The California Journalism Preservation Act: Analysis and Alternatives

Jeff Jarvis - April 2024

Executive summary

The California Journalism Preservation Act (CJPA) is the latest in a long line of efforts by the news industry — lobbying legislators in many countries — to extend copyright and diminish fair use for the exclusive benefit of news publishers and producers. The CJPA's stated intent is to address the deepening economic crisis in California's news industry by requiring large online platforms to pay a "journalism usage fee" for linking to news.

This paper will address a number of questions and issues relating to the legislation's likely impact and unintended consequences, its basis in law, and its economic presumptions. It will examine lessons from the history of other news-industry crises in the past. The paper will review the state of the news ecosystem in California and its history. It will then offer many alternative methods to support the news and information providers in the state.

CJPA follows a number of similar efforts to establish what is known as an "ancillary copyright,"[1] starting in Germany in 2012, spreading to Spain and the rest of the European Union and then to Australia, and Canada. In Canada, while Google agreed to pay C$100 million ($73 million) to publishers, Meta dropped all news content, links, and payment from Facebook and Instagram, leaving news providers arguably worse off than before the legislation.

Regarding the legislation, this paper offers the following findings:

- These link taxes violate copyright law by diminishing long-held principles of fair use.
- CJPA is constitutionally questionable, impinging on platforms' First Amendment rights to choose what they carry, because the bill forbids "retaliation" against publishers.
- Link laws are widely seen by internet advocates as breaking the basis of the web. Says Sir Tim Berners-Lee, the web's inventor, "It would undermine the fundamental principle of the ability to link freely on the web."
- CJPA would benefit national and even international news media, including hedge-fund owners, far more than California-owned news outlets, leaving little for — and in many cases excluding — community, Black, ethnic, and start-up outlets.
- As there are no clear journalistic standards set by the legislation, CJPA's process could be

[1] Legislation requiring platforms to pay news companies is variously and colloquially called an "ancillary copyright," "link tax," "snippet tax," "Google tax," or "neighboring right." The laws differ in detail, but in general they seek to diminish fair use in the quotation of news and to extend copyright, including granting news a property right, which has not been supported in American courts. Thus, as an extension of copyright, it is "ancillary." Pedantry requires notice that in California's case, CJPA does not create a tax insofar as the funds demanded of the platforms would be paid directly to publishers, not through the state — though, as payment is mandated by the state, it might still be considered a tax. In other nations' laws, explored below, the link is not made the issue but the quoting of headlines or snippets is — though since they are quoted for the purpose of linking to news, these can nonetheless be seen as "link taxes." In California, payment is based on the number of links, which the legislative counsel's digest calls a "journalism usage fee," so the sobriquet "link tax" seems appropriate.

manipulated to support extremist and propaganda outlets masquerading as news.
- The legislation sets up a perverse incentive to fill the web with more clickbait and does not incentivize innovation with new forms of news.
- The legislation carries no cap and no means of accountability.
- And the legislation could, as in Canada, result in greater harm to the news ecosystem in the state and to the internet as a whole.

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

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

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

The paper is organized in these sections:

- Section 1 examines CJPA and the many similar legislative efforts in other countries that have led up to it.
- Section 2 analyzes a number of issues, questions and likely unintended consequences of CJPA specifically.
- Section 3 reviews the state of the state's news ecosystem, including legacy newspapers as well as Black, diasporic, community, digital, and startup media.

  Next, the paper provides historical context in three sections:
- Section 4 on a long trend of consolidation in the state's news media,
- Section 5 on the history of copyright and publishers' many attempts to extend it, and
- Section 6 on the newspaper industry's reception of competitors in the past, revealing a pattern of newspaper lobbying for protectionist legislation.
- Section 7 offers analysis of a number of suggestions from multiple sources for supporting the news ecosystem.

This is followed by the paper's conclusion and a biography of its author.

1. The legislation and its antecedents

The California Journalism Preservation Act (AB886), introduced by Assembly member Buffy Wicks (D, Oakland), was passed by the state Assembly in June 2023, and is awaiting consideration in the Senate.[2] It targets qualifying internet platforms, defined as those with 50 million monthly users in the U.S., owned by a company with 1 billion monthly users or annual sales or market capitalization greater than $550 billion. These platforms — presumably Google and Meta and possibly TikTok and Microsoft — would be required to pay publishers for the right and privilege of quoting news headlines and linking to their news sites. The bill does not consider the value to the publisher of the platforms' links in this exchange.

The legislation defines a qualifying service as one that accesses — that is, "to acquire, to crawl, or to index" — content and that "aggregates, displays, provides, distributes, or directs users to content." These are activities intrinsic to the web, undertaken by nearly everyone on the internet, from news sites to bloggers to social-media users. These largest sites will be required to submit to arbitration with publishers to establish a fund without ceiling to be distributed to "digital journalism providers" proportional to the appearance of their links on pages served to California web users. Those news services — which need not be based in California — must be regularly updated and employ journalists and other staff to perform "a public information function comparable to that traditionally served by newspapers." To qualify, sites must generate at least $100,000 a year in revenue. The providers may not be controlled by foreign powers or terrorist organizations.

CJPA is similar to the Journalism Competition and Preservation Act (JCPA), federal legislation introduced by Sen. Amy Klobuchar (D, Minn.) in 2021. Each is championed by the News/Media Alliance (NMA), a merger of two legacy publishing trade associations, the former American Newspaper Publishers Association (ANPA), dating back to 1887, and the Magazine Publishers Association (MPA), founded in 1919. The NMA began accepting digital publications into membership only in 2016. The next year, the association announced it would lobby Congress for an exemption from antitrust to allow its 2,000 members to form a cartel to negotiate collectively with online platforms for compensation for links to their content; that is JCPA.[3]

By demanding payment for quoting and linking to content, publishers are seeking an extension of copyright and a diminishment of fair use — generally known as "ancillary copyright." As the Copyright Office explains: "Under the *fair use* doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances."[4] Or as Harvard Law professor Lawrence Lessig famously said in his book *Free Culture* (Penguin, 2004), "fair use in America simply means the right to hire a lawyer to defend your right to create."[5] The international Berne Convention for the Protection of Literary and Artistic Works

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[2] Text of the legislation: leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240AB886&showamends=false
[3] NMA press release: www.newsmediaalliance.org/release-digital-duopoly/.
[4] Copyright Office FAQs: www.copyright.gov/help/faq/faq-fairuse.html. See also the Copyright Office's fair use index: www.copyright.gov/fair-use/index.html
[5] Lawrence Lessig, *Free Culture: The Nature and Future of Creativity*, Penguin (2004), 187.

explicitly permits "quotations from newspaper articles and periodicals in the form of press summaries." In the opinion of the Computer & Communications Industry Association (CCIA), efforts to invent an ancillary copyright "contradict more than a century's worth of international copyright law, and disturb the harmony and balance within international copyright systems."[6]

A 2013 paper by Chrysanthos Dellarocas, Zsolt Katona, and William Rand in *Management Scienc*e forecasted the dialectic and war we witness now.

> Seeing their revenues collapse, some [publishers] have turned against content aggregators, accusing them of "stealing" their revenues by free-riding on their content. Some are even questioning the legitimacy of the unilateral free linking culture of the WWW, arguing that it might lead to a "tragedy of the commons" situation where content organizations are tempted to minimize the effort they spend on original content production and rely on linking to third-party content. Other market actors point out that, in today's "link economy," links bring valuable traffic to target nodes, so content creators should be happy that aggregators exist and direct consumers to quality content sites.... If links are chosen well, they point to quality content; as a result, they reduce the search costs of the consumer population, which, in turn, may lead to an aggregate increase in content consumption and to more traffic for higher-quality sites.[7]

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

Legislatively, the heritage of both CJPA and JCPA can be traced to the first link law, Germany's *Leistungsschutzrecht* (LSR), translated as ancillary copyright and also as a neighboring right, meaning a legal protection for creators whose content is used by others. The LSR was lobbied for by conservative publishers Axel Springer, Burda, and the *Frankfurter Allgemeine Zeitung* and introduced in 2012. The first rendition of the legislation would have granted publishers a one-year exclusive right to make their "press product" available online, requiring platforms to negotiate with and pay publishers to display snippets of their text longer than seven words. After considerable legislative negotiation, no agreement was reached on a definition or length of allowable snippets.[8]

Google had relied on a widely accepted opt-out mechanism, respecting rules for crawling content that publishers place in what is known as the robots.txt file. (All it takes to forbid Google from acquiring, crawling, or indexing any part of a site's content are these words: "User-agent:

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

[7] Chrysanthos Dellarocas, Zsolt Katona, and William Rand. "Media, Aggregators, and the Link Economy: Strategic Hyperlink Formation in Content Networks." *Management Science* Vol. 59, No. 10 (2013), 2360–79. www.jstor.org/stable/42919477.

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

Googlebot Disallow /.")[9] With the LSR, Google switched to an opt-in rule, telling publishers it would display snippets of content alongside links only with explicit and free permission. After passage of the law in 2013, publishers formed a copyright bargaining unit, VG Media, similar to what is envisioned in the federal JCPA.[10] Google refused to negotiate with VG. Meanwhile, a number of other publishers opted in to grant Google free licenses. Springer held out and refused to grant Google permission; Google did not link; Springer's daily visits dropped overall by 7%, from Google Search by 40% and Google News by 80%; after two weeks, Springer relented.[11] VG Media sued Google on competition and copyright grounds. The competition claim was rejected by the Bundeskartellamt, the German Federal Cartel Office. In the end, the *Leistungsschutzrecht* was ruled invalid by the European Court of Justice in 2019 because it had not been submitted in advance to the EU Commission.[12]

Thus the *Leistungsschutzrecht* would seem to have been for naught. But no. That law spawned copycat legislation around the world. Next came a law in Spain variously called a link tax, a snippet tax, a copyright fee, and a Google tax. This law required that compulsory fees be paid by aggregators to link to news, with no option for granting of free licenses, as in Germany. It excluded search and social-media. Before the law took effect in 2015, Google said it would not pay to link to news and pulled Google News, which carries no advertising, out of the country. Some Spanish aggregators did the same. Subsequent research found that daily visits to news sites in Spain decreased between 8.4% and 14.6%, with a consequent reduction in advertising revenue. That is to say that links had value to publishers, especially smaller ones, as the researchers found that "regional newspapers show a larger effect than national newspapers."[13]

All these efforts bore further legislative fruit in Europe with the passage in 2019 of the EU Copyright Directive. Its Article 15 is an ancillary copyright, requiring licensing for displaying anything more than "individual words or very short extracts" of any content less than two years old.[14] In France, the first to codify the directive into law, Google announced it would not display snippets from European publishers who did not opt in; French publishers sued; the competition authority declared that Google would have to negotiate; and Google reached an agreement to pay $76 million to 121 publications over three years.[15] Then the competition authority fined Google €500 million for negotiating in bad faith. Google and the publishers settled in 2022, for an amount not made public. As the EU directive superseded prior Spanish

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

[10] VG's full name: VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH or Society for the Exploitation of the Copyrights and Ancillary Copyrights of Media Companies.

[11] Joan Calzada and Richard Gil, "What Do News Aggregators Do? Evidence from Google News in Spain and Germany" (December 1, 2018), 4: conference.nber.org/confer/2017/EoDs17/Calzada_Gil.pdf; Harro Ten Wolde, Eric Auchard, "Germany's top publisher bows to Google in news licensing row," Reuters (November 5, 2014):
www.reuters.com/article/2014/11/05/us-google-axel-sprngr-idUSKBN0IP1YT20141105.

[12] For further history in Germany and other countries in this section, see "Copyright Protections for Press Publishers" by the U.S. Copyright Office (June, 2022):
www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf.

[13] Calzada and Gil., 18.

[14] EU Copyright Directive: eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32019L0790.

[15] Mathieu Rosemain, "Google's $76 million deal with French publishers leaves many outlets infuriated," Reuters (February 12, 2021): www.reuters.com/article/idUSKBN2AD039/.

law and allowed negotiation, Google News returned to the country in 2022. While the requirements of the directive were being written into law, Google entered into negotiations and came to terms with more than 2,600 publishers in 16 countries by the fall of 2023.[16]

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

Google threatened to pull news off its platform in Australia. Facebook actually did. On February 17, 2021, Facebook took down all news links and blocked Australian news from being shared or seen — along with other public-information sites. A media furor ensued, as Prime Minister Scott Morrison complained — on Facebook — about Facebook having "unfriended" the nation. Both Facebook and Google came to an agreement with the government and publishers, therefore not triggering the law and its conditions. News reappeared on Facebook six days after it disappeared. But this episode taught Facebook about the value of news on its services, which would prove useful in the next Commonwealth nation to enact a link tax, Canada.

