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Taming fake news: making search engines pay is insufficient

A dispute between the originators and aggregators of news content has broken out with uncertain prospects of resolution. The public interest, though, may lie elsewhere, in preventing the rampant contamination of news with advertising and propaganda, writes **SUKUMAR MURALIDHARAN.**

EARLY in January, the Competition Commission of India directed an investigation into allegations of monopolistic market practices by Google. It was acting on a petition by the Digital News Publishers Association, a consortium of media companies who have acquired digital arms in addition to their traditional presence in print and broadcast. The publishers' grievance is that the search giant – part of a diverse portfolio of companies held by the newly created firm, Alphabet – has been unfairly bleeding them of revenue.

There was a time when news publishers competed for the top few slots in a Google search. Few users go beyond the first page a typical Google search turns up, and the top three usually enjoy special privileges. News publishers now have another grievance: that Google often turns up "zero click" searches, providing "snippets" from many relevant news stories. As the user skips over material of lesser interest, publishers worry they may be losing money that could be earned in a click through.

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At the best of times, this was very poor sustenance for content generators. News aggregators typically bill each click or "impression" in decimal points of the rupee, or single digits, when media houses are used to raking in revenue in the thousands. Qualitatively speaking, in terms of traditional news values, the rush for securing impressions on scale, could create distortions of content, and a loss of depth and scope.

News outlets that have limited access to content on the web and chosen a subscription model, are still to assess how successful the move would be. With content of all sorts proliferating on the web, there may be little incentive for a user to pay for access, unless the outlet is purveying premium information or specialist data.

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Across the globe, embattled media outlets, unable to deal with the transition of advertising to digital platforms, have been sounding the alarm. Europe has determined that its copyright code obliges search and social media platforms to pay the originator of content. But this is a fragile argument since there is a distinction, which the legal system is yet to negotiate, between publishing material and providing a link to existing media content.

Without a clear rationale, a remedy has been thought up and implemented in certain jurisdictions, involving a sharing of revenues by social media and search platforms with the originators of content. The problem here is that it is difficult to precisely identify how much of the ad revenue a search engine earns is tied to specific news items. In fact, there is a tendency, observed recently, for advertisers to insist that their ads should not be linked to news items that carry highly divisive trigger words.

Basis for revenue sharing

The situation is not symmetric. The news publisher gains traction through Google, but for the search engine the additional value the publisher brings is close to zero. What possibly could be the basis of a revenue sharing arrangement then?

Australia was the first legal jurisdiction in which such an arrangement was announced, though details have been sketchy so far. The decisive factor there was the political clout that the global media baron Rupert Murdoch enjoys, despite one former prime minister describing him as a "cancer on democracy" and another accusing him of pushing "crazy agendas".

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Negotiations in Australia were contentious. Google threatened at one stage to cut off its search engine for internet users in the country, and Facebook vowed to boycott Australian news content if the government pressed ahead. The deals finally worked out have been opaque, and motivated perhaps by a pragmatic calculation by Google and Facebook about the future value of the market. The European Union, as another affluent market, could also drive a hard bargain.

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India too is a large and valued market for the technology giants. The greater imponderable here is how strongly the government will back the news industry's efforts at securing a share of search and social media revenues. As far as public perceptions are concerned, a serious impediment to any form of engagement is the lack of reliable figures on the news industry.

An annual event organised by the Federation of Indian Chambers of Commerce and Industry [FICCI] is an occasion when issues related to the media are aired and discussed. At the 2013 event, the chair of the FICCI media committee, Uday Shankar (then and now the top executive in India for Rupert Murdoch network), had this to say:

"Numbers are supposed to be the foundations of rational business decisions but how can we make decisions when professionals in the business of numbers can't get their numbers straight? … In fact, as a TV executive, I am surprised sometimes how I am even able to function. I do not know enough about my viewers – in fact I don't even know how many of them are there. … The country's premier media agencies can't even seem to agree on a fact as basic as the size of the advertising market."

Over the years, the advertising industry has become a source of information on the state of the media, though typically without the distinction between news and entertainment. The small number of ad agencies in operation after a global wave of consolidation, share an interest in charting the trajectory of media growth in the economy. The annual FICCI event is typically preceded by the release of a report on the media and entertainment industry, prepared by one of the accounting majors, Price-Waterhouse Coopers or Ernst & Young.

The ad agency Pitch Madison has also been bringing out an annual report which estimates the size of the market, categorised in various ways. What both estimates fail to account for are classified ads and tender notices, which are directly contracted by newspapers with the advertiser.

Over the decade gone by, there was a steady growth in advertising expenditure in the Indian economy from Rs. 27,400 crores in 2011 to Rs. 67,600 crores in 2019. There was a sharp drop to Rs. 54,000 crores in 2020, a year scarred in all but its first quarter by the global coronavirus pandemic.

Within these aggregates, the share of digital advertising has grown rapidly all the way up to 2019. In 2020, even as the aggregate shrank, digital advertising increased both in absolute terms and in its share of the total.

