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Regulating dependency: The political stakes of online platforms' deals with French publishers

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Abstract

At a time when the news industry is struggling to cope with the dominance of the advertising market by large platforms, along with recent crises such as the COVID-19 pandemic, commercial deals and regulatory initiatives are becoming increasingly common. While there is ample space for regulatory interventions seeking to level the playing field between news industry stakeholders and platforms, we are concerned these might further cement the dependency of the former on the latter through co-regulatory frameworks that epitomize the capture of vital infrastructures by platforms. This article examines the three-year negotiation of French news publishers with Google and Meta, which concluded with four framework agreements being signed. For our analysis, we first look at the historical trajectory of how these deals were made possible, using secondary sources such as leaks, press releases and the French Competition Authority's rulings; we then discuss their details and implications. We trace Google's attempt to capture news media in France and discuss the asymmetrical power it has exercised over the news industry, and how the subsequent deals with Meta were affected. Finally, our case study shows that these frameworks are not sufficient to tackle systemic imbalances – despite their good intentions – because they fail to challenge the concentration of power by a handful of oligopolistic private companies and, thus, effectively leave it up to them and the free market's idiosyncrasies to decide how they are implemented.

Keywords: platformization; copyright; related rights; Google News; Facebook News; Meta Journalism Project

Resum. *Regular la dependència: el que està en joc en els acords de les plataformes en línia amb els editors francesos*

En un moment en què la indústria periodística lluita per fer front al domini de l'espai publicitari per part de les grans plataformes, juntament amb crisis recents com la pandèmia de COVID-19, els acords comercials i les iniciatives reguladores són cada vegada més freqüents. Si bé existeix un ampli espai per a les intervencions reguladores que tractin d'equilibrar el terreny de joc entre les parts interessades de la indústria periodística i les plataformes, ens preocupa que aquestes puguin consolidar encara més la dependència de les primeres respecte de les segones a través de marcs coreguladors que encarnin la captura d'infraestructures vitals per part de les plataformes. Aquest article examina la negociació de tres anys dels editors de notícies francesos amb Google i Meta, que va concloure amb la signatura de quatre acords marc. Per a la nostra anàlisi, primer analitzem la trajectòria històrica de com aquests acords van ser possibles utilitzant fonts secundàries, com filtracions, comunicats de premsa i resolucions de l'Autoritat de la Competència de França; després n'analitzem el detall i les implicacions. Rastregem l'intent de Google d'aconseguir els mitjans de comunicació a França i analitzem el poder asimètric que ha exercit sobre la indústria periodística, així com la forma en què es van veure afectats els posteriors acords amb Meta. Finalment, el nostre estudi de cas mostra que aquests marcs no són suficients per fer front als desequilibris sistèmics —encara que tinguin bones intencions— perquè no aconsegueixen qüestionar la concentració de poder d'un grupat d'empreses privades oligopòliques i, per tant, deixen efectivament que siguin aquestes i les idiosincràsies del lliure mercat les que decideixin sobre la seva aplicació.

Paraules clau: plataformes; drets d'autor; drets relacionats; Google News; Facebook News; Meta Journalism Project

Resumen. *Regular la dependencia: lo que está en juego en los acuerdos de las plataformas en línea con los editores franceses*

En un momento en que la industria periodística lucha por hacer frente al dominio del espacio publicitario por parte de las grandes plataformas, junto con crisis recientes como la pandemia de COVID-19, los acuerdos comerciales y las iniciativas reguladoras son cada vez más frecuentes. Si bien existe un amplio espacio para las intervenciones reguladoras que traten de equilibrar el terreno de juego entre las partes interesadas de la industria periodística y las plataformas, nos preocupa que estas puedan consolidar aún más la dependencia de las primeras con respecto a las segundas a través de marcos coreguladores que encarnen la captura de infraestructuras vitales por parte de las plataformas. Este artículo examina la negociación de tres años de los editores de noticias franceses con Google y Meta, que concluyó con la firma de cuatro acuerdos marco. Para nuestro análisis, primero analizamos la trayectoria histórica de cómo estos acuerdos fueron posibles utilizando fuentes secundarias, como filtraciones, comunicados de prensa y resoluciones de la Autoridad de la Competencia de Francia; después analizamos sus detalles e implicaciones. Rastreamos el intento de Google de hacerse con los medios de comunicación en Francia y analizamos el poder asimétrico que ha ejercido sobre la industria periodística, así como la forma en que se vieron afectados los posteriores acuerdos con Meta. Finalmente, nuestro estudio de caso muestra que estos marcos no son suficientes para hacer frente a los desequilibrios sistémicos —aunque tengan buenas intenciones— porque no consiguen cuestionar la concentración de poder de un puñado de empresas privadas oligopólicas y, por tanto, dejan efectivamente que sean estas y las idiosincrasias del libre mercado las que decidan sobre su aplicación.

Palabras clave: plataformas; derechos de autor; derechos relacionados; Google News; Facebook News; Meta Journalism Project

1. Introduction

During the past few years, the discussion around the remuneration of news publishers by digital platforms such as search engines and social media has reignited public interest. What was once seen as ineffective or even impossible is now gaining traction in several countries, with perhaps the most prominent examples being France and Australia. Currently, policymakers in many countries are drafting or passing legislation seeking to regulate the relationship between press publishers and mainly US-based technological companies. This is primarily due to the news industry's need for new revenue streams, given the structural decline in traditional resources such as subscriptions and advertising. The digital platforms' gargantuan profits make them an ideal target for regulation intended to develop sustainable business models for journalism, especially since Google and Meta¹ have already been funneling money into the news media industry worldwide (Fanta and Dachwitz, 2020; Schiffrin, 2021; Papaevangelou, 2023).

