26

Are We Saving the News?

Martha Minow

Reports of declining local news have become all too familiar.[1] The crises in the news ecosystem are numerous: The funding model for local news has collapsed as advertising and eyeballs have migrated to online social media platforms.[2] Digital platforms and partisan media outlets are enabling (not halting) the rise in misinformation and disinformation. Private equity companies, committed only to short-term profits, are purchasing and strip-mining even profitable local news outlets. As a result, the public's trust in conventional (and fast disappearing) news outlets is declining rapidly.[3] Meanwhile, these patterns of consumption and distrust of information sources are reflecting and contributing to our social and political divisions[4]

[1] This chapter draws on and updates issues explored in Martha Minow, Saving the News: Why the Constitution Calls for Government Action to Preserve Freedom of Speech (2021). *See also* Martha Minow, *Does the First Amendment Forbid, Permit, or Require Government Support of News Industries?*, *in* Constitutionalism and a Right to Effective Government (Vicki C. Jackson & Yasmin Dawood eds., 2022); *The Changing Ecosystem of News and Challenges for Freedom of Press*, 64 Loyola L. Rev. 499 (2018), reprinted as *O ecossistema de notícias em mudança e os desafios para a liberdade de imprensa*, *in* Eleições e Democracia na Era Digital (Paulo Gustavo Gonet Branco et al. eds., 2022).

[2] *E.g.*, Thomas E. Patterson, *News Crisis: Can Local Public Radio Help Fill the News Gap Created by the Decline of Local Newspapers?*, Shorenstein Ctr. on Media, Pol. & Pub. Pol'y (Jan. 25, 2023), https://shorensteincenter.org/news-crisis-local-public-radio-report/; Margaret Sullivan, *What Happens to Democracy When Local News Dries Up?*, Wash. Post (Nov. 30, 2021), https://www.washingtonpost.com/magazine/2021/11/30/margaret-sullivan-the-local-news-crisis/. For a distinctive study of holes in local news coverage in one state, *see* Christopher Hanson, *Topography of a News Ecosystem: A First-of-Its-Kind Study Diagnoses the Local News Crisis in a Single State*, Poynter (Apr. 19, 2024), https://www.poynter.org/locally/2024/university-maryland-merrill-college-journalism-local-news-crisis-study/.

[3] *More than Half of U.S. Counties Have No Access or Very Limited Access to Local News*, Nw. Medill Sch. of Journalism, https://www.medill.northwestern.edu/news/2023/more-than-half-of-us-counties-have-no-access-or-very-limited-access-to-local-news.html (last visited June 18, 2024) [hereinafter *Access to Local News*].

[4] Ro'ee Levy, *Social Media, News Consumption, and Polarization: Evidence from a Field Experiment*, 111 Am. Economic Rev. 831 (2021), https://doi.org/10.1257/aer.20191777; Flavia Roscini, *How the American Media Landscape Is Polarizing the Country*, B.U. Pardee Sch. Global Stud. (May 28, 2024), https://sites.bu.edu/pardeeatlas/advancing-human-progress-initiative/back2school/how-the-american-media-landscape-is-polarizing-the-country/. *But see*

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as digital platforms continue to expose people to disinformation and misinformation, with little progress in redressing these problems.[5]

Since I published on the issues a few years ago, these trends have only continued and, indeed, accelerated.[6] I argued then, and still believe, that the U.S. Constitution's First Amendment – including the Speech and Press Clauses – recognizes the functions of newsgathering and circulation as fundamental to the projects of self-government.

Practices that once sustained vibrant newsgathering and distribution ecosystems have now been disrupted and are in jeopardy in the wake of the practices of social media platforms, the behaviors of private equity investors, and the choices made by media entities themselves. With a particular focus on local news, this chapter first sketches federal constitutional and governmental support of newsgathering and circulation; then turns to current sources of disruption and potential constructive reforms; and finally identifies some promising developments and further questions that they present.

26.1 AFFIRMATIVE GOVERNMENTAL SUPPORT

Many of the Constitution's framers recognized the importance of free speech and the press to self-government and freedom from tyranny.[7] In their writings and in their actions, James Madison, John Adams, Thomas Paine, George Washington,

Chloe Wittenberg et al., *Media Measurement Matters: Estimating the Persuasive Effects of Partisan Media with Survey and Behavioral Data*, 85 J. Politics (2023), https://www.journals.uchicago.edu/doi/10.1086/724960 (experiment contrasting stated preferences with actual news consumption patterns showed that less frequent consumers of news tend to be more persuaded by partisan content). A survey examining the United States and several European countries indicated very low contact with actual news sources but also little influence of partisan sources on people's views. Magdalena Wojcieszak et al., *No Polarization from Partisan News: Over-Time Evidence from Trace Data*, 28 Int'l J. Press/Politics 601 (2023), https://doi.org/10.1177/19401612211047194.

[5] Lisa Macpherson & Rajan Srinivasan, *"Lies All the Way Down" – Combating 2024 Election Disinformation*, Pub. Knowledge (Mar. 18, 2024), https://publicknowledge.org/lies-all-the-way-down/.

[6] Michael Lipka & Elisa Shearer, *Audiences Are Declining for Traditional News Media in the U.S. – With Some Exceptions*, Pew Rsch. (Nov. 28, 2023), https://www.pewresearch.org/short-reads/2023/11/28/audiences-are-declining-for-traditional-news-media-in-the-us-with-some-exceptions/; Brandy Zadrozny, *Disinformation Poses an Unprecedented Threat in 2024 – And the U.S. Is Less Ready than Ever*, NBC News (Jan. 18, 2024), https://www.nbcnews.com/tech/misinformation/disinformation-unprecedented-threat-2024-election-rcna134290.

[7] *See* David Wilson, *Freedom of the Press in the Eyes of the Founding Fathers*, Colonial Williamsburg (July 7, 2020), https://www.colonialwilliamsburg.org/learn/living-history/freedom-press-eyes-founding-fathers/. Benjamin Franklin – perhaps the founding father with the deepest ties to the press – expressed after the enactment of the Constitution some concerns about the unfettered press. *See* Arthur Milikh, *Franklin and the Free Press*, Heritage Found. (Apr. 4, 2017), https://www.heritage.org/american-founders/commentary/franklin-and-the-free-press.

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and Thomas Jefferson emphasized the vital importance of the freedoms of speech and of the press to democracy and freedom.[8] The First Amendment's freedoms provide a distinct bulwark against autocracy and a foundation for self-government by the people, which are key rationales for their protection.[9]

The federal Constitution's guarantees of free speech and press curb governmental restrictions, but do they also entail positive duties? Courts may not be well-positioned to articulate or enforce governmental duties affirmatively to assist free speech and press, but the Constitution is not only directed to courts. Those who swear allegiance to the Constitution and all who take seriously the survival of the government it established should understand constitutional commitments as obliging actions that respect and support both speech and the press.[10] These duties could include taking steps to strengthen the viability and reliability of newsgathering and distribution, as demonstrated by the actions of the federal government from the start and through time.

[8] *See* Wendell Bird, The Revolution in Freedoms of Press and Speech: From Blackstone to the First Amendment and Fox's Libel Act 7–9, 221–38, 268–75, 330 (2020); Minow, Saving the News, *supra* note 1, at 38–41; Wilson, *supra* note 7. George Washington wrote in 1783, "the freedom of Speech may be taken away – and, dumb & silent we may be led, like sheep, to the Slaughter." *National Gazette*, George Washington's Mount Vernon, https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/national-gazette/ (quoting From George Washington to Officers of the Army, 15 March 1783).

