

**BREAKING THE NEWS — JOURNALISM,  
COMPETITION, AND THE EFFECTS  
OF MARKET POWER ON A FREE PRESS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COMPETITION POLICY,  
ANTITRUST, AND CONSUMER RIGHTS  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
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**WEDNESDAY, FEBRUARY 2, 2022**

UNITED STATES SENATE,  
SUBCOMMITTEE ON COMPETITION POLICY, ANTITRUST,  
AND CONSUMER RIGHTS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice at 3:00 p.m., in Room 226, Dirksen Senate Office Building, Hon. Amy Klobuchar, Chair of the Subcommittee, presiding.

Present: Senators Klobuchar [presiding], Blumenthal, Booker, Ossoff, Lee, Hawley, and Blackburn.

Also present: Senators Durbin and Padilla.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,  
A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Chair KLOBUCHAR. Thank you, everyone. I call to order this hearing of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights entitled, Breaking the News—Journalism, Competition and the Effects of Market Power on a Free Press.

I want to welcome our witnesses. We have votes going on right now, so Senator Lee and I will be going back and forth, as well as some of the other Senators during this time. I want to thank him and his staff for working with us to put together this hearing as well as my own staff, Marc and Avery and Keagan, for the work they do every day.

Some of you may know my dad was a newspaperman. As a reporter and a columnist in the Twin Cities, he covered it all in an estimated 8,400 columns and about 12 million words in which he interviewed everyone from Ronald Reagan, Senator Lee, to Ginger Rogers to Chicago Bears Coach Mike Ditka. I won't say which interview was his favorite. He was proud to be a newspaperman. As you can imagine, in my house growing up, it was impossible to forget the importance of a free press.

That is what we are here to talk about today, to talk about the critical work news outlets around the country are doing and explore solutions to some of the existential challenges facing journalism.

It is truly local news that reports on the issues that people face in their everyday lives. I think about the Fargo Forum in my home State actually of Minnesota, next to North Dakota, that includes



Moorhead, Minnesota. When the floods, catastrophic floods, hit the area, that newspaper and the local broadcasters were the one covering it, warning people, giving them news updates all the time.

I think about investigative journalism at the local level with everything from city council scandals, not that those ever exist, to all kinds of things that would not be covered. I think of the sports games for high schools and the pride that people have in their local community events.

All of this brings the community together in different ways. They find stuff out. They have common—common information that they can look at in addition to what they see nationally, which sometimes can seem very distanced and larger than life. What our local news does is oftentimes tells a story of what my dad called ordinary people doing extraordinary things. As I said, this work not only connects communities, it also helps policymakers better understand how issues are impacting their constituents and helps them to figure out what needs to be done.

That's why it's critical that we ensure that local news cannot only survive but thrive, particularly as outlets face off with some of the biggest companies the world has ever known. Local news is facing a crisis in the U.S.

Since 2005, about 2,200 local newspapers across America have closed, and many of the ones that remain are on life support. Between 2008 and 2019, newsroom employment fell by 51 percent. With much smaller newsrooms, surviving outlets are often mere shells of their former selves.

I was thinking about that really troubling photo from the Denver Post where, the journalists, they show a picture of everyone happily smiling. Then a few years later, they show the hollowed-out images, the silhouettes of the journalists who are no longer there. Less than half of them are left.

As you know, local newspapers aren't closing or drastically reducing their coverage because of a lack of talent or a passion for the work. Yes, many of them have online presence, and they have tried their best to do that. In fact, their real problem is a lack of revenue.

Ad revenue for U.S. newspapers plummeted from over \$37 billion in 2008 to less than \$9 billion in 2020. Thirty-seven billion in 2008 to less than \$9 billion in 2020. What else happened during that time? If you see the ad revenues for the world's biggest companies, you'll see the exact opposite story being told.

Facebook and Google, worth over \$2.6 trillion combined, as I speak, became digital advertising titans during that same time. Just yesterday, Google reported \$61 billion in advertising revenue in a single 3-month period, a 33 percent jump. I say to my colleagues, "A 33 percent jump from the same period just last year. Look at those numbers." \$61 billion in just 3 months for one company. \$61 billion. You have U.S. newspaper revenue from 2008 to 2020 going from \$37 billion to \$9 billion. As one of my colleagues said during the Presidential race, "Do the math. It's not that hard to figure it out. Do the math."

These Big Tech companies are not friends to journalism. They are raking in ad dollars while taking news content, feeding it to their users, and refusing to offer fair compensation. They're making



money on consumers' backs by using the content produced by news outlets to suck up as much data about each reader as they can.

It's kind of a double whammy, right? They're the big guys. They're bringing in the content. They're not compensating for it as they should. At the same time, they are getting the revenue off the consumers that read the content that then don't go to the ones that are producing the content. Then that data really exacerbates what is already a huge divide in where that revenue goes.

How much do these companies care about retaining this power over the news and reader data? They care a lot, enough to even hold entire countries, industrialized nations, hostage as we saw happen last year in Australia. When Google was told by the government that they would have to pay for the news content that they wanted to use—this is the Australian government—the company essentially said, “We're out of here,” and threatened to pull Google search out of an entire country.

That's what monopolies do. That's what you do when you can do it because you have over 90 percent of the search market. Google didn't follow through on its threat, in part, because there was so much international pressure to stop them from doing it. Facebook actually switched off all news on its platform to protest the law only reversing course after a few days under immense outside pressure.

What does Big Tech's dominance over the news mean for Americans? As I've already noted, less revenue for local news, fewer journalists to do in-depth, high-quality reporting, more exposure to misinformation, and fewer reliable sources. While the rise of these platforms has sometimes meant a larger audience for some news outlets, that hasn't translated to increased ad revenue.

For years, I've heard concerns about things like the platforms do not provide adequate branding for news outlets' original content on the platforms, that they hoard for themselves all of the data on the users that access the news content produced by news providers through their platform, that they publish large snippets of newspapers' content to attract users to the platform without any compensation at all to that news outlet, and repeated complaints to Google and Facebook from newspapers and broadcasters are simply ignored because that's what a monopolist does.

They can ignore things. They can use their market dominance to elbow others out and retain their control. That's why we need to step in to level the playing field as so many other countries are doing.

We're here today to talk about how we'll give these news outlets a fighting chance. I teamed up with my colleague Senator Kennedy to lead the bipartisan Journalism Competition and Preservation Act. Our bill gives local news outlets the ability to collectively negotiate for fair compensation with companies like Google and Facebook so they can continue to invest in the kind of quality reporting that keeps us all informed.

We're working with our bipartisan partners in the House of Representatives on improvements to the bill. We're ready to take all ideas and address all challenges raised by our colleagues because we believe there's a way to do this fairly to make sure that all



news outlets are included to better help correct the better—imbalance in bargaining power between newspapers and Big Tech.

We're looking at this, a clear framework for good faith negotiations between news organizations and Big Tech, mechanisms to help make those negotiations go smoothly, protections to prevent discrimination against news outlets based on the political views that they express, and provisions to better ensure that the interest of small independent news outlets are paramount in any joint negotiation.

I also introduced the Future of Local News Act to help local outlets chart the path forward as they recover from the pandemic. I'm working with my colleagues to pass the Local Journalism Sustainability Act to help Americans pay for newspaper subscriptions.

All this said, if we were living in a perfect world where we didn't have monopoly search engines and monopoly platforms with, in some cases, over 90 percent of the market, and we were able to pass some of the bills that I have, my colleagues have on a bipartisan basis, Senator Grassley, to even that playing field, maybe we wouldn't be where we are.

We are here because we have a crisis going on when we've lost over 2,000 news outlets, and that is why we have come upon this targeted approach to protect the First Amendment, to protect the news organizations that we believe are so critical to making sure that the First Amendment stays strong.

We need to recognize that what separates the news from the vast majority of our other industries is its crucial role in our democratic system of Government. That's why our founders enshrined freedom of the press in the First Amendment. When the exercise of monopoly power results in a market failure in our news industry, it's critically important for our democracy that we act.

Local journalism is also important to local communities and their economies. The closures of local newspapers can lead to higher municipal borrowing cost and increased Government inefficiency. This means less money for schools, hospitals, and roads.

Thomas Jefferson said that our first objective should be to leave open, quote "all avenues to truth", end quote, and that the best way of doing that is through, quote "the freedom of the press", end quote. That rings especially true today.

As elected leaders, we certainly may not always like what we read or hear in the news. I think all of us can relate to this. I think we can all agree that ensuring the future of a vibrant and independent free press is essential to the fabric of our democracy and the American way of life.

Thank you. I now turn it over to my colleague, Senator Lee, for his opening statement.

**OPENING STATEMENT OF HON. MICHAEL S. LEE,  
A U.S. SENATOR FROM THE STATE OF UTAH**

Senator LEE. Thank you so much, Chair Klobuchar. I think today's hearing is important. I look forward to it for a variety of reasons. I think it'll be illustrative on a number of fronts.

It first involves what ails the news industry. News publishers do, in fact, have a legitimate beef with the Google-Facebook ad duopoly. That's a problem, and Google and Facebook's unrivaled market



power in digital advertising imposes a sort of de facto tax on every business that places or makes money from ads, which is a large swath of the 21st century economy.

I'm grateful to you, Madam Chair, and along with Senators Grassley and Blumenthal for working with me and my office to help tackle that two-headed hydra, which does need to be tackled, and we have a lot of agreement on that issue. I also think that it's important to ask the question whether that's really these publishers' only problem. I don't think it is. In fact, I think it's far from that.

Our witnesses today may not exemplify it, and I'll assume for purpose of our discussion today that they don't. There are a number of voices within the mainstream news media whose publications are rife with shoddy and extraordinarily biased reporting that many consumers simply don't trust or, in any event, don't want to spend money consuming.

There are too many examples to cite all of them. I think it's important to point out at least a few of them. We have the Steele dossier, a work of pure fiction, funded by the Clinton campaign and breathlessly, dutifully reported on by news media outlets across the country. Blinded by their own impassioned hatred of President Trump, they helped spread the dossier's lies even after it had been proven demonstrably literally false. We're still waiting on the retractions.

What about The Washington Post defamation of Covington Catholic High School student Nicholas Sandmann or the Post's fawning description of Islamic State leader Abu Bakr al-Baghdadi as a, quote unquote, "austere religious scholar"? Who can forget The New York Times reporting that Russia had placed bounties on the heads of American soldiers, which was quickly, dutifully parroted by other outlets in the run-up to the 2020 Presidential election? It wasn't until after President Biden was inaugurated that they felt comfortable admitting that the story didn't hold up. Mission accomplished, I suppose.

I know Senator Cotton will recall how his suggestion that COVID-19 may have been leaked from a lab in Wuhan was scoffed at and derided rather viciously in a series of personal attacks against him for saying that. As it turns out, he was right. How did the media respond? They stealth-edited their original reporting to pretend that it never happened.

Just last month, just in the last few weeks, the Salt Lake Tribune's editorial board literally said that if Utah were a more just, decent place that the National Guard would be mobilized to, in effect, hold people under house arrest orders if they were unvaccinated.

The fiery but mostly peaceful protests of the summer of 2020, the denials that Critical Race Theory is being taught in the schools, these things add to and constitute part of this list along with, quote unquote, "temporary inflation." The list goes on and on.

Look, today's news media is often a source of misinformation, and it's one of the leading causes when it does this of social discord and political upheaval, especially when it doesn't even acknowledge its mistakes and especially when its mistakes appear so frequently,



so consistently, so constantly to lean one direction and not the other.

The self-proclaimed Fourth Estate loves to preach to the masses about democracy dying in darkness while they themselves turn out the lights. On top of the fact that the mainstream media is selling something that, in many cases, people don't want, there are also the series of poor business decisions that have been made within that industry. During the years in which they made comfortable profits, almost nothing, in some of the companies at least, was reinvested into the business to innovate and to grow in response to changing technologies.

When the market changed with the advent of the internet forcing newspapers for the first time to face meaningful competition for advertising dollars, many publishers just went all in on an advertising-only business model, even abandoning a subscription revenue, for online content.

The bottom line here is that whatever the challenges that the news publishers are facing as a result of Big Tech's dominance over digital advertising, for some publishers, perhaps for many, they've got other problems. For some of them, perhaps for many, it may involve inferior product quality and failure to take into account evolving technologies to adapt their business model.

The second thing to straight—set straight here is that what we should do about this or rather what we should not do also matters. The last thing I think we should do is try to solve this or any other competition problem by saying that it's okay to just accept a cartel, that it's okay to make changes to the laws to encourage the formation and allow the formation and thereby encourage the formation of a cartel as many publishers are requesting. Make no mistake that is what this is. That—it is what this call is for, and that is what the JCPA would do. We're not talking about an arguably pro-competitive type of competitor collaboration on some sort of run-of-the-mill joint venture. This would be competitors themselves colluding with the approval of law against a common business partner in order to fix problems they're facing.

There is a lot that Senator Klobuchar and I have agreed on. One of the many things that—we've agreed also on a lot of areas within antitrust law. We held a fantastic hearing back in 2013, I think it was, when we talked about cartels. Senator Klobuchar said cartels have no other purpose other than to rob consumers, and I agree.

I certainly think that we're not going to be better off by giving a cartel formation hall pass to an industry that's been ravaged by a number of other problems that I've identified. This ends up passing those problems along to consumers, the very same consumers that are being forced to, in many cases, accept an inferior product and partisan hackery and so much else that goes along with it.

I know publishers, including some of our witnesses today, believe that they would benefit. Legislation like the Journalism Competition and Preservation Act would do far more to help The New York Times and far more to help The Washington Post than it would be a benefit for local journalism in Salt Lake City or in Minneapolis. The only way to fix this is by encouraging competition and allowing it and promoting it, not eliminating it, and not—certainly not giv-



ing people a hall pass to engage in contact that would challenge, threaten, and undermine it.

Finally, as I understand, the authors of the JCPA are rewriting that bill in an effort to mirror some reforms in Australia and the music licensing system of the United States, but I want to register my frustration that the majority hasn't shared draft texts with it. We haven't seen that draft text. It's nearly impossible for Senators and witnesses to prepare for a hearing where a draft of the legislative solution is still floating—is floating apparently around K Street, but not publicly available for Senators and for the American people, for that matter, to review.

With all that said, I look forward to this hearing and hearing from our witnesses and their contributions.

Chair KLOBUCHAR. Thank you very much, Senator Lee. I'd also note that your—the venue bill, we didn't have any hearing on that. We are here having a hearing on this, and I'm, of course, the lead author of that. I think I went through after our last discussion on my innovation bill, and we found dozens of bills including led by Republicans where the hearings were either at the Subcommittee level or there wasn't a hearing. We were able to have a markup and a discussion of the bill based on hearings such as the one we're having today.

I just think it's—after we're done with this hearing, we should look at that history because we would be putting on hold the venue bill and many others if that was our new standard that would be suddenly adopted this week.

I'm now going to introduce the witnesses that are before us today. From the local news area, something near and dear to my heart and the reason I feel so strongly about this bill, Jennifer Bertetto. Thank you for being here. Did I say that correctly? Thank you. Is the president and CEO of Trib Total Media located outside of Pittsburgh. The company operates a daily paper with a circulation of approximately 35,000, 11 weekly community newspapers with smaller circulations, and a handful of monthly newspapers.

Mr. Bertetto has been with the company—Ms. Bertetto has been with the company for more than 20 years, holding positions ranging from regional advertising director to chief operating officer to president. Her first job in the news business was taking baseball scores for the local baseball and soccer leagues at the age of 16. She also serves on the board of the News Media Alliance.

Next up, Joel Oxley. Mr. Oxley is the general manager of WTOP News. For anyone in the DC area, you've heard WTOP. It is a DC area radio station owned by Hubbard Broadcasting that happens to be located in Minnesota. WTOP has over 100 local journalists, and it is known for its local news programming. The station first went on the air in 1926. Mr. Oxley joined WTOP in 1992 and worked his way up the ranks in sales and sales management to general manager in 1998.

Dan Gainor. Mr. Gainor is a vice president of Free Speech America and Business for the Media Research Center, a nonprofit organization focused on alleged liberal media bias. He is a commentator for Fox and has a regular spot on the One America News Network. Prior to joining the Media Research Center, Mr. Gainor was an edi-



tor at several newspapers including the Washington Times and the Baltimore News American.

Next, last but not least, Daniel Francis. Mr. Francis—Dr. Francis is a lecturer on law at Harvard Law School where he writes about regulation and competition. His research focuses on antitrust as well as constitutional and other rules that facilitate, constrain, and shape regulatory action and competitive processes. He has a particular interest in digital and high-tech markets. Dr. Francis previously served at the Federal Trade Commission as senior counsel to the director—associate director for digital markets and ultimately deputy director.

Another witness that's here with us virtually, Hal Singer. Dr. Singer is an economist who has researched, published, and testified on competition-related issues in a wide variety of industries including media, pharmaceuticals, sports, and finance. Late last year, he published a paper commissioned by the News Media Alliance about the impact of Google and Facebook on newspapers finding that Google and Facebook undercompensate newspapers for content and advertising.

If the witnesses now would please stand and raise your right hand.

[Witnesses are sworn in.]

Chair KLOBUCHAR. Let the record reflect that each of the witnesses answered in the affirmative. You may be seated. I will now recognize the witnesses for 5 minutes of testimony each. As I noted, Senators have votes. We've invited all the Senators on the Committee as we always do to this hearing. We will begin with you, Ms. Bertetto. Thank you.

**STATEMENT OF JENNIFER BERTETTO, PRESIDENT  
AND CEO, TRIB TOTAL MEDIA, INC.,  
PITTSBURGH, PENNSYLVANIA**

Ms. BERTETTO. Chairwoman Klobuchar, Ranking Member Lee, and Members of the Subcommittee, thank you for the opportunity to participate in today's hearing.

My name is Jennifer Bertetto, and I'm the president and CEO of Trib Total Media. We are a small publisher that delivers news, information, and advertising to four counties in South—Southwestern Pennsylvania. Our company is 272 employees strong with daily and weekly newspaper circulations and hyperlocal community websites that comprise our neighborhood news network. Our newsroom is a collective of 88 journalists, photojournalists, editors, and designers. Our high-quality and award-winning journalism is why our flagship website, TribLIVE.com, draws more than 300 million page views each year.

Trib Total Media's commitment to delivering high-quality journalism dates back to our founding in the 1800's. Our company was transformed in 1970 when Richard Mellon Scaife purchased our local publishing company. We have remained focused on providing local news to our communities. With the rise of the internet, we recognize that we needed to shift our focus from print to digital. Having done that, we're proud to provide our flagship website for free, a testament to our commitment to the community and to making news accessible.



I've worked my entire career in the news industry, starting out of college and working my way up to president and CEO in 2015. I've seen firsthand the changing nature of news consumption and distribution and can attest that the news industry faces a dire and insurmountable challenge: leveling the playing field against the vast power exerted by dominant digital platforms.

I'd like to discuss three main points. First, local newspapers are under incredible financial pressure, and we must ensure that the people who create high-quality journalistic content are compensated for it. With the growth of the digital platforms, we saw our readership shift to fewer subscriptions and then cancellations.

To become profitable, in 2015, we restructured our business. We closed two newspapers, sold three others, and made the difficult decision to lay off more than 150 employees. In 2016, we published our last print edition of the Pittsburgh Tribune Review and moved our reporting in that market online. These decisions were essential to stay in business, but they have ramifications to this day. Several communities in Southwestern Pennsylvania are considered news deserts not served by any local newspaper.

Second, access to news online has become concentrated on two platforms, Facebook and Google, which serve as gatekeepers and determine how news is displaced, prioritized, monetized without compensating the journalists that create the content they rely on. Tech platforms have become gatekeepers, controlling access to news, my company's original content, on their sites. Sadly, most Americans get their news from these platforms who are raking in record profits by simply curating content, a word that has subtly devalued the painstaking work of real reporting by journalists.

On Google alone, 65 percent of users don't leave their site to click through to a newspaper's website depriving publishers of the traffic and ad dollars it brings. Some say the newspaper industry has failed to modernize, and that's nonsense. Even with restructuring and enhanced digital offerings, no matter what we did, it was not enough to level the playing field. Small publishers are stuck between a rock and a hard place. We carry no weight in negotiations with platforms. We do not have the resources or the stature to bring them to the table.

There is a solution to the problem. The Journalism Competition and Preservation Act would give publishers a seat at the table to negotiate fair terms for the value of our journalism. Thanks to the leadership of Chairwoman Klobuchar and Senator Kennedy, the JCPA would provide a limited safe harbor period for news publishers irrespective of size or political persuasion to negotiate collectively with the platforms for fair compensation for the use of our content.

It's imperative that journalists are fairly compensated, and the JCPA would allow us the opportunity to seek just that. The bill does not prescribe the outcome, but it allows the opportunity to seek fair compensation, requiring the parties to negotiate in good faith. To receive fair compensation for our work would enable small publishers like my company to invest more in our communities, hire more reporters, increase quality, fact-based news.

Thank you again for the opportunity to testify at today's hearing.



[The prepared statement of Ms. Bertetto appears as a submission for the record.]

Chair KLOBUCHAR. Next up, Mr. Oxley.

**STATEMENT OF JOEL OXLEY, GENERAL  
MANAGER, WTOP NEWS, WASHINGTON, DC**

Mr. OXLEY. Good afternoon, Chairwoman Klobuchar, Ranking Member Lee, and Members of the Subcommittee. My name is Joel Oxley, and I am the senior vice president and general manager of all-news radio station WTOP-FM, WTOP.com, and FederalNewsNetwork.com, which are all owned by Hubbard Broadcasting.

Hubbard Broadcasting is a Saint Paul, Minnesota family-owned and operated broadcasting company with 13 television stations located in Minnesota, New York, and New Mexico and 50 radio stations located in Minnesota, Illinois, Missouri, Ohio, Arizona, Washington, Florida, and Washington, DC.

I appreciate the opportunity to testify on behalf of the National Association of Broadcasters and its more than 6,600 free and local television and radio station members in your hometowns. Broadcasters represent one of the last bastions of truly local unbiased journalism, information that is still respected by all Americans. Your constituents turn to their local reporters and anchors for voices they trust. Legislative action, including swift passage of the Journalism Competition and Preservation Act, the JCPA, is needed to preserve this central cornerstone of our democracy.

Local journalists and the communities we serve face an existential threat whose fate increasingly rests in the hands of a few dominant digital platforms. We applaud this Subcommittee's attention to this challenge and your continued work in examining the digital marketplace for news and journalism.

The pandemic has shown that, when needed most, local television and radio stations provided the civic bond for the communities we serve doing incredible work in the face of our own enormous challenges. More importantly, we continue to be the primary source of the community-focused information on which your constituents have relied during this pandemic from health and vaccine resources to vital information about schools and local businesses.

I've been in the news business since college, when I wrote for the school newspaper and was a sportscaster at the radio station. I worked with Scripps Howard. I worked with the Chicago Tribune before joining WTOP three decades ago where I have worked my way up in sales and sales management before becoming the GM in 1998.

I understand the significant cost of producing quality journalism. I'm keenly aware of the significant financial resources needed to run a station and invest in the type of equipment necessary to serve the public day in and day out 365 days a year. Quality journalism delivered through our uniquely free service has only been made possible over the decades through advertising revenues. As you all are aware, these revenues have experienced a free fall in recent years, due almost exclusively to the rapid often anticompetitive expansion of the dominant online platforms who've upended the advertising marketplace.



The market power of the tech platforms undermines the online advertising model for local broadcast journalism in two important ways. First, the tech platforms' role as content gatekeepers stifles our ability to generate user traffic. Second, anticompetitive terms of service and a take it or leave it approach leave local broadcasters with a below-market sliver of those advertising revenues derived through their products.

For local broadcasters and our viewers and listeners who rely on quality journalism, this is a real catch-22. To attract online user traffic, we must be accessible through the major platforms, yet the terms of access dictated by the online platforms devalue our product. For example, not only is WTOP being compensated by Facebook and Google for its content, WTOP is actually—not being compensated. WTOP is actually paying to make sure its content is being accessed on their platforms. Even more concerning is the degree to which certain platforms commoditize news content with little regard for the quality and veracity of the story.

This puts fact-based reporting like ours on par with unsubstantiated clickbait as we fight for user eyeballs in both platform newsfeeds and search results. There is no doubt that tech platforms and their algorithms prioritize content that favors sensationalism over hard journalism. The dominant online platforms have flourished, siphoning off huge amounts of advertising revenues that are the lifeblood of free, local journalism.

Consider the big storm that just flew through the Northeast over the weekend, a nor'easter with blizzard conditions. Tons of work at a lot of cost and time for local broadcasters to cover for millions of people, but not for Facebook, Google, and the like. They simply take our coverage and profit from it, and virtually nothing comes back to us. But without local news, my guess is a lot of people would have not evacuated places like Cape Cod last weekend, and lives would have been risked. We just can't have that.

In conclusion, this Committee can address these concerns with the passage of the JCPA. The NAB thanks Chairwoman Klobuchar and Senator Kennedy for introducing the JCPA, a targeted, commonsense proposal. The NAB strongly supports the JCPA, which would level the playing field by creating a temporary safe harbor for broadcasters and certain digital publications to jointly negotiate with dominant online platforms regarding the terms and conditions by which their content may be accessed online.

Thank you again for the opportunity to appear before you today. I look forward to your questions.

[The prepared statement of Mr. Oxley appears as a submission for the record.]

Chair KLOBUCHAR. Thank you very much, Mr. Oxley. Next up, thank you for being here, Mr. Francis.

**STATEMENT OF DANIEL FRANCIS, LECTURER  
ON LAW, HARVARD LAW SCHOOL,  
CAMBRIDGE, MASSACHUSETTS**

Mr. FRANCIS. Chair Klobuchar, Ranking Member Lee, Members of the Subcommittee, thank you for having me here to testify today.

As a former Federal antitrust enforcer, I strongly support the Subcommittee's focus on digital monopoly, and I want to acknowl-



edge the seriousness of the difficulties that many publishers are facing across the country today while doing some of our most important work. I cannot think of anything the country needs less, now or ever, than a national news media cartel.

I want to make just three points. Point number one, cartels are the supreme evil of antitrust. They're so reliably harmful that we extradite and imprison people who form them, they're automatically illegal in civil litigation with no justification allowed at law, and for decades, the Justice Department has had a flagship policy project of fighting cartels and opposing exemptions just like this one. Congress has licensed cartels a handful of times over the 130 years of our antitrust laws but always with great caution and not always with happy results.

Point two, I think the real complaint that I hear from the publishing industry is not so much about monopoly but is rather about property rates on the internet. I appreciate the publishers complain that platforms and users can share links to websites and can get fair use previews of news websites that are a sentence or two long without paying. They argue that that's evidence of monopsony power because platforms are profiting and they're not paying or not paying nearly so much for those rights.

This is not evidence of monopsony power. Platforms aren't linking and previewing for free because they're monopsonists exercising buyer power. It's because our property laws very wisely don't give a website owner, whether it's an owner of a news website or something else, the power to veto or tax linking or fair use previewing of that website.

It's pretty easy to see that this has nothing to do with monopsony power because no one pays for it. We could—if someone has the coding ability in this room, we could start an app today and link and preview websites without paying for that privilege. Our law gives everyone that freedom, and I think that's a really good thing. Links are the lifeblood of the internet. Imagine how hard it would be to write even a traditional article or book if you couldn't cite a source or quote a sentence or two without paying for that privilege. Imagine the consequences of that rule for our internet today.

Despite the framing, my strong sense is that this is not really about monopoly or monopsony at all. It's a request to dramatically expand profit rights on the internet and then to allow that property right to be sold by a new national news cartel with major media conglomerates at the helm. I think whatever antitrust reform we need today—and I think we need some—this is not that.

Point three, I think we're going to hear today about countervailing power. I think that's a red herring. It's true that in economic theory if you have a single dominant buyer there is an argument that total welfare can be improved if you let the suppliers form a cartel, at least in the perfect world of theory. I don't think that's applicable here for two reasons. Number one, I don't see evidence of monopsony power here at all despite the size of the platforms. Again, platforms aren't linking and previewing for free because of buyer power. They're linking and previewing for free because that right, that freedom is theirs under our property law today.



This wouldn't be a cartel that would correct buyer power. It would create new seller power. That's a monopoly surcharge on all the news in the United States cascading down the supply chain driving up prices that are already too high.

Second, the harm would far outweigh any good. Despite the size of the platforms, it actually doesn't look a lot like they hold monopoly power in markets for news today. A national news cartel sure would be a monopolist. I think this Subcommittee would be really concerned if even two of the major publishers were to propose a merger. The idea that we might put all of them together under one roof to agree on rates and terms and business models strikes me as a consumer's nightmare.

Every week the antitrust agencies hear pretty creative but sometimes fragile blackboard economic theories about why we should tolerate harmful conduct. I don't think the agencies would accept this argument, and I don't think Congress should either. I think the best thing we can do for competition in news is significantly increase our funding for the antitrust enforcers. I think that's the most urgent need we face.

Thanks for inviting me today, and I look forward to your questions.

