's *Leistungsschutzrecht* (LSR), translated as ancillary copyright, and also as a neighboring right, meaning a legal protection for creators whose content is used by others. The LSR was lobbied for by conservative publishers Axel Springer, Burda, and the *Frankfurter Allgemeine Zeitung* and introduced in 2012. The first rendition of the legislation would have granted publishers a one-year exclusive right to make their "press product" available online, requiring platforms to negotiate with and pay publishers to display snippets of their text longer than seven words. After considerable legislative negotiation, no agreement was reached on a definition or length of allowable snippets.[5]

Google had relied on a widely accepted opt-out mechanism, respecting rules for crawling content that publishers place in what is known as the robots.txt file. (All it takes to forbid Google from acquiring, crawling, or indexing any part of a site's content are these words: "User-agent: Googlebot Disallow /.")[6] With the LSR, Google switched to an opt-in rule, telling publishers it would display snippets of content alongside links only with explicit and free permission. After passage of the law in 2013, publishers formed a copyright bargaining unit, VG Media, similar to what is envisioned in the federal JCPA. Google and other large online companies refused to negotiate with VG. Meanwhile, a number of other publishers opted in to grant Google free licenses. Springer held out and refused to grant Google permission; Google did not link; Springer's daily visits dropped by 8%; Springer soon relented.[7] VG Media sued Google on competition and copyright grounds. The competition claim was rejected by the German Federal

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[2] Copyright Office FAQs: www.copyright.gov/help/faq/faq-fairuse.html. See also the Copyright Office's fair use index: www.copyright.gov/fair-use/index.html

[3] Lawrence Lessig, *Free Culture: The Nature and Future of Creativity*, Penguin (2004), 187.

[4] "Understanding 'Ancillary Copyright' in the Global Intellectual Property Environment," CCIA: ccianet.org/wp-content/uploads/2015/02/CCIA-Understanding-Ancillary-Copyright.pdf.

[5] "Germany Waters Down Search Engine Legislation," *Der Spiege*l (February 27, 2014): www.spiegel.de/international/germany/germany-waters-down-google-search-engine-legislation-a-885899.html.

[6] Instructions for how to write a robots.txt file are here: developers.google.com/search/docs/crawling-indexing/robots/create-robots-txt#create_rules,

[7] Joan Calzada and Richard Gil, "What Do News Aggregators Do? Evidence from Google News in Spain and Germany" (December 1, 2018), 4: SSRN: ssrn.com/abstract=2837553.

Cartel Office. In the end, the *Leistungsschutzrecht* was ruled invalid by the European Court of Justice in 2019 because it had not been submitted in advance to the EU Commission.[8]

Thus the *Leistungsschutzrecht* would seem to have been for naught. But no. That law spawned copycat legislation around the world. Next came a law in Spain variously called a link tax, a snippet tax, a copyright fee, and a Google tax. This law required that compulsory fees be paid by aggregators to link to news, with no option for granting of free licenses, as in Germany. It excluded search and social-media. Before the law took effect in 2015, Google said it would not pay to link to news and pulled Google News, which carries no advertising, out of the country. Some Spanish aggregators did the same. Subsequent research found that daily visits to news sites in Spain decreased between 8.4% and 14.6%, with a consequent reduction in advertising revenue. That is to say that links had value to publishers, especially smaller ones, as the researchers found that "regional newspapers show a larger effect than national newspapers."[9]

All these efforts bore further legislative fruit in Europe with the passage in 2019 of the EU Copyright Directive. Its Article 15 is an ancillary copyright, requiring licensing for displaying anything more than "individual words or very short extracts" of any content less than two years old.[10] In France, the first to codify the directive into law, Google announced it would not display snippets from European publishers who did not opt in; French publishers sued; the competition authority declared that Google would have to negotiate; and Google reached an agreement to pay $76 million to 121 publications over three years.[11] Then the competition authority fined Google €500 million for negotiating in bad faith. Google and the publishers settled in 2022, for an amount not made public. As the EU directive superseded prior Spanish law and allowed negotiation, Google News returned to the country in 2022. As the requirements of the directive were being written into law, Google entered into negotiations and came to terms with more than 2,600 publishers in 16 countries by the fall of 2023.[12]

Next came Australia, where Rupert Murdoch's News Corp. led a coalition of publishers to create a News Media Bargaining Code sent to Parliament in 2020. It would have required platforms — Google, Facebook, and Microsoft — to negotiate with publishers. If that failed, various additional clauses in the legislation would have been triggered, requiring platforms to submit to arbitration and also requiring them to give publishers 28 days' notice of changes in their ranking algorithms (which critics said would only make it easier to manipulate and spam those algorithms).

Google threatened to pull news off its platform in Australia. Facebook actually did. On February 17, 2021, Facebook took down all news links and blocked Australian news from being shared or seen — along with other public-information sites. A media furor ensued, as Prime Minister Scott Morrison complained — on Facebook — about Facebook having "unfriended" the

[8] For further history in Germany and other countries in this section, see "Copyright Protections for Press Publishers" by the U.S. Copyright Office (June, 2022): www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf.
[9] Calzada, 18.
[10] EU Copyright Directive: eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32019L0790.
[11] Mathieu Rosemain, "Google's $76 million deal with French publishers leaves many outlets infuriated," Reuters (February 12, 2021): www.reuters.com/article/idUSKBN2AD039/.
[12] "An update on Google's compliance with the EU Copyright Directive":: blog.google/around-the-globe/google-europe/an-update-on-googles-compliance-with-the-eu-copyright-directive/.

nation. Both Facebook and Google came to an agreement with the government and publishers, therefore not triggering the law and its conditions. News reappeared on Facebook six days after it disappeared. But this episode taught Facebook about the value of news on its services, which would prove useful in the next Commonwealth nation to enact a link tax, Canada. Facebook has since allowed these deals to expire.

Columbia University Journalism School professor Bill Grueskin went to Australia to study the impact of the Bargaining Code. "But it's a murky deal, with critical details guarded like they're nuclear launch codes," Grueskin reported in the *Columbia Journalism Review*. "If you want to know how much money the platforms have paid to news organizations, you're out of luck. If you want to learn whether newsrooms are spending that money to bolster journalism, rather than pad executives' salaries, you're out of luck." The Australian Broadcasting Corp. and *The Guardian* said they used the funds to hire journalists, but there is no accountability otherwise for how much of the reported A$200 million paid went to whom to do what.[13]

Google has been careful not to set the precedent of positioning payments to publishers as quid-pro-quo for links. Instead, it started a Google News Showcase and sometimes positions payment as compensation for participation in it. In 2019, Facebook also introduced a news tab on its application and negotiated with publishers to participate. But by 2024, the company — now named Meta — killed the feature, canceled contracts with publishers, shifted development resources from media to grassroots content creators, and deprioritized news in its News Feed rankings. According to Chartbeat, Facebook referrals to news sites fell from 50% of social traffic to 33% in a year and continued falling.[14] Meta laid off virtually all employees who had worked with the news industry and cut off grants to news organizations and journalism schools. Meta did unfriend news. After enduring constant negative coverage from putative media partners, worldwide lobbying to extract payments, and constant criticism for fueling angst and engagement with news and politics, Meta reverted to its roots in parties and puppies.

That was the state of play when Canada proposed its Bill C-18 in 2021.[15] The legislation would have required Google and Meta to pay for linking to news. In testimony and conversation, Google and others had many complaints about the bill: paying for links violates copyright; large publishers would benefit over small sites; it set no journalistic standards; it had no cap; it did not account for the value of links; and the means of funds' distribution was unclear.[16] Proponents unrealistically vowed C-18 would bring in as much as C$375 million. That would have come on top of a journalism employment tax credit the federal government already provided, which now allows publishers to claim 35% of journalists' salaries up to C$85,000.[17] Google quietly tested

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[13] Bill Grueskin, "Australia pressured Google and Facebook to pay for journalism. Is America next?" *Columbia Journalism Review* (March 9, 2022): www.cjr.org/business_of_news/australia-pressured-google-and-facebook-to-pay-for-journalism-is-america-next.php.

[14] Jonathan Vanian, "Facebook made a major change after years of PR disasters, and news sites are paying the price," CNBC (January 22, 2024): www.cnbc.com/2024/01/22/metas-retreat-from-news-accelerated-in-2023-leaving-media-scrambling.html.

[15] Text of final version of C-18: www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent.

[16] Colin McKay, "Google Canada's testimony on Bill C-18, the Online News Act," Google (Oct 18, 2022): blog.google/intl/en-ca/company-news/outreach-initiatives/google-canadas-testimony-on-bill-c-18-the-online-news-act/.

[17] Bryan Passifiume, "Liberals expand payroll tax credit for news publishing in fall economic update," *National Post* (November 21, 2023): nationalpost.com/news/politics/news-publishing-fall-economic-update.

dropping news for a small number of users, and when the test was found out, executives were called to answer to Parliament. Google urged negotiation, but the bill was enacted as was. Only once enforcing regulations were drawn up was a cap put on Google's contribution; the company agreed to pay up to C$100 million.

Meanwhile, Meta made good on its threat to pull the plug on news in Canada, taking down news links and news sites from its services entirely. The company could not be compelled under C-18 to carry news and links to it, for that would violate Section 2 of the Canadian Charter of Rights and Freedoms, securing freedom of expression as a fundamental freedom. Facebook says, and independent measures corroborated, that its services lost virtually no traffic as a result. However, publishers in Canada immediately lost as much as half their traffic.

