Saving the News from Big Tech

ELECTRONIC FRONTIER FOUNDATION

Author: Cory Doctorow

A publication of the Electronic Frontier Foundation, 2023.

View this report online: https://eff.org/saving-the-news

Saving the News from Big Tech

CORY DOCTOROW

Special Advisor

June, 2023

Contents

Introduction

Media is in crisis: newsrooms all over the world are shuttering and the very profession of journalism is under sustained ideological and physical assault. Freedom of the press is a hollow doctrine if the only news media is written or published by independently wealthy individuals who don't need to get paid for their labor.

Where did the media's money go? It's complicated.

How News Companies Shot Themselves in the Face

Let's start with the news outlets themselves. Right around the time that personal computers were finding their way into home offices and kids' bedrooms, news media underwent an orgy of consolidation, starting with the Reagan administration's deregulation of the financial markets and, later the Clinton administration's Telecommunications Act, which stripped away the already weak restrictions on media consolidation.

As media outlets across the country merged, national chains took over from family proprietors. They raised prices and fired reporters, turning to wire services and chain-wide correspondents for subjects of national interest. They also fired locally focused salespeople, consolidating classified and display ad-sales to national call-centers. They sold off their buildings and presses and logistics networks, leasing them back. These cuts yielded dividends to the chains' investors, dividends that were augmented by liquidating the papers' cash reserves and "rainy day" funds.

Thus the papers were already hollowed out and brittle when online advertising came along. Though papers had weathered the advent of the telegraph, the telephone, the television, cable, and satellites, they were devastated by the rise of online classified advertising sites, from Craigslist to MSN.

Left with no cash reserves, heavy debt loads, a generic product that emphasized wire stories and national correspondents servicing dozens of outlets that purported to be "local" newspapers, the media had no cushion and the impact hit hard.

A national sales office that merchants call to place ads makes sense when you're the only game in town for reaching local customers, but when local websites spring up to offer cheaper advertising, the national "sales force" of people who sit around waiting to take orders and credit-card numbers won't cut it. If only the papers' corporate owners hadn't fired the shoe-leather salespeople who'd worked the local merchants for decades...

What's more, selling off and leasing back all that physical plant exposed the papers to rent and inflation shocks.

The financialization of news media weakened it, and the finance sector continues to bleed out the press, with waves of private equity debt-loading and rollups that reduce one-great newsrooms that filled iconic Deco skyscrapers to a few underpaid reporters working out of a remote concrete blockhouse the size of a Chipotle .

Enter Big Tech, Binge-Eating Little Tech

Finance-driven consolidation went beyond the media industry. The companies we call "Big Tech"—Google, Apple, Microsoft, Meta, etc.—attained their scale and reach primarily by buying out their potential competitors, not by inventing new technologies that were so amazing that they beat the competition.

That's true of Facebook, whose founder, Mark Zuckerberg, candidly told his executives, "It is better to buy than to compete," before going on to buy Instagram and WhatsApp, among dozens of other firms. Apple buys companies more often than most of us buy groceries.

Google is a company that had one genuine innovation—a best-of-class search engine—and then used its access to the capital markets to buy a video-sharing company; a mobile operating system company; many, many ad-tech companies; a maps company; a document-sharing company, etc. Notably, Google's own in-house products have been a nearly unbroken string of flops, with the main exceptions being a copy of Microsoft's Hotmail and a browser based on Apple's old browser engine.

And then there's Microsoft, a convicted monopolist with its own long, long list of acquisitions, a list that grows longer by the day.

These companies converted the net to "five giant websites filled with screenshots of the other four," replacing the dream of "disintermediation" with a new oligarchy of gatekeepers. Together, these companies rigged the ad-market, the app market, and the market for social media.

The result is a system that pleases no one—except the tech monopolists' shareholders.

Ads cost more, and media companies get paid less for them. Half of every ad dollar is gobbled up by tech intermediaries. Sure, media companies can switch to a subscription model—and hand over 30 cents out of every dollar in "app store taxes" levied by the mobile duopoly. Media companies can try going direct to their readers on social media, but the only way to reach your subscribers on big platforms is to pay to "boost" your posts, otherwise, they'll be hidden from the users who explicitly asked to see them.