This article examines the three-year negotiations between French news publishers and Google and Meta, which concluded with: a five-year deal struck in November 2021 between Google and *Agence-France Presse* (AFP);² a three-year deal signed in March 2022 between the *Alliance de la Presse d'Information Générale* (APIG) – the largest union of French daily newspapers – and Google, and between APIG and Meta signed in October 2021; and, last, a three-year deal between the *Syndicat des Éditeurs de la Presse Magazine*³ (SEPM) and Google in March 2022 (Rosemain, 2021). For our analysis, we look at the historical trajectory of how these deals were made possible and study them to identify similarities and differences. In the following sections, we examine the details of each deal by analyzing secondary sources such as leaks, press releases and rulings of the French competition authority, the *Autorité de la Concurrence* (ADLC). It should be noted that we did not analyze the documents from a legal standpoint; that is, we did not look closely into technical details, as we were mostly interested in their political-economic impact on the relationship between publishers and platforms.

We also show how France has served as the setting for many developments in regulating the publisher-platform relationship, from AFP's lawsuit against Google in 2006 (Cozens, 2005) to the creation of Google's Digital Innovation Fund in 2013, and the French publishers' complaint to the ADLC in 2021. Furthermore, we trace Google's attempt to capture news media in France and we examine the asymmetrical power it has wielded over the news industry. We demonstrate how Google's stance and the ADLC's decisions affected the outcome of the negotiations, including the deals signed with Meta. We explain how the EU attempted to satisfy publishers through copyright regulation, that is by creating a right to remuneration for the reuse

1. Formerly known as Facebook.

2. <<https://www.afp.com/sites/default/files/afpcommuniquede202111/pdf/cpapfgooglefr.pdf>>.

3. Association of magazine press publishers.

of their content by infomediary platforms. However, this is just a part of a larger mosaic that brings together the political economy of platform governance along with issues of competition, privacy, platform funding, lobbying and others. With this case study, we wish to shed light on the ongoing transformation of the relationship between news organizations and online intermediaries which organize, curate, distribute and, increasingly, fund news content. All these dimensions are essential to understanding the complex functioning of the contemporary digital public sphere, and we aspire for our paper to contribute to this scholarly endeavor.

2. Literature review

Platforms have practically reconfigured the means of production and distribution of, as well as access to, cultural products, including news (Nieborg and Poell, 2018; Smyrnaio and Rebillard, 2019). The concept of a platform signifies a figurative bridging of two or more parties, thereby acting as an intermediary. However, as several scholars have argued, this metaphor obscures the question of liability for data and content circulation, as well as the agency that is exercised by platforms through algorithmic content curation (Gillespie, 2010; Bucher, 2018). The phenomenon of “infomediation” (Siapera, 2013; Smyrnaio and Rebillard, 2019) has enabled platforms to assume an authoritative role in defining, either directly or indirectly, the limits of freedom of expression and consequently how public discourse is constructed. As a result, it is crucial to critically discuss what this implies for the future of our public sphere, which predominantly exists online and is governed by private platforms (van Dijck and Poell, 2015; Napoli, 2019).

We also employ the concept of “infrastructural capture”, a term used by Nechushtai to describe “situations in which an organization tasked with scrutinizing another organization, institution, business or industry is incapable of operating sustainably without the resources or services they provide” (Nechushtai, 2018: 1046). The concept of capture derives from the economic theory of “regulatory capture” (Stigler, 1971), which was effectively a way of claiming that regulation might be designed by or for industry stakeholders instead of prioritizing public interest. The related concept of “media capture” was subsequently used to frame an identical situation, in which media actors are working to ensure the preservation of the status quo, often with potential benefits to governments or corporations (Schiffrin, 2014). The concept of infrastructural capture, then, is used to analyze the risk of media organizations’ dependency on platform infrastructure, with clear threats to their independence and the way news is produced (Sebbah, Sire and Smyrnaio, 2020).

Finally, we draw on the work of Smyrnaio and Rebillard (2019) to understand how the French news industry has historically spearheaded negotiations with infomediaries, a process characterized by “[the] dominance of the infomediaries over publishers and, simultaneously, a collusion between these

two types of actors that leads the latter to dilute their editorial autonomy while the former gain power over news production and distribution” (Smyrnaio and Rebillard, 2019: 45).

3. Methods, corpus and case study selection

Qualitative methods are widely preferred by researchers studying institutional processes of a given field and, largely, the political-economic implications of regulatory development. More specifically, case studies are often best suited for looking closely at a particular issue and examining it through close reading, paying attention to its nuances and its unique sociopolitical context (Denzin and Lincoln, 2018: 557). We consider our paper to be a “detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events” (George and Bennett, 2005: 5).

Furthermore, our methodological and analytical approach was inspired by a scholarly analysis of the Australian New Media Bargaining Code (NMBC) passed in 2021, and how it was developed (Flew and Wilding, 2021). Specifically, Flew and Wilding analyzed a report from the Australian Competition and Consumer Commission (ACCC) that examined the dominance that Google and Meta hold over traditional news media publishers (Flew and Wilding, 2021: 51).

