

Statement of

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Chair Umberg, Vice Chair Wilk, and members of the Committee, thank you for the opportunity to speak to you today. My name is Jonathan McHale and I serve as Vice President for Digital Trade at the Computer and Communications Industry Association, which represents internet, technology, and communications firms.¹ CCIA was founded in 1972 to promote open markets, open systems, and open networks in the computer and telecommunications industry. Today, the Association continues to champion the same principles across these increasingly diverse and important sectors of the global economy.

I. Introduction

No one, least of all CCIA, questions the importance of quality journalism to the civic life of a country and to the maintenance of a vibrant democracy. Nor is there disagreement about how difficult it has been for news to develop a viable business model in the face of technological change. In terms of policy, the question boils down to what kind of governmental intervention will support a sustainable market environment for all participants: one where quality journalism can thrive, without undermining core elements of our digital ecosystem.

I would like to offer some observations on approaches several other countries have taken, or are planning to take, with parallels to what you are also considering in California. Interventions in foreign markets have taken two different forms: the creation, in Europe, of a pseudo intellectual property right, above and beyond copyright, called ancillary copyright,² intended to facilitate news businesses' ability to negotiate licenses for their content; and, in Australia and Canada, introduction of bargaining frameworks to govern commercial relationships between news businesses and specific internet companies.

What unites these two approaches is the controversial theory that fragments of text, or even just links, shared online, should generate a claim of compensation. Not only does this upend longstanding international copyright law, but it also points a dagger at very nature of the internet as an information-sharing ecosystem. These approaches are essentially a private tax in support of a business model under stress, arguably justified by the fact that news is also a public good.

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccia.net.org

² In June 2020, the United States Copyright Office, in response to a Congressional request to examine, inter alia, whether the United States should introduce a similar right in the United States, recommended against such an approach. See *Copy Protections for Press Publishers*, (June 30, 2020), <https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>.

Policy aside, one must ask whether it is even tenable to seek to compensate one set of market participants for losses of one of their traditional sources of revenue (i.e., advertising) by forcing another set of participants to cover that loss, if it is commercially unwarranted and thus, in the long term, economically unsustainable. If the effect of intervention is to force companies to exit the market segments that generate that tax, will that help news? International experience to date suggests that it will not, and that the unintended consequences are in fact bad for media diversity, particularly innovators and smaller players, bad for democracy, and bad for the openness of the internet.

In looking at these efforts in the EU, Australia, and Canada, my testimony will focus on how such intervention has or is likely to affect market concentration and its corollary, media diversity; the impact such intervention will likely have on smaller and more innovative businesses; and some thoughts on the long-term effect of such market intervention.

II. The European Experiments

For over a decade, Europe has been experimenting with providing new rights to news publishers, focusing on news aggregation services. It started with a voluntary approach to licensing in Germany in 2013; a mandatory compulsory license in Spain in 2014; and now a broader EU effort that is being implemented Europe-wide. On its face, this EU effort is voluntary but countries like France have turned it into a government-mandated “must-carry, must-pay” system, forcing targeted digital suppliers into making payments to publishers.

a. Germany

In Germany, the efforts failed: companies offering news aggregations services simply pulled out of the market for those publishers who demanded compensation. The representative of Germany's largest publishers, VG Media, nonetheless demanded a tariff for the use of news extracts and launched a complaint under Germany's competition law and before the European Court of Justice. Both of these complaints were rejected,³ and faced with what was reported to be a 40 percent decline in traffic to its members' websites VG Media eventually agreed to issue a gratis license.⁴ The take-away was clear: indexing and carrying extracts of news was much more valuable than publishers would admit,⁵ and claims of anticompetitive conduct fell flat.

³ In 2014 the Bundeskartellamt, the German Federal Cartel Office, rejected the competition claim because the complaint did “not provide sufficient indications of abusive conduct to initiate formal abuse of dominance proceedings against Google,” and was “not based on a specific conduct of Google.” On September 12, 2019, the Court of Justice of the European Union (“CJEU”) held that the ancillary copyright law was unenforceable because Germany had not properly notified the European Commission before passing the law. See *Understanding Ancillary Copyright* (2015) <https://ccianet.org/wp-content/uploads/2015/02/CCIA-Understanding-Ancillary-Copyright.pdf>.

⁴ See *The “Link tax” in the Experiences of Germany, Spain and the Article 11 of the EC Proposal for the New Copyright Directive* (2018), <https://www.linkedin.com/pulse/link-tax-experiences-germany-spain-article-11-ec-proposal-tani>.

