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KENNEALLY: I'm Christopher Kenneally with Copyright Clearance Center, and I host CCC's podcast series, Velocity of Content.

As a former freelance journalist, I used to say I eat what I kill, so getting paid for reporting the news is a no-brainer for me. But online, those who get paid for bringing you the news are less and less the reporters, the editors, and the publishers, and more and more the so-called platforms where so many news consumers get their information.

In 2020, digital advertising spending worldwide amounted to US \$378 billion, with online platforms Google and Facebook together owning half the market, or about \$190 billion of ad spend. For scale, the New York State budget in 2020 was \$177 billion, \$20 billion less.

Meanwhile, news organizations and other publishers have watched the rise of this duopoly with increasing distress. Last year, newspaper advertising spending worldwide was just US \$31 billion. The figure has slumped markedly since 2007, when it was \$110 billion, or more than three times the current number. By 2023, forecasts say that global news ad revenue will drop to \$25 billion – almost \$26 billion, a further 18% fall.

So what's a news publisher to do? As Paul Sweeting told us, many are turning to lawmakers and regulators for help. And for answers to the questions that Paul was suggesting – what are these efforts, and how will these licenses be administered, and how might payments be managed – we're going to turn to a panel of distinguished authorities on news publishing, intellectual property law, and technology.

Up first is Wout van Wijk. Wout van Wijk is executive director of News Media Europe, which represents over 2,500 media companies, including newspapers, radio, television, and on the web. Wout van Wijk joins us from Brussels. (inaudible) – welcome.

van WIJK: Good evening from Brussels. Good morning and good afternoon, wherever you are. You made a very good introduction, Christopher, of the state of current affairs. With the digital transition and the increasing intermediation of services, the European news industry has come under significant pressure over the past decade.



The already existing shift from print into digital has accelerated with the pandemic, which would be my second slide, please. This is a trend which we believe is here to stay. And as a result, some local and regional titles had to shut down, while others were forced to accelerate the diversification of their revenue streams.

The reality is that online platforms have attracted millions of users with editorial content that they do not produce themselves, but managed to monetize very effectively. Even though Europeans consume more news than ever before in history, we noticed that overall revenues of publishers are in a steady decline. So we're basically facing a situation whereby it becomes unsustainable for publishers to invest in the production of high-quality journalistic products. And again, particularly this holds true for local and regional titles.

The principle is simple. News aggregators, search engines, social media, or any platform that distributes and monetizes press content online must acquire the rights. And under the publisher's right or the neighboring right for press publishers, these press publishers are free to license or to retain exclusivity.

One of the lessons that we learned is that even the best-drafted law remains void without proper enforcement. This has been the conclusion of the French competition regulator, which has repeatedly sanctioned and ordered Google to negotiate fair payment terms and conditions with French press publishers over the last two years. This is a decision that was appealed by Google twice, and Sandra will probably tell you more about this. Even in France, where there has been wide support from the legislature, the government, judges, regulators, Google has so far managed to sort of impose their terms.

In parallel, also in Australia, Google and Facebook put immense pressure on the media code legislators and citizens by threatening to withdraw news from their pages. Facebook went as far as blacking out news and public service information content for an entire week.

That said, I remain optimistic that this trend will be overturned and that fair negotiations will be possible with the right pressure from the authorities, because now, due to these examples in France and in Australia, there's awareness among decision-makers – definitely in Europe, but also elsewhere in the world – that large platforms have become too big to care, which is a direct quote from Europe's internal market commissioner, Mr. Thierry Breton, and that their behavior is unsustainable from a market competition point of view, but also from a democratic point of view.

KENNEALLY: As Wout van Wijk was pointing out, France is one of the leaders in an effort to see that the press publishers are remunerated appropriately. And joining us now from Paris, France, is Sandra Chastanet. Sandra Chastanet is the rightsholder and international director of the Centre Français d'exploitation du droit de Copies, CFC, the French



collective management organization representing press content and books. Sandra Chastanet has served as president of the Press Database and Licensing Network. And as I say, she joins us from Paris. Bienvenue, Sandra.

CHASTANET: Thank you, Christopher. So France was the first country, the first European member state, to transpose the directive, especially Article 15, creating a new press publisher's right. So it's a neighboring right benefiting press publishers and press agencies. This right comes under copyright, or author's right as we know it in Europe.

This right specifically addresses the online use of press content – any press content. And it addresses information society service providers, or the platforms. So the purpose was to give a very quick and straightforward tool to press publishers to be able to monetize their content with the platforms. The law actually entered into force in October 2019, so it's been nearly two years now. And I will just show you what happened during these past two years, if you can go to the next slide, please.

Basically, Google was the main target of the press publishers. The reason is that Google actually attracted all the advertising revenues in the digital environment. Actually, it's more than 50% of digital advertising revenues directly going to Google in France. It was a real problem for press publishers, as the advertising revenue, which is a main source of revenue for press publishers, was decreasing constantly during these past years. So Google was the main target, and the reason is that Google is the gatekeepers of the press publishers' website. Actually, from what we know from the press publishers, 30-70% of the traffic to the press publishers' website goes through Google. So Google is able to monetize this traffic better than the press publishers, actually.

The news actually has a significant value for Google – for the platform in general, but especially for Google. Google is using news in the search engine, of course. It attracts all the audience and people to the Google search engine, because studies show that most of the people go to Google to search for news. So without news, Google wouldn't have this attraction to the audience. So they use it in the search engine. They use it in Google News. They use it in Google Discover. And they want to have new services, as we see with News Showcase. So it really has value, but Google didn't pay for this value.

