ONLINE PLATFORMS AND THE COMMODITIZATION OF NEWS CONTENT

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I. INTRODUCTION

Before the advent of the Internet, customers got their news from corner newsstands, convenience stores and supermarket checkout lanes. Carefully positioned racks displayed leading newspaper front pages and magazine covers, each vying for customers' attention. Customers browsing the racks could see the latest issue of *The New York Times, The Wall Street Journal* and *The Economist* alongside tabloids like *Weekly World News*. But there was never any risk of them confusing headlines like "Man laughs head off – AND HAS SCARS TO PROVE IT" for real news. Customers could easily distinguish between different publications, and they understood that some publications were trustworthy and others were not. Knowing this, publishers worked hard to build and maintain their reputations for quality and trustworthiness.

Today, the news racks are still there, but most of us now get our news online. The rapid transition towards the Internet becoming the primary distribution channel for news content has, in many ways, been a boon for consumers. Never before have we had so many news sources to choose from. But it also has a dark side. The Internet changed the way we interact with news content, making it harder to distinguish between real news and misinformation. Exacerbating this problem is the fact that online news distribution is now controlled by a small clique of dominant online platforms, such as Google. As we shall explain below, these companies have commercial incentives to accelerate the commoditization of news content and to ignore the problems that result. Ultimately, how to address this problem is an important question for antitrust law, but it is not one that antitrust enforcers have thus proved themselves willing to address.

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II. HOW THE INTERNET OPENED THE DOOR FOR THE "COMMODITIZATION" OF NEWS

Back when customers got their news from newsstands, they bought physical copies of newspapers and magazines. In doing so, they engaged with all of that publisher's content. Now, users engage with individual articles (and often, just the headlines). They click to an article from Google or Facebook, and then they click back. Customers used to see a difference between an article published by *The New York Times* and *The Wall Street Journal*. Both were viewed as completely different from an article by *Weekly World News*. Now, however, many don't even notice the name of the publisher that generated the article they are reading. News content has become divorced from the publishers who create it. This phenomenon has been referred to as the "commoditization" of news — users increasingly viewing news articles as fungible, homogenous commodities.

The commoditization of news has severe consequences, both for publishers and for society. First, it has made it extremely difficult for publishers to benefit from their investments in journalism, which is part of the reason that publisher revenues have declined precipitously over the past several years.[2] It used to be that a publisher that broke a news story could enjoy at least a short window of exclusivity and a reputational boost as a result. Now, within minutes of publishing a story, that publisher must compete against dozens (or even hundreds) of "copycat" articles popping up on other sites. This is a problem that publishers have recognized for years, and it is partially attributable to the lack of intellectual property protection for facts that appear in a publisher's story. But it is also attributable to the commoditization of news and the fact that users consume individual articles rather than complete publications. In many instances, consumers have little or no relationship to an article's publishers. Instead, users rely on search engines and other platforms to curate articles based on relevance and quality. As a result, competition among publishers has devolved from investing in original, high-quality journalism to investing in search engine optimization. Increasingly, journalist write articles for algorithms instead of readers.

Another major consequence of news commoditization — and one with more far-reaching implications — is the explosion of Fake News. While the term has been bandied about and coopted for political purposes over the past year, "Fake News" originally referred to unscrupulous publishers who posted spurious or outright false news articles online. Usually, such articles are designed to be incendiary or salacious, and they often target the biases of particular audiences the publisher is trying to influence. At its core, the commoditization of news is about erasing distinctions between news sources, which makes it easier for Fake News sites to flourish by masquerading as legitimate publications. Users can no longer distinguish between *Weekly World News* and *The New York Times*.

III. NO COMMERCIAL INCENTIVES TO RESIST COMMODITIZATION OF NEWS

The most obvious candidates to fight the negative effects of news commoditization are the dominant online platforms, which now act as the gatekeepers between users and online news. They have the technical means to promote quality, original content, and to demote — or at least identify — content from unreliable or untrustworthy sources. Unfortunately, the major online platforms' commercial interests and incentives run in the opposite direction, and their monopoly power lets them pursue those commercial interests at the expense of consumers.

The major online platforms do not have an incentive to counteract the trend towards news commoditization, nor even to fight specific ills caused by commoditization, such as Fake News. The reason stems from the fact that the major online platforms, especially Google, are advertising companies first and foremost. Google reports that 89 percent of its revenue comes from advertising, and along with Facebook it accounts for more than 63 percent of online advertising revenue in the U.S.[3] For Google, that revenue comes not only from selling ads on its own sites (e.g. Google Search, YouTube, etc.), but also from serving ads on third-party sites through its ad intermediation technology, such as DoubleClick. Through their ad intermediation services, the platforms can take an outsized share of ad revenue generated on third parties' sites, including those belonging to news publishers. This explains why advertising revenue for news publishers has fallen to a third of its 2006 levels, despite the fact that digital audiences continue to grow steadily.[4]

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2 Vranica & Marshall, "Plummeting Newspaper Ad Revenue Sparks New Wave of Changes," Wall St. J. (Oct. 20, 2016), https://www.wsj.com/articles/plummeting-newspaper-ad-revenue-sparks-new-wave-of-changes-1476955801.