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Constitution, but those that enjoy greater advertising support have their voices heard louder. Neither the content of speech, nor the volume, could legitimately be restrained, as per the Supreme Court.

The year 2021 was a year of recovery, with total advertising increasing 31 per cent for the 'traditional' and 34 per cent for the digital sectors. But there is unlikely to be a significant change from the decade-long trend, which is that growth will continue to be weak in print, slightly better in television, and buoyant in digital. The pandemic year witnessed the consolidation of a trend begun after the 2008 economic crisis. Though ahead of the growth curve during India's "miracle years" early this century, a slowdown began in 2008 and in the pandemic year, the news and media industry shrank significantly more than the economy overall.

The news media, as a two-sided market, poses a unique regulatory challenge. As the French Nobel laureate economist Jean Tirole puts it in his book 'Economics for the Common Good', *"offering goods at a low price (or even for free)"*, on one side of the market, *"may be a strategy to put rivals out of business by weakening them financially"*. In the lightly-regulated regime that India has, the media assumed regulatory functions themselves, determining how to balance their two distinct customer interfaces, between advertisers and audience. Tirole considers the technical aspects of this platform interface between the two, paying little heed to issues of quality that are vital in the news media.

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Porous boundary

The boundary between advertising on the one hand and news and editorial content on the other, has in recent years tended to become porous. Traditional distinctions in the law have been effaced in the process. There is a long tradition of judicial thought that insists advertising speech meriting lesser constitutional protection than "news and opinion speech". That remains unambiguously the case in India, though in the US, this principle was always subject to a test of the "reasonableness" of the restrictions imposed on advertising.

After a time when much "dark" or undeclared money sources were finding their way into political advertising, the US in the early years of this century, enacted a range of campaign finance reforms, including a prohibition of third-party advertisements on behalf of any candidate in a defined time-period prior to an election. In 2010, in its *Citizens United* judgment, the US Supreme Court struck down this prohibition as unconstitutional. It held that the constitution did not permit any restraint on free speech on grounds of identity – creating a spurious symmetry between the citizen and a corporation. It also built a case of the equivalence between the "dark money" advertiser – who typically takes the corporate form – and a news outlet, which also has the same legal status. A prohibition on advertisements by one could potentially be read as a limitation on news reporting and editorial commentary by the other, it held, creating unforeseen difficulties for the functioning of the free press. Needless to say, this false equivalence changed the conventional understanding about the distinction between advertising and editorial content, with implications that are still working out in terms of the possibilities of electoral corruption.

In judgments over the years dealing with the constitutionality of various restraints imposed upon the media to ensure that diversity is not lost in the tendency towards monopoly, the Supreme Court in India has held that the function of advertising is to ensure not just freedom, but also the "volume" of speech. All newspapers are beneficiaries of free speech guarantees under the Indian Constitution, but those that enjoy greater advertising support have their voices heard louder. Neither the content of speech, nor the volume, could legitimately be restrained.

While such meaningful distinctions existed, media regulation sought to treat "content" and "carriage" differently. The former involved the programming that the audience viewed; the latter was about the satellite and cable channels that brought content to the viewer. Mixing the two was seen to have a potentially deleterious impact on the public interest, through an erosion of diversity and growth of monopoly. In satellite TV news media, "carriage" organisations are not encouraged to have "content", and *vice versa*.

In the digital news media, such a distinction may have existed in the days before search and social media. Website owners and internet service providers were the only two players then, and the argument, if at all one existed, was over who should pay the costs and reap the revenues. Search and social media disrupted that early state of innocence by introducing an intermediary – a portal that could be the point at which the user could access the entire web.

Content and carriage distinctions have vanished in most part because Google purports to be neither. It conveys third-party content to the user depending upon her search query. Likewise, Facebook claims to operate entirely with user generated content, which it channels to its many users in accordance with their expressed interests and profiles.

The unstated point here is the role that algorithmic advertising plays in the revenue calculations of the technology giants. Recent work on internet search and social media platforms have concluded that the targeting of advertising based on minutely defined user profiles could be a significant contributor to "fake news".

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Facebook's failed experiment

Worried about increasing evidence of the platform being used for fake news and political propaganda, Facebook in 2018 appointed a former American intelligence operative Yael Eisenstat to head its elections integrity cell. She came into the job with great enthusiasm and among her first proposals was the application of a "truth test" to political advertising.

Einsenstat's proposal to apply Facebook's technical resources to a fact-checking of political advertising did not get far. It was shut down within months simply because there was too much money riding on advertising.

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The essential distinction between the two types of media content – news and advertising – is that one makes a truth claim and the other does not. But with these distinctions vanishing in the digital universe, the menace of a disinformation epidemic is real and manifest.

Today's regulatory priority would be to tame the proliferation of fake news that even the traditional media has been vulnerable to. Protecting the profits of established media houses would seem a lesser priority. Institutional change is inevitable in the rapidly changing news and information environment. But the public interest in sustaining trust in news sources remains unchanged.

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