April 23, 2024

Chair Jama, Vice Chair Bonham, and Members of the Committee,

My name is Dr. Courtney Radsch, I am a journalist, scholar and the director of the Center for Journalism & Liberty (CJL) at Open Markets Institute in Washington, D.C., a political economy think tank that works to help people relearn how to use competition policy to build stronger democracies, more equitable markets, and sustainable independent journalism. We don't receive corporate or government funding, which makes us a rare independent voice on technology policy and journalism.

I've spent the past four years analyzing legal regulatory approaches akin to SB 686 in the U.S. and around the world that seek to redress the harms of current platform-journalism dynamics, including amid the transition to generative artificial intelligence (AI). I'd like to express CJL's support for SB 686. Among the various competition tools that we have at our disposal, SB 686 would be a valuable **first step** towards rebalancing the distorted market dynamics that have enriched Big Tech platforms at the expense of, and on the backs of, Oregon news publishers.

The fact is that digital platforms providing products and services such as search, social media, and generative AI applications, would be far less valuable and much less useful without local journalism. Yet they return less and less to our sector. Let's be clear: In today's digital economy, large digital corporations operating search and AI systems are not passive platforms. They are proactively scraping news content without consent or respect for copyright protections that have long encouraged creativity and innovation in media and cultural industries.

Search and Digital Advertising are Monopolized Markets in the U.S.

Google, which has monopolized search for over a decade, runs a duopoly with Meta of the $200 billion U.S. digital advertising market. This duopoly has not only diverted revenue directly from newsrooms, but it has compelled newsrooms to use their platforms to reach audiences *and* advertisers. As a result, the symbiotic relationship that may have existed at the outset of the internet age – traffic in return for visibility – turned into a parasitic one, especially with the integration of generative AI features, which is once again built on the backs of journalists and publishers without permission, compensation, or credit.

In total, Google and Facebook pocket 50 cents for every dollar spent in digital advertising.[1] Both companies are facing antitrust lawsuits in U.S. federal courts, with proceedings moving forward at different stages. In the case of Google, federal courts have now determined in two separate cases that it has illegally monopolized search and search advertising — where Google controls

[1] https://www.statista.com/statistics/242549/digital-ad-market-share-of-major-ad-selling-companies-in-the-us-by-revenue/

90% of that market — and several parts of the advertising technologies (ad tech) that underpin the digital advertising market of the open web.[2]

In August 2024, federal judge Amit Mehta found Google abused its control over the distribution and monetization of content in search[3] — which it does not bear the cost of producing. Thanks to this case, it was shown in court that Google's monopoly power enables it to raise prices for search ads without commercially justifiable reasons and without losing demand, due to the lack of significant challengers.[4] Moreover, it became clear that Google also exploited this power to compel publishers to accept terms of use for products outside of the search market, such as Accelerated Mobile Pages, and now, generative AI summaries.[5]

As of April 2025, the tech giant is facing a series of court hearings to determine appropriate remedies to restore competition in search, including mandating a break-up of the Chrome browser, a special supervision regime of its investment in AI, giving more control to publishers and creators over their content used in Google's AI products, among other remedies.[6]

Also in April, federal judge Leonie Brinkema ruled that Google holds an illegal monopoly in the digital advertising market that connects news publishers and advertisers on the open web, specifically of the ad servers and ad exchanges that are fundamental for digital outlets to make ad revenues.[7] As a result of this misconduct, and by its own estimates, Google pockets on average at least 30 cents per each dollar that flows through its ad tech products, out of which 20 cents is attributable to **pure monopoly rent** coming from news publishers' pockets.[8]

Google's grip over this market is so vast that without utilizing Google's ad server and exchange, news publishers are locked out of nearly 60% of buyers of digital advertising.[9] A new series of hearings to determine appropriate relief is likely to start this year, since the U.S. Department of Justice had already requested in the initial lawsuit to order a break up of this line of business.[10]

Meta's growth and value was also propelled in part by the presence of journalism and fact-checking on its social media services, as well as through its ad business on those products. Similar to Google, Meta is also facing off a historic antitrust trial, but pitted against the Federal Trade Commission, for abusing its power in social networking through the acquisitions of WhatsApp and Instagram[11] — which have become essential channels for distribution of user-generated content as well as news content.

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[2] https://www.journalismliberty.org/google-monopolies
[3] https://www.techpolicy.press/google-is-a-monopolist-and-other-key-points-from-judge-mehtas-ruling/
[4] https://www.courtlistener.com/docket/18552824/1033/united-states-of-america-v-google-llc/ (pg. 164, 190).
[5] https://www.journalismliberty.org/publications/the-google-search-decision
[6] https://www.journalismliberty.org/publications/doj-sets-record-straight-karina-montoya
[7] https://washingtonmonthly.com/2025/04/18/court-ruling-against-google-ad-tech-monopoly-is-a-victory-for-journalism/
[8] https://www.courtlistener.com/docket/66753787/1410/united-states-v-google-llc/ (pg. 70).
[9] https://storage.courtlistener.com/recap/gov.uscourts.nysd.600671/gov.uscourts.nysd.600671.1.0_5.pdf
[10] https://www.justice.gov/atr/case-document/file/1566706/dl?inline
[11] https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0134-facebook-inc-ftc-v-ftc-v-meta-platforms-inc

Google and Meta Break Antitrust Law Globally and Continue to Face Scrutiny

The two tech giants have shown a pattern of misconduct breaching antitrust law in other democracies and are being investigated by competition regulators which are assessing ways to impose specific rules to their multiple lines of business, given their sheer market power. We think this is important to consider because it underscores how pervasive and extensive this power is and why legislation like SB 686 is needed as part of the wider array of policy interventions to address anticompetitive dynamics that undermine the sustainability of journalism business models.