3 Google 10-K; Marketer, "Google and Facebook Tighten Grip on US Digital Ad Market" (Sept. 21, 2017), https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494.

4 Barthel, "Despite subscription surges for largest U.S. newspapers, circulation and revenue fall for industry overall," Pew Research Center (June 1, 2017), http://www.pewresearch.org/fact-tank/2017/06/01/circulation-and-revenue-fall-for-newspaper-industry/; Pew Research Center, Newspapers Fact Sheet (June 1, 2017), http://www.journalism.org/fact-sheet/newspapers/.

Dominant platforms like Google are thus in the position of not only steering users towards particular news sites, but also profiting from ads displayed on those sites. In this position, Google has a strong economic incentive to pursue two goals: (1) keeping them coming back to its platform and (2) steering them to sites where Google can profit from ads. Resisting news commoditization would run counter to both goals.

A key characteristic of commoditized news content is that, from a consumer perspective, all content is indistinguishable. This situation favors the intermediary because instead of navigating directly to a publication's website, users navigate to the platform to search for news. In contrast, if news publishers can differentiate themselves, then they can build more direct relationships with consumers. Through these relationships, publishers might successfully encourage consumers to navigate directly to their sites or even sign up for subscription content. Direct navigation and digital subscriptions are thus the modern equivalents of a customer subscribing for home delivery of a newspaper. And in the same way that home delivery disintermediated the newsstand, direct navigation and digital subscriptions disintermediate the online platforms. Commoditization of news content, however, makes disintermediation less likely. Commoditization of news increases dependence dominant platforms and algorithms curate content and steer users.

News commoditization also serves the online platforms' advertising interests. News publishers that cannot differentiate their content are unable to monetize that content through subscriptions, because few customers will pay for content they think they can get elsewhere for free. Many publishers thus have to rely on advertising, which means more revenue for the ad intermediation sides of the online platforms' businesses.

Major online platforms such as Google thus have few incentives to halt news commoditization. Nor do they have an incentive to fight specific problems caused by commoditization, which explains the rash of recent incidents involving major platforms prominently featuring Fake News articles.[5] As with the general trend towards commoditization, the growth of Fake News actually helps the major platforms resist disintermediation and maximize advertising revenues.

With respect to disintermediation, Fake News sites benefit platforms like Google because, unlike higher quality news sources, they do not threaten to attract future traffic away from the platform by establishing direct relationships. Fake News purveyors offer little in the way of quality content on their sites. As a result, users do not linger long on those sites, and they are unlikely to navigate there directly for future news content. In contrast, a high-quality news publisher has a higher likelihood of becoming a users' first stop for news content, thereby disintermediating the platform.

Fake News also benefits the platforms' advertising businesses. While the primary motive of some purveyors of Fake News is often described as political, most also have an economic motive, and they monetize their content almost exclusively through online advertising. Fake News sites are thus heavy users of Google's ad intermediation services, meaning that when they make money, so does Google. Moreover, Fake News publishers' incendiary headlines attract clicks, and in the world of online advertising, more clicks mean more ad impressions.

Google and similarly situated platforms thus have little economic incentive to crack down on Fake News sites. Indeed, their revenue would suffer if they took on Fake News. For this reason, when we see major platforms in the news claiming that they are serious about finding a solution to Fake News, they likely are not doing so out of genuine concern, but rather in response to political pressures. Once those political pressures evaporate, so too will the platforms' concerns over Fake News.

5 See, e.g. Ehrenkranz, "Google's Top Stories Promoted Misinformation About the Las Vegas Shooting From 4Chan," Gizmodo (Oct. 2, 2017), https://gizmodo.com/googles-top-stories-promoted-misinformation-about-the-l-1819053288; Entous et al., "Russian Facebook ads showed a black woman firing a rifle, amid efforts to stoke racial strife," Washington Post (Oct. 2, 2017), https://www.washingtonpost.com/business/technology/russian-facebook-ads-showed-a-black-woman-firing-a-rifle-amid-efforts-to-stoke-racial-strife/2017/10/02/e4e78312-a785-11e7-b3aa-c0e2e1d41e38_story.html?utm_term=.9ee8723aca89.

IV. INTENTIONALLY OR NOT, ONLINE PLATFORMS EXACERBATE THE PROBLEMS

Given that news commoditization benefits dominant online platforms, it is not surprising that some might take steps to accelerate the trend. While a full exploration of the ways that platforms encourage news commoditization is beyond the scope of this article, examples include platforms scraping publishers' content and displaying it directly on their own sites, undermining publishers' subscription-based business models and using the threat of demotion to force publishers' acquiescence to abusive policies. Most recently, Google has introduced a practice that is particularly noteworthy, which it calls the Accelerated Mobile Pages ("AMP") project. AMP is perhaps the paradigmatic example of a dominant online platform imposing a policy on publishers that forces them to further the commoditization of their content.