The result in Canada has been "dramatically terrible" in the words of online news publisher Jeff Elgie and "disastrous" according to law professor Michael Geist. Elgie runs one of the success stories of local journalism anywhere, Village Media, which profitably serves more than 20 communities in Canada. As Elgie calculates the impact of Google's C$100 million fee, a third will go to broadcasters as stipulated by regulation, the rest to print and digital publications. Google was paying an estimated C$25 million to publishers to participate in its News Showcase but the company confirms that those deals are not being renewed. Thus, of the remaining C$67 million, C$42 million represents an incremental contribution, to be paid out as an estimated C$15,000 to C$20,000 per journalist at news organizations. News sites may apply for the funds and, under the regulation, an independent organization selected by Google will decide on grants.

At the same time, Elgie says, the industry lost as much as an additional C$25 to C$30 million in grants and fees Meta was estimated to be paying. Worse, Canadian news sites lost a great deal of traffic that had come from Facebook and Instagram. CBC/Radio Canada reported that its sites lost 23% of traffic, blaming the aftermath of C-18.[18] "We will probably get a bit more money than we did before with Facebook and Google combined," Elgie says, "but we lost the Facebook traffic. So if you ask me, any day I would say, keep your damn money and give us the Facebook traffic back." Without social traffic, it is nearly impossible to build audience for a local news or community startup online. Some smaller local sites — including *Eagle Feather News*, the leading Aboriginal newspaper in Saskatchewan, and Torontoverse — have gone on hiatus since C-18.[19] Further, Elgie says, in markets where Village Media works, "there's going to be one winner. There's not room anymore for multiple digital publishers." In the end, C-18 will result in less competition and fewer voices in news.

At the same time, major broadcaster Bell Canada laid off thousands of employees, including 200 journalists, cut some national newscasts, put almost half its radio stations up for sale, and sought to be relieved of its regulatory obligation to provide local news. CBC/Radio Canada cut 10% of jobs. *The Toronto Star*'s parent — a prime lobbyist for C-18 — cut 600 jobs, including 68 journalists, in its bankrupt community news division and stopped printing most of its 70 newspapers. As Elgie explains, for a large chain such as PostMedia, even C$20,000 per journalist would not dent its high operating costs and crushing debt.

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[18] "CBC.ca Site Traffic Down 23%," Blacklocks.ca: www.blacklocks.ca/cbc-ca-site-traffic-down-23/

[19] Jeff Elgie interviewed by the author in February 2024. See also www.eaglefeathernews.com/news/editorial-efnews-update; torontoverse.com/articles/4rvIEDdvRkKZwEJ_ogkoQA/why-torontoverse-will-be-slowing; www.cbc.ca/news/business/bce-cuts-1.7108658, thetyee.ca/News/2024/02/21/Blame-News-Layoffs-Feds-Fumbled-Pot-Gold/.

"Some layoffs and closures could be interpreted as a signal that some were holding out hope for a big pot of gold," says Geist, who holds the Canada research chair in internet and e-commerce law at the University of Ottawa. He adds, "We must lay blame not just with the government but with the media groups that lobbied for this.... The larger outlets — the Torstars, the Postmedias of the world — were a nonstop conveyer belt of supportive op-eds for the legislation with almost nothing on the other side.... Torstar ran for almost two years sort of a 'Big Tech is Evil' series." This is the ethical issue raised when news organizations lobby governments for favors: it can influence coverage. Asked what lessons there are from Canada for the U.S., Geist told an interviewer, "Ultimately Canada becomes a model for what not to do."[20]

A key lesson from all these attempts at creating ancillary copyright is that links have value for publishers. Publishers and legislators have refused to acknowledge that value, insisting that only the headlines have worth. As the Canadian experience proves, publishers' headlines had negligible value to Meta, but Meta's links had considerable value to publishers (which is why, Meta says, most links to news on its services were placed there by the publishers themselves, to attract audience). The value of links can also be calculated in the aftermath of the Spanish link tax, when Google News left, and the German *Leistungsschutzrecht*, when Springer lost traffic and capitulated.

Publishers have long argued that by displaying their headlines, platforms rob them of traffic and audience, as headlines alone are sufficient to satisfy — rather than whet — readers' appetite for news. This is called the "scanning effect." Platforms, on the other hand, argue that they send tremendous traffic and audience to news sites by exposing readers to stories they might otherwise not see. This is called the "traffic effect." Researchers Lesley Chiou and Catherine Tucker investigated an incident in 2010 to gain insight on both effects. When negotiations between the Associated Press and Google broke down, Google removed links to all AP articles, including those run by member newspapers. Meanwhile, Yahoo News renewed its contract and continued to display AP news, providing the opportunity to study the differences. The researchers found that traffic to Google News did not suffer — which they conclude disproves claims of a scanning effect — while traffic to news sites dropped by 28%. "We find evidence that the traffic effect is large, as aggregators may guide users to new content." Thus, they say, aggregators act as a complement rather than a substitute for news sources.

The market value of links to sites has never been established for a simple reason: Google gives them away for free. Bill Gross, who has started 150 companies out of his Pasadena-based incubator, IdeaLab, founded Goto.com in 1998 (later sold to Yahoo as Overture) as a pay-for-placement search engine; he charged for links. Google, on the other hand, chose not to sell placement in search results, only to the side, to assure the independence and credibility of search. Google has said that news accounts for 2% of searches. Even so, Google says it sends 24 billion clicks a month to news publishers' sites. Deloitte estimated the net promotional value of traffic to a news site (whether for advertising or subscriber acquisition) at $0.05 to $0.07 per visit — thus, Google's links would add up to $14.4 to $20 billion a year in economic value for publishers. That is in addition to the $1 billion Google says it is spending outright in licensing content from more than 2,500 publishers worldwide for its News Showcase, as well as the billions in revenue it says it shares with publishers via its ad platforms. Google also touts other

[20] Sarah Crichel, "Blame News Layoffs on the Feds' Fumbled 'Pot of Gold'," The Tyeee (February 21, 2024): thetyee.ca/News/2024/02/21/Blame-News-Layoffs-Feds-Fumbled-Pot-Gold/..

aid: training 570,000 journalists in various skills and helping sell 655,000 digital subscriptions to news with publishers via its tools.

Publishers' lobbyists have made their own claims about the value they say they bring to the platforms. The NMA, author of the core of SB686 and its related legislation in other states and JCPA, issued a statement in 2019 contending that Google benefits to the tune of $4.7 billion from news alone, based solely on extrapolating from an offhand remark by a long-gone Google vice president from a decade before, saying that Google News — which carries no advertising and brings no revenue — was worth $100 million to the company. The NMA report was widely mocked, even within the news industry. *The New York Times*, which is represented by the NMA, reported its assertions unquestioningly just before a House hearing on JCPA.[21] In 2023, the Centre for Economic Policy Research (CEPR) released a report claiming that Facebook owes U.S. news publishers $1.9 billion a year and Google $10 to $12 billion. That is based on numerous specious assumptions. In Facebook's case, the CEPR naively conflates its News Feed with news. (Facebook no longer calls its News Feed that; it is now just the Feed.) In Google's case, the CEPR paper relies on a Swiss study by Fehr Advice and Partners that conflates information and news, contending that information searches (e.g., for Paris hotels) are news searches. Again, Google says news accounts for 2% of searches and advertisers tend not to want to place their ads next to news. Fehr relies in turn on other studies contending that information searches (versus transaction or shopping and navigation searches) account for 50-80% of all searches (the latter number came from a two-decades-old paper using data from the defunct AltaVista). CEPR then calls upon a survey that says 70% of users want news in search, absurdly concluding that 35% of Google's revenue is news-related.[22] The SB686 assertion that each platform owes news publishers $122 million is equally specious.

The case study of Canada and C-18 belies the publishers' contentions. Reuters asked for data from two online analytics firms — Similarweb and Data.ai — both of which found that after pulling news off its platforms, Facebook and Instagram saw no meaningful loss of usage.[23] Facebook has long said news is no more than 4% of content; lately it says 3%, and that is declining precipitously. Is Facebook worse off without news? Elgie says his readers say so; the data might dissent.

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[21] The NMA statement can be found here: www.newsmediaalliance.org/wp-content/uploads/2019/06/Google-Benefit-from-News-Content.pdf. See also: Josh Benton, "That '$4.7 Billion' Number for How Much Money Google Makes Off the News Industry? It's Imaginary," NiemanLab (June 10, 2019): www.niemanlab.org/2019/06/that-4-7-billion-number-for-how-much-money-google-makes-off-the-news-industry-its-imaginary/; Marc Tracy, "Google Made $4.7 Billion From the News Industry in 2018, Study Says," *The New York Times* (June 9, 2019): www.nytimes.com/2019/06/09/business/media/google-news-industry-antitrust.html.

[22] Patrick Holder, Haaris Mateen, Anya Schiffrin, Haris Tabakovic, "Paying for News: What Google and Meta Owe US Publishers," CEPR (November 2013): policydialogue.org/files/publications/papers/LatestVersion.pdf. Fehr study: fehradvice.com/wp-content/uploads/2023/04/2023_04_21_study_journalistic_value_google_en.pdf. Lisa Macpherson, "Why Google and Facebook Don't Owe Publishers $14 Billion a Year," (December 21, 2023): publicknowledge.org/why-google-and-facebook-dont-owe-publishers-14-billion-a-year/; AltaVista paper: Daniel E. Rose and Danny Levinson, "Understanding User Goals in Web Search," WWW '04 (May 2004): dl.acm.org/doi/abs/10.1145/988672.988675.