⁵ See *The impact of web traffic on revenues of traditional newspaper publishers* (2019) <https://www2.deloitte.com/content/dam/Deloitte/es/Documents/financial-advisory/The-impact-of-web-traffic-on-revenues-of-traditional-newspaper-publishers.pdf>.

b. Spain

Spain's effort had more dire consequences, since unlike in Germany, it made compensation mandatory—even if the publisher did not seek it—and explicitly targeted any activity involving hyperlinks to news. It was, essentially, a compulsory license for news links, or what is colloquially known as a “link tax.” Predictably, smaller sites, most dependent on referral traffic, opposed this law.⁶ The main target of the law concluded that it could not justify maintaining its news aggregation service and thus shut it down before the law took effect in 2015.⁷ Other sites followed suit and the results were predictable: the traffic to news websites overall dropped more than 6 percent; and, for smaller publishers (who were more dependent on referral traffic) the drop was 14 percent.⁸ An oft-cited study analyzing the effects of the law pointed to the negative effects on diversity and innovation. It concluded that the “expansion effect” of aggregation (i.e., exposing consumers to a broader variety of news) outweighed the “substitution effect” (individuals consuming news through the extracts, as opposed to visiting the news websites).⁹

There have been studies showing that overall traffic in Spain later recovered,¹⁰ but this appeared to mainly be the case for the bigger players. In fact, the larger news publishers arguably benefited from the reduced competition that resulted from shutting down aggregation: readers seeking news naturally gravitated to the websites they knew, the best-known brands; and the lesser-known services, including innovators who depended on aggregation for exposure and discoverability, lost.¹¹ For these smaller players, the results were clearly negative: one opponent of the bill stated that “small providers and independent bloggers had their livelihoods effectively wiped out. Legal gray areas forced them to abandon their businesses, or radically change their innovative business models.”¹²

⁶ See *Commission's proposal on new rights for press publishers: A terrible solution good for no one*, <https://communia-association.org/2016/12/14/commissions-proposal-new-rights-press-publishers-terrible-solution-good-no-one/>.

⁷ While hailed as a success by large publishers, it took three years for the first company take a license from the collecting society (CEDRO) charged with implementing the law; and that company was none other than a joint-venture set up by Axel-Springer, one of the main drivers of Germany's ill-fated efforts.

⁸ See NERA Consulting's *Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual* (2015), [https://www.nera.com/content/dam/nera/publications/2015/090715%20Informe%20de%20NERA%20para%20AEEP%20\(VERSION%20FINAL\).pdf](https://www.nera.com/content/dam/nera/publications/2015/090715%20Informe%20de%20NERA%20para%20AEEP%20(VERSION%20FINAL).pdf).

⁹ *Supra* note 8 (“Aggregation services reduce search times, which allows readers to consume more news. This not only increases the total number of site visits, but increases the audience of less popular news outlets that otherwise would not have received attention.”).

¹⁰ See *The Effects of the Ancillary Right for News Publishers in Spain and the Resulting Google News Closure* (2019), https://www.newsmediaalliance.org/wp-content/uploads/2019/10/Final-Revised-Spain-Report_11-7-19.pdf.

¹¹ This result was further confirmed in a 2018 study, that estimated that smaller media companies that had been supported by aggregation suffered a 20 percent decline in traffic. See *Digital News Consumption and Copyright Intervention: Evidence from Spain before and after the 2015 “Link Tax”* (2017) <https://academic.oup.com/jcmc/article/22/5/284/4666430>.

¹² See *Ancillary Copyright for Press Publishers* (2019), <https://www.ionos.com/digitalguide/websites/digital-law/ancillary-copyright-for-press-publishers-in-europe/#:~:text=This%20had%20serious%20consequences%20for,change%20their%20innovative%20business%20models.>

One concerning result from Spain’s initial experiment was increased fragmentation of readership, with consumers clustering around narrower sources of news. As one study noted, this development undermined one of the most important conditions of democracy: “access to a common and rich informational space.”¹³

c. France

France was the first EU Member state to implement the 2019 Directive on Copyright in the Digital Single Market, which created an EU-wide right for press agencies and publishers to authorize or exclude the use of their content, above and beyond existing copyright protections. Unlike in Spain, “acts of hyperlinking” were excluded, as were “very short extracts of a press publication.”¹⁴ But uncertainty about the scope of “very short extracts” lead some online suppliers to require publishers to opt-in if they wanted their content indexed. In response, publishers convinced French authorities to mandate the indexing of content and to issue massive fines for allegedly not bargaining in good faith.