Columbia University Journalism School professor Bill Grueskin went to Australia to study the impact of the Bargaining Code. "But it's a murky deal, with critical details guarded like they're nuclear launch codes," Grueskin reported in the *Columbia Journalism Review*. "If you want to know how much money the platforms have paid to news organizations, you're out of luck. If you want to learn whether newsrooms are spending that money to bolster journalism, rather than pad executives' salaries, you're out of luck." The Australian Broadcasting Corp. and *The Guardian* said they used the funds to hire journalists, but there is no accountability otherwise for how much of the reported A$200 million paid went to whom to do what.[17]

Google has been careful not to set the precedent of positioning payments to publishers as quid-pro-quo for links. Instead, it started a Google News Showcase and sometimes positions payment as compensation for participation in it. In 2019, Facebook also introduced a news tab on its application and negotiated with publishers to participate. But by 2024, the company — now named Meta — killed the feature, canceled contracts with publishers, shifted development resources from media to grassroots content creators, and deprioritized news in its News Feed rankings. According to Chartbeat, Facebook referrals to news sites fell from 50% of social traffic to 33% in a year and continued falling.[18] Meta laid off virtually all employees who had worked with the news industry and cut off grants to news organizations and journalism schools. Meta did unfriend news. After enduring constant negative coverage from putative media partners,

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[16] "An update on Google's compliance with the EU Copyright Directive":: blog.google/around-the-globe/google-europe/an-update-on-googles-compliance-with-the-eu-copyright-directive/.

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

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

worldwide lobbying to extract payments, and constant criticism for fueling angst and engagement with news and politics, Meta reverted to its roots in parties and puppies.

That was the state of play when Canada proposed its Bill C-18 in 2021.[19] The legislation would have required Google and Meta to pay for linking to news. In testimony and conversation, Google and others had many complaints about the bill: paying for links violates copyright; large publishers would benefit over small sites; it set no journalistic standards; it had no cap; it did not account for the value of links; and the means of funds' distribution was unclear.[20] Proponents hoped C-18 would bring in as much as C$375 million. That would have come on top of a journalism employment tax credit the federal government already provided, which now allows publishers to claim 35% of journalists' salaries up to C$85,000.[21] Google quietly tested dropping news for a small number of users, and when the test was found out, executives were called to answer to Parliament. Google urged negotiation, but the bill was enacted as was. Once enforcing regulations were drawn up defining what would be necessary to be exempted from the legislation and putting a cap on Google's contribution, the company agreed to pay up to C$100 million.[22]

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

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

At the same time, Elgie says, the industry lost as much as an additional C$25 to C$30 million in grants and fees Meta was estimated to be paying. Worse, Canadian news sites lost a great deal of traffic that had come from Facebook and Instagram. CBC/Radio Canada reported that its sites lost 23% of traffic, blaming the aftermath of C-18.[23] "We will probably get a bit

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[19] Text of final version of C-18: www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent.
[20] Colin McKay, "Google Canada's testimony on Bill C-18, the Online News Act," Google (Oct 18, 2022): blog.google/intl/en-ca/company-news/outreach-initiatives/google-canadas-testimony-on-bill-c-18-the-online-news-act/.
[21] Bryan Passifiume, "Liberals expand payroll tax credit for news publishing in fall economic update," *National Post* (November 21, 2023): nationalpost.com/news/politics/news-publishing-fall-economic-update.
[22] David Clarke, "Google strikes a deal with the federal government over Bill C-18," (December 19, 2023): www.excal.on.ca/news/2023/12/19/google-strikes-a-deal-with-the-federal-government-over-bill-c-18/.
[23] "CBC.ca Site Traffic Down 23%," Blacklocks.ca: www.blacklocks.ca/cbc-ca-site-traffic-down-23/

more money than we did before with Facebook and Google combined," Elgie says, "but we lost the Facebook traffic. So if you ask me, any day I would say, keep your damn money and give us the Facebook traffic back." Without social traffic, it is nearly impossible to build audience for a local news or community startup online. Some smaller local sites — including *Eagle Feather News*, the leading Aboriginal newspaper in Saskatchewan, and Torontoverse — have gone on hiatus since C-18.[24] Further, Elgie says, in markets where Village Media works, "there's going to be one winner. There's not room anymore for multiple digital publishers." In the end, C-18 will result in less competition and fewer voices in news.

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

"Some layoffs and closures could be interpreted as a signal that some were holding out hope for a big pot of gold," says Geist, who holds the Canada research chair in internet and e-commerce law at the University of Ottawa. He adds, "We must lay blame not just with the government but with the media groups that lobbied for this.... The larger outlets — the Torstars, the Postmedias of the world — were a nonstop conveyer belt of supportive op-eds for the legislation with almost nothing on the other side.... Torstar ran for almost two years sort of a 'Big Tech is Evil' series and then promptly stopped the series once they got the legislation. They devoted a full page to making it blank and to say, 'This is what the news will look like if this bill doesn't pass.'" This is the ethical issue raised when news organizations lobby governments for favors: it can influence coverage. Asked what lessons there are from Canada for the U.S., Geist told an interviewer, "Ultimately Canada becomes a model for what not to do."[25]

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

Publishers have long argued that by displaying their headlines, platforms rob them of traffic and audience, as headlines alone are sufficient to satisfy — rather than whet — readers'

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

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

appetite for news. This is called the “scanning effect” or “substitution effect.” Platforms, on the other hand, argue that they send tremendous traffic and audience to news sites by exposing readers to stories they might otherwise not see. This is called the “traffic effect.” Researchers Lesley Chiou and Catherine Tucker investigated an incident in 2010 to gain insight on both effects. When negotiations between the Associated Press and Google broke down, Google removed links to all AP articles, including those run by member newspapers. Meanwhile, Yahoo News renewed its contract and continued to display AP news, providing the opportunity to study the differences. The researchers found that traffic to Google News did not suffer — which they conclude disproves claims of a scanning effect — while traffic to news sites dropped by 28%. “We find evidence that the traffic effect is large, as aggregators may guide users to new content.” Thus, they say, aggregators act as a complement rather than a substitute for news sources.[26] A study of the effects of the German *Leistungsschutzrecht* and Spanish link tax by Joan Calzada and Ricard Gil, cited above, concurs in its findings: “Our results demonstrate the existence of a market-expansion effect through which news aggregators increase consumers’ awareness of news outlets’ contents, thereby increasing their number of visits. We find no evidence of a substitution effect in our two empirical settings.”[27]

The market value of links to sites has never been established for a simple reason: Google gives them away for free. Bill Gross, who has started 150 companies out of his Pasadena-based incubator, IdeaLab, founded Goto.com in 1998 (later sold to Yahoo as Overture) as a pay-for-placement search engine; he charged for links. Google, on the other hand, chose not to sell placement in search results, only to the side, to assure the independence and credibility of search. Google has said that news accounts for 2% of searches. Even so, Google says it sends 24 billion clicks a month to news publishers’ sites. Deloitte estimated the net promotional value of traffic to a news site (whether for advertising or subscriber acquisition) at $0.05 to $0.07 per visit — thus, Google’s links would add up to $14.4 to $20 billion a year in economic value for publishers. That is in addition to the $1 billion Google says it is spending outright in licensing content from more than 2,500 publishers worldwide for its News Showcase, as well as the billions in revenue it says it shares with publishers via its ad platforms. Google also touts other aid: training 570,000 journalists in various skills and helping sell 655,000 digital subscriptions to news with publishers via its tools.

Publishers’ lobbyists have made their own claims about the value they say they bring to the platforms. The NMA, author of CJPA and JCPA, issued a statement in 2019 contending that Google earns $4.7 billion from news alone, based solely on extrapolation from an offhand remark by a long-gone Google vice president from a decade before, saying that Google News — which carries no advertising and brings no revenue — was worth $100 million to the company. The NMA report was widely mocked, even within the news industry. *The New York Times*, which is represented by the NMA, reported its assertions unquestioningly just before a House hearing on JCPA.[28] In 2023, the Centre for Economic Policy Research (CEPR) released a report

[26] Lesley Chiou and Catherine Tucker, “Content Aggregation by Platforms: The Case of the News Media (January 6, 2017). MIT Sloan Research Paper No. 6925-23: ssrn.com/abstract=437344.
[27] Calzada and Gil
[28] The NMA statement can be found here: www.newsmediaalliance.org/wp-content/uploads/2019/06/Google-Benefit-from-News-Content.pdf. See also: Josh Benton, “That ‘$4.7 Billion’ Number for How Much Money Google Makes Off the News Industry? It’s Imaginary,” NiemanLab (June 10, 2019): www.niemanlab.org/2019/06/that-4-7-billion-number-for-how-much-money-google-makes-off-the-news-industry-its-imaginary/; Marc Tracy, “Google Made $4.7 Billion From the News Industry in 2018, Study

claiming that Facebook owes U.S. news publishers $1.9 billion a year and Google $10 to $12 billion. That is based on numerous specious assumptions. In Facebook's case, the CEPR naively conflates its News Feed with news. (Facebook no longer calls its News Feed that; it is now just the Feed.) In Google's case, the CEPR paper relies on a Swiss study by Fehr Advice and Partners that conflates information and news, contending that information searches (e.g., for Paris hotels) are news searches. Google says news accounts for 2% of searches and advertisers tend not to want to place their ads next to news. Fehr relies in turn on other studies contending that information searches (versus transaction or shopping and navigation searches) account for 50-80% of all searches (the latter number came from a two-decades-old paper using data from the defunct AltaVista). CEPR then calls upon a survey that says 70% of users want news in search, absurdly concluding that 35% of Google's revenue is news-related.[29]

The case study of Canada and C-18 belies the publishers' contentions. Reuters asked for data from two online analytics firms — Similarweb and Data.ai — both of which found that after pulling news off its platforms, Facebook and Instagram saw no meaningful loss of usage.[30] Facebook has long said news is no more than 4% of content; lately it says 3%, and that is declining precipitously. Is Facebook worse off without news? Elgie surveyed his readers, who say they miss news on Facebook, though the usage data might dissent.

If, as publishers and legislators contend, all these efforts at regulation are in the interests of paving an even economic playing field, then the contributions of value the platforms make must be included. It is possible any such balanced accounting would end up with publishers owing platforms. Why have platforms paid publishers? They have been strong-armed into doing so by legislators lobbied by news organizations. The audience, attention, advertising, and revenue that publishers have lost since the advent of the internet was not theirs by rights. Google, Meta, and other internet companies did not steal that from publishers, any more than they steal content by promoting and linking to it. Advertisers fled the monopolistic pricing power of local media for the lower prices and greater efficacy and accountability of online advertising, and for the opportunity to establish their own domains online and build direct relationships with their customers, practically for free. Among members of the public, trust has been falling in news, along with circulation, since the 1970s, long before the internet. A researcher at the University of Pennsylvania recently performed an experiment offering to give away a free subscription to a local newspaper; out of 2,529 people who received the offer, only 1.7% accepted.[31] Publishers lost their customers — readers and advertisers — and have yet to engage in honest self-reflection

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Says," *The New York Times* (June 9, 2019): www.nytimes.com/2019/06/09/business/media/google-news-industry-antitrust.html.

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

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

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

about why.

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

2. CJPA: Issues and questions

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

CJPA violates copyright law: Fair use doctrine as defined in the 1976 Copyright Act stipulates that the use of copyrighted material “for purposes such as criticism, comment, news reporting, teaching... scholarship, or research, is not an infringement of copyright.” The Ninth Circuit found in multiple cases that displaying thumbnails or snippets of images is “a fair use primarily based on the transformative nature of a search engine and its benefit to the public.” Quoting and linking to content is transformative in that it serves a different function: “improving access to information on the internet.”[32]

It is critical to note that federal copyright law preempts state law. The 1976 federal statute specifies that all works that “come within the subject matter of copyright ... are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.”[33]

The trade associations supporting CJPA and JCPA — the NMA and National Association of Broadcasters — are pressing for an expansion of copyright and diminishment of fair use not only in the contexts of search engines and social media but also now regarding artificial intelligence, contending that AI companies should be required to license and pay even to read copyrighted material for the purpose of training large language models — itself a transformative use. (See their testimony, alongside that of this paper’s author, before the Senate Judiciary Subcommittee on Privacy Technology and the Law on January 10, 2024, footnoted below.[34]) The

[32] *Perfect 10 v. Amazon*: cdn.ca9.uscourts.gov/datastore/opinions/2007/12/03/0655405.pdf.
[33] 17 U.S. Code § 301

[34] Video of testimony and prepared statements are available here: www.judiciary.senate.gov/committee-activity/hearings/oversight-of-ai-the-future-of-journalism.