[23] Katie Paul and Steve Scherer, "Meta's Canada News Ban Fails to Dent Facebook Usage," Reuters (August 29, 2023): www.reuters.com/technology/metas-canada-news-ban-fails-dent-facebook-usage-2023-08-29/.

If, as publishers and legislators assert, all these efforts at regulation are in the interests of paving an even economic playing field, then the contributions of value the platforms make must be included. It is possible any such balanced accounting would end up with publishers owing platforms. Why have platforms paid publishers? They have been strong-armed into doing so by legislators lobbied by news organizations. The audience, attention, advertising, and revenue that publishers have lost since the advent of the internet was not theirs by rights. Google, Meta, and other internet companies did not steal that from publishers, any more than they steal content by promoting and linking to it. Advertisers fled the monopolistic pricing power of local media for the lower prices and greater efficacy and accountability of online advertising, and for the opportunity to establish their own domains online and build direct relationships with their customers, practically for free. Among members of the public, trust has been falling in news, along with circulation, since the 1970s, long before the internet. A researcher at the University of Pennsylvania recently performed an experiment offering to give away a free subscription to a local newspaper, and out of 2,529 people who received the offer, only 1.7% accepted.[24] Publishers lost their customers — readers and advertisers — and have yet to engage in honest self-reflection about why.

The proponents of SB686 speak of providing fair market value for content. In a fair market, both sides of a transaction would be accounted for. As the Computer and Communications Industry Association argues, ancillary copyright is not a matter of intellectual property but "an instrument of industrial policy. Aimed at rectifying perceived economic imbalances between industries, they act like a private tax or levy." That is the context in which it and its fairness should be judged.

2. SB686: Issues and questions

Both SB686 and JCPA have gathered support from news publishers and broadcasters as well as journalists, who understandably hope for an infusion of cash into their struggling newsrooms. Nationally, newsrooms have lost more than half their staff since 2008, while employment by digital publishers has grown, but not sufficiently to compensate for legacy's losses. Newspaper circulation is a third of what it was in the '70s and ad revenue is a fifth what it was in 2005, while subscription revenue has been flat for the last two decades. No one argues about the sad state of the news industry. As for the policy response, SB686 and JCPA have attracted much criticism and opposition from technology companies, of course, but also from associations of smaller publishers and internet advocates. Here are some of the questions and objections raised:

SB686 violates copyright law: Fair use doctrine as defined in the 1976 Copyright Act stipulates that the use of copyrighted material "for purposes such as criticism, comment, news reporting, teaching... scholarship, or research, is not an infringement of copyright." The Ninth Circuit found in multiple cases that displaying thumbnails or snippets of images is "a fair use primarily based on the transformative nature of a search engine and its benefit to the public." Quoting and linking to content is transformative in that it serves a different function: "improving

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[24] Kevin Lind, "They Gave Local News Away for Free. Virtually Nobody Wanted It," *Columbia Journalism Review* (February 8, 2024): www.cjr.org/business_of_news/they-gave-local-news-away-for-free-virtually-nobody-wanted-it.php,

access to information on the internet."[25] In addition, it should be noted that federal copyright law preempts state law.

The trade associations supporting SB686 and JCPA — the NMA and National Association of Broadcasters — are pressing for an expansion of copyright and diminishment of fair use not just in the contexts of search engines and social media but also now regarding artificial intelligence, contending that AI companies should be required to license and pay even to read copyrighted material for the purpose of training large language models — itself a transformative use. (See their testimony, alongside that of this paper's author, before the Senate Judiciary Subcommittee on Privacy Technology and the Law on January 10, 2024, footnoted below.[26])

Out-of-state companies will receive a large proportion of payments: SB686 does not require that a news organization be based in or dedicated solely to serving residents of Oregon. Its definition of a qualifying publication is extremely broad — it need only provide 25% of its content about "topics of current local, regional, national, *or* international public interest" (emphasis added). A portion of funds from SB686 is required to go to paying journalists — only one of whom need be in the state. And money is fungible; there can be no assurance that the funds will not end up instead fortifying parent companies' bottom lines.

Much of local, community, Black, and ethnic media are likely to get little: SB686 requires that a news organization earn at least $100,000 in revenue to qualify for 90 percent of the funds. This leaves out much of the media the law is intended to serve: community journalism. LION Publishers, an association of independent, local news sites, says that as of 2021, 44% of its members earned less than SB686's threshold. Smaller sites will need to apply and compete for 10% of the funds through the Consortium.

Funds could support disinformation: Because the legislation carries an overly broad definition of journalism and no standards for journalistic quality, fees can and likely will go to propaganda sites masquerading as news, with little means for policing. Daily Caller, founded by disgraced Fox News anchor Tucker Carlson, supported the California version of this bill.

Licensing of journalists: One clause of the legislation — section 1(11)(d) — refers to journalistic activities "for which a valid license has been obtained." To be clear, there is not now — and never should be — any official licensing of journalists or speech in the United States. That would be a clear violation of freedom of the press under the First Amendment.

Accountability: As with Australia's Bargaining Code, SB686 has no mechanism for accountability to audit whether funds are used to expand journalistic coverage or to innovate in the field.

Meta's stand: In May 2023, Meta spokesperson Andy Stone issued a statement regarding California's bill: "If the Journalism Protection Act passes, we will be forced to remove news from Facebook and Instagram rather than pay into a slush fund that primarily benefits big, out-of-state media companies under the guise of aiding California publishers. The bill fails to

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[25] *Perfect 10 v. Amazon*: cdn.ca9.uscourts.gov/datastore/opinions/2007/12/03/0655405.pdf.
[26] Video of testimony and prepared statements are available here: www.judiciary.senate.gov/committee-activity/hearings/oversight-of-ai-the-future-of-journalism.

recognize that publishers and broadcasters put their content on our platforms themselves and that substantial consolidation in California's local news industry came 15 years ago, well before Facebook was widely used. It is disappointing that California lawmakers appear to be prioritizing the best interests of national and international media companies over their own constituents." Meta's stand regarding SB686 is the same.[27]

Google and Meta are not responsible for the fall of local news: As Meta says in its statement, disruption in the news industry goes back long before the rise of these two platforms and the internet itself. SB686 is constructed punitively, as if just two technology companies are responsible for losses in the state's news industry, and so they should pay in recompense. Internet companies provided competitive offerings to advertisers with lower prices and greater efficiency, efficacy, and accountability. Newspapers' former advertising clients — auto dealers, real-estate agents, employers, and retailers — took advantage of the opportunities provided by the internet to build their presences online and establish their own direct relationships with customers, reducing their need for advertising in old media. The internet abhors middlemen. Publishers are middlemen who have lost their monopolies and their pricing power. That is the harsh reality of capitalism and technology disruption, not the invention of two internet companies.

Legacy news companies bear responsibility for their present state and fate: In an annual worldwide survey, the Reuters Institute for the Study of Journalism at Oxford found that 42% of Americans now sometimes or often avoid the news; only a third trust most news most of the time; and the proportion of those very or extremely interested in news has dropped 18%, from 67% to 49% since 2015. The numbers reflect an ideological divide: 22% of those on the left avoid social justice news vs. 70% on the right; for climate news it is 12% on the left vs. 64% on the right. Avoidance of local news in the US is lower than other categories — 7% on the left vs. 14% on the right — but still, note that it is twice as high on the right. Trust in news overall stands at only 32%, flat since 2015 (versus, for example, 69% in Finland and 57% in the Netherlands). Only 21% of Americans pay for news, even though most newspaper sites have erected paywalls.[28]

There is precious little self-reflection in journalism about news avoidance and lack of trust and willingness to pay, and not much more self-examination in publishers' suites about the loss of advertising customers. Neither blaming others for their failures nor seeking protectionism are strategies for the future.

SB686 breaks the web: Links are the nervous system of the web. They enable conversation, community, commerce, and collaboration. For Google, links are a signal of validation — one person saying that something is worth following, not unlike academic citation. To charge for links — or to require providing them — violates the ethic and architecture of the internet, for links should be freely given and freely followed. As the inventor of the world wide web, Sir Tim Berners-Lee, testified before the Australian legislature related to its Bargaining Code: "Requiring a charge for a link on the web blocks an important aspect of the value of web content.... It would undermine the fundamental principle of the ability to link freely on the web and is inconsistent with how the web has been able to operate over the past three decades. If this

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[27] See Stone's tweet on May 31, 2023: twitter.com/andymstone/status/1663951770052067338.
[28] Reuters Institute Digital News Report 2023: reutersinstitute.politics.ox.ac.uk/sites/default/files/2023-06/Digital_News_Report_2023.pdf.

precedent were followed elsewhere it could make the web unworkable around the world." Vint Cerf, an inventor of the internet, testified: "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.... We must not make the mistake of altering the fundamental and flexible ways in which the Internet works in order to fix the long-term structural problems that a particular industry was starting to face already years before the Internet and the world wide web appeared."[29]

3. Copyright in context

As SB686 is an effort to establish ancillary copyright for publishers in Oregon, it is important to examine the history of copyright.