In the European Union, between 2010 and 2019, Google was found guilty of anticompetitive practices involving its search engine, Android operating system, and its advertising software AdSense. As recent as July 2023, the EU Commission followed on the footsteps of the U.S. Department of Justice and sued Google for monopolizing the digital advertising market.[12] The EU Commission has already proposed a break-up of Google's ad tech business as the appropriate relief, and final ruling is slated to be issued any time now.[13]

Under the EU Digital Markets Act, both Google and Meta are considered gatekeepers,[14] subject to specific regulation to rein abuses of their dominant positions and preserve competitive digital markets. This week, Meta was fined by the EU Commission for breaching the Digital Markets Act, for failing to provide European users with an equivalent Facebook alternative that does not compel them to have their personal data combined and used for commercial purposes by Meta.[15]

The UK, in 2024 a group of publishers sued Google with antitrust violations in digital advertising,[16] while the UK Competition and Markets Authority opened a separate investigation into the same conduct.[17] This year, the UK CMA also opened an investigation into Google's dominant position in search, to potentially apply specific obligations under the recently approved Digital Markets, Competition and Consumers (DMCC) Act 2024.[18]

In Canada, the Competition Bureau has also filed an antitrust lawsuit against Google's business in digital advertising.[19] The South Africa Competition Commission found Google and Meta have harmed news publishers through anticompetitive practices,[20] following a wide-ranging investigation that included nascent AI markets as well.

[12] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207
[13] https://www.euractiv.com/section/tech/opinion/the-eu-and-us-should-stand-together-on-the-google-adtech-cases/
[14] https://digital-markets-act.ec.europa.eu/gatekeepers_en
[15] https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085
[16] https://www.bbc.com/news/articles/cqlle3k92zqo
[17] https://www.gov.uk/government/news/cma-objects-to-googles-ad-tech-practices-in-bid-to-help-uk-advertisers-and-publishers
[18] https://pressgazette.co.uk/news/google-cma-strategic-market-status-designation-investigation/
[19] https://www.canada.ca/en/competition-bureau/news/2024/11/competition-bureau-sues-google-for-anti-competitive-conduct-in-online-advertising-in-canada.html
[20] https://www.compcom.co.za/wp-content/uploads/2025/02/CC_MDPMI-Provisional-Report_Non-Confidential-Final.pdf

AI Amplifies Monopoly Harms

Google has used its search dominance to coerce publishers into extractive relationships before. A compelling example is the rollout of Accelerated Mobile Pages (AMP) in 2015.[21] When Google adopted AMP as a standard ostensibly aimed at making webpages load more quickly, it enabled the corporation to accumulate data to which its rivals did not have access. Google tied implementation of AMP to improved search results, visibility in the featured content carousel at the top of its results page, and appearance in its Google News product.[22]

Once again, Google, Meta, and other similarly positioned platforms are deploying AI products slated to exploit their monopoly power, by claiming the right to use journalism without credit, compensation or consent to train and ground its AI models.

For the past three decades, a simple yet elegant bit of code has provided basic instructions to bots that crawl the web, telling them whether they were allowed or not. For the most part, bots followed these instructions. Meanwhile, website operators and publishers allowed them to crawl their sites in exchange for the services they provided, like referral traffic from search engines or helping their websites load more quickly.[23]

But that exchange is being completely upended. Consumer-facing generative AI requires enormous energy, resources, technological infrastructure, and, most importantly, data. News and media, specifically, are among the most important sources of information for training models and are critical for real-time AI-powered searches. In an important Google dataset that is used to train some of the most popular large language models (LLMs), including some by Google and Meta, news makes up half of the top 10 sites in the training data.[24]

In the case of Google, as the corporation rolls out AI-assisted search with products such as Overviews AI and Gemini, search referral traffic to all types of web publishers is declining,[25] all while both such AI products still depend on accessing real-time, high-quality sources in the Google search index through grounding systems, known as retrieval augmented generation (RAG), to respond to user queries with the most accurate and reliable responses possible, especially in non-commercial queries.[26]

The issue of control over data is so central to the future of AI systems and their business models that the remedies hearings for the Google Search monopoly case includes a proposal to prohibit Google from locking in content for AI training and block it for everyone else, as it did

[21] https://www.journalismliberty.org/publications/google-search-remedies-doj-letter
[22] https://www.journalismliberty.org/publications/the-google-search-decision
[23] https://www.brookings.edu/articles/the-case-for-consent-in-the-ai-data-gold-rush/
[24] https://www.journalismliberty.org/publications/the-center-for-journalism-liberty-at-open-markets-submits-written-testimony-to-the-senate-judiciary-committee-on-sustaining-the-news-amid-the-growth-of-ai
[25] https://www.bloomberg.com/news/articles/2025-04-07/google-ai-search-shift-leaves-website-makers-feeling-betrayed?sref=ZvMMMOkz
[26] https://www.journalismliberty.org/publications/value-of-journalism-to-ai

with Reddit.[27] Additionally, the DOJ has also proposed an opt-out standard for web publishers to remove their content from AI training data without getting erased from Google's search index.[28]

The Cumulative Effect of These Actions Has Devastated News

Newspaper advertising revenue has declined by as much as 70% since 2009, even as the digital advertising industry has grown from being worth around $20 billion to over $200 billion in the same timeframe.[29] Newsroom personnel has constricted, with some estimates indicating half of all newsroom positions have been eliminated since 2009 and nearly a fifth of all newsrooms shuttering altogether.[30]

Meanwhile, Google's parent company Alphabet reported sales of $96.5 billion in 4Q2024,[31] sustained by growth of AI operations in Google Cloud, a business unit that passed the $10 billion mark in revenues for the first time in 2024.[32] Meta, similarly, posted sales of $48.4 billion in that same quarter, beating analysts' consensus, and announcing it plans to spend up to $65 billion to expand its AI efforts in 2025.[33]

Both companies have also tried to buy off news outlets with grants, fellowships and participation in special news products, though recently many of these journalism support funds have wound down. The paltry sums Big Tech deemed to provide news outlets not only undervalue news but also leave news outlets with no leverage, while making them beholden to the "benevolence" of the tech platforms they must cover.

Solutions Are Already Being Designed: We Have International Precedent

Oregon has the chance to join more than a dozen states and peer nations that have passed or introduced policies to redress market failures, which often require compensation for publishers.[34] And Oregon has the opportunity to learn from what has worked, what has not, and design its approach accordingly.

