

# Stop the Presses? Newspapers in the Digital Age

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## Stop the Presses? Newspapers in the Digital Age

During the past 20 years, more than 200 local daily newspapers have either reduced their publication frequency or ceased publishing altogether. Among those that survived, many employ a fraction of the journalists that they did at the turn of the 21<sup>st</sup> century, and many publish far fewer original, local, and investigative news stories than they did previously. As a result, in order to get local news, thousands of U.S. communities rely on “ghost newspapers” that are shells of their former selves and may rarely employ full-time professional local journalists. Researchers report that, among other societal effects, the lack of a daily newspaper to monitor local governments and publicly traded companies can lead to increased financing costs to make up for investors’ lack of trust.

In 2000, daily newspaper industry revenue peaked at \$89 billion, adjusted for inflation in 2020 dollars. Twenty years later, the revenue had fallen by 80%. Although some large, national newspapers continue to thrive, the newspaper industry as a whole has contracted. Websites and mobile apps enabling individuals to access news without a subscription have increased competition for readers and advertising. Between that 20-year period, revenue gains from online newspaper advertisements (from \$0 to \$3.1 billion) have not replaced revenue losses from print newspaper advertisements.

Some technology companies both compete and collaborate with newspaper publishers for online advertising revenue. For example, in addition to competing with newspapers’ websites for display advertising revenue, Google sells ad spaces (i.e., areas on websites/mobile apps set aside for online advertisements) on behalf of online publishers. Likewise, Google buys ad spaces on behalf of companies seeking to market goods or services to consumers with advertising (i.e., advertisers). For each step of the process—known as the *ad tech stack*—Google earns commissions from both buyers and sellers. In January 2023, the U.S. Department of Justice joined eight states in filing a lawsuit against Google, alleging that the company is violating antitrust laws by engaging in unlawful conduct to monopolize the ad tech stack. An additional 16 states and the Commonwealth of Puerto Rico filed a similar suit in 2021. In January 2021, a judicial panel combined this suit with multiple suits filed by newspaper publishers, advertisers, and others. Google claims these allegations mischaracterize its business and the degree of competition within the ad tech stack.

In addition, some online platforms—such as news aggregators (e.g., Apple News and Google News) and social media (e.g., Facebook)—can both enhance and diminish the ability of newspaper publishers to reach viewers. By acting as intermediaries between newspapers and their readers, these online platforms may increase consumers’ awareness of newspapers’ websites and prompt consumers to visit them. Alternatively, the headlines, snippets (small portions) of articles, and photographs displayed by these online platforms may dissuade consumers from visiting newspaper publishers’ own websites. This may impede the newspapers’ ability to collect data about their readers and generate revenues from their websites/mobile apps via subscriptions and advertising.

The Copyright Act generally prohibits online platforms from distributing full articles from newspaper publishers without their express consent. Courts determine whether a third party’s use of copyright material violates this law on a case-by-case basis. In June 2022, the U.S. Copyright Office published a report titled *Copyright Protections for Publishers* at the request of several members from the U.S. Senate Committee on the Judiciary. The report assessed the viability of establishing “ancillary copyright” protections for press publishers that would require online news aggregators to pay publishers for using excerpts of their content. The Copyright Office did not recommend amending copyright laws for this purpose, noting that stakeholders who filed comments with the office emphasized that the publishers’ challenges were due more to competition issues rather than copyright issues.

Some Members of 118<sup>th</sup> Congress have introduced bills that may help newspaper publishers. For example, the Advertising Middlemen Endangering Rigorous Internet Competition Accountability Act (S. 1073) would impose certain restrictions related to the ad tech stack. Online advertising revenues that would otherwise accrue to advertising technology firms could flow to the newspaper publishers who sell advertising on their papers’ websites. The Journalism Competition and Preservation Act of 2023 (S. 1094) would potentially increase the relative bargaining power of newspaper publishers.

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## Introduction

Digital communication has made it easier for individuals to access a wide range of information, including news and upcoming events, from multiple sources. For example, residents suffering from a local weather disaster can obtain critical information about recovery efforts from a local newspaper article, a local government authority's website, or an alert from friends via social media platforms.<sup>1</sup> This digital transformation has changed the consumption and production of news and reduced revenues at local newspapers.

Some Members of Congress have expressed concern about the decline of newspapers and have introduced bills to support newspapers and journalists. This report provides an overview of trends in the newspaper industry, discusses newspapers' relationships with online platforms,<sup>2</sup> and examines how the structure of online advertising affects newspapers' funding.

## Changing Patterns of News Consumption

The majority of Americans get at least some of their news—including content from newspapers—from digital devices, according to a 2022 survey conducted by the Pew Research Center.<sup>3</sup> Among those surveyed about their sources for online news, most age groups preferred news websites and apps,<sup>4</sup> but respondents aged 18 to 29 listed social media platforms (e.g., Facebook) as their preferred source of news.<sup>5</sup>

When asked about which form of media they use to “often get news,” 8% of respondents cited print publications, compared with 23% who cited social media platforms, 14% who cited search engines (e.g., Google), and 25% who cited news websites or apps (see **Figure 1**). Some of these

<sup>1</sup> See, for example, Thomas Rodriguez, “Cape Coral Brings Weeks-Long Burn Ban to a Halt Following Hurricane Ian,” *Fort Myers News-Press*, November 23, 2022, at <https://www.news-press.com/story/news/local/cape-coral/2022/11/23/cape-coral-terminates-temporary-burn-ban-exempts-hurricane-debris/10762600002/>; Charlotte County Florida, “Storm Recovery,” at <https://www.charlottecountyfl.gov/departments/public-safety/emergency-management/storm.html>; and Facebook, “Public Group: Hurricane Ian Updates and Relief,” at <https://www.facebook.com/groups/334640605104234/>.

<sup>2</sup> In this report, the Congressional Research Service (CRS) uses the term *online platform* as defined by the Organisation for Economic Co-operation and Development (OECD): “a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the internet.” Examples include search engines, social media, and app stores. OECD, *An Introduction to Online Platforms and Their Role in the Digital Transformation* (Paris: OECD Publishing, 2019), p. 20, at <https://doi.org/10.1787/53e5f593-en>.

<sup>3</sup> Naomi Forman-Katz and Katerina Eva Matsa, “News Platform Fact Sheet,” Pew Research Center, September 20, 2022, at <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>. *Digital devices* refers to smartphones, computers, and tablets; Michael Barthel et al., *Measuring News Consumption in a Digital Era*, Pew Research Center, December 8, 2020, pp. 4-5, at [https://www.pewresearch.org/journalism/wp-content/uploads/sites/8/2020/12/PJ\\_2020.12.08\\_News-Consumption\\_FINAL.pdf](https://www.pewresearch.org/journalism/wp-content/uploads/sites/8/2020/12/PJ_2020.12.08_News-Consumption_FINAL.pdf).

<sup>4</sup> The term *app* refers to type of application software designed to run on a mobile device, such as a smartphone or tablet computer. Apps—while small, individual units with limited functions—frequently serve to provide users with services similar to those accessed on personal computers. Apps are divided into two broad categories: web apps, which run through browsers, and native apps. Native apps are built for a specific mobile operating system, usually Apple’s iOS or Google’s Android. Margaret Rouse, “Dictionary: Privacy and Compliance: Mobile Application,” *Techopedia*, August 7, 2020, at <https://www.techopedia.com/definition/2953/mobile-application-mobile-app>.

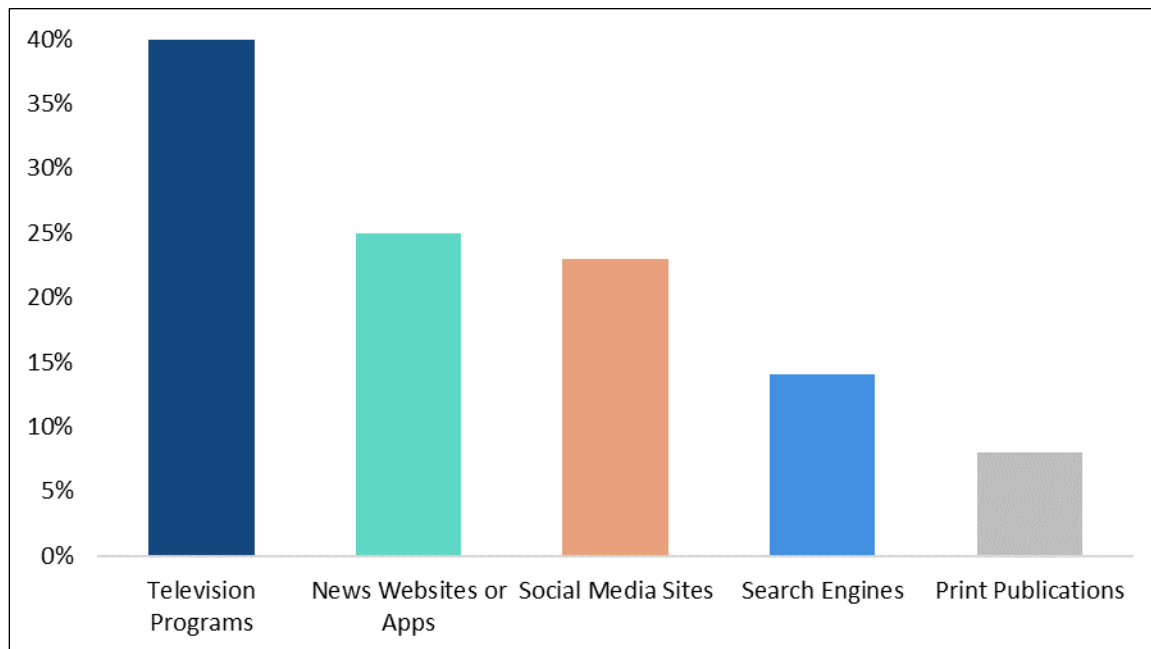
Apple and Google offer app “stores” that enable users to download native apps. See CRS Legal Sidebar LSB10752, *The Open App Markets Act*, by Jay B. Sykes.

<sup>5</sup> Naomi Forman-Katz and Katerina Eva Matsa, “News Platform Fact Sheet,” Pew Research Center, September 20, 2022, at <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

news websites and apps are operated by traditional media outlets, such as newspapers, cable television networks, radio networks, and broadcast stations.

**Figure 1. News Consumption, by Medium, 2022**

Percentage of Respondents Who “Often” Get News from Each Media Platform



**Source:** Naomi Forman-Katz and Katerina Eva Matsa, “News Platform Fact Sheet,” Pew Research Center, September 20, 2022, at <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

**Note:** Results based on self-reported responses to survey questions.

Newspapers have been offering their articles online since at least January 1994, when the *Palo Alto Weekly* published the first online newspaper.<sup>6</sup> While some local print newspapers successfully made the transition to digital media, others struggled to adapt.<sup>7</sup>

Digital media has increased consumers’ access to news stories, but it has also decreased news publishers’ ability to distinguish themselves with exclusive content. Although publishers distribute daily print newspapers only at set times, they can post and update online news content throughout the day.<sup>8</sup> One study in 2020 found that about one-fourth of online news stories are republished on a different website within four minutes of their original publication.<sup>9</sup>

<sup>6</sup> Sacha Wunch-Vincent and Graham Vickery, *The Evolution of News and the Internet*, OECD Working Party on the Information Economy, June 11, 2010, p. 8, at <https://www.oecd.org/sti/ieconomy/oecdexaminesfutureofnewsandtheinternet.htm> (hereinafter OECD June 2010 Report).

<sup>7</sup> Damian Radcliffe and Christopher Ali, *Small-Market Newspapers in the Digital Age*, Tow Center for Journalism, Columbia University, November 15, 2017, at <https://academiccommons.columbia.edu/doi/10.7916/D8WS95VQ>.

<sup>8</sup> Bertin Martens et al., *The Digital Transformation of News Media and the Rise of Disinformation and Fake News*, European Commission, Joint Research Centre Technical Report Working Paper 2018-02, April 2018, at <https://ec.europa.eu/jrc/sites/default/files/jrc111529.pdf>.

<sup>9</sup> Julia Cage, Nicolas Hervé, and Marie-Luce Viaud, “The Production of Information in an Online World,” *Review of Economic Studies*, vol. 87, issue 5 (October 2020), pp. 2126-2164.

Many news publishers that started in other forms of media, such as newspapers, television broadcasting, and radio, now offer their content online.<sup>10</sup> The online content both replicates and supplements the news content featured in paper editions of newspapers and on on-air broadcasts of radio and television stations.<sup>11</sup> The emergence of digital-native news publications has further increased the number of outlets providing news,<sup>12</sup> some of which have become substitutes for print newspapers.<sup>13</sup>

The digitization of news can affect local news coverage. Some news publishers may not have an incentive to report on all topics covered by local newspapers. Moreover, some publishers may not have an incentive to conduct in-depth investigations of local affairs, which can be costly and time-consuming, especially if it might not be of interest to current and potential readers.<sup>14</sup> In addition, some national news publishers have been able to attract readers from across the country by selling subscriptions to their digital products, which may affect users' engagement with local issues.<sup>15</sup>

## Newspaper Revenue Trends

Traditionally, the primary sources of revenue for daily print newspaper publishers have been print subscriptions and print advertising. Competition from online platforms and websites for readers and advertisers, however, in conjunction with business decisions by both newspaper publishers and online platforms' parent organizations, have led to newspaper industry revenue declines.

As **Figure 2** indicates, in the 20 years since newspaper industry revenues, adjusted for inflation, peaked at \$89 billion in 2000, they declined approximately 80%.<sup>16</sup> Two sources of newspaper revenue declined, and one source increased. Revenues from print advertising declined 92%, from \$73.2 billion in 2000 to \$6 billion in 2023. Subscription revenues declined by more than 50%, from \$15.8 billion in 2000 to \$7.8 billion. According to research firm S&P Global, the newspaper industry did not generate any online advertising revenue in 2000 and generated \$3.3 billion in advertising revenues in 2020. Thus, advertising revenues from newspapers' websites and apps

<sup>10</sup> For example, National Public Radio started as a network of public radio stations, and Fox News started as a cable television news channel; both now publish content on their own websites and apps.