All this to drive a system that spies on us, locks us in, mistreats us, and rips us off.

Something Must Be Done! (No, Not *That*)

Clearly, something must be done. A free press is a key component of a free society.

But just because something must be done, it doesn't follow that we should just do *anything*.

Media's problem is that tech is stealing its *money*, in great, gulping bites—50 percent ad-tech taxes, 30 percent app store taxes, and, on top of that, having to pay ransom money to reach your own subscribers, people who asked the platforms to show them everything you had to say.

And yet, the media companies' own default solution—proposed in countries all over the world, including the "JCPA" bill in the USA—is to levy a "link tax" on tech platforms' mentions of the news. These laws, also called "bargaining codes," start with the assumption that allowing the public to post links to the news, or indexing news stories, is an unfair business practice.

But that's wrong. There are lots of things wrong with how the tech sector treats the media sector, but linking to news stories is *good*. Hosting users' discussions of the news is *good*. No one has the right to control who can link to their website or discuss its content. Besides, if you can't talk about the news, it's not the news. News you can't talk about? That's called *"a secret."*

These link taxes are bad for the press, and they're good for tech. Australia's attempt - a "news bargaining code" - is arguably the most successful of these attempts, and it is a decidedly mixed bag. When Australia's government threatened the Big Tech with mandatory arbitration if they failed to reach agreements with media companies, Google and Facebook did strike bargains - both Rupert Murdoch's newspaper empire and a bargaining unit of dozens of smaller papers got paid.

But the deals themselves were shrouded in secrecy. Both the overall sums and the breakdown per paper are not a matter of public record. While this allows both the tech firms and the media companies to claim success, no one else can know what "success" means. For example, does it mean that smaller papers got a much smaller per-reader share than the Murdoch papers, but decided something was better than nothing?

What's more, the Australian law - passed but never invoked, serving instead as the threat that brought the tech firms to the table - included the possibility that the tech firms would be *required* to carry the newspapers' content. In other words, Facebook or Google wouldn't be allowed to simply drop news content from papers with whom they couldn't reach a deal. While this certainly gives the papers more bargaining power, it also constitutes a form of compelled speech, in which Facebook and Google *must carry* content even if they object to it. That would seriously hamper platforms' ability to engage in other kinds of beneficial news content, such as removing or downranking disinformation or inflammatory materials.

The architects of Australia's news bargaining code say that it isn't a link tax. Rather, the platforms were merely being forced to bargain voluntarily or have their deals decided by an arbitrator, with the news companies being allowed to form collective bargaining units. It's true that these don't add up to a link tax on their own, but when you add in the threat of "must carry," then a link tax emerges. There's just not much of a difference between "you *must* carry these links, and you *must* pay for them" and "you must pay to carry these links."

We're not fans of government orders to display, publish, or disseminate speech, and while the Australian constitutional tradition may allow such a move, any attempt to make this happen in the USA would fall afoul of the First Amendment. Even if you like the outcome in Australia, you couldn't do the same thing in the US, where compelled speech is unlawful.

In France, the link tax proposal led to a deal that requires the news media to opt into Google Showcase, an obscure Google product that was rocketed to national prominence by its adoption by major French media outlets.

In Canada, the threat of a looming link tax convinced tech platforms to "voluntarily" pay the *Toronto Star*, Canada's highest-circulation newspaper, a license fee—whereupon the *Star* ceased publication of its excellent, highly critical investigative series on Big Tech.

Do This Instead

Something must be done about the way that tech abuses the press—but that something shouldn't depend on tech's eternal dominance. It shouldn't make the press beholden to a scandal-haunted tech sector that desperately needs the scrutiny of investigative journalists. It shouldn't enshrine the dominance of ideological media barons or the vulture capitalists who galumphed through national media markets, gobbling up and gutting regional outlets.

Whatever we do about tech and the press, it should make tech *weaker*. It should do at least as much for independent journalists and small outlets as it does for massive media companies. It should not depend on surveillance, nor on gigantic, abusive social media companies overriding the preferences of their users.

In this series, we present four proposals for fixing tech and media that fit all these criteria. One of these proposals is already out there, working its way through legislatures; another has already passed into law and is waiting to be implemented; one has been repeatedly killed by corporate lobbyists; and one is a brand new idea we just thought up.