French competition authority has fined Google €250 million for reading and using news to train its large language model, Gemini.[35]

CJPA sets up a perverse incentive to create yet more clickbait: Because this is a link tax and the fee structure in the bill is built around how many links a news organization receives on a platform, publishers would be incentivized to produce more commodity content on every topic possible, worsening a problem that already plagues the web and news on it: Rather than doing original reporting, too many newsrooms squander scarce journalistic resource on the less-expensive task of copying and rewriting each others' stories to create generic content for the sake of search-engine optimization and social clicks, adding nothing of value to the information ecosystem. It is ironic that news organizations complain about platforms — to use the words of the legislation — accessing, crawling, and indexing content, when journalists do that every day when they read, learn from, and repurpose information from each others' work.

It is important to note that many innovative local and ethnic news organizations provide news in forms other than web sites, links, and clicks: through SMS and WhatsApp, podcasts, video, community events, databases, apps, issue trackers, open office hours, and — especially with Black and Latino media — print. Thus, rewarding links and measuring value according to them misses much of what these news organizations offer and, importantly, does not encourage innovation and experimentation with new forms of news serving people where they are.

California media will receive a small proportion of payments: Because CJPA does not require that a news organization be based in or dedicated to serving residents of California and because its definition of a qualifying publication is extremely broad — it need only provide 25% of its content about "topics of current local, regional, national, *or* international public interest" (emphasis added) — an untold number of news sites outside the state, including large national media conglomerates and even foreign entities, will qualify for a proportional share of revenue from the law. An analysis by Free Press asserts that California's independent, nonprofit, or ethnic media sites would receive "much less than" 2% of fees generated under CJPA.[36]

Hedge funds and media conglomerates benefit most from CJPA: Eighteen of California's top 25 newspapers by circulation are now controlled by hedge funds or private equity — based in New York, New Jersey, and Japan — which have a clear record of harvesting cash flow from the newspapers they own, selling assets, cutting newsrooms to the marrow, and not investing in growth or innovation. A portion of funds from CJPA is required to go to paying journalists. But money is fungible; there can be no assurance that it will not end up instead fortifying parent companies' bottom lines. On the broadcast side, Free Press' analysis notes that television stations account for three-quarters of referrals from Meta's services, and 85% of broadcast stations in its sample studied are owned by national media companies. They, too, will benefit from CJPA.

Much of local, community, Black, and ethnic media will get nothing: CJPA requires

[35] "French competition watchdog hits Google with 250 million euro fine," Reuters (March 20, 2024): reuters.com/technology/french-competition-watchdog-hits-google-with-250-mln-euro-fine-2024-03-20/.

[36] S. Derek Turner and Alex Frandsen, "Crumbs for California: How a Bill to 'Save Journalism' Would Enrich Big Media and Harm Community News Outlets," Free Press (November, 2023): www.freepress.net/sites/default/files/2023-11/crumbs_for_california_free_press_action_report_on_cjpa_legislation.pdf.

that a news organization earn at least $100,000 to qualify for funds — and if they qualify, they will be paid on the basis of how many links they receive on the platforms. This leaves out much of the media the law is intended to serve: community journalism. LION Publishers, an association of independent, local news sites, says that as of 2021, 44% of its members earned less than CJPA's threshold. Many Black newspapers are still that — newspapers — and thus would not benefit from a link-based fee. "While a number of conglomerates are scoped into the bill, true independent or small newspapers are explicitly excluded," says Benjamin Chavis, president and CEO of the National Newspaper Publishers Association (NNPA), serving Black news organizations.[37] Other services, such as Oakland's El Tímpano, serve users via text; that work would not be rewarded. This legislation is designed to benefit the members of the trade association that wrote it more than people building the future of local journalism.

Funds could support disinformation: Because the legislation carries an overly broad definition of journalism and no standards for journalistic quality, fees can and will go to propaganda sites masquerading as news. Daily Caller, founded by disgraced Fox News anchor Tucker Carlson, supports the bill. An analysis by the Chamber of Progress, a center-left advocacy organization funded by technology companies, concludes that "disinfo giants" (in its definition, Fox News, the *New York Post*, Newsmax) will, based on their comparative traffic, receive 4 times as much in CJPA fees as major California news media, 151 times as much as Latino media, and 844 times as much as Black media.[38]

Compelled speech is not free speech: The CJPA forbids platforms from "retaliating" against news outlets "by refusing to index content or changing the ranking, identification, modification, branding, or placement of the content." This amounts to a must-carry provision. Note well that freedom of expression protected under the First Amendment includes not only the creation of content but also the choice of what to carry. Newspapers, magazines, broadcast stations, and platforms each have a First Amendment right to decide what they will and will not carry; choice is speech. CJPA does give permission for a platform to enforce its terms of service, but that effectively sets up an opportunity for disinformation and propaganda outlets to harass platforms and demand carriage.

Not only would platforms be forced to carry speech they might object to, but they are further compelled to pay for it. In *United States v. United Food*, the Supreme Court held that "just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views... or from compelling certain individuals to pay subsidies for speech to which they object."[39]

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[37] Chris Krewson, "A Letter to LION Members About the Journalism Competition Preservation Act and the Online News Act" (September 5, 2022): www.lionpublishers.com/a-letter-to-lion-members-about-the-journalism-competition-preservation-act-and-the-online-news-act/; Benjamin F. Chavis, "Proposed Journalism Competition Preservation Act's Negative Impact on Small Minority-Owned Newspapers," The Washington Informer (December 7, 2022): www.washingtoninformer.com/chavis-proposed-journalism-competition-preservation-acts-negative-impact-on-small-minority-owned-newspapers/.

[38] Kaitlyn Harger, "California's Online Journalism Bill Would Be A Windfall for Fox News and Other Disinfo Outlets," Chamber of Progress (May 1, 2023): medium.com/chamber-of-progress/californias-online-journalism-bill-would-be-a-windfall-for-fox-news-and-other-disinfo-outlets-54d95a4636b4.

[39] United States v. United Foods. See also the CCIA memorandum, "Legal Deficiencies in the California Journalism Preservation Act": ccianet.org/wp-content/uploads/2023/06/CCIA-CJPA-Legal-Analysis-Memorandum.pdf.

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

No funding cap: As was the case in Canada's C-18 — until rectified by negotiation after passage — CJPA specifies no cap on funding required of platforms.

Meta's stand: In May 2023, Meta spokesperson Andy Stone issued a statement regarding CJPA: "If the Journalism Protection Act passes, we will be forced to remove news from Facebook and Instagram rather than pay into a slush fund that primarily benefits big, out-of-state media companies under the guise of aiding California publishers. The bill fails to recognize that publishers and broadcasters put their content on our platforms themselves and that substantial consolidation in California's local news industry came 15 years ago, well before Facebook was widely used. It is disappointing that California lawmakers appear to be prioritizing the best interests of national and international media companies over their own constituents." Some speculate CJPA's passage might trigger Meta to drop news entirely in the U.S. if not the world, which would be a severe blow especially to new and small community news outlets.[40]

Google and Meta are not responsible for the fall of local news: As Meta says in its statement, disruption in California's news industry goes back long before the rise of these two platforms and the internet itself. As this paper will explore next, early signs of such disruption began in the 1950s, when television reached half of American homes and newspapers folded and consolidated, leaving highly profitable, single-owner monopolies in the state's largest cities. CJPA is constructed punitively, as if just two California technology companies are responsible for losses in the state's news industry, and so they should pay in recompense. Internet companies provided competitive offerings to advertisers with lower prices and greater efficiency, efficacy, and accountability. Newspapers' former advertising clients — auto dealers, real-estate agents, employers, and retailers — took advantage of the opportunities provided by the internet to build their presences online and establish their own direct relationships with customers, reducing their need for advertising in old media. The internet abhors middlemen. Publishers are middlemen who have lost their monopolies and their pricing power. That is the harsh reality of capitalism and technology disruption, not the invention of two internet companies.

Legacy news companies bear responsibility for their present state and fate: In its annual worldwide survey, the Reuters Institute for the Study of Journalism at Oxford found that 42% of Americans now sometimes or often avoid the news; only a third trust most news most of the time; and the proportion of those very or extremely interested in news has dropped 18%, from 67% to 49% since 2015. The numbers reflect an ideological divide: 22% of those on the left avoid social justice news vs. 70% on the right; for climate news it is 12% on the left vs. 64% on the right. Avoidance of local news in the U.S. is lower than other categories — 7% on the left vs. 14% on the right — but note that is still twice as high on the right. Trust in news overall stands at only 32%, flat since 2015 (versus, for example, 69% in Finland and 57% in the Netherlands). Only 21% of Americans pay for news, even though most newspaper sites have erected paywalls.[41]

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

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

CJPA breaks the web: Links are the nervous system of the web. They enable conversation, community, commerce, and collaboration. For Google, links are a signal of validation — one person saying that something is worth seeing, not unlike academic citation. To charge for links — or to require providing them — violates the ethic and architecture of the internet, for links should be freely given and freely followed. To make links a bargaining chip — reward for publishers, punishment for platforms — ill serves users and citizens. As the inventor of the world wide web, Sir Tim Berners-Lee, testified before the Australian legislature related to its Bargaining Code: "Requiring a charge for a link on the web blocks an important aspect of the value of web content.... It would undermine the fundamental principle of the ability to link freely on the web and is inconsistent with how the web has been able to operate over the past three decades. If this precedent were followed elsewhere it could make the web unworkable around the world." Vint Cerf, an inventor of the internet, testified: "Links are the cornerstones of open access to information online; requiring a search engine (or anyone else) to pay for them undermines one of the fundamental principles of the Internet as we know it today.... We must not make the mistake of altering the fundamental and flexible ways in which the Internet works in order to fix the long-term structural problems that a particular industry was starting to face already years before the Internet and the world wide web appeared."[42] If California passes such a link tax, it would balkanize the web, isolating California's internet from the rest of the nation's and the world's as, for example, users in Sacramento could see their Facebook without news while users in Reno see a different Facebook with news.

3. The state of the California's news ecosystem

There is no question that the legacy news industry in California — as in the nation — is in crisis. In January, the *Los Angeles Times* announced layoffs of 20% of editorial staff, or at least 115 journalists, returning the level of staffing in the newsroom — once the largest in the nation — to its low ebb when Patrick Soon-Shiong bought the paper for $500 million in 2018. The paper has still not met the goal Soon-Shiong set in 2019 for 5 million digital subscribers; as of mid-2023, it had just over a tenth that number, which is half of the print circulation the paper boasted in 1990.[43] The paper is reported to be losing $30 to $40 million annually. *The Times*' layoffs included the paper's only Latina columnist, 38% of the newsroom's Latino staff, and much of the staff of *De Los*, which served Latino communities — in a market that is virtually half Hispanic or Latino.

In July, 2023, Soon-Shiong sold *The San Diego Union-Tribune* to Media News Group

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[42] Testimony available here: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABNewsMedia/Submissions.

[43] Sara Fischer, "LA Times reaches nearly 550K digital subs as it launches new brand," Axios (July 11, 2023): www.axios.com/2023/07/11/la-times-nearly-550k-digital-subs-launches-brand; Lukas I. Alpert, "L.A. Times Owner Sets Ambitious Goal: Five Million Digital Subscribers," *Wall Street Journal* (March 19, 2019): www.wsj.com/articles/los-angeles-times-owner-has-high-digital-ambitions-11553006559.

(MNG, also doing business as Digital First), which is owned by the hedge fund Alden Global Capital. The Union-Tribune joined the *Orange County Register, Los Angeles Daily News, Press-Enterprise* of Riverside, *Long Beach Press-Telegram, San Gabriel Valley Tribune, Pasadena Star-News, Whittier Daily News*, and *San Bernardino Sun* in MNG's Southern California group.