In the end, commercial deals were struck, but the result was a heavy-handed imposition of a “must-carry, must pay” regime. Such a framework arguably contravenes both the EU directive and France’s international obligations under both the Berne Convention and the World Trade Organization. As one commentator stated, “the French Competition Authority is forcing a negotiation in the shadow of competition law. However, the reasoning of the French Competition Authority seems not supported neither by the text of the EU Directive nor by the doctrines endorsed by the antitrust case law.”¹⁵

The likely effect of this intervention is increased media concentration and a decline in pluralism, a trend even Radio-France has decried, noting that nine billionaires now control most of the French press.¹⁶ While French law prevents any one company from controlling more than 30 percent of press audience nationally, the top three publications have a combined market share of over 60 percent,¹⁷ a level of concentration forced payments from online suppliers may well exacerbate. Recognition of this trend towards concentration led to the formation of a Senate inquiry on the negative effects of media concentration in 2021. On the other hand, it also gave rise to voices in praise of this trend: paraphrasing the views of former President Sarkozy, an influential French publication described his position as “rather than fight concentration, we

¹³ *Supra* note **Error! Bookmark not defined.**, at p. 285.

¹⁴ See Article 15.1 <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

¹⁵ See *Enforcing Copyright Through Antitrust? A Transatlantic View of the Strange Case of News Publishers Against Digital Platforms* (2020), p. 37 https://law.stanford.edu/wp-content/uploads/2020/10/colangelo_wp66.pdf.

¹⁶ <https://www.radiofrance.fr/franceculture/podcasts/l-esprit-public/la-concentration-des-medias-nuit-elle-au-pluralisme-6712713>

¹⁷ See *Media Pluralism Monitor 2016*, p. 6 <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/france/>.

should, to the contrary, favor building powerful French groups, so-called ‘national champions,’ capable of tackling the crisis and competing internationally.”¹⁸

III. The Australian Experiment

Australia’s approach to market intervention began with its 2017 Digital Platforms inquiry. This inquiry focused not on copyright or related rights, but broader dynamics in online markets, including advertising. As in other markets, newspapers in Australia have long struggled to build a sustainable business model: on a per capita basis, circulation in Australia has declined continuously since the 1950s.¹⁹ And as in other markets, newspaper revenues were decimated by losses in classified advertising—which plunged by 90 percent between 2000 and 2016, from an inflation-adjusted AU\$ 2.5 billion to AU \$210 million.²⁰

This was the nub of the problem, as the government candidly admitted in 2019, stating “There is not yet any indication of a business model that can effectively replace the advertiser model, which has historically funded the production of these types of journalism in Australia.”²¹

Australia’s solution was a government-sanctioned mechanism for revenue extraction, targeting the one set of companies who were developing new advertising markets.

What started as a voluntary code to facilitate bargaining between news businesses and digital service suppliers was suddenly abandoned in mid-2020, in favor of legislation and a mandatory code.²² This reflected both the impatience and the political influence of the major media groups: they were strong supporters of the incumbent conservative government, which faced elections 2 years hence—a closing window for legislation.

The Australian legislation passed in early 2021 and with it came the creation of a mandatory code, which was highly controversial. Critics included smaller publishers,²³ the United States

¹⁸ See *Media Concentration Against Democracy*, <https://laviedesidees.fr/La-concentration-des-medias-contre-la-democratie>.

¹⁹ See *The Financial Woes of News Publishers in Australia (2020)*, p. 1, <https://www.accc.gov.au/system/files/Google%20Annex.PDF>.

²⁰ *Supra* note 17 at p. 8.

²¹ See <https://www.socialmediatoday.com/news/understanding-facebooks-news-ban-in-australia-and-what-it-means-for-the-p/595394/>.

²² One of the initial 23 recommendations of the final 2019 report was that news business and digital intermediaries work together to develop a voluntary code of conduct for bargaining. The government targeted November 2020 as its date of completion, but midway suddenly changed course and ordered the ACCC to develop a mandatory code based on legislation. This was unusual: codes of conduct are common in Australia, but typically start as voluntary, and only progress to mandatory once a voluntary measure has proved ineffective.