For this paper, we studied relevant documentary materials, namely ADLC’s decisions; a parliamentary report on the application and impact of *related rights*;⁴ press releases from all negotiating parties involved; and numerous news articles containing information on the story’s development. We also conducted in-depth interviews with stakeholders, essentially with publishers.⁵ More specifically, the two decisions of the Authority examined here are *20-MC-01* of 09/04/2020⁶ and *21-D-17* of 12/07/2021.⁷ The former refers to the decision made by ADLC to grant the requests of the press publishers, namely APIG, SEPM and AFP, which had lodged an official complaint with the Authority against Google’s implementation of the French law transposing the European Directive on Copyright and Related Rights in the Digital Single Market,⁸ which introduced a related right for press publishers allowing them to demand remuneration for the (re)use of their content by intermediaries.

4. “Neighbouring rights”, “ancillary rights” and “related rights” are used interchangeably in this article. They describe the rights of a creative work not connected with the work’s actual author – in this case rights on content that are granted to publishers. We choose to use “related rights” as it is the term used in the European directive.

5. This is because our efforts to contact Google and Meta proved unfruitful.

6. <<https://www.autoritedelaconurrence.fr/en/decision/requests-interim-measures-syndicat-des-editeurs-de-la-presse-magazine-alliance-de-la>>.

7. <<https://www.autoritedelaconurrence.fr/en/press-release/remuneration-related-rights-press-publishers-and-agencies-autorite-fines-google-500>>.

8. <<https://eur-lex.europa.eu/eli/dir/2019/790/oj>>.

France has historically been at the epicenter of policymaking in relation to regulating publisher-platform relationships. For instance, in 2013, Google responded to pressure from the French government by creating a €60 million fund “to support press publishers’ innovation projects, which was the blueprint for the DNI & the GNI”⁹ (Fanta and Dachwitz, 2020: 89). Going even further back, the tumultuous launch of Google News in France in 2003 caused many French publishers, which were members of an association called *Groupement des Éditeurs de Services en Ligne* (GESTE)¹⁰, to temporarily withdraw their content from Google News (Smyrnaio, 2021). More recently, France was the first country to transpose the new copyright directive in 2019, showing the political will to regulate the relationship between press publishers and platforms, well before the Australian NMBC became law. For all these reasons, the way that this issue played out could set a precedent and, thus, impact the way that other countries attempt to regulate said relationship. It also serves as a prime example of the political-economic stakes of this relationship, with implications that go beyond the news industry.

4. Results

In this section, we look at the key developments indicated in the timeline we created to help readers contextualize the discussion (Fig. 1).

4.1. *The road to the updated European Copyright Directive and Google’s role*

France was the first member state in the EU to transpose the revamped European Copyright Directive, which, among others, included Article 15 regarding the “Protection of press publications concerning online uses”.¹¹ This Article introduced a related right to copyright for press publishers, thus opening the way for publishers to start receiving some sort of remuneration for the (re)use of their content – including indexing in search engines – by online intermediaries (Danbury, 2021). This right expires by default two years after the appearance date of a press publication (Art 15(4)).

It is worth noting here that Germany passed a similar law in 2013 in a bid to make Google pay for indexing news content.¹² However, due to the law’s vague language, Google proceeded with listing only links to articles on its search engine, and thus was able to avoid paying for the license demanded. As a result, German publishers had to waive their right to remuneration, as their readership coming via Google plummeted (Nordemann and Jehle, 2019).

9. DNI stands for Google’s Digital News Initiative fund, which later became Google News Initiative.

10. Group of publishers of online services.

11. <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>>.

12. <https://www.gesetze-im-internet.de/englisch_urhg/index.html>. This would later go on to serve as the foundation for Article 15 of the Copyright Directive.

Similarly, in 2014, the Spanish government passed a stricter law that essentially made it illegal for online services to use snippets of content without payment to the Spanish Association of Newspaper Publishers (Smith, 2014). Google retaliated by removing all Spanish media from the Spanish version of Google News for almost eight years, only for it to be re-activated after Spain complied with the new European copyright framework (Vincent, 2021).

Another similar story of platform power asymmetry played out in Australia, when Meta blocked dozens of news pages on Facebook following approval of the NMBC, including those of government and health officials (Taylor, 2021). Recently, whistleblowers have claimed that these pages were not affected by accident, as the company had previously argued, but that everything was part of Meta's deliberate strategy to improve its negotiating position (Taylor, 2022).

Following a historical institutionalist approach, we can indeed infer that “different countries or societies can develop dramatically different institutional responses to the same macrosocial structures” (Bannerman and Haggart, 2015: 5). Interestingly, though, the response of platforms in all the examples cited remains effectively the same: in addition to more traditional lobbying practices, they have been leveraging their power through censorship and media deplatformization in order to influence policymaking, with little regard for the public interest.

4.2. The role of the French Competition Authority

As noted above, a couple of months after France implemented the European Directive as national law, Google unilaterally stopped showing news snippets to its French users¹³ unless it had first explicitly received permission from the publishers, which would have amounted to waiving their right to remuneration. This reaction was what caused French publishers to come together and lodge a formal complaint to the ADLC against the way in which Google had interpreted and applied the copyright law, arguing it had “[abused] a dominant position” (ADLC, 2020: 3). The ADLC found Google's practices to be “anti-competitive” (2020: 4) and issued a decision in April 2020 (20-MC-01), ordering interim measures to be applied until the announcement of its final decision, namely that:

- Publishers and news agencies had to enter negotiations “in good faith” with Google, within a period of three months after such a request had been made, to discuss both the terms and conditions for the reuse and indexing of their content and the corresponding – retroactive – remuneration (Injunctions 4 & 5);

13. <<https://france.googleblog.com/2019/09/comment-nous-respectons-le-droit-dauteur.html>>.