[9] The drafters of the First Amendment were, of course, familiar with the protection of the press in the states, such as Pennsylvania and Virginia. *See* Bird, *supra* note 8, at 337–57; Paul Starr, The Creation of the Media: Political Origins of Modern Communications (2004). The Virginia ratifying convention directed that "[t]he people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." *Id.*, at 73–74. Pennsylvania's Declaration of Rights specified that "the people have a right to freedom of speech, and of writing, and publishing their sentiments, therefore, the freedom of the press ought not to be restrained," and the Pennsylvania Constitution assured free use of printing presses by "any person who undertakes to examine the proceedings of the legislature, or any part of the government." *Id.* The Pennsylvania Constitution to this day directs: "The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof." Pa. Const., art. 1, § 7.

[10] For a thorough argument for an affirmative governmental "duty to guarantee meaningful access to news and information for everyone," *see* Victor Pickard, *Legal Foundations for Non-Reformist Media Reforms: A Positive-Rights Paradigm for Guaranteeing a Universal Press System*, *in* The Future of Press Freedom: Democracy, Law, and the News in Changing Times 415 (RonNell Andersen Jones & Sonja R. West eds., 2025) [hereinafter The Future of Press Freedom]. *See also* Minow, Saving the News, *supra* note 1, at 94–100; C. Edwin Baker, Media Concentration and Democracy 161, 245–62 (2006); Thomas I. Emerson, *The Affirmative Side of the First Amendment*, 15 Georgia L. Rev. 795 (1981); RonNell Andersen Jones, *Press Speakers and the First Amendment Rights of Listeners*, 90 Colo. L. Rev. 499 (2019); Sonja R. West, *The Majoritarian Press Clause*, 2020 U. Chi. L. Forum 309 (2020), https://legal-forum.uchicago.edu/print-archive/majoritarian-press-clause.

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The Press Clause is the only provision in the Constitution that explicitly protects a private industry. But in practice, the federal government throughout history has done more than simply shield the press from governmental restrictions.[11] Congress established discounted postal rates for newspapers and the free exchange of newspapers between news printers and publishers.[12] Subsequent governmental support shaped communication, including the sharing of news, through the telegraph, telephone, computer, and the internet.[13] And the government constructed the system of broadcast licenses, the regulation of cable, the antitrust laws molding the communications industry, the Newspaper Preservation Act of 1970, the Freedom of Information Act, the Public Broadcasting System, and other federal policies.[14] State and local governments have also supported newsgathering and circulation.[15]

The constitutional guarantees of free speech and free press are primarily justified by their support of democratic self-governance, yet a nonviable press poses a grave threat to Americans' ability to engage in self-governance.[16] The goal of safeguarding democracy through the existence of countervailing powers underlies both the separation of powers among the three federal branches and the division of power between the federal government and the states. The press and the private sector

[11] Sonja R. West, *Favoring the Press*, 106 Cal. L. Rev. 91 (2018), https://www.jstor.org/stable/44630787.

[12] Minow, Saving the News, *supra* note 1, at 43, 54. For both historical origins and more recent developments of such policies, *see* Richard Kielbowicz, News in the Mail: The Press, Post Office, and Public Information, 1700–1860s (1989); Congressional Research Service, *Postage Subsidies for Periodicals: History and Recent Developments* (Jan. 22, 2009), https://www.everycrsreport.com/reports/R40162.html.

[13] *See* Richard R. John, Spreading the News: The American Postal System from Franklin to Morse (1998). *See* also Katie Hafner, Where Wizards Stay Up Late: The Origins of the Internet (1996).

[14] Larry Satkowiak, The Cable Industry (2015); Tim Wu, The Curse of Bigness: Antitrust in the New Gilded Age (2018). *See* Geoffrey Cowan & David Westphal, *Public Policy and Funding the News*, USC Annenberg Sch. for Commc'n & Journalism 7 (2010), https://fundingthenews.usc.edu/report/ (noting the federal government has been a "watchdog of power among news business owners; consumer advocate championing the news and information needs of underserved or neglected communities; affirmative action catalyst for extending employment and ownership opportunities to minorities and women; regulator of the public airwaves; and provider of both direct and indirect subsidies that have been important pieces of the news industry's economic health."). *See also* American Bar Association, Telecom Antitrust Handbook (2019); Steve R. Rivkin, A New Guide to Federal Cable Television Regulations (1978); Michael J. Zarkin, The FCC and the Politics of Cable TV Regulation, 1952–1980: Organizational Learning and Policy Development (2010).

[15] Cowan & Westphal, *supra* note 14, at 7 (noting state and local government support for news through income tax deductions and credits, local municipalities permission for newspaper vendor boxes on city sidewalks, state shield-law protection for reporters against prosecutors' subpoenas).

[16] *See* Alexander Meiklejohn, Free Speech and Its Relation to Self-Government (1948); Robert Post, *Participatory Democracy and Free Speech*, 97 Va. L. Rev. 477 (2011).

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serve as yet another countervailing power.[17] Moreover, state constitutions, many of which were drafted before the federal Constitution, embrace positive duties on government to support the press.[18] The duty to take action to safeguard the press hence has roots in this constitutional rationale, as well as in the long-standing history of governmental support for and involvement in news technologies and practices. A variety of policies and laws that undergird the circulation of news (and the human enterprises making it possible) are therefore both consonant with, and even bolster, these constitutional principles.

Some may view the federal Constitution solely as a set of restrictions on federal governmental power, but that misunderstands the commitment, which was motivated by the failure of the limited-government conception of the Articles of Confederation, to create and maintain an effective government.[19] How can there be effective self-government without access to news? And how can public and private power be held to account without workable journalism? These are the questions that the now undeniable crisis in the news world, especially in local news, urgently raises.

26.2 CAUSES AND RESULTS OF THE DECLINES IN LOCAL NEWS PRODUCTION

Since 2005, the United States has lost more than 2,900 newspapers, and as of 2023, it is losing them at an average of 2.5 a week.[20] Related trends have left 200 communities

[17] *See* The Federalist No. 51 (James Madison). *See also* John Kenneth Galbraith, *Countervailing Power*, 44 Am. Econ. Rev. 1 (1954), https://www.jstor.org/stable/1818317 (developing notion of "countervailing power").

[18] For a discussion of state constitutional laws that include affirmative duties as well as protections for the press, *see* Elijah O'Kelley, *State Constitutions as a Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms*, 69 Emory L. J. 111 (2019), https://scholarlycommons.law.emory.edu/elj/vol69/iss1/3/; Pickard, *supra* note 10; Christina Koningisor, *The Other Press Clauses*, *in* The Future of Press Freedom, *supra* note 10, at 182. The drafters of the First Amendment knew the protections of the press in the states, such as Pennsylvania and Virginia. *See* Starr, *supra* note 9.

[19] Noting ongoing controversy over whether the U.S. Constitution embraces only restrictions on government or also duties to enable people to exercise rights, *see* Emily Zackin, *Positive Rights*, *in* The Oxford Handbook of the U.S. Constitution (Mark Tushnet et al. eds., 2015) (ebook), https://doi.org/10.1093/oxfordhb/9780190245757.013.34. For analysis of the arguments over negative and positive liberty conceptions of the constitution, *see* David P. Currie, *Positive and Negative Constitutional Rights*, 53 U. Chi. L. Rev. 864 (1986), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5993&context=journal_articles. Assertion of the commitment to an effective government even in the face of arguments about constitutional limits on its powers by a member of the founding generation informs the foundation Supreme Court decision affirming Congressional power to create a national bank, despite lack of relevant explicit authority. *See* McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

[20] *Access to Local News*, *supra* note 3; *see* Sarah Grevy Gotfredsen, *US News Industry Faces Bleak Start to 2024*, Colum. Journalism Rev. (Feb. 20, 2024), https://www.cjr.org/tow_center/us-

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with no local news coverage,[21] while half of all local communities in the United States now have only one newspaper, and most of these are published just once a week.[22] As local news rapidly loses audiences, newspapers and broadcasters in small cities and towns are merging or being sold to chains or private equity investors. These new owners pursue economic returns through cost reductions and restructuring.[23]