Copyright is often portrayed as protection for the rights of the creators of content. Yet it was not authors who lobbied the British crown for the first copyright act; it was instead stationers — that is, the industry: booksellers and publishers. Since Gutenberg, the freedom to publish anything — books, Bibles, textbooks, news — had been a matter not of right but of license and privilege, of exclusive permission granted by authorities as a means of controlling the flow of information in print. The expiration of such licensing laws amid political chaos in England in 1695 — and the flourishing of the publishing of books and newspapers that followed — led stationers to seek protection of intellectual property as a tradable asset in the marketplace they controlled. They sought legislation no fewer than 13 times, finally leading to enactment of the Statute of Anne in 1710.

The statute gave authors the opportunity to sell rights in their works to publishers, who then asserted that they were acquiring authors' perpetual natural rights to the works. The momentous case of *Donaldson v. Becket* rejected the publishers' claims, limiting copyright for author or acquirer to the terms of the statute. Thus it can be argued that copyright was not a granting of rights but instead a limiting of rights, reducing a creator's control from forever to 14 years, for the benefit not of creators or publishers but of the public and its commons.[30]

It is important to note that at their inceptions, the Statute of Anne and United States copyright law offered no protection to news — neither newspapers nor magazines. *The New York Times'* recent suit against OpenAI claims that "since our nation's founding, strong copyright protection has empowered those who gather and report news to secure the fruits of their labor and investment."[31] That is incorrect. In point of fact, the Copyright Act of 1790 covered only books, maps, and charts. News periodicals were not explicitly brought into copyright's embrace until 1909. Even then, according to Will Slauter, author of *Who Owns the News: A History of Copyright* (Stanford, 2019), there was still debate over whether to protect news articles — as opposed to literary features — as they were seen as the products of institutions rather than the creative works of authors, and to limit the distribution of news would restrict public discourse about it.[32]

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[29] Testimony available here: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABNewsMedia/Submissions.
[30] Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, Princeton (2014), 65-69.
[31] NY Times v. Microsoft, OpenAI: nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf.
[32] Will Slauter, Who Owns the News: A History of Copyright," Stanford (2019), 201-202.

At first, copyright covered only American works, allowing publishers to issue — or one might today say "pirate" — countless books from England and elsewhere for free. When the U.S. did begin to honor international copyright in 1891, it was not so much to protect foreign writers including Charles Dickens, who had traveled to America to lobby for it, but was enacted at the behest of established publishers who "faced competition from firms that utilized new technology to undersell them in the marketplace," as Peter Jasczi and Martha Woodmansee recount. The mechanization and industrialization of print — with high-speed, steam-powered, rotary presses and the new Linotype typesetting machine, which opened the door to penny newspapers and the mass market — brought sudden abundance to the old, staid publishing industry. Elite publishers "could afford to license the copyrights of foreign authors, could mobilize copyright law to exclude competitors from the marketplace."[33] Thus acceptance of international copyright might be seen as a form of regulatory capture. Slauter points out that negotiators in the 1886 Berne Convention on Copyright — which the U.S. did not join until 102 years later — considered exempting news from protection to encourage its wide exchange.[34]

One might best understand the intent of our earliest legislators regarding news by noting that the Post Office Act — passed in 1792, two years after the Copyright Act — granted newspaper publishers the privilege of exchanging copies of their papers in the mails for free, enabling editors to copy and print each others' articles, with the explicit intent of creating a first national network of news — and with it a new nation. Newspapers employed people with the actual job title of "scissors editor." Browse papers from that era and you will find duplicate reports repeated again and again across the country. The only thing that would rankle a copied newspaper was if the copier did not credit the source.

Resentment at being copied without credit remains an issue today when major media — from "rip-and-read" reports on radio or TV news to even *The New York Times* — repurpose others' reporting without acknowledging the original publication, reporter, or blogger. To provide credit is common courtesy. But even such simple recognition is not required under copyright, for the law protects only the treatment of information, not the information itself. To claim exclusive ownership of information and knowledge would be repugnant in an enlightened society.

Newspapers and their wire services have, however, tried at various times to claim ownership of information. In *International News Service (INS) v. Associated Press (AP),* the Supreme Court in 1918 endorsed a so-called "hot news doctrine" or tort of misappropriation, holding that a news competitor could not reproduce another's scoop while it had "commercial value" — that is, while one wire service's clients across the country's time zones had yet to publish its news before the competing wire service repeated the information. Thus timeliness of facts became an asset of tangible worth — though come the internet, as Michael Lewis asserts in *Flash Boys: A Wall Street Revolt* (Norton, 2015), the value of timeliness is no longer measured in days or hours but in milliseconds. Hot news cools at the speed of a click.

Property—intellectual property—has been the predominant metaphor of copyright. SB686 and its antecedents attempt to create a property right in news. But in *INS*, the court's majority "consciously rejected the idea of a property right in news, expressing concern over the

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[33] Peter Jaszi and Martha Woodmansee, "Copyright in Transition," in *A History of the Book in America*, Vol. 4, edited by Carl Kaestle and Janice Radway, UNC Press (2009), 90-98.
[34] Slauter (2019) and the author's conversation with him in January 2024.

public interest consequences of such a move, and decided to frame its opinion in terms of unfair competition," Shyamkrishna Balganesh explains in the *Columbia Law Review*.[35] In his *INS* dissent, Justice Louis Brandeis famously warns against considering information property: "The general rule of law is, that the noblest of human production — knowledge, truths ascertained, conceptions, and ideas — become, after voluntary communication to others, free as the air to common use."[36] Since then, the doctrine of hot news has been whittled down, as Slauter explains, by the Supreme Court's decision in 1938 to end reliance on the common law principles called upon in *INS*, and by the Copyright Act of 1976, which preempts claims of misappropriation under state common law.[37]

The AP tried to resurrect its hot news doctrine as late as 2009, in a suit against an aggregator that "copied some or all of the expression contained within" articles, erasing the AP's brand and distributing it without credit. The suit was settled before trial. Two years later, in *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*, the Second Circuit decided against the plaintiff, which had sued an internet company for aggregating its research (with credit) alongside other financial news. The Court held the two companies were not competitors.[38] "Essentially," writes Adam J. Tragone, a newspaper editor turned First Amendment litigator, "if the alleged infringer is not in competition with the infringed, a court will more than likely find no instance of free riding. With the lines blurred as to who or what is a news source, traditional news sites have virtually no protection in the hot news tort after Barclays."[39]

That raises a critical question in relation to SB686: Are search engines and social media services — and now artificial intelligence companies — competitors with publishers? Publishers would say yes, for they fight over an audiences' attention and an advertiser's dollars. Platforms would say no, for they credit and link to news sites, giving them the value of added audience with their clicks. Platforms have no newsrooms. These industries compete for advertising but not for news.

4. Newspapers and competition: First, radio

With the birth of radio a century ago, print as a medium faced its first competitor for attention and advertisers. It is instructive to examine parallels to publishers' tactics today, involving copyright, antitrust, criticism in editorial coverage, and political lobbying.

Newspaper publishers were, to say the least, inhospitable to the new medium. As early as 1922, the AP — a cooperative owned by publishers — forbade the use of its news on radio. In 1932, members of the AP sought the help of the American Newspaper Publishers Association "to curtail broadcasting of AP news," but an association attorney warned that the groups could not collaborate "without violating the statutes relating to conspiracy in restraint of trade."[40]

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[35] Shyamkrishna Balganesh, "'Hot News': The Enduring Myth of Property in News," *Columbia Law Review*, Vol. 111 No. 3 (April 2011) 422.
[36] *International News Service v. Associated Press*.
[37] Slauter, 263
[38] *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*.
[39] Adam J. Tragone, "Defining the Press Clause: The End of Hot News and the Attempt to Save Traditional Media," *Chicago-Kent Journal of Intellectual Property*, Vol. 15, No. 1 (2016), 248.
[40] Rudolph D. Michael, "History and Criticism of Press-Radio Relationships," *Journalism Quarterly*, Vol. 15, No. 2 (June 1938), 179.