²³ See *Diversity Hit Between the Eyes as Old Media Pockets About 90% of Big Tech Cash*, <https://www.crikey.com.au/2021/02/24/media-diversity-hit-old-media-big-tech-cash/>.

government,²⁴ the inventor of the World Wide Web,²⁵ the Australia Taxpayers Alliance, the former Prime Minister Kevin Rudd,²⁶ and even the Financial Times. In the Financial Times' words, "Australia's proposal may have galvanized the debate, but it is not the answer...[it] is too blatant and arbitrary a manner of tipping the scales in favour of big media empires. The truth is many publishers have failed to find a workable digital business mode."²⁷

Opponents of the law saw a punitive and highly prescriptive intervention in the market on behalf of a select group of companies. The government's justification for this approach was that certain online companies qualified as "unavoidable trading partners;" and their alleged bargaining advantage justified governmental intervention on behalf of one set of participants. This analysis of the market was not without critics: in a recent review of the issue, the OECD noted that bargaining power imbalances are not unusual in competitive markets, and that this fell short of the typical competition trigger for intervention, substantial market power in a credibly defined market.²⁸

One fundamental question in this context was "is there a bargain to be had?" The notion that one should be forced to bargain for payments for snippets or links that news companies allow to be indexed, or postings that news business themselves initiate, defies logic. And as mentioned above, it is inconsistent with international copyright law, related trade commitments, and the fundamental architecture of the internet.

Australia's approach willfully ignored strong evidence that the relationship between news businesses and internet service suppliers is complementary rather than competitive. Companies have documented hundreds of millions of dollars of benefits voluntarily channeled in their direction by the very targets of the legislation.²⁹ As one small news outlet opposed to the bill explained, it relied on the two targeted companies for 75 percent of its readership.³⁰

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABNewsMedia/Submissions.

²⁵ "Tim Berners-Lee, who invented the world wide web in 1989, said the draft legislation "risks breaching a fundamental principle of the web by requiring payment for linking between certain content online." See *Australia's proposed media code could break the world wide web, says the man who invented it* (Jan. 19, 2021) <https://www.theguardian.com/media/2021/jan/20/australias-proposed-media-code-could-break-the-world-wide-web-says-the-man-who-invented-it>.

²⁶ See <https://www.youtube.com/watch?v=nL6XBJ5CoXo>.

²⁷ See *Big Tech's Reckoning Over Paying for News: a Viable Fourth Estate is Important for Democracy*, Financial Times (2021) https://www.ft.com/content/989f2837-16cb-4614-aa75-183eacd88fa6?FTCamp=engage%2FCAPI%2Freport%2Fchannel_signal%2F%2FB2B.

²⁸ See OECD, *Competition Issues Concerning News Media and Digital Platforms* (2021) p. 16, <https://www.oecd.org/daf/competition/competition-issues-concerning-news-media-and-digital-platforms-2021.pdf>.

²⁹ See Meta, *Meta's response to the Treasury Department's review of the news media bargaining law* <https://treasury.gov.au/sites/default/files/2023-02/c2022-264356-meta.pdf>; Google, *A workable publisher code for Australia* (2020); <https://blog.google/around-the-globe/google-asia/australia/workable-publisher-code-australia/>.

³⁰ See *Facebook Pulled News in Australia. Here's Why that Matters Everywhere*, CNET, <https://www.cnet.com/tech/tech-industry/facebook-pulled-news-in-australia-heres-why-that-matters-everywhere/>.

Some compromises were introduced during the debate of the bill,³¹ and the final product was touted as a market-oriented approach. But it was nothing of the sort: the specter of arbitration designed to assign compensation with no grounding in economic reality (and thus uncapped liability) meant that pressure to conclude deals lacking a sound commercial basis would be the norm.

In the end, the two targets of the legislation concluded deals with over 30 news businesses and thus, so far, have avoided designation. But these deals will soon expire, and at least one of the targets has cast serious doubts on its long-term effectiveness. The company called the law “an untidy, short-term and unsustainable compromise.”³²

Fundamental questions remain unresolved. Will new deals follow when the current set expire? If designation occurs, how would arbitration work in practice? If designated, would the targets of legislation remain in the Australian market? If targets of the legislation leave, how would that harm local, independent, and diverse journalism in the country? In short, the Australian experiment remains just that—an experiment that has yet to prove its worth.