Advertising revenues have followed people to digital platforms, whose owners and managers often choose not to invest in news production. This means they do not pay even for copyrighted news reports posted by users. It also means that they do not participate in what once was a virtuous circle where publishers used revenue from subscriptions and advertisements to support additional reporting. These trends especially decimate what might be called "local government accountability reporting," such as reporting on the excessive reliance on fines and fees by Ferguson, Missouri, where the police shooting of Michael Brown, an unarmed Black man, triggered racial riots across the country.[24] It turns out that the city of Ferguson had no daily newspaper, no news blog focused on local government, no community radio station, and no local public-access television.[25] After the identification of lead in the water supply of Flint, Michigan, whistleblower and public health expert Dr. Mona Hanna-Attisha said to me, "Actually, we were lucky."[26] When I asked why, considering that the discovery of lead represented a major crisis of public health, law, and politics, her reply was unforgettable: "We have good local

news-industry-faces-bleak-start-to-2024.php. A recent source indicates 225 counties now have no local newspapers. *See* Frank Jacobs, *America's News Deserts Are Growing*, Big Think (Apr. 18, 2024), https://bigthink.com/strange-maps/counties-without-newspapers/; *see also* Penelope Abernathy et al., The State of Local News 2022, Northwestern Medill Local News Initiative 6, 18 (2022).

[21] Penelope Muse Abernathy, The Rise of a New Media Baron and the Emerging Threat of News Deserts (2016), https://www.usnewsdeserts.com/wp-content/uploads/2016/09/07.UNC_RiseOfNewMediaBaron_SinglePage_01Sep2016-REDUCED.pdf. For a comprehensive study, *see* Margaret Sullivan, Ghosting the News: Local Journalism and the Crisis of American Democracy (2020).

[22] *Access to Local News*, *supra* note 3.

[23] C. W. Anderson et al., The News Media: What Everyone Needs to Know 137–40 (2016); Robert W. McChesney & John Nichols, The Death and Life of American Journalism: The Media Revolution that Will Begin the World Again (2010); Abernathy, *supra* note 21, at 12–14, 20–21.

[24] Joseph Shapiro, *In Ferguson, Court Fines and Fees Fuel Anger*, NPR (Aug. 25, 2014), https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger.

[25] Josh Wilson, *Fixing Journalism's Ability to Promote Civic Good Should Be the Focus of Philanthropic Giving*, Chron. Philanthropy (Nov. 1, 2017), https://www.philanthropy.com/article/Opinion-Fixing-Journalism-s/241610.

[26] Conversation with Dr. Hanna-Attisha, at the MIT Media Lab Disobedience Award ceremony (July 20, 2017) (where Dr. Hanna-Attisha received a Disobedience Award for "defying conventions of peer review as they sought to bring attention to Flint's water crisis before more people were affected"). *See also* Mona Hanna-Attisha, What the Eyes Don't See: A Story of Crisis, Resistance, and Hope in an American City (2018).

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news. There are hundreds of Flint, Michigans out there without local news, so we don't know about them."

The news ecosystems in this country were never perfect. Many communities had little coverage and faced biases affecting what was covered and how stories were reported or missed. News outlets often have neglected covering politics and abuses of power in their reporting and too frequently only reflect the interests of certain segments of the community. In the nineteenth century, political parties sponsored local news, and it was not until the turn of the twentieth century that journalists claimed to be objective.[27] Yet the loss of local journalism has palpable costs to democracy and community well-being. Communities lacking local news have higher rates of public and private corruption, as well as lower voter turnout than those with a steady supply of local news.[28]

There is a certain irony that it is local journalism facing the starkest challenges, because it has been among the most trusted sources of news – far more than national outlets.[29] Indeed, regions that lose local news become more

[27] *See* Michael Schudson, Discovering the News: A Social History of American Newspapers (1981); Michael Schudson, Journalism: Why It Matters (2020).

[28] On voting, *see* Martin Baekgaard et al., *Local News Media and Voter Turnout*, 40 Local Gov't Stud. 518 (2014), https://www.tandfonline.com/doi/abs/10.1080/03003930.2013.834253; Christopher Chapp & Peter Aehl, *Newspapers and Political Participation: The Relationship Between Ballot Rolloff and Local Newspaper Circulation*, 42 Newspaper Rsch. J. (2021), https://journals.sagepub.com/doi/10.1177/07395329211014968; Danny Hayes & Jennifer L. Lawless, *The Decline of Local News and Its Effects: New Evidence from Longitudinal Data*, 80 J. Politics (2018), https://www.dannyhayes.org/uploads/6/9/8/5/69858539/decline.pdf; David Hughes, *Does Local News Stimulate Voter Participation in State Supreme Court Elections?*, 8 J.L. & Cts. 8 (2020), https://www.cambridge.org/core/journals/journal-of-law-and-courts/article/abs/does-local-journalism-stimulate-voter-participation-in-state-supreme-court-elections/CE8E2CBDF4CF9C58DF08A013AE8B05A3. On declines in local news and increases in corruption, *see* Kriston Capps, *The Hidden Costs of Losing Your City's Newspaper*, Bloomberg (May 30, 2018), https://www.bloomberg.com/news/articles/2018-05-30/when-local-newspapers-close-city-financing-costs-rise, and even ideological identities demand more attention; Ted Matherly & Brad N. Greenwood, *No News Is Bad News: Political Corruption, News Deserts, and the Decline of the Fourth Estate*, Acad. Mgmt. Proc. (Aug. 2021), https://www.semanticscholar.org/paper/No-News-is-Bad-News%3A-Political-Corruption%2C-News-and-Matherly-Greenwood/545f14dc04ef25e3927cc940f43208b43b3c43e1; Steven Waldman, *The Local-News Crisis Is Weirdly Easy to Solve*, Atl. (Aug. 8, 2023), https://www.theatlantic.com/ideas/archive/2023/08/local-news-investment-economic-value/674942/.

[29] *See* Sarah Fioroni, *Local News Most Trusted in Keeping Americans Informed About Their Communities*, Knight Found. (May 19, 2022), http://knightfoundation.org/articles/local-news-most-trusted-in-keeping-americans-informed-about-their-communities/; Sarah Fioroni & Knight Foundation, *The Roles of Local News, Personal Networks, and Social Media in Local Political Engagement*, Knight Found. (May 19, 2022), https://knightfoundation.org/articles/the-roles-of-local-news-personal-networks-and-social-media-in-local-political-engagement/; *American Views 2022: Part 2, Trust Media and Democracy*, Knight Found. (Feb. 15, 2023), https://knightfoundation.org/reports/american-views-2023-part-2/; Dean Ridings, *Trusted and Reliable, Local Newspapers Matter to Their Communities*, Summerville J. Scene (Nov. 7, 2023), https://postandcourier.com/journal-scene/opinion/trusted-and-reliable-local-newspapers-matter-to-their-communities/article_70dfb06c-7c9e-11ee-976b-f3c80b717bba.html.

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partisan.[30] Perhaps the lower partisan divisions in local communities reflect how local politics and local issues tend to be less partisan and divisive than national politics.[31] News organizations not only reflect but also help to constitute a "public," a community of interest.[32] Journalists invite people to identify with a community and also stand in for the polity in holding those in power accountable.[33] When the press loses its viability, when it disappears, or when trust in it fades, then social trust and the sense of participation in a shared community also dissipate. Understanding why local news providers are disappearing thus matters for larger issues of social trust and democracy's future, and the following discussion explores contributing factors.

26.2.1 *Actions by Owners*

Some owners of media, such as the Koch brothers and the Murdoch family, have used their position to advance particular ideologies affecting the journalistic pursuits of facts and truth.[34] Consolidation of ownership in broadcasting – Sinclair, as of 2024, owns 185 stations – has produced reductions in local coverage and perhaps diminished diversity in viewpoints.[35] Private equity companies buy

[30] *Did You Know? Regions That Lose News Outlets Become More Partisan*, News Literacy Project, https://newslit.org/tips-tools/did-you-know-loss-of-local-news-outlets/ (last visited June 18, 2024); Matthew P. Hitt et al., *Why Losing Our Newspapers Is Breaking Our Politics*, Sci. Am. (Mar. 26, 2019), https://www.scientificamerican.com/article/why-losing-our-newspapers-is-breaking-our-politics/.