Australia, for example, passed the News Media and Digital Platforms Mandatory Bargaining Code in February 2021, the first of its kind at the time. As a result, Google, and to a lesser extent Meta, to make deals with news publishers estimated at A$220 million a year since the law was enacted. Although most of the funds went to big publishers, the Code has allowed a more diverse group of media to access negotiations (e.g., public media broadcaster ABC, and small publishers that joined the negotiating entity Public Interest Publishers Alliance - PIPA). And it has led to the creation of hundreds of journalism jobs (despite having no requirement for

[27] https://www.404media.co/google-is-the-only-search-engine-that-works-on-reddit-now-thanks-to-ai-deal/
[28] https://www.techpolicy.press/doj-sets-record-straight-of-whats-needed-to-dismantle-googles-search-monopoly/
[29] https://unicourt.com/case/pc-db5-caseguea705d777ad7-1515348
[30] *Idem.*
[31] https://www.emarketer.com/content/google-posts--96-5-billion-q4-revenue--ad-growth-only-half-of-meta-s
[32] https://qz.com/google-second-quarter-earnings-ai-1851602900
[33] https://www.investopedia.com/meta-earnings-q4-fy-2024-ai-spending-trump-lawsuit-update-8782681
[34] https://www.journalismliberty.org/tech-media-fair-compensation-frameworks

how news outlets ere to spend their funds). The Australian government now considering ways to make the deals more transparent, and to prevent the platforms from pulling out of distributing news content.

In Canada, as part of a multipronged approach to supporting local news, the government passed the Online News Act in June 2023. Unlike the Australian code, covered digital platforms can be exempted only if they broker deals with news publishers that meet a list of criteria, such as making fair contributions to the Canadian news market, ensuring corporate influence does not undermine journalistic independence, and benefiting independent and language-minority news outlets.

After a series of public hearings with various stakeholders about proposed regulation to enforce the new law, in November 29th, 2023, the Canadian government reached a deal with Google to ensure it would contribute $73 million (C$100 million) annually through agreements brokered with Canadian news outlets. The Online News Act was carefully thought out to prevent that most of this compensation went to the biggest broadcasters, including the nation's public broadcaster. We would draw your attention to the recent report by The Center for Media, Technology and Democracy *Canada's News Bargaining Codes: An Unabridged Account on C-18* which provides the first comprehensive non-partisan analysis of the legislation.[35]

In general, news media bargaining code style legislation that is based on a narrow conception of value based on referral traffic and/or digital advertising is going to generally favor larger outlets. One of the biggest challenges that legislation like SB 686 has faced in the US and around the world is that small publishers feel like they won't benefit, which has allowed tech companies to divide publishers. And they are right if we acquiesce to how tech companies like Google and Meta have narrowed the discussion to focus on clickthrough rates and the value of the traffic they provide to publishers, haggling over figures and value amid vast information asymmetries. The fact that large news organizations benefit is not a bad thing – they employ thousands of people, create jobs, conduct expensive investigations, and lobby on behalf of journalism. They also generate and receive the most traffic from big tech platforms, so this is not surprising and the criticism of so-called link taxes misses the point of these types of bills.
Unfortunately, publishers have bought into this narrow conception of value, which not only equates value with traffic metrics, but also excludes AI companies that use news content to build and improve their generative AI models and services. Looking narrowly at the value of news traffic to platforms (in the form digital advertising revenue) and news publishers focus on audience and engagement metrics, and thus will tend to favor large publishers over small ones because of the nature of the value proposition, which focuses on the scale of audience traffic.

A myopic focus on the value of referral traffic disregards the ways that journalism improves the platform itself for all users, even if they don't click through on a headline. Behavioral and econometric approaches that account for the role that consuming news plays in user experience

[35] https://www.mediatechdemocracy.com/all-work/climate-delay-report-release-3g8s8

on a platform seek to isolate the contribution that news content makes to the overall value of the platform, which could be determined by its digital advertising revenue generated in a specific jurisdiction. A recent study, for example, rightly hypothesized that people might engage in different types of behaviors if their search results didn't include information from publishers.

Researchers in Switzerland found that the value of news is far higher than policymakers or publishers think it is, at least on Google Search, which accounts for the majority of Google's $280 billion annual revenue. US economists applied a similar methodology and built on the well-established concept of the "additional value" created through the complimentary transactions between tech platforms and publishers – that is, publishers and tech platforms would evenly split the resulting value created via digital advertising. They found that Google owes U.S. publishers more than $10 billion a year for the way snippets and headlines of news articles appear in its search, amounting to 17.5% of its search revenue annually. It found that Meta should owe 6.6% of its ad revenue, or just under $2 billion a year.[36] These findings were conservative due to lack of access to proprietary data held by the platforms, and would likely be revised upward with fuller and more reliable information.

Furthermore, a narrow concept of value ignores the public interest served by journalism and the tax that is imposed on the public when local businesses can't survive, civic life is reduced to engagement metrics, and corruption proliferates because there is no watchdog holding those in power accountable.

Given that SB 686 covers scraping and crawling and could thus also cover artificial intelligence uses, we submit for the record CJL's Expert Brief What is the Value of Journalism to AI? A Framework for Establishing Journalism's Value in Artificial Intelligence Systems.

We would also draw the legislatures attention to the Global Principles on Fair Compensation that lay out ten principles that should inform public policies aimed at ensuring fair compensation, including transparency, accountability, and collectivity, and a complimentary set of principles aimed specifically at AI that seek to ensure tech companies pay for the news they use on social media and to fuel machine learning and generative AI.

Beware of Google and Meta's Retaliation Tactics

Google and Meta have attempted to derail legislation attempts to redress its harms to journalism in various ways. In Canada, Google first limited access to news results in Canada during a five-week test period in February 2023. But it later came to the negotiating table with publishers and

[36] Paying for News: What Google and Meta Owe US Publishers AUTHORS (ALPHABETICAL) Dr. Patrick Holder (The Brattle Group) Dr. Haaris Mateen (University of Houston) Dr. Anya SchiMrin (Columbia University) Dr. Haris Tabakovic (The Brattle Group) Columbia University Institute for Policy Dialogue. Oct. 29, 2023
https://policydialogue.org/files/publications/papers/USE-THIS-2023.10.28_Paying-for-News_Clean-2.pdf

the government (most likely because it realized that search is unhelpful and less valuable without news) – not before launching a ferocious public relations campaign against the Online News Act. Meta took the more dramatic stance of completely blocking news content from Facebook and Instagram to avoid being covered by the law, leading to the removal of 11 million views of journalism a day in Canada.[37]

Google in particular has consistently threatened to cut news availability in search results in any nation or U.S. states considering this type of legislation, including fellow states like California, where Google spent over $10 million in 3Q2024 to kill the California Journalism Protection Act.[38] In other nations, such as Brazil, Google has used its own search engine to advertise against the passing of regulation to compensate news publishers – essentially using its illegal monopoly to propagandize against legislation that would have helped address a part of the market imbalances between platforms and the press in Brazil. Brazilian law prevents undue interference in Congress' debates and Brazil's government and the judiciary ordered Google to remove such advertising or face daily fines.[39]

Proposed Improvements: Must Carry, Common Carriage, Nondiscrimination

To be clear, claims that news content will be less available if you pass SB 686 should be seen as threats from these tech corporations to retaliate against Oregonians if the state compels them to give publishers a fair share of compensation. If there is one lesson to draw from our peers in other nations and U.S. states it is that Big Tech will go against the public interest – preserving access to news in their monopolies – to fend off regulatory attempts.