[The prepared statement of Mr. Francis appears as a submission for the record.]

Chair KLOBUCHAR. Thank you. Next up, Dr. Singer who is here in person. Thank you.

**STATEMENT OF HAL SINGER, MANAGING  
DIRECTOR, ECON ONE RESEARCH,  
WASHINGTON, DC**

Dr. SINGER. Thank you to the Subcommittee for inviting me to speak today on this most serious issue. I want to begin on a slightly lighter note however by giving a shoutout to my mom, who turned 90 last month, who's watching this hearing the old-fashioned way and has not forgiven me to this day for becoming an economist rather than a lawyer.

The economic concepts here are complex and require a lot of ink, but I will try to boil them down to just a few by answering three questions. One, what is the competition problem this bill seeks to solve? Two, what are the social harms that flow from the competition problem? And three, how would a targeted bill address the competition problem?

Regarding the competition problem, two platforms, Google and Facebook, have monopolized the digital advertising industry. Google and Facebook capture approximately 61 percent of all digital advertising dollars because of their ability to collect consumer data across the web. Seventy percent of referral traffic to newspapers originate from just these two sites. This market power makes news publishers completely beholden to the dominant platforms for viewers and advertising dollars. The resulting power imbalance ensures the market rate for accessing news content will always be below competitive levels.

Google and Facebook achieved their dominance in the mid-aughts with the acquisition of countless competitors, complementors like Instagram and YouTube as well as critical



input suppliers in ad tech like DoubleClick and AdMob. Also in the mid-aughts and not by coincidence, newspaper began losing advertising mainly to the platforms. According to Pew Research, newsroom advertising declined from \$37.8 billion in 2008 to \$8.8 billion in 2020. Over the same time period, newsroom employees decline from 71,070 to 30,820. If these trends are left unchecked, we might not have local newspapers in the recent—in the near future.

The reason why Google scrapes indexes and posts news publisher content for free is because it can. It's like a school bully eating a smaller child's lunch. So long as market forces are allowed to dictate the payments for accessing news publisher content, the access price will remain zero and news publishers will be deprived of the billions of dollars a year of value created for the platforms.

Turning to my second question, in addition to the private harms, the underpayment to news publishers results in underemployment of journalists and other news employees as well as a host of other social ills associated with local news deserts including less competent local governments, greater spread of partisanship and misinformation, removal of economic stimulus to local economies, and a reduction in the diversity of viewpoints.

Turning to my third and final question, a targeted intervention similar to the negotiation framework adopted in Australia would solve the competition problem and mitigate the associated social harms by doing three things. First, it could permit a coalition of news publishers to form a joint negotiating entity to alleviate the power imbalance. No new publisher—news publisher would ever unilaterally shut down access to Google and Facebook. To do so would be suicidal.

Second, the bill could compel the platforms to negotiate in good faith for the access rights.

Third, if the good faith negotiation does not produce an agreement, the coalition of news publishers, but not broadcasters, could invoke arbitration rights. At that point, a panel of arbitrators would decide using baseball-style arbitration whose estimate of the value added to the platform by all the members of the coalition was closest to fair market value for accessing the content in the absence of the power imbalance.

Granting a narrow exemption to antitrust laws to address underpayments to vulnerable input providers finds precedent in both the labor exemption and the farm cooperative exemption to the antitrust law. Other countries such as Australia, which have employed a similar intervention to what I call for here, have seen immediate rewards to publishers for their interventions.

Relative to Australia's model, what I'm calling for would be more favorable to small publishers as it would not permit any large individual newspaper to avail itself of the good faith negotiation or arbitration rights. Only news publishers that remain in the coalition would be entitled to those rights.

Thank you, and I look forward to answering your questions.

[The prepared statement of Dr. Singer appears as a submission for the record.]

Chair KLOBUCHAR. Thank you very, very much. Now, our remaining witness who's appearing remotely is Dan Gainor, vice



president Free Speech America and Business for the Media Research Center. Thank you for being with us Mr. Gainor.

**STATEMENT OF DAN GAINOR, VICE  
PRESIDENT, FREE SPEECH AMERICA AND  
BUSINESS FOR THE MEDIA RESEARCH  
CENTER, RESTON, VIRGINIA**

Mr. GAINOR. Thank you. Chairperson Klobuchar, Ranking Member Lee, and Members of the Committee, thank you for the opportunity today to speak about one of my favorite topics, local journalism.

I worked as an editor on three different local daily newspapers as well as an editor of two weeklies, an editor and associate publisher to third. The best and honestly the most fun jobs I've ever had were in local news. If I could snap my fingers and fix local news, I would. I would hazard a guess that every single Member of this Committee would do the same. The Journalism Competition and Preservation Act of 2021 does not fix that problem.

It's a well-intentioned attempt to level the playing field between Big Tech and local journalism, but that's not what it does. It seems premised on a misinterpretation of history that somehow local journalism was killed by a few Big Tech companies. It was not. How do I know? I was there. I was there working in local journalism as news outlets brought in 20, 25, to 30 percent profits year after year and didn't reinvest those epic gains. Newspapers consolidated because delivery became difficult in rush hour traffic and more readers turned to TV news.

Baltimore, where I grew up, went from three dailies down to one in less than a decade. None of that was caused by the internet. I was director of Noon Media for a weekly chain as the internet began to catch on. I watched as news organizations downplayed the threat and posted their content online for free. Sclerotic news outlets were unable or unwilling to respond to the opportunities online, and so they were dissected by the competition. The Great Recession took a particular toll on local businesses, and that meant advertisers stopped advertising. COVID restrictions were just another example how the heavy hand of government harmed local news.

That's the background that brings us here today to discuss the future of journalism. The JCPA allows big media companies to ignore antitrust laws and work together. That isn't fixing the problem of having a Big Tech advertising cabal. It's simply adding another cabal to negotiate with it. Allowing a few of the largest and most powerful media companies to act as proxies for others only ensures that big firms will secure deals that benefit them.

We all want trustworthy local journalism that helps inform the public as well as hold powerful people accountable. Except that's not how corporate media have handled local journalism in the past. Local outlets were treated as cash cows. Big corporations milked them and slaughtered their remains.

This law would only serve to support huge existing corporate media instead of independent media. Corporate news organizations don't need our help. The New York Times just spent \$550 million in cash purchasing The Athletic, which according to journalist Aron



Pilhofer, covers 270-plus sports teams in more than 47 local markets. “The Times has placed itself in direct competition with every local news site from the same pool of subscribers,” he wrote. Times already had more than 8 million paid subscribers, and The Times even just bought the popular game Wordle for a price in the low seven figures. So why are we helping them?

The Washington area used to have a thriving chain of community weeklies. The Gazettes were founded in 1959 and grew to 550,000 in circulation in suburban Maryland. They were closed down by their owners, The Washington Post, in 2015. In 2021, The Post achieved record-breaking digital advertising, and it’s also owned by Big Tech billionaire Jeff Bezos. He purchased the company in 2013, 2 years before it killed the chain of weeklies. So why are we helping them?

Corporate media already benefit from better treatment by social media algorithms than smaller and independent outfits. Consolidating their already enormous advantages only makes them even more powerful. This JCPA also treads dangerously in the areas best left alone when defining a news content creator as one that has a dedicated professional editorial staff. Independent journalists still make news, but they would be squeezed out by corporate media.

Last, this issue needs to be seen in context. There are a few journalism bills floating around in this Congress. There is a concerted effort to get government involved in the practice and funding of journalists and journalism. It is unrealistic to expect journalists funded or supported by politicians to turn around and report aggressively on those same politicians. We can’t expect journalists to hold powerful people accountable when they are accountable to those powerful people for their paychecks.

All this happens at a time when Americans’ trust in media is near an epic low. According to Gallup, Americans’ trust in media to report the news fully, accurately, and fairly has fallen to just 36 percent. For Republicans, that number stands at 11 percent. Why then are we bailing out corporate media when ordinary Americans would rather find new sources of information?

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Gainor appears as a submission in the record.]

Chair KLOBUCHAR. Thank you very much, and thank you for appearing remotely. I’ll get started here. I’ll start with you, Ms. Bertetto.

Google is a search giant. About 90 percent of searches as we know, they have 90 percent market done on Google and also the largest company in the online advertising space, something I know that my colleague Senator Lee is very concerned about.

For small newspapers, Google takes a large percentage of the revenue generated on the newspaper’s site. How would you characterize your negotiations with Google over the share of the advertising revenue it gets compared to what your newspapers can keep?

Ms. BERTETTO. Thank you for your question. I guess the best way to answer that would be there have never been negotiations between my company and Google about the manner in which we get paid or how much we get paid. In fact, I’ve often had my com-



pany penalized whenever I have had other advertising services available on TribLIVE to help fund our free website. We get punished in the algorithm. If someone goes to search for TribLIVE, because we are using other companies that are not Google, our search results are pushed down.

When we have reached out directly to Google for help to improve our search rankings, we have been sent to resellers of Google products who charge us anywhere between 12 and 15 thousand dollars a month, which is a lot for our company, to help us solve our problem. The problem is always solved by removing other advertising mechanisms that exist on our site.

When I have attempted to find other ways to monetize our content independent of Google, I have hit wall after wall with Google. In fact, the resellers have been as brash as to say to me, "Look. I would take off these other platforms that you're using on your site." When I explain that I actually get a higher dollar per click using those resellers, they told me, "Well, Google doesn't like that, and Google owns everything."

Chair KLOBUCHAR. Okay. Pretty direct. Okay. Mr. Oxley, in your written testimony, you wrote that Big Tech companies like Google have adopted anticompetitive terms of service and a take it or leave it approach which leaves local broadcasters with a below market sliver of the ad revenue derived through their products. Can you tell the Committee what's your experience been negotiating with Big Tech companies like Google?

Mr. OXLEY. There is no negotiation. There is no conversation. There is no emails. There is no back and forth whatsoever. They don't really even give you that opportunity in any way, shape, or form. Believe me, we've tried every way possible with both of them. The bottom line is that they don't get back to you. Even worse, they make changes whenever they feel like it. We oftentimes over a weekend or overnight or in the middle of the afternoon, we'll all of a sudden have changes in terms of service just come down to us out of the blue, and we just have to deal with it. There is not any kind of negotiation. There's not any kind of conversation.

Chair KLOBUCHAR. Okay. Again, Dr. Singer. News aggregators, such as Apple News, Google News, Facebook News, take content from various news publishers and give it to consumers. It makes it very difficult for newspaper publishers and other news sites to establish direct relations with their own readers, which cuts into their ability to retain subscribers and improve their own advertising operations. Can you talk about the challenges faced by smaller media outlets which often find themselves in an uneven bargaining position with news aggregators?

Dr. SINGER. Sure. There is—the challenge, of course, is more acute for the smaller publishers than the larger because, as a matter of bargaining position, they have even less bargaining power, countervailing power. I would say that the asymmetry or the power imbalance extends across the entire industry, not just smalls but the mediums and the large as well.

The fundamental problem is that they cannot summon the will—the publishers cannot summon the will to do what's necessary to extract a fair market payment for access which is to shut down the access to Google or Facebook from their site. No one would ration-



ally do that on a unilateral basis. Now, the reason why is because they're extremely dependent and beholden on Google and Facebook for traffic. Like I said, 70 percent of the referrals come from just those two sites.

What the bill would seek to do to attack this power asymmetry, this bargaining asymmetry, is to first allow the newspapers and news publishers and broadcasters to bargain collectively vis-à-vis the dominant platforms. I think that, to answer your question, yes. They are facing dire straits in this.

Chair KLOBUCHAR. All right. I just want to ask one last question, and that is this. You've heard from I think it was Mr. Francis and my colleague over here with the use of the word news cartel about what this bill does. Of course, there's been Representative Buck, conservative over in the House, Senator Kennedy, not exactly a liberal. Senator Boozman has just been added to the bill, and there's a lot of interest in this bill.

I think it's really important as we look at the changes we're making to make clear that there isn't going to be any kind of bias here but that also—could you address this argument they've made that this creates some kind of news cartel? I'm only knowing the supporters of this bill in terms of the news organizations that run the gamut from liberal to very conservative. I find this impossible to see it that way. But could you comment about why this is not a news cartel?

Dr. SINGER. Right. The concept of creating a cartel here is laughable and uneconomic. Let me just try to explain why. The newspapers and the news publishers generally would not be getting coordination rights in their dealings with consumers. Would not. If they got together and tried to set prices for end users, they would go to jail.

The coordination rights that are being delivered here are narrowly tailored to pertain to only the news publishers' dealings with the dominant platforms. They wouldn't have coordination rights with respect to workers. They wouldn't have coordination rights with respect to buyers or customers. The notion of a cartel being created is fanciful.

I want to just make one other point too. I heard Mr. Francis say that it's going to result in higher prices as, you know, the cartel is going to exercise presumably its selling power vis-à-vis consumers. Well, that's false. Just think about what would happen if the news publishers got their way and got the bill passed and there was an arbitration hearing and there was an award that was given in the billions of dollars to the news publishers. What would happen?

You have a large lump sum payment coming in on the revenue side, and there is no theory in economics or no theory in pricing, which I happen to teach at Georgetown, that would suggest that a big, large increase of a lump sum revenue would ever cause a firm to raise its prices to end users. It just doesn't make any sense as an economic matter. If someone in my class suggested as such, they would fail.

Chair KLOBUCHAR. All right. Don't worry, Mr. Francis. When Senator Lee or another Senator returns, I myself will give you a chance to respond. Just hold your beer.



Okay. We have next up Senator Durbin. We're thankful he is here as the Chair of the Judiciary Committee. We're honored to have him here since he's not officially a Member of this Subcommittee, but he is our Chairman. We also thank Senator Grassley, the Ranking Member, for his constant interest in this issue and help. Senator Durbin.

Chair DURBIN. Thank you, Madam Chair. I have to leave very shortly, and I appreciate your putting me on the queue.

I recently read about the brown-headed cowbird. It's a brood parasite meaning it lays its eggs in the nests of other species. A female cowbird quietly searches for female birds of other species that are actively laying eggs. Once she's found a suitable host, the cowbird will sneak into the resident bird's nest when it's away, usually damage or remove one or more egg, and replace it with one of her own. The foster parents then unknowingly raise the young cowbirds usually at the expense of their own offspring.

It sounds like an analogy to something we're talking about here. It appears news sources are creating information which is being used by others that they don't pay any money to create. The advertising revenue comes their way when they steal that content and put it on their own tech boards and such.

I'm wondering here. Is there a way to deal with this? Let me quote one of the friends of mine, Dennis Lyle. You may know Dennis, president of the Illinois Broadcasters Association. He said to me, "The economic harm these tech giants are inflicting on local broadcast journalists around the country is brought out in this testimony where advertising revenues for radio broadcasters have experienced a free fall in recent years due to almost exclusively the rapid expansion of dominant online platforms who have devoured advertising market share in the digital marketplace and devised anticompetitive practices to protect it."

We're discussing the passage of JCPA to level the playing field. I'd like to ask Mr. Oxley. Can you discuss how this proposal and negotiation framework would help boost small Illinois broadcasters like those Dennis Lyle represents?

Mr. OXLEY. Absolutely. I appreciate the question. Absolutely. It would help us and all kinds of news operations to have a level playing field. I think that's all that we're asking for is a seat at the table. We want to be able to negotiate. We want to be able to have a conversation. We want to be able to jointly work together to try to have an outcome that will help small journalistic outfits and, you know, including broadcaster—but also including the newspaper industry.

In terms of broadcasting, we desperately need this because we're fading away. We're having fewer and fewer people involved in the news business. We've seen such a dramatic and steep decline in people involved in news that broadcasting has seen tremendous amounts of people leave the industry.

Chair DURBIN. You know Chicago.

Mr. OXLEY. Yes, I do.

Chair DURBIN. You've worked in Chicago.

Mr. OXLEY. Yes.

Chair DURBIN. I can tell you in my Senate career of a little over 20 years there's been a dramatic change. A press conference in Chi-



cago you're lucky to draw one reporter. Lucky. Instead, it's a bank of cameras. By union rules or by tradition, the cameramen don't ask questions. You make your statement, then they look at you, and you look back at them. That's the end of the story unless you want to start volunteering information and asking yourself questions. That's what it's come to in terms of what used to be one of the most vibrant news markets and competitive news markets in America. It has just disintegrated.

We now incidentally have a new experiment announced this week where WBEZ, the NPR station in Chicago, is joining up with the Chicago Sun-Times in a not-for-profit venture to deliver regular newspaper journalism with radio journalism through NPR. I wish them well. We need some competition. We need some people that are asking tough questions of politicians like myself, and it's just not the case. If nothing has changed, it's all going to go away.

Mr. OXLEY. And—

Chair DURBIN. It's just going to disappear.

Mr. OXLEY. That is my big concern is that, without something like the JCPA to help out these journalists, we're not going to be able to cover council meetings. We're not going to be able to cover press conferences. We're not going to be able to cover local weather emergencies or traffic or, you know, all of these things are just going to go away. What are you going to rely on then? Your local LISTSERV?

In the way it's been set up over the years is that to make a go at it from a digital business, as I know Jennifer could go into great detail, but it's very, very difficult. The profits just aren't there. You're lucky if you break even. Something has to change if we want local journalism to survive. The JCPA, I believe, can get that started by having—let us have a seat at the table so that we can at least even the playing field.

Chair DURBIN. If we don't do something, the cowbirds won't find any nests to raid.

Mr. OXLEY. They will not.

Chair DURBIN. Thank you. Thank you very much.

Senator LEE. Mr. Francis, first, I'd like to let you respond to a point Dr. Singer made a moment ago. I was out in the hall, so I didn't hear all of it. He described I think the word was—as laughable the point I was making earlier that this would authorize cartel behavior. You want to respond to that?

Mr. FRANCIS. Thank you. Yes. For sure. I understood Dr. Singer to suggest two things, both of which were pretty surprising to me and I think anybody sort of in the antitrust enforcement space.

Thing number one is the idea that a cartel is only a cartel if it deals with your dealings directly with consumers or workers. That is really not right, and that would be news to the Department of Justice. I think some of the flagship cartel enforcement actions have dealt with cartel agreements to harmonize on prices for sale to intermediate suppliers. I think of the wire harness cartel, the auto parts cartel, the LCD cartel. People went to prison for quite a long time for these things, even though they didn't involve dealings with consumers or workers. It's a routine piece of cartel enforcement.



Senator LEE. His conclusion is based on a distinction that you're saying is not one that's recognized by the antitrust enforcers at the Department of Justice?

Mr. FRANCIS. Certainly, the Department of Justice in cartel enforcement absolutely does not distinguish between cartels for sales direct to consumers and cartels for sales to an intermediate seller like a platform. They are equally illegal. In addition—

Senator LEE. That wouldn't be a defense then.

Mr. FRANCIS. That would absolutely not be a defense. Second, I understood Dr. Singer to suggest that the cartel overcharge here wouldn't increase prices. It is absolutely true for sure that a one-off lump sum payment would not have any effect on downstream prices. If what we're talking about here is just cutting a check, a one-time check, to Google and Facebook and then it's back to business as usual forever that would not as—sorry. From Google and Facebook. That alone is unlikely to impact downstream costs.

I understand that what we're talking about is an agreement that would lead to a rolling payment from Google and Facebook on an ongoing basis for news-related activity on search engines or social media. I think it's a pretty elementary piece of textbook microeconomics that if you take a monopolist and you increase their costs, then the process maximizing process of the monopolist will increase. I understand that, not a single one-off lump sum payment, to be what's contemplated here.

Senator LEE. Thank you. That's helpful. Just to be clear, getting back to the earlier point about the cartel, it's not like that is just an offshoot ramification of this. That is the point of the bill. Isn't that the primary point of the bill is to make lawful that which is currently unlawful?

Mr. FRANCIS. That's exactly how I would understand it. Getting competitors together to agree on the prices and terms with which they'll deal with a trading partner, that's a classic cartel.

Senator LEE. Thank you. Mr. Gainor, isn't the problem for news publishers simply that their value as an advertising venue has been diluted by the advent of the internet and targeted digital advertising?

Mr. GAINOR. It's been diluted even before the internet. If the Congress passed the Newspaper Preservation Act in 1970, trying to stop newspapers from going out of business back then. We ended up with, I think, more than two dozen joint operating agreements back then. You know, people live their lives online in much of the country right now, and 2 years of COVID restrictions have further encouraged that. When people aren't going to advertisers, they aren't going to stores, they aren't going to restaurants, those restaurants and stores stopped buying ads. That affects everybody, the businesses that we're talking about here.

Senator LEE. I've got a chart up behind me. I don't know whether you can see it. Digital advertising revenues have increased several-fold while the areas where newspaper is now face more competition. Classified ads and retails ads have declined precipitously. How much of this is a Big Tech problem versus how much of it might be a matter of business choices and how they interact with emerging technologies?



Mr. GAINOR. I'd say it's a mix of both. I mean, you look at that—look at those numbers. They were all declining—as I said, at Baltimore where I grew up had three newspapers. Baltimore News-American died in 1986 before the internet. The Evening Sun was shut down soon after the internet. That wasn't caused by the internet. You know, so the problem also was these publishers, the biggest ones, didn't reinvest, you know, for the future. You know, now, we've seen that the ones who are really doing well are what are called verticals that are very specialized. New York Times, a political vertical. Washington Post, the same. Sports, other things like that. Local news isn't doing as well because it's just not doing well across the board.

Senator LEE. Thank you. Mr. Francis, to be clear when we're talking here about what is at risk, what's at stake, what's suffering, we're not talking about the death of journalism itself. We're not talking about the idea that journalism itself can't be economically viable in the absence of this. We're talking more I think about whether certain business models followed by some in the news publishing industry are viable. Is that correct? Is that consistent with your understanding?

Mr. FRANCIS. I think that's exactly right. I think local news is clearly critical. I grew up in a very small English village where, when the LIFE Magazine or the Villager or the Town Crier or local newspapers would land through our letter box, everybody in the house at some point that week would read it and we would learn a bunch of things that we wouldn't find through alternative channels. Local media, local news are clearly critical. Exactly as you describe, what's at stake here is the manner in which local news will survive.

Senator LEE. Right.

Mr. FRANCIS. It's very clear that the business model is responding to competitive pressures.

Senator LEE. What that suggests is that some—not journalism itself is at stake but some business models, some businesses will fare better than others in that environment. If we—I have no idea. I'm not a businessperson. I'm certainly not an expert in the news publishing business. I never purport to know the ins and outs of that business.

I think it's fair to assume that you can identify a certain subset—I don't know exactly how big it is—a certain subset within the news publishing industry that has adopted a business model that's not succeeding. It's not going to succeed. Is it generally good policy from the standpoint of promoting competition for the Government to step in and sanction the formation of a cartel in order to save a particular type of business model that's dying?

Mr. FRANCIS. It's almost always not. That is not to say that we look with anything other than horror and sadness at the real difficulties that competitive change brings. Particularly with the transition to digital business models, we've seen from one sector to another legacy business models experiencing real difficulty as they transition to something that makes economic sense and is sustainable in the economy as it's emerging today. But—

Senator LEE. Horse and buggies to automobiles.



Mr. FRANCIS. Exactly. Video rental stores, film and camera. Like we see this story and there's real suffering associated with that. If you believe in antitrust, you have to believe in the competitive process that antitrust is there to guarantee. Without tolerating and allowing some degree of failure, some degree of discomfort, even market exit sometimes, then you don't have a competitive process. Then it's not clear what the antitrust project is for. As difficult as it is, the pains in exactly the way you describe are a necessary part of the competitive process.

Senator LEE [presiding]. I like your comparison to the home video industry. The consumption of home video entertainment didn't die. Netflix emerged long before it was an online streaming company, and it survived where Blockbuster didn't and a delivery mechanism. One worked. The other didn't. It wasn't the industry itself had died. Particular business models succeeded over others. Mr. Blumenthal.

Senator BLUMENTHAL. Thank you very much, Senator Lee. Thank you all for being here today. There are moments in the U.S. Senate I have found in my 10 years here that America comes to one of our hearings, literally America comes before us. I think we have that moment today. It is a moment for America about a failing industry that has been the lifeblood of America going back to the founding of our republic. It is part of the genius of America that we have local journalism which covers local stories and provides stories and provides a local form for people to be informed.

One of the ironies here is that Big Tech is using information in effect to dominate. It's information that is collected in all kinds of ways that local journalism simply doesn't have the power to do, and then it is used, in effect, to suffocate other sources of information, namely local journalism newspapers and now increasingly broadcast. To all of the sophisticated economic arguments that might be made against this act, I think Ms. Bertetto and her recounting what was told to her, I think, by someone who was asked, Google doesn't like it and Google owns everything. That's the nature of the power here.

I would like to say that the market will self-correct, that we can use existing antitrust law, but it ain't working. It isn't working for the Hartford Courant, which was weakened and then taken over, and its fate is uncertain. It was taken over by a vulture hedge fund, Alden Capital which has been, seemingly, selling off its assets, taking advantage of its real estate, of other assets in no way caring about, seemingly, its journalistic staff or even quality. They've cut staff in fact at twice the rate of their competitors.

On the bright side, The Connecticut Mirror in Connecticut has enabled vibrant democratic debate and discussion. It is a nonprofit. It depends on donations. It has discussed in recent times the importance of local elections and local reporters hold public officials including myself accountable to the people that we serve.

Dr. Singer, let me ask you and any of the other panelists that want to comment. I'm a supporter of this measure, but I wonder are we too late. Can we still rescue American journalism?

Dr. SINGER. I don't think we're too late, Senator. What this enforcement mechanism would do would provide for a payment to a collective or a coalition of newspapers or news publishers that



would attempt to approximate the fair market value of what they are contributing to the platforms in terms of users and clicks and the like. If we can put money back into the pockets of the news publishers, I think we can breathe life back into the industry, and that money would eventually pour down to the benefit of journalists and all the other workers and input providers that go into the production of news.

Senator BLUMENTHAL. Ms. Bertetto and Mr. Oxley, same question to you.

Mr. OXLEY. Yes. I certainly want to respond to that because I think that what's at risk here really is local news. That's what's really at risk. The huge news operations, yes, they will be just fine. When you talk about local news, local news is in a lot of trouble whether it's broadcast or print. I have experienced it even in the Washington, DC area that there is not a viable economic model that I have ever seen for local news to be all digital. It just doesn't work. The money's not there.

That's very distressing. Over time, I think, well, are we too late? No, I don't think we're too late. We're getting close. We might even be in the 11th hour because it's getting there. This is getting very dire. I look at it—you know, we're also a platform too. Hey, we're aggregators, and we're good with that, and we understand that. And we're a platform that pays for news content. I don't think the Associated Press would like it very much if all of a sudden we didn't pay for their content.

In many respects, I think that's what's happening here is, you know, the Facebooks and the Googles get all the advantage of it but don't have to pay for any of the content. To me, that's just not fair. It's the downfall—the true downfall putting out local news. You're just not going to be able to find a revenue model.

Senator BLUMENTHAL. Ms. Bertetto.

Ms. BERTETTO. You know, I can't sit here and pretend that as an industry we have done everything correctly. You know, there are certainly things that over time we have made missteps, and I feel like the JCPA is one aspect of what needs to happen for our business models to be corrected in the future. It is one piece, and there is responsibility on each of us as publishers to work on other solutions that make our business successful.

Our company, for example, you know, we have gone to great lengths to diversify our revenue streams, and I think it's creative solutions like that that will be necessary from all of us. JCPA won't fix all of our problems, but it will fix one of them.

Senator BLUMENTHAL. Thank you. My time has expired. This topic is urgent in my view because I agree that we are in the 11th hour, maybe even toward the end of the 11th hour, because once these institutions are gone, they are gone. There is no reconstructing them, at least with the quality of excellence that we've seen over so many years in exposing corruption and enabling information about school boards and holding accountable public officials so importantly at the local level because it is irreplaceable and indispensable. Thank you.

Chair KLOBUCHAR [presiding]. Thank you very much, Senator Blumenthal. I believe Senator Blackburn who was here diligently early is now on remotely and then we go to Senator Padilla. I think



he should be fine for voting. I guess that's my promise. Okay, Senator Blackburn.

Senator BLACKBURN. Thank you, Madam Chairman. I thank you all. What an interesting panel, and I really appreciate the testimony that you got to us and that you came to give today.

Mr. Gainor, I think I want to start with you because your organization has really put up a lot of attention—a lot of attention on bias in the mainstream media and how Big News and Big Tech team up and filter the news and really take control of what you hear and what you see when it comes to news.

When I go to Tennessee, I hear a lot about this from Tennesseans, and they don't like it. They feel that their views are not being represented and that they're very concerned about if they can or cannot trust mainstream media. We thank you for the work that you're doing on this front, but I'd like for you to touch on what small news outlets are doing that will help to combat that bias, what you all are seeing that they're doing. I think it's important that they do that. If you will just very quickly touch on what are the best placed efforts for combating this bias from the coziness of Big Tech and Big News?