MNG's Bay Area News Group has a history of consolidating editorial, production, and business operations and titles. In 2011, the *Alameda Times-Star*, *Fremont Argus, Hayward Daily Review*, and *West County Times* consolidated under the *Oakland Tribune*. The *Contra Costa Times*, *East County Times*, *San Ramon Valley Times*, *Tri-Valley Herald,* and *San Joaquin Herald* consolidated as *The Times*. The *San Mateo Times* became an edition of the *San Jose Mercury News*. In 2016, the company consolidated again as all those papers became two: *The Mercury News* and the *East Bay Times*. Thereby local newspapers become much less local. Layoffs and cutbacks have been a constant reality under Alden. It is a profitable strategy.[44]

Gannett, the largest newspaper chain in America, owns eight newspapers in the state. The combination of Gannett and Gatehouse is controlled by the Fortress Investment Group, a private equity firm owned by the Japanese company Softbank. (Fortress also took control of Vice and early in 2024 announced the layoff of "several hundred" employees and the shutdown of its entire web site.) McClatchy, the national chain headquartered in Sacramento, filed for bankruptcy in 2020 after it was unable to restructure pension debt. It publishes five papers in California. In 2020, it was taken over by Chatham Asset Management, which also controls Canada's PostMedia and owns *Us Weekly* and the tabloid *Star*.

On the same day in March 2024, both Gannett and McClatchy announced that they were dropping the Associated Press news wires. As their staffs shrink, many local newspapers have used AP content to fill columns and web pages with national, international, business, and sports stories from the service's 250 bureaus in 100 countries. Now, unless agreement is reached, that will disappear from these papers and websites. As it is a cooperative, the AP also facilitates the sharing of news among its more than 1,000 members, so the impact on the state's news ecosystem is even more far-reaching.[45]

California is hardly alone in its trauma. Nationwide, the country is on track to lose a third of its newspapers and 43,000 journalists, or 60% of the staff of already diminished newsrooms as of 2005. In that period, California lost 69% of its newspaper journalists. Broadcast news will be next as audiences age and decline, as podcasts and satellite radio compete for attention, and as advertising goes elsewhere. Northwestern University's Medill School of Journalism conducts a regular study of "news deserts" and finds that nationally, 200 counties have no or limited access to news. In California, by its count, 4 counties have no news source and 12 have a single source.

However, California also has vibrant Black, ethnic, and community media and an

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[44] Ken Doctor, "Newsonomics: Alden Global Capital is making so much money wrecking local journalism it might not want to stop anytime soon," NiemanLab (May 1, 2018): www.niemanlab.org/2018/05/newsonomics-alden-global-capital-is-making-so-much-money-wrecking-local-journalism-it-might-not-want-to-stop-anytime-soon/.

[45] Laura Wagner, "Two major newspaper chains dropped the AP. What will it mean for readers?" The Washington Post (March 21, 2024): www.washingtonpost.com/style/media/2024/03/21/gannett-mcclatchy-associated-press/.

impressive array of new and innovative digital news outlets. In Medill's count, California boasts 126 ethnic media outlets: 44 in Los Angeles County, 11 in San Diego, 9 in San Francisco, 7 in Riverside, 5 in San Bernardino. A census taken by the Center for Community Media at CUNY's Craig Newmark Graduate School of Journalism counts 216 AAPI outlets in the state — including print, web, radio, TV, podcast, magazine, newsletter; 91 Latino outlets; and 45 Black outlets. LION Publishers, an association of local, independent news outlets, counts 65 members in California and the Institute for Nonprofit News lists 34 of its 425 members in the state.[46]

California also has a large and growing population of digital news outlets. Medill counts 58 in the state: 13 in Los Angeles, 7 in San Francisco, 4 each in San Diego, Riverside, and Sacramento. Those serve local audiences, and there are many more that serve every variety of interests and industries, especially technology. Add to this a growing variety of podcasts, some produced by public radio, others independent — e.g., The State of California, Capitol Weekly, History of California Podcast, California Sun, and California Foodways.

This picture of the state's media ecosystem leads to a key question: If money is available to support journalism in California, where is it better invested: in large, legacy media or in new competitors, including community-based and both not-for-profit and for-profit news? Note well that most news published by legacy newspapers is now behind paywalls, serving smaller and smaller populations. (The *L.A. Times'* half-million paid digital subscribers would amount to 5% penetration in L.A. County.) Meanwhile, other outlets — community, ethnic, and not-for-profit, in addition to public media and social media — remain free and open. To spend time browsing new, community, independent, ethnic and public media is to be impressed with their breadth of coverage and innovation. Of course, many cities and counties — and the state as a whole — could use more and better coverage. And there are communities long not served by mass media that are still under-represented online. That is all the more reason to invest in the growth of this sector.

Take LAist. In 2018, Southern California Public Radio bought this local news website, and in 2023 it took the bold strategic move of rebranding its radio station, KPCC, and entire operation under the digital LAist brand. More than that, the organization did extensive work listening to communities, learning their needs, and reorganizing the newsroom and all its programming around those needs. Asked about the state of news in Los Angeles, Kristen Muller, chief content officer, says the *Times* used to set the agenda in the region but no longer does. The paper's coverage of Orange County used to be extensive, with 100 reporters, but that is reduced to perhaps a reporter and a columnist, while the *Orange County Register* — another Media News Group paper — is a shell of its former self after a series of owners and upheaval since 2003. Los Angeles' once-robust alternative media scene is also diminished as Village Voice Media, then owner of *LA Weekly*, entered into an agreement to end competition in multiple cities with the publisher of *New Times LA*, itself a consolidation of *Los Angeles View* and *Los Angeles Reader.* "I don't think the agenda is 'owned' anymore," Muller says. "There is no one news agenda."

At the same time, new, small-scale media are rising. Muller cites L.A. Public Press

[46] Medill's State of Local News Report 2023 is here: localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/. The Center for Community Media's censuses of Black, Latino, and AAPI media are here: localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/. Find LION Publishers' members here: www.lionpublishers.com/members/. INN's members are here: findyournews.org/campaign/inn-network-directory/. Each of these lists can be sorted by state.

(covering housing, transit, justice, health care, environment) and LA Taco ("celebrating the taco lifestyle in Los Angeles"). There are TikTokers explaining L.A. history. LAist has worked with community colleges on voter awareness and with ethnic media on the Census. Muller would like universities to help newsrooms with emerging technology. She envisions a networked system with a hub focused on accountability for county and city institutions, working collaboratively with the region's diverse new media. Ariel Zirulnick, LAist's director of news experimentation, adds that without a hub that "anchors the entire ecosystem, how do those communities talk to each other or become aware of what's happening just one neighborhood over?... You need a player that can listen to all those smaller players and connect the dots between what is happening not just in Boyle Heights but also in Pomona." She asserts that "information alone is not the solution ... not just keeping people up to date but helping them make sense of it."[47]

Note well that this discussion is not about the health of individual publications but instead about the health of the larger news and information ecosystems and the need for collaboration and innovation across newsrooms and other public institutions, from colleges to schools to libraries and local governments.

In the business of news, Ken Doctor is a renowned analyst and former newspaper executive who decided to practice what he preaches. In 2020, he raised capital and set out to launch Look Out Santa Cruz, serving the county's quarter-million residents with independent, nonpartisan, local coverage and competing with — soon replacing, in Doctor's ambition — the daily newspaper, the *Santa Cruz Sentinel*, which is now controlled by Media News Group. Look Out employs 10 journalists and 5 business staff. Doctor helped organize a national alliance of a half-dozen digital news outlets with similar ambitions, including Long Beach Post, which competes with the *Press-Telegram*, also owned by Media News. Doctor is planning to expand to a second city, where the community's newspaper was taken over by Gannett, and then three more markets after that. He chose not to make Look Out not-for-profit but instead a public benefit company, enabling him to raise capital, offer stock options, and endorse local candidates.

Doctor is critical of CJPA, saying it would reward clickbait and national media. "If you're going to have the rallying cry to save local news in California, it basically violates the idea of what you're trying to get at." Doctor offers other ideas for what would help grow the state's news ecosystem. Though a hub might be helpful in populous L.A., there is not enough media to create such a network in smaller Santa Cruz. But Doctor is eager to see the creation of a statewide advertising network for independent and ethnic media. He hopes for an association for independent media, for he says the California News Publishers Association (CNPA) is not representative. More than anything else, Doctor says what is needed is a capital pool to allow for investment in digital news startups, especially by Black and ethnic owners.[48]

Regina Brown Wilson runs California Black Media, a consortium and news service including about 30 Black news publishers.[49] "People are currently seeing less revenue but I will say that they're still surviving," she says. Black media have "always had to operate off less but are always expected to produce more." Asked what would help her members, her first answer is to maintain public notice laws. "Strengthen them; add to them. Have them continue to go to

[47] Author's interview with Muller and Zirulnick in February 2024.
[48] Author's interview with Ken Doctor, February 2024.
[49]. California Black Media membership list is here: www.cablackmedia.org/media-outlets/

print, local news media." Wilson says she helped obtain $60 million for publishers during the Census. She also wants independent measurement tools that will enable the equitable allocation of such funds. One issue not fully addressed in CJPA is "defining who's a news outlet and not," though government determining those definitions would make her uncomfortable. Standards are necessary to maintain credibility with both government and commercial advertisers.

Wilson frankly resented being shown CJPA as a *fait accompli*, without the opportunity to design policy that works for her constituents' unique place in the market. She has similar issues with some of the alternatives being proposed. Investigating the means to help local publishers should begin with listening to those publishers and organizations doing the work. She notes that some large legacy media and some not-for-profit media have an "elitist attitude." Across California's diverse media ecosystem, publishers will by no means present a monolithic view of a single solution. Wilson points out that many of the publications she works with are resilient — *Los Angeles Wave* is 110 years old, *Los Angeles Sentinel* 90, and *Black Voice News*, which Wilson's parents bought from students at the University of Riverside and which her sister runs now, is 50 years old. Print still matters in the Black press. "A lot of my folks are reluctant to go digital only," Wilson explains. "They are reluctant to go all in because they don't own it."[50] Yet they are innovating in other ways. In 2023, the *L.A. Sentinel*'s Taste of Soul — by its boast, the "biggest and baddest block party in all of Los Angeles" — attracted more than 300 vendors and 500,000 people.[51] If the goal is to help local news publishers as a whole, measuring value and basing compensation only on digital links and not accounting for other activities will be inequitable. Similarly, California's Latino news media often depend upon print as well as WhatsApp to serve their readers. Neither medium would be accounted for in CJPA's allocation of payments.[52]

The news and information ecosystem in California is marked by tremendous variety of form, of communities served, and of business models. Publications serving Latino and Hispanic communities include El Tímpano, La Prensa de Los Angeles, El Observador, *La Opinión*, *El Latino*, *Vida En El Valle*, *El Reportero*, and many more. The list of news organizations serving AAPI communities is a microcosm of all Asia, with sites and publications in English and diasporic languages serving Chinese, Philippine, Korean, Vietnamese, Khmer, Indonesian, Indian and many more communities. California being California, there is an impressive array of startups covering the state's leading industry, technology, among them The Information, Techdirt, 404 Media, and the TWiT network of podcasts (the author of this paper is cohost of one of them). Nextdoor, headquartered in the state, is playing an important role in helping neighborhoods share information, and Reddit, also a California company, serves no end of communities defined not by geography but by interest, passion, need, and circumstance.

In addition, Cal Matters, a nonprofit founded in 2015, is filling in gaps in capital and statewide coverage left by the shrinkage of large news organizations and their bureaus. San Francisco-based *Mother Jones* recently merged with the nearby Center for Investigative Reporting (Reveal) to expand investigative reporting. The San Francisco Standard is covering the City — and hiring journalists while they are being laid off elsewhere — thanks to the support

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[50] Author's interview with Regina Brown Wilson, February 2024.
[51] *The Sentinel*'s report here: lasentinel.net/oh-what-a-beautiful-day-taste-of-soul-500000-strong.html.
[52] Author's interview with Jessenia De Moya Correa, director of the Latino Media Initiative at CUNY's Newmark Journalism School, March 2024.

of Silicon Valley venture capitalist Michael Moritz. The Voice of San Diego, launched in 2005, became so successful at raising funds that it started the News Revenue Hub, which has helped independent newsrooms across the country raise $100 million from readers, without paywalls. Berkeleyside and the Oaklandside have been leading innovators in hyperlocal journalism in the country since 2009. Mission Local has been doing the same in San Francisco since 2008. Ed Source covers education. San Quentin News is reported by and serves the incarcerated. SJV Water covers vital issues of the environment. Weed Week covers that new — or newly legal — industry. This list of notable news services could go on and on and on.