We understand that the Oregon Legislature has expressed constitutional concerns about including provisions in SB 686 that would prohibit digital platforms from blocking news content, which rests on 'must-carry' legal frameworks.[40] However, we recommend reconsider including such provisions in light of their history in other domains such as broadcast, cable, and satellite, and also in light of a pending case, *Ohio v Google*, in which the State of Ohio is seeking to designate Google as a common carrier under state law in order to stop Google from preferencing it's own products and services.[41]

Oregonians can bulletproof regulatory actions by passing complementary legislation drawing from common carriage frameworks, and/or solutions to impose non-discrimination and equal access requirements. Despite Google and Meta having argued that there is no precedent for mandating payments for retransmission of content, or that they can't negotiate with hundreds of media organizations for compensation, the fact is that there is precedent in the media sector itself.[42] For example, one potential model can be drawn from a long-time policy that has

[37] https://meo.ca/work/old-news-new-reality-a-year-of-metas-news-ban-in-canada
[38] https://www.openmarketsinstitute.org/publications/google-refines-50-state-lobby-strategy-austin-ahlman
[39] https://www.reuters.com/world/americas/brazil-lawmakers-vote-controversial-bill-clean-up-social-media-2023-05-02/
[40] https://washingtonmonthly.com/2024/08/22/the-must-carry-solution-for-the-medias-google-problem/
[41] https://www.openmarketsinstitute.org/publications/amicus-brief-ohio-v-google
[42] https://www.openmarketsinstitute.org/publications/the-corner-newsletter-april-26-2024

governed the relationship between local over-the-air (or OTA) television channels and cable providers.[43]

In light of the monopolistic practices of corporate platforms that provide the inescapable infrastructure for journalism, audiences and digital advertising and in recognition of the value news provides to those platforms as well as the democratic society at large, the Center for Journalism & Liberty at the Open Markets Institute applauds and supports the efforts of the state of Oregon to discuss, improve, and pass SB 686. In this pivotal moment for the future of sustainable and independent journalism, it is essential for states like Oregon to lead the fight to protect local news and push back against the monopolization and degradation of our information ecosystem.

Sincerely,
Dr. Courtney Radsch
Director, Center for Journalism & Liberty at Open Markets Institute

[43] *Idem.*

Expert Brief

What is the Value of Journalism to AI?

A Framework for Establishing Journalism's Value in Artificial Intelligence Systems

By Courtney C. Radsch, PhD

Director, Center for Journalism and Liberty

Courtney C. Radsch, PhD, is the Director of the Center for Journalism and Liberty at the Open Markets Institute where she produces and oversees cutting-edge research into news media market structures, technology policy, and AI governance and helps design smart policy solutions to protect and bolster journalism's financial and editorial independence in the digital age.

Overview:

Problem: Big Tech is building its latest technology on the intellectual property and uncompensated use of expression, content, and data collected online and in databases. Journalistic content, which is far more than just a collection of facts and is often gathered at great costs to the journalists who report the news, is indispensable to these new AI technologies. The journalism sector needs a more sophisticated framework for how to determine the value of their content and what fair compensation would look like throughout various parts of the AI value chain. The legal regulatory system has lagged recent rapid-fire developments in AI. By failing to enforce intellectual property rights, regulators have allowed a handful of companies to further entrench their dominance and develop technologies and business models that undermine the viability of entire sectors of the economy, including journalism.

Solution: News publishers, along with the creative industries more broadly, must actively define the worth of their content and data by understanding how and why value is created throughout the generative AI process, from developing foundation models to powering real-time search, if they want to obtain fair compensation. Journalism cannot be expected to adapt its business models to the AI era without interventions by policymakers to correct market imbalances, enforce intellectual property rights, and require data access and transparency of AI systems.

Background:

After decades of giving away their content for free and being held hostage to the power of social media and search platforms, news publishers are realizing that they need to be more proactive in the era of artificial intelligence. As AI companies rely on news content to train their large language models and make AI applications more relevant, publishers already contending with a precipitous decline in referral traffic and the continued monopolization of digital advertising by Big Tech are being exploited even further.

The journalism industry shed nearly 3,000 jobs in the U.S. alone and scores of publications closed over the past year, exposing the unviability of the business models that had propped up news providers well into the 21st century. Publishers have seen referral traffic, already in decline since Facebook de-prioritized news, plummet even as they are trying to figure out how to navigate the

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demise of cookies and the implications of AI for the future of their business. Meanwhile, the tech companies propelling AI have enjoyed revenue growth and valuations that have turned them into the most valuable companies in the world with market capitalizations of more than a trillion dollars each.

This disconnect can be traced back to the damage tech corporations have wrought on news publishers by cannibalizing their original content and data, displaying them in their search results or social media feeds, and then diverting advertisers, readers, and potential subscribers away from the news sites themselves. This reduces revenues earned from subscription, advertising, licensing, and affiliates, undermining not just the ability to produce quality journalism but also the industry's underlying business model.

To adapt their business models for the AI era, news publishers need to demand their rights and work collectively to put a figure on the value of journalism to artificial intelligence systems and assess the threat posed to future revenue and business models. But journalism cannot be expected to adapt its business models to the AI era without interventions by policymakers to correct market imbalances, enforce intellectual property rights, and require data access and transparency. Industry action must go hand in hand with legislative and regulatory action.

From RAGs to Riches: Leveraging Three Stages of Value Creation in AI

There are three primary stages of value creation in AI that publishers can leverage: model inputs and development, training and improving models, and applications. Journalism content can serve as rich, diverse data that improve accuracy and reliability of AI models while helping them better understand and interact with the world, particularly as synthetic media becomes more prominent online. But too narrowly focusing on the use of their content just to develop and train large language models means publishers are bypassing several other opportunities to translate value into revenue. Journalism provides ongoing value because of its quality, timeliness, and empirical grounding, and it could become even more valuable as the amount of AI-generated content increases.