In *Media at War: Radio's Challenge to the Newspapers, 1924-1939* (Praeger, 1995), Gwenyth Jackaway recounts the many efforts publishers made to exclude broadcasters from news, most notably strong-arming the two nascent networks at the time into signing the Biltmore Agreement of 1933. It prohibited the networks from building news operations (Columbia Broadcasting disbanded its news operation with a half-dozen bureaus, a few dozen on staff, and 1,000 correspondents globally); required them to pay for news updates from the publishers' wire services; forbade commercial sponsorship of news; and limited twice daily news broadcasts to five minutes each, filled with 30-word bulletins, which could air only after local newspapers had come off the press at 9:30 a.m. and 9 p.m. The bulletins had to be written to encourage reading newspapers. In a perverse rendition of the hot news doctrine, according to Jackaway, on-air commentators were not allowed to discuss news until 12 hours after the event.[41]

Why would radio networks agree to such concessions? Politics. As *Broadcasting* reported in 1934, they thought "a friendly and cooperative attitude would preclude newspaper agitation against radio during the coming session of Congress."[42] "If you ask why broadcasters accepted such an unsatisfactory and humiliating agreement, the answer is simple," said H.V. Kaltanborn, who straddled both media. "They feared the power of the press. That power was ready to swing into action against them."[43] In *Harper's*, Isabelle Keating called the agreement "a metaphorical Versailles Treaty which by inference, placed the war guilt on the broadcasters, disarmed them, and sought to make them pay." Senator Clarence Dill called it "news suppression."[44]

The Biltmore Agreement fell away because, from the start, independent stations ignored it. Also, newspaper publishers entered the radio business, with 208 of 717 American stations owned by newspapers by 1937. And by then, 80% of homes had radios. As *Harper's* reported, newspapers "found that news broadcasting stimulated the sales of their papers."[45] *The New Republic* editorialized, "For years, newspaper publishers have fought the bad fight, using boycotts, reprisals, intimidation, ridicule and injunctions in a relentless effort to make radio shut its many-tubed mouth." Newspaper publishers would regularly complain about filching, stealing, and pirating of content and also contend that radio was a breeding ground for disinformation, for they contended that the eye was superior to the ear for learning. But their underlying complaint was this: "Their revenues were dropping, radio's were mounting — *ergo*: radio must be stealing the business from the newspapers... Radio was not only hamstringing advertising receipts, but it was dishing out free what newspapers had to sell."[46] Or as *Editor & Publisher* observed, "But the newspaper, apparently, is only a queer kind of business which gives its product away to a competitor, and stands idly by to see a natural and rightful function supplanted."[47]

Publishers tried to ban radio reporters from Congressional galleries, asking, in the words of Keating, "whether radio was not in fact subservient to the reigning political party because of its governmental license; whether, as a result, it was not unqualified to purvey disinterested

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[41] Gwenyth Jackaway, Media at War: Radio's Challenge to the Newspapers, 1924-1939, Praeger (1995), 27-29; Martin Codel, "News Plan to End Radio-Press War," Broadcasting (January 1, 1934), 10, 30.
[42] Codel, 10.
[43] Kaltenborn quoted in Robert McChesney, "Press-Radio Relations and the Emergence of Network, Commercial Broadcasting," *Historical Journal of Film, Radio & Television*, Vol. 11, No. 1 (March 1991).
[44] Isabelle Keating, "Pirates of the Air," *Harper's* (September 1, 1939), 468-469.
[45] Keating, 464.
[46] T.R.. Carskadon, "The Press-Radio War," *The New Republic* (March 11, 1936), 132-133.
[47] "Editorial: Radio and Elections," *Editor & Publisher* (November 10, 1928), 30.

news."[48] The California Newspaper Publishers Association called for "the return to the people the air channels now used by commercial interests, similar to the plan now in effect in England."[49] Throughout their battle, newspapers threatened to drop publishing of broadcasters' program listings, but when they followed through, readers protested and listings returned. Most profoundly, newspaper publishers lobbied for broadcast to be regulated, leading in 1927 to the creation of the Federal Radio Commission and its successor, the Federal Communications Commission (FCC), in 1934 — thus carving a considerable exception to the First Amendment and its protection of freedom of the press.

H.O. Davis, publisher of California's *Ventura Free Press*, waged a campaign to organize small, independent newspapers — those less likely to own broadcast towers — against radio. According to *Broadcasting*, Davis sent publishers letters advising them to use their news columns to "show up the moronic quality of most programs. Get interviews with all kinds of people who are disgusted with the character of radio programs and annoyed by the constant intrusion of advertising.... Emphasize the danger of uncontrolled broadcasting for the spreading of insidious propaganda." He suggested enlisting clergy against "the evils of broadcasting supported entirely by advertising.... Tell them of the danger that uncontrolled commercial television will bring movie sex smut and idealized gangsters right into the home."[50]

Publishers draped themselves in "the invocation of sacred rhetoric," in Jackaway's words. "Radio journalism, they warned, posed a threat to the journalistic ideas of objectivity, the social ideals of public service, the capitalistic ideals of property rights, and the political ideals of democracy.... Now they are no longer simply annoying competitors; they are invaders who pose a threat to some of the culture's most sacred ideals."[51] See for comparison, the sacred rhetoric in the preamble to the JCPA: "A free and diverse fourth estate was critical to the founding of our democracy and continues to be the lifeblood of a functioning democracy."[52] See also the opening of *The New York Times*' suit against OpenAI: "Independent journalism is vital to our democracy. It is also increasingly rare and valuable."

Radio would not be the last new competitor to inspire such sacred claims. As Jackaway observes, "When people feel threatened by the arrival of newcomers who do things in a new way, they often respond with hostility. They frequently claim some form of superiority over these outsiders, and thus dismiss them as lacking any value." Come television, we see a replay of the drama between newspapers and technology. "For the past dozen years," Morris J. Gelman wrote in *Television Magazine* in 1962, "newspapers with little regard for facts or proportion, have used television as the nation's number one whipping boy."[53] Publishers complained about the still-new kid on the block taking their national ad revenue, even though the industry at the time was enjoying record circulation and held a third of the total ad market, more than double TV's take. And one-third of TV stations were affiliated with newspapers.

The script was acted out once again against telephone companies when, following the 1984 breakup of AT&T into Regional Bell Operating Companies (RBOCs), the Baby Bells were

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[48] Keating, 468.
[49] Quoted in Jackaway, 100.
[50] "A Vicious Fight Against Broadcasting," *Broadcasting*, December 1, 1931, 10, 33.
[51] Jackaway, 44.
[52] Jackaway, 7-8
[53] Morris J. Gelman, "Newspapers," Television Magazine, November 1962, 88.

freed by court order in July 1991 from a prohibition against offering information services. "Stunned, the publishers are now scrambling to persuade Congress, in effect, to overturn the court ruling," *The New York Times*. "Behind the scenes, the publishers and telephone companies have hired some of Washington's most prominent lobbyists and political advisers. The American Newspaper Publishers Association, for example, has hired several heavyweights." One year later, both sides were taking out full-page newspaper ads and Congress was debating a bill to again limit the telcos, but that came to nothing. Another year on, however, the mood changed, as one might say today, enemies became frenemies as Times Mirror was in talks to collaborate with the phone companies in its newspaper markets, L.A. and New York.[54]

And now, with the arrival of the internet and lately artificial intelligence, the leitmotif of newspapers' fears, objections, accusations, and lobbying can be heard again. Journalists write headlines asking, in *The Atlantic*, "Is Google Making Us Stupid" and "Have Smartphones Destroyed a Generation?" while *The New York Times* declares, "It's Time to Unfriend the Internet." Meanwhile, publishers worry about competition, contending once again that "their" revenue has been "stolen" from them and trying to protect news as their property. In early days online, when Reuters began licensing its content to the then-king-of-the-web, Yahoo, AP management was met with stiff resistance to doing likewise by its board of newspaper owners. (The compromise: the AP could sell its main wire but not its local wires.)

Note recurrent trends: Publishers react to competition by trying to extend copyright and deprive others from using news, by accusing others of antitrust or seeking exemption from it, by decrying the methods and morals of the new medium, and by seeking protectionist legislation.

5. Alternatives

In examining alternatives to SB686, it is important to first address the goal. Is it to support news as it was, or news as it could be? Is it to stave off the death of existing news properties or support the growth of new outlets and models that serve communities previously underserved? That is, should newspapers owned by hedge funds, private equity, and media conglomerates receive funds if they do not invest in growing their coverage? Is the goal to support news alone or the larger information ecosystem and to improve public discourse? Who is being heard in the process of deciding on policy interventions in the market? Who is responsible for the current situation — two corporations or larger technological or societal disruption? And who is responsible for the health of the state's information ecosystem — those companies or every business and citizen in the state? Is the question at hand one of intellectual property or subsidy? If there are resources to be put to work, we must ask where those resources should come from, who should receive them, and on what basis they should be distributed.

The first step must be to listen. It is critical that many stakeholders in the future of the state's information ecosystem be consulted and heard. Note how some constituencies, such as Black and ethnic media and independent startups across the country, say they believe they are

[54] Edmund L. Andrews, "'Baby Bells,' Newspapers In a Brawl," *The New York Times* (November 11, 1991): www.nytimes.com/1991/11/11/business/the-media-business-baby-bells-newspapers-in-a-brawl.html; "Bill to Curb 'Baby Bells' Advances," *The Washington Post* (May 28, 1992); William Glaberson, "The Baby Bells Are Finding an Unlikely Ally in the Information-Services War: Newspapers," *The New York Times* (July 5, 1993): www.nytimes.com/1993/07/05/business/media-business-press-baby-bells-are-finding-unlikely-ally-information-services.html.

unrepresented by the legacy industry trade associations driving this process. The consulted stakeholders should include not only media proprietors but also civil society, members of communities, and representatives of other institutions that should have important roles in reimagining a better future for public discourse: librarians, schools, community colleges and universities, researchers, technologists, and local governments as well.

The legislation at hand is the product of trade associations collaborating with legislators at state and federal levels. The conflict of interest inherent in this process must be called out. Journalists assure the public that they act as independent watchdogs of those in power. They should not be in the position of seeking favors from those they cover. Direct payment from large technology companies mandated by government places news organizations and journalists in the position of being beholden to both. That is an ethical lapse. Journalists should not be lobbyists.

A better way to approach questions about the state of the state's news ecosystem would be to undertake independent study, whether through a state agency, university, or task force. Such research would enable a larger conversation involving multiple stakeholders to examine needs not just of publishers but, more important, of communities. That would provide context for judging some of the ideas presented here.