<sup>11</sup> See, for example, Kenneth Gosslin and Joseph F. Nunes, "Chapter 11: The Digital Age Takes Hold Post 9/11," Post 9/11: Digital Age Takes Hold, *The Hartford Current*, October 19, 2014 (describing evolution of the news posted on the website of *The Hartford Current* as part of a 250-year anniversary retrospective of the newspaper).

<sup>12</sup> This report uses the term *digital-native news publishers* to refer to news publishers that offer their content online only or those that started online; some may also be referred to as *online media companies* or other similar terms. Some of these publishers specialize in specific subject areas (e.g., *TechCrunch*, which focuses on the tech industry and start-up companies), some provide broader coverage of national events (e.g., *Business Insider*, *HuffPost*, and *Breitbart*), while others focus exclusively on local community news (e.g., *MinnPost* [focusing on Minnesota news] and *Patch*).

<sup>13</sup> Matthew Gentzkow, "Valuing New Goods in a Model with Complementarity: Online Newspapers," *American Economic Review*, vol. 97, no. 3 (2007), pp. 713-744; John Dimmick, Yan Chen, and Zhan Li, "Competition Between the Internet and Traditional News Media: The Gratification-Opportunities Niche Dimension," *Journal of Media Economics*, vol. 17, no. 1 (2004), pp. 19-33.

<sup>14</sup> Stigler Committee on Digital Platforms, "Final Report: News Industry Subcommittee Report," Chicago Booth Stigler Center, 2019, at, pp. 139-205. Bertin Martens et al., "The Digital Transformation of News Media and the Rise of Disinformation and Fake News," European Commission, Joint Research Centre Technical Report Working Paper 2018-02, April 2018, at <https://ec.europa.eu/jrc/sites/default/files/jrc111529.pdf>.

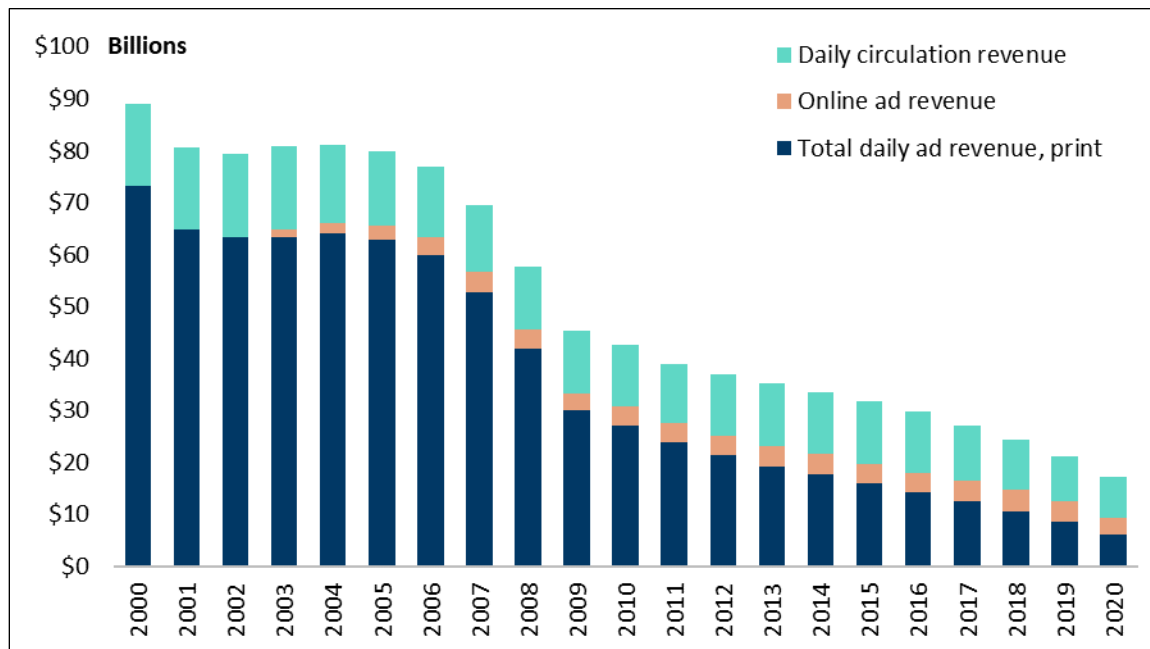
<sup>15</sup> For example, see Lisa George and Joel Waldfogel, "The *New York Times* and the Market for Local Newspapers," *American Economic Review*, vol. 96, no. 1 (2006), pp. 435-447.

<sup>16</sup> CRS analysis of data from S&P Global Market Intelligence. Inflation adjustment based on the Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers.

have grown in importance but not by enough to prevent a sharp overall decline in industry revenues.

**Figure 2. Sources of Daily Newspaper Industry Revenue**

Adjusted for Inflation in 2020 Dollars



**Source:** CRS analysis of data from S&P Global Market Intelligence. Inflation adjustment based on Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers.

**Notes:** Advertising revenue includes both national and local advertising. In nominal terms, newspaper publishers generated \$48.2 billion in 2004. S&P Global ceased tracking these data in 2021; figures are the most recent available. Historical data through 2012 come from the News Media Alliance, or NMA. From 2013 on, S&P's estimates are based on analysis of financial statements from publicly traded U.S. newspaper publishing companies.

## Online Competition for Readers: Free Versus Paid Subscriptions

The decline in daily circulation revenue coincided with a decline in daily circulation, including both print and online subscriptions. Pew Research Center reports that in 2000, U.S. newspapers collectively had an average weekday (Monday-Friday) circulation of 55.8 million in the United States and an average Sunday circulation of 59.4 million.<sup>17</sup> Pew estimates that in 2020, these figures had dropped by about 56%, to an average weekday circulation of 24.3 million and an average Sunday circulation of 25.8 million.<sup>18</sup> During that same period, however, newspaper subscription prices increased. Adjusted for inflation in 2020 dollars, the average revenue per subscriber grew from \$279/subscriber in 2000 to \$309/subscriber in 2020.<sup>19</sup>

<sup>17</sup> "Newspapers Fact Sheet," Pew Research Center, June 29, 2021, at <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>. Pew bases its 2000 circulation figures on data reported by the trade publication *Editor and Publisher*.

<sup>18</sup> Ibid. The estimates for 2020 are based on Pew's analysis of data from the Alliance for Audited Media, which exclude figures from the *New York Times*, the *Wall Street Journal*, and the *Washington Post*.

<sup>19</sup> CRS analysis of data from S&P Global Market Intelligence. Inflation adjustment based on the BLS Consumer Price Index for All Urban Consumers.



Meanwhile, newspaper publishers weighed how many news stories, if any, to make available online at no cost. In 1996, when *The Wall Street Journal* launched its online edition, its publisher Dow Jones & Company opted to charge readers.<sup>20</sup> The New York Times Company's strategy has evolved. After initially beginning a subscription program in 2005, the publisher opted in 2007 to make the website of its namesake newspaper available at no charge. In reaching its decision, executives stated that the value of online advertising generated from readers finding *New York Times* articles via search engines and links on other sites outweighed the potential of lost online subscription revenue.<sup>21</sup> In 2011, the New York Times Company began to limit monthly access to free articles on the *New York Times* website to 20 per month.<sup>22</sup>

A 2017 article in the *Columbia Journalism Review* found that most of the 25 most popular U.S. daily newspapers enabled visitors to access some or all of their online news stories at no charge, especially visitors from online platforms and social media.<sup>23</sup>

Also according to that 2017 article, citing an interview with the senior vice president for digital marketing at Tribune Publishing (formerly called "Tronc"),<sup>24</sup> "[t]he reason Tronc publications make an exception for search referrals ... was to comply with Google's First Click Free program. Google normally only indexes publically-available Web pages, that is, those not behind paywalls."<sup>25</sup> Likewise, Tribune opted to enable users referred from social media platforms to access stories at no charge. In October 2017, Google ended its policy that led some media outlets with strict paywalls to appear lower in its search engine results, enabling publishers to select the number of articles a Google user could read without paying.<sup>26</sup> In March 2018, it launched a "Subscribe with Google" feature aiming to make it easier for Google users to subscribe to news publications.<sup>27</sup>

Trade publication *Digiday* reported that as of December 2022, news publishers' online subscription strategies continued to vary.<sup>28</sup> Some require subscriptions to access certain or all stories; some allow readers to access a limited number of articles at no charge, while others offer a combination. In its analysis of these strategies, *Digiday* stated

The *L.A. Times*, *Boston Globe* and Chicago Tribune are regionally focused publications that offer some of the fewest member-exclusive benefits in the news cohort, excluding philanthropically supported publications, while also having some of the most expensive

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<sup>20</sup> Laurie Flynn, "Wall Street Journal Bets Internet Readers Will Pay a Fee," *New York Times*, April 20, 1996, at <https://www.nytimes.com/1996/04/29/business/wall-street-journal-bets-internet-readers-will-pay-a-fee.html>.

<sup>21</sup> Richard Pérez-Peña, "Times to Stop Charging for Parts of Its Website," *New York Times*, September 18, 2007, at <https://www.nytimes.com/2007/09/18/business/media/18times.html>.

<sup>22</sup> Jeremy W. Peters, "The New York Times Announces Subscription Plan," *New York Times*, March 17, 2011, at <https://www.nytimes.com/2011/03/18/business/media/18times.html>.

<sup>23</sup> Ariel Stulberg, "In Paywall Age, Free Content Remains King for Newspaper Sites," *Columbia Journalism Review*, September 22, 2017, at [https://www.cjr.org/united\\_states\\_project/newspaper-paywalls.php](https://www.cjr.org/united_states_project/newspaper-paywalls.php) (hereinafter Stulberg, "In Paywall Age," 2017).

<sup>24</sup> Robert Channick, "Tronc Changing Name Back to Tribune Publishing," *Chicago Tribune*, October 4, 2018, at <https://www.chicagotribune.com/business/ct-biz-tronc-name-change-tribune-publishing-20181004-story.html>.

<sup>25</sup> Stulberg, "In Paywall Age," 2017.

<sup>26</sup> Gerry Smith, "Google Said to Priorities Stories for Papers' Paying Readers," *The Boston Globe*, March 14, 2018.

<sup>27</sup> Jim Albrecht, "Introducing Subscribe with Google," Google Blog, March 20, 2018, at <https://blog.google/outreach-initiatives/google-news-initiative/introducing-subscribe-google/>.

<sup>28</sup> Li Lu, "Digiday+ Research: News Publisher Subscription Index," *Digiday*, December 20, 2022, at <https://digiday.com/media/digiday-research-news-publisher-subscription-index/> (hereinafter Lu, "Digiday+ Research," 2022).

base annual subscription prices, only surpassed by *The Wall Street Journal* and rivaled by *The New York Times*.<sup>29</sup>

Both the *Wall Street Journal* and the *New York Times* use “data and machine learning” to tailor the number of free articles available individually to nonsubscribers.<sup>30</sup> According to *Digiday*, the *New York Times* limits access to some content, which it makes exclusively available to subscribers.<sup>31</sup> The *Wall Street Journal* allows nonsubscribers to access any and all content up to a certain number of articles within a set time.<sup>32</sup>

## Online Competition for Advertising

The internet transformed the local advertising market for newspapers, unleashing competition from online platforms and websites. The launch of the free online-classified advertising website Craigslist in 1996<sup>33</sup> coincided with the falloff in newspapers’ revenue from print classified advertising.<sup>34</sup> In addition, some newspaper publishers invested in online-classified services such as Cars.com, Apartments.com, Autotrader.com, and CareerBuilder.com, which siphoned off classified advertising from newspapers.<sup>35</sup> As described in “Digital Advertising Formats/Types of Expenditures,” compared with other formats, classified advertising represents a relatively small proportion of online advertising spending.

In 2000, print newspapers generated 40% of their total advertising from classified ads. In 2020, print classified advertising generated 15% of total advertising revenue.<sup>36</sup>

Likewise, display advertisers, such as retailers and consumer products manufacturers, shifted their budgets from print newspapers to online platforms and websites as the internet enabled them to target potential customers in new ways.<sup>37</sup> Newspapers typically offer the same advertisement (or ad) to all print readers. In contrast, online platforms, particularly Google and Facebook, can target ads precisely to potential consumers based on the platforms’ access to data about individuals.<sup>38</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Shan Wang, “After Years of Testing, The Wall Street Journal Has Built a Paywall That Bends to the Individual Reader,” *Nieman Lab*, February 22, 2018, at <https://www.niemanlab.org/2018/02/after-years-of-testing-the-wall-street-journal-has-built-a-paywall-that-bends-to-the-individual-reader/>; and Rohit Supekar, “How the New York Times Uses Its Machine Learning to Make Its Paywall Smarter,” NYT Open Blog, New York Times Company, August 10, 2022, at <https://medium.com/timesopen/how-the-new-york-times-uses-machine-learning-to-make-its-paywall-smarter-e5771d5f46f8>.

<sup>31</sup> Lu, “Digiday+ Research,” 2022.

<sup>32</sup> Ibid.

<sup>33</sup> Beth Daley, “Craigslist Turns 25—a Reminder That a More Democratic Version of the Internet Can Still Thrive,” *The Conversation*, February 19, 2020, at <https://theconversation.com/craigslist-turns-25-a-reminder-that-a-more-democratic-version-of-the-internet-can-still-thrive-129875>. Craigslist began as an email listserv in 1995.

<sup>34</sup> Craig Shafer, “Don’t Blame Craigslist for the Decline of Newspapers,” *Politico*, December 13, 2016, at <https://www.politico.com/magazine/story/2016/12/craigslist-newspapers-decline-classifieds-214525/>.

<sup>35</sup> Ibid.

<sup>36</sup> CRS analysis of data from S&P Global Market Intelligence. Figures not adjusted for inflation.

<sup>37</sup> Display advertisements appear alongside editorial content. They often contain graphics or other artwork to promote products and/or services.