We published these one per week in the spring of 2023, and this PDF rounds them all up into a single "report" PDF suitable for emailing to your Member of Congress—or just that friend who is (rightly) concerned about how tech is clobbering the press, but is (wrongly) convinced that the only way to fix this is to create a new pseudo copyright over links to the press and short clips and headlines.

Here are the four sections:

1. **Break up the ad-tech sector:** Senator Mike Lee's AMERICA Act will force the largest ad-tech platforms, including those of Google and Meta, to break themselves up into small, competing independent pieces. Under the AMERICA Act, a single company won't be able to simultaneously operate an ad marketplace *and* represent both the buyers *and* the sellers in the marketplace. If you want to know how the ad-tech sector manages to claim half of the money spent on ads, look no further than this hilariously abusive market structure.

2. **Pass a comprehensive privacy law:** America is long overdue for a real, national privacy law. Such a law would effectively ban surveillance-driven "behavioral advertising" (if tech companies could only spy on you with your consent, they wouldn't be able to spy on you, because almost no one truly consents to surveillance). Banning surveillance ads would make "contextual ads" (based on the content of a publication, not the characteristics of a given user) much more attractive. Context ads are much harder for tech giants to capture—after all, a tech company may know everything about a reader's web-history and recent purchases, but no one knows more about a publication than its publisher.

3. **Open up app stores:** The mobile duopoly of Apple (iOS) and Google (Android) take 30 percent off the top of every dollar spent in an app. Apple bans third-party app stores, while Google merely engages in a suite of dirty tricks to hold them at bay. The EU's Digital Markets Act will make choosing another app store a simple matter of a couple of clicks. In the US, the Open App Markets Act is designed to do the same. Competition will drive down the app store tax— if credit card networks can process a payment for 2-5 percent, so can an app store.

4. **End-to-end delivery:** The internet's founding technical design principle is "end-to-end" - the idea that intermediaries should make the best effort to deliver data from willing senders to willing recipients. Bringing this principle to social media and webmail would mean that media companies could be assured that their subscribers see everything they post, and end the practice of ransoming those subscribers to "boosting" payments.

Each of these proposals is focused on paying *all* news services more, whether independent or corporate; ad-supported or subscription-based. They're designed to weaken Big Tech, not make it stronger. They ensure that media companies are independent of tech and able to report on tech wrongdoing without risking their bottom lines by angering a tech giant that "bargains" with them for license payments that pay reporters' salaries.

Most of all, they serve the *user*, the *audience* for the news. They *don't* create a new right to decide who can talk about the news. They *ban* spying. They make sure you see *what you ask to see*. They let *you* choose whose software you want to install on your devices.

The news media and news consumers are allies here. The news does not and should not require collusion with tech monopolists, nor mass surveillance, nor digital locks.

There's a way to make news better *and* make tech better.

1. To Save the News, We Must Shatter Ad-Tech

The news is in trouble. It's not just the mass closures of newsrooms - it's also the physical and ideological attacks on journalists.News websites are plastered with ads, but more than half of the money those ads generate is siphoned off by ad-tech companies, with the lion's share going to just two companies, Google and Meta, whose ad-tech duopoly has allowed them to claim an ever-greater share of the income generated by ads placed alongside of news content.

Once, tech platforms promised that "behavioral advertising" would be a bonanza for both media companies and their tech partners. Rather than paying commissioned salespeople to convince firms to place ads based on a publication's reputation and readership, media companies would run ads placed by the winners of a slew of split-second auctions, each time a user moved from one page to another.

These auctions would offer up the *user*, not the content, to an array of bidders representing different advertisers: "What am I bid for the right to show an ad to a depressed, 19 year old male Kansas City Art Institute sophomore who has recently searched for car loans and also shopped for incontinence pads?" In an eyeblink, every ad-slot on the page would be filled with ads purchased at a premium by advertisers anxious to reach that *specific* user. And that user will *like* it! They will be grateful for the process and all the "highly relevant" advertisements it dangled under their nose.