4. The history of disruption in California news

The state's news media ecosystem is more diverse with more competition and innovation than ever. For context, it is worthwhile to briefly explore the history of California media to understand that disruption is far from new.

In 1900, San Francisco, with a population of 300,000, boasted 18 daily newspapers — 3 in German, 2 in Italian, 1 in Japanese, 1 in French — and 61 weekly and monthly periodicals: everything from the provocative *Argonaut* and *Wasp* to *Coast Seamen's Journal* and *Filatelic Facts and Fantasies*. William Randolph Hearst and his *Examiner* battled with the de Young family's *Chronicle*, a rivalry that continued until 1965, when both publishers asserted they could not survive in competition. They entered a joint operating agreement — later codified in the Newspaper Preservation Act of 1970 — sharing production, distribution, advertising sales, and the publishing of the Sunday newspaper. (The author of this paper was editor of *The Examiner*'s contribution to that Sunday edition in the late '70s, before becoming a daily columnist competing with — and losing to — the legendary Herb Caen.) The technology that disrupted the publishers' businesses was not the internet, but broadcast. Even with that federally sanctioned exemption from antitrust, the papers continued to suffer, and in 2000, Hearst bought the *Chronicle* and sold off the *Examiner*, essentially leaving San Francisco as a one-paper town. At the time, *The New York Times* asked whether the Newspaper Preservation Act merely delayed the inevitable.[53]

The state capital, with a population of only 30,000 in 1900, was served by two daily newspapers, each founded in the 1850s. *The Union* and James McClatchy's *Bee* competed until the former folded in 1994, leaving another one-paper town. In 2008, McClatchy bought a fellow national chain, Knight Ridder, for $4.5 billion. The debt taken on to complete that transaction is what made McClatchy — like Gannett, Gatehouse, Tribune, Scripps, and other chains — vulnerable to takeover by hedge funds and private equity, which shop for distressed debt as a means to acquire inexpensive assets and cash flow.

In Los Angeles, disruption in the newspaper market stretched back to 1954, when the only Democratic paper west of the Rockies, the *Daily News* — founded as the *Illustrated Daily News* by Cornelius Vanderbilt IV in 1923 — was bought by the Republican *Times* and folded, all of its employees fired without severance. "Only one man hung himself — Pat O'Hara, a good friend of mine," a long-time California journalist named Don Dwiggins reminisced to CBS News

[53] Felicity Barringer, "A 1970's act to preserve faltering newspapers seems only to delay the inevitable end," The New York Times (Aug. 16, 1999): www.nytimes.com/1999/08/16/business/media-1970-s-act-preserve-faltering-newspapers-seems-only-delay-inevitable-end.html.

seven years later. “The rest struggled it out, got jobs again. It’s rough but you live through it.”

Los Angeles was still a four-newspaper if two-proprietor town with the Chandlers’ *Times* and *Mirror* and Hearst’s *Examiner* and *Herald-Express* — until 1962, when Chandler and Hearst entered into anti-competitive collusion to kill one each. On the same day, the *Mirror* died and the *Herald-Express* was folded into the afternoon *Herald-Examiner*. The House Judiciary Antitrust Subcommittee began hearings on the moves. Its chair, Rep. Emanuel Celler (D, NY) said, “Our chief interest is to keep newspapers alive.” Yet in L.A., papers were at the same time sprouting up in the county’s growing suburbs, with 24 daily newspapers in print then. That hurt the big dailies. TV hurt more. In 1964, a Roper poll said that 55% of respondents got most of their news from TV (just as today, according to the Reuters Institute, 48% get their news from social media, 48% from TV, and only 16% from print). In his inquiry, Celler asked whether newspapers should be exempted from antitrust as the price of survival (just as today, the federal JCPA seeks to exempt news companies from antitrust to negotiate with platforms).[54]

The news about less news in Los Angeles was so big that the first issue of the *Columbia Journalism Review* devoted nine pages to the loss of two newspapers, and CBS Reports aired a one-hour documentary less than three weeks after the papers shut down. Host Charles Collingwood noted that by then 95.8% of American newspapers had no competition. “When a newspaper dies,” he intoned, “it is something between a death in the family and a great ship sinking.” Indeed, much was lost with the papers’ demise. With the *Examiner* went “a legend of the kind of newspapering which also is on the wane: the freewheeling, swashbuckling, lock-picking, steal-the-picture, get-the-story school which history and technology have now overtaken,” Collingwood said.

Collingwood spoke with Harry Ashmore, editor-in-chief of *Encyclopedia Britannica*, who studied the American press — and seemed to foretell its fate even now. “The newspapers have lost their primacy, I think, in the total field of communications,” Ashmore said. “The economic base is also complicated by their inability, I think, to roll with the punch, to improve their methods. When I was in the newspaper business, which was up until a couple of years ago, we were still putting them out about the way Gutenberg got out the Bible — with hot type and inefficient methods. But I think more than anything else, it’s been a lack of imagination, an unwillingness on the part of the industry as a whole to recognize these changing conditions and try to adapt to them. And now, I think, it’s late in the day, and I think the bell is tolling, all right.” The show ended with press critic A.J. Liebling, who lamented that a one-newspaper town “is like a man with one eye and often the eye is glass.... What you have in a one-ownership town is a privately owned public utility that is constitutionally exempt from public regulation.”[55]

L.A. would end up a one-newspaper town when Hearst folded its *Herald-Examiner* after 118 years in 1989; its newsroom would be used as a Hollywood set. *The Times* would, for a time — like other monopoly newspapers across the country — become incredibly profitable. It carried the most advertising of any newspaper in America, until it didn’t. The paper’s ignominious fate: It was sold to Tribune Company in 2000, which was sold to real estate speculator Sam Zell, who

[54] “Celler Says Inquiry Aims to Keep Newspapers Alive,” *Editor & Publisher* (February 16, 1963), 11; “Celler Hearing Comes to Halt After Quiz on L.A. Closings,” *Editor & Publisher* (March 23, 1963), 11; Ray Erwin, “Editors Seek, Find Severe Criticism,” *Editor & Publisher* (December 12, 1964), 28; Reuters Institute 2023 report: reutersinstitute.politics.ox.ac.uk/digital-news-report/2023.

[55] “Death in the City Room,” CBS Reports, broadcast January 25, 1962. Transcript obtained by the author.

put it in bankruptcy and took it private in 2008 before it became Tronc Inc., which sold *The Times*, *The San Diego Union-Tribune*, and *Hoy* to investor Soon-Shiong in 2018.

Editor & Publisher, still the leading publication for the business of newspapers, writes: "It is tragic to see long-established institutions succumb to the inexorable forces of newspaper economics. It is tragic for the community that suffers the loss of a newspaper; it is tragic for the owners and operators who have to admit defeat in the battle against publishing obstacles; and it is more than tragic for those hundreds of loyal workers who are suddenly deprived of their livelihood." *Editor & Publisher* wrote that in July 1958.[56] Are things worse for newspapers today? Certainly. But they have been buffeted by the winds of technological, economic, and competitive change before. Some managed to adapt. Some did not.

5. Copyright and news: history and context

As CJPA is an effort to establish ancillary copyright for publishers in California, it is important to examine the history of copyright and news.

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

The statute gave authors the opportunity to sell rights in their works to publishers, who then tried to assert that they were acquiring authors' perpetual natural rights to the works. The momentous case of *Donaldson v. Becket* rejected the publishers' claims, limiting copyright for author or acquirer to the terms of the statute. Thus it can be argued that copyright was not a granting of rights but instead a limiting of rights, reducing a creator's control from forever to 14 years, for the benefit not of creators or publishers but of the public and its commons.[57]

It is critical to note that at their inceptions, the Statute of Anne and the United States' first copyright law offered no protection to news — neither newspapers nor magazines. *The New York Times'* recent suit against OpenAI claims that "since our nation's founding, strong copyright protection has empowered those who gather and report news to secure the fruits of their labor and investment."[58] In point of fact, the Copyright Act of 1790 covered only books, maps, and charts. News periodicals were not explicitly brought into copyright's embrace until 1909. Even then, according to Will Slauter, author of *Who Owns the News: A History of Copyright* (Stanford, 2019), there was still debate over whether to protect news articles — as opposed to literary

[56] "Newspaper Economics," *Editor & Publisher* (July 26, 1958), 6
[57] Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, Princeton (2014), 65-69.
[58] NY Times v. Microsoft, OpenAI: nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf.

features — as they were seen as the products of institutions rather than the creative works of authors, and to limit the distribution of news would restrict public discourse about it.[59]

Copyright covered only American works, allowing publishers to issue — or one might today say "pirate" — countless books from England and elsewhere for free. When the U.S. did begin to honor international copyright in 1891, it was not so much to protect foreign writers including Charles Dickens, who had traveled to America to lobby for it, but was enacted at the behest of established publishers who "faced competition from firms that utilized new technology to undersell them in the marketplace," as Peter Jasczi and Martha Woodmansee recount. The mechanization and industrialization of print — with high-speed, steam-powered, rotary presses and the new Linotype typesetting machine — opened the door to penny newspapers and the mass market and brought sudden abundance to the old, staid publishing industry. Elite publishers "could afford to license the copyrights of foreign authors, could mobilize copyright law to exclude competitors from the marketplace."[60] Thus acceptance of international copyright might be seen as a form of regulatory capture, benefitting incumbents. Slauter points out that negotiators in the 1886 Berne Convention on Copyright — which the U.S. did not join until 102 years later — considered exempting news from protection to encourage its wide exchange.[61]

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

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

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

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[59] Will Slauter, Who Owns the News: A History of Copyright," Stanford (2019), 201-202.
[60] Peter Jaszi and Martha Woodmansee, "Copyright in Transition," in *A History of the Book in America*, Vol. 4, edited by Carl Kaestle and Janice Radway, UNC Press (2009), 90-98.
[61] Slauter (2019) and the author's conversation with him in January 2024.

Property—intellectual property—has been the predominant metaphor of copyright. CJPA and its antecedents attempt to create a property right in news. But in *INS*, the court's majority "consciously rejected the idea of a property right in news, expressing concern over the public interest consequences of such a move, and decided to frame its opinion in terms of unfair competition," Shyamkrishna Balganesh explains in the *Columbia Law Review*.[62] In his *INS* dissent, Justice Louis Brandeis famously warns against considering information property: "The general rule of law is, that the noblest of human production — knowledge, truths ascertained, conceptions, and ideas — become, after voluntary communication to others, free as the air to common use."[63] Since then, the doctrine of hot news has been whittled down, as Slauter explains, by the Supreme Court's decision in 1938 to end reliance on the common law principles called upon in *INS*, and by the Copyright Act of 1976, which preempts claims of misappropriation under state common law.[64]

The AP tried to resurrect its hot news doctrine as late as 2009, in a suit against an aggregator that "copied some or all of the expression contained within" articles, erasing the AP's brand and distributing it without credit. The suit was settled before trial. Two years later, in *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*, the Second Circuit decided against the plaintiff, which had sued an internet company for aggregating its research (with credit) alongside other financial news. The Court held the two companies were not competitors.[65] "Essentially," writes Adam J. Tragone, a newspaper editor turned First Amendment litigator, "if the alleged infringer is not in competition with the infringed, a court will more than likely find no instance of free riding. With the lines blurred as to who or what is a news source, traditional news sites have virtually no protection in the hot news tort after Barclays."[66]

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

6. A history of newspapers and competition

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

Newspaper publishers were, to say the least, inhospitable to the new medium. As early as 1922, the AP — as a cooperative owned by publishers — forbade the use of its news on radio. In

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62 Shyamkrishna Balganesh, "'Hot News': The Enduring Myth of Property in News," *Columbia Law Review*, Vol. 111 No. 3 (April 2011) 422.
63 *International News Service v. Associated Press*.
64 Slauter, 263
65 *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*.
66 Adam J. Tragone, "Defining the Press Clause: The End of Hot News and the Attempt to Save Traditional Media," *Chicago-Kent Journal of Intellectual Property*, Vol. 15, No. 1 (2016), 248.