Mr. GAINOR. First of all, thank you very much, Senator. We've seen examples all through, even the recent Presidential election, of the problems of Big Tech and then followed up by Big Journalism not covering major issues. It's fair to note the difference between, you know, corporate media which is what, you know, you're talking about there and several people on the panel right now. Local journalism is something I think we all love and is at the heart of a community. On a national level, yes, there is incredible bias from the traditional media, the legacy media, and working hand in hand with the same people that I think we all want to beat up on right now with Google and Facebook and others.

The scary idea here of creating, you know, a cartel or whatever you want to call it, some sort of organized unit where the major players in journalism who, you know, The Washington Post and New York Times who didn't stand up during the Hunter Biden story and cover that story while the New York Post was being censored that they're going to stand up and represent the little—

Senator BLACKBURN. Okay. Let me jump in there because, see, it is—what we want to do is make certain that local news—that you're going to give local news what they need to be competitive, that you're not going to cut them off. I think everyone would agree with that. What we don't want to do is do something that is going to have the unintended consequence of the reverse effect to that.

Mr. Francis, let me come to you. Do you think that companies like Facebook, like Instagram, YouTube would stand to benefit from an antitrust exemption and what bad behaviors could they get away with if they did get that exemption?

Mr. FRANCIS. My understanding, Senator, is that this proposed exemption would work the other way around. In the event that this were created, two things would happen. The first is that the most immediate beneficiaries would be the participating media companies, obviously including some very large conglomerates as well as the smaller publishers that we're talking about. Certainly, the cartel overcharge that would emerge from agreements on prices would



be paid in the first instance by Google, Facebook, and then transmitted most likely in the form of higher prices for advertising down the chain to consumers.

Senator BLACKBURN. Okay. Basically, what you see is more hands in the pot for the money that is there adding extra layers of fees. In the end, you're going to have the originator of the content gets no more, but you're going to have the conglomerates reaping more profit off of that content. Am I following what you're saying there?

Mr. FRANCIS. That's exactly correct. There would be a new monopoly charge at the top.

Senator BLACKBURN. Yes. Let me ask you this. Yes. Let me ask you this. The music industry. When it comes to royalties and some really tricky royalty issues, what we've done through the years is look at how they operate under consent decrees. A few years ago, we had to work diligently creating the Music Modernization Act. It's something that was very important to a lot of my Tennessee constituents. Do you see something like the Music Consent Decrees being needed if Congress grants an antitrust exemption?

Mr. FRANCIS. My sense is—and I am not an expert. It's been many years since I worked on music licensing and the process under the consent decrees that you mention. I'll say a couple things. Thing number one, I think that has been an extremely complicated, difficult, and controversial process for a very long time in a way that I think would exemplify some of the difficulties if we were to embark on a similar price setting mechanism here, for example, with a, you know, compulsory arbitration mechanism.

Thing number two, all the—or many of the music licensing examples are distinctively situated because there's a compulsory licensing obligation. In other words, the licensor has a statutory obligation to issue the license. Obviously, that has all kinds of complicated effects for how you want to set up your system, and I don't think anybody is talking about creating a statutory obligation here on news publishers to issue a license. I am really not an expert on music licensing in particular. Everything that I say about it should be taken with some caution.

Senator BLACKBURN. I appreciate your candor. Thank you all. Thank you, Madam Chairman.

Chair KLOBUCHAR. Okay. Very good. Thank you. Senator Padilla.

Senator PADILLA. Thank you, Madam Chair. I want to begin by thanking all the witnesses for your testimony on this very important topic.

It is not an understatement to say that our democracy depends on a healthy and vibrant information ecosystem, and this requires, for example, that all of our communities can readily access online news via a high-speed internet connection, a reliable internet connection, that people are equipped with information and media literacy skills responsive to today's complex content streams, and that they're served by a thriving free press that includes media outlets, journalists, and broadcasters that both reflect and are responsive to the diversity of our Nation.

Economic recessions and a loss of advertising revenue has devastated the news industry. In the last 20 years, more than a quarter of the country's newspapers have disappeared. Local, regional,



community, and independent media are understaffed, underresourced, and in need of assistance as they work to identify new sustainable business models. It's critical that Congress explore how we can assist the news industry as it tries to find its footing during this transition period.

Ms. Bertetto, I know from personal experience that local news is so vital to keeping communities in California informed particularly during elections, for example, or during and after natural disasters. You touched on it during your opening statement. Can you discuss what's at stake if local and community-facing news outlets disappear particular when it comes to our democracy or public safety?

Ms. BERTETTO. Of course. Our readers, again being a small publisher in Southwestern Pennsylvania, rely on us for the information they are literally not going to get anywhere else. That is covering school board meetings. That is covering city government. That is letting them know when the bridge is out in their community. That is letting them know when the senior citizens' center is going to be open during the cold winter months as heating stations. We often provide that very content as well to the television broadcasters. Often, they're relying on us to inform them so they can spread the message through their channels.

Obviously, as newspaper staffs continue to dwindle, what will become very problematic is there will be no one. You know, The Washington Post and The New York Times will probably be fine no matter what is decided, but New Kensington, Pennsylvania won't be. Who is going to report on New Kensington, PA if my company isn't doing that? How are we going to have an informed electorate, how are we going to have a society that understands what is happening in local government, State government, and national Government if my company is not providing them those resources?

Senator PADILLA. Thank you. Those are great examples. I mean, I appreciate that not every bridge failure makes national cable news.

Ms. BERTETTO. Exactly.

Senator PADILLA. God only knows how contentious school board meetings are in this day and age. Given the importance of local newsrooms to our democracy, I'm deeply concerned that newsroom employment in the United States has dropped by 26 percent since 2008. Ms. Bertetto, in your testimony, you stated that the Journalism Competition and Preservation Act, the JCPA as we're referring to it, would help small publishers make additional investments into the community and hire more reporters. A question for Ms. Bertetto and Mr. Oxley. Can you discuss the importance of explicitly tying benefits from the bill to job creation and retention?

Ms. BERTETTO. Presently in our company, about \$7 million is paid out in salaries to journalists on staff. To give you some sense of what we earn presently from Google, it is \$144,000 a year. I really feel I'm starting at zero, and any additional moneys that could come in could certainly help to first keep reporters on so we can stop this decline because it's astronomical the number of reporting positions I'm seeing leave our market.

I also think that with a hundred—you know, when you're looking at \$144,000 and say I can get \$600,000, just for example, I could cover more communities. I could add beats. I'm presently making



decisions every single day about which communities we can afford to have a reporter in on a full-time basis and where we have to decide to have a part-time reporter or no reporter at all. Any additional economic relief to help me avoid those decisions would certainly be welcome.

Senator PADILLA. Mr. Oxley.

Mr. OXLEY. The same goes for us. Our sizes aren't all that different. Our newsroom is about—costs about \$12 million to run every year. What we're finding is more and more has to be switched to the digital side even though the digital side really doesn't make us money. At best, over the years, we've broken even. In the last 10 years, our digital overall revenues off of our website have barely moved and the costs have gone up a lot. If we were able to have money come in—and I think that the JCPA could provide that by having a level playing field, having a seat at the table—then we would be investing in reporters.

The very thing I get all the time from all of the people on the content side and the programming side is, you know, can I add people. Of course, we would like to add people. Also, our area has grown exponentially. It wasn't that long ago that the whole area in Washington, DC was 3 million people. Now, it's about 6 million people yet our newsroom has not been able to grow in size because we have not been able to really change in terms of growing our people. The very first thing we would do would be to add more journalists.

The one other thing I would say about the journalists that we would add is they're professional journalists, and I think that is a huge point here. These aren't people who are doing clickbait or they're people who are researching these stories. They've been educated to do that. They know what they're doing. They make sure to get it right. We have a saying at our operation, "Before you get it first, first get it right." And that means getting good sources. That means verifying. That means doubling, tripling, quadrupling your efforts to make sure that you've got it right before you put it out. That way, people get the facts. That's what people need in local news.

Senator PADILLA. Thank you very much. Madam Chair, just in closing, I know that the conversation has also gone in the direction of what else the industry is doing to find solutions, short term and longer term, during this transition period. I invite the ongoing conversation of what else Congress can be doing both in the short term and the longer term to help the news industry. Thank you very much.

Chair KLOBUCHAR. Okay. Thank you very much, Senator Padilla. I think it's down to just Senator Lee and myself here. I'm going to have to leave at about five to five. I'm going to let him maybe do 5 minutes or so. I'll have two more questions and we can go from there.

Senator LEE. Thank you. Mr. Gainor, let's go back to you if that's all right. How do you believe consumer trust or distrust of news publishers might impact their success? I ask because the Edelman Trust Barometer as displayed in the chart behind me shows a growing mistrust of the media across the globe. Edelman reported this year that 46—46 percent of people around the world view gov-



ernment and media as divisive forces in society and 74 percent of Americans worry about fake news.

How do you think political bias or, you know, including anticonservative censorship might have contributed to that mistrust?

Mr. GAINOR. I think it helps contribute to it a lot both on the, you know, Big Tech side and on the media side. Again, that's—you know, you're talking about large media outlets, corporate media. It's not a slam on local news. When people, when ordinary Americans think about media, they're generally not thinking about their local news outlet, their weekly newspaper, their radio station. They're thinking about larger media. They're thinking about the media they see on TV, and then they're also thinking about the problems of Big Tech.

I don't know if this Committee or others want to go to war with Big Tech. I think conservatives would be very happy about that. The question is does this bill work to do that? You know, when you look at the years of, you know, gradual decline of people's interest at media and then you also look at people's—the rising tide of people distrusting media, the two track very similarly.

Senator LEE. That makes some intuitive sense, and there seems to be anecdotal support for that. At least intuitively, it makes sense to me. The Congressional Research Service has noted that 70 percent of daily newspapers are owned by private equity firms, hedge funds, or other investment groups. Nothing wrong with those business models, but those are the data that I've got.

Do you think these owners are necessarily going to be more concerned about investing in journalists and quality journalism than they are about getting a return on investment? Regardless, would the JCPA make a difference in that regard? Is the JCPA going to change the incentives in place for the owners of these businesses one way or another?

Mr. GAINOR. It certainly doesn't seem like it. I mean, you look at, you know, just The Washington Post, for example. The Post—its identity is as a national newspaper. When it owned a chain of weeklies that were very popular in suburbia, it shut it down. When Tribune owned the Baltimore Sun, they had a chain of weeklies that they gutted to the point where they're largely nonexistent now.

That's been an ongoing problem, you know, not necessarily the local ownership. You know, local ownership, which I think is reflected on this panel, local ownership tends to care about the local community. You know, but when its national ownership that you were saying 70 percent, then they're not necessarily loyal to their readers or their viewers.

Senator LEE. Mr. Oxley, while I'm never going to support legislation that I believe attempts to improve competition by forming a cartel as this one does, if the purpose of something like the JCPA is to protect small and independent local publishers, then why not at least limit the bill's scope? Why not limit its application to small and independent local publishers?

Mr. OXLEY. I don't know the ins and outs of that as well as an awful lot of people in this room. I don't know—I haven't been able to look at the ins and outs of this bill and how it works. But—



Senator LEE. Are you saying that you would support it if it were so limited?

Mr. OXLEY. I would certainly support anything that would help local news. I feel at this point that we're in a really, really tough spot with local news. That's to me what we're really talking about here. We're not talking about the national news players. Local news players are still some of the most trusted in America, you know? Study after study shows that your local news people are trusted and that there is actually a very favorable view of them, you know? The national is a different story. But locally—we need something to truly help out the local news providers.

Senator LEE. If that's the case, if we are going to make as most of this discussion today has been, if we are going to make it about the local folks, then why not limit it to them? Dr. Francis, I assume you'd agree with this suggestion that if you buy into the notion that creating a cartel or a type of cartel permission slip is acceptable for one universe you could reduce the harm inflicted by that universe where cartels are authorized by reducing the scope. In this case, since most of the discussion has focused around small, independent, local publishers, couldn't that have that effect?

Mr. FRANCIS. I think that's exactly right, Senator. As you've heard, I have pretty strong feelings about cartels. I don't object in principle anything like so much to the idea of supporting local struggling news publishers. At a minimum, restricting the scope of what you were describing—sorry. Restricting in the way you described the scope of the exemption so that it's truly targeted at small, struggling publishers, that means we can avoid conferring the ability to, you know, add a cartel overcharge to large, very profitable media companies. That would really help.

I am pretty uncomfortable at this moment in our sort of political life about taking a big bite out of antitrust when we should be reinforcing it. I would love to be talking about other ways to support local news. Any support mechanism should be targeted to those who really need it, not to the most prominent publishers.

Senator LEE. Is there a risk that by focusing on this particular issue it might draw attention away from other things, other things that also need to be addressed including the problem we've got with Google and Facebook?

Mr. FRANCIS. I think digital monopoly and monopoly in general is a problem that at the minute vastly overmatches the ability of our antitrust agencies. I would love to see more funding and more resources. I think that's the most urgent need we have as, you know, a competition policy community in this country even more urgent than antitrust reform is money and personnel for the agencies. That's where I would love the focus of the conversation to be. That's what I think is top of the wish list.

Senator LEE. Thank you.

Chair KLOBUCHAR. Thank you very much, Senator Lee, and thank you for—I'm sure you have other questions for the record. Thank you. Mr. Francis, that's something where we agree on the funding for the Agencies. As you probably know, Senator Grassley and I have a bill that passed the Senate actually to change the merger fees actually make it easier for smaller mergers and harder for bigger ones, maybe not harder but just a little more expensive,



to help pay for the agencies to be able to do their reviews as well as some other funding mechanisms that we're working on.

A few things. I'm just going to ask a few questions here at the end. Be brief here, Dr. Singer. I have to go now work on the Electoral Count Act. Dr. Singer, in your opinion, should news organizations have a right to be compensated when digital platforms take in profit from detailed snippets—I think it's a little more than snippets—of their copyrighted content? They're claiming it's fair use, and I'd like your response.

Dr. SINGER. Right. Yes, they should be compensated for any value that is being conferred from the newspapers to the platforms including when the platforms scrape and index and use Rich Text and images to decrease the likelihood of a user actually clicking on the link.

I'd like, if I could, just to address the cartel pricing increase that Mr. Francis keeps saying which doesn't make sense as an economic matter. He did admit, I think his most important admission today, that if there was a one-time lump sum transfer from the platforms to the newspapers, as a coalition, there would be no price increase by the newspapers. I think he did admit that. That's the most important admission that we heard today.

What he said next, which was uneconomic again, was that if it were to recur every 5 years then there would be a price increase of some sort. I can't follow what the economic logic is, and I start—maybe he's talking about a price increase by the platforms. I want to rebut that as well because the platforms, as you know, Senator, has used a free price—a zero price model to consumers. The notion that the platforms having to write a check of say \$5 billion every year for the payment of access is going to induce them to suddenly abandon their free model and start charging consumers access for search or charging consumers access to the Facebook social platform is uneconomic. I can't say it any nicer than that. There will be no cartel price effect from this lump sum transfer. You can take my word for it.

Chair KLOBUCHAR. Okay. Thank you. Dr. Singer, just some questions about some of the concerns that we've heard. Of course, I mentioned we're making revisions with the House to the bill. Are there changes we should consider to ensure that small and local organizations benefit from joint negotiations and can exert an appropriate level of control over the process?

Dr. SINGER. Yes, I understand there are certain provisions in the bill that would protect small publishers that you were asking, and the most important that comes to mind is the nondiscrimination provision. A newspaper—a small newspaper that wanted to apply to become a member of the coalition could not be discriminated against based on its size or on its viewpoint. That's very important. That is they could access to the bargaining coalition.

The second thing I understand there are voting rights. One member, one vote. It's very important that smaller newspapers who are members of the coalition must be protected and their interests must be protected that way.

Chair KLOBUCHAR. Should we also consider changes to prevent discrimination—this has been raised by some of my colleagues—in the joint negotiation process against news outlets carrying content



that expresses different or even unpopular views whether they are from the left or the right? I know that we have support for this bill, some of my colleagues have noted, from news organizations that they consider left and then we have support from—that are in support of the bill, Washington Examiner, Washington Times, Daily Caller, not exactly a bastion of liberal organizations. Could you respond to that if there's some provision we could put in to ensure that there is no bias?

Dr. SINGER. The provision again is the nondiscrimination provision. Any coalition of newspapers that forms would not be able to exclude a member based on their viewpoints, plain and simple.

Chair KLOBUCHAR. Okay. If joint negotiations with the dominant platforms stall, should Congress consider providing for binding arbitration to resolve the impasse?

Dr. SINGER. Yes. Binding arbitration is critical here because it is possible for Google or Facebook to check all the boxes and abide by the good faith protections during the good faith negotiation period. It's very important that they look down the road and see that, if they do that, they're going to be faced with binding arbitration again at which point a panel of, say, three arbitrators would make a determination as to whose estimate of the fair market value was fairest of them all, most closely approximated the value being conferred by the news publishers onto the platform.

Chair KLOBUCHAR. Okay. That's one proposal—thank you—as we finish up this bill. I also would like to enter a set of more than three dozen letters from newspapers, news organizations into the record.

[The information appears as a submission for the record.]

Those letters focus on the state of competition in journalism and the need for solutions like the Journalism Competition and Preservation Act, which is bipartisan both in the Senate and the House. We also have a letter from Lee Enterprises, no relation, discussing the challenges the industry faces from those who would exploit it for short-term profit opportunities as well as a few others.

Chair KLOBUCHAR. I'll put those in the record. I want to thank you all for being here. Local news is of foundational importance to our democracy. I want to thank our witnesses today for their testimony. Many Senators from different parties, different views as you can see came together today. That's part of the exercise of free speech and part of being a Senator. Senator Lee and I truly enjoy doing these hearings and really appreciate it. I want to get something done here. That is my goal, and we want to make it work for this country.

The record will remain open for 1 week until February 9th. Thank you. Do you want to add anything, Senator Lee. Okay. Thank you very much to all of you.

[Whereupon, at 4:55 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]



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Committee on the Judiciary  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
United States Senate

**Testimony of Jennifer Bertetto**  
**President and CEO**  
**Trib Total Media**

February 2, 2022

Chairwoman Klobuchar, Ranking Member Lee, and members of the Subcommittee, thank you for the opportunity to participate in today's hearing.

My name is Jennifer Bertetto, and I am the President and Chief Executive Officer of Trib Total Media. We are a small publisher that delivers news, information and advertising to four counties in Southwestern Pennsylvania. Our company is 272 employees strong, with a daily circulation of 45,755, a weekly community newspaper circulation of 122,345, a monthly community newspaper circulation of 60,690 and 31 hyper-local community websites which comprise our "Neighborhood News Network." Our newsroom is a collective of 88 journalists, photojournalists, editors, and designers. Although we are singularly focused on the communities we serve, our high quality and award-winning journalism are why our flagship website, TribLIVE.com, draws more than 300 million page views each year.

Trib Total Media's commitment to delivering high-quality local information and journalism dates back to our founding in the 1800's. In 1970, our company was transformed when Richard Mellon Scaife purchased a local publishing company and a community-focused newspaper. Over the years, *thanks to our advertising revenue and the philanthropic generosity of Mr. Scaife*, we added other regionally-focused newspapers to our circulation. Our focus was on providing local news to communities however small in our region, but with the rise of the Internet, we recognized that we needed to shift our focus to digital distribution instead of paper circulation – and we did. We were the first online news resource to serve Western Pennsylvania. We also expanded our digital content to include high school sports and neighborhood news networks, providing unique value to our region and connecting with our readers however they consume news. We are especially proud to offer our flagship website for free – a testament to our commitment to the community and our desire to make news equally accessible by all.

I have worked my entire professional career in the news industry at our family of companies. I started just out of college as a sales representative for the Tribune-Review and worked my way up to hold various positions within the company, including Advertising Director and Chief Operating Officer before becoming President and Chief Executive Officer in 2015. I have seen firsthand the changing nature of news consumption and distribution in the digital age. From my experiences, I can attest that the news industry faces a dire and insurmountable



challenge: leveling the playing field against the vast power exerted by dominant digital platforms.

Today, I'd like to discuss three main points:

- 1) Local newspapers across the country are under incredible financial pressure, and we must ensure that the people who create journalistic content are compensated for their work.
- 2) Access to news online has become concentrated on just two platforms - Facebook and Google – who serve as gate keepers for our trustworthy news coverage and exact the majority of advertising revenue away from news publishers.
- 3) There must be a fair exchange for the significant value that platforms derive from news publishers' content so that publishers can continue to invest in high-quality journalism.

**1. *Local newspapers face increasingly difficult financial pressures to stay in business.***

Between 2000 to 2020, newspaper advertising revenue has declined 82%, nearly \$40 billion.<sup>1</sup> Not surprisingly, this decline in revenue correlates to 31 million fewer daily newspapers in circulation<sup>2</sup> and a 57% decline in newsroom staff from 2004 to 2020.<sup>3</sup>

I saw the transformation of the news industry that these statistics reveal first-hand. With the growth of the digital platforms, mainly Facebook and Google, we saw our readership shift to less than 7-day print subscriptions, to Sunday-only subscriptions to subscription cancellations. To become profitable, in 2015, we restructured our business. We closed two newspapers with low circulation and significant revenue losses; we sold 3 other local newspapers; and we made the difficult decision to lay off more than 150 employees. In 2016, we published our last print edition of the Pittsburgh Tribune-Review – where I first started my career – and moved our reporting in the Pittsburgh market online. These decisions were essential to stay in business, but they had ramifications that are still felt today.

While we have been fortunate to cover the communities in our market through a combination of print and digital products, several communities in southwestern Pennsylvania are considered news deserts, not served by any locally-focused newspaper, either daily or weekly. Our restructuring unfortunately left a news desert in the Mon-Valley, a traditionally underserved and low-income area within Allegheny County. With a newspaper losing nearly 4 million dollars a year, there was no way to make the product viable or to make it attractive to a buyer. We shifted our resources to invest in enhanced digital offerings, and we redesigned our flagship website, TribLIVE.com, and launched a Pittsburgh-focused website, PGHtrib.com (which was migrated fully to TribLIVE.com at the end of 2021). We also launched our own

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<sup>1</sup> Pew Research Center: [Newspapers Fact Sheet](#)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*



digital advertising agency, 535media, to help us capture more revenue from advertisers who had shifted their buys from printed papers to digital outlets.

When I took over as President in January of 2015, we had enough money to remain in business until May of 2017. Without fundamental change, we faced complete closure. The changes we made benefitted our company by reducing our annual operating losses significantly enough that we remain a viable news organization today. Our news content reaches a larger audience than ever before through our print and online offerings. Three years in a row, we have been named the best overall newspaper by the Society of Professional Journalists, and we have been awarded the title of Best Overall Website by the same society for the last two years. But, the impact on the number of journalists in our newsroom and in our communities is jarring. We have gone from 316 reporters in 2014 to just 88 today.

***2. Access to news online has become concentrated on two primary platforms, Facebook and Google, who serve as gatekeepers and determine how news is displayed, prioritized, and monetized.***

With the shift from paper circulation to digital news consumption, I also saw two platforms position themselves as gatekeepers, controlling access to news – my company’s original content - on their sites. Sadly, most Americans get their news today from Facebook or Google, who are raking in profits by simply curating “content,” which is just a fancy word for the articles, photos and videos that are the work product of real journalists doing the hard work of reporting at newspapers. 65% of users do not leave Google and click through to the newspapers’ websites depriving news publishers of the traffic, or eyeballs, on their sites and the ad dollars that come with it.

Moreover, these companies determine how our local, original content is displayed, prioritized, and monetized without compensating us for the work we created. Some may say the newspaper industry has failed to modernize or keep pace with the changing digital times. To that I say: nonsense. Even with our restructuring and enhanced digital offerings, we realized that no matter what we did, it was not enough to level the playing field.

Quite frankly, small publishers like my company are stuck between a rock and a hard place. We carry no weight in negotiations with these two platforms. Our outreach to the platforms has fallen on deaf ears. We do not have the resources or stature to demand they come to the negotiating table.

At the same time, I do not have a choice in removing my content from these platforms. Search drives about 40 percent of our total audience. So, while Google claims license to use our articles and images from online terms and conditions allegedly agreed to years ago when we added Google Maps to our site, Google does not compensate us for our content. Instead, Google only offers to pay a select few publishers - mostly the largest publishers who have the resources to legally challenge the claims of license - for their content.



We have similar concerns with Facebook's treatment of our content. We do not know how Facebook prioritizes content through its algorithm; it is completely opaque. I can only speak to my personal experiences and have seen how difficult it is to have our content appear in Facebook's news feed. I follow my company's page and favorite or like the content, but I still need to affirmatively visit our company's page on a daily basis because the content does not appear in my feed. If it's not appearing for me despite my daily engagement, it is certainly not appearing for our customers. Ironically, even Facebook has admitted that over 50% of its users "want[] to see more local news and community information on Facebook – more than any other type of content."<sup>4</sup>

Beyond the use of our content without compensation and using it to become a publisher itself, Google further controls both the digital advertising market and the distribution of our content. Google determines which news websites to prioritize in returning its search results and uses that system to punish publishers for using other advertising platforms or selling too many direct ads to advertisers. If we sell too many ads, or if we use competing ad network platforms, Google penalizes our search ranking.

Put simply, Google and Facebook effectively impose an advertising tax on publishers, taking 40 to 70 percent of every ad dollar away from us.<sup>5</sup> This is wrong. Moreover, they collect consumer data and then use or sell it without sharing it to the creator of the original content. These two platforms alone capture 60% of all digital ad dollars because of their ability to collect data.<sup>6</sup> Publishers – those who create the original content – must be able to retain more of the revenue derived from their work and investment. Doing so would allow us to retain, and hire more reporters, and pay for the quality journalism that is so valuable – even to these platforms and their profits.

By draining so much advertising money out of local newsrooms, Google and Facebook have not just limited how much quality news readers have access to, they have decimated the institutional trust in newspapers that once helped ensure people could believe the news they read.

***3. The Journalism Competition and Preservation Act is a tailored solution to help news publishers have a seat at the table and negotiate fair terms for the significant value of their content that platforms use and profit from.***

Thanks to the leadership of Chairwoman Klobuchar and Senator Kennedy – as well as

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<sup>4</sup> Facebook: "Connecting People to Local News and Their Communities," <https://about.fb.com/news/2018/11/connecting-people-to-local-news/>

<sup>5</sup> Augustine Fou, "Marketers and publishers are making more money by using less Adtech," Forbes (August 7, 2020), <https://www.forbes.com/sites/augustinefou/2020/08/07/marketers-and-publishers-are-making-more-money-by-using-less-adtech/?sh=6f308e5a5898>

<sup>6</sup> Kurt Wagner, "Digital advertising in the US is finally bigger than print and television," Vox (February 20, 2019), <https://www.vox.com/2019/2/20/18232433/digital-advertising-facebook-google-growth-tv-print-emarketer-2019>



Congressmen David Cicilline (D-RI) and Ken Buck (R-CO) in the House – the Journalism Competition and Preservation Act (JCPA) would allow news publishers – irrespective of size or political persuasion – to jointly negotiate with the platforms for fair compensation for the use of our content. Existing antitrust laws ironically protect the tech giants by preventing the much smaller news publishers from coming together to negotiate fair compensation from them.

It is hard for me to understand how the JCPA could be at all controversial. It would simply allow a temporary and limited opportunity for publishers to negotiate collectively with large companies that clearly have superior market power and advantage. It is ironic to me that it is even necessary to talk about thousands of publishers needing a safe harbor from antitrust laws just to allow them to fairly negotiate with the types of companies for which the antitrust laws were designed to check their market power.

The JCPA would help level the playing field between publishers and Big Tech in three important ways:

1. It would establish a limited "safe harbor" for news publishers to come together to jointly negotiate and seek fair compensation from Google, Facebook and other covered platforms;
2. Proposed modifications would help ensure that negotiations between publishers and the platforms are conducted in good faith and result in payments that are evenly distributed to small and local papers; and
3. It would ensure that compensation for journalistic content is driven by market forces – the terms of our negotiations - not by Big Tech or the government.

The JCPA would give my company – a small, regionally-focused publisher – what we don't have today: a seat at the table. By sitting at the table with other publishers, we will have the collective stature that we do not have individually. We have seen that without negotiating mechanisms like those proposed in the JCPA, Google and Facebook do not hesitate to refuse to negotiate with publishers, cut-off access to the news content on their platforms, or offer publishers limited compensation to stymie support for reigning in their anticompetitive tactics.

While Google and Facebook earn record profits year after year, their monopolistic behavior has led to downsized or shuttered newsrooms across America. Undoubtedly, this has also contributed to the proliferation of a new type of "news," one that is nothing more than false, click bait. Journalism cannot just be 'content' that Big Tech can commoditize. Our Founders understood that quality journalism is key to sustaining civic society, and it's why a free press is enshrined in the U.S. Constitution. But the "free" press does not mean our work is for free.

It's imperative that journalists are fairly compensated for their work, and the JCPA would allow us the opportunity to seek just that. The bill does not prescribe the outcome, but it does require all parties to at least come to the table and negotiate in good faith. If successful, the JCPA will help publishers, including small publishers like my company, to earn fair



compensation for our work, which will enable us to continue to make more investments in our community, hire more reporters, and increase quality, fact-based news.