Such an arrangement has numerous moving parts. The "ad-tech stack" includes:

- A "**supply-side platform**" (SSP): The SSP acts as the publisher's broker, bringing each user to market and selling their attention on the basis of their "behavioral" traits;

- A "**demand-side platform**" (DSP): The DSP represents the advertisers, consulting a wishlist of specific behavioral traits that each advertiser wants to target;

- A **marketplace**: The marketplace solicits bids on behalf of the SSP, collects bids from DSPs, and then consummates the transaction by delivering the winning bidder's ad to the SSP to be crammed into the user's eyeballs.

There are many companies that offer one or two of these services, but the two biggest ad-tech companies - Meta and Google - offer *all three*.

That means that there are millions of transactions every single day in which Google (representing a publisher) tells Google (representing the marketplace) about an ad-slot for sale; whereupon Google (representing many different advertisers) places bids on that ad-slot. Once the sale is consummated, Google earns three different fees: one for serving as the seller's agent, another for serving as the buyer's agent, and a third for the use of its marketplace.

What's more, Google is also a major publisher, offering millions of ad-slots for sale on YouTube and elsewhere. It is also an advertising agency, buying millions of those selfsame ad-spots on behalf of its business customers.

There are no parallels for this in the real world: imagine if the owners of the New York Stock Exchange were also a brokerage house *and* an underwriting bank - as well as owning several of the largest businesses on the exchange, and buying huge amounts of stock on its own exchange.

Imagine if a real estate agent represented both the buyer and the seller, and also owned the listing service, and also bought and sold millions of houses, bidding against its own buyer-customers and competing for sales with its own seller-customers.

Imagine if a divorce lawyer represented both parties, and was also the judge in the divorce court, and was also trying to match both of the soon-to-be-single parties on a dating service.

Owning the marketplace lets Google give preference to its own brokers, on both the advertiser and publisher sides. Being on both sides of the transaction lets Google tweak the bids and the acceptances to maximize its own revenue, by rigging the auctions to charge advertisers more and pay publishers less.

It's not just Google: Meta *also* operates a dominant, "full-stack" ad system, intimately connected to its multiple platforms, including Facebook and Instagram, where it competes with the publishers it brokers ads for. Just like Google, Meta represents buyers *and* sellers on a marketplace it controls, and rigs the bidding to benefit itself at the expense of both.

Even worse, Google and Meta are alleged to have illegally colluded to rig the market, creating a system of nearly inescapable disadvantages, where sellers and buyers had nowhere to turn.

The ad-tech market isn't a market at all: it's a big store con where everyone the publisher sees is in on the game: the buyer's agent, the seller's agent and the marketplace where they bring the publisher's product are all run by a single company, or by two companies that have secretly agreed not to compete. If you can't spot the sucker at the poker-table...*you're* the sucker.

That's how ad-tech grew to consume more than *half* of all the ad dollars spent. They *stole* it.

This needs to be fixed. The actually illegal stuff - market rigging - is the kind of thing that antitrust enforcers frequently look after. They're on it.

But even if the ad-tech duopoly are ordered to halt their most obviously egregious conduct, it will not be enough. It's not enough to make the companies pinky-swear that they won't use their power as agents for buyers *and* sellers in their own marketplace to enrich themselves at publishers' expense.

Ask any lawyer. Ask any judge. Ask any sports-fan. The only way to resolve a conflict of interest like that is to eliminate it. The referee can't own the team. The team can't own the referee. The judge can't hear their kid's case. Your lawyer can't work for your opponent.

And an ad-tech company can't be the marketplace, the buyer's agent and the seller's agent.

That's where the AMERICA Act comes in. Introduced by Sen. Mike Lee [R-UT], the bill is truly bipartisan, numbering among its co-sponsors both Sen. Ted Cruz [R-TX] *and* Sen. Elizabeth Warren [D-MA], and many other powerful senators from both sides of the aisle.

Under the AMERICA Act's provisions, companies like Google and Meta would be forced to sell off or shut down their demand-side (buyer) platforms and their supply-side (seller) platforms. No large company (processing $20 billion per year or more in ad transactions) that operated an ad exchange would be allowed to represent the buyers and sellers who used that exchange. Likewise, no buyer-side platform could operate a seller-side platform, and vice-versa.