Access to human-created, high-quality content that is a relatively accurate and timely portrayal of reality, like journalism, is an important input for machine learning models. Journalism is a primary provider of high-quality, relevant, and current information underpinning generative AI search, summarization, and content generation. News outlets must therefore consider how to optimize revenue streams and assert their pricing autonomy throughout the AI value chain. They will need to figure out how to unlock the value of journalism by adopting sophisticated and dynamic compensation frameworks and pricing strategies for news content in various parts of AI systems and applications, which are laid out in the next section. They will need access to data, including data sets and foundational model weights, and they need regulations that enable them to do so, regardless of whether they decide to litigate or license.

Whether opting for fixed rates or dynamic pricing based on use cases or consumption metrics, aligning pricing with the intrinsic value of journalistic content in AI is crucial if publishers are to successfully navigate the AI landscape. The following section outlines a three-pronged model for assessing value.

- **Foundation Models**: Data and content used to build foundation models, including large language models (LLMs), multimodal models (MMMs are text and images), and computer vision models (CVMs).
- **Improving models:** Training, updating, and improving models through fine-tuning, alignment, scaling, and other processes.
- **Outputs & Applications:** Retrieval Augmented Generation and real-time news: Generative search, summarization, content creation, and other applications that make use of journalism to provide more accurate, timely, and relevant results, for example, through retrieval augmented generation or grounding.

Foundational models	Data inputs, neural networks, training	Historical news data/Archives; metadata; translations
Improving Models	Model and transformer training, fine-tuning, alignment, scaling, reinforcement learning	Historical news data/Archives; prompt engineering and use of AI in the newsroom
RAGs & Applications	Retrieval Augmented Generation, grounding	Real-time news; Historical news data/ Archives; search, chatbots, summarization, content creation, enterprise specific uses

FOUNDATIONAL MODELS: ARCHIVES AND HISTORICAL NEWS DATA

Journalism is an essential part of many of the foundational data sets used to develop and train generative artificial intelligence systems. News comprises *half* of the top 10 sites in the training data of a Google dataset that is used to train some of the most popular LLMs, including models from both Google and Meta. News makes up a significant part of the Common Crawl dataset, one of the oldest unstructured datasets used in many LLMs that spans 16 years of unfiltered, unlabeled content culled from across the internet and social media. Common Crawl, a nonprofit that makes its datasets available for free, began offering a regularly updated news dataset in 2016. The News and Media category is the third most prevalent source of data and makes up 13 percent of the dataset. News accounts for nearly half of the top 25 most represented sites in the Colossal Clean Crawled Corpus, a snapshot of the open-source Common Crawl dataset filtered to retain high-quality English sources and discard low-quality and problematic content like profanity and hate speech. Even content that was put behind paywalls and intended to be restricted to paid users is present in LLMs and recycled in generated responses. Last year, ChatGPT and Bing had to stop a new product partnership because users were able to bypass publisher paywalls. The *Los Angeles Times*, which relies on subscriptions and employs a paywall, is among the top sites in that dataset. In January, the newspaper laid off 20 percent of its workforce after losing tens of millions of dollars a year. Another publisher, the *New York Times*, was the fifth most used source to train ChatGPT, according to the newspaper's copyright infringement lawsuit against Open AI and Microsoft. News organizations have increasingly relied on paywalls and subscriptions amid declines in digital advertising revenue as the Google and Meta duopoly became inescapable intermediaries. Big Tech freely used publishers' content to improve the value of their search and social media platforms while controlling the underlying adtech and cloud infrastructure that publishers and advertisers rely on. Now they are once again freely using journalism to fuel their AI models, products, and services, and continuing to undermine the news industry's business model.

AI's need for data is insatiable and experts envisage that creating and training new LLMs will become increasingly difficult as AI-generated content becomes more prevalent online and in the data sets used to create and train LLMs. OpenAI reportedly transcribed upwards of one million hours of YouTube videos while Meta explored buying publishing house Simon & Schuster for this purpose. Google also transcribed YouTube videos and granted itself the right to use online content from public Google Docs, reviews on Google Maps, and a host of other applications where its users generate ostensibly public-facing content to fuel its AI products, according to the *New York Times*.

Access to human created, high-quality content that is a relatively accurate portrayal of reality is therefore an important input for the models that fuel machine learning and generative AI applications that require veracity or information retrieval; without it the models malfunction, degrade and potentially even collapse, putting the entire system at risk. And this is not a theoretical risk — Europol estimated that more than 90 percent of internet content will be AI-generated by 2026. Which makes human generated data more important, and thus more valuable. As GenAI is integrated into content production and labor markets that support human content production become more precarious -- think journalism, entertainment, and writing – AI companies will need

to figure out how to maintain access to a steady supply of quality data.

IMPROVING MODELS: TRAINING, FINE-TUNING, REINFORCEMENT LEARNING

News content enriches pretrained models, reinforcement learning, and fine-tuning that help AI models to excel at specific tasks, such as summarization or text-to-image generation. Natural language processing (NLP) and fine-tuning AI models involves training them with specific types of content or human feedback.

Bigger is better, according to many in the AI field, and it was the scale of these models that launched the current wave of generative AI developments. But as the science and math advances, researchers are also learning that smaller amounts of high-quality data are more important than vast troves of lower quality data. Journalism provides a regular supply of relatively high-quality data that includes metadata and multimedia, and many news publishers are sitting on archives – what AI startup founder Lucky Gunasekara calls the "fat head" of value — that AI companies would love to get their hands on. Curated content like journalism is considered high quality and particularly useful for training and fine-tuning.

Scaling solutions that grow the value created by a core trained model and its repurposing for offshoot models, will become increasingly important as the volume of data increases, companies compete on processing speeds, and the environmental and carbon impact of AI technologies comes under greater scrutiny.