If broad-based benefits of the law are unknown, short-term windfalls are not. According to one source, 90 percent of the payments went to three traditional media businesses.³³ Thus, Australia appears to provide further evidence that forced revenue transfers seeking to shore up legacy business models disincentivizes innovation and exacerbates media concentration—undermining the ability of new entrants to increase media diversity.³⁴

Australia is already one of most concentrated news markets in the world. By one count it is just behind Egypt and China.³⁵ It is no surprise that one of the biggest advocates for the legislation and biggest beneficiaries of the compelled deals in 2020 was News Corp. This helped inspire former Prime Minister Rudd to open a Parliamentary inquiry on the subject, which focused on News Corp’s two-thirds share of metropolitan dailies and 52.5 percent share of total newspaper

³¹ The final legislation incorporated three key concessions: the right of a designated platform subject to arbitration to show the value it provided the news businesses; the right to protect proprietary algorithms, changes to which had to be notified to news businesses; and an ability avoid designation, and the prospect of highly unpredictable arbitration, by concluding agreements with an undefined number of Australian news business.

³² “It is not certain that digital platforms like Meta will be able to continue or increase on our investment in Australian news (given the flaws in the legislative framework), but it is also not clear that this revenue is being used by publishers to address the fundamental industry-wide shifts that placed them under pressure in the first place.” See *Meta’s response to the Treasury Department’s review of the news media bargaining law* <https://treasury.gov.au/sites/default/files/2023-02/c2022-264356-meta.pdf>; and *A workable publisher code for Australia* (2020).

³³ *Supra* note 23.

³⁴ This tendency to perpetuate legacy market positions is no accident: in addition to the political influence they wield in sealing deals outside of the bargaining code, the code itself, if invoked, would by definition favor them: a key factor in calculating remuneration is cost of production, which benefits legacy businesses in two ways: their relative size, providing more costs to recover; and their greater inefficiency, being saddled with legacy costs that can define the compensation base, such as printing presses, pensions, distribution assets, etc.

³⁵ See *Australia’s newspaper ownership is among the most concentrated in the world*, The Guardian (2020) <https://www.theguardian.com/news/datablog/2020/nov/13/australia-newspaper-ownership-is-among-the-most-concentrated-in-the-world>.

revenues.³⁶ Rudd previously questioned what the bargaining code would do to increase media diversity. His concise answer: Nothing.³⁷

As for meeting its goal of saving news, the early data are not encouraging: news production initially increased in the urban metropolitan areas but plummeted in non-metropolitan areas following passage of the law. By 2023, declines even hit urban areas while regional news declined at much higher rates.³⁸ In short, it is unlikely that forced payments are a silver bullet for the deep structural issues surrounding the economics of news production. On the other hand, the negative effects are significant.

IV. The Canadian Experiment

Canada's Online News Act passed on June 23 of this year. It will come into effect no later than December 19—in exactly two weeks. Modelled on Australia's law, it is a bargaining code on steroids: it dramatically expands the base of potential beneficiaries, and while it has a mechanism for digital service suppliers to avoid designation, discretion in granting an exclusion is much more circumscribed.³⁹

In response to criticisms that the law would impose uncapped liability on companies subject to arbitration, Canada proposed implementing regulations that it thought provided a solution: an explicit price for an exclusion order, set at 4 percent of a company's total global revenue roughly attributable to Canada (and thus, targeting revenues unrelated to the presence of news content). However, that was simply a minimum payment a company had to make and thus provided no real certainty to targeted firms.⁴⁰ To obtain an exclusion order, targeted companies would still need to meet the ill-defined goals of compensating “a wide range of news businesses” and “contributing to the sustainability of the news marketplace.” Any offer to meet that goal, under the proposed regulations, would appear to be little more than a roll of the dice.

Both targets of this legislation have declared the implementing regulations for this law to be unworkable.⁴¹ One target began halting the sharing Canadian news in June, and the other is

³⁶ See paragraphs 6.6 and 6.8 of *Consequences of concentrated ownership and ineffective regulation*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Mediadiversity/Report/section?id=committees%2freportsen%2f024602%2f78577.

³⁷ *Supra* note 22.

³⁸ <https://piji.com.au/wp-content/uploads/2023/10/2306-Report-v2.pdf> at 20-21.

³⁹ In fact, proposed regulations defining who is subject to the law—that is, entities presumed to enjoy a “bargaining imbalance”—are clearly (but arbitrarily) defined as search services or social media companies with annual earnings of 1 billion Canadian dollars, globally; and 20 million monthly average users in Canada. These definitions currently capture only two companies, both of which are U.S. providers.

⁴⁰ The proposed regulation allows any ten news businesses, employing in total as few as 30 journalists, to oppose an exclusion order. Furthermore, the regulations propose that payments to gain an exclusion be harmonized within a 20 percent band. That sets up what could be interminable negotiations to harmonize deals among many hundreds of potential claimants.