For smaller companies - those transacting between $5 billion and $20 billion per year in ad sales - the AMERICA Act establishes a duty to "act in the best interests of their customers, including by making the best execution for bids on ads," and to maintain transparent, auditable systems so that buyers and sellers can confirm that this is the case. Companies that represent buyers and sellers would need "firewalls" between the two sides of the business, with still penalties for conflicts of interest.

This kind of rule was once a bedrock of American competition regulation. When too-big-to-fail bankers and too-big-to-jail rail barons brought America to the brink of ruin, regulators imposed "structural separation" on these platform businesses, prohibiting them from competing with their own customers.

That meant that railroads couldn't compete with the freight companies that shipped goods on their rails. It meant that banks couldn't own businesses that competed with the companies they loaned money to. The railroads and the banks could swear that they would never "self-preference" but the temptation to do so is strong, and the chance of getting caught is low, and the consequence is the conversion of American industry to a planned economy run by a handful of cozy CEOs.

For years, the ad-tech duopoly swore that they would never yield to the temptation to rig the game in their favor. But they couldn't help themselves. That's not surprising: conflict-of-interest rules don't just exist to thwart the dishonest, they exist to steer the honest-but-fallible away from temptation. And whomst amongst us can claim to be infallible?

For the news industry, the AMERICA Act is an *incredible* opportunity. Simply changing the distribution of ad-dollars - reducing the share going to the platforms to a more modest 10 percent, say - could give publishers a 20 percent increase in ad revenues, *while reducing the cost of advertising by 20 percent.*

That's good for *everyone*. Giving publishers their fair share of ad revenue means they won't have to plaster their websites with content-obscuring ads. Reducing costs for advertisers means that goods can be sold more cheaply.

The AMERICA Act affirms something that everyone understands in their bones: you can own the league, you can own a team, or you can referee the game - but you can't do all three and still run an honest game.

2. To Save the News, We Must Ban Surveillance Advertising

The ad-tech industry is incredibly profitable, raking in hundreds of billions of dollars every year by spying on us. These companies have tendrils that reach into our apps, our televisions, and our cars, as well as most websites. Their hunger for our data is insatiable. Worse still, a whole secondary industry of "brokers" has cropped up that offers to buy our purchase records, our location data, our purchase histories, even our medical and court records. This data is continuously ingested by the ad-tech industry to ensure that the nonconsensual dossiers of private, sensitive, potentially compromising data that these companies compile on us are as up-to-date as possible.

Commercial surveillance is a three-step process:

1. **Track:** A person uses technology, and that technology quietly collects information about who they are and what they do. Most critically, trackers gather online behavioral information, like app interactions and browsing history. This information is shared with ad tech companies and data brokers.

2. **Profile:** Ad tech companies and data brokers that receive this information try to link it to what they already know about the user in question. These observers draw inferences about their target: what they like, what kind of person they are (including demographics like age and gender), and what they might be interested in buying, attending, or voting for.

3. **Target:** Ad tech companies use the profiles they've assembled, or obtained from data brokers, to target advertisements. Through websites, apps, TVs, and social media, advertisers use data to show tailored messages to particular people, types of people, or groups.

This data-gathering and processing is the source of innumerable societal harms: it fuels employment discrimination, housing discrimination, and is a pipeline for predatory scams. The data also finds its way into others' hands, including the military, law enforcement, and hostile foreign powers. Insiders at large companies exploit data for their own benefit. It's this data that lets scam artists find vulnerable targets and lets stalkers track their victims.

Our entire digital environment has been warped to grease the skids for this dragnet surveillance. Our mobile devices assign tracking identifiers to us by default, and these unique identifiers ripple out through physical and digital spaces, tracking us to the most minute degree.

All of this done in the name of supporting culture and news. The behavioral advertising industry claims that it can deliver more value to everyone through this surveillance: advertisers get to target exactly who they want to reach; publishers get paid top dollar for setting up exactly the right user with exactly the right ad, and the user wins because they are only ever shown highly relevant ads that are tailored to their interests.

Of course, anyone who's ever used the internet knows that this is hogwash. Advertisers know that they are being charged billions of dollars for ads that are never delivered. Publishers know that billions of dollars collected from advertisers for ads that show up alongside their content are never delivered.

And as to the claim that users "like ads, so long as they are relevant," the evidence is very strong that this isn't true and never was. Ad-blocking is the most successful consumer boycott in human history. When Apple give iPhone users a one-click opt-out to block all surveillance ads, *96 percent* of users clicked the button (presumably, the other four percent were confused, or they work for ad-tech companies).