[31] Richard Florida, *Are Local Politics as Polarized as National? Depends on the Issue*, Bloomberg (Apr. 24, 2019), https://www.bloomberg.com/news/articles/2019-04-24/local-politics-aren-t-as-polarized-as-national-politics; Michael Williams, *Keeping Political Partisanship Out of Local Government*, ICMA (Aug. 1, 2021), https://icma.org/articles/pm-magazine/keeping-political-partisanship-out-local-government.

[32] Charles B. Forcey, *Review of Schudson, Michael, The Power of News*, H-Review (Sept. 1997), https://www.h-net.org/reviews/showrev.php?id=1270; Michael Schudson, *Why Conservation Is Not the Soul of Democracy*, 14 Critical Stud. in Mass Commc'n 297, 304–05 (1997).

[33] Forcey, *supra* note 32.

[34] Sasha Chavkin, *The Koch Brothers' Media Investment (Updated)*, Colum. Journalism Rev. (Apr. 22, 2023), https://www.cjr.org/united_states_project/the_koch_brothers_media_investment.php; David McKnight, *Rupert Murdoch's News Corporation: A Media Institution with a Mission*, 30 Hist. J. Film, Radio & Television 303 (2010), https://doi.org/10.1080/01439685.2010.505021. *See* Matea Gold, *The Mercers and Stephen Bannon: How a Populist Power Base Was Funded and Built*, Wash. Post (Mar. 17, 2017), https://www.washingtonpost.com/graphics/politics/mercer-bannon/. Peter Thiel used his resources to bring lawsuits against one outlet (Gawker) and thereby destroy it. Andrew Ross Sorkin, *Peter Thiel, Tech Billionaire, Reveals Secret War with Gawker*, N.Y. Times (May 25, 2016), https://www.nytimes.com/2016/05/26/business/dealbook/peter-thiel-tech-billionaire-reveals-secret-war-with-gawker.html.

[35] Sarah Ellison, *Sinclair's Recipe for TV News: Crime, Homelessness, Illegal Drugs*, Wash. Post (Feb. 16, 2024), https://www.washingtonpost.com/politics/2024/02/16/sinclair-broadcasting-conservative-media-trump/; Lisa Marshall, *Media Consolidation Takes Toll on Local News But Doesn't Necessarily Bias Coverage*, https://www.colorado.edu/today/2021/10/20/media-consolidation-takes-toll-local-news-doesnt-necessarily-bias-coverage; Levy, *supra* note 4.

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local news outlets and typically proceed to cut reporters, original stories, and local coverage.[36]

Often, the entities are actually in the black, but the new owners strip-mine them, squeezing profits from subscriptions and sales while destroying their ongoing viability.

A few notable news enterprises have found wealthy investors who treat the enterprises in part as philanthropies, with commitments to editorial independence, but still seek to make them financially going concerns even if that means layoffs.[37] The chief examples are Jeff Bezos and The Washington Post and Patrick Soon-Shiong and the L.A. Times, who both pursued a civic mission but, over time, appear to be losing the willingness to foot the bills.

26.2.2 *Migration of Advertising Dollars to Social Media*

The elephant in the room is the devastation to the business model of private news enterprises posed by social media platforms. It probably started with Craigslist: The reliable revenue source of local advertising shifted from local media to online networks.[38] Social media sites have, over time, drawn the lion's share of advertising revenues while taking advantage of the technology to collect detailed data about the consumers and to target ads based on that data. The platforms also offer unlimited space, permitting videos and copy, along with metrics available to the sponsoring companies at any time. The data platforms – including Amazon, Google, Netflix, YouTube, Facebook (Meta), and TikTok – assemble audiences far larger than any local news outlet ever could. Even local retailers send their advertising to the platforms to follow the attention of consumers.[39]

[36] Margot Susca, Hedged: How Private Investment Funds Helped Destroy American Newspapers and Undermine Democracy (2024); Brier Dudley, *Study: Private Equity Firms Buying Newspapers Cut Local News*, Seattle Times (Feb. 18, 2022), https://www.seattletimes.com/opinion/study-private-equity-firms-buying-newspapers-cut-local-news/.

[37] Lukas I. Alpert, *How Biotech Billionaire Patrick Soon-Shiong's Los Angeles Times Investment Went Wrong*, MarketWatch (Jan. 23, 2024, 3:52 PM), https://www.marketwatch.com/story/how-biotech-billionaire-patrick-soon-shiongs-los-angeles-times-investment-went-wrong-ec1d916d; Noah Kirsch, *Journalists Are Angry About Layoffs at The Atlantic, Owned by Billionaire Laurene Powell Jobs*, Forbes (May 21, 2020, 7:37 PM), https://www.forbes.com/sites/noahkirsch/2020/05/21/journalists-are-angry-about-layoffs-at-the-atlantic-owned-by-billionaire-laurene-powell-jobs/; Benjamin Mullin & Katie Robertson, *A Decade Ago, Jeff Bezos Bought a Newspaper. Now He's Paying Attention to It Again*, N.Y. Times (July 22, 2023), https://www.nytimes.com/2023/07/22/business/media/jeff-bezos-washington-post.html.

[38] *The Evolution of Classified Ads*, ADvendio (June 27, 2022), https://www.advendio.com/evolution-classified-ads ("In the early 2000's the internet became more readily available to households which posed a bigger opportunity for digital classifieds to reach a larger audience and thus, increase profitability. With this jump from print to digital, the figure of newspaper ad revenue reduced by over half to 18%.").

[39] Ephraim Schwartz, *Ad Dollars Drive Online Move*, InfoWorld (Apr. 2, 2007, 5:00 PM), https://www.infoworld.com/article/2662445/ad-dollars-drive-online-move.html.

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Digital technologies accelerate trends pursued by broadcasting and cable businesses: "narrowcasting," which focuses only on specific segments of potential viewers and users. Following advice from Roger Ailes, Rupert Murdoch created Fox Media as an enterprise that unabashedly serves as the cheerleader and propaganda machine for one political party rather than seeking to serve diverse audiences.[40] Digital media has further refined narrowcasting and unbundled content.[41] Rather than combining political news with sports, recipes, weather, and crossword puzzles, digital media allows consumers to bypass human editors, which disintegrates traditional media enterprises. Legacy media companies were slow to adapt, and when they did, they too often gave their content away, which contributed to the expectation that content could be found online for free. Advertising dollars shifted from newspapers and magazines to social media and digital search platforms. These platforms target people based on the data about their prior uses, which reveals their interests. This shift has decimated cross-subsidies and serendipity as features of the information ecosystem.

26.2.3 *Legal Treatment and Practices of Digital Media*

Online interactive networks invite people to participate in peer-to-peer communications and to access businesses, entertainment, and news sources with no fee other than sharing their personal data. Through these platforms, users can connect with friends and family, build larger social and professional networks, and find information.[42] These platforms offer users the ability to post and exchange information, photographs, and videos, as well as to become active producers, not just consumers, in the sharing networks.[43]

Individuals regularly embed copyrighted materials (and, perhaps with more legal safety, post links to the digital materials they find online), including copyrighted

[40] David Plotz, *Fox News Channel: It's Not Fair, It's Not Balanced. So What?*, Slate (Nov, 23, 2000), https://slate.com/news-and-politics/2000/11/fox-news-channel.html; Kelefa Sanneh, *What Roger Ailes Figured Out*, New Yorker (May 24, 2017), https://www.newyorker.com/news/news-desk/what-roger-ailes-figured-out. For a media review of a media retelling of this media story, *see* Daniel D'Addario, *TV Review: "The Loudest Voice,"* Variety (June 26, 2019), https://variety.com/2019/tv/reviews/the-loudest-voice-review-roger-ailes-showtime-1203243626/.