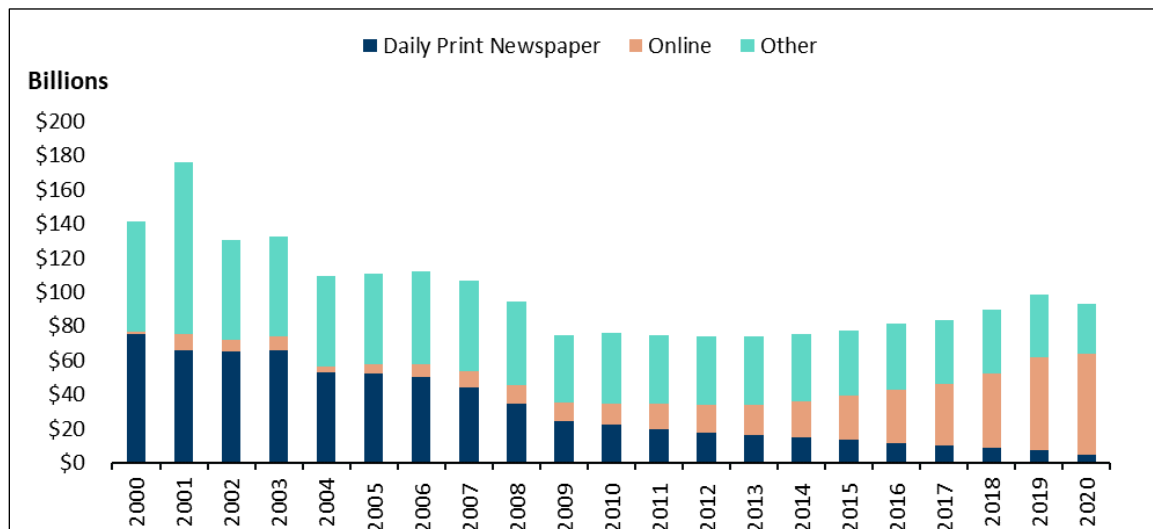
<sup>38</sup> “Digital Versus Traditional Marketing: What Today’s C-Suite Needs to Know,” Wharton Online (blog), University of Pennsylvania, July 17, 2019, at <https://online.wharton.upenn.edu/blog/digital-versus-traditional-marketing/>.

As of October 2021, Google and Facebook collectively received 52.7% of online advertising revenue nationwide.<sup>39</sup> In particular, these two companies benefited from a self-reinforcing cycle of attracting users and advertisers. The more users Google and Facebook attract, the more data they can collect, and the easier it is to provide the users with targeted advertisements, thereby enabling those companies to maintain a competitive advantage vis-à-vis other online media outlets in generating online advertising revenues.

As **Figure 3** illustrates, printed newspapers' share of overall advertising spending has plummeted over the past 20 years. The share was 53% of the \$142 billion spent in 2000 (adjusted for inflation in 2020); it was 5% of the \$93 billion spent in 2020. In contrast, online media's share increased from 1% in 2000 to 63% in 2020. Thus, while newspaper publishers rely on online platforms to reach readers and advertisers, the publishers also compete with those platforms, either directly or indirectly, for access to their readers' data and revenues from advertisers.

**Figure 3. Advertising Revenue Shares, by Medium**

Figures in \$ Billions, Adjusted for Inflation in 2020 Dollars



**Source:** CRS analysis of data from Magna Global via S&P Global Market Intelligence and the BLS Consumer Price Index for All Urban Consumers.

**Notes:** “Newspapers” revenues include those generated by paper-based circulation. “Online” includes advertising revenues generated by advertising over the internet and over mobile, including the websites and mobile apps of newspapers. “Other” includes advertising revenues generated by broadcast and radio television stations and networks, cable and satellite operators and networks, magazines, movie theaters and other out-of-home media, and outdoor media (e.g., billboards).

The few daily newspapers with national and international readership—such as the *New York Times*, the *Wall Street Journal*, *USA Today*, and the *Washington Post*—have experienced different advertising trends than those with primarily local or regional readership. Journalism professor Penelope Muse Abernathy wrote in a June 2020 report that national newspapers “have a journalistic mandate and a business model, which rely on scale and reach that are very different from that of either the state and metro papers or smaller community papers.”<sup>40</sup> This scale and

<sup>39</sup> Zak Stambor, “Amazon Has a Larger Advertising Business than YouTube,” *Insider Intelligence eMarketer*, February 4, 2022, at <https://www.insiderintelligence.com/content/amazon-has-larger-advertising-business-than-youtube>.

<sup>40</sup> Penelope Abernathy, *News Deserts and Ghost Newspapers: Will Local News Survive?*, Center for Innovation and (continued...)

reach enable the national papers to attract national advertisers in addition to local advertisers, thereby generating more advertising revenue than their local counterparts. National advertisers, in order to reach readers nationwide, prefer to negotiate a “seamless and turnkey” arrangement rather than engage in multiple negotiations with various local newspaper publishers.<sup>41</sup> In addition, as described below, large publishers are less reliant on advertising technology intermediaries, such as Google, and are therefore able to retain a greater share of online advertising revenues than small publishers. For example, the *New York Times* generated approximately 62% of its advertising revenue from online advertising in 2021.<sup>42</sup> In contrast, that same year, two leading publishers of local daily newspapers—Lee Enterprises Inc. and DallasNews Corp.—generated 37.6%<sup>43</sup> and 35.2%,<sup>44</sup> respectively, of their total advertising revenue from online advertising.

## Effects of Revenue Declines

Declining revenue prompted some news publishers to close or reduce publication frequency, resulting in staff layoffs. According to one count, between 2004 and 2022, 242 daily newspapers in the United States ceased publication.<sup>45</sup> As of July 2022, 42 of the 100 largest newspapers delivered print editions six or fewer times per week, including 11 that publish print editions one or two times per week.<sup>46</sup>

The widespread economic and social impact of the Coronavirus Disease 2019 (COVID-19) pandemic in 2020 led to a further decline in the number of daily newspapers, as advertisers cut back spending.<sup>47</sup> In July 2020, Wyoming became the first state without a daily printed newspaper on Monday mornings.<sup>48</sup>

New owners of newspaper publishers—in many cases private equity firms, hedge funds, or other investment groups—took on debt to acquire the newspapers, promising investors that they would earn a return on their investments by cutting costs.<sup>49</sup> In some instances, such cost cutting involved selling real estate and equipment and laying off employees.<sup>50</sup>

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Sustainability in Local Media, University of North Carolina at Chapel Hill, June 2020, p. 13, at <https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/>.

<sup>41</sup> Sara Fischer, “Gannett, McClatchy Team Up to Sell Ads,” *Axios*, February 15, 2021, at <https://www.axios.com/gannett-mcclatchy-advertising-sales-local-f87fa8db-cc60-4bf6-9ea4-a8b033d6aa52.html>.

<sup>42</sup> New York Times Company, SEC Form 10-K for the fiscal year ended December 26, 2021, p. 3 (hereinafter NYT 2021 SEC Form 10-K).

<sup>43</sup> Lee Enterprises Inc., SEC Form 10-K for the fiscal year ended September 26, 2021, p. 16.

<sup>44</sup> DallasNews Corporation, SEC Form 10-K for the fiscal year ended December 31, 2021, p. 13.

<sup>45</sup> Penny Abernathy, *The State of Local News*, Medill Center, Northwestern University, June 29, 2022, at <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/#local-news>. The loss includes more than 100 dailies that shifted to weekly publications.

<sup>46</sup> Greg Burns, *The Future of the Daily Newspaper*, Medill Center, Northwestern University, July 27, 2022, at <https://localnewsinitiative.northwestern.edu/posts/2022/07/27/frequency-state-of-local-news/>.

<sup>47</sup> Erika Bolstad, “COVID-19 Is Crushing Newspapers, Worsening Hunger for Accurate Information,” Pew Charitable Trusts, September 8, 2020, at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/08/covid-19-is-crushing-newspapers-worsening-hunger-for-accurate-information>.

<sup>48</sup> Joshua Benton, “Want to Read a Local Newspaper on a Monday Morning in Wyoming? The Last One Printing Is About to Stop,” *Nieman Lab*, July 15, 2020, at <https://www.niemanlab.org/2020/07/want-to-read-a-local-newspaper-on-a-monday-morning-in-wyoming-the-last-one-still-printing-is-about-to-stop>.

<sup>49</sup> Anna Nicolau and James Fontanella-Khan, “The Fight for the Future of America’s Local Newspapers,” *Financial Times*, January 21, 2021, at <https://www.ft.com/content/5c22075c-f1af-431d-bf39-becf9c54758b>.

<sup>50</sup> McKay Coppins, “A Secretive Hedge Fund Is Gutting Newsrooms,” *The Atlantic*, October 14, 2021, at <https://www.theatlantic.com/magazine/archive/2021/11/alden-global-capital-killing-americas-newspapers/620171/>.

Despite their declining revenues, newspaper publishers continue to employ more news analysts, reporters, and journalists than their online counterparts do. In 2022, newspaper publishers employed about 13,500 news analysts, reporters, and journalists, or about 28.7% of the 47,100 employed across industries.<sup>51</sup> Among different types of media, this amount is second only to television broadcasters, which employ about 14,500 (30.8%). Online-only publishers employed about 3,800 (8.0%).<sup>52</sup>

Research indicates that local newspaper closures and employee layoffs can increase the financing costs of both local governments and private corporations. A study published in 2020 found that because “local newspapers hold their governments accountable, keeping municipal borrowing costs low and ultimately saving local taxpayers money,” closures can “have a significantly adverse impact on municipal borrowing costs in the long run.”<sup>53</sup> Likewise, a study published in 2021 found that newspapers play an important role in enabling shareholders to monitor publicly traded firms.<sup>54</sup>

## Newspaper Publishers’ Relationship with Online Platforms

Some online platforms allow consumers to access news articles, or portions of news articles, without a direct subscription to the newspaper. This section discusses how two types of online platforms—news aggregators and social media platforms—can both benefit and harm local newspapers.<sup>55</sup>

### News Aggregators

News aggregators (e.g., Google News, Apple News, and SmartNews) curate content from various news publishers, including local and digital-native newspapers; some aggregators also publish original content.<sup>56</sup> Some aggregators link only to headlines of the news articles, while others include multiple sentences or photographs.<sup>57</sup> Aggregators rely on online advertising and subscriptions for their revenue.<sup>58</sup> They bundle articles and display them in a particular order, often

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<sup>51</sup> BLS, “Data Tools; Employment Projections; National Employment Matrix; 27-3023 News Analysts, Reporters, and Journalists; Employment by Industry, Occupation, and Percent Distribution, 2021 and Projected 2031,” at <https://data.bls.gov/projections/nationalMatrix?queryParams=27-3023&ioType=o>.

<sup>52</sup> BLS’s industry subsector category of “Other Information Services” includes “group establishments ... operating Web sites Web sites that use search engines to allow for searching information on the Internet, or publishing and/or broadcasting content exclusively on the Internet.” BLS, “Industries at a Glance; Other Information Services: NAICS 519,” at <https://www.bls.gov/iag/tgs/iag519.htm>.

<sup>53</sup> Pengjie Gao, Chang Lee, and Dermot Murphy, “Financing Dies in Darkness? The Impact of Newspaper Closures on Public Finance,” *Journal of Financial Economics*, vol. 135, no. 2 (2020), p. 445.

<sup>54</sup> Min Kim et al., “Stop the Presses! Or Wait, We Might Need Them: Firm Responses to Local Newspaper Closures and Layoffs,” *Journal of Corporate Finance*, vol. 69 (2021), p. 102035, at <https://www.sciencedirect.com/science/article/pii/S0929119921001577?via%3Dihub>.

<sup>55</sup> Although this report focuses on news aggregators and social media platforms, some of these issues may be applicable to other online platforms.

<sup>56</sup> For example, Yahoo News publishes original content; see <https://news.yahoo.com/originals/>.

<sup>57</sup> Shira Perlmutter, *Copyright Protections for Press Publishers*, U.S. Copyright Office, Library of Congress, Washington, DC, June 2022, p. 39, at <https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>.

<sup>58</sup> For example, Google News and SmartNews obtain their revenue from online advertising, while Apple News+ is subscription-based.



using proprietary algorithms that weigh factors such as relevance, freshness, and authoritativeness of the content.<sup>59</sup> Details about each aggregator's ranking process, such as the weight given to each factor used to prioritize certain news articles, are not publicly disclosed by the companies.

Some newspapers have attracted readers by working with aggregators, particularly popular ones.<sup>60</sup> Limiting aggregators' access to a newspaper's content can reduce overall news consumption, including on the newspaper publisher's own websites and apps.<sup>61</sup> However, aggregators can make it difficult for newspaper publishers to create direct relationships with their readers, potentially resulting in newspapers having fewer subscribers and limited data about their readers.<sup>62</sup> The National Media Association has asserted that widespread aggregation may significantly impede the ability of press publishers to obtain payments from potential subscribers.<sup>63</sup> One study found that when an aggregator displayed more information about a news article, such as longer snippets or accompanying images, readers were less likely to click through to the original article on the publisher's platform.<sup>64</sup> However, the same study found that when choosing among several related articles, readers tended to pick the one with more information displayed.

The visibility of each publisher's content can depend on the aggregator. Newspaper editors may have little or no control over the visibility of articles on an aggregator's website, including where the aggregator lists content on its main page or in response to a user's search. In an effort to obtain a more prominent position on aggregators' platforms, some newspapers might focus on producing content that they expect will be ranked higher by the aggregators' algorithms.<sup>65</sup>

<sup>59</sup> For example, Apple presents content selected by editors under "Top Stories" and content selected by its algorithms under "Trending Stories" on its Apple News feed, while Google uses only algorithms to rank content in its Google News feed. See Apple, "See News Stories Chosen Just for You on iPhone," Apple iPhone User Guide, accessed on September 21, 2021, at <https://support.apple.com/guide/iphone/see-news-stories-chosen-just-for-you-iph5b557ed3d/ios>; and Google, "Surfacing Useful and Relevant Content," Google News Initiative, accessed on September 21, 2021, at <https://newsinitiative.withgoogle.com/hownewsworks/approach/surfacing-useful-and-relevant-content/>.

<sup>60</sup> For example, Robert Thomson, CEO of News Corporation, the publisher of the *Wall Street Journal*, stated that the "Apple News partnership allows us to ... bring in a significantly new audience that we would hope to graduate to a paid *WSJ* subscription over time." See "Q4 2020 News Corp. Earnings Call—Final," CQ-Roll Call, Inc., August 6, 2020.