Surveillance advertising serves no one except creepy ad-tech firms; for users, publishers *and* advertisers, surveillance ads are a bad deal.

It's time to kill them.

Non-Creepy Ads

Getting rid of surveillance ads doesn't mean getting rid of ads altogether. Despite the rhetoric that "if you're not paying for the product, you're the product," there's no reason to believe that the mere act of paying for products will convince the companies that supply that product to treat you with respect.

Take John Deere tractors: farmers pay hundreds of thousands of dollars for large, crucial pieces of farm equipment, only to have their ability to repair them (or even complain about them) weaponized and monetized against them.

You can't bribe a company into treating you with respect - companies respect you to the extent that they fear losing your business, or being regulated. Rather than buying our online services and hoping that this so impresses tech executives that they treat us with dignity, we should ban surveillance ads.

If surveillance ads are banned, advertisers will have to find new ways to let the public know about their products and services. They'll have to return to the techniques that advertisers used for centuries before the very brief period in which surveillance advertising came to dominate: they'll have to return to **contextual ads**.

A contextual ad is targeted based on the *context* in which it appears: what article it appears alongside of, or which publication. Rather than following users around to target them with ads contextual advertisers seek out *content* that is relevant to their messages, and place ads alongside that content.

Historically, this was an inefficient process, hamstrung by the need to identify relevant content before it was printed or aired. But the same realtime bidding systems used to place behavioral ads can be used to place contextual ads, too.

The difference is this: rather than a publisher asking a surveillance company like Google or Meta to auction off a reader on its behalf, the publisher would auction off the *content* and *context* of its own materials.

That is, rather than the publisher saying "What am I bid for the attention of this 22 year old, male reader who lives in Portland, Oregon, is in recovery for opioid addiction, and has recently searched for information about gonorrhea symptoms?" the publisher would say, "What am I bid for the attention of a reader whose IP address is located in Portland, Oregon, who is using Safari on a recent iPhone, and who is reading an article about Taylor Swift?"

There are some obvious benefits to this. First things first: it doesn't require surveillance. That's good for readers, and for society.

But it's also good for the publisher. No publisher will ever know as much about readers' *behavior* than an ad-tech company; but no ad-tech company will ever know as much about a publisher's *content* than the publisher. That means that it will be much, much harder for ad-tech companies to lay claim to a large slice of the publisher's revenue, and it will be much, much easier for publishers to switch ad-tech vendors if anyone tries it.

That means that publishers will get a larger slice of the context ads pie than they do when the pie is filled with surveillance ads.

But what about the size of the pie? Will advertisers pay as much to reach readers who are targeted by context as they do when the targeting is behavioral?

Not quite. The best research-driven indications we have so far is that advertisers will generally pay about five percent less for context-based targeting than they do for behavioral targeting.

But that doesn't mean that *publishers* will get paid less - even if advertisers insist on a five percent discount to target based on context, a much greater *share* of the ad-spending will reach the publishers. The largest ad-tech platforms currently bargain for more than *half* of that spending, a figure they're only able to attain because their monopoly power over behavioral data gives them a stronger negotiating position over the publishers.

But more importantly: if ad tracking was limited to users who truly consented to it, almost no one would see *any* ads, because users *do not consent to tracking.*

This was amply demonstrated in 2021, when Apple altered iOS, the operating system that powers iPhones and iPads, to make it easy to opt out of tracking. *96 percent* of Apple users opted out - costing Facebook over $10 billion dollars in lost revenue in the first year.

Unfortunately, Apple continues to track its users in order to target ads at them, even if those users opt out. But if the US were to finally pass a long-overdue federal privacy law with a private right of action and require real consent before tracking, the revenue from surveillance ads would fall to zero, because almost no one is willing to be tracked.

This is borne out by the EU experience. The European Union's General Data Protection Regulation (GDPR) bans surveillance for the purpose of ad-targeting without consent. While the US-based ad-tech giants have refused to comply with this rule, they are finally being forced to do so.