[41] Gary A. Bolles, *How the Internet Evaporates the Middle: Unbundling Media*, Medium (Oct. 17, 2014), https://medium.com/@gbolles/unbundling-media-6c3e79bc2d95; *Unbundled Media Poses a Challenge*, Forbes (Apr. 3, 2006), https://www.forbes.com/2006/03/31/media-content-tech-cx_04030xford.html?sh=b5122e9cf4bf.

[42] Dylan Selterman, *Why Do People Even Use Social Media?*, Psych. Today (July 18, 2023), https://www.psychologytoday.com/us/blog/the-e-resistance-hypothesis/202307/why-do-people-even-use-social-media; Simon Kemp, *Digital 2024: Global Overview Report*, DataReportal (Jan. 31, 2024), https://datareportal.com/reports/digital-2024-global-overview-report (majorities of users identify social connection, finding information, and entertainment as key reasons for social media use).

[43] Abhisa Pal, *Motivations of Individuals Participating in Social Media: A Cultural Perspective*, 14 J. Modern Acct. & Auditing 315 (June 2018), https://doi.org/10.17265/1548-6583/2018,06.003.

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journalism. In practice, the platform companies do little to enforce copyrights held by the original creators of the materials, and the burden falls on the creators who are not well situated to monitor global social media networks.[44] In addition, copyright laws have complex exceptions, and the rules vary across jurisdictions.[45] In the United States, a further complication is the shield from liability Congress created for social media companies through Section 230 of the Communications Decency Act.[46] That provision also protects social media companies from liability for falsehoods, defamation, and other legal vulnerabilities faced by conventional media companies.[47]

At the same time, social media platforms work with algorithms designed to maximize people's "engagement," which boosts material that elicits outrage and polarization, including misinformation and disinformation.[48] The algorithms select and amplify materials while seeking to optimize the time people spend online and, hence, the number of ads they see. And outrage fuels "virality," or massive spread, which in turn increases profits.[49] But the casualties are public trust in news, individual thought, the health of the polity, and even individuals' health (due to misinformation and distrust related to health news).[50]

[44] Abou Naja, *Copyright Infringement on Social Media: How to Prevent*, Abou Naja Intell. Prop. (Apr. 25, 2024), https://abounaja.com/blogs/copyright-infringement-on-social-media; Matt D'Angelo, *How to Avoid Copyright Infringement in the Age of Social Media*, Bus. News Daily (Oct. 23, 2023), https://www.businessnewsdaily.com/4693-legal-image-usage.html.

[45] *See* sources cited in *supra* note 44.

[46] *See* Minow, Saving the News, *supra* note 1, at 53, 107–13; *Section 230 Protections*, Elec. Freedom Forum, https://www.eff.org/issues/bloggers/legal/liability/230 (last visited June 18, 2024).

[47] Congressional Research Service, *Section 230: An Overview* (Jan. 4, 2024), https://crsreports.congress.gov/product/pdf/R/R46751.

[48] Gizem Ceylan, *How Social Media Rewards Misinformation*, Yale Sch. Management (Mar. 31, 2023), https://insights.som.yale.edu/insights/how-social-media-rewards-misinformation; Anastasia Micich & R. J. Cross, *How Misinformation on Social Media Has Changed News*, U.S. PIRG Educ. Fund (Nov. 22, 2023), https://pirg.org/edfund/articles/misinformation-on-social-media/.

[49] *See* Jon Evans, *Facebook Isn't Free Speech, It's Algorithmic Amplification Optimized for Outrage*, TechCrunch (Oct. 20, 2019), https://techcrunch.com/2019/10/20/facebook-isnt-free-speech-its-algorithmic-amplification-optimized-for-outrage/. For further details and proposal for reforms, *see* Sara Bundtzen, *"Suggested for You": Understanding How Algorithmic Ranking Practices Affect Online Discourses and Assessing Proposed Alternatives*, Inst. for Strategic Dialogue (2022), https://www.isdglobal.org/wp-content/uploads/2022/12/Understanding-How-Algorithmic-Ranking-Practices-Affect-Online-Discourses-and-Assessing-Proposed-Alternatives.pdf.

[50] Camila Mont'Alverne et al., *The Trust Gap: How and Why News on Digital Platforms Is Viewed More Skeptically Versus News in General*, Reuters Inst. (Sept. 22, 2022), https://reutersinstitute.politics.ox.ac.uk/trust-gap-how-and-why-news-digital-platforms-viewed-more-sceptically-versus-news-general; Yasmim Mendes Rocha et al., *The Impact of Fake News on Social Media and Its Influence on Health During the COVID-19 Pandemic: A Systematic Review*, Z Gesundh Wiss. 1 (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8502082/. On the jeopardy to thought, *see* Robert Post, *The Internet, Democracy, and Misinformation, in*

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26.3 POTENTIAL RESPONSES

Policymakers can pursue several kinds of responses. The first approach would tackle the forces undermining the viability of local news by holding social media platform companies to the standards applied to responsible actors and by protecting the companies' readers and users. The second would bolster existing local newsgatherers and providers, as well as nurture potential ones, while also cultivating the public's demands and taste for their efforts. The third approach would promote innovations in business models for local news, in newsgathering and dissemination, and in the institutional arrangements affecting the news ecosystem.

26.3.1 *Responsibilities of Social Media Companies*

Amazon, Alphabet, and Meta, which operate social media activities, are among the companies with the largest market valuations in history.[51] They can and should be held to the same duties that apply to other companies, including paying for the use of copyrighted materials and meeting consumer protection responsibilities, such as guarding against fraud and defamation.[52] Efforts to ensure such payments are already underway in other countries. For example, Canada's Online News Act, adopted in 2022, and Australia's News Media Bargaining Code, passed in 2021,[53] are policies keyed to the negotiations between journalism entities and tech platforms. These laws aim to establish a bargaining code that requires social media companies to compensate news organizations for the use of content that they produce.

Tech companies resist efforts to hold them accountable, and in the United States, they successfully lobbied for and retained legal insulation from liability on their side. That legal insulation – provided in Section 230 of the Communication Decency Act – once could be justified as protection for fledging enterprises in the early days of the internet. That justification no longer makes sense, given the enormous success of large platform companies. Hence, Congress should amend the statutory immunity of platforms from legal liability.[54] If individual litigation to enforce laws imposing

Disinformation, Misinformation and Democracy (Ronald J. Krotoszynski, Jr. et al. eds., forthcoming 2024).

[51] Amazon is not only an online retailer, host of other retailers, and provider of cloud services; it increasingly provides social media functions. Kiri Masters, *Amazon Is Looking More Like a Social Media Platform. Here's How Brands Can Benefit*, Forbes (Aug. 29, 2022, 1:31 PM), https://www.forbes.com/sites/kirimasters/2022/08/29/amazon-is-looking-more-like-a-social-media-platform-heres-how-brands-can-benefit/.

[52] *See* Minow, Saving the News, *supra* note 1, at 104–12, 129–38.

[53] Selen Ozturk, *How Can Local Media Face the News Crisis?*, Ethnic Media Servs. (Feb. 5, 2024), https://ethnicmediaservices.org/news-exchange/how-is-local-media-facing-the-news-crisis/.

[54] Mountains of scholarship and policy proposals on the subject include *Danielle Draper, Section 230: Are Online Platforms Publishers, Distributors, or Neither?*, Bipartisan Pol'y Org. (Mar. 13, 2023), https://bipartisanpolicy.org/blog/section-230-online-platforms/; Rosie Moss, *The Future of Section 230: What Does It Mean for Consumers?*, Nat'l Ass'n Atty's Gen.