<sup>61</sup> Lesley Chiou and Catherine Tucker, "Content Aggregation by Platforms: The Case of the News Media," *Journal of Economics and Management Strategy*, vol. 26, issue 4 (2017), pp. 782-805, at <https://doi.org/10.1111/jems.12207>; and Joan Calzada and Ricard Gil, "What Do News Aggregators Do? Evidence from Google News in Spain and Germany," *Marketing Science*, vol. 39, issue 1 (2020), pp. 134-167, at <https://doi.org/10.1287/mksc.2019.1150>.

<sup>62</sup> For example, this was the reason the *New York Times* stopped partnering with Apple News. See Kellen Browning and Jack Nicas, "The New York Times Pulls Out of Apple News," *New York Times*, June 29, 2020, at <https://www.nytimes.com/2020/06/29/technology/new-york-times-apple-news-app.html>.

<sup>63</sup> News Media Alliance Initial Written Comments regarding Response Request for Comments to Library of Congress, Copyright Office, "Publishers' Protections Study: Notice and Request for Public Comment, Notice of Inquiry," 86 *Federal Register* 57621, October 2021, pp. 16-17, at <https://www.regulations.gov/docket/COLC-2021-0006/comments> (hereinafter News Media Alliance Comments for 2022 Copyright Office Report).

<sup>64</sup> Chrysanthos Dellarocas et al., "Attention Allocation in Information-Rich Environments: The Case of News Aggregators," *Management Science*, vol. 62, no. 9 (September 2016), pp. 2457-2764, at <https://doi.org/10.1287/mnsc.2015.2237>.

<sup>65</sup> Stigler Committee on Digital Platforms, "Final Report: News Industry Subcommittee Report," Chicago Booth Stigler Center, 2019, at <https://research.chicagobooth.edu/stigler/media/news/committee-on-digital-platforms-final-report>, pp. 139-205; and Bertin Martens et al., *The Digital Transformation of News Media and the Rise of Disinformation and Fake News*, European Commission, Joint Research Centre Technical Report Working Paper 2018-02, April 2018, at <https://ec.europa.eu/jrc/sites/default/files/jrc111529.pdf>.

Some aggregators have created sections dedicated to local news.<sup>66</sup> One study found that after Google News was redesigned to place links to geo-targeted local news content on its Home Page, local news consumption among heavy Google News users rose by 25%, with no evidence that consumers were visiting Google News rather than directly visiting the publishers' platforms.<sup>67</sup> However, another study found that Google's algorithms might rank content from local newspapers lower than content from national newspapers, displaying local newspapers' content less prominently.<sup>68</sup>

Specific terms of each publisher's agreement with an aggregator typically are not publicly available. Although some aggregators provide information on the amount of revenue they provide publishers,<sup>69</sup> oftentimes details about an agreement between a specific publisher and aggregator are available only from news articles by individuals familiar with the negotiations.<sup>70</sup> Popular newspapers with a large customer base may be able to negotiate more favorable terms with aggregators and receive a larger share of revenue than smaller newspapers.

Some news aggregators may be able to leverage greater bargaining power over newspaper publishers or obtain a greater share of the advertising revenue through their parent company's other products and services. For example, Microsoft integrates its news aggregator in its web browsers;<sup>71</sup> Microsoft and Google embed a preview of the news aggregator results in response to some news-related searches on their respective search engines;<sup>72</sup> and Apple preinstalls Apple News on its hardware products.<sup>73</sup> Integrating news aggregators into other platforms or devices may be convenient for some publishers and consumers, but this integration may make it difficult for news aggregators that do not operate similar access points to compete, increasing the market power of the integrated aggregators.

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<sup>66</sup> For example, Google News has a section dedicated to local news where users can prioritize content from specific cities and zip codes, and SmartNews allows users to search for news in selected cities.

<sup>67</sup> Lisa George and Christiaan Hogendorn, "Local News Online: Aggregators, Geo-Targeting, and the Market for Local News," *Journal of Industrial Economics*, vol. 68, issue 4 (December 2020), pp. 780-818.

<sup>68</sup> Sean Fischer, Kokil Jaidka, and Yphtach Lelkes, "Auditing Local News Presence on Google News," *Nature Human Behavior*, vol. 4 (December 2020), pp. 1236-1244, at <https://doi.org/10.1038/s41562-020-00954-0>.

<sup>69</sup> For example, according to Apple News, publishers keep all of the advertising revenue generated from ads sold by the publisher and 70% of the revenue from ads sold by Apple. In October 2020, Google stated that it would spend \$1 billion investing in partnerships with newspaper publishers in a new platform, Google News Showcase. Google stated that it had signed partnerships with nearly 200 leading publications across Germany, Brazil, Argentina, Canada, the United Kingdom, and Australia; it currently is not available in the United States. Apple, "Publishing on Apple News," Apple Developer, accessed on November 17, 2021, at <https://developer.apple.com/news-publisher/>; and Sundar Pichai, "Our \$1 Billion Investment in Partnerships with News Publishers," Google Blog, October 1, 2020, at <https://blog.google/outreach-initiatives/google-news-initiative/google-news-showcase/>.

<sup>70</sup> For example, Apple was reportedly seeking to take 50% of the revenue generated through Apple News+, the subscription-based version of Apple News that provides additional content, and a Google spokesperson stated that publishers received over 70% of the ad revenue when they used Google tools to monetize their content. Lukas Alpert, "Facebook Chief Mark Zuckerberg Urges Tech Rivals to Pay for News," *Wall Street Journal*, October 25, 2019, at <https://www.wsj.com/articles/facebook-launches-news-service-for-select-users-11571997601>; and Apple, "Apple News+," accessed on January 14, 2022, at <https://www.apple.com/apple-news/>.

<sup>71</sup> In 2021, Microsoft launched a news aggregator, Microsoft Start, to replace Microsoft News. Sarah Perez, "Microsoft Launches a Personalized News Service, Microsoft Start," *TechCrunch*, September 7, 2021, at <https://techcrunch.com/2021/09/07/microsoft-launches-a-personalized-news-service-microsoft-start/>.

<sup>72</sup> Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary, *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*, October 6, 2020, p. 187, at [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf).

<sup>73</sup> Apple, "iPad & iPhone," App Store Preview, accessed on October 19, 2021, at <https://apps.apple.com/us/developer/apple/id284417353?mt=12#see-all/i-phone/i-pad-apps>.

## Social Media Platforms

Social media platforms distribute newspapers' content in a variety of ways.<sup>74</sup> Newspapers can create their own social media accounts, individual reporters can post information, and other users can post and share links to newspaper articles. In these cases, content from newspapers is intermixed with content from other sources. Some social media platforms have created sections of their platforms that provide news articles only from selected newspapers, including local ones.<sup>75</sup>

Similarly to news aggregators, social media platforms can increase the visibility of some newspaper articles while diminishing it for others. These platforms have an incentive to amplify publishers' content that they expect will increase user engagement, which could increase their revenue from online advertising.<sup>76</sup> Some social media platforms recommend content, which can include newspaper content that increases user engagement, even if nobody in the user's network directly shares the article. One study found that social media platforms could increase online news consumption, potentially reducing the amount of time readers spend on news publishers' platforms.<sup>77</sup> Some studies have found that when users are unable to access news content through social media, more individuals than not will go directly to the news publishers' platform;<sup>78</sup> other studies have found that fewer individuals will do so.<sup>79</sup> Some social media platforms have developed technologies that make it possible for publishers to obtain more detailed information about their readers and target potential readers;<sup>80</sup> some newspapers, particularly smaller ones, may not have direct access to these technologies.

The complexities of social media platforms' relationship with newspapers mirror those of news aggregators. Detailed information about social media platforms' agreements with newspaper publishers typically are not publicly available. For example, when Meta launched a news section on its platform Facebook, it reportedly paid licensing fees to only some of the publishers whose articles it republished, with the amount depending on the size of the publisher.<sup>81</sup> Meta subsequently stated that it would pay \$5 million to support local journalists to "regularly publish written, public-interest journalism focused on a local community," with precedence given to areas

<sup>74</sup> News publishers can be affected by other aspects of social media, such as users posting information about an incident (e.g., car accident, shooting), particularly if it goes viral. These potential effects are beyond the scope of this report.

<sup>75</sup> For example, Facebook launched a section exclusively for news—Facebook News—in June 2020. See Sarah Perez, "Facebook Launches to All U.S. with Addition of Local News and Video," *TechCrunch*, June 9, 2020, at <https://techcrunch.com/2020/06/09/facebook-news-launches-to-all-in-u-s-with-addition-of-local-news-and-video/>; and Facebook, "How Facebook News Works," *Facebook News*, at <https://www.facebook.com/news/howitworks>.

<sup>76</sup> Online advertising is the primary source of revenue for most social media platforms. For example, in 2020, online advertising made up 98% of Facebook's total revenue and 86% of Twitter's. See Facebook Inc. SEC Form 10-K for the year ending December 31, 2020, and Twitter Inc. SEC Form 10-K for the year ending December 31, 2020.

<sup>77</sup> Sinan Aral and Michael Zhao, "Social Media Sharing and Online News Consumption," SSRN, posted February 14, 2019, at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3328864](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328864).

<sup>78</sup> See, for example, Josh Schwartz, "What Happens When Facebook Goes Down? People Read the News," *Nieman Lab*, October 22, 2018, at <https://www.niemanlab.org/2018/10/what-happens-when-facebook-goes-down-people-read-the-news/>.

<sup>79</sup> See, for example, Catarina Sismeiro and Ammara Mahmood, "Competitive vs. Complementary Effects in Online Social Networks and News Consumption: A Natural Experiment," *Management Science*, vol. 64, no. 11 (November 2018), pp. 5014-5037.

<sup>80</sup> For example, Facebook offers various tools, such as Page Insights, that provide information on the number of views and other metrics for each piece of content. Facebook, "The Journalist's Guide to Facebook and Instagram," Facebook Journalism Project, May 2021.

<sup>81</sup> Lukas Alpert and Sahil Patel, "With Facebook's Coming News Tab, Only Some Will Get Paid," *Wall Street Journal*, September 30, 2019, at <https://www.wsj.com/articles/with-facebooks-coming-news-tab-only-some-will-get-paid-11569852600>.



that “are not currently served by an existing journalism entity.”<sup>82</sup> Recent layoffs at Meta might affect its various news-related efforts.<sup>83</sup> Research firm eMarketer estimates that as of May 2023, 52.4% of the U.S. population uses Facebook at least once per month.<sup>84</sup>

## Role of Copyright Laws

In the United States, several provisions of copyright law protect publishers’ news content. First, a publisher typically owns the copyright in the “collective work” of articles contained in its website or publication.<sup>85</sup> Second, publishers can assert rights in individual articles via the work-made-for-hire doctrine.<sup>86</sup> With respect to photographs, however, it is generally photographers, not publishers, who own the original rights to display those images to the public,<sup>87</sup> although photographers may license or authorize others to sublicense those images to news publishers.<sup>88</sup>

The Copyright Act generally prohibits aggregators and other online platforms from distributing full articles without the express consent of the copyright owner (usually the publisher).<sup>89</sup> The extent of these legal protections, however, is not always clear.<sup>90</sup> For example, Google News provides snippets of news articles on its Home Page and in search results.<sup>91</sup> While Google

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<sup>82</sup> Campbell Brown, “Creating More Opportunities for Independent, Local Writers to Thrive,” Meta Journalism Project, April 29, 2021, at <https://www.facebook.com/journalismproject/apply-platform-independent-writers>.

<sup>83</sup> Sarah Scire, “Meta’s Layoffs Make it Official: Facebook is Ready to Part Ways with the News,” *Nieman Lab*, November 14, 2022, at <https://www.niemanlab.org/2022/11/metass-layoffs-make-it-official-facebook-is-ready-to-part-ways-with-the-news/>.

<sup>84</sup> eMarketer, “Social Network Users Penetration by Platform, U.S., 2023,” May 2023. The second-most popular social platform, by U.S. user penetration, is Instagram, which is accessed at least once per month by 39.8% of the U.S. population. Facebook (now Meta) acquired Instagram in 2012. Jenna Wortham, “It’s Official: Facebook Closes Its Acquisition of Instagram,” *New York Times*, September 6, 2012, at <https://archive.nytimes.com/bits.blogs.nytimes.com/2012/09/06/its-official-facebook-closes-its-acquisition-of-instagram/>.

<sup>85</sup> *Ibid.* The Copyright Act defines *collective work* as a work “in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. §101. In addition, the Copyright Act considers collective works as a type of compilation, which the act in turn defines as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.”

<sup>86</sup> “Work made for hire” is a category of works created for an employer or commissioning party, for which, for copyright purposes, the individual(s) who create the work are not considered the author(s) or initial owner(s). Instead, the author is either (1) the employer of that individual, if the work is prepared within the scope of employment or (2) the entity who commissions or orders the creation of the work, provided that the work fits within one of nine specific categories and the parties expressly agree in a signed writing that “the work shall be considered a work made for hire.” 17 U.S.C. §101.

<sup>87</sup> 17 U.S.C. §101(5).

<sup>88</sup> Comments of the National Press Photographers Association Joined by the American Society of Media Photographers in response to U.S. Copyright Office’s Request for Additional Comments for Study on Ancillary Copyright Protections for Publishers, November 9, 2021, p. 3, at <https://www.regulations.gov/comment/COLC-2021-0006-0053>. See also Associated Press, “AP Images: License Images and Photos,” at <https://www.apimages.com/license-pictures>.

<sup>89</sup> 17 U.S.C. §106(3).

<sup>90</sup> In addition to immunity afforded by copyright laws, online platforms—including news aggregators—might receive federal immunity from liability for content provided by a third party (e.g., the news publisher) under §230 of the Communications Act of 1934. For more information, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

<sup>91</sup> Google, “Best Practices for Your Article Pages,” Google Publisher Center Help, at <https://support.google.com/news/publisher-center/answer/9607104?hl=en>.

considers this fair use of publishers' content,<sup>92</sup> some newspaper publishers have claimed that the Copyright Act does not provide a clear-cut standard to determine what constitutes fair use.<sup>93</sup>

In comments to the Copyright Office, publishers claimed that the majority of their content is distributed by Google and Facebook, who in turn collect, post, and disseminate newspaper publishers' content without the publishers' permission.<sup>94</sup> As a result, the publishers claimed, the publishers are losing access to potential subscribers and advertisers, further depressing their revenues.<sup>95</sup>

In June 2022, in response to a request from several members of the Senate Committee on the Judiciary, the U.S. Copyright Office published a report entitled *Copyright Protections for Publishers*.<sup>96</sup> The report assessed the viability of establishing "ancillary copyright" protections for press publishers, similar to protections implemented in the European Union, which would require online news aggregators to pay publishers for excerpts of content they provide for others to view.