It is important to understand the information needs of communities. That can begin by building on the work of LAist, which performed many interviews and surveys to identify community needs. See also the methodology of the Knight Foundation's collaboration with the FCC on a Working Group on the Information Needs of Communities in a Democracy in 2011.[55] This effort should also focus on what is missing in the ecosystem: What communities — defined by geography, ethnicity, or need (e.g., the disabled, the elderly, students, the homeless) — are unheard and underserved? Is there sufficient coverage of state government and politics? What is the impact of news on civic involvement?

It is important that any study also undertake to evaluate the quality of journalism provided by various entities, asking frankly what it is worth supporting. Journalism is notorious for examining every other sector of society while not engaging in self-examination. There are reasons why, as reported above, well more than a third of citizens actively avoid news. Many communities are damaged. This process should aim to improve, not just subsidize, news.

Here is exploration of alternative ideas along with the questions and issues they raise.

Public-notice advertising: One long-standing subsidy for newspapers has been public-service notices, known in the trade as legal ads. Ken Doctor, founder of Look Out Eugene, wants digital news outlets such as his to be included.

In 2021, New York City directed \$15.6 million or 82% of its \$19.1 million ad budget to go to 230 community and ethnic media outlets. In California, AB1511 sought to "require a state agency or department that expends funds on paid advertising, communications, or outreach to

[55] Ariel Zirulnick, "Entry Points, On-Ramps, and Waypoints: How KPCC/LAist Is Trying to Help Angelenos Engage With Their Complex City," Medium (September 22, 2022): medium.com/engagement-at-laist/entry-points-on-ramps-and-waypoints-how-kpcc-laist-is-trying-to-help-angelenos-engage-with-their-8e1c95d2298a. Knight report: knightfoundation.org/reports/assessing-community-information-needs/.

direct 45% of its total expenditures to ethnic media outlets and community media outlets."[56]

Some states, including Florida and Colorado, have considered no longer requiring placement of notices in newspapers, while in New Jersey, publishers successfully lobbied for it to continue — until Oregonian parent Advance Local ceased printing its newspapers in the state. Towns are known to pull notices from local publications; in some cases, the ads are used as a political football because of critical coverage, though in others there is legitimate debate about which publications qualify as news outlets of general circulation. For government to decide what is and is not news raises difficult questions: Would that amount to unconstitutional licensing of journalism? Given plummeting circulation and market penetration for metro papers, should they still be considered publications of general circulation? Are governments' own web sites a better means of distributing notices?

There is another, more creative way to view governments' information dissemination needs: as a new business opportunity for news organizations. Local governments are participants in local news ecosystems, for they hold much information of value to their constituents. Innocode, a Norwegian company, creates apps to enable towns to share more information — for example personalized alerts about nearby building permits.[57] Using artificial intelligence and large language models, citizens might ask questions of building codes, local regulations, budgets, meeting agendas, reports, and other stores of knowledge. Rather than dogging local officials with freedom-of-information demands, how much better it would be if news organizations and governments could work in partnership for greater civic transparency.

Tax support for news: An obvious political advantage and expediency of SB686's structure is that by requiring payment directly to publishers from Google and Meta — if the latter continues to link to news — this avoids establishing a tax, involving the state budget and its necessary approvals. However, if the fate of Oregon's news is truly of statewide concern, then shouldn't that be a priority for the state itself and shouldn't more companies than just Google — shouldn't taxpayers as a whole — be expected to contribute to healthier civic life in the state? "The link tax is more like a regulated negotiation process akin to intellectual property licensing," says Andrew Leahey in Bloomberg Tax. "If Canada, California, Germany, or any other jurisdiction wants to tax big tech companies and subsidize news outlets, they should simply do so."[58] A study of state and local legislation to support news from 2017 to 2022 counts 24 bills up to that time, some involving general funding and tax incentives; most were not enacted.[59] Local taxation is also an option. In New Jersey, hyperlocal journalist Simon Galperin proposes that municipalities set up info districts — like fire or sewer districts — supported by local tax levies to help local news organizations, such as his Jersey Bee.[60]

Advertising tax: Some have suggested that rather than requiring direct payment from the

[56] Text of AB1511 is here: legiscan.com/CA/text/AB1511/id/2832486.
[57] Innocode information (in Norwegian) here: nnocode.com/no/innbyggerappen/; the author's post on the app here: medium.com/whither-news/sprouts-from-the-ashes-294bb10cd003.
[58] Andrew Leahey, "Canada's lLink Tax' Can't Replace a Real Tax," Bloomberg Tax (December 10, 2023): news.bloombergtax.com/tax-insights-and-commentary/week-in-insights-canadas-link-tax-cant-replace-a-real-tax.
[59] Jessica Mahone, "An Overview of State and Local Legislation to Support Local News," *Annals AAPSS* Vol. 707 No. 1 (May 2023): journals.sagepub.com/doi/full/10.1177/00027162231211391.
[60] More on Galperin's proposals here: www.comminfo.org/info-districts,

platforms, a digital advertising tax could be imposed. This implies that a new competitor in a marketplace — having won away business with better prices, performance, or service — owes something to incumbent competitors. Under such logic, Skype, Zoom, and Google Meet would be taxed to pay for the losses of the Baby Bell phone companies; A&P would owe reparations to every corner grocery; and solar- and wind-power providers should subsidize coal mines. But yes, a broader tax would at least create a fairer base for gathering funds for a subsidy.

Once the tax line is crossed and if there is a politically acceptable source for tax revenue, then that opens up different means of collecting funds and also different models for distributing them, including through tax credits.

Employment tax credit: Steven Waldman, president of Rebuild Local News, a backer of SB686, has proposed a number of ideas for supporting news, among them a tax credit for every journalist employed — or, in variant models, for every journalist added or retained. This seems appealing simply because journalism requires reporting and reporting requires reporters. Since this would be a state tax credit, it would support journalists working in the state, not national or international media. However, money being fungible, there is no guarantee that the credit would lead to an increase in news coverage. And it would require public expenditure.[61]

Local advertising tax credit: Another idea endorsed by Rebuild Local News is a tax credit for local businesses buying advertising from local news organizations. This method puts its thumb on the scale for one business model — advertising — potentially excluding public and nonprofit media. It is a nonmarket intervention to the extent that local merchants may find that other means of marketing — e.g., their own websites, social media targeted advertising, direct mail — are more cost-effective and efficient for them.

Subscription tax credit: Another idea often proposed is a credit or coupon for state residents to use when subscribing to news outlets, resulting in greater subscription revenue for those news outlets. Such a subsidy amounts to another nonmarket intervention, another thumb on the scale, this time for subscription. That could have the unintended consequence of driving more news behind paywalls, further redlining quality, reliable journalism in favor of those who can and choose to pay for it, leaving the vast majority to consume the disinformation and propaganda that is offered for free. It also would disadvantage nonprofit news outlets and those serving poorer communities that choose to remain free.

A variant on this idea is to provide coupons to transfer funds to any news outlet, whether paywalled or not. Another is to provide free subscriptions to groups, such as students and teachers. The industry operated for many years a Newspapers in Education program aimed at inculcating a habit of reading news in young people while also selling papers. Ken Doctor's Out Look Santa Cruz signed up half the county's 12,000 high-school students, and 100 teachers, for free access.[62] In 2009, Nicolas Sarkozy, then president of France, gave free newspaper subscriptions to people 18-24 years old. In 2019, Canada announced a C$600 million plan for a journalism employment tax credit and a credit for 15% of approved news subscriptions, up to $500. In the first year, 1% of Canadians took up the offer, spending an average of C$240 on subscriptions with credits averaging C$36. Startup news publisher David Skok says the result

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[61] Author interview with Steven Waldman, February 2024.https://www.rebuildlocalnews.org/solutions/.
[62] NIE programs: www.socalnie.com/ and nieonline.com/latimes/enewspaper.cfm.

was "negligible," as mainly existing subscribers took advantage of the credit, leading to few new subscribers.[63]

Paying for some news to be free: Why not use public funds to pay news organizations to make certain public-service news and journalism free for all — that is, pay for content that is behind paywalls to be made available to the public? If the public is going to be asked to use tax dollars to subsidize the news, shouldn't the public benefit from that news? In a time when most news from quality, for-profit outlets is retreating behind paywalls, leaving disinformation to rule the web, that creates a crisis of information quality on the internet. What news exactly should be brought out from behind paywalls is one question. Another is whether this would incent more publishers to build paywalls. And another is whether making more stories available would deprive publishers of audience. But in experiments run by the author in New Jersey — making news embeddable across multiple sites — one counterintuitive lesson was that complete stories acted as better promotion, driving more clickthrough than headlines or snippets.[64]

In any case, journalism as a profession needs to examine the impact of paywalls on public discourse. Yes, journalists need to earn a living. But journalism has a higher obligation to the information ecosystem and democracy. Bringing critical news to everyone would be one way to address this moral imperative.