OUTPUTS & APPLICATIONS: RETRIEVAL AUGMENTED GENERATION (RAG) AND REAL-TIME NEWS

Journalism can be a particularly valuable source for grounding, which involves connecting outputs with a given data source, and retrieval augmented generation (RAG), which improves static LLM results by retrieving and connecting the model with relevant external or proprietary data. RAG is a cost-effective way to update static LLMs with more timely, relevant, or domain-specific information, which improve accuracy and predictability and reduces the likelihood and prevalence of hallucinations. The new generation of generative search engines and answer machines are powered by RAGs, which also enable chatbots and generative search and provide real-time and external context. In enterprise applications, RAGs can reduce and potentially eliminate hallucinations. RAG inputs can come from any source of content, but the bulk of real use-case for queries appears to be everyday journalism and specific genres, like finance or reviews. Perplexity AI, for example, prioritizes what founder Aravind Srinivas calls "peer-reviewed domains" such as leading journalism outlets because it is high-quality, has been through an editing process and includes background research and source verification.

Perplexity AI, a so-called AI unicorn, has attracted investors like Jeff Bezos and chip manufacturer Nvidia and earned the company a nearly $3 billion valuation, despite the fact that the AI startup pays publishers nothing and privacy concerns have led several companies, including notably Microsoft, to ban employees from the chatbot at work. The company's CEO admitted that the economic value of quality journalism is "very high" but seemed to think that visibility of content was incentive enough for news publishers. Srinivas admitted that using news inputs "doesn't actually lead to direct monetization," which presents a problem that he acknowledged "companies relying on the quality of the output for their own services should help them" with. Perplexity is rumored to be getting into the advertising business, but there is no indication that any of that revenue would be returned to the sources upon which it depends for accurate answers.

Access to human created, high-quality content that is a relatively accurate portrayal of reality is therefore an important input for the models that fuel machine learning and generative AI applications that require veracity or information retrieval; without it the models malfunction, degrade and potentially even collapse, putting the entire system at risk.

AI-powered search and conversational "answer engines" are gaining in popularity and predicted to replace traditional search. Search queries are one of the most important sources of referral traffic for publishers, who are deeply concerned about how AI will further exacerbate the trend toward zero-click searches, which have been on a steady upward trend since 2019. A 2022 study found that half of all Google searches were zero-click, meaning

that Google displayed or summarized the user's queried information such that the user did not click through to the original content, and just a tiny fraction of Facebook users click through on the content in their newsfeeds.

The Faustian bargain publishers made with tech platforms to exchange access to content for access to audiences via referrals seems unlikely to pay off in the new generation of AI chatbots, which do very poorly on news retrieval, according to a recent study by the Reuters institute for the Study of Journalism. It found that chatbots did a poor job of basic headline retrieval, failing to retrieve headline news accurately or consistently despite very specific prompts. And even when results provided a link to the publisher's website, it was rarely to the specific article referenced.

Silicon Valley startup Miso.ai found clickthrough rates of only 10 to 15 percent on its Answers platform, an alternative to chatbots that provides bulleted briefings with citations in contrast to narrative answers that typically contain few, if any, references. Miso.ai's low clickthrough rates indicate the new generation of search engines are unlikely to drive sufficient traffic to news publishers, indicating the need for alternative revenue models not just based on referrals.

Yet generative search and answer machines are where journalism, particularly local journalism, could be particularly valuable and thus must be able to monetize. Searching for information about local businesses, community issues, or government is going to be lot less useful if there is no local journalism informing the results. Similarly, journalism that focuses on niche topics, breaking news, or specific domains are also likely to be especially valuable to applications that want to provide up-to-date, relevant, and timely information to their users while fighting the scourge of misinformation and low-quality content online.

"Yesterday's news is actually super important," said Gunasekara. Miso's data shows that 80 percent of Answers rely on data that is more than 30 days old in order to provide context and background. "Archives, in our opinion, are extremely valuable," he said. Establishing the value of journalism throughout the search pipeline would entail understanding how it is used by, or creates value for, the crawler, index, query processor, and ad engine.

Currently this value can only be extrapolated from inadequate data, although the EU AI Act may hold out some hope for improving transparency. Furthermore, different types of journalism and news publisher content — such as archives, paywall-protected or premium content, fact-checks, and human- as opposed to AI-generated data, photos, videos, and audio — may offer different value to various parts of the AI tech stack. Publishers need to consider tailoring rates to content type and use case.

Publishers must also be realistic about the value created by generative applications such as search. According to one estimate of inference costs, the cost each ChatGPT query is .36 cents, meaning that "a search query with an LLM has to be significantly less than <0.5 cents per query, or the search business would become tremendously unprofitable for Google."

But journalism must not get locked into the current version of how search, content production, dissemination, and digital advertising work. Publishers need to remain flexible enough to update and revise agreements as technology develops and the political economy of the information ecosystem evolves. Equally important is the need for public policies, including enforcing intellectual property and contract rights that limit unfettered scraping of publisher and other creator websites while giving publishers the right to collectively negotiate and create a viable markets solution.

Strategic Rate Setting: Leveraging Uniqueness

Content isn't one-size-fits-all. Breaking news, investigative journalism, foreign coverage, local reporting, and other types of premium content possess distinct value propositions. Breaking news, thematic verticals and reviews, or local journalism can make real-time searches for information more relevant and accurate. News organizations should strategically set rates that reflect this and consider tiered pricing models that are tailored to the types of content needed for specific use cases. For example, foundational training licenses for commercial firms may command higher rates than API or on-demand access, which could be priced dynamically.

In defining their value proposition, news outlets could take a page from the Big Tech companies squeezing them. The ad tech system fueling digital advertising is based on real-time bidding that allows advertisers and publishers to connect using automated systems that (theoretically at least) optimize the cost of advertising on a specific site. Dynamic scalable licensing or royalty schemes that allow AI companies to bid for access to specific aspects of a publisher's content for various purposes could play a similar role in expanding and streamlining the remuneration process without extensive legal or business development efforts. Publishers already

have licensing and royalty systems that cover different types of uses, for example, individuals versus commercial companies, and establish fees accordingly. The music industry's mechanical and performance license frameworks, along with licensing for interactive versus noninteractive platforms, are another way to account for different uses. The same could be done with AI.

Publishers could also deploy tiered licensing based on the type of content that caters to different types of AI needs. For example, a generative search engine could bid on licensing breaking news or local news focused on certain geographies. Publishers could adopt a different fee structure for AI companies that want to access basic news articles, reviews, or historical archives for model development or fine-tuning or those that want to use it for content generation applications. News summaries, translations, multimedia, and metadata all have particular relevance for AI training and improvement.