The Copyright Office did not recommend adopting additional copyright-like rights for publishers, concluding the following:

[A]ncillary copyright protections have not been shown to be necessary in light of publishers' existing rights, and would likely be ineffective so long as publishers depend on news aggregators for discoverability. Moreover, to the extent that any ancillary copyright protections would lack traditional copyright limitations and exceptions, they would raise significant policy and Constitutional concerns.<sup>97</sup>

Furthermore, the Copyright Office stated that the publishers and online platforms that commented on the report "emphasize[d] that they see the challenges publishers face as more a matter of competition policy than copyright."<sup>98</sup> In its 2021 annual report, newspaper publisher Gannett stated, "We generally are not compensated for the consumption of our original content on third-party digital products and social platforms."<sup>99</sup>

## Newspaper Websites: Flow of Advertising Revenue

As discussed in "Newspaper Revenue Trends," online advertising has become a growing source of revenue for newspaper publishers (see **Figure 2**). Nevertheless, that revenue has been insufficient to compensate for the decline in print advertising. More generally, a proliferation of options has constrained the prices media outlets can charge for online advertising.<sup>100</sup>

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<sup>92</sup> Richard Gingras, "Setting the Record Straight on News," Google News Initiative Blog, June 26, 2020, at <https://blog.google/outreach-initiatives/google-news-initiative/setting-record-straight-news/>.

<sup>93</sup> Johannes Munter, "Fairer Fair Use," News Media Alliance, February 27, 2021 at <https://www.newsmediaalliance.org/fairer-fair-use/>.

<sup>94</sup> News Media Alliance Comments for 2022 Copyright Office Report, pp. 2-3, 8.

<sup>95</sup> Ibid., pp. 2-3. The News Media Alliance claims that the Journalism Competition and Preservation Act of 2022 (JCPA)—described in "Amending Clayton Act to Place Restrictions on Ad Tech Ownership: AMERICA Act"—by amending antitrust laws temporarily, would "allow press publishers to collectively negotiate with Facebook and Google for fair compensation for the use of their content." Ibid., p. 23.

<sup>96</sup> Shira Permuter, *Copyright Protections for Press Publishers*, U.S. Copyright Office, Washington, DC, June 2022, at <https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>.

<sup>97</sup> Ibid., p. 2.

<sup>98</sup> Ibid.

<sup>99</sup> Gannett Co., Inc. SEC Form 10-K for the fiscal year ended December 31, 2021, p. 21 (hereinafter Gannett 2021 SEC Form 10-K).

<sup>100</sup> Gannett 2021 SEC Form 10-K, p. 18; and NYT 2021 SEC Form 10-K, p. 11.

To attract readers to their websites and sell online advertisements, newspaper publishers must rely on some of the companies that they compete with for advertising revenue. For example, newspapers rely on Google's search engine and its Google News aggregation service to refer readers to their news sites. In addition, both advertisers and newspaper publishers rely on Google to supply the technology necessary to place online advertisements.

This section describes how the structure of the online advertising industry—particularly the structure of the automated, or *programmatic*, advertising industry—affects the flow of advertising revenue to newspaper publishers, and the role of Google in the advertising technology supply chain.

## Digital Advertising Formats/Types of Expenditures

Digital advertising typically appears in one of six forms:<sup>101</sup>

- **Search advertising** is the term used to describe listings of advertisers returned in response to a consumer's web search query. The advertisers pay to have their names and website links included or prioritized among the search results. Search accounted for an estimated 40.2% of the \$209.7 billion in U.S. digital advertising expenditures in 2022.
- **Digital display advertising** describes the boxes on websites, apps, or platforms that appear along the top of the screen as a banner ad or elsewhere on the screen of a desktop/laptop computer, mobile device, or television connected to the internet.<sup>102</sup> Digital display represented an estimated 30.3% of 2022 digital ad spending in the United States.
- **Video advertising** refers to online advertisements that contain video. These accounted for an estimated 22.9% of 2022 U.S. digital advertising expenditures.<sup>103</sup>
- **Classified advertisements** refers to online advertisements listing specific products or services (e.g., jobs and real estate listings).
- **Lead generation** fees refer to payments made by advertisers to website operators that refer qualified potential customers or provide information about consumers who have agreed to be contacted by advertisers. Combined, classified advertising and lead generation represented an estimated 4.2% of 2022 U.S. digital advertising expenditures.
- **Audio formats** are audio-only advertisements. Digital audio advertisements occur in streaming music services and podcasts, among other media. These represented an estimated 2.8% of 2022 U.S. digital advertising expenditures.<sup>104</sup>

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<sup>101</sup> PwC and Internet Advertising Bureau, *Internet Advertising Revenue Report: Full-Year 2022 Results*, April 2023, pp. 15, 22-23, at <https://www.iab.com/insights/internet-advertising-revenue-report-full-year-2022/>.

<sup>102</sup> eMarketer, *Display Ad Spending by Device: U.S., 2023*, March 2023 (describing display ad spending, by device) (available via subscription to Inside Intelligence eMarketer).

<sup>103</sup> eMarketer estimates that in 2022, Meta (via its Facebook and Instagram social media platforms) had a 30.2% share of video advertising spending, compared with an 8.9% share of spending for YouTube and 62% for TikTok. Sara Lebow, "TikTok Threatening YouTube in U.S. Video Ad Spend," eMarketer, May 17, 2023. National newspaper publishers, such as *New York Times* and the *Wall Street Journal*, also sell online video advertising. Michael Sebastian, "Pressing Print's Case at Digital NewFronts," *AdAge*, May 5, 2015.

<sup>104</sup> Although the New York Times Company's podcast "The Daily" is one of the most popular podcasts in the United (continued...)

Thus, the most popular formats of digital advertising are digital search and display, which combined accounted for 70.5%, or \$147.9 billion, of 2022 U.S. digital advertising expenditures. The companies with the largest share of advertising revenues in each format, Google and Meta, respectively, each rely to some extent on news stories and headlines produced by newspaper publishers to generate those revenues.

According to research firm eMarketer, 56.1% share of total search ad spending went to Google, 22.6% to Amazon, and 5.3% to Microsoft.<sup>105</sup> Google News, described in “News Aggregators,” relies on newspaper publishers’ stories and headlines to generate revenues from this format. eMarketer estimates that 36.3% of digital display advertising went to Meta, 9.8% to Google, 6.1% to Amazon, and 2.0% to Microsoft. Most of newspaper publishers’ online advertising revenues come from digital display advertising.<sup>106</sup> Thus, while newspaper publishers, as described in “Social Media Platforms,” rely on Meta’s Facebook and others to promote their websites to readers, the publishers also compete with Meta for display advertising revenues. In addition, Google, as described in “Advertising Technology Stack and Related Antitrust Lawsuits,” plays a significant role as an intermediary in the buying and selling of digital display advertising.

## Reliance on Technology Firms in Programmatic Advertising

The process of purchasing and selling advertising in nondigital media (e.g., print editions of newspapers) has traditionally been relatively straightforward: advertisers or their advertising agencies contacted the media organization’s salespeople (or vice versa), and the parties would negotiate and agree on contracts concerning price, ad placement, and frequency, among other terms and conditions. In the early days of digital advertising, the process was similar, involving bilateral negotiations between representatives of buyers and sellers of advertising.<sup>107</sup> The process was based solely on *contextual targeting tactics*—the placement of an advertisement relevant to a user based on the similarity between the characteristics of the advertisement and the characteristics of the content next to it.<sup>108</sup> **Figure 4** illustrates how a classified advertisement sold directly via a newspaper publisher, based on contextual targeting, appears to a visitor of the newspaper’s website.

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States, with 2 million daily downloads as of January 2020, reports indicate that the most popular podcasts—in part because of the relatively high prices they charge compared with less popular podcasts—may be struggling to sell out their inventory as advertisers’ budgets shrink. Daniel Kostantinovic, “While Top Podcasts Like ‘The Daily’ Struggle to Sell ad Space, Smaller Shows Thrive,” eMarketer, May 9, 2023.

<sup>105</sup> Evelyn Mitchell, “U.S. Search Ad Spending 2022,” eMarketer, September 12, 2022.

<sup>106</sup> For example, of the total amount of online revenue Gannett generated from online advertising and marketing services in 2021, “display advertising either delivered on our products or off-platform on partner channels such as Facebook Instant Articles and Apple News” generated 66%, or \$361 million. Gannett 2021 SEC Form 10-K, pp. 6, 44.

<sup>107</sup> OECD November 2020 Report, p. 14.

<sup>108</sup> Evelyn Mitchell et al., *Programmatic Advertising Explainer*, Insider Intelligence, eMarketer, July 2022, p. 9.

Figure 4. Display Ad Based on Contextual Targeting

The New York Times

What to Read > 2023's Best Books Fiction Nonfiction May Releases Critics' Reviews Editors' Choice

ADVERTISEMENT

The gorgeous  
Norton Centenary Edition

LETTERS  
TO A  
YOUNG  
POET  
TRANSLATED BY  
M. D. R. NORTON  
RAINER  
MARIA  
RILKE

ORDER NOW

100  
NORTON

**13 New Books Coming in May**

A landmark biography of Martin Luther King Jr., Tom Hanks's debut novel, a dystopian work of fiction about the prison industrial complex and more.

**Source:** Joumana Khathib, "13 New Books Coming in May," *New York Times*, May 1, 2023, at <https://www.nytimes.com/2023/05/01/books/new-may-books.html> (visited May 23, 2023).

The buying and selling of digital advertising has become more automated and complex, with algorithmic computer software used to buy and sell advertising on newspapers' websites via intermediaries. The term *programmatic* refers to this automated process of buying and selling advertisements. Research firm eMarketer estimates that as of 2023, programmatic transactions represent 91.1% of digital display advertisement spending in the United States.<sup>109</sup>

Regardless of whether online publishers sell their online display advertising inventory directly to advertisers or indirectly (via intermediaries), the advertisements target specific users at specific times and locations.<sup>110</sup> Instead of purchasing inventory based on the content of a newspaper's online articles, advertisers purchase the inventory based on the ability to reach a specific user. *Behavioral targeting tactics* refers to the placement of an advertisement to a user based on a user's online browsing activity and purchase history.<sup>111</sup> Because online ads are targeted at individual users, a website with three different ad slots on a page with 1 million views has 3 million unique ad units to sell.

<sup>109</sup> Evelyn Mitchell et al. *Programmatic Ad Spending Forecast Q1 2023*, Insider Intelligence, eMarketer, February 2023, p. 2. In contrast to the Internet Advertising Bureau, eMarketer includes video advertising, as well as banners, rich media, sponsorships, and advertisements that appear within social media feeds in its estimates of display advertising. Insider Intelligence, eMarketer, "Display Ad Spending US, 2022 – 2024," March 2023 (available on eMarketer website via subscription).

<sup>110</sup> Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint, p.17. For more information about this lawsuit, see "U.S. Allegations Regarding Google's Conduct." The states originally filed their third amended complaint in November 2021, Third Amended Complaint, The State of Texas, et al. v. Google, LLC, 1:21-CV-06841 (S.D.N.Y. November 12, 2021). The Southern District of New York released a version in January 2022 with fewer redactions. This report references the January 2022 version.

<sup>111</sup> Evelyn Mitchell et al. *Programmatic Ad Spending Forecast Q1 2023*, Insider Intelligence, eMarketer, February 2023, p. 2.



## Direct Programmatic Sales Process: Large Publishers

Large publishers, including publishers of major national newspapers such as the *New York Times* and the *Wall Street Journal*, can sell their advertising inventory directly to advertisers.<sup>112</sup> In a process called *programmatic direct*, large publishers conduct automated private auctions of advertising space or employ salespeople to negotiate longer-term placements with advertisers. Programmatic direct transactions involve one seller and one buyer.<sup>113</sup> The publishers' own ad servers manage the inventory of available advertising spaces and are responsible for the decision logic underlying the final choice of which ad to serve, based on the direct deals reached between the publisher and advertisers.<sup>114</sup> According to Google's internal analysis, large news publishers keep 95% of the revenue when they sell advertisements in this way.<sup>115</sup> eMarketer estimates that programmatic direct represents about three-quarters of programmatic digital display advertising, due primarily to the prominence of social media websites, which account for just over half of all programmatic display advertising spending.<sup>116</sup>

## Indirect Programmatic Sales Process: Smaller Publishers

A publisher cannot forecast precisely how many of its ad spaces will be available to sell directly to advertisers because its inventory depends on how many users actually visit the publisher's website.<sup>117</sup> For this reason, a publisher may find itself with unsold surplus inventory. Enabling publishers to sell inventory that otherwise might be surplus was the original impetus for the development of a specialized *indirect* distribution channel, whereby publishers sell their ad inventory indirectly to advertisers via auctions. *Real-time bidding* (RTB) is an auction-based approach used to buy or sell advertising inventory.<sup>118</sup>

Indirect sales, which account for about one-quarter of programmatic digital display advertising, occur via RTB through centralized electronic trading venues called *ad exchanges* and through networks of publishers and advertisers. Publishers that sell this way permit ad exchanges to auction off some or their entire inventory to advertisers in real time; in return, the ad exchange or network retains a portion of the proceeds. **Figure 5** illustrates how a display advertisement sold via indirect advertising appears to certain readers of an online newspaper's website. Based on individual behavioral data, different readers viewing the same article might see different digital display advertising.

<sup>112</sup> Sacha Wunch-Vincent and Graham Vickery, *The Evolution of News and the Internet*, OECD Working Party on the Information Economy, June 11, 2010, p. 8, at <https://www.oecd.org/sti/ieconomy/oecdexaminesfutureofnewsandtheinternet.htm>. OECD November 2020 Report, p. 15. In an effort to improve users' experiences, the New York Times Company has limited advertising presented in its iOS (Apple) and Android (Google) mobile applications to ads it sells directly. NYT 2021 Annual Report, p. 11.