On behalf of the Trib Total Media family of companies, our 88 local journalists, and the community in which we serve, I urge you to support this vital, common-sense bill.

Thank you again for the opportunity to testify at today's important hearing.



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WRITTEN TESTIMONY OF

DANIEL FRANCIS

CLIMENKO FELLOW AND LECTURER ON LAW

HARVARD LAW SCHOOL

BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COMPETITION POLICY, ANTITRUST, AND CONSUMER

RIGHTS

FOR A HEARING ENTITLED

“BREAKING THE NEWS: JOURNALISM, COMPETITION, AND THE EFFECTS OF

MARKET POWER ON A FREE PRESS”

FEBRUARY 2, 2022



## **I. Introduction**

Chair Klobuchar, Ranking Member Lee, Members of the Subcommittee, thank you for the opportunity to appear before you today and testify about antitrust policy in news markets.

My name is Daniel Francis, and I am currently a lecturer and fellow at Harvard Law School. I am a former federal antitrust enforcer: from May 2018 to January 2021 I served in the antitrust arm of the FTC as Senior Counsel, Associate Director for Digital Markets, and finally as Deputy Director. My portfolio focused on digital and platform antitrust, including among other things the Facebook investigation and litigation. Before joining the FTC, I spent a little over a decade in private practice. Since leaving the government, I have not taken on any work for private clients, so I have no brief in testifying today other than my interest in protecting consumers and supporting the antitrust system. My academic work currently focuses on ways to reinforce our antitrust laws, including in digital markets, without sacrificing principle and rigor.<sup>1</sup>

I strongly support close antitrust scrutiny of tech markets, including in areas that relate to news. When digital monopolists, or monopsonists, engage in anticompetitive acquisitions or practices to attain, expand, or entrench monopoly power, agencies and courts should act promptly and effectively. But I recommend against the creation of a national news cartel: even in response to the remarkable success of Google and Facebook in winning advertising business, and even given the genuine struggles that many news publishers face today.

The difficulties facing news publishers today do not appear to be the result of monopsony power, nor of any other problem that could be solved by forming a national news cartel. Rather

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<sup>1</sup> See, e.g., Daniel Francis, *Making Sense of Monopolization: Antitrust and the Digital Economy*, Antitrust L.J. (forthcoming 2022) (proposing a principled regrouping of monopolization doctrine); Steven C. Salop, Daniel Francis, Lauren Sillman, and Michaela Spero, *Rebuilding Platform Antitrust: Moving on from Ohio v. American Express*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3959827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3959827) (proposing a balanced approach to platform antitrust cases).



than solving publishers' problems, the creation of such a cartel would harm consumers and deter innovation in news. Instead, Congress should reaffirm its commitment to competition, and invest in more antitrust, not less. Among other things, fully funding the antitrust agencies would help to guard against anticompetitive practices and transactions, in news and other digital markets, without adding more monopoly power into the supply chain.

Of course, there are real hardships in the news industry today. The industry in general, and local news in particular, appears to be undergoing a painful transition driven by a shift in advertisers' and consumers' demand away from local print and broadcast media, and toward digital alternatives. That transition has been hard on news publishers, particularly smaller ones. But this alone is no reason to depart from our fundamental commitment to competition by authorizing conduct that would normally be a matter for criminal prosecution. To the contrary: the transition is evidence of competition working as it should, as consumers and advertisers are choosing platforms that they prefer. Moreover, there seems to be considerable evidence that the industry is responding by pivoting to digital business models, albeit slowly and painfully. This process of competition is almost certainly best left to continue, under the watchful eye of federal and state antitrust enforcers, and this Subcommittee, to make sure that it takes place on the merits. A "competitive" market that does not tolerate failure and exit is really nothing of the kind.

I am aware of an argument that Google and Facebook must be monopsonists—that is, buyer-side monopolists—in a market for news distribution because they get more value from linking and previewing news web sites than they pay to news publishers.<sup>2</sup> But that argument seems to me to rest on a fundamental mistake. It presumes there is a market for "news distribution rights,"

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<sup>2</sup> See, e.g., Hal J. Singer, *Second Round Comments in Response to U.S. Copyright Office's Publishers' Protection Study: Notice and Request for Public Comment*, 86 Fed. Reg. 56721 (Oct. 12, 2021) 15–17.



in which news publishers have the initial IP (or equivalent) right to decide who can link and preview their content, which they can then license to others (like Facebook or Google).

But no such market exists, because the news publishers hold no such right in the first place. The operator of a website—news or otherwise—has no legal right that is invaded when others link to it, or reproduce small “snippet” previews covered by copyright’s fair use doctrine.<sup>3</sup> Today, Google and Facebook are not purchasing a right to link-and-preview news publishers’ web sites from anyone, because they already have that right under our law. Thus, when Google, Facebook, or anyone else—Bing, DuckDuckGo, Twitter, LinkedIn, a new entrant—links and previews content for free on the internet, they are not exercising monopsony power, just the freedoms that our law grants to us all. These freedoms are foundational to the internet as we know it today: a place in which we do not need permission to link to a website or quote a sentence or two from it. Moreover, in exercising their rights to link and preview, platforms and their users appear to confer a considerable traffic-generation windfall upon news publishers: it does not seem plausible that news publishers receive *less* traffic rather than more overall because Google and Facebook are disseminating links to their articles. Indeed, a 2017 study commissioned by an association of publishers in Spain indicated that linking-and-previewing is good, not bad, for publishers.<sup>4</sup>

So authorizing a national news cartel would not solve either of the publishers’ problems. It would not return advertisers or consumers to local news, and it would not create new veto powers over linking and previewing, even if Congress wanted to do either of these things. Instead, it

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<sup>3</sup> See, e.g., *Authors Guild v. Google, Inc.*, 804 F.3d 202, 225 (2d Cir. 2015); *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1168 (9th Cir. 2007); *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 822 (9th Cir. 2003).

<sup>4</sup> NERA Economic Consulting, *Impact on Competition and on Free Market of the Google Tax or AEDE fee: Report for the Spanish Association of Publishers of Periodical Publications (AEEPP)* (2017), [https://clabe.org/pdf/Informe\\_NERA\\_para\\_AEEPP\\_\(INGLES\).pdf](https://clabe.org/pdf/Informe_NERA_para_AEEPP_(INGLES).pdf).



would likely harm consumers, chill innovation, and undermine our antitrust system. But antitrust needs reinforcement, not erosion.

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The remainder of my written testimony is in two parts. Part II explains why I recommend that Congress not depart from the fundamental rule against cartels to authorize the proposed national news monopoly. Part III explains why, in my view, there are better ways to move forward, while keeping a close watch on tech monopolies and news competition.

## **II. Congress Should Not Authorize a National News Cartel**

I understand that news publishers have proposed that they be allowed to form a national news cartel: that is, that they be given a statutory power to agree with one another on the prices and terms on which they will supply their news content, free from the criminal liability that would usually attend such conduct.

This proposal should be strongly resisted. As Section A explains, the rule against cartels is the first commandment of antitrust law and policy, and a centerpiece of decades of antitrust enforcement and advocacy at home and abroad. Statutory authorization to cartelize is the antitrust equivalent of a license to kill: it should be granted only under the most compelling circumstances, and then only with extreme care and subject to close supervision.<sup>5</sup>

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<sup>5</sup> It is often difficult to ensure effective supervision of an authorized cartel, even when it is expressly commanded by Congress. For example, a GAO report in 1979—prepared at the request of this Subcommittee to monitor the effects of an antitrust exemption for agricultural cooperation under the Capper-Volstead Act—noted that statutory supervision of agricultural cooperation by the Department of Agriculture, intended to protect against “unwarranted price increase[s],” was inadequate in practice. GAO, *Family Farmers Need Cooperatives, But Some Issues Need to Be Resolved*, CED-79-106 (July 26, 1979), ii–iii (noting concerns that “cooperatives have garnered a dominant market position in some commodities and increased prices, thereby fueling inflation” and that “[the Department of] Agriculture has done very little to guard against undue price enhancement and other unfair practices”). Strikingly, 11 years later, when the GAO undertook a second investigation of the same issue, the Office concluded that such supervision remained inadequate. GAO, *Dairy Cooperatives—Role and Effects of the Capper-Volstead Exemption*, GAO/RCED-90-186 (Sept. 1990), 30–32 (“USDA has done little to improve its oversight of cooperatives since our



Those circumstances are not present here. Section B explains that the central complaints articulated by news publishers are not of the kind that would justify an antitrust exemption. Section C explains why considerable consumer harm would likely result from the creation of such an exemption. Section D proposes that this is a time to reinforce antitrust, not a time to undermine it by opening the door to a long line of immunity applicants seeking special treatment.

#### **A. Licenses to Cartelize Are Strongly Disfavored.**

For more than 130 years, our antitrust laws have required that businesses in the United States must gain and retain market and monopoly power by competition, not by anticompetitive practices or transactions.<sup>6</sup> That principle has applied with equal force in virtually every part of our economy. Today, the Sherman Act is the “Magna Carta of free enterprise” in the United States, and it stands at the heart of our commitment to protecting American consumers and guaranteeing the competitiveness of our economy.<sup>7</sup>

Over the years, recognizing the critical importance of this commitment to competition, Congress has granted exemptions from the antitrust laws only in a handful of very unusual cases.<sup>8</sup> This strong presumption against immunities and carveouts has served consumers, and our economy, very well. Every bite taken out of our antitrust framework weakens our protection of competition, and encourages others to seek similar special treatment. Today—with bipartisan

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1979 review.”), 3 (USDA has “little information on cooperative pricing activities and provides little assurance that cooperatives are not inappropriately increasing prices for their goods”).

<sup>6</sup> See 15 U.S.C. § 1 *et seq.*

<sup>7</sup> *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972). See also, e.g., *City of Lafayette, La. v. Louisiana Power & Light Co.*, 435 U.S. 389, 398 (1978) (noting that, in passing the Sherman Act, “Congress, exercising the full extent of its constitutional power, sought to establish a regime of competition as the fundamental principle governing commerce in this country”).

<sup>8</sup> See, e.g., 46 U.S.C. § 49307 (shipping line exemption). Prominent judicially-created exemptions include, for example, the *Noerr-Pennington* doctrine, which immunizes certain petitioning conduct, and the “state action” doctrine, which provides limited immunity for conduct undertaken by or at the behest of state and local governments. See, e.g., *Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *Parker v. Brown*, 317 U.S. 341 (1943).



agreement that our antitrust system needs to be strengthened rather than weakened, and with consumer prices already climbing fast—this commitment is more important than ever.

Among antitrust violations, cartels—naked agreements on prices and terms—are uniquely harmful to consumers (and workers<sup>9</sup>), and uniquely abhorrent to our antitrust laws. It has long been the most basic point of bipartisan consensus in antitrust, as well as the consistent position of the Supreme Court, that cartels are the “supreme evil” of antitrust: accordingly, cartel enforcement has been a flagship priority of the Department of Justice for decades.<sup>10</sup>

In fact, cartels are so reliably associated with harm to consumers and competition that the Department of Justice prosecutes such nakedly anticompetitive behavior *criminally*, imposing significant jail time and criminal fines.<sup>11</sup> In civil litigation, courts do not permit defendants to adduce justifications for naked cartelization, instead imposing a “*per se*” or automatic rule of

<sup>9</sup> Although cartels most commonly involve suppliers of products and services, the Sherman Act’s prohibitions apply equally to cartelization among buyers of labor that harm workers. *See, e.g.*, Statement of Doha Mekki before the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, “*Antitrust and Economic Opportunity: Competition in Labor Markets*” (Oct. 29, 2019) (“[N]aked no-poach and wage-fixing agreements are indistinguishable from and eliminate competition in the same irredeemable way as agreements to fix product prices or allocate customers.”); *United States v. Jindal*, Case 4:20-cr-00358, 2021 WL 5578687, at \*6 (E.D. Tex. Nov. 29, 2021) (“[N]aked horizontal agreements to fix the price of labor, like the agreement here, are ordinarily *per se* illegal.”).

<sup>10</sup> *See, e.g.*, *Verizon Communications v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) (collusion is the “supreme evil” of antitrust); *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 639 (1992) (“No antitrust offense is more pernicious than price fixing.”); Christine Varney, Remarks to the U.S. Chamber of Commerce (June 24, 2011), <https://www.justice.gov/opa/speech/assistant-attorney-general-christine-varney-speaks-us-chamber-commerce> (“The Division has focused on prosecution of large price-fixing, bid-rigging, and market allocation cartels that raise prices to both businesses and individual consumers, restrict supply, reduce innovation, and act as a drag on the entire economy.”); R. Hewitt Pate, Asst. Atty. Gen., U.S. Dept. of Justice, *International Anti-Cartel Enforcement* (Nov. 21, 2004), <https://www.justice.gov/atr/speech/international-anti-cartel-enforcement> (“[W]e at the U.S. Justice Department see antitrust enforcement as a three part hierarchy. At the top of this hierarchy is enforcement against cartels, conduct that is devoid of any efficiency justification and inflicts tremendous harm on our economy.”).

<sup>11</sup> *See, e.g.*, Renata Hesse, Acting Asst. Atty. Gen., U.S. Dept. of Justice, *The Measure of Success: Criminal Antitrust Enforcement During the Obama Administration* (Nov. 3, 2016), <https://www.justice.gov/opa/speech/acting-attorney-general-renata-hesse-antitrust-division-delivers-remarks-26th> (“[I]n recent years we’ve obtained the largest fines in the division’s history. The auto parts cases now total nearly \$2.9 billion in criminal fines, surpassing the international cartel investigation before it—the air transportation investigation totaled \$1.8 billion. And last year we announced over \$2.5 billion in criminal fines and penalties from corporate offenders in a single investigation in the financial-services sector. At the same time, we continue to hold individuals accountable for the crimes imputed to their corporate employers, asking for sentences that reflect their seriousness and send a powerful deterrent message. During the past eight years we obtained well over 300 individual convictions while maintaining a 23-month average prison sentence.”).



illegality.<sup>12</sup> As long ago as 1940, the Supreme Court stated that: “[F]or over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements are unlawful *per se* under the Sherman Act and that *no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense.*”<sup>13</sup>

This remains a central commandment of the U.S. antitrust system, and the Department of Justice has long emphasized it in both its policy advocacy and its enforcement practice.<sup>14</sup> Indeed, the Department has invested decades of leadership and advocacy in encouraging other jurisdictions around the world to punish cartels, and in supporting the repeal of cartel exemptions at home.<sup>15</sup>

For all these reasons, any departure from the rule against cartels should be entertained only with considerable skepticism, only in light of compelling evidence that cartelization really is the right solution to the policy problem at issue, and only after carefully considering the consequences

<sup>12</sup> *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940). See also John B. Kirkwood, *Collusion to Control a Powerful Customer: Amazon, E-Books, and Antitrust Policy*, 69 U. Miami L. Rev. 1 (2014) (“Virtually all cases apply a rule of *per se* illegality to hard-core collusion . . . even if the colluders are selling to or buying from a firm with substantial power. Only one case has recognized the benefits of offsetting power. Similarly, most scholars would not let firms collude to exert countervailing power, concluding that a defense for such behavior would do more harm than good.”); *FTC v. Indiana Fed. of Dentists*, 476 U.S. 447 (1986) (“That a particular practice may be unlawful is not, in itself, a sufficient justification for collusion among competitors to prevent it.”).

<sup>13</sup> *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) (emphasis added).

<sup>14</sup> See, e.g., Richard A. Powers, Deputy Asst. Att’y Gen., U.S. Dept. of Justice, *A Matter of Trust: Enduring Leniency Lessons for the Future of Cartel Enforcement* (Feb. 19, 2020) <https://www.justice.gov/atr/page/file/1250346/download> (“[I]ndividuals who violate U.S. antitrust laws and seek to evade justice will find no place to hide.”); Gregory J. Werden et al., *Deterrence and Detection of Cartels: Using All The Tools and Sanctions* (Mar. 1, 2012), <https://www.justice.gov/atr/file/518936/download> (“Cartels have no legitimate purposes and serve only to rob consumers of the tangible blessings of competition. . . . [P]articipation in a cartel is viewed in the United States as a property crime, akin to burglary or larceny, and it is properly treated accordingly. Like other serious crimes, cartels are never socially desirable, and therefore U.S. law properly seeks to deter them completely rather than merely tax them.”).

<sup>15</sup> See, e.g., Contribution by the United States, OECD Working Party No. 3 on Co-operation and Enforcement (June 9, 2020) (noting that cartels are “uniquely pernicious”). The Antitrust Division has also advocated for the repeal of exemptions in U.S. law. See, e.g., Contribution by the United States, *Competition Issues in Liner Shipping*, OECD Working Party No. 2 on Competition and Regulation (May 26, 2015), <https://www.justice.gov/atr/file/823411/download>, ¶ 10 (“Because the [ocean shipping carrier] exemption denies the full benefits of competition, the Division has twice testified before Congress in favor of eliminating the exemption. In addition, the American Bar Association’s monograph on Federal Statutory Antitrust Exemptions describes why the arguments traditionally asserted to justify the exemption (i.e., ruinous competition due to overcapacity) are dubious. The ABA concludes that the conferences typically result in inefficiently high rates and have at least some ability to inflate price.”).



for consumers and competition. This is doubly true if the proposed cartel would include not just vulnerable minnows but also vast conglomerates. As the following sections explain, those factors do not appear to support a departure from the general rule here.

**B. Publishers' Complaints Do Not Support an Exemption.**

The struggles of many news publishers—as genuine and as troubling as they are—do not appear to be of a kind that would support an antitrust exemption. At root, the public case for an antitrust exemption seems to rest on two main complaints. The first is the dramatic migration of advertising dollars from local print and broadcast media to digital advertising. The second is the perceived exploitation of news publishers by digital platforms who include links and previews in search results, or allow them to be shared by users in social media posts.

Neither of these complaints states a problem that an antitrust exception could plausibly be expected to solve. Despite the optics of wealthy platforms prospering while some local news publishers flounder, neither of the news publishers' two main complaints appears to be a result of monopoly or monopsony power (although certainly some digital platforms do enjoy such power in some markets<sup>16</sup>) against which a supply cartel could act as an economic counterweight.

In fact, on closer examination, neither of the complaints appears to state a problem that Congress would be well advised to try to “solve.” Advertising dollars probably cannot, and probably should not, be forced back toward local news. And there is no improper “exploitation” of news content here because platforms, like everyone else, invade no legal right of the publisher

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<sup>16</sup> See, e.g., First Amended Complaint, *FTC v. Facebook, Inc.*, Case No. 1:20-cv-3590 (D.D.C., filed Aug. 19, 2021), ¶¶ 163–216 (alleging monopoly power in personal social networking).



when they link to, and preview, their news content. I will suggest, as other commenters have, that that is an exceedingly good thing, and should not be altered or undermined—even implicitly.

I want to acknowledge two important points before continuing. First, to be sure, the U.S. news industry is an important one. But so too are many other industries—pharmaceuticals, healthcare, energy, defense, and so on—from which antitrust agencies hear pleas for special indulgence on a weekly basis. Those pleas are routinely and correctly denied. The more important the market, the *more* important it is that we insist on the antitrust rules of the road. Our fundamental commitment to competition is not reserved for trivial or unimportant industries.

Second, digital monopoly is a matter of serious public and Congressional concern. News publishers, like many other businesses in our economy, face enormous digital platforms, the operation of which have raised serious policy problems while bringing undeniable benefits. But if we are concerned about monopoly power, in tech markets or elsewhere, the solution is more antitrust enforcement, not less. Our task should be to make sure that market, monopoly, and monopsony power are vulnerable to competitive erosion, and that they are neither created nor maintained by anticompetitive practices or transactions. As I shall suggest in Part III, concerns about digital monopoly counsel in favor of additional support for federal and state antitrust enforcers, as well as carefully calibrated reinforcements to antitrust doctrine.

*1. Complaint 1: Advertising dollars and consumers have moved elsewhere.*

The first complaint articulated by news publishers is that advertising dollars and consumers are leaving local print and broadcast news in large numbers.

It is clear that the news industry has seen profound and painful change in the last few decades. Before the rise of digital advertising, many local print and broadcast media companies



enjoyed significant market power—sometimes with only one or two newspapers in a given metropolitan area—and enjoyed high margins as a result.<sup>17</sup> As a report from the UNC Center for Innovation and Sustainability in Local Media (“UNC Report”) explains, this changed radically with the arrival of the tech revolution, when advertisers and readers migrated to digital—and often national—alternatives that they preferred:

In the latter half of the 20th century, the sole surviving newspaper in many markets was often a de facto monopoly, able to set rates for both print advertisers and readers. As a result, papers in smaller markets often operated at 20 to 40 percent profit margins. But, by 2011, reader habits had shifted, with more people getting their news online than from a newspaper. Advertisers followed readers, causing the collapse of the print business model.<sup>18</sup>

As painful as this has been, this turn is not itself a result of market power, monopoly power, monopsony power, or anticompetitive conduct (although it may well have *led to* such power): instead, it is caused by technological and commercial progress, and changes in market demand. The turn to digital advertising, for example, may be due to its broader geographic reach, its vastly superior ability to target consumers and generate metrics for advertisers, or to other advantages—and, to be sure, it may raise other concerns, including those relating to privacy.<sup>19</sup> But ultimately this shift is evidence of competition working as it should: migration to a superior product by the many purchasers that prefer it.

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<sup>17</sup> See, e.g., U.S. Copyright Office, Publishers’ Protections Study: Notice and Request for Public Comments 86(194) Fed. Reg. 56,721, 56,722–23 (Oct. 12, 2021) (“Digital distribution exposed city papers that once enjoyed close to local monopolies to national competition from well-heeled newsrooms like *The New York Times*.”).

<sup>18</sup> Penelope Muse Abernathy, NEWS DESERTS AND GHOST NEWSPAPERS: WILL LOCAL NEWS SURVIVE? Report of the UNC Center for Innovation and Sustainability in Local Media (2020) 22.

<sup>19</sup> See generally, e.g., Farhad Manjoo, *The Online Ad Industry Is Undergoing Self-Reflection. That’s Good News*, N.Y. TIMES (Apr. 5, 2017), <https://www.nytimes.com/2017/04/05/technology/online-ad-industry-self-reflection.html>? (“Digital advertising fundamentally altered [the previous business model of advertising]. Through profiling, now ad companies know — or, at least, aim to know — exactly who is reading a certain site or watching a certain video. So instead of buying ads tied to a certain piece of content, companies can buy ads targeted exactly to an audience.”).



Consumers, too, appear to be switching their news consumption away from local print and broadcast news. In 2019, a Pew Research report found that only 14% of Americans had directly paid a local news source.<sup>20</sup> And, as the U.S. Copyright Office has noted, decline in newspaper circulation predates the internet era.<sup>21</sup> Again, the fact of this secular decline does not imply that market or monopoly power, or anticompetitive conduct, is to blame. Rather, it appears that given increasing access to sources of news, including national news—print, radio, television, web sites (including publishers and aggregators alike), social media, podcasts, and so on—consumers are choosing other things than local news. Such switching by consumers to a preferred product is the essence of competition.

But however legal and necessary this transition may be, it has been extremely hard on many local print and broadcast news publishers. The UNC Report noted “Between 2005 and 2018, newspaper advertising revenue, which had historically funded local news gathering, dropped from almost \$50 billion annually to less than \$15 billion, resulting in the elimination of thousands of newsroom positions.”<sup>22</sup> Indeed, we have long known that technological and commercial change can be a very painful process for market participants whose traditional products or business models no longer thrive: from the photographic camera-and-film industry to video rental stores.

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<sup>20</sup> Pew Research Center, *For Local News, Americans Embrace Digital but Still Want Strong Community Connection* (Mar. 26, 2019), <https://www.pewresearch.org/journalism/2019/03/26/for-local-news-americans-embrace-digital-but-still-want-strong-community-connection/>.

<sup>21</sup> U.S. Copyright Office, *Publishers’ Protections Study: Notice and Request for Public Comments* 86(194) Fed. Reg. 56722 (Oct. 12, 2021) (“Total newspaper circulation, already declining before the internet-era, in 2020 fell to its lowest point since 1940.”).

<sup>22</sup> Penelope Muse Abernathy, *NEWS DESERTS AND GHOST NEWSPAPERS: WILL LOCAL NEWS SURVIVE?* Report of the UNC Center for Innovation and Sustainability in Local Media (2020) 41.



These facts suggest that the news industry, and particularly local news, is undergoing a difficult and painful transition away from a business model that is “broken and must be rebuilt.”<sup>23</sup> For many publishers, the pandemic has made conditions even harder.<sup>24</sup>

Importantly, however, not all publishing businesses are equally situated. The UNC Report points out that, “[d]espite the shrinking universe of surviving papers, the chains are bigger than ever—and poised to grow even bigger, with the creation of a handful of highly leveraged mega-chains formed by the union of large publicly traded newspaper companies with large hedge funds and private equity firms.”<sup>25</sup> The Harvard University Future of Media Project has published a helpful chart of ownership information for the largest U.S. news sources.<sup>26</sup>

Amid the difficulties, there are reasons for optimism. In particular, it appears that news publishers are responding to the changes in the marketplace and that consumer demand for digital news is rising. While overall newsroom employment has fallen considerably in recent years, a Pew Research Center study has identified a steady *growth* in employment at digital-native publishers.<sup>27</sup> The New York Times added almost half a million digital subscriptions in the third quarter of 2021 alone, recording its “best third-quarter performance in both News and total net subscription additions since the launch of the digital pay model more than a decade ago, and, outside of 2020, [the paper’s] best quarter ever for digital subscription additions.”<sup>28</sup> Last month, Hearst Newspapers announced its “single largest digital expansion ever” following an increase in

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<sup>23</sup> *Id.* at 56.

<sup>24</sup> *Id.* at 29.

<sup>25</sup> *Id.* at 10.

<sup>26</sup> <https://projects.iq.harvard.edu/futureofmedia/index-us-mainstream-media-ownership>.

<sup>27</sup> Pew Research Center, U.S. newsroom employment has fallen 26% since 2008 (July 13, 2021), <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>

<sup>28</sup> Marc Tracy, New York Times Adds 455,000 Subscriptions in Third Quarter, N.Y. TIMES (Nov. 3, 2021), <https://www.nytimes.com/2021/11/03/business/media/new-york-times-3q-earnings.html>.



paid digital-only subscriptions of 50% more than in the previous year, and a Senior Vice President noted that “collectively, our Hearst Newsrooms are the same size as five years ago, although with much different digital skill sets.”<sup>29</sup> In general, then, digital news appears to be firmly on the rise,<sup>30</sup> with Pew Research noting that “[o]utlets have several options for reaching their consumers online, including apps, newsletters, podcasts and aggregation platforms like Apple News or Flipboard.”<sup>31</sup>

Many of the undoubted difficulties experienced by news publishers, especially local ones, imply *more* competition, not less, in news: markets are expanding, new platforms are emerging, and once-comfortable local incumbents are encountering strong competitive headwinds.<sup>32</sup> The U.S. Copyright Office recently pointed out that “[d]igital distribution [has] exposed city papers that once enjoyed close to local monopolies to national competition from well-heeled newsrooms like *The New York Times*.”<sup>33</sup> Indeed, today, American consumers appear to be receiving news through a wider variety of distribution channels than ever, including television, radio, newspapers

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<sup>29</sup> Rick Edmonds, *Coming off big digital subscription growth, Hearst Newspapers plan a new data and product hub for 2022*, POYNTER (Jan. 27, 2022), <https://www.poynter.org/business-work/2022/coming-off-big-digital-subscription-growth-hearst-newspapers-plan-a-new-data-and-product-hub-for-2022/>.

<sup>30</sup> See, e.g., Pew Research Center, *Digital News Fact Sheet* (July 27, 2021) (“The average fourth quarter, monthly unique visitors for the primary domains of [97 news] outlets in 2020 was 32.1 million, an 11% increase over the 29 million visitors those sites received in 2019, according to Comscore data.”); Faisal Kalim, *300% growth in subscriptions for digital news and media: Time for publishers to reassess their business models?*, WHAT’S NEW IN PUBLISHING (Apr. 30, 2020), <https://whatsnewinpublishing.com/300-growth-in-subscriptions-for-digital-news-and-media-time-for-publishers-to-reassess-their-business-models/>.

<sup>31</sup> Pew Research Center, *Digital News Fact Sheet* (July 27, 2021).

<sup>32</sup> Indeed, some public advocacy materials say this out loud. See, e.g., BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News* (2021), [https://www.nab.org/documents/newsRoom/pdfs/Economic\\_Impact\\_Tech\\_Platforms\\_Broadcast\\_News.pdf](https://www.nab.org/documents/newsRoom/pdfs/Economic_Impact_Tech_Platforms_Broadcast_News.pdf), 3 (“[Big tech platforms] have hit local broadcasting where it hurts most, in its ability to produce and serve audiences with quality journalism and generate advertising revenue to maintain viability and competitiveness in the market.”). This argument, in a study commissioned by the National Association of Broadcasters, is an explicit complaint about competition.