- Google had to provide sufficient information regarding the criteria and parameters of calculating remuneration fees (Injunction 2);
- During the period of negotiations, Google had to continue displaying snippets and audiovisual content in its search engine in a neutral way, i.e. without downgrading it (Injunctions 3, 5 & 6);
- Finally, Google had to send an initial report to the ADLC on its compliance with the obligations (Injunction 7).

ADLC based its decision on the fact that, at the time, Google “[was] likely to hold a dominant position on the French market for general search services” (ADLC, 2020: 3). Specifically, it argued that “Google may have abused its dominant position to circumvent the Law on Related Rights” for having forced the hand of publishers to waive their right to remuneration by granting free licenses to Google, for not having shared critical information regarding the way of determining the level of remuneration and, last, for having unilaterally blocked short extracts and other audiovisual content from its search engine (ADLC, 2020: 4).

Another important point in the development of our case study was the decision of ADLC on 7 June 2021 (21-D-11) in relation to Google’s practices in the online advertising sector in France, which fined the company €200 million for “having abused its dominant position in the market for ad servers for publishers of websites and mobile apps” (ADLC, 2021a: 3). This time, the case was brought to the Authority’s attention by *News Corp Inc.*, *Groupe Figaro* and *Groupe Rossel La Voix*, all of which are press publishers and important stakeholders in the news industry in France and beyond.

One month later, on 13 July 2021, ADLC issued its final decision (21-D-17) concerning the interim measures that had been announced in its previous decision of April 2020 (20-MC-01). The Authority fined Google €500 million, primarily for not having complied with injunctions 1, 2, 5 and 6; most importantly, the decision condemned Google’s attempt to connect the payment of publishers’ related rights to their use of the newly launched Google News Showcase.¹⁴ The ADLC also took into consideration the decision of the Paris Court of Appeal of 8 October 2020, which dismissed Google’s argument that the company would jeopardize “improvements and innovations” of its services if it complied with all foreseen obligations (ADLC, 2021b: 3).

Subsequently, Google proposed eight commitments to the ADLC, applicable for five years, as remedies for the infringed injunctions (Allen and Overy, 2021), agreeing *inter alia* to negotiate a separate license for Google News Showcase. This was a concession from Google, which sought, on the

14. Google statement described Showcase as “a licensing program for news publishers that provides a customizable, curated space for news content in Google News and Discover. These are not payments for links, snippets, short extracts, or headlines.” <<https://news.google.com/news-showcase/>>.

one hand, to disengage itself from an on-going legal spar with the ADLC and the French news industry, especially shortly after Meta had announced a framework agreement with APIG, and, on the other, to avoid further negative publicity (Cohen, 2021). Through a historical institutionalist lens, this illuminates an institutional change in platform regulation, which Google attempted to oppose but had to ultimately give in to – albeit on its own terms, as we will see.

4.3. *AFP and APIG, the platforms' favorites*

APIG was created in 2018 following the merger of four different unions. The organization brings together and represents nearly 300 political and general news titles, both at the regional and local level, including the most prestigious Paris-based dailies such as *Le Monde*, *Le Figaro* and *Libération*. Pierre Louette, the President of APIG and CEO of *Groupe Les Echos-Le Parisien*, part of the powerful LVMH group, has supported the idea of remunerating the news industry based on related rights, arguing that: “It is the birth of a new category of stable income” (Valentini, 2021). It is also worth noting that Philippe Jannet, the first press executive in the world to formulate a collective demand for remuneration from Google on behalf of the GESTE in 2003 when Google News launched in France, was also CEO of *Les Echos* at the time. Thus, the same prominent players, mainly Parisian financial and political newspapers, had for years been developing the arguments that were adopted by the French publishers involved in this litigation. APIG was the first among the three complainants to strike an agreement with Google, in January 2021, although it subsequently became inoperable, due to ADLC’s second decision in July 2021; finally, a new framework agreement was signed in March 2022.

Furthermore, APIG remains the only association to have signed an agreement with Meta regarding related rights. Specifically, the deal with Meta covers a period of three years, with an option to renew, and stipulates that every publisher participating in APIG will receive a minimum remuneration fee, retroactively, i.e. it will cover fees for related rights owed to publishers since the law’s implementation in July 2019. Through our interviews we learned that there are three factors that determine the amount of remuneration: (i) the number of Facebook followers; (ii) the number of interactions with publishers’ posts; and (iii) the number of visitors outside Facebook, as evaluated by ACPM.¹⁵ So, we could assume that similar parameters exist for determining the amount of remuneration from Google.

Nevertheless, financial details concerning these framework agreements were not made publicly available either for Google or for Meta. A report from Reuters mentioned that the initial deal with Google involved approximately €67 million over three years (Rosemain, 2021); details regarding the

15. <<https://www.acpm.fr>>.

second deal were not revealed. For instance, *Le Monde* would reportedly receive approximately €1.5 million, while a local outlet, *La Voix de la Haute Marne*, would receive only €12,500. Even though the initial deal is no longer in force, the fact that larger outlets would have received substantially more money than smaller ones reveals two things: on the one hand, that inequalities exist among industry players, and, on the other, that even though collective negotiation made striking deals more likely, it did not necessarily help remedy imbalances.