<sup>113</sup> Evelyn Mitchell et al., *Programmatic Advertising Explainer*, Insider Intelligence eMarketer, July 2022, p. 4.

<sup>114</sup> Competition and Markets Authority (CMA), United Kingdom, *Online Platforms and Digital Advertising*, Market Study Final Report, London, UK, July 2020, Appendix M, p. M5, at <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report> (hereinafter July 2020 CMA Report).

<sup>115</sup> Bonita Stewart, "A Look at How News Publishers Make Money with Google Ad Manager," Google Ad Manager (blog), Google, June 23, 2020, at <https://blog.google/products/admanager/news-publishers-make-money-ad-manager/> (hereinafter June 2020 Google blog.)

<sup>116</sup> Evelyn Mitchell et al., *Programmatic Advertising Explainer*, Insider Intelligence eMarketer, July 2022, p. 10.

<sup>117</sup> Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint, p. 16-17.

<sup>118</sup> Evelyn Mitchell et al. *Programmatic Ad Spending Forecast Q1 2023*, Insider Intelligence, eMarketer, February 2023, p. 14.

**Figure 5. Display Advertising Sold via Indirect Advertising**

The screenshot shows a news article from the St. Paul Pioneer Press. The article title is "St. Paul publishes draft environmental review of St. Thomas ball field proposal for public comment". Below the title are social media sharing icons. The main image is a photograph of a street in St. Paul, showing a road with a yellow center line, trees, and a tall brick chimney in the background. To the right of the main image is a vertical advertisement for Pulte Homes, featuring a modern interior and the text "NEW 4-LEVEL TOWNHOMES BY METRO. BECOME A VIP! Reston Arboretum - Reston, VA From the upper \$700ks". At the bottom of the article, there is a byline: "By FREDERICK MELO | fmelo@pioneerpress.com | Pioneer Press".

**Source:** St. Paul Pioneer Press, November 15, 2021, at <https://www.twincities.com/2021/11/15/design-picked-for-new-rice-street-in-st-paul/>.

Most online publishers in the United States sell at least some of their inventory to advertisers indirectly. However, smaller publishers, including those of local newspapers, are more likely than large publishers to rely exclusively on the indirect programmatic sales process. The Australian Competition and Consumer Commission (ACCC), in its December 2020 interim report, explained that

[f]or many small advertisers and publishers that currently engage in the ad tech supply chain, the costs involved in relying on direct negotiation for a large proportion of their display advertising may be prohibitive.... [I]n comparison to selling via the ad tech supply chain, many publishers may not have the time, resources or expertise to sell all ad inventory on [their] website[s] via direct deals and programmatic direct. As such, publishers may lose potential revenue if they do not also sell inventory via the ad tech supply chain.<sup>119</sup>

As of 2022, about 42% of indirect programmatic sales spending went to ad tech intermediaries in the form of fees.<sup>120</sup> eMarketer notes that “fees vary greatly by partner, and not every ad tech intermediary is always upfront (or consistent) about how much they take.”<sup>121</sup> The extreme complexity of the indirect programmatic advertising sales process contributes to what a British study describes as “a markedly opaque supply chain.”<sup>122</sup>

<sup>119</sup> Australian Competition and Consumer Commission (ACCC), *Digital Advertising Services Inquiry*, Interim Report, December 2020, p. 115, at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-advertising-services-inquiry> (hereinafter December 2020 ACCC Interim Report).

<sup>120</sup> Evelyn Mitchell et al., *Programmatic Advertising Explainer*, Insider Intelligence eMarketer, July 2022, p. 10.

<sup>121</sup> Ibid.

<sup>122</sup> ISBA and PwC May 2020 Study, p. 7.

According to the December 2020 ACCC Interim Report, “The opaque and complex nature of the ad tech supply chain can mean that ... [i]t may ... be difficult for stakeholders to know whether [ad-tech intermediaries are engaging in] conduct such as self-preferencing.”<sup>123</sup> In an effort to enable newspaper publishers to keep more digital advertising revenue that would otherwise flow to ad tech intermediaries, an independent advertising agency launched a campaign in February 2021 to encourage U.S. companies to, among other actions, pledge to reallocate 20% of their programmatic advertising budgets directly to local news sources.<sup>124</sup>

## **Advertising Technology Stack and Related Antitrust Lawsuits**

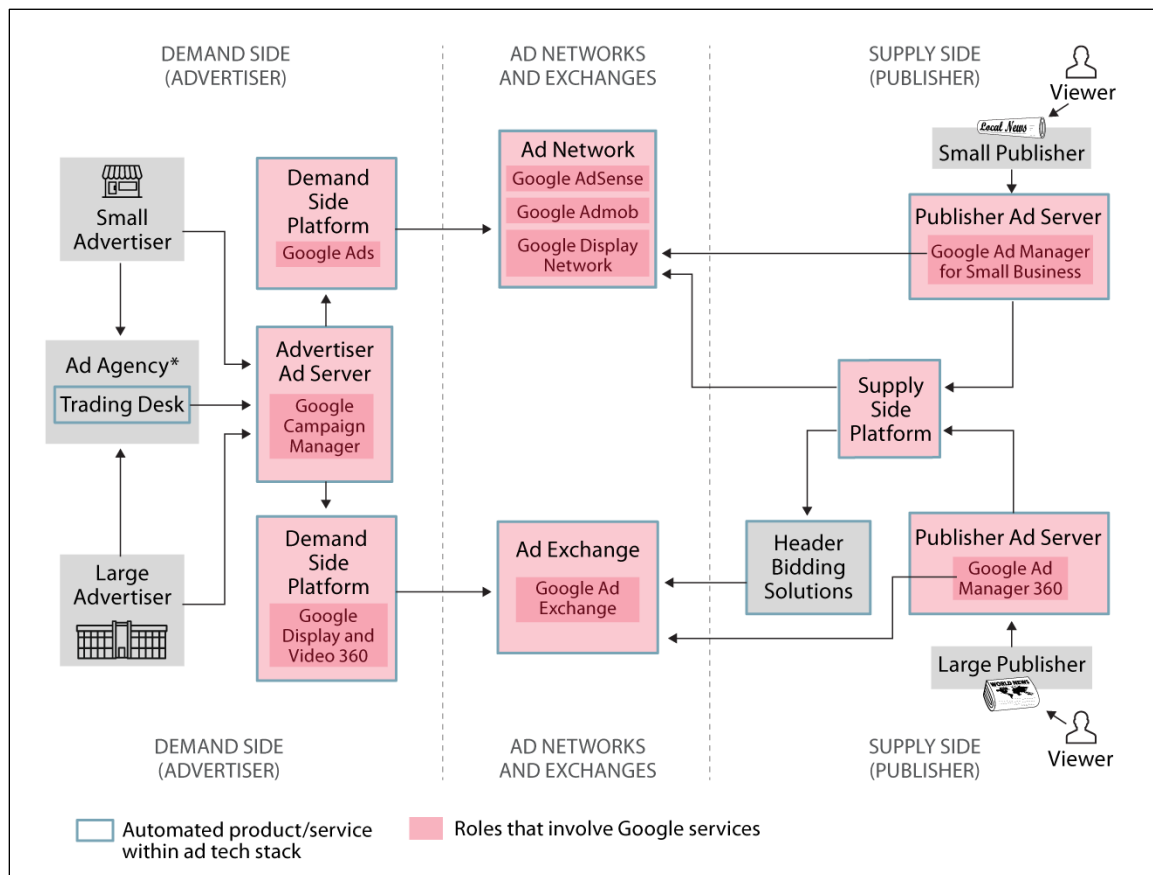
As **Figure 6** illustrates, Google has a presence in each component of the tools and software that publishers and advertisers use to transmit online advertisements to users, also known as the *advertising technology stack* (ad tech stack). State and foreign government officials allege that Google’s various roles in the advertising technology stack incentivize and enable it to prioritize its own interests above those of its customers, including newspaper publishers and advertisers, and to generate higher fees than it could in a competitive market.

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<sup>123</sup> ACCC, *Digital Advertising Services Inquiry*, Interim Report, December 2020, at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-advertising-services-inquiry>.

<sup>124</sup> Alison Weissbrot, “Indie Agency Allen & Gerritsen Urges Ad Industry to Support Local News,” *Campaign*, February 18, 2021, at <https://www.campaignlive.com/article/indie-agency-allen-gerritsen-urges-ad-industry-support-local-news/1707799>. See also Allen & Gerritsen, “Protect Our Press,” at <https://protectourpress.org/thepledge>.



**Figure 6. Google's Presence in Advertising Technology Stack**

**Sources:** CRS analysis of data from Evelyn Mitchell, *Programmatic Advertiser Explainer*, eMarketer, June 19, 2022 (report). See also Jon Fletcher, "How to Use Google Ad Manager as Publisher," Marfeel, October 15, 2020, at <https://www.marfeel.com/resources/blog/use-google-ad-manager-as-a-publisher>.

**Note:** Some advertisers work with ad agencies to purchase online advertisements; others do not.

## Components of Advertising Technology Stack

*Ad servers* store and manage ads from a variety of advertisers and automate the process of selecting which ads to serve to which visitors on certain web pages. Ad servers also gather data about how users interact with the ads displayed to them.<sup>125</sup> Publishers tend to focus on using ad servers to manage their ad inventory and reporting, while advertisers tend to focus on using them for managing the creative features of their advertising campaigns.

An *ad exchange* is a digital marketplace that enables advertisers and publishers to buy and sell display and mobile advertising inventory, often through real-time auctions.<sup>126</sup> Ad exchanges that serve the interests of both publishers and advertisers are transparent and neutral when routing information about the parties' asking and bidding prices.

<sup>125</sup> "Ad Servers vs. DSPs, SSPs, DMPs & CDPS: Differences Clarified," General (blog), AdButler, March 31, 2021, at <https://www.adbutler.com/blog/article/ad-servers-vs-dsp-vs-ssp-vs-dmp-vs-cdp-vs-crm> (March 2021 AdButler blog).

<sup>126</sup> Jack Marshall, "WTF Is an ad exchange?," *Digiday*, January 30, 2014, at <https://digiday.com/media/what-is-an-ad-exchange/>.

A *supply side platform (SSP)* is a piece of software used to sell publishers' digital display advertising inventory.

Google integrates its publisher ad server and SSP in its "Ad Manager" product.<sup>127</sup> Other companies integrate these two pieces of technology as well. Nevertheless, ad servers and SSPs perform separate functions. SSPs focus on allowing publishers to sell their remnant ad space conveniently, whereas ad servers are what ultimately allow an advertiser's ads to be served to a publisher's website.<sup>128</sup>

SSPs that act in publishers' interests connect the publishers to multiple exchanges, allowing a range of potential buyers to purchase advertising space. As described in "U.S. Allegations Regarding Google's Conduct," the state attorneys general contend that by preventing publishers from doing this, Google enabled its Ad Manager product to prioritize its own interests over those of publishers.<sup>129</sup>

A *demand-side platform (DSP)* is a piece of software used by advertisers (or their agencies) to buy digital display advertising inventory in an automated fashion. DSPs allow advertisers to buy impressions targeted to specific users across a range of publisher sites, via multiple exchanges.<sup>130</sup> DSPs acting in advertisers' interests enable them to buy a wide range of ad inventory at the lowest possible price.<sup>131</sup> Similarly to SSPs, many DSPs integrate advertiser ad server functions.<sup>132</sup>

An *ad network* is an aggregator that purchases display and mobile ad inventory from smaller publishers and then resells it to advertisers.<sup>133</sup> The network enables advertisers to reach users across many publishing sites (e.g., local newspapers' sites) that are not large enough to trade their inventory in an exchange. Examples of ad networks featuring newspapers include the USA TODAY Network, a joint venture of Gannett and McClatchy,<sup>134</sup> and Zeus Prime, which includes newspaper websites owned by the *Washington Post*, the *Dallas Morning News*, Tribune Publishing, MediaNews Group, and McClatchy.<sup>135</sup> Google operates its own network, called Google Display Network, which is composed of Google properties such as YouTube, Gmail, and millions of third-party publisher sites.<sup>136</sup> AdMob is Google's mobile ad network for apps.<sup>137</sup>

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<sup>127</sup> December 2020 ACCC Interim Report, p. 168.

<sup>128</sup> March 2021 AdButler blog.

<sup>129</sup> Third Amended Complaint, State of Texas, et al. v. Google LLC, No. 1:21-md-03010-PKC (S.D. NY January 14, 2022), pp. 96-97 (Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint).

<sup>130</sup> "What the Tech Are DSPs, SSPs, and DMPs?," Data-Driven 101 (blog), The TradeDesk, March 30, 2021, at <https://www.thecurrent.com/what-the-tech-are-dsps-ssps-and-dmps>.

<sup>131</sup> December 2020 ACCC Interim Report, p. 15.

<sup>132</sup> March 2021 AdButler blog.

<sup>133</sup> Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint, p. 35.

<sup>134</sup> USA TODAY Network, "Gannett and McClatchy Collaborate to Offer Local Reach for National Advertisers," press release, February 16, 2021, at <https://www.usatoday.com/story/news/pr/2021/02/16/gannett-and-mcclatchy-collaborate-offer-local-reach-national-advertisers/6743048002/>.

<sup>135</sup> Max Willens, "They're Solving a Problem: The Washington Post Readies Its Zeus Platform for the Buy Side," *Digiday*, March 8, 2021, at <https://digiday.com/media/theyre-solving-a-problem-the-washington-post-readies-its-zeus-platform-for-the-buy-side/>.

<sup>136</sup> Google, Google Ads Help, "Google Display Network and YouTube on computers, mobile devices, and tablets," at <https://support.google.com/google-ads/answer/2740623?hl=en>.

<sup>137</sup> Google, Google AdMob, "Earn more revenue with your apps," at [https://admob.google.com/home/?gclid=EAIaIQobChMIImOXXIOuq9QIVVuHICxQw5WEAAAYASAAEgLDHPD\\_BwE&gclid=aw.ds](https://admob.google.com/home/?gclid=EAIaIQobChMIImOXXIOuq9QIVVuHICxQw5WEAAAYASAAEgLDHPD_BwE&gclid=aw.ds).