<sup>33</sup> U.S. Copyright Office, *Publishers’ Protections Study: Notice and Request for Public Comments* 86(194) Fed. Reg. 56,721, 56,722–23 (Oct. 12, 2021). See also, e.g., Matthew S. Weber, *Antitrust Policy and the United States News Media*, USC Annenberg Center on Communication Leadership & Policy (2010), <https://fundingthenews.usc.edu/related-research/> (“In the online space . . . margins are significantly smaller and competition notably higher, resulting in decreased profits for newspapers.”).



(including web sites operated by print newspapers), digital-native news publishers, podcasts, social media, and so on. There is some indication that even more competitive entry is on the way.<sup>34</sup>

And the marketplace appears fairly competitive today, as a number of studies have suggested. A Statista report in September 2021 concluded that the top ten most-visited news websites in the United States were those of: CNN (378.7 million monthly visits); msn.com (329.3 million); foxnews.com (266.3 million); nytimes.com (252.7 million); finance.yahoo.com (162.3 million); washingtonpost.com (122.1 million); news.yahoo.com (100.7 million); bbc.com / bbc.co.uk (98.5 million); cnbc.com (96.6 million); nypost.com (94.4 million).<sup>35</sup>

A poll conducted in May 2021 by Morning Consult and The Hollywood Reporter found that adults in the United States exhibit considerable diversity in the channels of news distribution to which they turn:

	Daily	Once or More per Week	Once or More Per Month	Less than Once Per Month	Never
Newspapers	13%	22%	12%	14%	39%
Radio	20%	30%	13%	10%	27%
Cable News	22%	24%	11%	7%	35%
Network News	27%	29%	11%	8%	24%
Online-Only News Sites	19%	28%	14%	8%	31%
Social Media	32%	24%	9%	5%	30%
Podcasts	6%	18%	10%	11%	55%

Source: Morning Consult & The Hollywood Reporter, *National Tracking Poll #210530 (May 6–9, 2021)* (question: “How often do you turn to the following sources for news?”) (aggregation mine).<sup>36</sup>

<sup>34</sup> BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News* (2021), [https://www.nab.org/documents/newsRoom/pdfs/Economic\\_Impact\\_Tech\\_Platforms\\_Broadcast\\_News.pdf](https://www.nab.org/documents/newsRoom/pdfs/Economic_Impact_Tech_Platforms_Broadcast_News.pdf), 9 (noting evidence that Amazon and Apple plan to increase their activity in news markets).

<sup>35</sup> Amy Watson, *Leading global English-language news websites in the United States in September 2021, by monthly visits*, STATISTA (Oct. 28, 2021) (reporting survey of visits in the United States during September 2021).

<sup>36</sup> Source: Morning Consult & The Hollywood Reporter, *National Tracking Poll #210530 (May 6–9, 2021)*, *Crosstabulation Results*, [https://assets.morningconsult.com/wp-uploads/2021/05/18093706/210530\\_crosstabs\\_HOLLYWOOD\\_Adults\\_v1\\_AUTO.pdf](https://assets.morningconsult.com/wp-uploads/2021/05/18093706/210530_crosstabs_HOLLYWOOD_Adults_v1_AUTO.pdf), 42–69.



In sum: the news industry appears to be negotiating the slow and painful process of adjustment to technological and commercial change, and to the introduction of more options for consumers and advertisers. The central problem faced by local publishers—migration of advertisers and customers to other options—seems to be a consequence of competition, not monopoly. And the industry appears to be responding appropriately to the resulting pressures, by developing an expanding array of digital options.<sup>37</sup>

## **2. Complaint 2: Publishers do not have an IP right to prevent linking and previewing.**

The second complaint articulated by news publishers is that large digital platforms—including Google and Facebook in particular—derive a benefit from activity involving links to, and previews of, news websites. In particular, Google’s search results may include links to news websites and short preview “snippets” (just as they do for other search results); likewise, Facebook users may choose to share links to news websites, which may also include preview snippets. And the platform may monetize this activity, like other activity on the platform, through advertising.<sup>38</sup>

As I understand the applicable law,<sup>39</sup> this is not a function of market, monopoly, or monopsony power: rather, it is a (very fortunate) consequence of our property laws. Under our

<sup>37</sup> Similar developments can be seen in other jurisdictions. See, e.g., NERA Report, *supra* note 4, § 3.1 (Spanish experience).

<sup>38</sup> Competing studies have been published by the (keenly interested) participants expressing very different views of the value of the marginal contribution made by the news content to platform revenue. See, e.g., News Media Alliance, *Google Benefit from News Content* (June 2019), 25 & Ex. C (listing a “suggested estimate” of benefit at \$4.7 billion in 2018, although the factual basis for that estimate is not fully explained).

<sup>39</sup> To be very clear: I am not an expert in intellectual property, the law of the internet, or the law of news. The text states only my high-level understanding of applicable law. I note the existence of a question in at least some states about the status and scope of “hot news” misappropriation doctrine, including questions about whether and to what extent that doctrine is preempted by federal copyright law. However, I have set that issue aside, for—as the Copyright Office has noted in a recent Federal Register notice—“most courts faced with hot news misappropriation claims since *Motorola* have found them to be either preempted or insufficiently proven.” and “even if a hot news misappropriation claim could be brought against a news aggregator, it would face a significant hurdle in avoiding preemption by the Copyright Act.” U.S. Copyright Office, *Publishers’ Protections Study: Notice and Request for Public Comments* 86(194) Fed. Reg. 56,721, 56,722–23 (Oct. 12, 2021). I also note protections and safe harbors in the Digital Millennium Copyright Act for certain forms of reproduction. See 17 U.S.C. § 512. Of course, publishers may have practical or technical means of impeding linking-and-previewing: if they were to exercise such means, platforms and others would remain free in turn to implement workarounds to the extent permitted by applicable law, because linking-and-previewing invades no exclusive right of the publisher.



law, *everyone* has the vital freedom to link and preview web pages, without asking the page owner's permission, and without paying a penny for the privilege. Indeed, linking-and-previewing is ubiquitous on the internet: on the Bing and DuckDuckGo search engines, on the Twitter microblogging site, on the LinkedIn professional networking site, and countless other platforms and sites. Anyone could set up a new-entrant app or website today, with zero users and a zero market share in both news and advertising, and do exactly the same thing for exactly the same (zero) price. This freedom to link and preview without permission or payment has nothing at all to do with market, monopoly, or monopsony power.

Instead, it is a function of the fact that *news publishers (and web site operators generally) have no intellectual property right covering such activity*. Our property and IP laws simply do not give web site publishers—of news or otherwise—exclusive control of the right to link and preview their websites. A short preview, such as a low-resolution thumbnail image and a line or two of text, falls within the “fair use” exception to copyright.<sup>40</sup> So neither a vast digital platform nor the smallest new entrant has any need to bargain with a news publisher for the right to link and preview. The news publisher has nothing that the platform (or entrant) needs to purchase.

Accordingly, the claim that monopsony power can be inferred from the fact that Google and Facebook do not pay for linking-and-previewing news seems incorrect.<sup>41</sup> That claim presupposes that there is a market for the right to link-and-preview news: a right held initially by the news publisher that can then be sold or licensed to the digital platforms, or anyone else, for a

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<sup>40</sup> See *supra* note 3. See also Letter from Authors Alliance et al. to Chair Klobuchar, Chair Cicilline, Ranking Member Lee, and Ranking Member Sensenbrenner (June 17, 2021), [https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617\\_JCPA-Letter-to-Congress.pdf](https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617_JCPA-Letter-to-Congress.pdf) (“[B]rief snippets of content—such as headlines, images, or short excerpts—that often accompany links . . . have been consistently found to be fair uses under copyright law, and protection for these uses is mandated by our participation in the Berne Convention. These fair uses cannot be banned or substantially curtailed without running afoul of Supreme Court jurisprudence, the First Amendment, and multilateral international obligations.”).

<sup>41</sup> See, e.g., Singer, *supra* note 2.



price. But a market for that right does not exist. The right to link-and-preview websites has already been allocated, by our property law, to anyone in the economy who wants it, including platforms.

This is almost certainly an exceedingly good thing. Hyperlinks are the very lifeblood of the internet: nothing like our modern internet could have flourished if a user or platform needed to obtain a copyright license before linking to another page.<sup>42</sup> Imagine the incalculable harm it would do if no-one on the internet could link to another website (news or otherwise) without obtaining the permission of the linked website and paying a fee.<sup>43</sup> So much of the economic, intellectual, creative, and political value of our internet would be sacrificed in a flash: the freedom to link between websites is right at the core of the enormous value the internet has brought. And it is hard to think of anything more deserving of robust protection in a democratic society than our ability to communicate freely—online and offline—about news and news reporting in particular.

To illustrate the importance of this freedom by analogy, consider how research works in our traditional offline world of books and articles. People engaged in research express their ideas in books and articles all the time. Those ideas, and the books and articles that articulate them, often represent extensive investment of time and energy. And while copyright provides considerable protections against reproductions of creative works like books and articles, neither copyright nor any other law prevents other people engaged in research from using and building on

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<sup>42</sup> Letter from Authors Alliance et al. to Chair Klobuchar, Chair Cicilline, Ranking Member Lee, and Ranking Member Sensenbrenner (June 17, 2021), [https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617\\_JCPA-Letter-to-Congress.pdf](https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617_JCPA-Letter-to-Congress.pdf) (“The ability of one website to connect (‘link’) to other websites, without needing to negotiate to do so, is a foundational component of modern internet infrastructure.”).

<sup>43</sup> See, e.g., Lisa Mepherston, *Can the Journalism Competition & Preservation Act Really Preserve Local Journalism? Public Knowledge Says “Probably Not.”* PUBLIC KNOWLEDGE (June 17, 2021), <https://publicknowledge.org/can-the-journalism-competition-preservation-act-really-preserve-local-journalism-public-knowledge-says-probably-not/> (“Digital platforms like Google and Facebook do not currently negotiate with news sites for the right to link to their stories, just like regular users don’t need a license to drop a link in a tweet or a Facebook post. That’s because news outlets currently have no legal right to prohibit third parties from linking to their content; linking exists entirely outside the ambit of copyright law. (Any site that doesn’t want its content to be linked to just has to put its content behind a paywall or a login screen.) That is the fundamental, wonderful nature of the internet: It’s built on links, and the fact that you don’t need to ask for permission or negotiate compensation to link to sites has facilitated the free and open flow of information.”).



the underlying ideas, from citing previous works, and from quoting extracts—snippets, if you like—from them, so long as the later writer keeps the extracts brief and within the bounds of fair use. (Citing and quoting a written work, of course, is remarkably similar to linking and previewing a web page.)

Importantly, those who later use the earlier ideas, and who cite and quote the earlier-published works, may derive *enormous* benefits from the earlier writers' investments, including significant financial benefits. A later book that popularizes an idea may make vastly more money than an earlier book or article that advanced the idea for the first time. Even Newton famously emphasized that his own extraordinary achievements came by building on the work of others.<sup>44</sup> But the later writer does not owe the earlier writer a penny under our law. As a matter of law, the originating writer simply does not have the legal right to appropriate profits derived from the use of ideas, nor from citing and quoting the original work—however well the later book sells.

Thus, creators of books and articles setting out new ideas and knowledge, confers a benefit on the rest of the world over which the creator does not have a property right. A good thing too: it would be a terrible thing for research if a writer had a right, in intellectual property or otherwise, to prevent citation of, or brief quotation from, their work without a license. Imagine the stifling nature of an IP system that gave everyone the legal right to sue in infringement for every use of their every idea, or for every citation or quotation to their published work. And so it is with linking and previewing on the internet. The freedom to link and preview without permission is at the heart of a vital online sphere and free public discourse. A search engine that could return only a list of

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<sup>44</sup> Isaac Newton, *Letter to Robert Hooke* (Feb. 5, 1675), <https://digitallibrary.hsp.org/index.php/Detail/objects/9792>.



bare links (with no previews), or indeed no links at all without permission, would be vastly less valuable to consumers.

Finally, it is worth emphasizing that even if Congress wanted to expand the armory of property rights to allow news publishers to capture more of the social benefits of their investments—notwithstanding the broader costs of doing so for the internet and for public discourse—that goal could justify the creation of a new intellectual property right, but it would not justify the right to license that property through a cartel.

*A note on “free riding”*

Some commenters have suggested that digital platforms are “free riding” on the efforts of news publishers in a way that, even if it is not illegal, is unfair and provides a basis for regulatory intervention. The intuition is understandable, but the framing is misleading, and the policy implications are not as they may appear.

Platforms do obtain a benefit from news publishers’ investment, in the form of increased activity that helps to drive additional advertising revenue. Users may post more, or engage more intensively, on a platform as a result of news content being discussed and shared.<sup>45</sup> Platforms do not generally pay for this benefit because—as explained above—there is no legal or economic reason why they should do so. It is what an economist would call a positive externality: a benefit that one entity receives by virtue of an activity undertaken by another. (The same kind of thing happens, for example, when a shopping mall opens near a pre-existing coffee shop, and the coffee shop gains significant extra traffic and profit from the arrival of the mall without paying a penny.)

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<sup>45</sup> See generally, e.g., News Media Alliance, *Google Benefit from News Content* (June 2019) (arguing that this effect is considerable in magnitude).



So the benefits of publishers' investments in news confer an unpriced benefit on the public: if publishers were permitted to recapture this benefit through the creation of an exclusive property right in linking-and-previewing (setting aside the separate question of cartelization), their profits and incentives could in principle be increased—albeit at the cost of making others, including consumers, worse off than they are today.

But the free riding in this case goes both ways, and publishers do not seem to be losing out on balance from linking and previewing. News publishers benefit because linking and previewing drives a tremendous amount of traffic to the news publishers' websites which they would not enjoy if Google and Facebook did not permit linking and previewing, or did not exist at all.<sup>46</sup> (Even if only a modest percentage of users click through to a news article, the claim that news publishers, individually or collectively, are receiving less traffic rather than more traffic *overall* as a result of linking-and-previewing does not seem intuitively plausible, and should probably not be accepted without robust evidence.) And the news publishers, in turn, typically monetize this additional traffic through advertising. They do not pay the platforms for the free service of link dissemination. So they, also, benefit from a positive externality, just as platforms do.

The fact that publishers are enjoying a significant windfall externality of their own is critical for any policy analysis. It means that if Congress were to create a property right over the linking-and-previewing of articles, the digital platforms would face a choice about whether they wanted to buy or license that right. They could simply choose not to take the deal, in turn

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<sup>46</sup> See, e.g., Parse.ly, *2018 traffic sources by content categories and topics: Referral trend benchmarks for Facebook, Google, and others for 23 categories* (April & May 2018), [http://learn.parse.ly.com/rs/314-EBB-255/images/authority-report-15.pdf?utm\\_campaign=authority-report-15-pdf](http://learn.parse.ly.com/rs/314-EBB-255/images/authority-report-15.pdf?utm_campaign=authority-report-15-pdf), 2; U.S. Copyright Office, *Publishers' Protections Study: Notice and Request for Public Comments* 86(194) Fed. Reg. 56,721, 56,722 (Oct. 12, 2021) ("Aggregators appear to drive a significant amount of traffic to news websites, and therefore their activities may serve to expand the market for press publishers.").



terminating the positive externality that they confer on news publishers. In light of these realities, the parties would engage in bargaining.

The outcome of that bargaining process would depend on how much better or worse each party's alternatives were, compared to a deal. And there is considerable reason to believe—as a 2017 study commissioned by publishers concluded<sup>47</sup>—that uncompensated linking-and-previewing is on balance good, not bad, for publishers, and that in a “free” market publishers would have little ability or willingness to extract a fee on top of the free service of link-and-preview dissemination. For example, in France, when the freedom to preview articles with snippets was revoked, Google simply stopped previewing and switched to bare linking, until the French government intervened on grounds that this harmed publishers (!).<sup>48</sup> Likewise, in Spain, when the freedom to link was revoked and Google terminated the practice, an economic study commissioned by publishers themselves concluded that “publishers saw traffic fall on average more than six percent, while smaller publications saw it drop by 14 percent[.]”<sup>49</sup> In Germany, a study found, when news aggregators chose to exclude publishers rather than pay a government-mandated fee, publishers soon “noticed that they were losing traffic” and “asked to be linked back without demanding any payment in return.”<sup>50</sup>

It is important to appreciate that positive externalities are common in our digital economy. A new product or platform often creates opportunities for others to jump into the market and seize a profit opportunity that the first mover created, and suppliers in adjacent markets frequently

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<sup>47</sup> NERA Report, *supra* note 4, at iii–v.

<sup>48</sup> See, e.g., Natasha Lomas, *France's competition watchdog orders Google to pay for news reuse*, TECHCRUNCH (Apr. 9, 2020), <https://techcrunch.com/2020/04/09/frances-competition-watchdog-orders-google-to-pay-for-news-reuse/>.

<sup>49</sup> Anna Solana, *The Google News effect: Spain reveals the winners and losers from a “link tax.”* ZDNET (Aug. 14, 2015), <https://www.zdnet.com/article/the-google-news-effect-spain-reveals-the-winners-and-losers-from-a-link-tax/>.

<sup>50</sup> NERA Report, *supra* note 4, i.



benefit from one another's investments. For example, the introduction of new hardware frequently confers a benefit on software developers by driving demand for new software or new software features—and vice versa. The introduction of an improved operating system frequently benefits app developers and device-makers—and vice versa. And so on. It would be a serious mistake to see this kind of joint value creation as a problem invariably requiring that one side or other be given a legal exclusive property right to control the joint profit. And it would be considerably worse to see it as justification for a cartel that would sell this new exclusionary right not for a competitive price but on monopoly terms.

Moreover, the framing that platforms are appropriating publisher investment is incomplete: the benefits of traffic from social media users seeing news articles that interest them are the benefits of *joint* investment. They reflect the fruits of the investment of publishers and platform alike.

Nor does there seem to be any serious suggestion that the externalization of news value is what is driving the flight of advertising from local print and broadcast to digital: in fact, on the contrary, all the evidence strongly suggests that that is the consequence of changes in underlying demand for news and advertising services.<sup>51</sup> In other words, digital platforms do not appear to be “monopolizing” advertising markets by linking-and-previewing articles.

Ultimately, the claim that Google and Facebook are monopsonists extracting an infracompetitive price turns out to hide a more fundamental and less attractive complaint that is grounded in property, not competition: that news publishers, like other publishers of content on the web, have no stranglehold on the ability of others to link to, or give fair-use previews of, their

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<sup>51</sup> See *supra* § II.B.1.



content. True as it is, this not a problem: it is the right outcome. Not all externalities are bad; some are vitally beneficial; and this one is not the source of publishing's ills.

**3. *Cartelization would neither bring back advertising nor create IP rights.***

It should be clear that neither of these putative problems—that is, neither the flight of advertising dollars nor the freedom of others to link-and-preview—would plausibly be solved by blessing a national news cartel. Such an measure would not do a thing to force advertising or consumers back to local print and broadcasting, nor would it create new property rights allowing web site operators to stifle the practice of linking and previewing—even if we wanted to do either of those things. (For the avoidance of doubt: I certainly do not recommend either!)

Instead, as the next section explains, an antitrust exemption would just create a new source of harm, at the expense of consumers and competition. Specifically, it would likely allow news publishers to create a new source of monopoly power in the supply chain; suffocate their incentives to innovate and disrupt in news distribution; and perhaps also create a back door around the merger control laws that could make consolidation more likely.

To be sure, cartelization would generate some additional money for publishers, and that revenue stream might in a crude sense “offset” some of the challenges facing the publishing industry, in just the same way that a right to engage in any other profitable crime would do. But this money would be the fruits of competitive harm, extracted at the expense of consumers and harm to the competitive process. Moreover, the well-known problem of deadweight loss would mean that the loss would exceed the gains, leaving us socially worse off overall.

More fundamentally, in the United States we do not generally respond to technological upheaval, or the rigors of competition, by giving unsuccessful competitors a license to engage in



profitable law-breaking simply because it provides them an offsetting subsidy from the pockets of their victims. That is a wise policy, and Congress should not depart from it here.

### **C. A National News Cartel Would Harm Consumers and Competition.**

The creation of a statutory national news cartel would not just be a poor fit with the problems facing news publishing today: it would also be independently harmful. Specifically, long experience and economic theory alike suggest that it would harm consumers (including by driving up consumer prices at a time of sharp inflation), deter innovation, turn hungry commercial adversaries into cozy stakeholders in the status quo, and entrench monopoly in the supply chain.

#### **1. A national news cartel will harm consumers.**

As noted above, it has long been the most basic tenet of U.S. antitrust law that cartels—naked agreements among competing suppliers or purchasers on prices and other terms—are the supreme evil of antitrust, the top enforcement priority of the Department of Justice, a principal focus of our policy advocacy, and an appropriate matter for jail time and criminal penalties, not encouragement.<sup>52</sup> This policy is based on the long teachings of economists and experience that cartels consistently raise prices, lower output, reduce quality, and suffocate innovation, even when sponsored by the state.<sup>53</sup> An OECD study of the effects of cartelization concluded that cartel markups “can be very large, as much as 50% or more,” and explained:

Cartels harm consumers and have pernicious effects on economic efficiency. A successful cartel raises price above the competitive level and reduces output. Consumers choose either not to pay the higher price for some or all of the

<sup>52</sup> See *supra* § II.A.

<sup>53</sup> See, e.g., George Symeonidis, *The Effect of Competition on Wages and Productivity: Evidence from the United Kingdom*, 90 Rev. Econ. & Stats. 134, 142 (2008) (finding “clear evidence of a negative effect of collusion on labor productivity growth”); Jason E. Taylor, *The Output Effects of Government Sponsored Cartels During the New Deal*, 50 J. Indus. Econ. 1, 8 (2002) (“[D]uring the New Deal, the government-sponsored cartels behaved consistently with the traditional theory by reducing output.”). I will discuss a narrow exception to the principle that cartels are always bad, involving monopsony and countervailing power, in the next section. See *infra* § II.C.2.



[cartelized] product that they desire, thus forgoing the product, or they pay the cartel price and thereby unknowingly transfer wealth to the cartel operators. Further, a cartel shelters its members from full exposure to market forces, reducing pressures on them to control costs and to innovate. All of these effects adversely affect efficiency in a market economy.<sup>54</sup>

We should deeply—and perhaps particularly—fear the creation of a national cartel in news, which would inflict all these harms in a market of particular importance. First and most straightforwardly, by setting a news monopoly at the very top of the supply chain, it would impose monopoly overcharge on prices for news content that would cascade down the chain.<sup>55</sup> A monolithic union of all the nation’s news publishers—large and small, national and local, diversified and specialized alike—would wield startling power over the price and output of one of our nation’s most important goods: information about events of public importance. The cartel overcharge would likely be passed through Google and Facebook to millions of consumers, whether in the form of increased consumer prices (or, equivalently, reduced quality) for products and services, or higher advertising prices that would then raise the costs of the advertised products and services. This would be unwelcome and harmful at any time: at a time of soaring inflation it seems particularly unattractive.

Importantly, even if Google and Facebook hold downstream market or even monopoly power in a market for distributing news—despite what appears to be considerable variety and diversity in news distribution today, as noted above<sup>56</sup>—the cartel overcharge will still likely land on consumers. It is an elementary point of textbook microeconomics that increasing a monopolist’s costs for an input, holding downstream demand constant, will tend to increase that

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<sup>54</sup> OECD, *Report on The Nature And Impact of Hard Core Cartels and Sanctions Against Cartels under National Competition Laws*, DAFFE/COMP(2002)7, at 2.

<sup>55</sup> See, e.g., NERA Report, *supra* note 4, ii (noting negative impact of a compulsory link-and-preview tax on consumers and advertisers).

<sup>56</sup> See *supra* § II.B.1.



monopolist's own profit-maximizing downstream price, and reduce output.<sup>57</sup> This could flow to consumers directly (in the form of increased nominal prices, or reduced quality for zero-price products and services) or through advertisers (in the form of increased advertising prices, which are then transmitted to the businesses buying them).

Separately, we should also fear the loss of vital incentives to innovate and disrupt in news publishing and distribution. Today, news publishers have strong incentives to invest in new and innovative methods of digital news delivery and distribution: indeed, as noted above, this is already taking place.<sup>58</sup> That incentive to disrupt is driven, in large part, by a desire to capture more of the profits from Americans' demand for news. But authorizing a national news cartel with the ability to extract monopoly prices from the status quo would suffocate this vital incentive, turn news publishers into cozy incumbents, and entrench the status quo. After all: why take the risks and incur the costs of investment in competitive innovation, when you can instead shelter under a comfortable cartel authorization and enjoy supracompetitive profits? As Laura Alexander warns, "two monopolists at adjacent levels in a market will quickly realize their interests align in imposing a monopoly price on the downstream market and dividing the resulting monopoly profits amongst themselves."<sup>59</sup> Stifling a vital spur to disruption, by aligning the incentives of major media corporations with major digital platforms, is the very last thing we should do if we want a competitive, innovative news industry.

Finally: limiting the antitrust exemption to negotiations with specific large platforms (say, Facebook and Google) would not improve matters much, if at all. Charging a monopoly price to

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<sup>57</sup> See, e.g., Robert S. Pindyck & Daniel L. Rubinfeld, *MICROECONOMICS* (7<sup>th</sup> ed. 2009) § 10.1.

<sup>58</sup> See *supra* § II.B.1.

<sup>59</sup> Laura M. Alexander, *Countervailing Power: A Comprehensive Assessment of a Persistent but Troubling Idea*, American Antitrust Institute (Oct. 15, 2020), <https://www.antitrustinstitute.org/work-product/new-aa-i-white-paper-analyzes-the-pitfalls-of-countervailing-power-as-a-response-to-rising-market-concentration/>, 5.



Facebook and Google—piggy-backing a new monopoly rent upon whatever market or monopoly power those platforms enjoy downstream—will wash downstream to their customers, users and advertisers alike. That is a significant harm to many millions of Americans consumers and businesses. Second, authorizing a hardcore cartel for sales to one customer is likely to facilitate coordination to other customers.<sup>60</sup> It is, after all, not particularly plausible to think that news publishers will get together and agree on prices and terms for two customers, while competing vigorously on their dealings with all the rest. Third, such a limitation could create a perverse incentive for the news publishers to *preserve*, rather than erode, whatever downstream monopoly Google and Facebook might have, by turning the publishers into profit-sharers in the digital platforms' own market power.<sup>61</sup> This would certainly blunt their incentive to undertake, or sponsor, new entry downstream in competition with the incumbent platforms.<sup>62</sup>

## 2. The “monopsony exception” does not apply here.

There is a narrow theoretical exception to the economic proposition that cartels invariably harm consumers. When a competitive set of suppliers are confronted by a textbook monopsonist—that is, a sole buyer—and the sole buyer is exerting its power to obtain monopsony prices below the competitive level, then the formation of an upstream supplier cartel can in theory improve total welfare (although not all the way to the efficient level), by creating what economists call a bilateral

<sup>60</sup> For example, scholars have recognized that export cartels—at least in their true hard-core cartel form—may facilitate coordination on domestic sales. See, e.g., D. Daniel Sokol, *What Do We Really Know About Export Cartels and What is the Appropriate Solution?*, 4 J. Comp. L. & Econ. 971, 971 (2008); Christian Schultz, *Export Cartels and Domestic Markets*, 2 J. Ind. Comp. & Trade 223 (2002).

<sup>61</sup> If the cartel participants can enjoy monopoly returns over the volume of downstream transactions that Facebook and Google control, but are relegated to (at least more) competitive returns over the volume that the competitors of Facebook and Google control, it is easy to see which outcome publishers are likely to favor.

<sup>62</sup> As Public Knowledge warns, this would more generally be a way of “deepening existing power relationships between the largest platforms and largest publishers.” Lisa Mepheron, *Can the Journalism Competition & Preservation Act Really Preserve Local Journalism? Public Knowledge Says “Probably Not.”* PUBLIC KNOWLEDGE (June 17, 2021), <https://publicknowledge.org/can-the-journalism-competition-preservation-act-really-preserve-local-journalism-public-knowledge-says-probably-not/>.



monopoly: a monopoly seller facing a monopsony buyer.<sup>63</sup> But while bilateral monopoly may be work out well in theory, in practice—as the nonpartisan pro-enforcement American Antitrust Institute has explained—“it rarely does so.”<sup>64</sup>

The theoretical basis for the idea is disputed and fragile. Since the introduction of the idea, “more sophisticated economic analyses . . . have identified only very narrow circumstances in which bilateral monopoly can improve efficiency and even more narrow circumstances where those efficiency gains are passed on to smaller or weaker players.”<sup>65</sup> For example, as three leading former antitrust-agency chief economists have pointed out, the theoretical tendency of bilateral monopoly to make things better rather than worse may not survive information asymmetries, incomplete contracting, or markets in which suppliers’ marginal costs are declining (in which case “the classic monopsony model is inapplicable and misleading”).<sup>66</sup> They point out that “with private information, economic theory indicates that negotiated outcomes often are *more* efficient and lead to *more* trade if [a single dominant] buyer can negotiate with two or more suppliers rather than just one.”<sup>67</sup> And they underscore that, in making real decisions about antitrust policy outside blackboard microeconomics, competition is almost always a safer bet than monopoly.<sup>68</sup> In other words, a bilateral monopoly defense looks a lot like the kind of fragile economic-theory excuse for anticompetitive conduct that modern antitrust is often criticized for being too quick to accept.

