



CLOSING IN: GLOBAL RECKONING WITH BIG TECH

The last several months have witnessed an unprecedented amount of antitrust enforcement and regulatory action targeting Google and its harm to the journalism industry across the United States and around the world. The tech giants have largely acted with impunity as they've grown to dominate huge sectors of the online marketplace. This action by regulators and policymakers is desperately needed as the disparities in digital advertising revenue between Google and its competitors in the news business is only growing.

Though appearing to be quite different, Google and news outlets have a similar business model: they both seek to capture the attention of consumers and then sell advertising space to businesses seeking to reach those consumers. The story of the last decade plus of the advertising-driven business model is one of explosive growth for Google (and Facebook) and the collapse of ad revenue for news outlets.

In 2007, all U.S. newspapers pulled in [\\$45.4 billion](#) in ad revenue, according to figures compiled by the Pew Charitable Trust. That same year, Google's total ad revenue was [\\$16.4 billion](#). Fast forward to today, and Google recently reported its fourth quarter revenue figures for 2020, generating [\\$46.2 billion](#) in advertising revenue over the last three months of the year. That massive sum puts Google's fourth quarter 2020 ad revenue at roughly the same level as all [U.S. newspapers'](#) ad revenue for 2016, 2017, and 2018 combined.

The collapse of ad revenue has resulted in an unprecedented contraction of the journalism industry in the United States. More than [2,000 newspapers](#) have closed leaving more than 1,000 communities across the United States without a local newspaper and U.S. newspapers have [shed half](#) their workforce since 2008. And this is not just an American phenomenon, as local newspapers shut down across [North America](#), [Australia](#), and [Europe](#).

The journalism industry has taken a lot of criticism for failing to adapt to the changing world of digital media and the disruptive technology of the Internet. That transition was always going to be difficult and some of that criticism is deserved. But what is now finally becoming clear is that news outlets never really had a fair shot at competing in the online marketplace that was not only dominated by the big platforms, but the tech giants – and particularly Google – exploited that dominance to rig the system and siphon off revenue.

The question now is not whether Google is a monopoly power that uses its market dominance to devastate the journalism industry. The question is whether the growing number of American and international enforcement actions can stop Google before it's too late to save journalism.

House Judiciary Antitrust Subcommittee Investigation

On October 6, 2020, the House Judiciary Antitrust Subcommittee [published](#) a groundbreaking report detailing Apple, Amazon, Google, and Facebook’s exploitation of monopoly and market power to undermine competition, harm consumers, and weaken our democracy. The [report](#) revealed the findings of the subcommittee’s more than 16-month long investigation into the state of competition in the digital economy.

This historic and bipartisan investigation began with a hearing focusing on the tech giants’ negative impact on the journalism industry, and several key findings in this report show how Google and Facebook in particular have abused their power to siphon off billions in advertising revenue that used to go to the journalism industry. As the committee [noted](#), the “dominance of Google and Facebook allows them to ‘pick winners’ online by adjusting visibility and traffic.” These moves often cement their dominance and have catastrophic consequences for news outlets.

The committee focused on the market power of these platforms, specifically how Google can make unilateral decisions that force other market players to adhere to their standards, which the committee found are “ultimately designed to serve Google’s interests.” One such example raised by the committee was Google’s decision to phase out third-party cookies which “would have the likely effect of reinforcing Google’s power and harming rivals.” News outlets would be particularly harmed, as a 2019 Google study found that eliminating third-party cookies would cut ad revenue for news publishers by an [average of 62%](#).

The United States vs. Google

On October 20, 2020 the US Department of Justice and 11 states filed a [lawsuit](#) against Google, alleging that the company used its search dominance to preserve its other monopolies, including advertising. The lawsuit, which is the government’s most [significant](#) challenge to a tech company’s market power in a generation, [parallels](#) the 1990s Microsoft case by narrowly targeting Google’s “exclusionary contracts” with other companies, most prominently its more than \$12 billion deal to keep Google as Apple’s default search engine.

