TRIBUNA, PRÁCTICA Y OPINIÓN LEGAL

A primer on the value exchange between news publishers and search engines

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I. INTRODUCTION

News Publishers' revenue peaked in the early 2000s but plummeted soon after, while advertising revenue on new online services has soared.[2] One reason is technological innovation; the internet radically disrupted News Publishers' business models, as consumers could find, access, and consume content in new ways. In response, News Publishers have not only broadened their digital offering to service customers in new ways but also proposed that Google transfers a share of the money it earns from the advertising opportunities it creates and sells.

The rationale behind the News Publishers' proposal is a subtle one. Their view is that, while Google's success critically depends on the content that News Publishers make available for display in its organic (or algorithmic) search results, Google provides insufficient incentive or reward for that contribution. This is a "free-riding" argument: search engines should provide an adequate return so that News Publishers have the incentive to continue publishing content, or otherwise everyone, including users, will be worse off.

However, as explained in detail in this paper, search engines in general, and Google in particular, do not free-ride. They help News Publishers to reach the users most likely to value their content, which they are then able to monetise through advertising or subscriptions; and provide that valuable benefit for free. Very little of a search engine's revenue depends on the content News Publishers provide. Any assessment of fairness must therefore consider the two-way exchange of value that flows between platforms and web publishers.

The real problem for News Publishers is not that search engines free-ride on their content but that they help users find their competitors' content, and they

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1 Economists at Compass Lexecon. This paper has been prepared at the request of Google. The opinions in this report are the exclusive responsibility of its authors and need not represent the views of other Compass Lexecon experts and affiliates or its clients, including Google.

2 We refer to 'News Publishers' as a defined term as a matter of notational convenience. We are not aware of any universally accepted definition of News Publishers.

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help them for free. As a result, the market for content and the adjacent market for advertising are now much more competitive than they once were. And when competition goes up, incumbents' prices and revenues go down. That is not a sign of market failure, it is a sign of markets working.

II. ARE NEWS PUBLISHERS FAIRLY REWARDED BY GOOGLE?

News Publishers advocate that Google should split the proportion of the search engine's advertising revenue that is driven by News Publishers' content between them, under the implicit assumption that Google would not be able to make that money were it not for the content News Publishers provide. News Publishers further claim that that proportion is substantially based on the recent, and repeatedly quoted, report by FehrAdvice & Partners (the "FehrAdvice Report").[3]

A. How do search engines earn money?

Before we discuss the FehrAdvice Report's approach for allocating Google's revenue to News Publishers, it is worth exploring how Google earns that money in the first place. Google provides an intermediary service to, among others, News Publishers and their users. Its search engine matches News Publishers with people seeking News Publishers' content. The search engine itself is agnostic about the type of content users want; but if people search for news, then its results will provide links to relevant content.

In a trivial sense, the value of this intermediary service depends on the availability of the content. If relevant content is not available, there is nothing for users to search for. However, that is only one side of the value equation. Without an intermediary, it would be more onerous for users to find the content they want, and it would be more expensive for content providers — including News Publishers — to cut through and find consumers, irrespective of the quality of their offerings. An intermediary service, e.g., an effective search engine, that reduces search costs is especially valuable for both for people seeking content and content producers.

There are estimated to be well over 1 billion websites, all providing content of some kind. Navigating them without help would be impossible; in fact, many of them would not exist at all in the absence of an effective matching service to help consumers find the content they are looking for. Search engines, such as Google, provide tailored, immediate, and comprehensive lists of search results, updated in real time. And they do it for free to both content providers and those seeking

3 FehrAdvice & Partners (2023) "The value of journalistic content for the Google search engine in Switzerland", report carried out by SWISS MEDIA publishers' association.

content because they monetise their services indirectly through advertising. Google makes its money by providing a high-quality and free search service, so that it can attract as many users as possible, which enhances its ability to sell advertising space to companies trying to reach those users — mostly in the form of search ads, targeted at users searching for relevant content.

The quality of service a search engine provides to advertisers has two fundamental sources; one is "relevance" — Google can sell advertising space that is much more likely to convert into sales than your typical highway billboard for example because it can target advertisements at users seeking relevant content in that moment; and the other is "reach" — the number of people seeking high quality search services to find content they need. The advertising revenue that Google generates, therefore, depends on it incentivising users and content producers to participate in its search services; which is why, unlike many traditional intermediary services, it gives those services away for free.

B. How much do News Publishers contribute to the value that a search engine generates?

The FehrAdvice Report cannot argue that News Publishers provide a service to Google that it should pay for, because they do not provide one. Rather, the proposition is subtler. Google, it claims, would not be able to earn as much as it does were it not for the content News Publishers produce. Therefore, it further claims, Google should provide News Publishers with a share of its revenues.