So what happened when the law was transposed? Google said that they won't pay for indexing publishers' web content. Actually, they didn't contest the law. They just said that they wouldn't pay, and they asked all press publishers if they'd allow Google to continue to use all press content for free. And if they said no, they announced that they will only show URLs in the search engine results, which would have an impact on the press publishers' traffic and on the press publishers' revenue.



Next slide, please. So how did the publishers react to that? Obviously, Google used its dominant position to impose unfair conditions to the market. So the press publishers – actually, the Federation of Newspapers, the Federation of Magazine Press Publishers, and AFP – sued Google for abuse of dominant position, and they filed a claim with the competition authority in France.

We want to get remuneration for the press to protect the investment to be able to have journalism. But beyond that, of course, it is a question of democracy, because we want to have an independent and diverse press, so independent journalism. And we want the platform to stay neutral, not to influence and not to impose conditions to the press publishers. And as it was said also, I think there is a real momentum now, because with this directive, we have real political support, and we can see that it is not only in Europe. It is all across the world, as we can see in Australia. There is new regulation that gives tools to the press publishers to monetize their content. And we can also see that there is a lot of (inaudible) initiatives.

KENNEALLY: Well, Sandra Chastanet, thank you so much for sharing with us the perspective from France and the leading role that French publishers have played in all of this and the important role that the French courts have played as well. So thank you for that.

We're going to jump across the Atlantic Ocean right now to Washington, DC. Joining us from there is Danielle Coffey. She is the executive vice president and general counsel for the News Media Alliance, which represents 2,000 news media outlets worldwide. She leads the organization's advocacy and strategy. Before joining News Media Alliance, Danielle was vice president and general counsel for the Telecommunications Industry Association. Danielle, welcome.

COFFEY: When we first started looking at what it is we wanted to do here with legislation and litigation, we identified the problem. We wrote a white paper that outlined how our content is used on the platforms and the value that's extracted through that use, through the walled garden. 65% of users do not leave Google. And then when they do, the ad tax makes digital advertising insufficient and inadequate payment for our valuable content. And then we also did a financial assessment of how that translates to the value that is received by the platforms, which is why we feel very strong in our position for compensation, remuneration, for our quality content from the tech platforms.

So access to our content needs to come at a price, and competition law requires that that price be paid. We reside in the antitrust subcommittees for that reason, with the chairs and the leaders supporting the Journalism Competition and Preservation Act that was reintroduced earlier this year and is moving through Congress. It allows a temporary safe harbor from



antitrust so that news publishers can collectively negotiate with the tech platforms for compensation.

The expanded bill will also require equitable terms be paid to all negotiating and take into account outside negotiations and commercial agreements so that outside negotiations don't work against the legislation and don't render it ineffective. It will also have an oversight mechanism and a backstop that makes a decision in the event of good faith negotiation impasses, which is where many end up with the tech platforms. We'll also include language that we believe is necessary to guard against retaliation, both contractually and also in the opaque search transparency of the platforms, among other retaliatory measures and punishment, if you will, that we've seen take place when compensation is demanded.

That legislation is moving through Congress. We are confident that it will become law. And we are working with our companies on how we will negotiate and how we will allocate those payments once it does.

The Journalism Competition Preservation Act is our primary means of an enforcement against the platforms.

KENNEALLY: Thank you, indeed, Danielle Coffey with the News Media Alliance.

I want to conclude with a presentation from my colleague at Copyright Clearance Center, Roy Kaufman. Roy Kaufman, welcome.

KAUFMAN: Thank you, Chris. Good to be here.

KENNEALLY: Yeah, thank you for joining us. Roy Kaufman is managing director of business development and government relations with CCC, and you want to take a look at an interesting sideline exemption to the EU Copyright Directive that really does have a surprising impact on news publishers. Why don't you tell us more about that?

KAUFMAN: I'm going to be talking about text and data mining. I'll also be talking a little bit about using content to train artificial intelligence, or AI. These are overlapping Venn diagrams. And what it is, is it's the machine as the consumer. Now, to a machine, everything is data. So text is data, but it's a very special type of data. It's what's called unstructured. It's not tabular. And it is subject to copyright.

So what's happened in the European Commission, especially with the new Digital Single Market legislation that Wout was talking about, was there's a bunch of new stuff in copyright, and then there were two exceptions for text and data mining. Even though they are copyright exceptions, in a way, the copyright exception – especially the one applicable



to news – took away a lack of clarity and created clarity which I think will lead to opportunity.

So there's this broad exception in reproduction and extraction – make copies of lawfully accessible works. Again, you can't illegally scrape, but you can legally scrape if it's allowed. You can't use infringing content. But other than that, if it's lawfully accessible, you can use it.

However, it can only be mined on the condition that the rights to mine have not been expressly reserved by rightsholders in an appropriate manner, including machine – something just jumped up on my screen. OK, sorry, I got distracted. Including machine-readable formats.

So what was the commission trying to do here? I think what they were trying to do was separate out professional content, such as news or journal articles or the like, where there's a copyright owner who has a copyright interest. And the commission said, look, reserve your rights. Once you reserve your rights, they have to come to you for licenses, because that's what the language says.

KENNEALLY: It's been a fascinating discussion involving technology and a bit of a trip to law school for all of us. I really want to thank each of the contributors to our panel today. From Brussels, Wout van Wijk, who is executive director of News Media Europe, thank you. Sandra Chastanet, rightsholder and international director of CFC in Paris, France. Danielle Coffey, executive vice president and general counsel for the News Media Alliance. And my colleague, Roy Kaufman, with CCC. I also want to thank Paul Sweeting with the RightsTech Summit for this invitation to host this panel.

I'm Christopher Kenneally. Take care.

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