As we noted above, the French news industry has been at the forefront of demanding remuneration for the reuse of their content by online platforms. A case in point is when AFP sued Google in 2005 for having “breached its copyright by reproducing its pictures and articles” in the Google News section (Cozens, 2005). The two parties settled the lawsuit two years later, with Google paying AFP an undisclosed sum of money to continue displaying content on its services, but further details were never made publicly available (Auchard, 2007; Smyrniaos and Rebillard, 2019: 40). This deal, along with a similar one made with Associate Press, are the first occasions in history when Google agreed to share revenue with a publisher. Currently, AFP is not a part of any of the associations mentioned above. Nonetheless, it decided to collaborate with the other publishers’ bid against Google by lodging a complaint to the ADLC. AFP signed its own agreement with Google in November 2021, which, unusually, is valid for five years, compared to the three-year deals signed by the other associations (France24, 2022).

Fabrice Fries, CEO of AFP, also stated in the parliamentary hearings that the international status and elevated prestige of the news agency helped secure a higher level of remuneration than that obtained by other publishers (Duby-Muller and Garcia, 2022: 65). As a result, we would be remiss not to mention here some of the other financial arrangements between AFP and the two largest private funders of journalism, Google and Meta. Specifically, AFP has become one of the most important fact-checking organizations worldwide, with the support of the platforms and the French government. In December 2021, a month after signing the agreement on related rights, Google and AFP announced their collaboration on a fact-checking project called *Objectif Desinfox*, relating to the French presidential and legislative elections of 2022;¹⁶ this was seen as an expansion of their previous work on election-related fact-checking for the previous presidential elections in 2017. This time, the two parties created a coalition of 21 French news organizations coordinated by AFP which aimed to combine forces to combat disinformation, which put AFP in a rather privileged position within the media ecosystem. Also, AFP is currently the largest partner of Meta’s Third-Party Fact-Checking Network (Goldshlager, 2019).

16. Objective: Combat Fake News: <<https://www.afp.com/en/inside-afp/afp-google-team-fact-check-french-polls>>.

Figure 1. Case Study Timeline



Source: <<https://prezi.com/i/view/1VcwBpaUCyRnTp6CTWUO>>.

4.4. Magazines and independent online publishers: the outsiders

SEPM is the leading association of magazine publishers for the general public in France; it was first formed in 1982 but merged with the *Syndicat Professionnel de la Presse Magazine et d'Opinion* (SPPMO) in 2012,¹⁷ and now represents 80 publishers and more than 400 magazines across France.¹⁸ SEPM was the last association to sign an agreement with Google, in April 2022, following another complaint lodged on 10 January 2022 (Cohen, 2022). This time, the complaint was filed solely by SEPM, as the other two associations had already signed different agreements. SEPM argued that Google had not “respected” the injunctions announced by ADLC, indicating that the company had likely negotiated different terms with the other complainants. In any case, it seems that the pressure put on Google by that last complaint, along with its wish to conclude negotiations with the French news industry, opened the way for a framework agreement that will last three years, with Google distributing around €20 million per year to the association’s participants (OFFREMEDIA, 2022).

Moreover, it should be noted that one major point of contention between APIG and SEPM was that the latter did not accept Google’s framing of the scope of related rights: Google wanted the definition to cover solely publications that fell under the umbrella term “political and general information”, to which APIG agreed.¹⁹ In fact, ADLC’s 21-D-17 decision specifically condemned that framing, which would exclude numerous media from benefiting from related rights (ADLC, 2021b: 83).

Finally, in June 2021, SEPM joined forces with *la Fédération Nationale de la Presse d'Information Spécialisée* (FNPS), which represents “specialized and professional” press, and with *le Syndicat de la Presse d'Information Indépendante en Ligne* (Spiil), which represents independent online media, to launch a dedicated collective copyright management organization that will collect and distribute remuneration for related rights among member publishers. As the Parliamentary Report on the application of the law on related rights in France noted, such organizations “limit the [market] distortions without favoring the big publications and allowing the smaller ones to defend themselves” (Duby-Muller and Garcia, 2022: 51). This happens through the method of *péréquation*, i.e. balancing costs or revenue among different parties to achieve a fairer distribution than that obtained through simple market mechanisms.²⁰ However, neither AFP nor APIG, who appear to be Google’s

17. <<https://archive.wikiwix.com/cache/index2.php?url=http%3A%2F%2Fwww.sppmo.org%2FLe-2-mai-dernier-le-SPPMO-est.html#federation=archive.wikiwix.com&tab=url>>.

18. <<http://www.lapressemagazine.fr/presentation>>.

19. In France, media publishers that meet the criteria of Article 1 of the decree of 29 October 2009 may be recognised as providing “political and general information” (IPG), which makes them eligible for public funding and tax breaks.

20. In France, the newspaper distribution system is traditionally based on a collective mechanism of *péréquation*, i.e., the distribution of costs among publishers to assure diversity and pluralism.

privileged contacts, have yet joined this organization, which significantly weakens its negotiating power. Therefore, one can observe that power asymmetries characterize not only the relationship between publishers and platforms, but also those between different news industry stakeholders themselves.