Yet, if the argument was correct, it would be in Google's interest to do so, as otherwise everyone, including Google, would be worse off. Google should also be able to work that out, and it would be motivated to provide sufficient incentive to content providers to participate, including News Publishers. The fact it has not done so thus far, and that News Publishers continue to participate in its services anyway, suggests that the logic in the argument is flawed.

The FehrAdvice Report does not engage in this assessment. Rather, it starts from a presumption that News Publishers do generate incremental value for Google. It estimates News Publishers' contribution to Google's search advertising revenue in two steps: first, it estimates the proportion of searches that relate to news (55%);[4] and secondly, it estimates the proportion of those searches that would not exist without News Publishers allowing the search engine to show their content in its results (70%). Taken together, The FehrAdvice Report infers that News Publishers contribute to 38.5% of Google's search advertising revenue.

Each step has an insecure footing, however. Consider the first step. Even on its own terms, the estimate that 55% of searches relate to News Publishers'

4 FehrAdvice Report, page 38.

content is unjustifiable. In fact, while 55% of all searches (in Switzerland) are "information searches",[5] not all information searches relate to the content uniquely provided by News Publishers. Questions such as "how do you make an Eton Mess?", and "what is the capital city of South Africa?", are information searches outside the News Publishers' domain. In contrast, queries for which Google's search algorithm infers that a user is primarily seeking news content generally represent less than 5% of all queries.[6] That alone would reduce the estimate of Google's news-dependent revenue from 38.5% to under 3%.

Furthermore, asking what proportion of searches relate to news is the wrong question. Those search services are provided for free, to both people searching for content and content producers seeking consumers. The relevant question is: what proportion of Google's revenue comes from advertisements that are attached in some way to news-related searches? The answer is not very much. Searches such as "washing machine reviews", "accommodation in Florence, Italy" and "is Android better than iPhone?" lend themselves to lucrative advertising opportunities. Searches about the current state of the US primaries, the situation in Ukraine, or the election outcome in India, provide limited, often negligible, stimulus for advertisement sales.

The second step in the FehrAdvice Report's estimation of News Publishers' contribution is even shakier. For its methodology requires not only showing that a proportion of a search engine's revenue *relates* to advertisements in searches that link to News Publishers' content, but also establishing that the revenue to be allocated to the News Publishers *depends* on that content, such that were News Publishers to collectively abandon search engines all together (competition law notwithstanding), the search engine would lose it all.

The FehrAdvice Report avers that 70% of the revenue that is associated with consumers seeking news *depends* on News Publishers in this way. That figure comes from a survey in which 70% of survey respondents — after a series of questions about news-related searches — said that they place positive value on the possibility that search engines may present search results linking News Publishers on their result pages.

Yet, that fact does not support the inference that Google would lose 70% of 'news'-related searches, let alone an equivalent proportion of its advertising revenue, were it not for the content that News Publishers provide. In fact, given that the respondents were choosing between a free search service that provides results that include content from News Publishers, and an otherwise identical free search engine that does not include content from those publishers, what is

5 FehrAdvice Report, page 38.

6 See e.g., https://www.sistrix.com/blog/ancillary-copyright-law-how-much-journalistic-content-is-found-in-google-search/#309-of-search-terms-journalistic.

remarkable is that 30% of those respondents said that they did *not* place positive value on the possible inclusion of News Publishers' content.

Even if 100% of respondents — as we might have expected — attributed positive value to such content, it does not say how many of them would choose *not to* use the search engine in the absence of News Publishers' content. For comparison, 70% of consumers may value the possibility of finding apples, pineapples, and papaya in a supermarket's fruit and veg section. But that does not mean that they would cease to buy fruit and veg, or much less any other goods and services, from that supermarket in the absence of any of those three products being available. Neither does it mean that apple wholesalers, pineapple wholesalers, and papaya wholesalers would *each* be entitled to demand a proportion of 70% of the supermarket's revenues from sales from fruit and veg, and even less so from other categories.

So, what we are left with is the fact that not many searches relate to the news, *of those searches*, very few provide opportunities to earn advertising revenue, and *of those* the extent to which that revenue genuinely depends on the contribution of News Publishers is unknown.

C. How would News Publishers and search engines split the value?

The FehrAdvice Report uses a benchmark to determine the 'typical' proportion of a search engine's advertising revenue we should expect it to give to the third parties on whom it depends. The FehrAdvice Report suggests that News Publishers should receive 40% of the money that Google makes from search advertising.[7] This figure comes from an analysis of the typical split in advertising revenue between the content providers that *create and host* advertising space and the providers of the advertising technology that auctions those advertising opportunities to advertisers in real time.

The problem with such a benchmark is that it provides a fundamentally different and irrelevant comparison. While it is the search engine who is the service provider that creates and hosts the opportunities for advertising, News Publishers are *not* equivalent to providers of advertising technology — a service that, unlike News Publishers' content, the search engine does require, whether it is provided by a third party or in-house as a vertically integrated service.