1932, members of the AP sought the help of the American Newspaper Publishers Association "to curtail broadcasting of AP news," but an association attorney warned that the groups could not collaborate "without violating the statutes relating to conspiracy in restraint of trade."[67]

In *Media at War: Radio's Challenge to the Newspapers, 1924-1939* (Praeger, 1995), Gwenyth Jackaway recounts the many efforts publishers made to exclude broadcasters from news, most notably strong-arming the two nascent networks at the time into signing the Biltmore Agreement of 1933. It prohibited the networks from building news operations (Columbia Broadcasting disbanded its news operation with a half-dozen bureaus, a few dozen on staff, and 1,000 correspondents globally); required them to pay for news updates from the publishers' wire services; forbade commercial sponsorship of news; and limited twice daily news broadcasts to 5 minutes each, filled with 30-word bulletins, which could air only after local newspapers had come off the press at 9:30 a.m. and 9 p.m. The bulletins had to be written to encourage reading newspapers. In a perverse rendition of the hot news doctrine, according to Jackaway, on-air commentators were not allowed to discuss news until 12 hours after the event.[68]

Why would radio networks agree to such concessions? Politics. As *Broadcasting* reported in 1934, they thought "a friendly and cooperative attitude would preclude newspaper agitation against radio during the coming session of Congress."[69] "If you ask why broadcasters accepted such an unsatisfactory and humiliating agreement, the answer is simple," said H.V. Kaltenborn, who straddled both media. "They feared the power of the press. That power was ready to swing into action against them."[70] In *Harper's*, Isabelle Keating called the agreement "a metaphorical Versailles Treaty which by inference, placed the war guilt on the broadcasters, disarmed them, and sought to make them pay." Senator Clarence Dill called it "news suppression."[71]

The Biltmore Agreement fell away because, from the start, independent stations ignored it. Also, newspaper publishers entered the radio business, with 208 of 717 American stations owned by newspapers by 1937. By then, 80% of homes had radios. As *Harper's* reported, newspapers "found that news broadcasting stimulated the sales of their papers."[72] *The New Republic* editorialized, "For years, newspaper publishers have fought the bad fight, using boycotts, reprisals, intimidation, ridicule and injunctions in a relentless effort to make radio shut its many-tubed mouth." Newspaper publishers would regularly complain about filching, stealing, and pirating of content and also contend that radio was a breeding ground for disinformation, for they contended that the eye was superior to the ear for learning. But their underlying complaint was this: "Their revenues were dropping, radio's were mounting — *ergo*: radio must be stealing the business from the newspapers... Radio was not only hamstringing advertising receipts, but it was dishing out free what newspapers had to sell."[73] Or as *Editor & Publisher* complained, "But the newspaper, apparently, is only a queer kind of business which gives its product away to a

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[67] Rudolph D. Michael, "History and Criticism of Press-Radio Relationships," *Journalism Quarterly*, Vol. 15, No. 2 (June 1938), 179.
[68] Gwenyth Jackaway, Media at War: Radio's Challenge to the Newspapers, 1924-1939, Praeger (1995), 27-29; Martin Codel, "News Plan to End Radio-Press War," Broadcasting (January 1, 1934), 10, 30.
[69] Codel, 10.
[70] Kaltenborn quoted in Robert McChesney, "Press-Radio Relations and the Emergence of Network, Commercial Broadcasting," *Historical Journal of Film, Radio & Television*, Vol. 11, No. 1 (March 1991).
[71] Isabelle Keating, "Pirates of the Air," *Harper's* (September 1, 1939), 468-469.
[72] Keating, 464.
[73] T.R.. Carskadon, "The Press-Radio War," *The New Republic* (March 11, 1936), 132-133.

competitor, and stands idly by to see a natural and rightful function supplanted."[74]

The California Newspaper Publishers Association called for "the return to the people the air channels now used by commercial interests, similar to the plan now in effect in England."[75] Throughout their battle, newspapers threatened to drop publishing of broadcasters' program listings, but when they followed through, readers protested and listings returned. Most profoundly, newspaper publishers lobbied for broadcast to be regulated, leading in 1927 to the creation of the Federal Radio Commission and its successor, the Federal Communications Commission (FCC), in 1934 — thus carving a considerable exception to the First Amendment and its protection of freedom of the press. With no apparent sense of irony, after forcing radio to be regulated by government, newspaper publishers then tried to ban radio reporters from Congressional galleries, asking, in the words of Keating, "whether radio was not in fact subservient to the reigning political party because of its governmental license; whether, as a result, it was not unqualified to purvey disinterested news."[76]

H.O. Davis, publisher of California's *Ventura Free Press*, waged a campaign to organize small, independent newspapers — those less likely to own broadcast towers — against radio. According to *Broadcasting*, Davis sent publishers letters advising them to use their news columns to "show up the moronic quality of most programs. Get interviews with all kinds of people who are disgusted with the character of radio programs and annoyed by the constant intrusion of advertising.... Emphasize the danger of uncontrolled broadcasting for the spreading of insidious propaganda." He suggested enlisting clergy against "the evils of broadcasting supported entirely by advertising.... Tell them of the danger that uncontrolled commercial television will bring movie sex smut and idealized gangsters right into the home."[77]

Publishers draped themselves in "the invocation of sacred rhetoric," in Jackaway's words. "Radio journalism, they warned, posed a threat to the journalistic ideas of objectivity, the social ideals of public service, the capitalistic ideals of property rights, and the political ideals of democracy.... Now they are no longer simply annoying competitors; they are invaders who pose a threat to some of the culture's most sacred ideals."[78] See for comparison, the sacred rhetoric in the preamble to the JCPA: "A free and diverse fourth estate was critical to the founding of our democracy and continues to be the lifeblood of a functioning democracy."[79] See also the opening of *The New York Times*' suit against OpenAI: "Independent journalism is vital to our democracy. It is also increasingly rare and valuable."

Radio would not be the last new competitor to inspire such sacred claims. As Jackaway observes, "When people feel threatened by the arrival of newcomers who do things in a new way, they often respond with hostility. They frequently claim some form of superiority over these outsiders, and thus dismiss them as lacking any value." Come television, we see a replay of the drama between newspapers and technology. "For the past dozen years," Morris J. Gelman wrote in *Television Magazine* in 1962, "newspapers with little regard for facts or proportion, have used

[74] "Editorial: Radio and Elections," *Editor & Publisher* (November 10, 1928), 30.
[75] Quoted in Jackaway, 100.
[76] Keating, 468.
[77] "A Vicious Fight Against Broadcasting," *Broadcasting*, December 1, 1931, 10, 33.
[78] Jackaway, 44.
[79] Jackaway, 7-8

television as the nation's number one whipping boy."[80] Publishers complained about the still-new kid on the block taking their national ad revenue, even though the industry at the time was enjoying record circulation and held a third of the total ad market, more than double TV's take. And one-third of TV stations were affiliated with newspapers.

The script was acted out once again against telephone companies when, following the 1984 breakup of AT&T into Regional Bell Operating Companies (RBOCs), the Baby Bells were freed by court order in July 1991 from a prohibition against offering information services. "Stunned, the publishers are now scrambling to persuade Congress, in effect, to overturn the court ruling," *The New York Times* reported. "Behind the scenes, the publishers and telephone companies have hired some of Washington's most prominent lobbyists and political advisers. The American Newspaper Publishers Association, for example, has hired several heavyweights." One year later, both sides were taking out full-page newspaper ads and Congress was debating a bill to again limit the telcos, but that came to nothing. Another year on, however, the mood changed when, as one might say today, enemies became frenemies and Times Mirror was in talks to collaborate with the phone companies in its newspaper markets, L.A. and New York.[81]

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

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

7. Alternatives

In examining alternatives to CJPA, it is wise to first address the goal. Is it to support news as it was, or news as it could be? Is it to stave off the death of existing news properties or support the growth of new outlets and models that serve communities previously underserved? That is, should hedge-fund-controlled newspapers receive funds if they do not invest in growing their coverage? Is the goal to support news alone or the larger information ecosystem and to improve public discourse? Who is being heard in the process of deciding on policy interventions in the

[80] Morris J. Gelman, "Newspapers," Television Magazine, November 1962, 88.
[81] Edmund L. Andrews, "'Baby Bells,' Newspapers In a Brawl," *The New York Times* (November 11, 1991): www.nytimes.com/1991/11/11/business/the-media-business-baby-bells-newspapers-in-a-brawl.html; "Bill to Curb 'Baby Bells' Advances," *The Washington Post* (May 28, 1992); William Glaberson, "The Baby Bells Are Finding an Unlikely Ally in the Information-Services War: Newspapers," *The New York Times* (July 5, 1993): www.nytimes.com/1993/07/05/business/media-business-press-baby-bells-are-finding-unlikely-ally-information-services.html.

market? Who is responsible for the current situation — two corporations or larger technological or societal disruption? And who is responsible for the health of the state's information ecosystem — those few companies or every business and citizen in the state? Is the question at hand one of intellectual property or subsidy? If there are resources to be put to work, we must ask where those resources should come from, who should receive them, and on what basis they should be distributed.

The first step must be to listen. It is critical that many stakeholders in the future of the state's information ecosystem be consulted and heard. Note above how some constituencies, such as Black and ethnic media and independent startups, say they believe they are not represented by the legacy industry trade associations driving this process. The consulted stakeholders should include not only media proprietors but also civil society, members of communities, and representatives of other institutions that should have important roles in reimagining a better future for public discourse: librarians, schools, community colleges and universities, researchers, technologists, and local governments as well.

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

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

It is important to understand the information needs of communities. That can begin by building on the work of LAist, which performed many interviews and surveys to identify community needs. See also the methodology of the Knight Foundation's collaboration with the FCC on a Working Group on the Information Needs of Communities in a Democracy in 2011.[82] This effort should also focus on what is missing in the ecosystem: What communities — defined by geography, ethnicity, or need (e.g., the disabled, the elderly, students, the homeless) — are unheard and underserved? Is there sufficient coverage of state government and politics? What is the impact of news on civic involvement?

Such study might also examine sources of revenue and support for news, including new business models and revenue streams — membership, events, commerce, services — and contributions from corporations, wealthy individuals, and foundations. A 2023 study by the University of Chicago's NORC with Media Impact Funders and the Lenfest Institute found increased philanthropic support for journalism — 71% of foundations surveyed saying they choose to support local journalism, 50% direct funds to community engagement or investigative

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

journalism, and 38% now considered giving to for-profit news.[83]

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

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

Public-notice advertising: One long-standing subsidy for newspapers has been public-service notices, known in the trade as legal ads. Regina Brown Wilson says this alone could be enough to support some newsrooms serving Black communities; she wants it to go to print newspapers. Ken Doctor wants digital news outlets such as his to be included. How such advertising spending is equitably distributed is a question.

Wilson emphasizes that such advertising is not charity but a fee for service, whose impact and efficacy as advertising can be measured. In 2021, New York City directed $15.6 million or 82% of its $19.1 million advertising budget to go to 230 community and ethnic media outlets. In California, AB1511, introduced in 2023, seeks to "require a state agency or department that expends funds on paid advertising, communications, or outreach to direct 45% of its total expenditures to ethnic media outlets and community media outlets."[84]

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

There is another, more creative way to view governments' information dissemination needs: as a new business opportunity for news organizations. Local governments are participants in local news ecosystems, for they hold much information of value to their constituents. Innocode, a Norwegian company, creates apps to enable towns to share more information — for example personalized alerts about nearby building permits.[85] Using artificial intelligence and large language models, citizens might ask questions of building codes, local regulations, budgets, meeting agendas, reports, and other stores of knowledge. Rather than dogging local officials with freedom-of-information demands, how much better it would be if news organizations and local governments could work in partnership for greater civic transparency.

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83 NORC report here: mediaimpactfunders.org/wp-content/uploads/2023/08/Summary-of-Survey-Findings-from-NORC-at-the-University-of-Chicago-1.pdf.
84 Text of AB1511 here: legiscan.com/CA/text/AB1511/id/2832486.
85 Innocode information (in Norwegian) here: nnocode.com/no/innbyggerappen/; the author's post on the app here: medium.com/whither-news/sprouts-from-the-ashes-294bb10cd003.