5. Conclusions

Meta and Google are among the largest benefactors of journalism worldwide, with their Meta Journalism Project (MJP) and Google News Initiative (GNI) respectively (Fanta and Dachwitz, 2020; Jurno and D'Andréa, 2020). Indeed, Meta and Google have claimed that they have so far invested more than \$900 million in the news industry, and between them have pledged to spend close to \$1.5 billion (Scutari, 2022).²¹ These funding initiatives are distinct from the licensing programs they offer, such as Google News Showcase or Facebook News, or other commercial services such as Subscribe with Google. As a result, we are left in the dark regarding the figures for their funding for journalism programs, and we lack exact information about the reach of these initiatives due to the opaqueness and complexity of their activities.

A case in point, which is also related to our case study, is when Google signed individual agreements with more than a dozen French news organizations between the end of 2020 and the beginning of 2021. (Duby-Muller and Garcia, 2022: 65). However, neither the content nor the amounts involved were disclosed. These agreements were based on related rights but were made outside the remits of the associations, even though some of these organizations, like *Le Monde*, partake in them; the selected publishers were also given privileged access to services such as Subscribe and Showcase. Consequently, we believe that this “divide and conquer” strategy among monopolistic digital platforms contributes to further fragmenting the news ecosystem and weakening smaller publishers. The same applies to audiovisual media and, particularly, TV channels; we did not include them in our study because they do not participate in the negotiations sanctioned by the French public authorities. However, the largest ones, such as the TF1 group, have signed deals of mutual agreement, notably with Google, including favorable revenue sharing for content published on YouTube.²²

Furthermore, while the ADLC played a positive role in limiting platforms' leverage, we also ought to underline the political context which undermined its work in favor of monopolistic platforms. France, alongside Germany, has been among the frontrunners leading the regulatory race in the EU. We could argue, thus, that there existed a political willingness to regulate US-based tech giants. French President Emmanuel Macron, though, did not renew the tenure of Isabelle de Silva, head of ADLC, because they did not see eye-to-eye regarding merger rules, with the former wanting softer rules that

21. <<https://www.facebook.com/journalismproject/introducing-facebook-journalism-project>>.

22. <<https://www.reuters.com/article/ofrin-tf1-youtube-idFRKCN01Y27Q20141114>>.

would allow for a greater concentration of companies, so that French and European technological companies could “better compete against the United States and China” (Leali and Kayali, 2021). However, the swift and unprecedented decisions of ADLC during de Silva’s tenure, condemning the harmful practices of Google, makes the above reasoning questionable. We believe that, as with the agreement to create the DNI in 2013 by François Hollande and Google’s then-CEO Eric Schmidt, the French government demonstrates a preference for the market to self-regulate, even if this means perpetuating power imbalances among stakeholders.

To summarize, this paper set out to discuss the political economy of regulation of the relationship between press publishers and online intermediaries. We examined the three-year negotiations between a large part of the French news industry and dominant technological companies, specifically Google and Meta, and we inferred the following:

- i. Collective bargaining is more effective for news publishers in their efforts to negotiate commercial deals with online platforms but is also harder to organize because of market fragmentation and opposing interests.
- ii. There exists not only a power asymmetry between publishers and platforms but also among publishers themselves, e.g., with larger news organizations securing better deals, participating in separate commercial arrangements with platforms, and refusing to join a collective management organization.
- iii. Independent judicial authorities can play a positive role in regulating platforms and their relationship with other governance stakeholders such as press publishers if there is an enabling political and institutional environment.
- iv. Monopolistic platforms avoid sharing details of deals to ensure a fragmented negotiating front and to deter smaller publishers from increasing their demands.
- v. They also unilaterally utilize their power, in cases where they cannot avoid regulation, to enforce their interpretation of regulatory frameworks and, thus, influence policymaking and policy-enforcement.

In conclusion, our article highlights the existing risk of expanding the platformization of news (Nieborg and Poell, 2018) by attempting to force services like Google News Showcase onto the publishers. At a time when the news industry is struggling to cope with the dominance of large platforms in the advertising space, along with recent crises such as the Covid-19 pandemic, commercial deals and regulatory initiatives are bound to become increasingly common. While there is ample scope for regulatory interventions seeking to level the playing field among news organizations and platforms, we are concerned these might further cement the dependency of the former on the latter through co-regulatory frameworks (Ouakrat, 2020: 51-52) that enable plat-

forms to capture vital infrastructures (Nechushtai, 2018). We believe that these frameworks are not sufficient to tackle systemic imbalances – even if they mean well – because they fail to challenge the concentration of power among a handful of oligopolistic private companies, and thus give way to platforms and to the free market’s idiosyncrasies to decide how they are implemented. Similarly, the lack of political will to democratize access to this new source of revenue for all publishers, for instance through a collective management system of related rights, may contribute to further concentration of the media industry, and may thus limit pluralism of opinions in the public sphere. Future research should focus on studying the progressively contentious relationship between publishers and platforms concerning issues beyond funding as well.