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<sup>63</sup> See Roger D. Blair & Jeffrey L. Harrison, *MONOPSONY IN LAW AND ECONOMICS* (2010) Chs. 6 & 10; Jonathan B. Baker, Joseph Farrell, & Carl Shapiro, *Merger to Monopoly to Serve a Single Buyer: Comment*, 75 Antitrust L.J. 637, 640-41 (2008); John B. Kirkwood, *Collusion to Control a Powerful Customer: Amazon, E-Books, and Antitrust Policy*, 69 U. Miami L. Rev. 1 (2014).

<sup>64</sup> Laura M. Alexander, *Countervailing Power: A Comprehensive Assessment of a Persistent but Troubling Idea*, American Antitrust Institute (Oct. 15, 2020), <https://www.antitrustinstitute.org/work-product/new-aa-i-white-paper-analyzes-the-pitfalls-of-countervailing-power-as-a-response-to-rising-market-concentration/>.

<sup>65</sup> *Id.* at 12.

<sup>66</sup> See Jonathan B. Baker, Joseph Farrell & Carl Shapiro, *Merger to Monopoly to Serve a Single Buyer: Comment*, 75 Antitrust L.J. 637 (2008).

<sup>67</sup> *Id.* at 643.

<sup>68</sup> *Id.* at 646.



At the barest minimum, before accepting the applicability of the principle here, Congress would probably want to be confident of at least three things. *First*, that there is evidence of genuine and enduring monopsony power held by a buyer in a market for “news distribution” (*i.e.*, not just downstream monopoly power as a seller of some downstream product or service, nor monopoly or monopsony power in some *other* market such as advertising) that is not vulnerable to competitive erosion for some reason. *Second*, that the cartel would not “overcorrect” and make things worse, by creating more downstream market power than previously existed, or by creating innovation harms that outweigh the static benefits. *Third*, that the coordination would not have “spillover” effects into other markets where there is no monopsony purchaser.<sup>69</sup> But, far from establishing all these of these elements, public evidence does not appear to support any of them.

(a) *Monopsony Power*

First and most importantly, as noted at length above, there does not appear to be any reason to think that news publishers are facing a monopsonist purchaser in a market for “news distribution.” Assuming that by “news distribution” we mean linking and previewing news articles, no such market exists, because news publishers, like other web site operators, *do not* have

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<sup>69</sup> See John B. Kirkwood, *Collusion to Control a Powerful Customer: Amazon, E-Books, and Antitrust Policy*, 69 U. Miami L. Rev. 1, 60 (2014) (“Suppliers should not be allowed to collude in response to a customer’s power, no matter how large, if their collusion would enable them to exercise downstream market power. For in that case, they would acquire the ability and the incentive to exploit consumers.”); *id.* at 61–62 (“Supplier collusion could create downstream market power that did not already exist in three principal ways. First, the colluding suppliers could raise prices beyond what is necessary to counteract the anticompetitive effects of the buyer’s power, raising the buyer’s input costs and causing it to increase its downstream prices. Second, supplier collusion could reduce competition downstream between the powerful customer and its rivals. . . . Third, supplier collusion could create downstream market power in an unrelated market. Suppose that the suppliers sell their product in two markets: in the first, they face a powerful customer; in the second, they sell to customers that lack any significant power as buyers or sellers. In the first, their collusion may create no downstream market power. In the second, however, the suppliers may exert downstream power and raise prices to consumers. This assumes, of course, that the second market is a relevant antitrust market, a market in which significant downstream power could be exercised.”). Some existing antitrust exemptions—such as the exemption for labor unions and the exemption for agricultural cooperatives in the Capper-Volstead Act—might plausibly be seen either as circumstances in which these criteria are met, and/or as situations in which an antitrust exemption has served as a vehicle to provide a direct welfare subsidy to workers or farmers for reasons unrelated to competition or competition policy.



a legal right to prevent or monetize the linking and previewing of their news content. That freedom is just not theirs to sell.<sup>70</sup>

Moreover, as explained above, that fact is likely a very good thing: both for the growth and vibrancy of the internet and for the health of our national discourse. The freedom to hyperlink without permission, and to excerpt without permission under the “fair use” doctrine, ensures that web site operators in general, and news publishers in particular, do not have a legally-backed stranglehold over public debate.

Thus, the relationship between the value that Google and Facebook get from news, and any payments that they make to news publishers, is not a helpful guide to monopoly or monopsony power. (Of course, platforms may enter into an arrangement to obtain *more* than the bare right to link-and-preview, and they may choose to pay for those additional rights. But in that case they are still getting the basic right to link-and-preview for free by operation of law, and paying only for the extra rights: to put it a little crudely, they are getting the cupcake by operation of law, and choosing to pay for a cherry on top as well. In such a case, nothing much can be learned from the relationship between the value to the platform of the cupcake and the payment to the publisher for the cherry.<sup>71</sup>)

(b) *Harm that would exceed benefits*

Second, even if the creation of a national news cartel *would* somehow generate benefits through countervailing power, there are many reasons to fear that it would also cause harm vastly in excess of those benefits. For the creation of a national news monopolist would wield market

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<sup>70</sup> See *supra* § II.B.2.

<sup>71</sup> Compare Singer, *supra* note 2, at 18–19.



and monopoly power across the entire U.S. news ecosystem, reaching far more broadly than the channels operated by Facebook and Google.

**Neither Facebook nor Google really appear to be monopolists or monopsonists in news.** First, whatever the market or monopoly power of Facebook and Google in other markets (such as internet search, personal social networking, or advertising), there is not much reason—at least at first blush—to think that either company has monopoly or monopsony power as a supplier or distributor of news. In fact, today, as noted above, there is remarkable variety and fragmentation in news publishing and news distribution: with a growing array of online news channels available in what were formerly one- and two-paper areas, markets for publication and distribution of news may be *more* competitive today than they have ever been.<sup>72</sup>

Consider the 2021 Morning Consult / Hollywood Reporter poll described above, showing the wide variety of channels through which news is consumed. It indicates that less than a third of Americans consume news daily on social media; almost the same amount never consume news this way at all. Each of the seven channels carries a significant volume of news distribution.

	Daily	Once or More per Week	Once or More Per Month	Less than Once Per Month	Never
Newspapers	13%	22%	12%	14%	39%
Radio	20%	30%	13%	10%	27%
Cable News	22%	24%	11%	7%	35%
Network News	27%	29%	11%	8%	24%
Online-Only News Sites	19%	28%	14%	8%	31%
Social Media	32%	24%	9%	5%	30%
Podcasts	6%	18%	10%	11%	55%

Source: Morning Consult & The Hollywood Reporter, *National Tracking Poll #210530 (May 6–9, 2021)* (question: “How often do you turn to the following sources for news?”).<sup>73</sup>

<sup>72</sup> See *supra* § II.B.1.

<sup>73</sup> Source: Morning Consult & The Hollywood Reporter, *National Tracking Poll #210530 (May 6–9, 2021)*, *Crosstabulation Results*, [https://assets.morningconsult.com/wp-uploads/2021/05/18093706/210530\\_crosstabs\\_HOLLYWOOD\\_Adults\\_v1\\_AUTO.pdf](https://assets.morningconsult.com/wp-uploads/2021/05/18093706/210530_crosstabs_HOLLYWOOD_Adults_v1_AUTO.pdf), 42–69.



Given this diversity, and the availability of multiple channels and apparent substitutability from one channel to another, it is very far from obvious that either Google or Facebook—even together, let alone separately—would easily be called monopolists of the nation’s news.<sup>74</sup>

None of this is to exclude or deny the possibility that there might be narrower markets for news: market definitions are fact-intensive and complicated things. The more limited point is, rather, that such evidence has not been prominently featured in the public debate so far, and that Big Tech platforms are not always monopolists in every market in which they participate. Nor, as noted above, is the concept of “monopsony in news distribution” applicable to interactions like linking-and-previewing where the good to be purchased is already lawfully in the hands of the “buyer.”

Accordingly, it is far from clear that Google and Facebook enjoy market or monopoly power in a market for news: whatever market, monopoly, or monopsony power they enjoy in any other markets, including markets for advertising.

**A national news cartel certainly would hold monopoly power.** On the other side of the ledger, we can be fairly confident that a national news cartel—bringing together all the nation’s news publishers, large and small, online and offline—*would* exercise vast monopoly power. It would be an antitrust enforcer’s nightmare. One need only imagine the antitrust attention that would quite deservedly accompany a proposed merger between any *two* of the major participants (say, News Corp. and the New York Times): the idea of bringing *all* of them under one roof to set prices and terms should instill horror.

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<sup>74</sup> Compare, e.g., *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945) (“[Ninety percent] is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not.”).



Such a measure would place the manacles of monopoly on the country's access to news content. Its power would extend far beyond whatever portion of the news supply chain Google and Facebook might control today. As noted above and in the following section, we would probably not be well advised to expect that the pernicious effects of the cartel could or would be limited to publishers' dealings with Google and Facebook.

Finally, it is also worth noting that a statutorily authorized cartel is likely to be worse, not better, than an organic one. The participants in a legal cartel need not fear detection: their activities can be as extensive, expansive, and public as they like, including in their mechanisms of monitoring and enforcement of cartel discipline. They can communicate the terms openly throughout their participant entities without having to limit communications to trusted insiders. And they can be confident that the enterprise is not vulnerable to being brought down by an FBI investigation or a leniency applicant.<sup>75</sup>

*(c) Spillover harms*

The harms of a national news cartel would likely be felt in markets *other* than those in which Facebook and Google are across the bargaining table. In those markets, it would simply be a vast, new monopolist.

As noted above, it does not seem particularly plausible to suppose that a national news cartel could or would be limited to dealings with a couple of customers. The participants would have the opportunity to conduct extensive exchanges of information, including information about prices, costs, and strategy (including information about possible innovations that might affect the

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<sup>75</sup> Participants in organic cartels face the problem—ingeniously created by the Justice Department's landmark leniency program—that any other participant might, fearing detection, choose at any time to report the collusion to the Antitrust Division and cooperate against the other participants, in exchange for significant leniency benefits. A state-sanctioned cartel, of course, is free from this gnawing threat of collapse, and to that extent more robust.



terms of supply); negotiate collective bargaining positions; and explicitly harmonize their prices and terms. Once that knowledge is shared and the terms of collusion are established, they will become a de facto baseline for dealings with other customers. At the very least, the information exchange will facilitate “oligopolistic” interaction (*i.e.*, tacit collusion) in dealings with other customers. Imagine, for example, authorizing all the nation’s major defense contractors to form a cartel for their dealings with one major customer, and then trusting that they would compete vigorously to supply the very same products to other customers. That is no more plausible than what is suggested here.

Indeed, if—as the current bill text contemplates—the statutory immunity applies to any negotiations that *include* news, the tentacles of the cartel would surely spread into markets for other products and services that have nothing to do with news at all! This includes, of course, markets in which Google and Facebook are not even present. The threat is very clear.

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In sum, a national news cartel would look nothing like—for example—a labor union, or a cooperative of agricultural producers facing genuine monopsony power in markets for milk or wheat, and presenting little risk of spillover harms or lost innovation. (Not least because it would prominently feature a number of enormous, and profitable, media giants.) Rather, it would look much more like the kind of thing that the Antitrust Division has long prosecuted criminally.

### ***3. The proposed exemption could undermine merger enforcement.***

Congress may wish to consider one further risk. If news publishers are given a license to collude with one another, such that competition between them is lawfully eliminated, it may be



harder to succeed in a merger challenge in the event that publishers subsequently seek to acquire their rivals.

This is because merger enforcement relies on showing that the proposed transaction may have an effect on competition: specifically, that the merger may substantially lessen competition between the parties or tend to create a monopoly.<sup>76</sup> And if the merging parties are already allowed to collude because of an antitrust exemption, such that they are not competing anyway, it becomes more difficult to show that effect. To make it concrete: suppose that the antitrust exemption is enacted and the news cartel is created. Under that exemption, Big Publisher and Small Publisher cease to compete for at least a significant percentage of their business. Later on, Big Publisher seeks to acquire Small Publisher, which operates newspapers or broadcasting in the same area. And the first argument on the table from the merging parties, to an agency and to a court, will be: *this transaction does not harm competition because we are already lawfully colluding, so there's no harm—only an efficiency from integration*. There is a real risk that such an argument would be accepted, either by a court or by an agency weighing the chances of litigation success in deciding whether to allocate scarce resources to a challenge.

This may be a particular problem because, while a cartel authorization could in theory be revoked in a later effort to go back to competitive business as usual, mergers may end up being closed during the life of the cartel period that could not, either legally or practically, be unpicked after that period. Thus, the proposed exemption could have the ultimate effect of fueling and sheltering consolidation among news publishers, rather than guarding against it.

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<sup>76</sup> 15 U.S.C. § 18.



**4. *Compelled arbitration would not likely be better, and could be worse.***

I am aware that some public advocacy has proposed that collective bargaining could take place against the background of compelled arbitration.<sup>77</sup> That approach does not seem much better than mere cartelization—and may be worse—for four reasons.

First, compelled arbitration would undesirably force the platforms to make a payment for the exercise of what is, and should almost certainly remain, the important freedom to link and preview. Even a bare national news cartel could not, after all, literally *force* its customers to buy a liberty that, as a matter of law, they already have. But a forced-arbitration system would create exactly this power. And the one thing that can drive a price higher than a cartel’s monopoly price is that same cartel *plus* a government obligation to buy the cartelized product.

Second, more fundamentally, there is a risk that such a direction from Congress would send a harmful message to the arbitrator, the public, and to the market. It would surely suggest to the arbitrator (or panel) that Congress believes there is something wrong with the fact that the freedom to link and preview is currently unpriced, and that some kind of meaningful payment is expected.<sup>78</sup> (Recent actions in Australia and France seem to point in this direction.<sup>79</sup>) This implicit instruction—perhaps combined with public opinion, which would no doubt expect to see a significant payment emerge from the arbitration process—could influence the arbitrator, resulting

<sup>77</sup> Compare, e.g., *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*, No. 21, 2021 (amending the Australian Competition and Consumer Act 2010), §§ 52KZ *et seq.*

<sup>78</sup> Compare, e.g., Letter from Authors Alliance et al. to Chair Klobuchar, Chair Cicilline, Ranking Member Lee, and Ranking Member Sensenbrenner (June 17, 2021), [https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617\\_JCPA-Letter-to-Congress.pdf](https://www.authorsalliance.org/wp-content/uploads/2021/06/20210617_JCPA-Letter-to-Congress.pdf) (expressing concern that the proposed exemption “could be interpreted by courts to *implicitly* change the scope of copyright, expanding the exclusive rights that news publications enjoy in their material beyond what any copyright owner has ever enjoyed”).

<sup>79</sup> See generally Harold Feld, *America Needs a Public Interest Approach to Solving Big Tech Harms to News*, PUBLIC KNOWLEDGE (Feb. 9, 2021), <https://publicknowledge.org/america-needs-a-public-interest-approach-to-solving-big-tech-harms-to-news/> (“[A]ustralian and French proposals establish the principle that linking transfers value from the linked source to the linker — an unjust enrichment where the linker should pay the linked to website. This constitutes a radical change that threatens the fundamental nature of the internet as it exists today. If this principle becomes established in law, we can expect it to expand[.]”).



in a hefty tax on an activity that ought to remain free. More generally, it is not at all clear that there are any principled grounds on which an arbitrator could or should draw to set a “fair” price for something that is already (and fortunately) available for free. (Imagine, by way of comparison, an arbitrator trying to set a “fair value” for the right to talk about ideas published by others, or the right to cite, or quote briefly from, books and articles!) Further complexity would be created by the need to calculate the offsetting benefit enjoyed by publishers as a result of platform investment and activity, as any fair rule would require. And, as noted above, the fair value of this benefit could offset the value of the linking-and-previewing, such that the efficient “balancing” payment might flow the other way: *i.e.*, from publishers to platforms.

Third, the arbitration would leave intact the harmful collusion, merely trusting in the power of a government price-setter to manage its effects. The formation and operation of the cartel—with all the attendant exchange of information and agreement on prices, terms, and rates—would still take place under this model. As a result, this approach would promise anticompetitive effects outside the cartel’s formal bounds, and thus outside the scope of the arbitrator’s control.

Fourth, and finally, compelled statutory arbitration is just another way of doing something that Congress has tried to avoid for a long time: having the government set prices based on what Robert Jackson long ago called “calculation, not . . . competition.”<sup>80</sup> Any pre-arbitration negotiations will reflect not “free market” dynamics, or anything of the kind, but rather the looming shadow of the expected legal determination.<sup>81</sup> (Even less happily, the process as applied to this market seems likely to put the government in the position of having to distinguish “legitimate”

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<sup>80</sup> Robert H. Jackson, Asst. Att’y Gen. for Antitrust, *Should the Antitrust Laws Be Revised?* 71 U.S.L.Rev. 575, 578 (1937).

<sup>81</sup> See, e.g., Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L.J. 950 (1979).



news providers, who can benefit from this special treatment, from others.) The core purpose of the antitrust system is the protection of a competitive market, not a price-managed one in which winners, losers, and prices are picked by the state or its designee.<sup>82</sup>

#### **D. Congress Should Not Open the Door to Special-Interest Immunities.**

Many of the principles at the heart of this discussion are not limited to the news industry. Today, many sets of trading partners confront digital platforms with impressive scale and power. And in some markets, some of these platforms exercise market, monopoly, or monopsony power—although it can be harder than it looks to be certain that such power exists.<sup>83</sup> When such power does exist, vigorous antitrust scrutiny is appropriate, just as in other markets throughout the economy. But consumers will be best served if Congress resists the urgings of market participants to create statutory monopoly cartels across the table in the hope of “leveling the playing field.” Consumers, and American competitiveness, will bear the costs of that effort. And countless businesses will be turned from eager disruptors of the status quo into cozy stakeholders in it.

Today, for example, it is news publishers who are pointing to the success and scale of digital platforms, and seeking a statutory profit-share through a cartel overcharge. If their effort succeeds, other industries will surely follow. Merchants will argue for a cartel exemption to negotiate collectively with e-commerce platforms. Content creators will seek one for joint negotiations with video- or music-streaming platforms. Advertisers will seek one to negotiate

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<sup>82</sup> Robert H. Jackson, Asst. Att’y Gen. for Antitrust, *Should the Antitrust Laws Be Revised?* 71 U.S.L.Rev. 575, 576 (1937) (“The antitrust laws represent an effort to avoid detailed government regulation of business by keeping competition in control of prices. It was hoped to save government from the conflicts and accumulation of grievances which continuous price control would produce and to let it confine its true responsibility to seeing that a true competitive economy functions.”).

<sup>83</sup> See, e.g., *FTC v. Facebook, Inc.*, No. CV 20-3590, 2021 WL 2643627, at \*12 (D.D.C. June 28, 2021) (dismissing complaint against Facebook with leave to amend for insufficient detail in allegations of monopoly power).



jointly with advertising suppliers. Publishers to negotiate with e-book platforms. App and software developers to negotiate with platforms of all kinds.<sup>84</sup> And so on.

At every turn, Congress will be invited to respond to digital power—in some cases amounting to true market, monopoly, or monopsony power—by creating a statutory monopoly. But an economy of cartels is an economy of higher prices, lower quality, and stifled innovation. That is no remedy for digital monopoly, which is best kept on its toes by the threats of unhappy trading partners and rapid innovation. Nor should we compromise the uniform and even-handed application of antitrust across markets and industries—“one of its greatest strengths”—by carving a patchwork of exemptions for favored players.<sup>85</sup> We need *more* antitrust enforcement, not less: even for businesses facing Big Tech.

### **III. There Are Better Alternatives.**

Although Congress should decline the invitation to create a national news cartel, there is plenty that can be done to support our local news during this transitional period. First, and most importantly, Congress should provide significant additional funding—FTEs and dollars—to support the work of the DOJ Antitrust Division and the FTC Bureau of Competition. This work includes supervision of conduct and transactions in digital markets, including platform markets as well as activity within the ad tech stack. Second, to the extent that Congress is focused on harm to local news suppliers that may not make it onto the radar of the federal agencies, Congress may wish to consider supporting the antitrust capacity of State Attorneys General. Third, if Congress

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<sup>84</sup> Laura M. Alexander, *Countervailing Power: A Comprehensive Assessment of a Persistent but Troubling Idea*, American Antitrust Institute (Oct. 15, 2020), <https://www.antitrustinstitute.org/work-product/new-aa-ai-white-paper-analyzes-the-pitfalls-of-countervailing-power-as-a-response-to-rising-market-concentration/>, 15 (“[W]e are currently seeing a push to allow app developers to collude and collectively bargain against Apple to countervail Apple’s market power resulting from its control of its app store.”).

<sup>85</sup> *Id.* at 16.



chooses to target local news for transitional support, this may best be done directly, in the form of a subsidy from general revenue. Fourth, publishers themselves have some scope to collaborate under existing law, as genuinely procompetitive activities are already lawful under the antitrust laws.

Of course, these measures will not wholly alleviate the rigors and pains of competition or technological transition. That is probably an impossible and undesirable goal. Those rigors and pains are the very engine of progress in a market economy, and intervention in this area should be framed with that in mind.

#### **A. Congress Should Support Antitrust Enforcement.**

The best way to protect news publishers from digital monopoly is to ensure that digital monopolists must compete on the merits, and that unlawful transactions and practices are promptly detected and prohibited. This means, above all else, reinforcing the antitrust agencies. In fact, the *most* urgent need in antitrust enforcement today—more urgent than substantive law reform, and much easier to design—is a serious infusion of resources to the agencies. The FTC Bureau of Competition and DOJ Antitrust Division have been heavily outgunned for a long time, and things are getting worse.

The FTC’s website demonstrates the soaring workload of the agencies and the desperate imbalance between work and resources. In fiscal year 1979, there were 814 HSR filings,<sup>86</sup> while in fiscal year 2021 there were 3,644 HSR filings: more than four times as many.<sup>87</sup> But the staffing

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<sup>86</sup> FTC, *Third Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976*, <https://www.ftc.gov/system/files/documents/reports/3rd-report-fy-1979/3annrpt1979.pdf>, 4.

<sup>87</sup> FTC, *Premier Enforcement Program*, <https://www.ftc.gov/enforcement/premerger-notification-program> (preliminary numbers). Fiscal year 2020 involved a relatively low 1,637 transactions, down from 2,089 the previous year. FTC & U.S. Dept. of Justice, *Hart-Scott-Rodino Annual Report Fiscal Year 2020*, [https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/\\_hsr\\_annual\\_report\\_-\\_final.pdf](https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/_hsr_annual_report_-_final.pdf), 2.



of the agency has not just failed to keep pace: shockingly, it has *declined*. In fiscal year 1979, the agency's FTE utilization was 1,746, while by fiscal year 2020, it had fallen to 1,128: a loss of more than 35%.<sup>88</sup>

In addition to the urgent need for staff, the agencies need money for experts, without whom antitrust cases against sophisticated businesses often cannot be won. For example, a recent successful hospital merger litigation—of the kind that may appear, from afar, relatively straightforward when compared to novel cases in tech markets—involved no fewer than *seven* testifying experts, with the defendants retaining five to the FTC's two.<sup>89</sup> (The case is on appeal.) If this is the expert need for a hospital merger—a type of case in which the FTC has decades of world-leading experience and expertise—it is easy to see how enforcement targeted at novel practices in novel markets, including tech markets affecting news, urgently need serious financial backing.

Although resources are top of the list, there is also plenty of scope to sharpen the antitrust laws on some margins that matter tremendously for digital antitrust. Section 2 of the Sherman Act, the law against monopolization, needs clarification and reinforcement.<sup>90</sup> Section 7 of the Clayton Act, the law against anticompetitive mergers and acquisitions, needs a somewhat more flexible application reflecting its letter and spirit.<sup>91</sup> And the Supreme Court's *AmEx* decision has made platform cases vastly more difficult, apparently requiring plaintiffs not only to prove harms but also to disprove benefits claimed by a defendant: that, too, requires correction.<sup>92</sup> And so on.

<sup>88</sup> <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

<sup>89</sup> *FTC v. Hackensack Meridian Health, Inc.*, Case No. 20-18140, 2021 WL 4145062, at \*1–2 (D.N.J. filed Aug. 4, 2021).

<sup>90</sup> See generally Daniel Francis, *Making Sense of Monopolization*, *supra* note 1.

<sup>91</sup> See generally *id.* at 34; Daniel A. Crane, *Antitrust Antitextualism*, 93 Notre Dame L. Rev. 1205, 1242–45 (2021) (“[A]lthough continuing to pay lip service to the ‘incipiency’ standard pregnant in the language of the statute, the courts have increasingly held the government to the burden of proving probable harm to competition in the form of higher prices.”).

<sup>92</sup> See Steven C. Salop et al., *Rebuilding Platform Antitrust*, *supra* note 1.



In this effort, the bills introduced by Chair Klobuchar and Ranking Member Lee represent valuable achievements: each contains much that would concretely help antitrust enforcement.<sup>93</sup>

**B. Congress Should Support State-Level Enforcement.**

Congress may reasonably be concerned that the federal agencies may not be well placed to identify or prioritize antitrust violations that affect local news publishers: for example, a series of rollup acquisitions or other pernicious practices eliminating news competition in a state far from Washington, DC, might escape the agencies' attention. Thus, Congress may wish to consider reinforcing the antitrust enforcement capacity of State Attorneys-General, with a contribution of funding grants and/or technical assistance. State AGs are often the first line of defense for consumers, but—while many offices are prominent and effective voices in antitrust enforcement—others lack sufficient funding and expertise to operate a robust antitrust enforcement program.

**C. Any Support to News Publishers May Best Be Done Directly.**

Finally, if Congress prefers to intervene to support local news during its transition, the cleanest and least distortionary way to do so may be to furnish a subsidy out of general revenue, possibly in the form of a kind of National Endowment for Local News modeled on the existing National Endowments for the Arts and the Humanities. Such a measure would support news publishers during the transitional period, would avoid the deadweight losses associated with monopoly, and could be specifically targeted at businesses at the heart of Congress's concerns: perhaps local or small newsrooms far from our metropolitan centers. Among other things, this

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<sup>93</sup> Competition and Antitrust Law Enforcement Reform Act, S.R. 225, 117<sup>th</sup> Cong. (2021); Tougher Enforcement Against Monopolists Act, S.R. 2039, 117<sup>th</sup> Cong. (2021).



would avoid the wasteful and illogical prospect of subsidizing major media conglomerates from the pockets of taxpayers and consumers.

To be sure, this approach would raise challenges and concerns of its own. These include the risks of political influence and entanglement in news coverage, as well as the dangers of discouraging the necessary shift to self-sustaining digital business models. But it would avoid many of the harms that would attend a national news monopoly, and would preserve the integrity of our antitrust statutes.

#### **D. Procompetitive Collaborations Are Already Lawful.**

Finally, there is plenty of room under the antitrust laws for news publishers to help themselves, and each other. Existing antitrust law does not prevent news publishers from entering into joint ventures and other collaborations that are procompetitive overall: indeed, the antitrust agencies have issued extensive guidance on the principles that apply to such joint efforts.<sup>94</sup>

These principles often permit competitors to work together to generate new products and services that would not otherwise be available to the market. For example, in light of the Supreme Court's seminal decision in *BMI v. CBS*, it would likely be lawful for a group of news publishers to jointly contribute to a nonexclusive blanket IP license that would cover all their content, granting licensees much broader rights to use their content than existing law (such as fair use) would allow, and avoiding any need for collusive setting of the terms on which their own individual content would be made available.<sup>95</sup>

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<sup>94</sup> See FTC & U.S. Dept. of Justice, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS (Apr. 2000), [https://www.ftc.gov/sites/default/files/documents/public\\_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/feddojguidelines-2.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/feddojguidelines-2.pdf).

<sup>95</sup> *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979).



It also would likely be lawful for local news publishers to enter into other cost-saving ventures: for example, through joint procurement.<sup>96</sup> And when the effect of a merger or acquisition would be to promote competition (*e.g.*, by joining several small, struggling publishers into one capable of weathering the competitive environment), it too may be an effective and lawful means of building a business model that can compete in the modern news landscape. Any of these methods would be vastly preferable to the creation of a national news cartel. A Business Review Letter from the DOJ Antitrust Division would help the participants be confident that they were on the right side of the line.<sup>97</sup>

#### **IV. Conclusion**

The news supply chain, like the rest of our economy, needs competition and disruption, not monopoly and stagnation. Congress should protect our antitrust system and the competitive process that it guards.