Not everyone has flouted the GDPR. The Dutch public broadcaster NPO only used targeted ads for users who consented to them, which means it served virtually no targeted ads. Eventually, NPO switched to context ads and saw a massive increase in ad revenues, in part because the ads worked about as well as surveillance ads, but mostly because no one saw their surveillance ads, while everyone saw context ads.

Killing surveillance ads will make *surveillance* companies worse off. But everyone else: readers, journalists, publishers, and even advertisers will be *much* better off.

3. To Save the News, We Must Open Up App Stores

When Steve Jobs unveiled the iPad in 2010, he didn't just usher in a new kind of computing device - the first mainstream touchscreen tablet - he also promised a new model for internet-based publishing: paid subscriptions.

Jobs railed against the world of advertising-supported web publishing, correctly identifying it as the pretense for the creation of a vast, dangerous unaccountable surveillance system that the private sector would build, but which cops and spies enjoyed unfettered, warrantless access to.

Jobs promised a better internet: he promised publishers that if they expended the capital to build apps for his new tablets, that he would free them from the increasingly concentrated and aggressive surveillance advertising sector. Instead of paying for journalism with ads, Jobs promised that publishers would be able to sign up subscribers who'd pay cash money, breaking the uneasy coalition between surveillance and journalism.

Publishers piled in, spending billions in aggregate to fill Apple's App Store with apps that let readers pay directly for the news. Readers followed - not in the numbers that Jobs had alluded to, and not for every publisher, but for many publishers, apps were a lifeline.

Apple's App Store started off with a pretty straightforward proposition: when publishers sold an app to readers, Apple would process the transaction and take a 30 percent cut. After that, publishers could use any payment processor they wanted - including Apple - to handle future purchases, such as per-article fees, recurring subscriptions, or other transactions.

But as the iPad - and other devices that tapped into the App Store, the iPhone and iPod - grew in prominence and became more structurally important to publishers' businesses, Apple altered the deal.

In 2011, Apple announced that every in-app transaction had to be processed by Apple, and that Apple would take a 30 percent commission on *all* revenues generated by *every* app user. To ensure that publishers didn't do an end-run around this new deal, Apple banned apps from directing users to the web to process payments.

Google Play, the Android app store, has nearly identical policies. Nominally, users can install third party app stores on their Android phones, but in practice, Google uses a variety of commercial, technical and psychological tricks to prevent this.

The net result of this is that 30 percent of every in-app subscription or micropayment dollar is siphoned off by either Google or Apple. In a world where large merchants can get their payments processed for 2-3 percent, that is a *massive* cash-grab.

The fact that Apple and Google charge 1,000% more to process transactions than other payment processors tells us that they do not fear outside competition. The fact that they both charge many publishers the *same* outrageous commissions tells us that they don't compete with each other, either.

Competition in mobile app stores would open up competition for mobile payments, and that would drive prices down to the industry norm of 2-3 percent. That means that every news organization that receives subscription payments through an app would see an increase of 25 percent or more for each and every one of those payments (and news companies that don't accept mobile payments at all because of the high fees could start).

The EU is well on its way to making this a reality. The new Digital Markets Act requires mobile companies to offer simple, secure access to rival app stores. In the USA, the Open App Markets Act, a Senate bill introduced in the last session, would do the same.

The app store duopoly claims that opening up app stores would necessarily expose users to security risks. This is not true: a thoughtful, careful approach could maintain app store security while liberating the news - and every other app-based business - from the 30 percent commissions claimed by the tech giants.

4. To Save the News, We Need an End-to-End Web

Once, news organizations enthusiastically piled into social media. New platforms like Facebook and Twitter were powerful "traffic funnels," where algorithmic recommendation systems put excerpts from news stories in front of a vast audience of new readers, who followed the links at the end of the excerpt to discover sources that became part of their regular news-diets.

As platforms like Facebook grew essential to the new companies' business, they changed the deal. First, it was a general "deprioritization" of news posts.

This didn't just mean that articles from news accounts were less likely to be recommended to users who didn't subscribe to the news publisher's account. It also meant that people who explicitly followed publishers - that is, who had explicitly directed Facebook to show them the things those publishers posted - would be less likely to see the publishers' posts.

The public explanation for this was that Facebook was shifting to prioritizing posts from "friends," but publishers couldn't help but notice that their account managers at Facebook stepped up the pressure to "boost" their posts.