Without a share of the advertising revenue, providers of advertising technology would not develop it or contribute to it to help the search engine make money: they would have no incentive to do so. In contrast, without a share of the search engine's advertising revenue, content providers can and *do* benefit from developing good content and they also benefit from making it available

[7] Between 32% and 49% (on average 40%). FehrAdvice Report, pages 40 and 41.

for listings in search results. News Publishers invest in developing content that users will value to attract and retain their own consumers — not to assist the search engine create advertising opportunities. Further, the search engine *helps* the content provider monetise its content, by directing the consumers most likely to value that content to the provider. A News Publisher is not 'left out' of the opportunity to monetise its content. Once the search engine directs users to its content, it can monetise that consumption directly, or indirectly through its own advertising or subscription offers.

D. A red herring: 'snippets' help users find content, not consume it

News Publishers could motivate their 'free-riding' argument if the information provided in search results fully satisfied users' needs, as then they might not click through to the website that the content originates from. The search engine would benefit from News Publishers making their content available for search results, but would deny them the opportunity to serve those users and monetise their content directly or indirectly.

While the logic of this argument may apply to news aggregators, it is misleading in the case of search engines. Some news aggregators — such as Apple News or Microsoft's MSN.com — take content from news publishers and *provide* it to users of the aggregator, who may consume the content on the aggregator's site in which case the aggregator may split its advertising revenue with content providers, or otherwise compensate them, to encourage them to contribute to the aggregators' service.

However, that is not how search engines generally work. Search engine results direct users to content; search engines do not distribute content. Few, if any, users of a search engine are likely to be satisfied by the information in the results alone, especially since search engine results only provide 'snippets' of content. If the information in those brief summaries satisfied users' needs, they would not click through to the News Publishers' content. However, we find that this is not the case; on the contrary, snippets on search engines make users *more* likely to click through to a content provider's content, not less. Surveys show that there is a positive correlation between content providers making snippets available and their ability to attract users to their websites.[8] This explains why News Publishers freely and rationally *choose* to enable snippets, and how long to make them.

Ultimately, content providers freely choose to contribute to a search engine's matching service, and they choose how they will contribute. They do so because

[8] An experiment conducted by Google on live internet traffic in Germany in 2017 found that removing snippets from search results resulted in a reduction of 7% in the click rate to the corresponding sources.

they benefit from the arrangement: the search engine, free of charge, reduces their costs for finding the consumers most likely to value their content — whether they publish news or any other content. That enables them to attract more users for their own content and incentivises them to produce it.

III. ARE SEARCH ENGINES FAIRLY REWARDED FOR *THEIR* CONTRIBUTION TO NEWS PROVIDERS' REVENUE?

One aspect of the News Publishers' proposal is conspicuous by its absence: if we are asking whether search engines fairly reward News Publishers for their contribution to the search engine's revenue, then the Principle of Fairness requires us to ask the same question of News Publishers: do *they* adequately reward search engines for enabling the revenue they generate?

Unlike a search engine, News Publishers do receive a service from search engines that they do not pay for. We can ask first how much of News Publishers' revenue *depends* on users being able to find their content through a search engine. And then how much of that incremental revenue is shared with the search engines.

A. Search engines increase News Publishers' ability to monetise content

Content providers, including News Publishers, make money in one of two ways: they sell content directly to people that want to consume it; or they give away content to attract users, so that they can sell advertising opportunities to advertisers seeking to reach those users. Whichever business model News Publishers choose, search engines enhance their ability to monetise their content.

Both business models require attracting consumers of content. That is precisely what search engines help content providers to do, and they help them to do so relatively cheaply. This benefits new content providers in particular since they would otherwise find it hard to reach sufficient scale to enter the market and remain there.

Once a search engine directs users to a content provider, it places little-to-no constraint on how that content provider makes money. Some publishers, like the *Wall Street Journal*, and *The Times*,[9] use pay-walls. Others, such as the *Guardian and the Daily Maverick,* offer a membership model.[10] Others offer conventional advertising opportunities on their own sites.[11] The most advantageous model for

[9] https://store.wsj.com/ and https://www.thetimes.co.uk/

[10] https://www.theguardian.com/uk and https://www.dailymaverick.co.za/.

[11] https://www.dailymail.co.uk/home/index.html and https://eu.usatoday.com/

monetising users will depend on numerous factors — including its reach, the relative strength of the publisher's content, whether it targets business users or private consumers, its ability to generate a loyal following of repeat visitors, and so forth. Regardless, the search engine facilitates that monetisation, by helping the content provider find consumers that are likely to value its content.