In particular, Congress should not create a state-sanctioned national news monopoly, however superficially appealing the prospect of “leveling the playing field” might seem. Cartels are virtually always harmful, and this one seems virtually certain to be so. There is something to be said for countervailing power in theory, but in practice it is much more likely that a news cartel would be a new monopolist—loading more weight on the backs of consumers, and heavily invested in the status quo—and not a counterweight to existing power. Congress may also wish to keep in mind that, while small publishers are front-and-center in public advocacy on this issue,

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<sup>96</sup> See, *e.g.*, COMPETITOR COLLABORATION GUIDELINES, *supra* note 94, at 14 (“Competitor collaborations may involve agreements jointly to purchase necessary inputs. Many such agreements do not raise antitrust concerns and indeed may be procompetitive. Purchasing collaborations, for example, may enable participants to centralize ordering, to combine warehousing or distribution functions more efficiently, or to achieve other efficiencies.”).

<sup>97</sup> See <https://www.justice.gov/atr/business-reviews>.



large media conglomerates hover in the background and would receive a massive windfall, at the expense of consumers, from the opportunity to lead a national cartel.

Digital monopoly, like all monopoly, deserves close scrutiny. The solution is more antitrust and more competition, not less of either. A great deal of harm could be done under the banner of “what’s bad for Big Tech is good for America.” Certainly, Big Tech should be made to play by the same rules that apply to the rest of the economy; but so too should their trading partners.

I am grateful for the opportunity to testify before the Subcommittee today.



**Testimony on the Future of Journalism**  
**2/2/2022**

Dan Gainor  
Vice President of Free Speech America and Business  
Media Research Center

Chairperson Klobuchar, Ranking Member Lee, and Members of the Committee: Thank you for the opportunity today to speak about one of my favorite subjects — local journalism.

I have worked as an editor on three different local daily newspapers, as well as an editor at two weeklies and editor and associate publisher at a third. The best, and honestly, the most fun jobs I've ever had were in local news.

If I could snap my fingers and fix local news, I would. I would hazard a guess that every single member of this committee would do the same.

But the Journalism Competition and Preservation Act of 2021 does not fix the problems. It is a well-intentioned attempt to level the playing field between Big Tech and local journalism. But that's not what it does.

It seems premised on a misinterpretation of history, that somehow local journalism was killed by a few Big Tech companies. It was not. How do I know? I was there.

I was there working in local journalism as news outlets brought in 20, 25 or 30 percent profits year after year and didn't reinvest those epic gains. Newspapers consolidated because delivery became difficult in rush hour traffic and more readers turned to TV news.

Baltimore, where I grew up, went from three dailies down to one in less than a decade. None of that was caused by the internet.

I was a director of new media for a weekly chain as the internet began to catch on. I watched as news organizations downplayed the threat and posted their content online ... for free. Sclerotic news outlets were unable or unwilling to respond to the opportunities online.

And so they were dissected by the competition.



The Great Recession took a particular toll on local businesses and that meant advertisers stopped advertising. And Covid restrictions were just another example of how the heavy hand of government harmed local news.

That's the background that brings us here today to discuss the future of journalism.

The JCPA allows big media companies to ignore antitrust laws and work together. That isn't fixing the problem of having a Big Tech advertising cabal. It is simply adding another cabal to negotiate with it. Allowing a few of the largest and most powerful media companies to act as proxies for others only ensures that big firms will secure deals that benefit them.

We all want trustworthy local journalism that helps inform the public, as well as holds powerful people accountable. Except that's not how corporate media have handled local journalism in the past. Local outlets were treated as cash cows. Big corporations milked them and slaughtered their remains.

This law would only serve to support huge existing corporate media instead of independent media. Corporate news organizations don't need our help.

The New York Times just spent \$550 million *in cash* purchasing The Athletic, which, according to journalist Aron Pilhofer, "covers 270-plus sports teams in more than 47 local markets." "The Times has placed itself in direct competition with every local news site for the same pool of subscribers," he wrote. The Times already had more than 8 million paid subscribers.

And The Times even just bought the popular game Wordle for a price "in the low seven figures."

So why are we helping them?

The Washington area used to have a thriving chain of community weeklies. The Gazettes were founded in 1959 and grew to 550,000 circulation in suburban Maryland. They were closed down by its owners ... The Washington Post ... in 2015.

"In 2021, The Post achieved record-breaking digital advertising." And it's also owned by Big Tech billionaire Jeff Bezos. He purchased the company in 2013, two years *before* it killed the chain of weeklies.

So why are helping *them*?



Corporate media already benefit from better treatment by social media algorithms than smaller and independent outlets. Consolidating their already enormous advantages only makes them even more powerful.

This JCPA also treads dangerously into areas best left alone like defining a “news content creator” as one that has “a dedicated professional editorial staff.” Independent journalists still make news but they would be squeezed out by corporate media.

Lastly, this issue needs to be seen in context. There are a few journalism bills floating around in this Congress. There is a concerted effort to get government involved in the practice and funding of journalists and journalism.

It is unrealistic to expect journalists funded or supported by politicians to turn around and report aggressively on those same politicians. We can’t expect journalists to hold powerful people accountable when they are accountable to those powerful people for their paychecks.

And all this happens at a time when American trust in media is near an epic low.

According to Gallup, “Americans’ trust in the media to report the news fully, accurately and fairly” has fallen to just 36 percent. For Republicans, that number stands at 11 percent.

Why then are we bailing out corporate media when ordinary Americans would rather find new sources of information?

Thank you.





**Hearing on  
“Breaking the News – Journalism, Competition, and the Effects of Market  
Power on a Free Press”**

**United States Senate Committee on the Judiciary**

***Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights***

**February 2, 2022**

**Statement of Joel Oxley**

**Senior Vice President and General Manager  
WTOP, WTOP.com and FederalNewsRadio.com  
Hubbard Broadcasting, Inc.**

**National Association of Broadcasters**



Introduction

Good afternoon Chairwoman Klobuchar, Ranking Member Lee and members of the subcommittee. My name is Joel Oxley and I am the senior vice president and general manager of the all-news radio station WTOP-FM, WTOP.com and FederalNewsNetwork.com, which are all owned by Hubbard Broadcasting. Hubbard Broadcasting is a St. Paul, Minnesota, family-owned-and-operated broadcasting company with 13 television stations located in Minnesota, New York and New Mexico, and 50 radio stations located in Minnesota, Illinois, Missouri, Ohio, Arizona, Washington, Florida and Washington, D.C. In the decades since receiving its first FCC license in 1923, Hubbard stations have earned numerous NAB Marconi, Murrow, DuPont and Peabody broadcasting industry awards, as well as multiple NAB Crystal Radio Awards for outstanding community service. In 2019 alone, WTOP received the National Edward R. Murrow Award for Overall Excellence by the Radio Television Digital News Association (RTDNA), 14 Chesapeake Associated Press Broadcasters Association (CAPBA) Awards, 10 Regional Edward R. Murrow Awards by the RTDNA and five Virginia Associated Press Broadcasters Association (VAPBA) Awards.

I appreciate the opportunity to testify on behalf of the National Association of Broadcasters, and its more than 6,600 free and local television and radio station members that provide uniquely valuable service to all of our hometowns.

Local journalists and the communities we serve face an existential threat whose fate increasingly rests in the hands of a few dominant digital platforms. We applaud this subcommittee's attention to this challenge, and your continued work in examining the digital marketplace for news and journalism. Legislative action, including swift passage of the Journalism Competition and Preservation Act (JCPA), is needed to preserve this essential cornerstone of our democracy in a



digital marketplace that is otherwise distorted by the anticompetitive conduct of certain tech platforms.

Local Broadcasters: Providing Trusted, Unbiased Journalism

The nation's broadcasters represent one of the last bastions of truly local, unbiased journalism – information that is still respected by Americans around the country, regardless of political persuasion, wealth, race, background or creed. These are your constituents, and they continue to turn to their local reporters and anchors for voices they trust to keep them informed about their communities and the nation. Prior to the pandemic, Pew Research found that from 2008 to 2019, radio and television broadcasting comprised an increasing portion of all newsroom employees.<sup>1</sup> Combined, the broadcasting industry accounted for nearly a third of all newsroom employees in 2019, nearly the same amount as the newspaper industry.<sup>2</sup>

The pandemic has shown that when needed most, local television and radio stations provided the civic bond for the communities we serve, doing incredible work in the face of our own enormous challenges. More importantly, we continue to be the primary source of the community-focused information on which your constituents have relied during this pandemic, from health and vaccine resources to vital information about schools and local businesses. Local broadcasters remain a touchstone for the truth, and our commitment to fact-checking, locally-based reporting and the public interest explain why local television and radio stations are the most trusted sources of information across all segments of the American

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<sup>1</sup> <https://www.pewresearch.org/fact-tank/2020/04/20/u-s-newsroom-employment-has-dropped-by-a-quarter-since-2008/>

<sup>2</sup> *Id.*



population. According to a study conducted by Poynter in 2018, 76% of Americans across all political parties trusted the news on their local television station.<sup>3</sup>

I am proud that Hubbard's stations exemplify the commitment to local communities that is the hallmark of local broadcasting. Broadcasters' enduring commitment to local communities has driven extraordinary levels of public service. Here are a few examples from Hubbard stations:

- For more than a decade during the holiday season, WTMX in Chicago has raised an average of \$3 million a year for St. Jude's Hospital.
- For the last nine years, KSTP-FM in Minneapolis/St. Paul has raised millions of dollars and brought thousands together for their "Clouds Concert" at the Mall of America to benefit the Zach Sobiech Osteosarcoma Fund.
- In Brainerd, Minnesota, population 13,373, WJJY-FM and KUAL-FM raised \$95,000 last year by teaming with other organizations with their 28th annual radio-thon to raise funds for child abuse prevention. That would be equal to raising \$42 million in Washington, D.C., which is big money, even for this area.
- In 2020, WDIO-TV in Duluth, Minnesota, with the help of 84 volunteers, helped 800 people in need file 1,900 tax returns, resulting in \$2.5 million in refunds. WDIO also worked with Second Harvest Northern Lakes to provide 3.8 million meals to families, kids and seniors facing hunger issues.
- For the last 13 years, WNYT-TV in Albany, New York has collected for Toys for Tots, a program run by the United States Marine Corps Reserve. Last year they collected 237,000 toys.
- In Albuquerque, New Mexico, KOB-TV has been working with the Roadrunner Food Bank for the last 25 years, and last year raised \$2.2

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<sup>3</sup> <https://www.poynter.org/ethics-trust/2018/finally-some-good-news-trust-in-news-is-up-especially-for-local-media/>. Additional research shows that local news plays a key role in political and civic engagement. <https://knightfoundation.org/reports/american-views-2020-trust-media-and-democracy/>



million, collected 11 million pounds of food, and served 100,000 meals.

- And here in Washington, D.C., WTOP raised well into six figures to renovate the Metropolitan Boys and Girls Clubhouse #2 to help kids in need in the neighborhood of Sorsum Corda. Clubhouse #2 is located just one mile from where we sit today.

Helping our communities and local charities is part of what we do and have done for decades. We want to be able to have a fair business environment that will let us continue this vital work for years to come.

#### Quality Local Journalism Is Costly

I've been in the news business since college when I wrote for the school newspaper, and was a sportscaster at the radio station. I worked with *Scripps Howard* and *The Chicago Tribune* before joining WTOP three decades ago, where I have worked my way up in sales and sales management before becoming general manager in 1998. I am proud to say that at WTOP, we have a saying that our job is to defend the middle. We receive tons of complaints from all sides of the political spectrum, and I think that means we are doing our job.

In my position, I understand the business challenges of producing the type of hard-hitting, informative journalism the communities we serve demand and deserve. And, I am keenly aware of the significant financial resources needed to run a station and invest in the type of equipment necessary to serve the public day in and day out, 365 days a year. It is very expensive. I should know. It costs us more than \$12 million each year to run our newsrooms. More than a third of that expense goes to running our digital operation. Our recent move out of a building we had been in for over 30 years cost in excess of \$10 million. Not all local radio stations have been able to keep producing news like we have. The RTDNA recently reported that the number of stations reporting a loss on radio news in the



past year went up in every market size and was particularly pronounced in major markets.<sup>4</sup> Eight percent of surveyed radio stations had canceled their local news programming in response to economic repercussions of the COVID pandemic.<sup>5</sup> Running local radio and serving communities is expensive. But believe me, it's a drop in the bucket compared to what it costs many local TV stations to operate.

From 2013 to 2018, NAB found that TV stations spent nearly a quarter of their budgets on news costs, averaging over \$3 million per year.<sup>6</sup> In the 10 largest markets, local news operating costs were \$9.7 million annually per station, and approximately \$15.8 million for affiliates of the major broadcast networks.<sup>7</sup> In addition to these operating costs are significant capital investments for things like satellite trucks, state-of-the-art cameras and, in some cases, specialized equipment such as news helicopters.

#### Dominant Online Platforms' Anticompetitive Behavior Threatens Local Journalism

Despite the tremendous cost of bringing world-class news and journalism to local communities around the country, one of the greatest sources of personal pride for broadcasters is the simple but fundamental principle upon which local broadcasting is based – that television and radio stations serve the public interest and what we do matters by making all of our valuable content available to American viewers and listeners over the airwaves, completely free of charge. Free of charge. That's a key point. If not for us, how are people going to get their local

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<sup>4</sup> RTDNA/Newhouse School at Syracuse University Survey, The Business of Radio News, 2021.

<sup>5</sup> RTDNA/Newhouse School at Syracuse University Survey, The Profound Effects of Coronavirus on TV and Radio Newsrooms, 2021.

<sup>6</sup> See NAB Television Financial Reports 2004 to 2019.

<sup>7</sup> *Id.*



news? For your constituents who may be unable to pay for quality, vetted local news, radio broadcasters help ensure that they are not left behind.

This free service does not exist in a vacuum. It has been made possible over many decades through the advertising revenues generated from businesses of all sizes, national and local. However, these revenues have experienced a free-fall in recent years, due almost exclusively to the rapid expansion of the dominant online platforms who have devoured advertising market share in the digital marketplace and devised anticompetitive practices to protect it.

The market power of the tech platforms undermines the online advertising model for local broadcast journalism in two significant ways. First, the tech platforms' role as content gatekeepers stifles our ability to generate user traffic independent of their services. Second, anticompetitive terms of service and a "take it or leave it" approach leave local broadcasters with a below-market sliver of those advertising revenues that are derived through their products. For local broadcasters and our viewers and listeners who rely on quality journalism, this is a lose-lose proposition: To attract online user traffic, we must be accessible through the major platforms, yet the terms of access dictated by the online platforms devalue our product. This is a catch-22 that local television and radio broadcasters cannot avoid and it will ultimately undermine our ability to invest in locally-focused journalism.

Consider the big storm that just blew through the Northeast over the weekend – a nor'easter and blizzard conditions. Tons of work at a lot of cost and time for local broadcasters to cover it for millions of people. But not for Facebook, Google and the like. They simply take our coverage and profit from it, and virtually nothing comes back to us. If we don't find a way to monetize our content better by having true partnerships with the big platforms we will not be around – and neither will our coverage. And without local news, my guess is a lot of people



would have not evacuated places like Cape Cod last weekend, and lives would have been risked. We just can't have that.

I read almost all of our emails from listeners and readers of our website. These people count on us whether it's for news updates to be in the know at work, for traffic to get home quicker, or weather reports that sometimes are a lifesaver. Like a nor'easter.

It truly is very concerning the degree to which certain platforms commoditize news content with little regard for the quality and veracity of the story. This puts vetted, fact-based reporting like ours on par with unsubstantiated click-bait as we fight for user eyeballs in both platform news feeds and search results. The consequence is that local journalists may become increasingly tempted to focus on catchy headlines and stories to generate user interest rather than quality journalism. This is a dangerous trend.

As our viewers and listeners change their media consumption habits, the need for local broadcasters to be fairly compensated in the digital ecosystem is acute. According to BIA estimates, ad revenue for local television stations fell by over 40% in real terms between 2000–2018, while radio ad revenues fell by nearly 45% in real terms over the same time period.<sup>8</sup> This decline in ad revenue worsened significantly during the pandemic. At the height of the pandemic, many local broadcasters saw their advertising revenue decline more than 50% compared to the same time a year before, and some even saw their advertising cancellations approach 90%.

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<sup>8</sup> BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction*, at 16 and Fig. 10 (Mar. 15, 2019) (BIA TV Study); BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, at 10-11 and Fig. 7 (Apr. 19, 2019) (BIA Radio Study).



Meanwhile, the dominant online platforms have flourished, siphoning off huge amounts of advertising revenues that are the lifeblood of free, local journalism. A recent report by BIA Advisory Services focusing on Google Search and Facebook News Feed found that local broadcasters lose an estimated \$1.873 billion annually by providing their content to these platforms.<sup>9</sup> As Sen. Maria Cantwell noted in a report she issued in October 2020, Google and Facebook control an estimated 77% of locally-focused digital advertising.<sup>10</sup>

This market transformation is not accidental. It has been exacerbated by deliberate decisions on the part of the tech platforms to put technological and systemic roadblocks in the way of broadcasters trying to gain access to, and compensation from, these platforms for the use of broadcast content. The barriers to entry erected by the major platforms take on many forms, from decisions about which content will be prioritized by algorithms that often favor sensationalism over hard journalism, to unilateral mandates about which content is eligible to be monetized and what share of revenue the big platforms will retain.

Make no mistake, Hubbard, and local broadcasters throughout the country, embrace the opportunities afforded to us by new technologies to reach our audiences and enhance the service we provide to our viewers and listeners. Further, broadcasters, in many instances, value the partnerships we have with large online platforms that are the subject of this hearing, which provide television and radio stations the ability to reach a different audience than they would through traditional media. Without access to these platforms, broadcasters would lose the ability to reach hundreds of millions of viewers and listeners.

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<sup>9</sup> BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News*, at iii (2021).

<sup>10</sup> [https://www.cantwell.senate.gov/imo/media/doc/Local%20Journalism%20Report%2010.26.20\\_430pm.pdf](https://www.cantwell.senate.gov/imo/media/doc/Local%20Journalism%20Report%2010.26.20_430pm.pdf).



To be clear, I am not against news aggregation. WTOP negotiates with other providers and local news organizations for mutually agreeable compensation agreements. But the partnerships we have with the digital platforms like Facebook and Google are different. For all of the reasons stated above, the vast market power of these platforms ensures that broadcasters must simply accept whatever terms are handed to them, regardless of whether they represent a fair or appropriate approximation of the value local broadcast content offers these platforms and the American consumers who use them. For example, not only is WTOP not being compensated by Facebook and Google for its content, WTOP is actually *paying* to make sure its content is being accessed on their platforms.

#### Potential Legislative Solutions Provide Hope for Local Journalism

One significant step toward curing the harms caused by the anticompetitive behavior of the giant online platforms would be the passage of the JCPA, recently reintroduced by Chairwoman Klobuchar and Sen. Kennedy. NAB commends Chairwoman Klobuchar and Sen. Kennedy for their thoughtful approach to the competitive challenges facing local journalists around the country, and strongly supports this targeted, commonsense proposal. The JCPA would level the playing field by creating a temporary safe harbor for broadcasters and certain digital publications to jointly negotiate with dominant online platforms regarding the terms and conditions by which their content may be accessed online. Broadcasters support efforts to further strengthen the JCPA by requiring covered platforms and broadcasters to negotiate in good faith and extend reasonable offers as part of a joint negotiation, as well as prohibit discrimination against a broadcaster wanting to participate based on its size or views expressed within its content.



Conclusion

Radio and television stations depend on ad revenue to produce local news, which gives the community its voice. Without someone to shine a spotlight on local government, health care, education, environment and business development, there is less accountability in communities and a less informed electorate. This has been proven to decrease voter turnout and civic engagement. Broadcast radio and television stations are the last bastion of local and investigative journalism in many communities. Yet, without action by policymakers, these stations may face the same future as other local media and be forced to cut back or even eliminate their investment in local news.

In order to ensure that broadcasters not only survive, but continue to thrive and serve their communities, broadcasters support the JCPA and urge its swift passage to address the overwhelming market power of Big Tech gatekeepers. The JCPA would level the playing field to allow broadcasters and other journalists the ability to seek adequate compensation for the tremendous value they provide these platforms and the millions of Americans who use them.

Thank you again for the opportunity to discuss this issue, which is critical to America's broadcasters and the communities we serve. I look forward to your questions.



February 2, 2020

The Honorable Amy Klobuchar  
Chair  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
U.S. Senate

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
U.S. Senate

I want to thank the Subcommittee for inviting me to testify on the important topic of ensuring that news publishers are compensated at competitive rates for the right to access their content.<sup>1</sup>

At the request of the News Media Alliance, I wrote a study that assesses the underpayment to news publishers from Facebook and Google (the “dominant platforms”) attributable to the power imbalance between individual news publishers and the dominant platforms, and to describe how a pending bill in Congress, the Journalism Competition and Preservation Act (JCPA), could effectuate competitive payments to all news publishers, regardless of their political bent, effectively simulating a world in which the power imbalance were removed.<sup>2</sup> My study is attached as an appendix to this testimony. In addition to the *private* harms to news publishers from what is likely billions of dollars per year in underpayments, allowing market forces to determine the access charge results in a host of *social* harms, including underemployment of journalists and other news employees, less accountability for local governments, greater spread of partisanship and misinformation, removal of economic stimulus to local economies, and a reduction in the diversity of viewpoints.

#### **Why Antitrust Cannot Get at the Anticompetitive Conduct Addressed by the JCPA**

The dominant platforms appropriate the value added of news publishers by reframing articles in rich previews containing headlines, summaries, and photos; and by curating the content alongside advertisements. This reframing and curation decreases the likelihood of a user clicking into the article, thereby depriving news publishers of clicks while enriching the dominant tech platforms. The underpayments that would be addressed via this legislation are for the right to access news publishers’ content in the first instance. The anticompetitive conduct being challenged here concerns value appropriated for news content *before* it has been scraped, indexed, posted, aggregated, or displayed. In economic

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1. I currently serve as an economic expert in two litigation matters, one adverse to Apple and another adverse to Google.

2. Prior to being retained by the NMA, I published an article, co-authored with law professor Sanjutta Paul, in *Competition Policy International* titled “Countervailing Coordination Rights in the News Sector Are Good for the Public.” The article is available for download at <https://www.competitionpolicyinternational.com/countervailing-coordination-rights-in-the-news-sector-are-good-for-the-public-a-response-to-professor-yun/>.



parlance, the platforms are exercising their “monopsony” or buying power, effectively marking down the value added of news publishers to zero, as news publishers are so beholden to the platforms for referral traffic that they have no where else to turn.<sup>3</sup> Because this underpayment for access is achieved via the power imbalance, as opposed to a classic restraint in trade such as a tie-in or exclusive-dealing arrangement, the platforms’ flexing of their monopsony muscles cannot be addressed via antitrust law.

In a competitive input market for online news content, where news publishers enjoyed free agency and could play one platform against another, payments to news publishers for the right to access content would approach the incremental contribution of news publisher content (legitimate news) to the platforms’ advertising revenues. By exploiting their monopsony power over news publishers, however, the dominant platforms effectively pay a price of zero for accessing and “crawling” the news publishers’ content. My study finds that allowing current market forces to dictate the news publishers’ payments ensures that news publishers are compensated at rates significantly below competitive levels. And this underpayment results in underemployment of journalists and other news employees, as well as host of social ills associated with local news deserts, including less competent local governments, greater spread of partisanship and misinformation, removal of economic stimulus to local economies, and a reduction in the diversity of viewpoints, particularly among minority populations.

The best way to correct this market failure is for the government to permit the news publishers and broadcasters to coordinate in their dealings with the digital platforms over payment terms and conditions, as contemplated in the JCPA. Under an expanded bill being considered, the JCPA would allow a joint-negotiation entity to form that could then avail themselves of good-faith protections during a good faith negotiation period. In the event an agreement could not be reached, news publishers would have the additional right to invoke “baseball-style” arbitration, in which both parties would offer their best estimate of the fair market value of the services being exchanged and a panel of arbitrators choose the most compelling offer of the two. The fair market value to be determined at arbitration would represent the news publishers’ collective contribution to the platforms’ revenues. It would not vary in proportion to the number of links the platform offered or links that were clicked through. Hence, the oft-used “link tax” reference is a misnomer. This model is very similar to Australia News Media Bargaining Code that recently resulted in payments from the tech platforms to news publishers. Current proposals being deliberated by this Committee would deviate from the Australia model, however, to ensure that large publications cannot avail themselves of the protections should they opt out of the joint-negotiation entity.

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3. Roughly 70% of all 2018 referrals to newspapers originated from Facebook and Google (including Google Search, Google News, and Google Chrome Suggestions). See John Saroff, *Working Together to Make Sense of Facebook’s News Feed*, CHARTBEAT, Jan. 18, 2018 (“Facebook has been an important referral partner for publishers. Chartbeat tracks just over 50 billion page views a month across thousands of publishers in 65 countries. In aggregate, 13% of those page views (and 30% of all “external” page views) are driven by referrals from Facebook. In both metrics, Facebook is the second largest referrer behind Google search which, by comparison, drives 21% of total page views and 40% of external referrals.”), available at <https://blog.chartbeat.com/2018/01/18/working-together-make-sense-facebooks-news-feed/>.



To compound the news publishers' financial problems, Facebook and Google also allegedly engage in a host of classic restraints that are recognized under antitrust law and depress payments to publishers from the sale of advertisements from click-throughs to be artificially depressed. According to a complaint filed by ten state attorneys general in December 2020, Google and Facebook conspired to prevent the ascendancy of a process called "header bidding," which was used by news publishers as a workaround to reduce their reliance on Google's ad platforms and thereby capture a larger pay share on ads sold on their sites.<sup>4</sup> In particular, header bidding permitted news publishers to solicit bids for ad placements from multiple ad exchanges at once. In March 2017, Facebook announced it was testing a header-bidding program with several major publishers; but by September 2018, those plans were abandoned, as Google and Facebook entered into an agreement not to compete for news publishers. As part of the agreement, Facebook allegedly received special information and speed advantages to help it succeed in the auctions, as well as a guarantee that Facebook would win a fixed percentage of auctions that it bid on, in what appears to be a market-allocation scheme.

Google is separately being sued by a class of news publishers for unilateral exclusionary conduct, including but not limited to: (1) extending its power across the "ad stack" via acquisitions in the ad-server segment and via manipulation of its auction to favor its own ad exchange; (2) placing a tax on rival ad exchanges to discourage header bidding by publishers; and (3) requiring that publishers use Google's ad exchange in order to get the best bids from its ad servers (a "tie in"). According to the complaint, this unilateral exclusionary conduct allegedly reduced the publishers' pay shares on the sale of advertising from click-throughs. Like Google and Facebook's alleged coordination to stymie header bidding, these classic restraints fall squarely within the ambit of antitrust. In any event, if news publishers are able to prevail in those antitrust lawsuits, they would recover payments for underpayments for click-throughs *in the past*; the JCPA would allow news publishers, by contrast, to capture competitive payments for the right to access their content *going forward*.

#### **Facebook and Google Wield Monopsony Power in the Acquisition of News Publishers' Content**

Facebook and Google possess significant buying or monopsony power in the acquisition of news publisher content generally. Monopsony is the flip side to monopoly, or selling power in the output market. The relevant question here is whether Facebook or Google (or both) possess monopsony power in the acquisition of news content for their respective platforms. As it turns out, for many of the same reasons that end users and advertisers lack substitution opportunities to Facebook and Google, input providers such as merchants (for Amazon), app developers (for Apple and Google) and news publishers

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4. With no sense of self-awareness, the platforms assail the JCPA for allowing the formation of a "cartel" of newspapers. To the extent the States' allegations concerning Project Jedi Blue are proven to be true, Google and Facebook would be the only known operating cartel in the digital news landscape. Importantly, the antitrust exemption in the JCPA would allow the news publishers to coordinate only in their dealings with dominant platforms. The news publishers would not be allowed to coordinate in their dealings with customers, workers, or any other economic agents.



(for Google and Facebook) lack substitution possibilities, and thus are beholden to these platforms. The input providers are chasing the set of customers assembled by the platforms; by locking in customers, the platforms simultaneously lock in the suppliers. Accordingly, evidence of Facebook's and Google's selling power in their respective output markets is also evidence of their buying power in their respective input markets. The platforms' massive buying power can be demonstrated indirectly, via evidence of high market shares combined with high barriers to entry. For example, Facebook and Google accounted for over half of U.S. digital display advertising in 2019;<sup>5</sup> combined shares in excess of 50 percent are consistent with collective market power under U.S. antitrust jurisprudence. Google and Facebook capture approximately 61 percent of all digital advertising dollars because of their ability to collect consumer data across the web.<sup>6</sup>

Buying power also can be proven directly via evidence of payments below competitive levels or the ability to exclude rivals. Direct evidence of the platforms' buying power includes: (1) payments to news publishers significantly below competitive levels, (2) news publishers are compelled to accept these take-it-or-leave-it terms by the platforms, indicating the power imbalance; (3) the platforms have used exclusive agreements with third parties to exclude horizontal rivals, and they have prevented rivals from acquiring news content via acquisition.