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liability are inadequate or inefficient, legislative reform should make such duties clear and enforceable or condition the immunity on their fulfillment.[55] Alternatively, Congress could tax digital ads to support local journalism, which would place responsibility on critical activities underlying the financial challenges faced by local news outlets.[56] Currently, tech companies externalize the effects of their activities, but the government could use taxation to place the responsibilities on the shoulders of the internet companies as opposed to the community at large.

26.3.2 *Protect Users and Consumers*

In addition to enforcing terms of service agreements and consumer protection laws, new laws could protect digital media users from some of the platform companies' detrimental effects on local news without jeopardizing free speech.[57] Other potential reforms could shift power to users of digital media by requiring transparency and explanations of the algorithms companies use to select content or by putting content curation in the hands of users.[58] A thoughtful proposal along these lines would demand that internet companies permit users to install "middleware," or software that gives users more control over content selection and moderation, thus unbundling editorial control and the other functions of the social media platforms.[59]

(July 21, 2023), https://www.naag.org/attorney-general-journal/the-future-of-section-230-what-does-it-mean-for-consumers/; Elliot Sher, *Amending Section 230 to Reform Social Media and Address Political Extremism*, The Gate (University of Chicago) (April 11, 2023), http://uchicagogate.com/articles/2023/4/11/amending-section-230-reform-social-media-and-address-political-extremism/; Michael D. Smith & Marshall Van Alstyne, *It's Time to Update* Section 230, Harv. Bus. Rev. (Aug. 12, 2021), https://hbr.org/2021/08/its-time-to-update-section-230.

[55] *See* Jessica Gutierrez Alm, *"Sharing" Copyrights: The Copyright Implications of User Content in Social Media*, 35 Hamline J. Pub. L. & Pol'y 104 (2014), https://digitalcommons.hamline.edu/jplp/vol35/iss1/2/.

[56] *See* Julia Angwin, *Can Taxing Big Tech Save Journalism?*, Markup (July 16, 2022), https://themarkup.org/newsletter/hello-world/can-taxing-big-tech-save-journalism; Paul Romer, *A Tax That Could Fix Big Tech*, N.Y. Times (May 6, 2019), https://www.nytimes.com/2019/05/06/opinion/tax-facebook-google.html; Lucia Walinchus, *Opinion: We Need a News Utility*, Poynter (June 16, 2022), https://www.poynter.org/commentary/2022/national-tax-support-journalism/.

[57] Reforms should avoid empowering actions by repressive governments in the name of cracking down on misinformation and disinformation. *See* Gabrielle Lim & Samantha Bradshaw, *Chilling Legislation: Tracking the Impact of "Fake News" Laws on Press Freedoms Internationally*, Ctr. Int'l Media Assistance (July 19, 2023), https://www.cima.ned.org/publication/chilling-legislation/.

[58] Bundtzen, *supra* note 49.

[59] Francis Fukuyama et al., *Middleware for Dominant Digital Platforms: A Technological Solution to a Threat to Democracy*, Stan. Cyber Pol'y Ctr. (2021), https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/cpc-middleware_ff_v2.pdf. For a litigation effort on a related theme, *see* Ethan Zuckerman, *I Love Facebook. That's Why I'm Suing Meta*, N.Y. Times (May 5, 2024), https://www.nytimes.com/2024/05/05/opinion/facebook-court-internet-meta.html.

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Congress has required broadcast and cable companies to carry local news, so might social media companies have similar duties? The immediate objection to this proposal is that the scarcity of the airwaves justified such regulations of broadcasting.[60] Yet the Supreme Court also upheld "must-carry" requirements on cable companies, despite the lack of scarcity, because it recognized the government's compelling interest in ensuring state and local content and public media options.[61] If governments lack the ability to impose similar duties on social media companies, perhaps some inducements – such as conditioning Section 230 immunity on such duties – could be enacted.

26.3.3 *Increasing Support for Local News by Amplifying Both Supply and Demand*

Financial support for local news can be increased through philanthropy. This is the strategy adopted by a coalition of foundations forming the "Press Forward" initiative.[62] Committing $500 million nationwide with a plan to raise another $500 million for local and regional efforts, Press Forward is devoted to strengthening trusted local newsrooms, improving the infrastructure for producing and disseminating local news, redressing inequities in coverage and practices, and developing policies to expand access to local news and information.[63] Converting for-profit news organizations to nonprofit status can open avenues for support by encouraging donations by individuals in addition to large-scale support from philanthropies.[64] In addition, for-profit news organizations can establish affiliated foundations for support.[65]

[60] *See* Red Lion v. FCC, 395 U.S. 367 (1969).

[61] *See* Turner Broad. Co. v. FCC, 520 U.S. 180 (1997); *Cable Television*, Federal Commc'ns Comm'n (Mar. 19, 2024), https://www.fcc.gov/media/engineering/cable-television.

[62] *Democracy Flourishes When People Have Access to Reliable Information*, Press Forward, https://www.pressforward.news/; Alex Daniels, *After Shaky Start, Philanthropy Coalition's $500 Million Local News Effort Takes Shape*, Chron. Philanthropy (Apr. 25, 2024), https://www.philanthropy.com/article/after-shaky-start-philanthropy-coalitions-500-million-local-news-effort-takes-shape.

[63] Press Release, MacArthur Foundation, $48 Million in Support of Local News, Initial *See*ding of Press Forward Collaborative (Dec. 18, 2023), https://www.macfound.org/press/press-releases/macarthur-announces-$48-million-in-support-of-local-news-initial-*see*ding-of-press-forward-collaborative.

[64] Kathleen McElroy et al., *Considerations for Community Newspaper Conversion to Nonprofit*, U. Tex. Sch. Journalism (2024), https://journalism.utexas.edu/innovation/considerations-community-newspaper-conversion-nonprofit; Institute for Nonprofit News, *Quick Guide to Converting a For-profit to a Nonprofit News Outlet*, https://inn.org/research/guides/conversion-guide/ (last visited June 18, 2024); Margaret Renkl, *Can Nonprofit News Save the South from Itself?*, N.Y. Times (Apr. 29, 2024), https://www.nytimes.com/2024/04/29/opinion/nonprofit-media-journalism.html.

[65] *See*, *e.g.*, Teresa Parker & Ed Miller, *About Us*, Provincetown Independenthttps://provincetownindependent.org/about-provincetown-independent/ (a beneficial corporation,

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The government can also support the news ecosystem through tax exemptions for nonprofit organizations and favorable tax treatment for donations. Tax exemptions for philanthropic aid already support nonprofit news operations, including ProPublica and other media watchdogs that often engage in reporting that involves expensive big-data analyses. The government should preserve and expand tax deductions for such contributions.[66] The Local News Sustainability Act, which is currently pending in Congress, would go further and allow tax deductions for individuals who take out subscriptions to local media outlets and for businesses that take out ads in local media outlets. It would also exempt local media hires of journalists from payroll taxes.[67] In these ways, government support works through intermediary organizations and individuals, which helps to insulate the editorial judgments from government influence. Similarly, the government can impose requirements on the delivery systems, remote from decisions about what to cover and how. The United States government, for example, has required telecommunications companies to provide universal service, and the government itself has subsidized broadband where individuals and communities cannot afford it.[68]

Strengthening local news through direct government support provides a parallel avenue, although this raises risks of government control and influence. For example, Native Nations have long provided direct aid to their local news outlets.[69] Government licenses for broadcasting are also a form of subsidy, given that the government only charges nominal fees for the rights to use the scarce good of public

committed to a public service as well as profits) and local journalism project, receiving donations, https://www.localjournalismproject.org/give (last visited June 18, 2024).

[66] Collaborations through which some news organizations support data analyses through cooperative agreements are the kind of effort that can help and should not be impaired by antitrust or other legal concerns. *See* Ken Doctor, *Newsonomics: The New Knight-Lenfest Initiative Gives a Kick in the Pants to America's Metro Newspapers*, NiemanLab (Feb. 13, 2017), http://www.niemanlab.org/2017/02/newsonomics-the-new-knight-lenfest-initiative-gives-a-kick-in-the-pants-to-americas-metro-newspapers/. Slanted imitators are bound to arise, requiring further watchdogs.