Creating a digital marketplace where AI companies can bid on access to news content that adjust based on demand, use-case, relevance, or other factors would empower news organizations to reclaim the value of their content and ensure that they maintain some level of control over how their intellectual property is used by AI systems. However, given that Google and Meta dominate the current ad tech ecosystem (with Amazon gaining market share) and significant parts of the AI ecosystem, preventing them from extracting monopoly profits by controlling the entire system will be essential. Any new licensing bidding system would need to be transparent and structurally separate from the powerful entities that control the ad tech system.

Rather than negotiating individual contracts, which is largely undoable for all but the largest publishers, news organizations should be able to set prices strategically and dynamically and will need to create collectives that can lead negotiations with AI companies.

Efforts to create a marketplace for publishers and AI companies are nascent but promising. Venture capital-backed TollBit, for example, has raised several million dollars. The startup promises to create a frictionless way for AI companies and publishers to transact, but these voluntary efforts will still need to be shaped by public policy that ensures there is sufficient information available to determine fee structures. Also, policymakers should allow small publishers to collectively bargain given the inefficiency, difficulty, and improbability of each outlet trying to get a deal on their own. Smaller publishers are not prioritized by AI companies, noted Srinivas, CEO of Perplexity AI, and is reflected in the fact that only the biggest or most prominent publishers have secured AI deals with tech firms.

This is also where news media bargaining codes could be especially consequential. More than a dozen jurisdictions around the world have passed or are considering passing laws that require dominant platforms to negotiate with publishers for the right to use their content, although the laws as currently envisioned cover just search and social media and not AI. They could expand to require that AI companies of a certain size come to the table while empowering smaller publishers to pool their resources and collectively negotiate (as CJL recommended to the South African Competition Authority in its Media and Digital Platforms Market Inquiry).

To Litigate or License? Copyright, Contracts, and the Market

Publishers around the world are considering whether to litigate or license. Publishers, musicians and record labels, photographers and photo agencies, authors, entertainers, and artists have filed lawsuits against the AI companies at the forefront of what one plaintiff characterized as "systematic theft on a mass scale." A top executive at open-source Stability AI quit in protest over the theft of copyrighted works by wealthy AI companies.

AI companies have freely admitted that requiring licensing would stall "progress" and potentially make some tools impossible but have also inked deals with dozens of media organizations. "If licenses were required to train LLMs on copyrighted content, today's general-purpose AI tools simply could not exist," according to Anthropic, the Amazon and Google-backed generative AI firm. And limiting model training to content in the public domain would not meet the needs of their models, according to OpenAI.

More than half of 1,159 publishers surveyed have requested AI web crawlers stop scanning their sites in hopes of forestalling the theft and monetization of their content by AI companies, but compliance is voluntary and can be ignored with impunity. Others have filed lawsuits against AI companies for copyright infringement, including under the Digital Millennium Copyright Act.

The New York Times filed suit in late 2023 against OpenAI and Microsoft for copyright violations after it could not reach a licensing agreement for the use of its content. In February, several leading independent news outlets

including RawStory, Alternet, and The Intercept sued OpenAI for violating the Digital Millennium Copyright Act, seeking statutory damages. In April eight leading U.S. news publications owned by hedge fund Alden Capital also sued OpenAI, demanding that publishers be compensated for use of the content rather than seeking monetary damages. The Times lawsuit appears to have come after they could not reach a voluntary licensing agreement, which suggests that the companies were too far apart on their value estimates and one reason why the final arbitration offer model of Australia's News Media Bargaining Code is attractive. The 2021 law and a similar effort in Canada required designated platforms to negotiate with news publishers for the use of their content and ensured that negotiations took place in good faith and did not drag on indefinitely by giving the arbitrator the right to pick one side or the other if a mutually agreed upon figure could not be reached.

Legal regulatory efforts to enforce copyright and impose mandatory negotiating frameworks on search and social media companies have gained popularity around the world recently, with at least a dozen jurisdictions and EU member states considering or passing such legislation. Allowing collective bargaining by publishers, requiring access to data held by designated tech platforms, and imposing transparency requirements will bolster a regulatory framework that not only increases the power of local and smaller news outlets but could be applied to AI companies that crawl and scrape publisher websites.

But to sue or sign is not an either-or proposition, and to some extent ensuring that a market for licensing publisher data exists could help boost copyright claims by mitigating fair use arguments. This happens because in many jurisdictions, market replacement is a key factor in determining whether the unlicensed use of journalistic content is protected by copyright. The leading AI companies, with their Big Tech partnerships, are projected to reap billion-dollar revenues with valuations approaching a trillion dollars. By contrast, news publishers — whose content is integral to AI models — are either shutting down or struggling to remain viable.

WHAT WE CAN LEARN FROM EXISTING DEALS

Reddit inked a $60 million partnership with Google in February, effectively planting a flag with a number on it in the ground. Reddit will provide training data and more efficient ways to train models by allowing Google to access its Data API, while Google locks in Reddit's use of its VertexAI cloud and gains access to a real-time fresh structured data source. Given Reddit's 50 million daily active users, that translates to a value of about 83 cents per user per year. Given the prevalence of misinformation, hate speech, extremism, and "norm-violating influencers" on Reddit, journalism could be valued far higher for its accurate and higher quality data.

Reddit had already started featuring more prominently in Google search results prior to the deal announcement, which came just as the company filed for its initial public offering IPO, which revealed that the company's licensing agreements with a number of outside parties amount to $203 million over the next two to three years. We do not know whether this includes deals with OpenAI, whose CEO is a major Reddit shareholder, or Tencent Holdings, which owns 11 percent of outstanding shares and is one of the China's leading AI companies. Reddit also signed a deal in May with OpenAI, whose CEO Sam Altman is the social media platforms' third largest shareholder, though the amount and terms have not been disclosed.