Bibliographical references

- ALLEN & OVERY (2021). *Proposition d’engagements de Google LLC, Google Ireland Limited et Google France*. Retrieved from <https://www.autoritedelaconcurrence.fr/sites/default/files/prop_enga_google_dtsvoisins_dec21.pdf> (Accessed: 16 May 2022).
- AUCHARD, E. (2007, 7 April). “AFP, Google News settle lawsuit over Google News”. *Reuters*. Retrieved from <<https://www.reuters.com/article/us-google-afp-idUSN0728115420070407>> (Accessed: 16 May 2022).
- AUTORITÉ DE LA CONCURRENCE (2020). *Decision 20-MC-01 of 9 April 2020 on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d’information générale and others and Agence France-Presse*. Retrieved from <https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2020-06/20-mc-01_en.pdf> (Accessed: 10 May 2022).
- (2021a). *Decision 21-D-11 of 7 June 2021 regarding practices implemented in the online advertising sector*. Retrieved from <https://www.autoritedelaconcurrence.fr/sites/default/files/attachments/2021-07/21-d-11_ven.pdf> (Accessed: 13 May 2022).
- (2021b). *Decision 21-D-17 of 12 July 2021 on compliance with the injunctions issued against Google in Decision 20-MC-01 of 9 April 2020*. Retrieved from <https://www.autoritedelaconcurrence.fr/sites/default/files/attachments/2022-02/21-d-17_en.pdf> (Accessed: 13 May 2022).
- BANNERMAN, S. and HAGGART, B. (2015). “Historical Institutionalism in Communication Studies: Historical Institutionalism in Communication Studies”. *Communication Theory*, 25 (1), 1-22. <<https://doi.org/10.1111/comt.12051>>
- BUCHER, T. (2018). *If. . . Then: Algorithmic Power and Politics*. New York: Oxford University Press (Oxford Studies in Digital Politics).
- COHEN, C. (2021, December 15). “Droits voisins: Google abat ses dernières cartes pour sortir du conflit avec la presse”. *Le Figaro*. Retrieved from <<https://www.lefigaro.fr/medias/droits-voisins-google-abat-ses-dernieres-cartes-pour-sortir-du-conflit-avec-la-presse-20211215>> (Accessed: 16 May 2022).
- (2022, January 10). “Droits voisins: la presse magazine saisit à nouveau l’Autorité de la concurrence contre Google”. *Le Figaro*. Retrieved from <<https://www.lefigaro.fr/medias/droits-voisins-la-presse-magazine-saisie-a-nouveau-l-autorite-de-la-concurrence-contre-google-20220110>> (Accessed: 16 May 2022).

- COZENS, C. (2005, March 21). "AFP sues Google over copyrighted content". *The Guardian*. Retrieved from <<https://www.theguardian.com/technology/2005/mar/21/media.newmedia>> (Accessed: 16 May 2022).
- DANBURY, R. (2021). *The DSM Copyright Directive: Article 15: What? - Part II, Kluwer Copyright Blog*. Retrieved from <<http://copyrightblog.kluweriplaw.com/2021/04/29/the-dsm-copyright-directive-article-15-what-part-ii/>> (Accessed: 11 May 2022).
- DENZIN, N. K. and LINCOLN, Y. S. (Eds.) (2018). *The SAGE Handbook of Qualitative Research*. Fifth. Los Angeles: SAGE Publications Ltd.
- DIJCK, J. van and POELL, T. (2015). "Social Media and the Transformation of Public Space". *Social Media + Society*, 1 (2). <<https://doi.org/10.1177/2056305115622482>>
- DUBY-MULLER, V. and GARCIA, L. (2022). *Rapport d'information sur l'application du droit voisin au bénéfice des agences, des éditeurs et professionnels du secteur de la presse*. Parliamentary Report 4902. France: Assemblée Nationale, p. 89. Retrieved from <https://www.assemblee-nationale.fr/dyn/15/rapports/dv/115b4902_rapport-information.pdf>.
- FANTA, A. and DACHWITZ, I. (2020). *Google, the media patron. How the digital giant ensnares journalism*. preprint. SocArXiv. <<https://doi.org/10.31235/osf.io/3qbp9>>
- FLEW, T. and WILDING, D. (2021). "The turn to regulation in digital communication: the ACCC's digital platforms inquiry and Australian media policy". *Media, Culture & Society*, 43 (1), 48-65. <<https://doi.org/10.1177/0163443720926044>>
- FRANCE24 (2022, March 3). "Google et la presse quotidienne française signent un accord-cadre sur les droits voisins". *France 24*. Retrieved from <<https://www.france24.com/fr/france/20220303-google-et-la-presse-quotidienne-fran%C3%A7aise-signent-un-accord-cadre-sur-les-droits-voisins>> (Accessed: 16 May 2022).
- GEORGE, A. L. and BENNETT, A. (2005). *Case studies and theory development in the social sciences*. Cambridge, Mass: MIT Press (BCSIA studies in international security).
- GILLESPIE, T. (2010). "The politics of 'platforms' ". *New Media & Society*, 12 (3), 347-364. <<https://doi.org/10.1177/1461444809342738>>
- GOLDSHLAGER, K. (2019). *How AFP Has Built a Global Fact-Checking Operation, How AFP Has Built a Global Fact-Checking Operation*. Retrieved from <<https://www.facebook.com/journalismproject/afp-fighting-false-news-facebook>> (Accessed: 16 May 2022).
- JURNO, A. C. and D'ANDRÉA, C. (2020). "Between Partnerships, Infrastructures and Products: Facebook Journalism Project and the platformization of journalism". *Brazilian Journalism Research*, 16 (3), 502-525. <<https://doi.org/10.25200/BJR.v16n3.2021.1306>>
- LEALI, G. and KAYALI, L. (2021, October 13). "Antitrust star falls amid France's renewed push for champions". *Politico*. Retrieved from <<https://www.politico.eu/article/antitrust-france-isabelle-de-silva-emmanuel-macron/>> (Accessed: 13 May 2022).
- NAPOLI, P. M. (2019). *Social media and the public interest: media regulation in the disinformation age*. New York: Columbia University Press.