Tax support for news: An obvious political advantage and expediency of CJPA's structure is that by requiring payment directly to publishers from Google and Meta — if the latter continues to link to news — this avoids establishing a tax, involving the state budget and its necessary approvals. However, if the fate of California's news is truly of statewide concern, then shouldn't that be a priority for the state itself and shouldn't more companies than just Google — shouldn't taxpayers as a whole — be expected to contribute to healthier civic life in the state? "The link tax is more like a regulated negotiation process akin to intellectual property licensing," says Andrew Leahey in Bloomberg Tax. "If Canada, California, Germany, or any other jurisdiction wants to tax big tech companies and subsidize news outlets, they should simply do so."[86] A study of state and local legislation to support news from 2017 to 2022 counts 24 bills up to that time, some involving general funding and tax incentives; most were not enacted.[87] Local taxation is also an option. In New Jersey, hyperlocal journalist Simon Galperin proposes that municipalities set up info districts — like fire or sewer districts — supported by local tax levies to help local news organizations, such as his Jersey Bee.[88]

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

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

Employment tax credit: Steven Waldman, president of Rebuild Local News and a founder of Report for America — which places jointly funded reporters into newsrooms across the country — has proposed a number of ideas for supporting news, among them a tax credit for every journalist employed — or, in variant models, for every journalist added or retained. This is appealing simply because journalism requires reporting and reporting requires reporters. An advantage of this model is that unlike CJPA, this rewards the employment of journalists rather than links and clickbait. Since this would be a state tax credit, it would support journalists working in California, not national or international media. However, money being fungible, there is no guarantee that the credit would lead to an increase in news coverage. Also, many smaller outlets — notably Black and ethnic media — utilize freelancers more than staff and so, unless formulas were established to account for freelance and part-time work and hyperlocal bloggers' own sweat equity, only larger outlets would benefit from such a credit.[89]

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86 Andrew Leahey, "Canada's lLink Tax' Can't Replace a Real Tax," Bloomberg Tax (December 10, 2023): news.bloombergtax.com/tax-insights-and-commentary/week-in-insights-canadas-link-tax-cant-replace-a-real-tax.

87 Jessica Mahone, "An Overview of State and Local Legislation to Support Local News," *Annals AAPSS* Vol. 707 No. 1 (May 2023): journals.sagepub.com/doi/full/10.1177/00027162231211391.

88 More on Simon Galperin's proposals here: www.comminfo.org/info-districts,

89 Author interview with Steven Waldman, February 2024. See a list of proposals from Rebuild Local News here: www.rebuildlocalnews.org/solutions/.

Local advertising tax credit: Another idea endorsed by Rebuild Local News is a tax credit for local businesses buying advertising from local news organizations. This method puts its thumb on the scale for one business model — advertising — potentially excluding public or nonprofit media that do not take sponsorship. It is a nonmarket intervention to the extent that local merchants may find that other means of marketing — e.g., their own websites, social media targeted advertising, direct mail — are more cost-effective and efficient for them.

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

A variant on this idea is to provide coupons to transfer funds to any news outlet, whether paywalled or not. Another is to provide free subscriptions to groups, such as students and teachers. For many years, the industry operated a Newspapers in Education program aimed at inculcating a habit of reading news in young people while also selling papers. Out Look Santa Cruz signed up half the county's 12,000 high-school students, and 100 teachers, for free access.[90] In 2009, Nicolas Sarkozy, then president of France, gave free newspaper subscriptions to people 18-24 years old. In 2019, Canada announced a C$600 million plan for a journalism employment tax credit and a credit for 15% of approved news subscriptions, up to C$500. In the first year, 1% of Canadians took up the offer, spending an average of C$240 on subscriptions with credits averaging C$36. Startup news publisher David Skok says the result was "negligible," as mainly existing subscribers took advantage of the credit, leading to few new subscribers.[91]

Paying for some news to be free: Why not use public funds to pay news organizations to make certain public-service news and journalism free for all — that is, pay for content that is behind paywalls to be made available to the public? If the public is going to be asked to use tax dollars to subsidize the news, shouldn't the public benefit from that news? In a time when most news from quality, for-profit outlets is retreating behind paywalls, leaving disinformation to rule the web, that creates a crisis of information quality on the internet. What news exactly should be brought out from behind paywalls is one question. Another is whether this would incent more publishers to build paywalls. And another is whether making more stories available would deprive publishers of audience. But in experiments run by the author in New Jersey — making news embeddable across multiple sites — one counterintuitive lesson was that complete stories acted as the most effective promotion, driving more clickthrough than headlines or snippets.[92]

In any case, journalism as a profession needs to examine the impact of paywalls on public discourse. Yes, journalists need to earn a living. But journalism has a higher obligation to the

[90] NIE programs: www.socalnie.com/ and nieonline.com/latimes/enewspaper.cfm.
[91] Sarah Scire, "Canada Offered a Tax Credit to Encourage Digital News Subscriptions," NiemanLab (April 26, 2022): www.niemanlab.org/2022/04/canada-offered-a-tax-credit-to-encourage-digital-news-subscriptions-heres-how-its-going/.
[92] The author's report on embeddable content: *Geeks Bearing Gifts,* CUNY Journalism Press (2015): medium.com/geeks-bearing-gifts/the-link-economy-and-creditright-95f938b503be

information ecosystem and democracy. Bringing critical news to everyone would be one way to address this moral imperative.

News-sharing networks: California is running its own experiment in embeddable content with a new news-sharing network announced by public broadcaster KQED, working with the Palo-Alto-based Distributed Media Lab (DML). The project is funded by the Google News Initiative. Such a network is a mechanism for gathering, choosing, and highlighting the best of California journalism. A KQED producer selects that news, assuring its quality. Participating sites benefit in multiple ways: their content is shared with larger audiences on others' sites, and they can embed others' content in their sites to offer their audiences a wider range of quality news. This is also the basis for a sponsorship network for quality journalism, sharing revenue with those that host shared content — so far, 20 sites. "The goal is to be embedded on all quality local news sites in California," says David Gehring, head of DML. "This project builds a model for local news that works on the web the way the web was designed to work," says Tim Olson of KQED. DML is working to bring the same model to eight more states and to similar networks of Latino, Black, environmental, educational, and other media.[93]

Networks of sites could be established across the state, in regions (see the discussion with LAist about a hub there), and among sites of similar interest (see networks of Black news sites) to share content, collaborate on news coverage, share advertising sales, and more.[94]

Support networks: Small and independent news sites have needs beyond sharing content, including training, technology, and the sharing of best practices. One such support network is the New Jersey News Commons at Montclair State University's Center for Cooperative Media. It offers its more than 400 members — local news organizations and individuals — training in topics from revenue generation to practical uses of AI, as well as individualized mentorship, shared content, stipends for membership in other organizations (e.g., the National Association of Hispanic Journalists), access to the center's research, and translation services. Nationally, LION Publishers and the Institute for Nonprofit News provide similar services.[95] The state could provide funding to establish such support networks.

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

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

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[93] KQED announcement is here: www.kqed.org/pressroom/12222/kqed-seeks-california-news-partners-for-new-pilot-platform-to-grow-digital-audiences. Author's email exchange with David Gehring, February 2024.

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

[95] See more at the New Jersey News Commons: centerforcooperativemedia.org/njnewscommons/; LION Publishers: www.lionpublishers.com/learn/; Institute for Nonprofit News: inn.org/resources/.

New Jersey's Civic Information Consortium was established after the state sold its public TV and radio licenses to stations in New York and Philadelphia, netting $332 million from a spectrum sale to the FCC. Free Press, a public advocacy organization working on media issues, collaborated with legislators to draft a bill requiring that some of those funds be directed to support New Jersey's news ecosystem.[96] The Consortium, run out of Montclair State, is managed by a 16-member board appointed by public universities, the governor, and the legislature. It holds open calls for grants to support training of professionals and community members, programs to encourage civic engagement, and nonpartisan voter information, giving priority to information gaps, news deserts, and marginalized communities and training "aspiring media makers of color." The original bill would have granted $20 million to the effort. In the end, it yielded $500,000 in 2021, $2 million in 2022, $4 million in 2023 and 2024, plus $1.52 million raised from other funders, totalling over $12 million. To date, it has issued 82 grants.[97]

The California Public Interest Act of 2022 (SB911) proposed a similar independent, nongovernmental board to give grants of public and private money to news media, to "encourage independent, local public service news coverage" and "establish grant application criteria and procedures, including standards for evaluation of journalistic integrity," allocating at least 25% of funds to ethnic-owned news and 25% to local news. It was positioned as a Corporation for Public Broadcasting for the state.[98] For such models to be used nationally, political safeguards would need to be designed for states such as Texas and Florida, whose laws requiring platforms to carry even noxious political speech are under review in the Supreme Court. How might standards of journalistic quality be assured, protected from political pressure?

Press Forward is a consortium of 25 major journalism funders in the nation, led by the Knight Foundation and MacArthur Foundation and including the Democracy Fund, the Ford Foundation, and California's Hewlett Foundation. Together, they have pledged $500 million "to strengthen local newsrooms, close longstanding gaps in journalism coverage, advance public policy that expands access to local news, and to scale the infrastructure the sector needs to thrive." The consortium has encouraged the formation of, to date, 17 local Press Forward chapters led by local funders, such as New Jersey's Civic Information Consortium and Philadelphia's Lenfest Institute (a trust housed at Temple University that now owns the *Inquirer*). California could have its own Press Forward chapter or an equivalent such as that envisioned in SB-911 to encourage community foundations and high-wealth individuals (of whom the state has many) to take part in supporting the news ecosystem, and to manage grants. The chapter could receive seed or matching funds from the state to encourage its establishment and growth.[99]

Another consortium, the American Journalism Project, has raised $168 million — including from California technology companies Google, Meta, and OpenAI — to support 44 nonprofit news organizations, as well as starting four new newsrooms. Its California grantees include Cityside (Berkeleyside, The Oaklandside, and Nosh), inewsource, and San José Spotlight.[100]

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[96] Text of NJ A3628, New Jersey Civic Information Consortium: www.billtrack50.com/BillDetail/969532.
[97] New Jersey Civic Information Consortium site here: njcivicinfo.org/about/.
[98] Text of SB911: leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB911.
[99] Press Forward information here: www.pressforward.news/locals/.
[100] American Journalism Project site: www.theajp.org/.

Newsmatch is a project of the Institute for Nonprofit News benefitting its 425 members by encouraging foundations — it lists almost 20 — to provide funding to match contributions from the public. Since 2017, it has raised more than $271 million. This is a variation on the subscription tax credit or voucher ideas above: a means to encourage contributions to news outlets from the public. The state could work with local foundations to match or give tax credits for those contributions, giving the public a vote in where funds are allocated. As with many of the ideas here, there needs to be a mechanism for deciding what organizations qualify as journalistic.[101]

Public media's role: As demonstrated with LAist's reorganization and KQED's news network, public media are taking a leadership role in innovating ways to provide news to their communities and services to the larger media ecosystem. This is part of a nationwide trend that is taking many shapes. In Chicago, as the *Tribune* continued to deteriorate under Media News Group ownership, Chicago Public Media (WBEZ) bought the second-place *Sun-Times*, taking down its paywall and expanding the demographics of those served by public media. In Lancaster, Pennsylvania, the Steinman family converted the newspaper it published for 158 years, *LNP*, to a public-benefit corporation, and donated it to public broadcaster WITF, while endowing the Steinman Institute for Civic Engagement to support community and journalist education. In nearby Scranton, the *Times-Tribune* was sold to Alden's Media News Group, immediately laying off much of its staff. WVIA public media is stepping into the gap, creating a growing newsroom of a dozen journalists. A 2022 study found that from 2016 to 2021, public media's employment of journalists rose from 3,694 to 4,148 and that more than 40 public radio stations supported newsrooms of at least 15 journalists; a quarter of those had at least 40 full-time journalists.[102]

Public media may be best-positioned to take on the role once performed by monopoly newspapers but with a greater public-service mission to provide news to the entire community. Public media stations in California have joined together in a California Regional Newsroom, with five stations coordinating statewide and investigative coverage.[103] How might private or state support enable the expansion of public media's role, buying or starting other news media, promoting quality journalism, and sharing coverage, training, technology, and support for patronage and philanthropy? How might public funds help public media become yet more public?

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

Much of news must still be a profitable, thus sustainable enterprise. To accomplish that, there needs to be investment in new ventures, in innovation by existing ventures, and in rescuing

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[101] Newsmatch information here: newsmatch.inn.org/.
[102] Elizabeth Hansen Shapiro, Mark Fuerst, Caroline Porter, "The Growing Strength of Public Media Local Journalism" (October 2022): www.nationaltrustforlocalnews.org/_files/ugd/9477fa_3eb200c1eddb47828c2e456b8370b77e.pdf.
[103] NPR press release on the newsroom: www.npr.org/about-npr/1039087722/public-radio-veteran-adriene-hill-to-lead-california-statewide-regional-newsroom.

some troubled ventures. Ken Doctor started his Look Out Santa Cruz with initial funds of $2.4 million, adding $1 million. He's raising $4 million to launch a second of a planned 5 sites. Not every news startup needs such financing. A lone journalist covering a town or topic needs dollars measured in the thousands to get started and build a critical mass of audience and revenue.