That News Publishers benefit from the service that search engines provide is obvious from their willingness to contribute to it. The fact that many News Publishers allow their content to be crawled and appear in search results, and that they choose which content to make available as snippets and how much of it, demonstrates the benefits they receive and their autonomy on the terms of that arrangement, since no search engine is an essential distribution channel for their content. For each News Publisher, its decision to allow content to be linked by search engines reflects: (i) the additional traffic it may attract; and (ii) the value it may generate from such traffic.

Search engines do not just provide the opportunity to attract additional users in general. They provide the opportunity to attract additional users that are *particularly* likely to value the specific content that a News Publisher provides. That is because a search engine matches users with the content most likely to satisfy their needs. For News Publishers that produce content consumers actually want to search for and consume, that is positive; the search engine helps them reach users most likely to become loyal subscribers if that is how the content provider monetises its content, and consumers with specific interests may create more lucrative advertising opportunities.

E. Should News Providers pay search engines?

One could argue that News Publishers should pay search engines out of the proportion of their revenue that *depends* on search engines directing users to their content. To calculate how much, we could first estimate the proportion of subscriptions and views attached to advertising opportunities that originate from users that found the content through a search engine. While avid consumers of news tend not to use search engines to find news stories, as they have pre-existing loyalties and preferences, many consumers of News Publishers' content *do* find it through search engines; either, for 'casual' consumers seeking news on high-profile events, new consumers that are yet to forge loyalties, and consumers of *non-news* content — such as those looking for items on entertainment, or sport, or culture, or games, or lifestyle that news publishers also produce — and present more lucrative advertising opportunities than traditional news does.[12]

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[12] This, for example, is why the news publication *The New York Times* spent so much to acquire the non-news related game, *Wordle*. See https://www.nytimes.com/2022/01/31/business/media/new-york-times-wordle.html

So too we could ask what proportion of consumers would find that content *without* a search engine. Given the difficulty of navigating the internet without an effective intermediary, it is probable that News Publishers would earn significantly less than they currently do in a world without a search engine — or a world with less effective search engines.

IV. THE CATCH FOR NEWS PUBLISHERS: SEARCH ENGINES CREATE MORE COMPETITIVE MARKETS FOR CONTENT AND ADVERTISING

There is an apparent, but illusory, contradiction in the economics of the relationship between search engines and News Publishers. If News Publishers benefit so much from search engines helping them to reach consumers free of charge, why have they lost so much revenue with the emergence of the internet and search engines?

Once upon a time, a traditional newspaper may have been able to report the news, alongside items on entertainment, and sport, and culture, and lifestyle choices, and classified ads — all of which provided lucrative advertising opportunities — while facing relatively little competition. A modern online News Publisher now faces intense competition on all fronts; not just from other News Providers, but from specialists. This is clearest with classified advertisements, once a major source of revenue for newspapers; the market has blossomed, but is served almost exclusively by online specialists. Before the internet and effective search engines, those specialists may have struggled to find an audience at sufficient scale; but now entry is a trivial proposition — they just need to produce content people would search for.

News Publishers also face competition for advertising revenue. A traditional newspaper with wide circulation may have once commanded substantial appeal for advertisers. Now, in a world with many online platforms and targeted data driven advertising, competitors can offer advertising opportunities at greater scale and precision, in the sense that they are more likely to convert to sales. The opportunities on a search engine are particularly high quality as they relate directly to what a consumer is specifically and, *in that moment*, searching for. That does not mean that search engines have 'taken' News Publishers' advertising revenue in any sense other than the conventional and beneficial competitive sense: they have developed a better service that advertisers are willing to pay for.

This type of disruption is common with innovation in general, and the internet in particular. New distribution models have broken incumbents' business models and power structures. That is bad for incumbents, but good for consumers, who enjoy greater choice and the ability to mix and match suppliers to best address their preferences. And it is good for content producers in general, as reducing barriers to accessing consumers means that many more producers can enter and compete. Users are now able to readily find and access content specifically addressing their imminent interests from multiple outlets online, rather than consuming printed publications aggregating a wider range of topics. As users split their attention across online News Publishers, on-demand audiovisual content from broadcasters, and other online enabled formats, such as podcasts, advertisers gained additional avenues and space to reach these users and have access to constantly improving technology to do so more accurately and efficiently.

V. CONCLUSION

Search engines are not eroding the production of content they index. They provide a service that connects users looking for high-quality content with content producers — including News Publishers. And they provide that service free of charge. Content providers, including News Publishers, choose to contribute to that service because they benefit from it. Search engines make it possible and cheap for content providers to find an audience and monetise them.

Unfortunately for incumbent News Publishers, that service is freely available to all content providers, including their competitors, which are now numerous. Many incumbent News Publishers face lower revenues, but that is a sign that competition to produce content that consumers value works, not the result of free-riding by search engines. Search engines and News Publishers mutually benefit from helping each other, and judging from their continuous relationship, not based on dependency, they must be incentivising each other just fine.