Google's monopoly on search means it is the top external referrer to news websites, making news outlets utterly dependent on Google for readers. Google then uses that reliance to require news publishers to conform to its demands, such as requiring news websites to use Google's Accelerated Mobile Pages (AMP) format in order to rank higher on search results. AMP is a stripped down format that has less advertising space, produces less revenue for news publishers, and gives Google access to more data on news websites' readers. Overall, the government's antitrust case is built on the [idea](#) that Google's dominance results in less competition, which could lead to lower-quality products for consumers.

Marketers for an Open Web Petition UK's Competition and Markets Authority

On November 23, 2020, Marketers for an Open Web (MOW), a coalition of technology and publishing companies in the UK, filed a [complaint](#) asking the Competition and Markets Authority (CMA) to delay the launch of Google's Privacy Sandbox technology. Google's Privacy Sandbox is what it is replacing the capabilities of third-party cookies with. Building off the concerns identified by the House Judiciary Antitrust Subcommittee, MOW is arguing that Google is using its [market dominance](#) to force other market players to adhere to its standards, standards which had previously been set by competitive market forces. It is also usurping the role of regulators by de facto setting the standards by which most market players must abide.

Thus, MOW [requested](#) that the CMA put a temporary delay on Google's Privacy Sandbox initiative in order to give regulators time to devise or propose what it dubs "long term competitive remedies to mitigate [Google's dominance]." The [temporary](#) delay it requested will give time for regulators to provide a proper legal course, making sure that the future of the internet is a fair and level playing field for all digital businesses and people who use it. Google's own 2019 study revealed that eliminating third party cookies - the change made in the Privacy Sandbox initiative - on Chrome would reduce ad revenue for news outlets by an [average of 62%](#). Forcing news publishers to either use Google's Privacy Sandbox or lose more than half of its ad revenue is the very definition of anti-competitive market power.

Australian Mandatory Bargaining Code for News Media and Digital Platforms

On December 9, 2020, a bill was [introduced](#) to the Australian Parliament that would make Google and Facebook pay for news content. The bill was initially requested by the Australian Government when in April 20, 2020, they asked the Australian Competition and Consumer Commission (ACCC) to develop a mandatory code of conduct to address the bargaining power imbalances between Australian news media businesses and digital platforms, specifically Google and Facebook. The law essentially has been designed to address the [loss](#) of advertising revenue from traditional media businesses to Big Tech companies.

The ACCC undertook a multiyear investigation of digital platforms and the news media, releasing a final report in 2019 which found that advertising revenue for news outlets in Australia [declined by 94%](#) from 2001 to 2016, “from AU\$3.7 billion to AU\$225 million.” This collapse in revenue was due in part to “the uneven playing field between digital platforms and some news media business.” The code seeks to address this imbalance, giving media companies and Facebook and Google a framework to bargain and reach a binding agreement, strengthening the media companies’ bargaining position in the hopes that they can claw back some of this lost revenue.

The [core](#) of this new proposed legislation essentially lies in power: who gets to decide the payments, what prompts a charge for the tech companies, and when do they have to reveal changes in their algorithms. Although the bill has still not been formally passed, Google and Facebook have already [retaliated](#) with Google threatening to make its search engine unavailable in Australia if the government approves the legislation and Facebook vowing to block users in Australia from posting or sharing links to news.

Ten U.S. States vs. Google

On December 16, 2020 a coalition of 10 state Attorneys General [filed](#) a bombshell lawsuit alleging systemic anti-competitive practices by Google to extract exorbitante revenue from ad marketplace, rig auctions, and a secret deal with Facebook to fix ad prices. This lawsuit is the [first](#) to focus on Google's dominance in ad tech, and it claims that the company uses its market power to "extract a very high tax of [redacted] percent of the ad dollars otherwise flowing to the countless of online publishers and content producers like online newspapers ... who survive by selling advertisements on their websites and apps."

The states allege that Google and Facebook entered into an "unlawful agreement" codenamed Jedi Blue in which "Facebook significantly curtailed its header bidding [a rival to Google's dominance] and would bid through Google's ad server instead. In return, Google agreed to give Facebook a leg up in its auctions," resulting in Google "manipulat[ing] publisher auctions in Facebook's favor."

The lawsuit [states](#) that Google's dominance lets the company exact a higher cut of each sale without contributing to the costs of creating content. Thus, we see a successful Google stand in sharp contrast to shrinking newsrooms and the shuttering of many local papers. Finally, the lawsuit also alleges that Google and Facebook agreed not to compete with each other and rigged the ad tech market - which is a clear [violation](#) of Section 1 of the Sherman Act, which prohibits agreements that restrict trade.