Google created AMP as a standard for creating streamlined mobile webpages.[6] At its most basic level, AMP is a set of rules for coding HTML pages that eschew certain tags and JavaScript functionality to make pages load faster. While faster page load times are a worthy goal, Google's AMP protocols elevate that goal above everything else, including publishers' ability to differentiate their content and brands.

The ability to control the presentation of content has always been a key way that publishers differentiate themselves in the minds of consumers, but Google's strict HTML protocols make publishers' webpages look formulaic. Publishers can no longer implement custom JavaScript elements that let users interact with information in innovative ways. Instead, they have to use Google's JavaScript library. Publishers are also limited in their ability to create menus or other navigation elements designed to guide users deeper into their sites. The result is that each AMP page looks like every other AMP page.

Making matters worse for publishers, Google stores AMP webpages on its own servers, from which it loads them into an "AMP News Carousel" on its search results page.[7] In the AMP News Carousel, users can flick left and right on the screen to switch between similar articles, encouraging them to think of the articles as homogenous, easily interchangeable substitutes. The AMP News Carousel thus discourages engagement with any particular publisher's content and brand, while at the same time giving Google valuable data about how users interact with the page.

Many publishers would resist Google's calls for AMP implementation if they could, but Google makes doing so incredibly costly. Google favors the AMP News Carousel on its mobile search results page, meaning that publishers that refuse to implement AMP miss out on vital search traffic. Many thus have no choice but to endure the further commoditization of their content in order to maintain the flow of search traffic.

Even if online platforms like Google are not consciously pushing the news industry towards commoditization, their choices of where to focus their innovation efforts can have the same effect. For example, online platforms innovate heavily with respect to the user experience of engaging with online news content. Google's AMP is a good illustration of those efforts: Google devoted considerable resources to finding ways to reduce page load times by a few milliseconds and to make it easier for users to swipe through a stream of similar articles. But none of the major online platforms has invested meaningfully in innovations that might better the *quality* of the content presented to consumers. Despite pleas from the publishing community, the platforms have devoted virtually no resources to finding ways to highlight original, high-quality content or to flag duplicative or untrustworthy content. The result is that users' ability to interact with news content is constantly evolving, but the quality of that content is deteriorating.

6 Accelerated Mobile Pages, https://www.ampproject.org/.

7 Google, Inc., AMP on Google – Google AMP Cache (last accessed Dec. 13, 2017), https://developers.google.com/amp/cache/.

V. NEWS COMMODITIZATION IS A COMPETITION PROBLEM

Less competition means that dominant platforms can afford to decrease the quality of news and/or underinvest in quality control without risk of losing enough users to make the behavior unprofitable. As described above, news commoditization ultimately hurts users because it suppresses high-quality, original content and promotes Fake News. Yet the commercial consequences are *de minimis*. If dominant online platforms had to compete in their respective markets, then they could not afford to be ambivalent to the societal harms caused by news commoditization. But each of the dominant platforms understands that customers have few — if any — credible alternatives in the markets in which they operate, so they fail to address this very real consumer need. News commoditization is thus not a natural consequence of the shift to online news distribution, but a consumer harm resulting from lack of competitive pressure. To the extent that dominant platforms engage in exclusionary behavior to maintain their platform dominance, the conduct and resulting harm to users and publishers should be actionable under the antitrust laws.

Unfortunately, antitrust enforcers tend to have a blind spot when it comes to non-price-related consumer harms stemming from exercises of market power.[8] This lapse is becoming an increasingly serious problem in an age of major tech platforms that monetize their consumer-facing services through advertising and data rather than direct fees. The risk is that regulators are giving a pass to some types of anticompetitive conduct merely because the harm that results is not price-related. As the above discussion illustrates, the concern is not merely hypothetical. Dominant online platforms have control over the mix of news sources that are presented to consumers, and they have an incentive to alter that mix to benefit themselves. The end result is a deterioration in the quality of news content available to consumers and the spread of misinformation. Both of these are consumer harms with real world consequences, but there is a risk that regulators will give such non-quantifiable harms less weight compared to the price-related consumer harms with which they are more familiar.

Finally, there is another sense in which news commoditization is a competition concern. The most obvious players with a stake in this issue are the publishers, but each is too small to influence the major online platforms. Their only hope would be to band together to push the platforms to address the problem, but the antitrust laws prevent them from doing so. This situation has led to calls for a limited antitrust safe harbor for publishers to bargain with dominant online platforms over these types of issues.[9] Until such an exemption is granted, however, we will continue to have the incongruous situation in which antitrust enforcement is too weak to address consumer harm by dominant online platforms but strong enough to prevent collective action by publishers that might remedy the harm.

8 While both U.S. and European competition authorities formally acknowledge the possibility of consumer harms that go beyond price increases — such as quality decreases or reductions in innovation — they tend to de-emphasize such harms in practice. For an incisive discussion of the problems associated with a price-centric focus on consumer harm and its implications for data-related markets. See Stucke & Grunes, *Big Data and Competition Policy,* 107-26 (2016).

9 Rutenberg, "News Outlets to Seek Bargaining Rights Against Google and Facebook," N.Y. Times (July 9, 2017), https://www.nytimes.com/2017/07/09/business/media/google-facebook-news-media-alliance.html.