News-sharing networks: California is running an experiment in embeddable content with a new news-sharing network announced by public broadcaster KQED, working with the Palo-Alto-based Distributed Media Lab (DML). The project is funded by the Google News Initiative. Such a network is a mechanism for gathering, choosing, and highlighting the best of California journalism. A KQED producer selects that news, assuring its quality. Participating sites benefit in multiple ways: their content is shared with larger audiences on others' sites, and they can embed others' content in their sites to offer their audiences a wider range of quality news. This is also the basis for a sponsorship network for quality journalism, sharing revenue with those that host shared content — so far, 20 sites. "The goal is to be embedded on all quality local news sites in California," says David Gehring, head of DML. "This project builds a model for local news that works on the web the way the web was designed to work," says Tim Olson of KQED. DML is working to bring the same model to eight more states, including New Jersey, and to similar networks of Latino, Black, environmental, educational, and other media.[65]

Networks of sites could be established across the state, in regions, and among sites of similar interest (see networks of Black news sites) to share content, collaborate on news coverage, share advertising sales, and more.[66]

Support networks: Small and independent news sites have needs beyond sharing content, including training, technology, and the sharing of best practices. One such support

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[63] Sarah Scire, "Canada Offered a Tax Credit to Encourage Digital News Subscriptions," NiemanLab (April 26, 2022): www.niemanlab.org/2022/04/canada-offered-a-tax-credit-to-encourage-digital-news-subscriptions-heres-how-its-going/.

[64] The author's report on embeddable content: *Geeks Bearing Gifts,* CUNY Journalism Press (2015): medium.com/geeks-bearing-gifts/the-link-economy-and-creditright-95f938b503be

[65] KQED announcement is here: www.kqed.org/pressroom/12222/kqed-seeks-california-news-partners-for-new-pilot-platform-to-grow-digital-audiences.

[66] The author speculated on the role of such regional hubs in his book, *Geeks Bearing Gifts*: medium.com/geeks-bearing-gifts/business-ecosystems-3d24619e67fd.

network is the New Jersey News Commons at Montclair State University's Center for Cooperative Media (where the author of this paper is a distinguished fellow). It offers its more than 400 members — local news organizations and individuals — training in topics from revenue generation to practical uses of AI, as well as individualized mentorship, shared content, stipends for membership in other organizations (e.g., the National Association of Hispanic Journalists), access to the center's research, and translation services. Nationally, LION Publishers and the Institute for Nonprofit News provide similar services.[67] The state could provide funding to establish such support networks.

Advertising networks: There is a clear need in the state, especially among independent and ethnic media, for joint advertising sales. That should be a private, commercial enterprise. The state could help by placing its public-notice advertising through the network (see above) and by subsidizing its start-up expenses. Google could contribute technology and sales. Ads bought through the network could qualify for a state advertising tax credit.

Philanthropic and matching funds and granting authorities: The state could partner with private efforts to support news, which would leverage the state's resources and provide infrastructure to screen and certify applicants for funding based not on links but on criteria for quality, impact, diversity, and innovation. There are multiple models for pooled funding.

New Jersey's Civic Information Consortium was established after the state sold its public TV and radio licenses to stations in New York and Philadelphia, netting $332 million from a spectrum sale to the FCC. Free Press, a public advocacy organization working on media issues, collaborated with legislators to draft a bill requiring that some of those funds be directed to support New Jersey's news ecosystem.[68] The Consortium, administered out of Montclair State, is managed by a 16-member board appointed variously by public universities, the governor, and the legislature. It holds open calls for grants to support training of professionals and community members, programs to encourage civic engagement, and nonpartisan voter information, giving priority to information gaps, news deserts, and marginalized communities and training "aspiring media makers of color." The original bill would have granted $20 million to the effort. In the end, it yielded $500,000 in 2021, $2 million in 2022, $4 million in 2023 and 2024, plus $1.52 million raised from other funders, totalling over $12 million. To date, it has issued 82 grants.[69]

Press Forward is a consortium of 25 major journalism funders in the nation, led by the Knight Foundation and MacArthur Foundation, which together have pledged $500 million "to strengthen local newsrooms, close longstanding gaps in journalism coverage, advance public policy that expands access to local news, and to scale the infrastructure the sector needs to thrive." It has also encouraged the formation of, to date, 17 local Press Forward chapters led by local funders, such as New Jersey's Civic Information Consortium and Philadelphia's Lenfest Institute (a trust housed at Temple University that now owns the *Inquirer*).[70]

Newsmatch is a project of the Institute for Nonprofit News benefitting its 425 members by encouraging foundations — it lists almost 20 — to provide funding to match contributions

[67] See more at the New Jersey News Commons: centerforcooperativemedia.org/njnewscommons/; LION Publishers: www.lionpublishers.com/learn/; Institute for Nonprofit News: inn.org/resources/.
[68] Text of NJ A3628, New Jersey Civic Information Consortium: www.billtrack50.com/BillDetail/969532.
[69] New Jersey Civic Information Consortium site here: njcivicinfo.org/about/.
[70] Press Forward information here: www.pressforward.news/locals/.

from the public. Since 2017, it has raised more than $271 million. This is a variation on the subscription tax credit or voucher ideas above: a means to encourage contributions to news outlets from the public. The state could work with local foundations to match those contributions, giving the public a vote in where funds are allocated. As with many of the ideas here, there needs to be a mechanism for deciding what organizations qualify as journalistic.[71]

Public media's role: Public media are taking a leadership role in innovating ways to provide news to their communities and services to the larger media ecosystem. This is part of a nationwide trend that is taking many shapes. In Chicago, as the *Tribune* continued to deteriorate under Media News Group ownership, Chicago Public Media (WBEZ) bought the second-place *Sun-Times*, taking down its paywall and expanding the demographics of those served by public media. In Lancaster, Pennsylvania, the Steinman family converted the newspaper it published for 158 years, *LNP*, to a public-benefit corporation, and donated it to public broadcaster WITF, while endowing the Steinman Institute for Civic Engagement to support community and journalist education. In nearby Scranton, the *Times-Tribune* was sold to Alden's Media News Group, immediately laying off much of its staff. WVIA public media is stepping into the gap, creating a growing newsroom of a dozen journalists. A 2022 study found that from 2016 to 2021, public media's employment of journalists rose from 3,694 to 4,148 and that more than 40 public radio stations supported newsrooms of at least 15 journalists; a quarter of those had at least 40 full-time journalists.[72]

Public media may be best-positioned to take on the role once performed by monopoly newspapers but with a greater public-service mission to provide news to the entire community. How might state support enable the expansion of public media's role, buying or starting other news media, promoting quality journalism, and sharing coverage, training, technology, and support for patronage and philanthropy? How might public funds help public media become yet more public?

Capital funds for local ownership: It would be a mistake to presume all Oregon news media should be not-for-profit, for there is not enough philanthropy and generosity to support the journalism needed. Some argue news should become a public good, paid for by government — though if the degree of effort entailed in enacting SB686 is an indication, that could be politically difficult, journalistically compromising, and economically insufficient.

Much of news must still be a profitable, thus sustainable enterprise. To accomplish that, there needs to be investment in new ventures, in innovation in existing ventures, and in rescuing some troubled ventures. Ken Doctor started his Look Out Santa Cruz with initial funds of $2.4 million, adding $1 million. He has just launched Out Look Eugene with more than $3 million in funding raised and is planning more sites. Not every news startup needs such financing. A lone journalist covering a town or topic needs dollars measured in the thousands to get started and build a critical mass of audience and revenue.

Funds for innovation: Next Gen News, a report just released by Financial Times Strategies and Northwestern Medill's Knight Lab and supported by the Google News Initiative,

[71] Newsmatch information here: newsmatch.inn.org/.

[72] Elizabeth Hansen Shapiro, Mark Fuerst, Caroline Porter, "The Growing Strength of Public Media Local Journalism" (October 2022): www.nationaltrustforlocalnews.org/_files/ugd/9477fa_3eb200c1eddb47828c2e456b8370b77e.pdf.

interviewed 45 news consumers from 18 to 25 in the U.S., Nigeria, and India to identify the needs and preferences of the next generation. "We found an existing and growing gap between the news experience the next generation wants and what they're currently being provided with," the authors write. These young people use many different digital affordances (social media, chat, texting, word of mouth), filter information through their trusted networks, make sense of it through conversation with others, and exhibit sophisticated skills to search for what they need to know. They want trusted sources and personal relevance delivered according to their desires.[73]

This is to say that the forms of news we know now — whether articles on web pages or stories on broadcast — are proving inadequate to satisfy the next generation. It is also to say that considerable development, experimentation, and investment is needed to devise new ways to gather news collaboratively with communities, to help citizens discern authority and reliability, and to provide relevance and service to people and communities.

Then there is the eternal question: how to make money and support journalism? The author of this paper directed a Center for Entrepreneurial Journalism, exploring business models for news: membership, patronage, commerce, events, education, new advertising models, and more. There is no easy answer. Much work remains to be done to try and fail, succeed and learn. Stopgap measures do little to build a more sustainable future for journalism. That requires investment. Imagine a capital fund established by the state, or contributed to alongside the philanthropic models explored above, to provide investment, interest-free loans, and grants to strengthen the strategic growth and sustainability of for-profit and not-for-profit news.

Technology sharing and development: On the one hand, the technological work needed to start and run a news site has become simpler and less expensive. Automattic's NewsPack, subsidized by Google, provides WordPress software and a suite of tools — e.g., Broadstreet Ads, Parse.ly analytics, News Revenue Hub contributions — for a few thousand dollars a month. The Tiny News Collective offers a starter kit of technology and training for less: $50 to $100 a month.[74] Technology is no longer a barrier to any journalist wanting to serve a community's news needs with a web site, newsletters, social media, and video, gaining support via advertising (from Google to Broadstreet), patronage (see San Francisco's Patreon and San Diego's News Revenue Hub), subscription (see Ghost), and revenue sharing (see YouTube, Medium).