## U.S. Allegations Regarding Google's Conduct

In 2023, the U.S. Department of Justice (DOJ) and attorneys general from 17 states filed a civil antitrust suit in the U.S. District Court for the Eastern District of Virginia against Google.<sup>138</sup> The suit alleges that the company engaged in monopolization of markets and unlawful tying of several online advertising technology products in violation of Sections 1 and 2 of the Sherman Antitrust Act of 1890 (Sherman Act).<sup>139</sup> Section 1 of the Sherman Act (26 Stat. 209, Ch. 647) prohibits contracts or conspiracies in restraint of trade or commerce; Section 2 prohibits monopolization or attempted monopolization.<sup>140</sup> According to DOJ, “[a]s a result of its illegal monopoly, and by its own estimates, Google pockets on average more than 30% of the advertising dollars that flow through its digital advertising technology products; for some transactions and for certain publishers and advertisers, it takes far more.”<sup>141</sup>

Likewise, in 2021, attorneys general from 16 states and the Commonwealth of Puerto Rico, led by Texas Attorney General Ken Paxton, filed suit against Google LLC, alleging the company's conduct in the advertising technology stack violated antitrust laws.<sup>142</sup> In January 2022, Google filed a motion to dismiss the lawsuit, claiming that (1) the regulators failed to plausibly allege anticompetitive conduct, and (2) the regulators waited too long to file suit.<sup>143</sup>

In September 2022, U.S. District Court Judge P. Kevin Castel issued an opinion and order finding that several of the states' allegations against Google were plausible and permitting their lawsuit to go forward. Specifically, Judge Castel found that the state plausibly alleged that Google violated the Sherman Act (15 U.S.C. §§1-2) by, among other actions, engaging in anticompetitive conduct to

- willfully acquire or maintain monopoly power in the markets for ad exchanges, publisher ad servers, and demand-side platforms (also called ad-buying tools) for small advertisers (Count I, alleging violation of §2 of the Sherman Act);

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<sup>138</sup> U.S. Department of Justice (DOJ), “Nine Additional States Joining Justice Department’s Suit Against Google for Monopolizing Digital Advertising Technologies,” press release, April 17, 2023, <https://www.justice.gov/opa/pr/nine-additional-states-join-justice-department-s-suit-against-google-monopolizing-digital>. As of April 2023, the 17 states joining the United States in filing the complaint are Arizona, Illinois, Michigan, Minnesota, New Hampshire, North Carolina, Washington, West Virginia, Virginia, California, Colorado, Connecticut, New Jersey, New York, Rhode Island, and Tennessee. *Ibid.*: Complaint, United States, et al. v. Google LLC, No. 1:23-cv-00108 (E.D. Va. January 24, 2023) (U.S., et al. v. Google, January 2023 Complaint) (DOJ January 2023 Complaint.) For additional information about this lawsuit, see CRS Legal Sidebar LSB10956, *The DOJ’s Ad Tech Antitrust Case Against Google: A Brief Overview*, by Alexander H. Pepper and Jay B. Sykes.

<sup>139</sup> DOJ January 2023 Complaint.

<sup>140</sup> 15 U.S.C. §§1, 2.

<sup>141</sup> DOJ, “Justice Department Sues Google for Monopolizing Digital Advertising Technologies,” press release, January 24, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>.

<sup>142</sup> Third Amended Complaint, State of Texas, et al. v. Google LLC, No. 1:21-md-03010-PKC (S.D. NY January 14, 2022)(Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint). The unredacted version of the complaint, originally filed in November 2021, became publicly available in January 2022. The 16 states that joined Puerto Rico in filing this suit are Texas, Alaska, Arkansas, Florida, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, North Dakota, South Carolina, South Dakota, and Utah. The Texas Attorney General, joined by state attorneys general from nine other states, filed the original complaint in December 2020 in the U.S. District Court for the Eastern District of Texas. Complaint, State of Texas, et al. v. Google LLC, No. 4:20-cv-0957-SDJ (E.D. TX December 16, 2020).

<sup>143</sup> Defendant Google LLC’s Memorandum of Law in Support of Its Motion to Dismiss Counts I Through IV of State Plaintiffs’ Third Amended Complaint, State of Texas, et al. v. Google LLC, No. 21-CV-6841 (S.D.N.Y. January 21, 2022).

- attempt to monopolize the markets for ad exchanges, demand-side platforms for small advertisers, and demand-side platforms for large advertisers (Count II, also alleging violation of §2 of the Sherman Act); and
- use its market power in the ad exchange market to coerce publishers to use its publisher ad server, thereby unlawfully tying two separate and distinct products (Count III, alleging violations of §1 and §2 of the Sherman Act).<sup>144</sup>

In March 2023, a federal judge refused to permit Google to transfer DOJ's case from Virginia to New York, where Google is defending itself against antitrust allegations from Texas, et al. and private plaintiffs.<sup>145</sup> DOJ and the states are seeking to convince the courts to require Google to divest its publisher ad server and ad exchange, enjoin the company from engaging in anticompetitive practices, reimburse them for legal fees, and pay fines.<sup>146</sup>

## **International Allegations Regarding Google's Conduct**

International government authorities have also alleged or are investigating allegations that Google has leveraged market power in the advertising technology stack to thwart competition.

The United Kingdom's Competition and Markets Authority estimated that large publishers using Ad Manager (a Google ad server) retain, on average, 70%-80% of advertising revenue received by Google, whereas small publishers using AdSense (another Google ad server) for content retain, on average, 60%-70% "of the revenues earned by Google from advertisers."<sup>147</sup> The authority's July 2020 report stated, "In acting simultaneously on behalf of publishers and advertisers, Google faces strong conflicts of interest. It has been able to leverage the market power from its owned-and-operated advertising inventory [e.g., on YouTube] into the open display market and within the ad tech stack, making it harder for third-party intermediaries to compete."<sup>148</sup>

The Australian Competition and Consumer Commission, in its August 2021 final report, stated

Google has engaged in conduct which has had the cumulative effect of restricting or limiting the ability of its rivals to compete in the supply of ad tech services. Google has also engaged in conduct in the supply of ad tech services that promotes its own interests ahead of the parties it serves (advertisers and publishers). Google has been able to do this given its dominance in key parts of the ad tech supply chain, and its control of key services."<sup>149</sup>

In June 2021, France's Autorité de la concurrence, following referrals from several newspaper publishers, issued a decision

sanctioning Google, up to 220 million euros, for having abused its dominant position in the advertising server market for website and mobile applications publishers.... [T]he press groups—including those who were at the origin of the referral to the Autorité—were

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<sup>144</sup> Google Digit. Advert. Antitrust Litig., No. 21-md-3010 (PKC), (S.D.N.Y. Sep. 13, 2022). The judge dismissed a fourth count, in which the states alleged that Google had reached an unlawful agreement with Facebook to thwart competition in the ad exchange market, in violation of Section 1.

<sup>145</sup> Brian Koenig, "Google Can't Transfer DOJ Ad Case from Va. to NY," *Law360*, March 10, 2023.

<sup>146</sup> DOJ January 2023 Complaint, pp. 139-140. Texas, et al. v. Google, January 2022 3<sup>rd</sup> Amended Complaint, pp. 208-216.

<sup>147</sup> July 2020 CMA Report, Appendix R, p. R14.

<sup>148</sup> *Ibid.*, p. 211.

<sup>149</sup> ACCC, *Digital Advertising Services Inquiry: Final Report*, August 2021, p. 132, at <https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf>.

affected even though their economic model is also strongly weakened by the decline in sales of print subscriptions and the decline in associated advertising revenue.<sup>150</sup>

Also in June 2021, the European Union’s European Commission

opened a formal antitrust investigation to assess whether Google has violated [European Union] competition rules by favouring its own online display advertising technology services in the so called “ad tech” [stack], to the detriment of competing providers of advertising technology services, advertisers and online publishers. The formal investigation will notably examine whether Google is distorting competition by restricting access by third parties to user data for advertising purposes on websites and apps, while reserving such data for its own use.<sup>151</sup>

## **Google’s Response to U.S. Lawsuits**

Google claims these allegations mischaracterize both its role and the degree of competition in the ad tech market. First, Google states that DOJ and state attorneys general are attempting to reverse U.S. antitrust agencies’ prior approvals of Google’s acquisition of ad tech firms in 2008 and 2011. In addition, Google states that it does not condition publishers’ access to its exchange on their use of its ad server. Third, Google states that competing firms—including Amazon, Comcast, and Microsoft—operate integrated ad tech stacks. Fourth, Google states that it sought to improve upon, rather than shut out, competing technologies. Google also states that its tools “help advertisers bid more efficiently and help publishers make more money.” Finally, Google states, “we don’t have a duty to bid on rival auctions.”<sup>152</sup>

## **Additional Antitrust Lawsuits Against Technology Firms**

Additional antitrust lawsuits do not specifically mention newspaper publishers but may affect their revenue through licensing and subscriptions. This section briefly discusses a selection of these lawsuits.

### **Facebook: Alleged Monopolization of Social Media**

The Federal Trade Commission (FTC), in an ongoing lawsuit, alleges that Meta engaged in anticompetitive conduct to monopolize personal social networking services.<sup>153</sup> In January 2022,

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<sup>150</sup> Autorite de la concurrence, “Le Autorite de la Concurrence Hands out a €220 Million Fine to Google for Favoring Its Own Services in the Online Advertising Sector,” press release, June 7, 2021, at <https://www.autoritedelaconcurrence.fr/en/communiqués-de-presse/autorite-de-la-concurrence-hands-out-eu220-millions-fine-google-favouring-its>.

<sup>151</sup> European Commission, “Antitrust: Commission Opens Investigation into Possible Anticompetitive Conduct by Google in the Online Advertising Technology Sector,” press release, June 22, 2021, at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143).

<sup>152</sup> Dan Taylor, “DOJ’s Lawsuit Ignores the Enormous Competition in the Online Advertising Industry,” Google Blog, January 24, 2023, at <https://blog.google/outreach-initiatives/public-policy/doj-ad-tech-lawsuit-response/>. Google’s detailed response is available at *Setting the record straight about our advertising technology business*, at [https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/Setting\\_the\\_record\\_straight\\_about\\_our\\_advertising\\_technology\\_business.pdf](https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/Setting_the_record_straight_about_our_advertising_technology_business.pdf).

<sup>153</sup> The Federal Trade Commission (FTC) filed an amended complaint after a federal judge dismissed the agency’s original lawsuit in June 2021. See First Amended Complaint for Injunctive and Other Equitable Relief FTC v. Facebook, No. 1:20-cv-03590 (D.D.C. August 19, 2021), and FTC v. Facebook, Inc., No. 20-3590, 2021 (D.D.C. June 28, 2021).

the U.S. District Court for the District of Columbia denied Meta’s motion to dismiss the case and allowed the FTC to continue with its allegation that Facebook maintained monopoly power through Meta’s anticompetitive acquisitions, such as WhatsApp and Instagram.<sup>154</sup> One of the remedies proposed by the FTC is requiring Meta to divest its assets, including Instagram and WhatsApp.

Increasing competition among personal social networking services might reduce Facebook’s relative bargaining power in negotiations with newspaper publishers, such as if and how much revenue publishers receive.

## Apple and Google: App Store Policies

Apple and Google charge a 30% commission for apps sold on their respective app stores, as well as in-app purchases, if the owner of the app earns more than \$1 million in annual revenue; businesses that generate less than \$1 million in annual revenue pay a 15% fee.<sup>155</sup> For subscription-based apps, Apple collects a 30% commission during the first year on its App Store and a 15% commission thereafter.<sup>156</sup> News publishers that participate in the Apple News app and meet certain requirements pay 15% for the first year, rather than 30%, since September 2021.<sup>157</sup> Google charges a 15% commission for automatically renewing subscription products, regardless of the revenue earned by the developer, and 15% or less for developers that qualify under certain programs.<sup>158</sup>

Apple and Google have been engaged in multiple lawsuits for their app store policies. For example, Epic Games—the producer of the video game *Fortnite*—filed separate lawsuits against Apple and Google, claiming that the companies are monopolists engaging in anticompetitive behavior with their app store policies.<sup>159</sup> On September 10, 2021, a federal district court ruled that although Apple had a “considerable market share of over 55% and extraordinarily high profit margins,” Epic Games “failed in its burden to demonstrate Apple is an illegal monopolist.”<sup>160</sup> However, the court found that Apple engaged in anticompetitive conduct through its anti-steering provisions—a violation of California competition law—and ruled that Apple cannot prohibit developers from providing external links and other actions that allow customers to make purchases outside of the app within 90 days.<sup>161</sup> Apple and Epic Games appealed the decision, and

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<sup>154</sup> FTC v. Facebook, 581 F. Supp. 3d 34 (D.D.C. 2022), Court Opinion.

<sup>155</sup> Apple, *Apple Developer Program License Agreement*, February 25, 2022, at <https://developer.apple.com/support/downloads/terms/schedules/Schedule-2-and-3-20220225-English.pdf>; Apple, “Apple Announces App Store Small Business Program,” press release, November 18, 2020, at <https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/>; and Google, “Service Fees,” Play Console Help, accessed on May 9, 2023, at <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>.

<sup>156</sup> Apple, *Apple Developer Program License Agreement*, February 25, 2022, at <https://developer.apple.com/support/downloads/terms/schedules/Schedule-2-and-3-20220225-English.pdf>.

<sup>157</sup> Apple, “Apple Introduces the News Partner Program,” press release, August 26, 2021, at <https://www.apple.com/newsroom/2021/08/apple-introduces-the-news-partner-program/>.

<sup>158</sup> Google, “Service Fees,” Play Console Help, accessed on May 9, 2023, at <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>.

<sup>159</sup> Motion for Temporary Restraining Order, *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640 (N.D. Cal. August 17, 2020); Complaint for Injunctive Relief, *Epic Games, Inc. v. Google LLC et al.*, No. 3:20-cv-05671 (N.D. Cal. August 13, 2020).

<sup>160</sup> *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640-YGR (N.D. Cal. September 10, 2021), Rule 52 Order After Trial on the Merits.