The implied message was, "While Facebook says it's prioritizing posts from users' friends in their feeds, we're actually prioritizing posts from users' friends, as well as posts from publishers who will pay us to put their posts back into the feeds of the readers who asked to see them."

Facebook was betting that publishers would pay for "reach." It's not just Facebook: the new Twitter policy is explicit: if you want to reliably reach the people who asked to see your Tweets, you need to sign up for Twitter Blue. If you're a media company, that will cost you $1,000/month.

Facebook parent company Meta has also doubled down on holding media companies to ransom, charging for "verification," and with it, a soft promise that the material you post will reach the people who asked to see it.

The tech companies' logic is simple: once end-users and publishers are locked into their platforms, any value they create for one another can - and should - be captured by the platform instead. The ideal user feed should consist of *just enough* of the things the user has asked to see, or is predicted to enjoy, as will keep that user on the platform.

Naturally, the news needs to be where users are. So long as the users stay put on a platform, the press will feel pressured to join them. That gives platforms leverage to charge news sources for "boosting" or "verification" or other forms of Danegeld to increase the likelihood that the news they post will reach the people who asked to see it.

This conduct - where a platform prioritizes delivering the content that makes it the most money, irrespective of its users' wishes - violates the venerable end-to-end principle: that a platform's first duty should be to deliver data sent by willing senders to willing recipients, as quickly and reliably as possible.

When we apply end-to-end to the internet itself, we call it "Net Neutrality": the idea that your ISP should deliver the data to you asked for (a video from your preferred streaming service, say), not the data its investors *wish* you had asked for (a video from a rival streaming service owned by your ISP).

Like the internet itself, early social media was born neutral: the first social networks were simple conduits connecting users, so every user's update was shown to that user's followers. Gradually, these feeds were augmented with recommendation systems that helped users prioritize otherwise excessive posts from the people they followed.

But as users were switched from a default of show-me-the-things-my-friends-posted to the default of show-me-the-things-you-think-I-should-see, a powerful temptation seized platform managers: to violate the implicit contract to deliver the things users requested, and then turn to the senders (publishers, performers, creators) and demand ransom money to reach their own followers.

Paying to "boost" content is now ubiquitous. It's another way - along with gouging on ad commissions and mobile app payments - that tech platforms misappropriate value generated by the news.

If social media platforms honored the end-to-end principle, this ransom would end. Social media users would see the things they asked to see and publishers would reach the audiences that asked to hear from them.

It's possible that we could see a law or regulation mandating end-to-end delivery for platforms, but we don't have to wait for a law. The platforms are incorrigble in their continuous violations of existing fraud, privacy, and competition laws. After years of successful delaying tactics, time has run out on the largest tech companies, which are now facing colossal fines for their bad behavior.

A fine on its own won't be enough to deter companies from breaking the rules. A fine is a price, and so long as the price is lower than the illicit profits it buys, companies will pay it.

With fines climbing, companies are apt to begin suing for peace: offering settlements to end long, bruising fights. We think these settlements will offer a fine opportunity for regulators to craft service-specific end-to-end rules.

Unlike other remedies - say, rules requiring platforms to curb harassment - an end-to-end rule is easy to administer. A no-harassment rule requires: agreement on the definition of harassment, agreement on whether a specific incident constitutes harassment, and a fact-intensive investigation of whether the platform had taken reasonable steps to prevent harassment.

By contrast, if we suspect a platform isn't reliably delivering the messages it promised to deliver, we can just send test messages and see if they arrive.

What's more, complying with an end-to-end rule doesn't require expensive engineering that would make the rule a barrier to entry for smaller, less abusive platforms. The default state of social media is delivery from senders to receivers: it's holding followers for ransom that requires extra engineering.

When tech was a competitive sector, most of the innovation was devoted to delivering more value to both end-users and publishers. Once tech became a concentrated industry dominated by bloated companies that had gorged themselves by buying up their smaller competitors, "innovation" shifted to finding new ways to misappropriate value from both users and business customers.

That's not so different from the story of telecoms itself. When telecoms curdled into a rent-seeking snarl, we built a better network, one that ran on end-to-end.

That same end-to-end principle will go a long way to unrigging social media platforms, too.