We know much less about the deals that AI companies have already made with news publishers, though OpenAI has been the most aggressive in pursuing voluntary licensing deals. OpenAI, in which Microsoft has a major ownership stake, has made licensing agreements with some of the largest journalism organizations in the world, including the Associated Press, Axel Springer, Le Monde, Spanish media conglomerate Prisa, and DotDash Meredith, the largest print and digital publisher in the U.S., while several more are reportedly in discussion with Apple and Google. Although the terms are largely unknown, analysis of publicly available announcements and news reports indicate that many of the deals cover licensing content, including archives and contemporary content, for a defined period (two years seems to be the norm) as well as access to AI tools in the newsrooms. Reports indicate that OpenAI offered between $1 and $5 million annually while Apple appears to be offering more money for a wider array of uses to a handful of large publishers including Condé Nast and NBC News. The AP deal with OpenAI provides partial access to its archive going back to 1985 and is likely to set a benchmark for other deals going forward, though industry insiders think the AP undervalued its worth and should have leveraged its power to get deals for the news organizations that work with the cooperative.

Microsoft and Google have not announced any specific AI licensing deals, though they have announced bespoke "collaborations" and "partnerships" to assist newsrooms in adapting and adopting AI in the newsrooms. Microsoft did not respond to specific

questions about whether it compensates publishers when their content shows up in generative searches or chats, pointing instead to a page outlining how it is ensuring newsrooms can "innovate" with its products. Google did not respond to a request for comment. Publishers will be creating value for these companies using their products, though it is unlikely that any of them have negotiated with these AI companies for the value created through their use of these tools, such as prompt engineering or fine-tuning.

Onboarding newsrooms to their AI infrastructure and training them in how to integrate AI into the journalism process is redolent of the way that Facebook, now Meta, and Google "helped" newsrooms make better use of their tools and platforms over the past decade, which served to entrench the dependence of publishers on these platforms, even as they pivoted away from news and tried to torpedo regulatory efforts aimed at making them compensate publishers. While newsrooms need to build their capacity to leverage AI, relying on Big Tech to drive these efforts reinforces and deepens platformization and undermines their editorial and economic independence.

In the meantime, some news providers are forging ahead with voluntary agreements in the absence of legal regulatory clarity. But this leaves out smaller and local publishers and could undermine efforts to develop sustainable business model alternatives for journalism. Bespoke, secretive deals with the largest or most influential news outlets are not a replacement for public policy and will not rescue local news from the precarity created by corporations who skirt the law and enjoy dominant market power. Furthermore, regardless of whether news outlets are engaged in individual or collective discussions, developing a robust understanding of the value proposition is critical for ensuring they do not leave money on the table. The framework for licensing or developing a royalty model would include different aspects of their content and data for various stages of the AI model, as well as use cases.

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WHY VOLUNTARY BLOCKING AND WALLING OFF CONTENT IS NOT THE RIGHT SOLUTION

More than two-thirds of leading U.S. and EU newspapers, and more than 75 percent of U.S. news outlets, are behind a paywall. More than half of 1,159 publishers surveyed this year have requested at least one AI web crawler to stop scanning their sites in hopes of stalling the theft and monetization of their content by AI companies. But compliance is voluntary and can be ignored with impunity, especially given the existing incentives and a lack of legally enforceable restrictions. And many publishers feel that simply asking companies not to crawl though robots.txt – the voluntary protocol that websites use to provide instructions to automated crawlers and scrapers – is insufficient. Nonetheless, including restrictions on crawling, scraping and commercial use in a site's terms of service and via robots.txt could strengthen a publisher's case if pursuing litigation.

To fend off reproach by publishers and content creators, Google started to allow publishers to de-index their sites or pages from its AI crawlers without also withdrawing from its search crawler in late 2023. But de-indexing news undermines public interest goals by reducing the supply side of quality information while further entrenching the dominance of Big Tech companies that have already built LLMs using news.

Furthermore, walling off news content and preventing it from being used would remove quality information from RAGs and the chatbots, generative search products, and foundational models that underpin generative AI services, resulting in a range of negative impacts. Withdrawing news will exacerbate mis- and disinformation, reinforce harms like "hallucinations" (essentially incorrect answers made up by generated by AI), and undermine a host of downstream applications. The *Washington Post*, for example, found that training sets already include several media outlets that rank low on NewsGuard's independent scale for trustworthiness, or which are backed by a foreign country, including Russia's propaganda arm RT. Removing countervailing quality content would just give junk news, propaganda, disinformation and synthetic media greater prominence. Continued access to quality human data is becoming increasingly important and thus more valuable. Google's data deal with Reddit, for example, means that it can leverage the site's human-generated data to better train Gemini and its other AI models,

chatbots, and generative tools to detect bias, misinformation or other malign content, even though Reddit does not offer the level of curated high-quality content that journalism does. The news industry, too, must figure out its value proposition, from original reporting to verification and fact-checking to analysis, reviews, and opinion.

Making AI Safer through Licensing and Compensation

Policymakers around the world are concerned about the ability to document and scrutinize the data used by foundation models. Imposing requirements that publishers, authors, photographers, and other creators receive compensation for their work will help ensure that systems are put in place and technology developed that will allow them to do just that. Regardless of a handful of voluntary agreements, policymakers should explore statutory licensing and taxing generative AI firms to create a compensation fund that rights holders could apply for.

Many are also concerned about the rapid pace of development and deployment of general and generative AI, particularly given the lack of safeguards, regulations, and legislation in place to govern its use. Indeed, many AI luminaries and tech leaders signed a letter last year calling for a temporary halt on AI development, which went nowhere because no one wanted to be left behind in the scramble for AI dominance.

Making Business Models Viable Requires Public Policy

AI companies claim that it would be impossible to license data used in foundation models and compensate rights holders, as if that should absolve them of the responsibility to do so. But acquiescing to this stance means that we are prioritizing one business model over another. We are favoring a business model based on the pervasive theft of intellectual property by the wealthiest companies in the world over the business model of journalism. Journalism cannot be expected to adapt its business models to the AI era without interventions by policymakers to correct market imbalances, enforce intellectual property rights, and require data access and transparency.

How we decide to allocate intellectual property rights and what we decide about how fair use does or does not apply to developing and training artificial intelligence systems will have profound ramifications for business models in a variety of sectors and the further concentration of power in a handful of technology corporations. Over the past nearly two decades, as tech companies like Apple, Amazon, Google, Meta, and Microsoft grew to become some of the most valuable companies in the world, the United States lost a third of its newspaper and two-thirds of its newspaper journalists. They cannot be replaced with AI.

Gone are the days of passive acceptance that enabled social media and search platforms to siphon off value from publishers and journalists without compensation. We know that journalism is essential to democracy. Given AI's well-established harms like the spread of misinformation during elections, we cannot say the same of generative AI.

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