European Union's Copyright in a Digital Single Market Law Pushes Google to Pay French News Outlets to License Their Content

On January 21, 2021, Google [announced](#) it would pay French publishers for news content in a major digital copyright deal in the only EU country to adopt its new digital copyright law. The agreement came after several months of talks between Google France and France's Alliance de la Presse d'Information Generale (APIG), a lobbying group representing the media companies. The deal addresses how to apply revamped EU copyright rules, which were [overhauled](#) in 2019, and now require search engines and social media platforms to share revenue with publishers if their content is displayed.

When the new rules went into effect last year in France, Google **announced** it would only display headlines. In April, the French competition authority ruled that Google had abused its market dominance and ordered the company to negotiate with French publishers. The new agreement establishes that Google will **negotiate** individual licensing agreements with individual publishers and it would open access to its new mobile service company called Google News Showcase, which so far is only **available** in Brazil and Germany. Newspapers will be **remunerated** based on contributions to political and general information, daily volume of publications, and monthly internet audience. France is the only EU country so far to have **translated** the Copyright Directive into national law, but other EU countries are expected to follow before an implementation deadline of June 7, 2021.

HD Media Group vs. Google

On January 29, 2021, HD Media Group, a West Virginia news publisher, **filed** an antitrust suit against Google and Facebook, making it the first private action brought by a news publisher against the tech giants. HD Media **claims** Google has monopolized the online market to such an extent that “it threatens the extinction of local newspapers across the country.” The suit also **alleges** that Google and Facebook conspired to further their dominance with the Jedi Blue agreement revealed in the suit brought by the ten states in December 2020 described above.

The media company **states** that the business behavior of Facebook and Google has hurt their ability to “effectively monetize its content” because the tech companies are enabled to take an uncompetitive share of the news publisher’s ad revenue. HD Media has **asked** for unspecified damages and that the court stop Google and Facebook from engaging in the type of uncompetitive conduct it has laid out in the lawsuit.

Sen. Amy Klobuchar's Competition and Antitrust Law Enforcement Reform Act

On February 4, 2021, Senator Amy Klobuchar (D-MN), the lead Democrat on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [introduced](#) legislation that would reinvigorate America's antitrust laws and bring them up to similar standards as other developed countries. The bill is premised on the [notion](#) that current laws have left antitrust enforcement ill-equipped to address the challenges of the 21st century economy.

Thus, through her bill, Klobuchar aims to reform antitrust law in [three main ways](#): resetting the standard for enforcement and shifting the burden of proof onto dominant firms in merger cases; requiring agencies to study markets and merger effects regularly, with the help of additional funds; and giving new tools to antitrust enforcers, like imposing civil penalties. If passed, the bill [would not](#) retroactively apply to conduct predating the amendments. Nevertheless, updated antitrust laws could [prevent](#) future uncertainty about what constitutes anti competitive conduct and what burden the government must meet to demonstrate it, which, in turn, should incentivize firms to moderate their behavior and reduce their exposure to antitrust challenges.

Bipartisan Legislation in House to Level Playing Field Between News Outlets and Tech Giants

Rep. David Cicilline (D-RI) and Rep. Ken Buck (R-CO), the Chair and Ranking Member of the House Judiciary Antitrust Subcommittee, [intend to introduce](#) the Journalism Preservation and Competition Act on March 12, 2021. The legislation, similar to a bill of the same name introduced in the last Congress, is designed to provide a safe harbor from antitrust law to allow groups of news outlets to band together and negotiate better terms for advertising revenue from the tech giants.

In discussing the Committee's work, Rep. Cicilline has emphasized that their investigation has revealed that ["local news is on life support,"](#) and that "we have to take action because the monopoly power of [Google and Facebook] is resulting in a significant decline in local journalism." We look forward to seeing this new legislation and are hopeful that it is in fact structured around providing urgent support for local news outlets. There are legitimate concerns that the big media conglomerates are best placed to take advantage of this kind of legislative action following News Corp's [mega deal](#) with Google spurred by the Australian bargaining code.



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