[67] Sarah Scire, *Some Questions (and Answers) About the Local News Sustainability Act*, NiemanLab (Sept. 14, 2021), https://www.niemanlab.org/2021/09/some-questions-and-answers-about-the-local-journalism-sustainability-act/.

[68] *Universal Service*, FCC, https://www.fcc.gov/general/universal-service (last updated June 13, 2024); *Affordable Connectivity Program*, Internet for All, https://www.internetforall.gov/program/affordable-connectivity-program (last visited June 19, 2024).

[69] *See* Sally Smith, *Native Americans in Contemporary News Media*, Am. Archive Pub. Broad, https://americanarchive.org/exhibits/native-narratives/contemporary-news (last visited June 19, 2024) (tracing support back to the Cherokee Nation's support for the Cherokee Phoenix in 1828). For riveting accounts of the ultimately successful effort by journalists in one tribe to secure press independence alongside financial support for news media, *see* Rebecca Landsberry-Baker & Joe Peeler, *Bad Press* (2023), https://badpress.film/ (award-winning documentary film); and Nancy Wetzman, *Documentary Tells Tale of Muskogee Free Press Constitutional Amendment*, State Ct. Report (Nov. 29, 2023), https://statecourtreport.org/our-work/analysis-opinion/documentary-tells-tale-muskogee-nation-free-press-constitutional (reviewing documentary *Bad Press*).

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airway frequencies. To strengthen local news coverage, the Federal Communications Commission has proposed a rule that would give priority and expedited license renewals to local stations that provide at a minimum three hours of local programming.[70] (One advocacy organization endorses the proposal but wants the minimum raised to 10 hours.) In the past, licenses predicated on the scarcity of airwaves included conditions that the broadcasters had a duty of public interest coverage. Yet, with the advent of digital delivery systems, that predicate is gone.[71] Instead, the scarcity to justify government regulation today may be the limitations of human attention.

Although it should never entirely crowd out privately funded media, public media created for public purposes helps meet crucial needs for an "information commons" and for competition with private companies, which are incentivized by profit maximization. Surveys have rated public media as the most or among the most trustworthy news organizations for many years.[72] Public media – including websites, podcasts, documentaries, and daily news reports – can make particular differences in addressing holes created by private actors, such as local news deserts.[73] Further bolstering of public media would involve adjustment of rules regarding underwriting by private sources and revision of the Copyright Act's treatment of public media to reflect new distribution platforms.[74]

Growing the public demand for reliable news is also important. Media education can equip people to become informed and aware consumers of media of all sorts, including the risks and practices of digital media.[75] Digital media literacy is associated with greater political engagement and with exposure to diverse viewpoints.[76]

[70] Steven Waldman, *How the FCC Could Help Save Local News*, Rebuild Local News (Mar. 15, 2024), https://www.rebuildlocalnews.org/how-the-fcc-could-help-save-local-news/.

[71] *See* Josephine Soriano, *The Digital Transition and the First Amendment: Is It Time to Reevaluate Red Lion's Scarcity Rationale?*, 15 B.U. Pub. Int'l L.J. 341 (2006), https://www.bu.edu/pilj/files/2024/04/Soriano.pdf.

[72] Linley Sanders, *Trust in Media 2022: Where Americans Get News and Who They Trust for Information*, YouGov (Apr. 5, 2022), https://today.yougov.com/politics/articles/41957-trust-media-2022-where-americans-get-news-poll.

[73] Adam Ragusea, *Topple the Towers: Why Public Radio and Television Stations Should Radically Reorient toward Digital-First Local News, and How They Could Do It*, Knight Found. (2017), https://www.knightfoundation.org/public-media-white-paper-2017-ragusea.

[74] Blair Levin, *Public Media at 50: What's Next for the Information Commons?*, Knight Found. (2017), https://knightfoundation.org/public-media-white-paper-2017-levin/.

[75] *See* Emily Bonilla, *Why Media Literacy Education Matters in the Era of Fake News*, TNTP (Dec. 13, 2016), https://tntp.org/blog/post/why-media-literacy-education-matters-in-the-era-of-fake-news; *What Is Digital Literacy?*, Common Sense Media (June 4, 2020), https://www.commonsensemedia.org/articles/what-is-digital-literacy. A recent study shows that children often feel neglected, misrepresented, or depressed by news they encounter in varied media and also have trouble distinguishing fake news stories from real ones. *News and America's Kids: How Young People Perceive and Are Impacted by the News*, Common Sense Media (Mar. 2017), https://www.commonsensemedia.org/research/news-and-americas-kids.

[76] Joseph Kahne et al., *Digital Media Literacy Education and Online Civic and Political Participation*, 6 Int'l J. of Commc'n 1 (2012), http://ijoc.org/index.php/ijoc/article/view/999.

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Teaching members of the public how to distinguish user-generated content or stories exchanged by friends from professionally created or vetted material would help users identify and assess the source and reliability of the information they encounter online.[77]

26.3.4 *Problems with Subsidies by the Government and by Philanthropy*

Some federal and state initiatives propose incentivizing financial support for local outlets that hire new journalists, as well as incentives for individuals to subscribe to, and businesses to advertise with, local news entities. For instance, New York State has committed $90 million to support local news.[78] Yet both private philanthropies and governments seeking to boost local news through financial support face two immediate challenges. First, they must determine who or what should be eligible. For example, should a solo blogger qualify? And how can they exclude fake or entirely partisan entities?[79] Second, they must ensure that the news enterprise can maintain its editorial independence and avoid the risks of "capture" or of editorial bias in favor of the funding sources.[80]

These questions expose serious problems with giving the government the power to identify who is and who is not a journalist for purposes of funding; in fact, giving this task to philanthropy is also a problematic grant of power and potential curtailment of free speech.[81] Indeed, the very fact of governmental subsidies can

[77] *See* Katie Benner, *Snapchat Remakes Itself, Splitting the Social from the Media*, N.Y. Times (Nov. 29, 2017), https://www.nytimes.com/2017/11/29/technology/snapchat-redesign-social-media.html.

[78] Cameron Joseph, *New York Just Committed $90 Million to Help Save Local Journalism. Will It Work?*, Colum. Journalism Rev. (May 6, 2024), https://www.cjr.org/the_media_today/new_york_local_journalism_funding.php (noting that "eligible outlets can apply to receive a refundable tax credit of up to $25,000 for the first $50,000 worth of employees' salaries, with a per-company cap of $300,000."). *See* Mike Blinder, *New York State Implements Historic Tax Credits to Support Local Newspaper and Broadcast News Media*, Editor & Publisher (Oct. 20, 2024), https://www.editorandpublisher.com/stories/new-york-state-implements-historic-tax-credits-to-support-local-journalism,249316.

[79] David Martin Davies, *Pink Slime News Is Spreading in News Deserts*, Tex. Pub. Radio (Apr. 13, 2023, 10:06 AM), https://www.tpr.org/podcast/the-source/2023-04-13/pink-slime-news-is-spreading-in-news-deserts; Priyanjana Bengani, *Hundreds of "Pink Slime" Local News Outlets Are Distributing Algorithmic Stories and Conservative Talking Points*, Colum. Journalism Rev. (Dec. 18, 2019), https://www.cjr.org/tow_center_reports/hundreds-of-pink-slime-local-news-outlets-are-distributing-algorithmic-stories-conservative-talking-points.php.

[80] On capture risks, *compare* Kate Wright et al. Capturing News, Capturing Democracy: Trump and the Voice of America (2024) *with* Legal Services Corp. v. Velazquez, 531 U.S. 533 2001) (government cannot deny funding to publicly supported lawyers seeking to sue the government).

[81] *See* George Will, *Local Media Is Struggling. Government Support Would Make It Worse*, Wash. Post (Feb. 21, 2024), https://www.washingtonpost.com/opinions/2024/02/21/government-subsidies-newspapers/.