- NECHUSHTAI, E. (2018). "Could digital platforms capture the media through infrastructure?". *Journalism*, 19 (8), 1043-1058.
<<https://doi.org/10.1177/1464884917725163>>
- NIEBORG, D. B. and POELL, T. (2018). "The platformization of cultural production: Theorizing the contingent cultural commodity". *New Media & Society*, 20 (11), 4275-4292.
<<https://doi.org/10.1177/1461444818769694>>
- NORDEMANN, J. B. and JEHLE, S. (2019). *VG Media/Google: German press publishers' right declared unenforceable by the CJEU for formal reasons – but it will soon be re-born*, *Kluwer Copyright Blog*. Retrieved from <<http://copyrightblog.kluweriplaw.com/2019/11/11/vg-media-google-german-press-publishers-right-declared-unenforceable-by-the-cjeu-for-formal-reasons-but-it-will-soon-be-reborn/>> (Accessed: 26 April 2022).
- OFFREMEDIA (2022). *Droits voisins : accord entre le SEPM et Google*, *OFFREMEDIA*. Available at: <<https://www.offremedia.com/droits-voisins-accord-entre-le-sepm-et-google>> (Accessed: 16 May 2022).
- OUAKRAT, A. (2020). "Google, la presse et le droit voisin". *Sur le journalisme, About journalism, Sobre jornalismo*, 9 (1), 44-57.
- PAPAEVANGELOU, C. (2023). "Funding Intermediaries: Google and Facebook's Strategy to Capture Journalism". *Digital Journalism*.
<<https://doi.org/10.1080/21670811.2022.2155206>>
- ROSEMAIN, M. (2021, February 12). "Exclusive: Google's \$76 million deal with French publishers leaves many outlets infuriated". *Reuters*. Retrieved from <<https://www.reuters.com/article/us-google-france-copyright-exclusive-idUSKBN2AC27N>> (Accessed: 13 June 2021).
- SCHIFFRIN, A. (Ed.) (2014). *Media in the Service of Power: Media Capture and the Threat to Democracy*. Washington, D.C: National Endowment for Democracy. Retrieved from <https://www.cima.ned.org/wp-content/uploads/2017/08/CIMA_MediaCaptureBook_F1.pdf> (Accessed: 9 June 2021).
- (2021). *Media capture: how money, digital platforms, and governments control the news*. New York: Columbia University Press.
- SCUTARI, M. (2022). "Where Is Facebook's Journalism Funding Headed? Here's What We Know". *Inside Philanthropy*. Retrieved from <<https://www.insidephilanthropy.com/home/2022/4/19/where-is-facebooks-journalism-funding-headed-heres-what-we-know>> (Accessed: 17 May 2022).
- SEBBAH, B., SIRE, G. and SMYRNAIOS, N. (2020). "Journalism and Platforms: From Symbiosis to Dependency". *Sur le journalisme, About journalism, Sobre jornalismo*, 9 (1), 12-17. Translated by H. Obermeir.
- SIAPERA, E. (2013). "Platform Infomediation and Journalism". *Culture Machine*, 14, 28.
- SMITH, C. (2014, December 12). "Why Google News is leaving Spain and what it means for publishers". *Digiday*. Retrieved from <<https://digiday.com/media/google-news-spain/>> (Accessed: 26 April 2022).
- SMYRNAIOS, N. (2021, September 9). "Comment le 11-Septembre a donné naissance à Google News". *La Revue des Médias*. Retrieved from <<http://larevuedesmedias.ina.fr/google-news-actualites-origine-11-septembre-attentats>> (Accessed: 18 May 2022).
- SMYRNAIOS, N. and REBILLARD, F. (2019). "How infomediation platforms took over the news: a longitudinal perspective". *The Political Economy of Communication*, 7 (1), 21.

- STIGLER, G. J. (1971). "The Theory of Economic Regulation". *The Bell Journal of Economics and Management Science*, 2 (1), 3.
<<https://doi.org/10.2307/3003160>>
- TAYLOR, J. (2021, February 17). "Treasurer says Facebook has 'damaged its reputation' with Australian news ban". *The Guardian*. Retrieved from <<https://www.theguardian.com/australia-news/2021/feb/18/facebook-to-restrict-australian-users-sharing-news-content>> (Accessed: 12 May 2022).
- (2022, May 6). "Facebook whistleblowers allege government and emergency services hit by Australia news ban was a deliberate tactic". *The Guardian*. Retrieved from <<https://www.theguardian.com/technology/2022/may/06/facebook-whistleblowers-allege-government-and-emergency-services-hit-by-australia-news-ban-was-a-deliberate-tactic>> (Accessed: 12 May 2022).
- VALENTINI, F. B. (2021, October 20). "Droits voisins: La presse parvient à un accord avec Facebook". *Les Echos*. Retrieved from <<https://www.lesechos.fr/tech-medias/medias/droits-voisins-la-presse-parvient-a-un-accord-avec-facebook-1356955>> (Accessed: 17 May 2022).
- VINCENT, J. (2021, November 3). "Google News to relaunch in Spain after mandatory payments to newspapers scrapped". *The Verge*. Retrieved from <<https://www.theverge.com/2021/11/3/22761041/google-news-relaunch-spain-payments-publishers-eu-copyright-directive>> (Accessed: 26 April 2022).