Many of California's newspapers and broadcasters are controlled by out-of-state corporations. In the not-for-profit National Trust for Local News under founder Elizabeth Hansen Shapiro there is a model for acquiring papers before they fall into ownership by hedge funds. The Trust recently bought most of Maine's newspapers — 5 dailies and 17 weeklies.[104] The National Trust even bought presses in Colorado to help outlets that still print there to do so economically. Many Black and Latino outlets still depend on print in California, where the number of printing facilities is declining. Even the *Los Angeles Times* closed its Olympic plant in downtown L.A. and outsourced its printing to Media News Group.[105]

Funds for innovation: Next Gen News, a report released by Financial Times Strategies and Northwestern Medill's Knight Lab and supported by the Google News Initiative, interviewed 45 news consumers from 18 to 25 in the U.S., Nigeria, and India to identify the needs and preferences of the next generation. "We found an existing and growing gap between the news experience the next generation wants and what they're currently being provided with," the authors write. These young people use many different digital affordances (social media, chat, texting, word of mouth), filter information through their trusted networks, make sense of it through conversation with others, and exhibit sophisticated skills to search for what they need to know. They want trusted sources and personal relevance delivered according to their desires.[106]

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

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

Technology sharing and development: On the one hand, the technological work needed to start and run a news site has become simpler and less expensive. Automattic's NewsPack,

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[104] More information on the National Trust for Local News here: www.nationaltrustforlocalnews.org/.
[105] Suzie Glassman, "Colorado Community Media owner purchases printing press, offering lifeline to local newspapers across the state," The Colorado Sun (March 13, 2024): coloradosun.com/2024/03/13/colorado-community-media-printing-press-purchase/; video of the last day in the L.A. Times' Olympic plant here: www.youtube.com/watch?v=98veJCnRP3o.
[106] Next Gen News report available here: www.next-gen-news.com/downloadreport.pdf.

subsidized by Google, provides WordPress software and a suite of tools — e.g., Broadstreet Ads, Parse.ly analytics, News Revenue Hub contributions — for a few thousand dollars a month. The Tiny News Collective offers a starter kit of technology and training for less: $50 to $100 a month.[107] Technology is no longer a barrier to any journalist wanting to serve a community's news needs with a web site, newsletters, social media, and video, gaining support via advertising (from Google to Broadstreet), patronage (see San Francisco's Patreon and San Diego's News Revenue Hub), subscription (see Ghost), and revenue sharing (see YouTube, Medium).

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

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

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

Should not California — as headquarters state for the internet — encourage and support greater collaboration among journalists and technologists, helping with the use of AI, with developing alternative revenue streams, and with more effective reporting? California should show the way to greater and smarter use of technology, not greater hostility toward it.

Education's role: Schools, libraries, community colleges, and universities should, like public media, take a greater leadership role in helping shape and improve the information ecosystems of communities. They need support to do that. The California Local News Fellowship at UC-Berkeley, funded with $25 million by the state, is one attempt. The program places up to 40 young journalists in newsrooms for full-time reporting jobs. Note, sadly, that the *L.A. Times* just laid off almost triple that number.

Universities can train more journalists to work in new news enterprises — and help them

[107] More information on Newspack: newspack.com/. On the Tiny News Collective: www.tinynewsco.org/.

become responsible business stewards — but scholarship money is needed, as young journalists will have difficulty paying off loans on reporters' salaries.

Universities can become incubators for innovation in news. One example: USC's journalism and engineering schools developed Crosstown, a platform that enables journalists to analyze data across cities or states and turn that into highly targeted local newsletters about what is happening in hundreds of neighborhoods around city services, crime, and so on.[108]

Schools and libraries can become gathering points for community dialog and information. They and universities can also train neighbors to help report on their communities. See Documenters, a project of Chicago's City Bureau, which trains and pays residents to put every public meeting on the record. Fresno has a Documenters outpost.[109] Imagine news-gathering outposts in more cities and counties to augment local reporting through some of the ideas presented above: Innocode's town app or AI analysis of meeting transcripts. Imagine classes of high school and community college students joining such efforts, learning about civic involvement. Every small news startup and ethnic outlet is in need of training in journalism, technology, revenue, and finance. Schools, working with support networks, could help them. These activities require support.

Reparative journalism: In weighing whether to support news as it was against news as it could be, perhaps the most important factor to consider is not only which communities are underserved and underrepresented but how these communities have been damaged by existing media, and what needs to be done in reparation.[110] Newspapers including the *Los Angeles Times* have apologized for their history of racism.[111] That is a necessary first step. But what then? The collaborative essay "Media 2070" asks, "What would it look like if media policies ensured that Black communities had equitable ownership and control of our own local and national media outlets and over our own online media platforms?"As Sara Lomax-Reese, CEO of Philadelphia's Black-owned WURD radio, said, "If there is not a wholesale investment in reviving and supporting and providing resources to Black media — and I am not talking about Black-oriented media, I am talking about Black-owned media — it will go away."[112]

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

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[108] Crosstown's site here: xtown.la/.
[109] Documenters Network site here: www.citybureau.org/documenters.
[110] Meredith Clark on reparative journalism: www.niemanlab.org/2020/12/the-year-journalism-starts-paying-reparations/.
[111] "Our Reckoning With Racism," the *Los Angeles Times* (September 27, 2020): www.latimes.com/opinion/story/2020-09-27/los-angeles-times-reckoning-with-racism.
[112] Joseph Torres, Alicia Bell, Collette Watson, Tauhid Chappell, Diamond Hardiman, Christina Pierce, "Media 2070: An Invitation to Dream Up Media Reparations," media2070.org.

and ethnic groups, women and girls, and LGBTQ+ communities.[113]

There are impressive exemplars of innovation in journalism-as-service from ethnic-media outlets such as El Tímpano, founded in Oakland by Madeleine Bair to serve Spanish-speaking and Mayan diasporas via SMS. Hear Dana Amihere, founder of AfroLA, as she works 55 hours a week as "bookkeeper, web producer, data visualist, editor, social media manager, internship coordinator, and reporter," while freelancing and teaching, applying for grants, and scraping by on $15,000 revenue. Since she does not earn $100,000, she would not qualify for funds from CJPA. Says NNPA's Chavis, "This legislation would only further reinforce racial exclusion trends, rather than actually help smaller local publications like those in NNPA."[114] Legislation that does not intentionally address inequities in California news media should be rejected.

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

In summary, one might imagine an amalgam of many of these ideas to provide private, reader, government, and mutual support to a growing news ecosystem in California:

- *Fund-raising:* Regional or statewide chapters of Press Forward as a mechanism to raise funds from local and national philanthropic sources as well as soliciting voluntary contributions from a wide range of California corporations and individuals.
- *Grant-making:* A version of the New Jersey Civic Information Consortium as a means to solicit and judge grant proposals, deciding on their merit, and distributing private and possibly public funds to support operations of news outlets and their initiatives and to invest in growth in the ecosystem.
- *Support:* A state-wide or regional news commons modeled on that at Montclair State University to provide training, networking, mentoring, and sharing of best practices and to initiate and manage collaborative reporting projects.
- *Quality news sharing:* An expansion of the KQED network to identify, share, and bring attention to quality journalism wherever it is produced in the state.
- *Revenue growth:* Advertising networks to sell to commercial marketers and to distribute state and local public-notice advertising. Add programs to encourage and manage membership revenue by local news outlets, with challenge grants.
- *Services:* Provide connections to services from other networks, including NewsPack's content management system, the Tiny News Collective's technology starter kits, LION

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

114 Lourdes M. Cueva Chacón and Jessica Retis, "Qué Pasa with American News Media? How Digital-Native Latinx News Serves Community Information Needs Using Messaging Apps," *Annals AAPSS,* Vol. 707 (May 2023): doi.org/10.1177/00027162231218542; Dana Amihere, "Local News Blues: Does it really have to be this hard?," Local News Blues, (March 3, 2024): indepthnh.org/2024/03/03/local-news-blues-does-it-really-have-to-be-this-hard/,

Publishers' training, the News Revenue Hub's services for revenue from the public, and where appropriate, the Institute for Nonprofit News.

Such infrastructure — possibly housed with universities or public media — could support ongoing research into the news needs of communities and into the effectiveness of news outlets and provide accountability for the use of funds granted to them. It could enable collaboration and experiments with new business models and new forms for news.

Conclusion

In response to many of the policy suggestions made to support local news, the federal General Accounting Office performed a literature review and interviewed officials, journalists, academics, and representatives of news and technology companies, culminating in a two-day workshop. It issued a report on various policy options in 2023, concluding: "However, literature, stakeholders, and experts expressed concerns that the policies may be based on insufficiently supported claims, and if not properly designed, could result in unintended consequences for smaller publishers and consumers. Experts advised that the primary goal of public policies should be to preserve the function of journalism rather than specific local news outlets. Experts conveyed that the main goal of journalism is to have a well-informed society, and policies that aim to support this goal need to be innovation-friendly, forward-looking, and inclusive."[115]

As this paper was being written, an Illinois legislator proposed three bills with recommendations from a Local Journalism Task Force assembled by the state, including some ideas covered here. One bill is a CJPA-like link tax. A second calls for half of state ad spending to go to local news organizations, an employment tax credit for journalists, a local ad tax credit, and a journalism scholarship program. A third would allocate $5 million to the state Arts Council for grants to public broadcasting.[116] The author of this paper appeared before an Illinois Senate committee hearing regarding the first bill, raising some of the concerns addressed in this paper. Wisconsin legislators also introduced bills to provide tax credits for news subscriptions, a fellowship program for journalism students in state universities, and a government-established board to grant funds.[117]

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

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

[116] Illinois Journalism Task Force report (January 2024): dceo.illinois.gov/content/dam/soi/en/web/dceo/events/local-journalism-task-force/local-journalism-task-force-final-report-january-2024.pdf; text of Illinois Strengthening Community Media bill: www.ilga.gov/legislation/billstatus.asp?DocNum=3592&GAID=17&GA=103&DocTypeID=SB&LegID=153334&SessionID=112; and the Journalism Preservation Act: www.ilga.gov/legislation/BillStatus.asp?DocNum=3591&GAID=17&DocTypeID=SB&LegId=153333&SessionID=112&GA=103; and the public broadcasting bill: www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=3590&GAID=17&SessionID=112&LegID=153332.

[117] Wisconsin press release: legis.wisconsin.gov/senate/15/spreitzer/media/2012/for-immediate-release-sen-mark-spreitzer-and-legislative-colleagues-introduce-bills-to-promote-local-journalism-in-wisconsin.pdf.

- If news and the public information ecosystem are in crisis, what role should government play in addressing the problem and what conflicts of interest and moral hazards does this present for journalism?
- If government is to use legislation to raise money to support news, who should that money come from? Should one or two companies be held responsible for the health of the news ecosystem, or is that the responsibility of entire industries, sectors, or the public? Should those funds come from forced arbitration or a tax?
- Who should receive funds: large media companies controlled by national conglomerates and hedge funds or those trying to serve communities not well served by legacy outlets? Should hedge funds, investor-owners, and media conglomerates be excluded from the benefits of legislation in favor of local enterprises? (Note that Report for America recently decided to no longer send reporters to hedge-fund-controlled newspapers.[118])
- How should the funds be distributed? Rather than making a blanket formula for distribution, as in the link-based structure of JCPA, should an independent, private body distribute funds based on stated needs and goals; on the value of proposals to communities, particularly those ill-served to date; on the qualifications of the journalists and others involved; on the innovative value of the proposal for news in the state; and on the chances of success?

The future of journalism is uncertain but there are many efforts to imagine a better future, including movements called Engagement Journalism, Solutions Journalism, Constructive Journalism, Dialog Journalism, Reparative Journalism, Deliberative Journalism, and more. How might California participate in and lead such movements?

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

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

The author

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

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Disclosures: Jarvis helped raise funds for various programs at CUNY from technology companies including Facebook and Google but has not received payment from any technology company personally. He served on a digital advisory board for Digital First Media, now doing business as Media News Group, until 2015. He has worked for Hearst at the old *San Francisco Examiner* and for Tribune Company, later an owner of the *L.A. Times*. This report was commissioned and the author was compensated by the California Foundation for Commerce and Education, affiliated with the California Chamber of Commerce, which did not exercise control over its content.