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undermine the perception and reality of press independence and presents a frustrating paradox: With public funding, the perception of independence, and thus the public's trust, in the news would be further ruptured; yet without public funding, the crucial function of the press holding the government accountable is vitiated.

Potentially promising solutions to identifying who should count as a journalist for purposes of eligibility for funding could come from shifting the selection process to peers or independent private entities. Peer-operated accreditation processes already operate in the academic sphere; the European Union hosts a press council to strengthen self-regulation and journalistic ethics; and guidelines can commit to plural and diverse ownership, management, and editorial judgments.[82] These examples suggest that the methods for identifying who should be eligible for public or private support can be separated from the funder while simultaneously strengthening journalistic norms.

To guard against the danger of the government controlling the media it funds, the United States, Great Britain, and other nations have established mechanisms to minimize government influence on public media outlets.[83] A royal charter in Britain established the BBC as an independent entity, making it a quasi-autonomous nongovernmental entity.[84] Criticisms of bias in the BBC's coverage arise but interestingly, the critiques themselves reflect contrasting and conflicting viewpoints. Because its level of financial support was fixed from the start and tied to license fees attached to television and radio sets, the BBC has been spared the difficulties of needing to seek renewed government support through the politicized legislative process. Yet, as new generations rely on digital devices, this insulation is under pressure, and new funding models are under review.[85]

[82] *See Accreditation & Recognition: About Accreditation*, Council for Higher Educ. Accreditation, https://www.chea.org/about-accreditation (last visited June 19, 2024); *Strengthening Journalistic Ethics and Self-Regulation in Europe*, Press Councils.eu, https://www.presscouncils.eu/ (last visited June 19, 2024). Commitments to pluralism can be embedded in institutional designs, such as the multiperson selection teams allocating federal arts and humanities funds, or in the parallel work of diverse funders. *See* Heather Templeton Dill et al., *We Disagree on Many Things, but We Speak with One Voice in Support of Philanthropic Pluralism*, Chron. Philanthropy (Apr. 13, 2023), https://www.philanthropy.com/article/we-disagree-on-many-things-but-we-speak-with-one-voice-in-support-of-philanthropic-pluralism. *See also Merit Review*, U.S. Nat'l Sci. Found., https://www.nsf.gov/bfa/dias/policy/merit_review/ (last visited June 19, 2024).

[83] Minow, Saving the News, *supra* note 1, at 138–42 (steady funding in Britain based on tax on hardware insulated revenues for the BBC to some degree from immediate politics). On recent challenges to the historic funding model posed by migration to internet distribution and calls for new forms, *see* Heather Evennett, Future Funding of the BBC: Lords Committee Report (2022), https://lordslibrary.parliament.uk/future-funding-of-the-bbc-lords-committee-report/.

[84] *See* Alan Pifer, *The Quasi-Non-Governmental Organisation*, in Public Policy and Private Interests: The Institutions of Compromise 380–90 (D.C. Hague et al. eds., 1975).

[85] House of Lords, Future Funding of the BBC: Lords Committee Report (Dec. 7, 2022), https://lordslibrary.parliament.uk/future-funding-of-the-bbc-lords-committee-report/.

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To support its public media, the United States created an intermediary entity, the Corporation for Public Broadcasting, which distributes federal dollars to local public media, including more than 1,000 locally managed radio stations and 360 locally managed television broadcasters.[86] Those entities, in turn, seek and receive funding from varied sources, including local donors and philanthropies, state and local governments, and business sponsorships. But technological and economic changes are also threatening this funding model.[87] If this chapter's analysis of the risks from losing journalism is correct, the nation must pursue new funding approaches and creative ways to guard against distortion.[88]

These funding issues affect the supply of public media, but efforts to boost the demand for quality local news are no less important.

26.3.5 *Further Innovations to Address the Local News Crisis*

By definition, local news does not scale large enough to generate national advertising support, so further innovations are needed.[89] Students in colleges and even high schools already provide valuable coverage of local issues and events. Schools could support these efforts through their own resources, philanthropy, and government subsidies to their institutions. For example, Miami University decided to dedicate part of its student newspaper to local news after a local outlet went out of business.[90] Another potential solution is to deploy artificial intelligence tools to issue reports of local government meetings, which would leave more time for the remaining journalists to do investigative work.[91] Such efforts, however, are controversial due to questions about the reliability of the tools and concerns about threatening the employment of human journalists.[92]

[86] *About Public Media*, Corp. for Pub. Broad., https://www.cpb.org/aboutpb (last visited June 19, 2024).

[87] *Id.*; *see* Howard Husock, *The Truth About NPR Funding and Its Possible Future*, The Hill (Apr. 17, 2023), https://thehill.com/opinion/campaign/3950550-the-truth-about-nprs-funding-and-its-possible-future/.

[88] *See* Heidi Kitrosser, *Distorting the Press*, *in* The Future of Press Freedom, *supra* note 10, at 391.

[89] *See* Christina Koningisor & Jacob Noti-Victor, *Innovation Policy and the Press*, *in* The Future of Press Freedom *supra* note 10, at 437.

[90] David Brancaccio & Alex Schroeder, *Solutions for Local News Deserts*, Marketplace Morning Report (Apr. 9, 2024), https://www.marketplace.org/2024/04/09/local-news-outlets-business-model-solutions/.

[91] Mark Caro, *AI Is Disrupting the Local News Industry. Will It Unlock Growth or Be an Existential Threat?*, Poynter (May 8, 2024), https://www.poynter.org/business-work/2024/medill-report-impact-ai-local-news-business-models/; Vikram Oberoi, *How Citymeetings.nyc Uses AI to Make It Easy to Navigate City Council Meetings* (Mar. 29, 2024), https://vikramoberoi.com/posts/how-citymeetings-nyc-uses-ai-to-make-it-easy-to-navigate-city-council-meetings/.

[92] *Id.*; Will Henshall, *Experts Warn Congress of Dangers AI Poses to Journalism*, Time (Jan. 10, 2024), https://time.com/6554118/congress-ai-journalism-hearing/.

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Some press advocates propose constructing shared infrastructures for civic news functions and shared "back office" operations for diverse local enterprises.[93] Experiments using short message services (SMS) can supply local information based on people's indicated interests.[94] However, several questions remain: What durable sources of funding can we secure, and how can we ensure diverse sources of news? What measures can we implement to guard against floods of disinformation and misinformation or the increasing proliferation of different information worlds? Focusing on the local news problem may offer a more tractable approach and allow us to build on the sources of trust that remain in this era of distrust.

26.4 REFLECTIONS

Alarm about diminishing local news operations has become to stimulate responses. Philanthropies, governments, and innovators in business and technology are taking action, but it is too soon to tell whether the results will sustainably strengthen reliable and abundant sources of local news in the United States. Failure, however, risks democratic governance and trust, increased public and private corruption, and jeopardy to the health of individuals and communities.

Long-standing traditions of governmental and private investments in newsgathering and reporting offer legal and practical foundations for new reforms, but the challenges to local news in an age of large-scale digital communications require innovation, persistence, and care.

[93] Ken Doctor, *Hard Truths About Reviving Local News*, Nieman Reports (Sept. 14, 2023), https://niemanreports.org/articles/9-hard-truths-about-reviving-local-news/; Ethan Zuckerman, *The Case for Digital Public Infrastructure*, Knight First Amendment Institute at Columbia University (Jan. 17, 2020), https://knightcolumbia.org/content/the-case-for-digital-public-infrastructure.

[94] Katie Hawkins-Gaar, *"It Doesn't Look Like Conventional Journalism": Local Newsrooms Using SMS and Messaging to Reach Audiences*, Press Forward (Mar. 14, 2024), https://www.pressforward.news/it-doesnt-look-like-conventional-journalism-press-forward-funders-support-newsrooms-using-sms-and-messaging-to-reach-audiences/.

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