⁴¹ See <https://twitter.com/andymstone/status/1686415795184717825> and <https://blog.google/intl/en-ca/company-news/outreach-initiatives/an-update-on-canadas-bill-c-18-and-our-search-and-news-products/>.

negotiating an alternative basis for an exclusion—a revised approach that is expected to be reflected in final regulations, to be issued before December 19.

Since one targeted firm began removing news links, small and independent media outlets have reported significant losses and fear of a worsening environment for their survival. One social-media-oriented outlet, responding to draft regulations, said: “As a result of this bill, the Department of Canadian Heritage is inadvertently blocking the distribution and propagation of reliable digital news content on social platforms, which will result in more misinformation and disinformation for millions of Canadians. This is a disaster for our democracy.”⁴² The Reuters Institute, based on its investigation, stated “for independent local news business, which the Bill aimed to protect, this new media ecosystem can be a death sentence.”⁴³

A loss of digital services in Canada would bring deep losses for the news sector. Together, the two companies targeted by the bill estimate that their exit from the market would deprive Canadian news business of over \$400 million in benefits driven by traffic referrals.⁴⁴

This figure does not count the value of existing commercial deals that risk being terminated or new ones that might have been made in the absence of compulsion. In addition, the value assigned to traffic referral also does not take into account the immeasurable loss of supporting innovative alternatives, a richer information-sharing ecosystem, or Canadian consumers losing full access to an open internet.

There is significant opposition to the Online News Act, from smaller publishers, academics, politicians, and a former commissioner of the Canadian Radio and Television Commission.⁴⁵ Even a potential beneficiary of the law, the Toronto Globe and Mail, said, “Like any other favoured-industry policy, C-18 distorts the marketplace by protecting certain companies from reality.... In short, there are clearly better ways of supporting Canadian media than the mess of Bill C-18.”⁴⁶

As in Australia, Canada’s efforts look likely to increase media concentration in an already highly concentrated market: in Canada, three companies control 60 percent of daily newspapers, with the largest, at 43 percent, owned by a U.S. private equity firm. Television is even more concentrated, with four companies controlling over 80 percent of revenues. The Canadian government recognizes that it is the big players who will be the biggest beneficiaries: Canada’s Parliamentary Budget Officer estimated that 75 percent of the expected annual revenue

⁴² <https://canadagazette.gc.ca/rp-pr/p1/2023/2023-09-02/html/reg1-eng.html>.

⁴³ <https://reutersinstitute.politics.ox.ac.uk/news/canadas-battle-big-tech-smaller-publishers-are-caught-crossfire>.

⁴⁴ See <https://about.fb.com/news/2023/05/metas-position-on-canadas-online-news-act/> and <https://blog.google/canada-news-en/#overview>.

⁴⁵ See CCIA, *White Paper on Canada's Bill C-18* (2022) at p. 11, <https://ccianet.org/wp-content/uploads/2022/09/CCIA-White-Paper-on-Canadas-Bill-C-18-the-Online-News-Act.pdf>.

⁴⁶ See *There are better ways for a government to help journalism* (2023) <https://www.theglobeandmail.com/opinion/editorials/article-there-are-better-ways-for-a-government-to-help-journalism/>.

contribution from digital service suppliers would go to the highly-concentrated broadcasting sector.⁴⁷

In two weeks, we may have a verdict on Canada's gamble: despite a last-minute compromise, it is still evidence of a policy that does more harm than good.

V. Final thoughts

There is much evidence that forced revenue transfers from internet service suppliers to news business is not a path to sustainable, quality journalism. Apart from the immediate and negative side effects detailed above, it is also worth asking: would it be healthy for independent news to be so inextricably dependent on specific companies for their financial well-being? If your answer is that they are already, does it make sense to enshrine that reliance into law?

And one final thought. The targets of forced revenue transfer policies around the world are California companies, contributing an enormous amount to this state in terms of employment, taxes, and research & development. If California copies the experiments of Australia and Canada, it would signal a blazing green light for other countries to follow suit. Such a move would effectively muzzle the ability of the United States to criticize similar moves elsewhere; and several countries are considering extending the logic of these experiments to extract money for links beyond just news. Consider the implications of Canada's proposed 4 percent tax, extended globally: it would mean over ten billion dollars paid out into foreign markets—money no longer available to invest in California, to pay for Californian jobs, and pay California taxes. How could that possibly be in California's interest?

⁴⁷ See *Cost Estimate for Bill C-18: Online News Act, Supplementary data* (2022) <https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne>.