<sup>161</sup> *Ibid.*; *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640-YGR (N.D. Cal. November 9, 2021), Permanent Injunction.



on April 24, 2023, the U.S. Ninth Circuit Court of Appeals upheld the ruling from the federal district court.<sup>162</sup> The lawsuit against Google is ongoing.

The court rulings in these cases may result in app stores reducing the fees charged to the owners of apps, including news publishers.

## **Google: Alleged Monopolization of Search Engine**

In October 2020, DOJ, along with 11 state attorneys general, filed a lawsuit against Google in the U.S. District Court for the District of Columbia “to stop Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets and to remedy the competitive harms.”<sup>163</sup> The lawsuit is ongoing.<sup>164</sup>

The News Media Alliance, a trade organization representing newspaper publishers, has argued that Google uses its dominance in search to promote its news aggregator and that Google’s Accelerated Mobile Pages has made it difficult for publishers to form direct relationships with their readers.<sup>165</sup>

## **Potential Legislative Actions**

Bills introduced in the 117<sup>th</sup> and 118<sup>th</sup> Congresses to support newspaper publishers and journalists fall into two main categories: some would amend antitrust laws in ways that might enable newspaper publishers to generate more revenue, while others would support newspaper publishers with grant funding and tax breaks.<sup>166</sup> Below are selected examples.

### **Amending Antitrust Laws**

#### **Amending Clayton Act to Place Restrictions on Ad Tech Ownership: AMERICA Act**

The Advertising Middlemen Endangering Rigorous Competition Accountability Act (AMERICA Act, S. 1073), introduced in March 2023, would amend the Clayton Act to prohibit entities with more than \$20 billion in digital advertising revenue from “owning more than part of the digital ad

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<sup>162</sup> *Epic Games, Inc. v. Apple Inc.*, No. 21-16506, 21-16695 (D.C. No. 4:20-cv-05640-YGR April 24, 2023). For more information, see CRS Legal Sidebar LSB10960, *Appeals Court Holds That Apple’s “Walled Garden” Does Not Violate Federal Antitrust Law*, by Jay B. Sykes.

<sup>163</sup> DOJ, “Justice Department Sues Monopolist Google for Violating Antitrust Laws,” press release, October 20, 2020, at <https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws>.

<sup>164</sup> Additional lawsuits have been filed subsequently (see, for example, Matthew Perlman, Google Hit with 3<sup>rd</sup> Monopolization Suit,” *Law360*, December 17, 2020, at <https://www.law360.com/articles/1338900>). For more information about the lawsuits, see CRS Legal Sidebar LSB10544, *The Google Antitrust Lawsuit: Initial Observations*, by Jay B. Sykes; and CRS Report R46875, *Antitrust Reform and Big Tech Firms*, by Jay B. Sykes.

<sup>165</sup> News Media Alliance, *How Google Abuses Its Position as a Market Dominant Platform to Strong-Arm News Publishers and Hurt Journalism*, June 2020, p. 2, at <http://www.newsmediaalliance.org/wp-content/uploads/2020/06/Final-Alliance-White-Paper-June-18-2020.pdf>.

<sup>166</sup> Other bills have been introduced that would affect journalists; this report does not discuss those bills. For example, the Journalist Protection Act (S. 2528; H.R. 4857) from the 117<sup>th</sup> Congress would have implemented penalties for assaulting journalists, and the Protect Reporters from Exploitative State Spying Act (S. 2457; H.R. 4330) from the 117<sup>th</sup> Congress would have prohibited a federal entity from compelling a journalist or covered service provider to disclose protected information without a court-issued subpoena or other compulsory process.

ecosystem.”<sup>167</sup> Specifically, the bill would prohibit such a company from (1) owning both an ad exchange and a supply-side brokerage or both an ad exchange and a demand-side brokerage;<sup>168</sup> (2) owning both a supply-side brokerage and a demand-side brokerage; and (3) owning a supply-side or demand-side brokerage if the entity is also a buyer or seller of digital ads. In addition, the AMERICA Act would require firms that process more than \$5 billion in digital ad transactions to act in the best interests of their clients and erect firewalls to prevent conflicts of interest. If enacted, the bill would likely require Google and Facebook to divest significant portions of their advertising businesses.

The bill would potentially affect the amount of revenue newspaper publishers are able to obtain from digital ads. The share of revenue publishers obtain may increase if competition among SSPs and ad exchanges were to increase. However, the total amount of revenue obtained from digital ads could also decrease, depending on the payment structure used. For example, if the digital ads were performance based (e.g., cost-per-click) and the ad exchanges were less effective at targeting ads, the total amount of revenue could decline, decreasing the amount of revenue obtained by newspaper publishers.

### Temporary Exemption for Journalism Outlets to Collectively Negotiate: JCPA

The Journalism Competition and Preservation Act of 2023 (JCPA, S. 1094), introduced in March 2023, would provide a temporary safe harbor (i.e., a six-year antitrust exemption) for “eligible digital journalism providers” (e.g., broadcasters, cable networks, and publishers) to collectively negotiate with “covered platforms” (e.g., online platforms that meet certain criteria, discussed below) to distribute their news content.

Certain media outlets would be ineligible for inclusion, under the JCPA’s definition of “eligible entities.” For example, publications that generate less than \$100,000 from editorial content or employ more than 1,500 exclusive full-time employees would be ineligible.<sup>169</sup>

Although employee data for individual newspapers are not readily available publicly, reports indicate that this exclusion would apply to the three largest newspapers in the United States: the *New York Times*, the *Wall Street Journal*, and the *Washington Post*.<sup>170</sup> However, the bill does not include a similar employee limit for publications’ parent organizations.<sup>171</sup> Thus, for example,

<sup>167</sup> Senator Mike Lee, “Advertising Middlemen Endangering Rigorous Internet Competition Accountability (AMERICA) Act, [two-page summary],” March 20, 2023, at <https://www.lee.senate.gov/services/files/EAA0E83B-69AC-4E00-9004-A6A7FD870F61>.

<sup>168</sup> Supply-side and demand-side brokerages are essentially SSPs and DSPs, as discussed above in “Components of Advertising Technology Stack.”

<sup>169</sup> S. 1094, §§ 2(11)(B)(vi)(1), 2(11)(B)(viii).

<sup>170</sup> Jeremy Littau, “Congress’ Best Idea to Save Local Journalism Would Actually Hurt It,” *Slate*, December 9, 2022. News reports indicate that Alphabet reached online distribution agreements with News Corp., the parent company of the *Wall Street Journal*, and the New York Times Company to feature news content from the *Wall Street Journal* and the *New York Times* in Google news sites around the world. News Corp., “News Corp. and Google Agree to Global Partnership on News,” press release, February 17, 2021, <https://newscorp.com/2021/02/17/news-corp-and-google-agree-to-global-partnership-on-news/>; and Alexandra Bruell, “New York Times Details Google Pay,” *Wall Street Journal*, May 9, 2023.

<sup>171</sup> As of June 30, 2022, News Corp. had about 25,000 employees, of whom about 9,000 were located within the United States. News Corporation, SEC Form 10-K for the fiscal year ended June 30, 2022, p. 14, at <https://investors.newscorp.com/static-files/8c153e10-28ca-48c4-80d0-60e57c7a1c0b>.



other news publications owned by the *Wall Street Journal*'s parent organization, News Corp., including the *New York Post* and *Barrons*,<sup>172</sup> might be eligible.

Likewise, according to the JCPA's definition of a "television network," the broadcast television networks ABC, CBS, FOX, and NBC, as well as broadcast stations owned and operated by those networks, would not be eligible.<sup>173</sup> Other news-producing broadcast networks, however, including Univision (partly owned by Grupo Televisa, Softbank, and Google)<sup>174</sup> and Telemundo (a subsidiary of Comcast Corporation),<sup>175</sup> would be eligible for exemption, along with their parent companies' owned-and-operated broadcast stations. The *eligible broadcaster* is a "person" that "holds or operates under a license issued by the Federal Communications Commission (FCC) under Title III of the Communications Act of 1934, (47 U.S.C. § 301 et seq.)."<sup>176</sup>

In addition to local broadcast radio and television stations, national cable television and radio networks rely on licenses issued by the FCC under Title III of the Communications Act (i.e., satellite stations) to transmit programming across the country.<sup>177</sup> Examples of such national licensees include Fox News Network LLC, Herring Networks Inc. (owner of One America News Network),<sup>178</sup> Bloomberg Communications Inc. (owner of the Bloomberg television network),<sup>179</sup> Public Radio International (a 501(c)(3) organization that distributes broadcast radio programs),<sup>180</sup> and SiriusXM Radio Inc.<sup>181</sup> Therefore, based on this definition of eligible broadcaster, these national media organizations, as well as local broadcast media outlets, would be eligible for the temporary antitrust exemption described in the JCPA bill.

Pursuant to the JCPA, media outlets eligible for the antitrust exemption would be able to negotiate only with "covered platforms" that meet several criteria. These criteria, measured during the 12 months preceding the formation of a joint negotiation entity by broadcasters and publishers, would include but are not limited to the following:

- having a minimum of 50 million U.S.-based active users or subscribers;
- being owned or controlled by an entity with
  - U.S. net annual sales or a market capitalization greater than \$550 billion, adjusted for inflation based on Consumer Price Index, or

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<sup>172</sup> News Corp., "Our Businesses and Brands," at <https://newscorp.com/news-corp-businesses-and-brands/> (last visited May 21, 2023).

<sup>173</sup> S. 1094, § 2(12).

<sup>174</sup> TelevisaUnivision, Inc., "Univision and Televisa Complete Transaction to Create 'TelevisaUnivision,' the World's Leading Spanish-Language Media and Content Company," press release, January 31, 2022, at <https://investors.televisaunivision.com/investor-news/press-release-details/2022/Univision-and-Televisa-Complete-Transaction-to-Create-TelevisaUnivision-the-Worlds-Leading-Spanish-Language-Media-and-Content-Company/default.aspx>.

<sup>175</sup> Comcast Corporation, "Comcast Reports 4<sup>th</sup> Quarter and Full Year 2022 Results," press release, January 26, 2023, at <https://www.cmcsa.com/news-releases/news-release-details/comcast-reports-4th-quarter-and-full-year-2022-results>.

<sup>176</sup> S. 1094, § 2(3).

<sup>177</sup> Federal Communications Commission (FCC), "Further Streamlining Part 25 Rules Governing Satellite Services," Report and Order, FCC 20-159, 33 *FCC Record* 1385, November 19, 2020.

<sup>178</sup> Herring Networks, Inc., "About One American News Network," at <https://www.oann.com/about/>.

<sup>179</sup> Bloomberg Finance L.P., "Bloomberg the Company & Its Products."

<sup>180</sup> Although the FCC lists its license name as "Public Radio International," the company changed its name to PRX in 2018 after merging with an audio technology company. Tyler Falk, "PRX Drops PRI From Branding," *Current*, November 1, 2019, at <https://current.org/2019/11/prx-drops-pri-from-branding/>.

<sup>181</sup> CRS analysis of data from FCC, International Bureau, Satellite Space Stations, Current Authorizations by Licensee, at [https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr014b.hts?as\\_subsystem\\_code=SAT&column=ADDRESS.address\\_nameC/Name&fstate=1/CURRENT&prepare=/](https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr014b.hts?as_subsystem_code=SAT&column=ADDRESS.address_nameC/Name&fstate=1/CURRENT&prepare=/).

- at least 1 billion worldwide monthly active users; and
- is not a nonprofit.<sup>182</sup>

The JCPA would set forth a framework for eligible digital journalism providers to form a joint negotiation entity, including the provision that each eligible digital journalism provider shall be eligible to one vote on any matter submitted to a vote of the members.<sup>183</sup> In addition, the bill would specify permitted and prohibited conduct for the joint negotiations, including a requirement that parties negotiate in good faith.<sup>184</sup>

Under the JCPA, parties would be required to file copies of the following with the FTC and the Assistant Attorney General in charge of DOJ's Antitrust Division no later than 60 days after execution/issuance: (1) any written agreements and (2) any arbitration decisions.<sup>185</sup> In addition, eligible digital journalism providers would be required to provide public transparency regarding the use of any funds to support operations to maintain or enhance news production and distribution, including public reporting regarding the amount of funds received each year under or related to each such agreement or decision.<sup>186</sup> The bill would prohibit covered platforms and joint negotiating entities from discriminating on the basis of the eligible digital journalism provider's size or views expressed by its content.<sup>187</sup> Parties alleging a violation of the bill's provisions related to negotiations, discrimination, and retaliation would be allowed to bring a civil action in an appropriate district court.

## **Support for News Publishers**

### **Tax Breaks for News Publishers, Advertisers, and Subscribers**

The Local Journalism Sustainability Act (H.R. 3940; S. 2434) from the 117<sup>th</sup> Congress would have allowed individual and business taxpayers to receive tax credits for supporting local newspapers and media. Specifically, individual taxpayers might claim an income tax credit of up to \$250 for a local newspaper subscription. The bill would have also allowed local newspaper employers a payroll tax credit for wages paid to an employee for service as a local news journalist and certain small businesses a tax credit for local newspaper and media advertising expenses.

### **Establishment of Local News Committee**

The Future of Local News Act of 2021 (H.R. 3169; S. 1601) from the 117<sup>th</sup> Congress would have created the Future of Local News Committee to examine the state of local news and make recommendations related to the ability of local news to meet information needs. The bill would have directed the committee to recommend mechanisms that the federal government could implement to support the production of local news, such as the creation of a national endowment

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<sup>182</sup> For example, Meta estimates that its worldwide monthly active users across its "Family of Apps" (i.e., Facebook, Instagram, and What's App) collectively was 3.74 billion as of December 31, 2022, and Facebook's worldwide monthly active users were 2.96 billion as of December 31, 2022. Meta Platforms, Inc., SEC Form 10-K for the fiscal year ended December 31, 2022, p. 56.

<sup>183</sup> S. 1094, §3(a)(1)(D).

<sup>184</sup> S. 1094, §3(b).

<sup>185</sup> S. 1094, §5(c).

<sup>186</sup> S. 1094, §6(c).

<sup>187</sup> S. 1094, §6.

for local journalism. The committee would have comprised 13 members, including eight appointed by congressional leadership.

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