On the other hand, with the advent of generative artificial intelligence, there are myriad new uses for technology in journalism. Because generative AI has no sense of meaning or fact, it should not be used to write articles. But AI has many other uses. It can help reporters organize and query large amounts of information: transcripts, documents, data. It can transcribe hundreds of citizens' recordings of town and school board meetings to find trends. It can make local government information and data more useful and usable, as explored above. It can offer agents to alert users when news on certain topics arrives or a nearby house comes up for sale. It can help personalize news and make it more relevant to individuals and communities. It can help create and target higher value advertising. It can provide a new window onto archives of news. Now that the machine can converse in human language, one need not learn coding to make fuller use of technology. But to develop uses such as these still requires time, experimentation, and help.

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[73] Next Gen News report available here: www.next-gen-news.com/downloadreport.pdf.
[74] More information on Newspack: newspack.com/. On the Tiny News Collective: www.tinynewsco.org/.

More — not less — collaboration with technology companies: This is not the time to abandon collaboration between journalism and technology. After its experiences in Australia and Canada, Meta has left news behind, killing its news tab, ending deals with publishers, including those negotiated in Australia, and making no new products or applications for news.

Google is still collaborating with journalists, creating technology specific to journalism, training journalists in skills from data to product development through its Google News Lab, convening journalists in gatherings, and contributing directly to news enterprises through its Google News Initiative and News Showcase. However, if Google is forced to pay news outlets under SB686 or JCPA, it is assumed it might cease its voluntary services and payments, cutting off an important avenue for innovation in news when it is most needed, when artificial intelligence offers so many new opportunities and challenges to the news industry.

Education's role: Schools, libraries, community colleges, and universities should, like public media, take a greater leadership role in helping shape and improve the information ecosystems of communities. They need support to do that. Universities can train more journalists to work in new news enterprises — and help them become responsible business stewards — but scholarship money is needed, as young journalists will have difficulty paying off loans on reporters' salaries. Universities can become incubators for innovation in news. The University of Oregon's Agora Journalism Center, led by Andrew DeVigal, is a national leader in innovation in local, engaged journalism. USC's journalism and engineering schools developed Crosstown, a platform that enables journalists to analyze data across cities or states and turn that into highly targeted local newsletters about what is happening in hundreds of neighborhoods around city services, crime, and so on.[75]

Schools and libraries can become gathering points for community dialog and information. They and universities can also train neighbors to help report on their communities. See Documenters, a project of Chicago's City Bureau, which trains and pays residents to put every public meeting on the record. Imagine outposts in more cities and counties to augment local reporting through some of the ideas presented above: Innocode's town app or AI analysis of meeting transcripts. Imagine classes of high school and community college students joining, learning about civic involvement. Every small news startup and ethnic outlet is in need of training in journalism, technology, revenue, and finance. Schools, working with support networks, could help them. These activities require support.

Reparative journalism: In weighing whether to support news as it was against news as it could be, perhaps the most important factor to consider is not only which communities are underserved and underrepresented but how these communities have been damaged by existing media, and what needs to be done in reparation.[76] Newspapers including the *Los Angeles Times* have apologized for their history of racism.[77] That is a necessary first step. But what then? The collaborative essay "Media 2070" asks, "What would it look like if media policies ensured that Black communities had equitable ownership and control of our own local and national media outlets and over our own online media platforms?"As Sara Lomax-Reese, CEO of Philadelphia's

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[75] Crosstown's site is here: xtown.la/.

[76] Meredith Clark on reparative journalism: www.niemanlab.org/2020/12/the-year-journalism-starts-paying-reparations/.

[77] "Our Reckoning With Racism," the *Los Angeles Times* (September 27, 2020): www.latimes.com/opinion/story/2020-09-27/los-angeles-times-reckoning-with-racism.

Black-owned WURD radio, said, "If there is not a wholesale investment in reviving and supporting and providing resources to Black media — and I am not talking about Black-oriented media, I am talking about Black-owned media — it will go away."[78]

Today, legacy, white-run, corporate news media cry crisis. But as Joseph Torres and Collette Watson ask in another paper, "When *hasn't* journalism been in crisis for Black people?" Diversity in "mainstream" newsrooms has been chronically deficient; only 303 of 2,500 news outlets could be persuaded to report their diversity statistics. The FCC has a history of depriving underrepresented groups from owning broadcast licenses. And philanthropic attention is late and spare. A 2019 report for the Democracy Fund found that only 8.1% of the $1.1 billion foundations spent on journalism between 2013 and 2019 went to news designed to serve racial and ethnic groups, women and girls, and LGBTQ+ communities.[79]

Accountability: None of these ideas should be implemented without plans for accountability, measuring success and failure against goals that come from listening and research on the information needs of Oregon's communities. That is a glaring question left unanswered in SB686: What would the money accomplish? How would Oregon's news and information ecosystem benefit? Against what standards and goals?

Conclusion

In response to many of the policy suggestions made to support local news, the federal General Accounting Office performed a literature review and interviewed officials, journalists, academics, and representatives of news and technology companies, culminating in a two-day workshop. It issued a report on various policy options in 2023, concluding: "However, literature, stakeholders, and experts expressed concerns that the policies may be based on insufficiently supported claims, and if not properly designed, could result in unintended consequences for smaller publishers and consumers. Experts advised that the primary goal of public policies should be to preserve the function of journalism rather than specific local news outlets. Experts conveyed that the main goal of journalism is to have a well-informed society, and policies that aim to support this goal need to be innovation-friendly, forward-looking, and inclusive."[80]

Whether in Salem or Washington, policymakers should consider these questions if they formulate legislation to address the health of news:

- If news and the public information ecosystem are in crisis, what role should government have in addressing the problem and what conflicts of interest and moral hazards does this present for journalism?
- If government is to use legislation to raise money to support news, who should that

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[78] Joseph Torres, Alicia Bell, Collette Watson, Tauhid Chappell, Diamond Hardiman, Christina Pierce, "Media 2070: An Invitation to Dream Up Media Reparations," media2070.org.

[79] Michelle Polyak and Katie Donnelly, "Advancing Diversity, Equity, and Inclusion in Journalism," Democracy Fund (October 2019): democracyfund.org/wp-content/uploads/2020/06/2019_DF_AdvancingDEIinJournalism.pdf; Sarah Scire, "'Crushing resistance': Yet again, newsrooms aren't showing up to the industry's largest diversity survey," NiemanLab (April 12, 2022): www.niemanlab.org/2022/04/crushing-resistance-yet-again-newsrooms-arent-showing-up-to-the-industrys-largest-diversity-survey/.

[80] "Local Journalism: Innovative Business Approaches and Targeted Policies May Help Local News Media Adapt to Digital Transformation," General Accounting Office (January 2023): www.gao.gov/assets/gao-22-105405.pdf.

money come from? Should one or two companies be held responsible for the health of the news ecosystem, or is that the responsibility of entire industries or the public? Should those funds come from forced arbitration or a tax?

- Who should receive funds: large media companies controlled by national conglomerates and hedge funds or those trying to serve communities not well served by legacy outlets? Should hedge funds, investor-owners, and media conglomerates be excluded from the benefits of legislation in favor of local enterprises? (Note that Report for America recently decided to no longer send reporters to hedge-fund-controlled newspapers.[81])
- How should the funds be distributed? Rather than making a blanket formula for distribution — as in the link-based structure of JCPA — should an independent, non-governmental body distribute funds based on stated goals; on the value of a proposal to communities, particularly those ill-served to date; on the qualifications of the journalists and others involved; on the innovative value of the proposal for news in the state; and on the chances of success?

The future of journalism is uncertain but there are many efforts to imagine a better future, including movements called Engagement Journalism, Solutions Journalism, Constructive Journalism, Dialog Journalism, Reparative Journalism, Deliberative Journalism, and more. THe University of Oregon's Agora Journalism Center is counted among leaders of such movements. How might Oregon further support such movements?

As was said at the start, this paper did not set out to recommend one path to helping news in Oregon. That conclusion should come after further listening, conversation, research, and brainstorming among many constituencies: not just publishers, journalists and their trade associations, not just legacy media, but also Black, ethnic, and community media; start-ups; technologists; academics and researchers; policymakers; civil society; funders; and most important of all, residents of the state. Such conversation should include a frank analysis of the state of news today, of who is and is not being served, and of what does and does not deserve support. With such effort, Oregon could lead in imagining and implementing new ways to improve its information ecosystem with the support of its technology industry.

[81] Sophie Culpepper, "Report for America is 'phasing out' partnerships with hedge fund-owned publications," NiemanLab (March 4, 2024): www.niemanlab.org/2024/03/report-for-america-is-phasing-out-partnerships-with-hedge-fund-owned-publications/.

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He is the author of six books: *The Gutenberg Parenthesis: The Age of Print and Its Lessons for the Age of the Internet* and *Magazine* (both Bloomsbury, 2023), *The Web We Weave: Why We Must Recapture the Internet From Moguls, Misanthropes, and Moral Panic* (Basic Books, 2024), *Geeks Bearing Gifts: Imagining New Futures for News* (CUNY Journalism Press, 2014), *Public Parts* (Simon & Schuster, 2011), and *What Would Google Do?* (Harper, 2009). He is writing a cultural history of the Linotype. He is cohost of the podcasts *Intelligent Machines* and *AI Inside*.

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