Payments to news publishers can be measured in a "but-for" world where the platforms' buying power were removed, thereby making the news content (input) market competitive. Economic theory dictates that in competitively supplied input markets, input providers tend to capture 100 percent of their marginal revenue product (MRP). Fortunately, the three measures of incremental revenue generated by news publishers for the platforms serve as a reasonable approximation for the news publishers' MRP. By compelling the dominant platforms to pay news publishers the fair-market value of their value added, Congress could replicate payments to news publishers in a world absent Google and Facebook's buying power. News content is a "must-have" input for the platforms, as news drives most of the conversation. Must-have inputs, such as broadcasting and sports networks, command something closer to their MRP for cable programming, as their selling power counteracts a portion of cable's buying power. These must-have input providers capture pay shares of between seven and eleven percent of the cable operators' total revenue; pay shares that vastly exceed the pay shares currently captured by news publishers from Google and Facebook.

### **The Social Harms Flowing from the Underpayments to News Publishers**

There are myriad social harms of news publishers not receiving competitive compensation. The news industry has incurred losses in advertising revenue every year since 2006, around the time that the platforms solidified their market power over digital

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5. eMarketer, Leading Digital Display Ad Sellers in the US, June 2020, available at <https://www.emarketer.com/chart/238193/leading-digital-display-ad-sellers-us-by-net-revenueshare-2019-2022-of-us-digital-display-ad-spending>.

6. Nicole Perrin, *Facebook-Google Duopoly Won't Crack This Year*, EMARKETER, Nov. 4, 2019, available at <https://www.emarketer.com/content/facebook-google-duopoly-won-t-crack-this-year>.



advertising. This is not to say that Facebook's and Google's domination of digital advertising came entirely at the expense of news publishers. Rather, it is to provide context as to how any underpayment to news publishers can exacerbate an environment that is already quite dire. The effect of shrinking advertising revenues<sup>7</sup>—in part caused by underpayment from dominant platforms—is less cash flow to support journalists, a clear employment effect flowing from the exercise of monopsony power by the dominant platforms. According to Pew Research, newsroom advertising declined from \$37.8 billion in 2008 to \$8.8 billion in 2020; over the same time period, newsroom employees declined from 71,070 to 30,820.<sup>8</sup> As a result of the deteriorating news media landscape described above, hundreds of local news publishers have been acquired or declared bankruptcy. The elimination of local news threatens democracy. Another critical role of traditional news outlets is providing fact-based journalism in the face of disinformation campaigns. The reduction in traditional news publishers has coincided with more Americans using social media platforms to access news. Local newspapers also provide an important role in keeping governments accountable.<sup>9</sup>

Moreover, the negative employment trends among news publishers, exacerbated by underpayments from the dominant platforms, can have ripple effects throughout local economies. When reporters, correspondents, and broadcasts news analysts, along with the other supporting employees at a publishing firm, lose their jobs, they lose incomes to spend at grocers, restaurants, and other local businesses. This reduction in spending can have a multiplier effect that ripples throughout a local economy and removes stimulus that was once there. There are also social harms of news publisher closure on a community, including the lack of social cohesion and a reduction in the diversity of viewpoints. These findings support a proportionate intervention to effectuate competitive payments to news publishers and thereby mitigate these social harms. At a high level, and as contemplated by the JCPA, the solution to the power imbalance is to permit news publishers to conduct joint negotiations for payments from platforms with good faith negotiations followed by, if necessary, an adequate enforcement mechanism that ensures equitable payment to all news publishers.

### **Rebutting the Platforms' Attacks on the Bill**

It is easy to rebut economic criticisms of this proposal. Detractors from this proposal, including but not limited to the platforms, have argued that: (1) This effort is meant to enrich the largest news publishers; (2) it is better to attack the power imbalance

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7. Newspaper advertising revenue has declined 82 percent by nearly \$40 billion from 2000 to 2020. See Pew Research Center, Newspapers Fact Sheet, June 29, 2021, available at <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>. Newsroom staff has declined 57 percent from 2004 to 2020. *Id.* Since 2000, newspaper circulation has dropped by half, with 31 million fewer daily newspapers in circulation in 2020 than were published when the century started. *Id.*

8. Pew Research Center, Newspapers Fact Sheet, June 29, 2021, available at <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>.

9. See, e.g., Terry Francke, *Why the Bell Scandal Happened and What Can Be Done*, VOICE OF OC, July 28, 2010 (attributing the self-dealing scandal in the local government of Bell, Canada to the closure of the local newspaper), available at <https://voiceofoc.org/2010/07/why-the-bell-scandal-happened-and-what-can-be-done/?amp>.



leading to near-zero payments for access with antitrust intervention; (3) news publishers derive significant value via referrals from platforms, which should be deducted from the value added by news publishers to platforms when determining compensation; and (4) the JCPA will lead to higher prices for consumers. I address each of these arguments and explain why they are not persuasive as a matter of economics or competition policy.

With respect to purportedly benefiting only the largest news publishers, while it is true that large news publishers benefit by coordinating with smaller news publishers in their dealings with Google, smaller news publishers benefit by even more, as small news publishers would be subjected to even greater levels of exploitation if they were compelled to deal with Google unilaterally. A handful of the very largest news publishers have a modicum of countervailing bargaining power against the platforms. This is not so for the vast majority of news publishers. Accordingly, the largest beneficiaries of this proposal are the smallest news publishers.

The argument that this proposal is meant to enrich the largest news publishers also ignores the likely allocation mechanism of a joint-negotiation entity, which would prevent large publishers from appropriating a disproportionate share of the award. Even if the allocation were done purely in proportion to a news publisher's pro-rata share of clicks, no single news publisher would achieve all of the payments, as the allocation of clicks across news publishers is well distributed. To the extent news publishers elect to distribute some portion of funds according to full-time journalists, high-quality news sites that deliver informative yet non-click-worthy news could achieve payments in excess of their pro-rata share of clicks.

With respect to using antitrust to attack the problems raised here, greater enforcement of existing antitrust laws against Google or Facebook, even if successful, could recover only a fraction of the underpayment described here, which flows from the platforms appropriation of value added from the news publishers' content, including from impressions, *regardless of whether a news story is clicked on by a user*. A Sherman Act Section 2 complaint against a platform would require publisher plaintiffs (or an agency) to (1) challenge a restraint of trade, preferably in a contract with third-party publishers or advertisers; and (2) establish a causal connection between said restraint and the underpayment to news publishers. While restraints in contracts with publishers or advertisers might be contributing to artificially suppressed news publishers' pay shares on ads sold against news publishers' stories generated by click-throughs, there are myriad factors, including network effects, customer lock-in, and other natural barriers to entry, also potentially contributing to the underpayment from ads sold against news publishers' stories; at best, a successful antitrust lawsuit challenging a platform's restraints would raise payments from that platform by the increment attributable to the restraints for ads sold against news publishers' stories. Such a lawsuit would not address the platform's appropriation of news publishers' value-add from impressions that do not result in a click-through, and thus would not restore the payments to competitive levels for the entirety of the value-added by news publishers to platforms. Moreover, a successful antitrust lawsuit against (say) Google would provide zero relief for news publishers in their dealings with Facebook. And a successful antitrust lawsuit against Google or Facebook would require



several years to adjudicate, and the appeals might not be resolved for nearly a decade. In the interim, news publishers would be left twisting in the wind. Given news publishers' precarious financial state, it is not clear how long many could survive without an intervention today.

The dominant platforms might argue that they are generating traffic for news publishers, and they are thus owed payments by the news publishers, or at least such incremental benefits should be deducted from the value added by news publishers to platform advertising revenues. This is wrong for at least two reasons. *First*, although the platforms designed a compelling product that retains users and advertisers via network effects, the platforms are not entitled to keep 100 percent of the incremental value that news publishers bring to their platforms. The traffic generated by the platforms should not be considered payment because news content is what brings users (and advertisers) to the platforms in the first instance. And news publishers would garner that traffic in a more competitive search or social media markets, without having to surrender access to their content as they do now.

*Second*, platforms are already being compensated for this traffic generation via a monopoly tax imposed on the advertising revenue. As noted above, the anticompetitive restraints that support the size of the tax are the subject of fresh antitrust litigation. Google takes a cut of 22 to 42 percent of U.S. ad spending that goes through its ad systems—two to four times as much as the fees charged by rival digital advertising exchanges.<sup>10</sup> An employee at Google said the platform can get away with it because “smaller pubs don’t have alternative revenue sources.”<sup>11</sup>

The purpose of granting the antitrust exemption and placing some structure on the ensuing joint negotiations is to compensate news publishers for the uncompensated value they bring to the platforms. As noted above, the platforms are reframing news stories in rich previews containing headlines, summaries, and photos. The platforms are not compensating news publishers for any of this lost traffic or lost subscription revenues. The proper focus of the inquiry should be the incremental platform advertising revenues generated by the news publishers. After all, this value added to the platforms would be the payments to news publishers in a competitive input market. Accordingly, such “offsets” should be ignored.

Finally, the notion that the JCPA will result in higher prices for consumers defies basic pricing principles and economic logic. Under the best-case scenario for news publishers, a joint-negotiation entity will achieve an award in the billions of dollars per year, which will be allocated to its members according to metrics such as pro-rata share of traffic generated and investments in journalism. From the platforms' perspective, that payment will be considered lump-sum, which per standard pricing theory means that it will

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10. Keach Hagey & Tripp Mickle, *Google Charges More Than Twice Its Rivals in Ad Deal, Unredacted Suit Says*, WALL STREET JOURNAL, Oct. 22, 2021, available at <https://www.wsj.com/articles/google-charges-more-than-twice-its-rivals-in-ad-deals-wins-80-of-its-own-auctions-court-documents-say-11634912297>.

11. *Id.*



not enter into their pricing calculus. By the classic Lerner index in microeconomics,<sup>12</sup> only costs that vary with small changes in output affect pricing decisions. Moreover, both Google and Facebook have embraced “zero prices” for users, choosing instead to generate revenue from advertisers. That these platforms would suddenly reject this pricing model—which has succeeded wildly in drawing in users and keeping them there—due to a lump-sum transfer to news publishers is flatly uneconomic and should be rejected by this Committee as scaremongering.

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12. See, e.g., *Lerner Index definition*, CONCURRENCES, available at <https://www.concurrences.com/en/dictionary/lerner-index>.



**Appendix:** Addressing the Power Imbalance Between News Publishers and Digital Platforms: A Legislative Proposal for Effectuating Competitive Payments to Newspapers



# Addressing the Power Imbalance Between News Publishers and Digital Platforms: A Legislative Proposal for Effectuating Competitive Payments to Newspapers

Hal J. Singer<sup>1</sup>

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### Introduction and Executive Summary

The purpose of this study is to explore the underpayment to newspapers from Facebook and Google attributable to the power imbalance between individual news publishers and the dominant platforms, and to describe how a pending bill in Congress, the Journalism Competition and Preservation Act (JCPA),<sup>2</sup> could effectuate competitive payments to news publishers, effectively simulating a world in which the power imbalance were removed. Facebook and Google (the “dominant platforms”) appropriate the value added of news publishers generally—and newspapers specifically<sup>3</sup>—by reframing articles in rich previews containing headlines, summaries, and photos; and by curating the content alongside advertisements. This reframing and curation decreases the likelihood of a user clicking into the article, thereby depriving news publishers of clicks while enriching the dominant tech platforms.<sup>4</sup> By exploiting their monopsony power over newspapers, Facebook and Google effectively pay a price of zero for accessing and “crawling” the newspapers’ content.

This study finds that allowing current market forces to dictate the newspapers’ “pay shares”—that is, the portion of platform revenues that redounds to newspaper publishers—ensures that newspapers are compensated at rates significantly below competitive levels. This underpayment results in underemployment of journalists and other news employees, as well as host of social ills associated with local news deserts, including less competent local governments, greater spread of partisanship and misinformation, removal of economic stimulus to local economies, and a reduction in the diversity of viewpoints, particularly among minority populations. The best way to correct this market failure is for the government to permit the news publishers (either newspapers alone, or all news publishers) to coordinate in their dealings with the digital platforms over payment terms and conditions,<sup>5</sup> as contemplated in the JCPA.

The report is not intended to isolate that portion of the underpayments to news publishers that can be attributable to the platforms’ exclusionary conduct. Facebook and Google engage in a host of potentially anticompetitive strategies vis-à-vis news publishers—both within a platform’s firm boundaries and across the platform’s firm boundaries with third parties—that likely sustain the power imbalance and contribute to the suppression of payments to news publishers. For

<sup>2</sup> H. R. 5190 (March 7, 2019), § 3(b)(1)(A).

<sup>3</sup> I use the term “news publishers” to refer to any publisher of legitimate news content, through any medium. I use the term “newspapers” to refer to the subset of news publishers in the newspaper industry.

<sup>4</sup> Damien Cave, *An Australia With No Google? The Bitter Fight Behind a Drastic Threat*, NEW YORK TIMES, Jan. 22, 2021 (citing [Tama Leaver](#), a professor of internet studies at Curtin University in Perth).

<sup>5</sup> See, e.g., Sanjutka Paul & Hal Singer, *Countervailing Coordination Rights in the News Sector Are Good for the Public (A Response to Professor Yun)*, COMPETITION POLICY INTERNATIONAL (2019), available at <https://www.competitionpolicyinternational.com/countervailing-coordination-rights-in-the-news-sector-are-good-for-the-public-a-response-to-professor-yun/>.



example, Facebook's algorithm rewards click-worthy stories, an attribute of stories not produced by legitimate news publishers, by moving them to the top of users' news feed.<sup>6</sup> Facebook also co-mingles sponsored content or ads alongside user-generated content in its news feed, thereby equating the quality of legitimate news and potentially fake news (not all sponsored content is fake news).<sup>7</sup> Both strategies tend to commodify legitimate news, diminishing its value. Prior to introducing its Instant Articles program, Facebook defaulted users to an in-app browser that degraded the download speeds of news publishers.<sup>8</sup> News publishers care about download speeds because users are quick to abandon a story that takes too long to download; news publishers can avoid this degradation by complying with Facebook's porting requirement, but at a cost of losing clicks (that would have occurred on their own sites) and thus advertising dollars.<sup>9</sup> Because legitimate news organizations need advertising revenues to staff reporters and editors, Facebook's policies discriminate in favor of intentionally fabricated news, which has only minimal quality and managerial costs, and against legitimate news. In December 2020, Facebook unveiled an AI assistant tool called "TLDR," which reportedly "could summarize news articles in bullet points so that a user wouldn't have to read the full piece," further depriving news publishers of traffic.<sup>10</sup> Although Facebook has yet to release it, the new tool reportedly could also provide audio narration,<sup>11</sup> which conveniently would not include a link to the original article.

Google employs a different set of potentially anticompetitive strategies against news publishers. For example, it inserts snippets of news stories from legitimate news sites on its search results page, which induces some users to forgo clicking on the link and thereby deprives news sites of clicks and the associated

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<sup>6</sup> Postings with comments and likes on a person's status are given more weight in the Facebook algorithm. See, e.g., *The Facebook Algorithm Explained*, BRANDWATCH, Jan. 9, 2019, available at <https://www.brandwatch.com/blog/the-facebook-algorithm-explained/>. A change to Facebook's algorithm in January 2018 to prioritize content based on audience engagements has been estimated to have decreased referral traffic from Facebook to news publishers' sites by one third. *How Much Have Facebook Algorithm Changes Impacted Publishers?*, MARKETING CHARTS, Apr. 4, 2019, available at <https://www.marketingcharts.com/digital/social-media-107974>.

<sup>7</sup> Christopher Mims, *Facebook Is Still In Denial About Its Biggest Problem*, WALL STREET JOURNAL, Oct. 1, 2017 ("On a network where article and video posts can be sponsored and distributed like ads, and ads themselves can go as viral as a wedding-fail video, there is hardly a difference between the two."), available at <https://www.wsj.com/articles/facebook-is-still-in-denial-about-its-biggest-problem-1506855607>.

<sup>8</sup> Sally Hubbard, *Why Fake News Is an Antitrust Problem*, FORBES, Jan. 10, 2017, available at <https://www.forbes.com/sites/washingtonbytes/2017/01/10/why-fake-news-is-an-antitrust-problem/?sh=70b171930f1e> ("In a test by The Capitol Forum, Facebook's in-app browser loaded on average three seconds slower than regular Safari on iOS. Studies show that 40 percent of desktop users and 53 percent of mobile users abandon websites that take more than three seconds to load.").

<sup>9</sup> See Ryan Mack, *Facebook Said It's Developing A Tool To Read Your Brain*, BUZZFEED NEWS, Dec. 15, 2020, available at <https://www.buzzfeednews.com/article/ryanmac/facebook-news-article-summary-tools-brain-reader>.

<sup>10</sup> Facebook appears to reward content that appears on Instant Articles. See *id.* ("According to Facebook, users click on Instant Articles 20 percent more than other articles, and they share Instant Articles 30 percent more than mobile web articles on average.").

<sup>11</sup> *Id.*



advertising revenues.<sup>12</sup> Like Facebook, Google also aggregates news sources with and without editorial oversight; such commodification (or “atomization”) of news can also cause reputational harm to news publishers by signaling no quality difference between replicators of news and the original source.<sup>13</sup> Google’s placement of news on accelerated mobile pages (AMP) required the creation of costly and otherwise unnecessary parallel websites by publishers that are hosted, stored and served from Google’s servers rather than the publishers.<sup>14</sup> To the extent that Google and news publishers are horizontal competitors for the same readership and advertisers, this conduct can be understood as a form of raising rival’s costs.<sup>15</sup> When a publisher attempts to avoid this AMP-related incremental cost by moving its content behind a paywall, its rise in subscriptions is offset by declines in traffic from Google and other platforms.<sup>16</sup>

According to a complaint filed by ten state attorneys general in December 2020, Google and Facebook conspired to prevent the ascendancy of a process called “header bidding,” which was used by news publishers as a workaround to reduce their reliance on Google’s ad platforms and thereby capture a larger pay share on their sites.<sup>17</sup> In particular, header bidding permitted news publishers to solicit bids for ad placements from multiple ad exchanges at once. In March 2017, Facebook announced it was testing a header-bidding program with several major publishers; but by September 2018, those plans were abandoned, as Google and Facebook entered into an agreement not to compete for news publishers.<sup>18</sup> As part of the agreement, Facebook allegedly received special information and speed advantages to help it succeed in the auctions, as well as a guarantee that Facebook would win a fixed percentage of auctions that it bid on, in what appears to be a market-allocation scheme.<sup>19</sup>

Although these strategies and restraints are consistent with the claim that Facebook and Google enjoy monopsony power vis-à-vis news publishers,<sup>20</sup> and

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<sup>12</sup> Majority Staff Subcommittee on Antitrust, Commercial and Administrative Law, Investigation of Competition in Digital Markets, Oct. 2020, at 70 (discussing Google’s incentives to minimize outbound referrals) [hereafter *Majority Report*], available at [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf).

<sup>13</sup> *Id.* at 309.

<sup>14</sup> *Id.* at 308.

<sup>15</sup> Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals’ Costs To Achieve Power Over Price*, 96 YALE L.J. 209 (1986).

<sup>16</sup> *Majority Report* at 308 (citing News Media Alliance white paper). Some news publishers assert that this practice results in inferior rankings in search results as compared to other search platforms.

<sup>17</sup> Complaint, *The State of Texas, et al. v. Google LLC*, (E.D. Tex.) ¶¶9-14 (filed Dec. 16, 2020) [hereafter *Texas Complaint*]. See also Daisuke Wakabayashi and Tiffany Hsu, *Behind a Secret Deal Between Google and Facebook*, NEW YORK TIMES, Jan. 17, 2021, available at <https://www.nytimes.com/2021/01/17/technology/google-facebook-ad-deal-antitrust.html?referringSource=articleShare>.

<sup>18</sup> *Behind a Secret Deal*, *supra*.

<sup>19</sup> *Id.*

<sup>20</sup> Other regulators have found that Facebook and Google enjoy significant buying power vis-à-vis newspapers. See, e.g., Australian Competition & Consumer Commission, Draft News Media Bargaining



although they likely support the platforms' ability to underpay news publishers, isolating the incremental harms flowing from a *particular* anticompetitive restraint is outside the scope of this report.<sup>21</sup> In contrast to an antitrust matter, which would focus on a set of restraints, this report focuses on the underpayments to news publishers flowing from the power imbalance between the platforms and individual news publishers *generally*, whether achieved by natural barriers or artificial barriers (restraints) or some combination of the two. In a competitive input market for online news content, where news publishers enjoyed free agency and could play one platform against another, payments to news publishers would approach the incremental contribution of news publisher content (legitimate news) to the platforms' advertising revenues.

This report is organized as follows. **Part I** assesses the significant buying (monopsony) power of Facebook and Google in the acquisition of news publisher content generally. Monopsony is the flip side to monopoly, or selling power in the output market. The relevant question here is whether Facebook or Google (or both) possess monopsony power in the acquisition of news content for their respective platforms. As it turns out, for many of the same reasons that end users and advertisers lack substitution opportunities to Facebook and Google, input providers such as merchants (for Amazon), app developers (for Apple and Google) and news publishers (for Google and Facebook) lack substitution possibilities, and thus are beholden to these platforms. The input providers are chasing the set of customers assembled by the platforms; by locking in customers, the platforms simultaneously lock in the suppliers. Accordingly, evidence of Facebook's and Google's selling power in their respective output markets is also evidence of their buying power in their respective input markets. The platforms' massive buying power can be demonstrated *indirectly*, via evidence of high market shares combined with high barriers to entry. For example, Facebook and Google accounted for over half of U.S. digital display advertising in 2019;<sup>22</sup> combined shares in excess of 50 percent are consistent with collective market power under U.S. antitrust jurisprudence. Buying

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Code, Q&As: Draft news media and digital platforms bargaining code, *available at* <https://www.accc.gov.au/focus-areas/digital-platforms/draft-news-media-bargaining-code> ("The code seeks to address the fundamental bargaining power imbalance between Australian news media businesses and major digital platforms.").

<sup>21</sup> Indeed, the Department of Justice and Federal Trade Commission recently sued Google and Facebook, respectively, under the antitrust laws, alleging restraints in support of monopolization in some of the same markets (such as advertising and search advertising) as those studied here. Complaint, U.S. et al. v. Google LLC, Oct. 20, 2018, ¶1 ("For many years, Google has used anticompetitive tactics to maintain and extend its monopolies in the markets for general search services, search advertising, and general search text advertising—the cornerstones of its empire.") [hereafter *Google Complaint*]; Complaint, Federal Trade Commission v. Facebook Inc., Dec. 9, 2020, ¶28 [hereafter *Facebook Complaint*] ("By monopolizing personal social networking, Facebook thereby also deprives advertisers of the benefits of competition, such as lower advertising prices and increased choice, quality, and innovation related to advertising.").

<sup>22</sup> eMarketer, Leading Digital Display Ad Sellers in the US, June 2020, *available at* <https://www.emarketer.com/chart/238193/leading-digital-display-ad-sellers-us-by-net-revenue-share-2019-2022-of-us-digital-display-ad-spending>



power also can be proven *directly* via evidence of payments below competitive levels or the ability to exclude rivals. Direct evidence of the platforms' buying power includes: (1) payments to news publishers significantly below competitive levels, (2) news publishers are compelled to accept these take-it-or-leave-it terms by the platforms, indicating the power imbalance; (3) the platforms have used exclusive agreements with third parties to exclude horizontal rivals, and they have prevented rivals from acquiring news content via acquisition.

**Part II** explores how payments to newspapers would be measured in a “but-for” world where the platforms' buying power were removed, thereby making the news content (input) market competitive. Economic theory dictates that in competitively supplied input markets, input providers tend to capture 100 percent of their marginal revenue product (MRP). Fortunately, the three measures of incremental revenue generated by newspapers for the platforms serve as a reasonable approximation for the newspapers' collective MRP. By compelling the dominant platforms to pay newspapers the fair-market value of their value added, Congress could replicate payments to news publishers in a world absent Google and Facebook's buying power. Newspapers are a “must-have” input for the platforms, as news drives most of the conversation. Must-have inputs, such as broadcasting and sports networks, command something closer to their MRP, as their selling power counteracts a portion of cable's buying power. These must-have input providers capture pay shares of between seven and eleven percent of the cable operators' total revenue; pay shares that vastly exceed the pay shares currently captured by newspapers from Google and Facebook.

In **Part III**, I assess the myriad social harms of newspapers not receiving competitive compensation. The news industry has incurred losses in advertising revenue every year since 2006,<sup>23</sup> around the time that the platforms solidified their market power over digital advertising. This is not to say that Facebook's and Google's domination of digital advertising came entirely at the expense of newspapers. Rather, it is to provide context as to how *any* underpayment to newspapers can exacerbate an environment that is already quite dire. The effect of shrinking advertising revenues—in part caused by underpayment from dominant platforms—is less cash flow to support journalists, a clear employment effect flowing from the exercise of monopsony power by the dominant platforms. Employment among newspaper employees fell from 71,000 in 2008 to 31,000 in 2020.<sup>24</sup> As a result of the deteriorating news media landscape described above, hundreds of local newspapers have been acquired or declared bankruptcy.<sup>25</sup> The elimination of local news threatens democracy. Another critical role of traditional

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<sup>23</sup> *Id.*

<sup>24</sup> Mason Walker, U.S. newsroom employment has fallen 26% since 2008, Pew Research Center, July 13, 2021, available at <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>.

<sup>25</sup> Penelope Muse Abernathy, Univ. N.C. Sch. Of Media And Journalism, The Expanding News Desert 33 (2018), available at [https://www.cislm.org/wp-content/uploads/2018/10/the-expanding-news-desert-10\\_14-web.pdf](https://www.cislm.org/wp-content/uploads/2018/10/the-expanding-news-desert-10_14-web.pdf).



news outlets is providing fact-based journalism in the face of disinformation campaigns. The reduction in traditional newspapers has coincided with more Americans using social media platforms to access news. Moreover, the negative employment trends among newspapers, exacerbated by underpayments from the dominant platforms, can have ripple effects throughout local economies. When reporters, correspondents, and broadcasts news analysts, along with the other supporting employees at a publishing firm, lose their jobs, they lose incomes to spend at grocers, restaurants, and other local businesses. This reduction in spending can have a multiplier effect that ripples throughout a local economy and removes stimulus that was once there. Finally, there are also social harms of news publisher closure on a community, including the lack of social cohesion and a reduction in the diversity of viewpoints.

These findings support a proportionate intervention to effectuate competitive payments to newspapers and thereby mitigate these social harms.<sup>26</sup> At a high level, and as contemplated by the JCPA, the solution to the power imbalance is to permit newspapers to collectively bargain for payments from platforms, with voluntary negotiations between the platform and newspaper collective, followed by, if necessary, an adequate enforcement mechanism that ensures equitable payment to all news publishers. **Part IV** provides a prebuttal of anticipated economic criticisms of this proposal. Detractors from this proposal, including but not limited to the platforms, will likely argue that: (1) This effort is meant to enrich the largest newspapers; (2) it is better to attack platform power with antitrust intervention; and (3) newspapers derive significant value via referrals from platforms, which should be deducted from the value added by newspapers to platforms when determining compensation. I address each of these arguments and explain why they are not persuasive as a matter of economics or competition policy.

### **I. Google and Facebook Possess Significant Buying Power in the Acquisition of Newspaper Content**

Monopsony, or buying power in the input market, is the flip side to monopoly, or selling power in the output market. Some firms, like single-company towns, might enjoy power on the buying side for labor, but lack selling power in any output market. Other firms, like Apple, might enjoy selling power in the sale of laptops due to brand prestige, but lack buying power over office supplies or any other standard inputs used by thousands of other firms. And still other firms possess both buying power and selling power. The relevant question here is whether Facebook or Google (or both) possess monopsony power in the acquisition of news content for their respective platforms. As it turns out, for many of the same

<sup>26</sup> Social harms are a form of “negative externalities”: costs not fully borne by parties to the transactions at issue—the news publishers and dominant tech platforms—but instead by society at large. Degradation in fact-based news coverage has been found to impose substantial long-term costs to society. See, e.g., Roberto Cavazos, *The Economic Cost Of Bad Actors On The Internet: Fake News In 2019*, available at <https://www.cheg.ai/fakenews> (estimating that “the epidemic of online fake news is costing the global economy \$78 billion each year.”).



reasons that end users and advertisers lack substitution opportunities to Facebook and Google, input providers such as merchants (for Amazon), app developers (for Apple and Google) and news publishers (for Google and Facebook) lack substitution possibilities, and thus are beholden to these platforms. The input providers are chasing the set of customers assembled by the platforms; by locking in customers, the platforms simultaneously lock in the suppliers. Accordingly, evidence of Facebook's and Google's selling power in their respective output markets is also evidence of their buying power in their respective input markets.

**A. Indirect Measures of Buying Power: High Market Shares and Barriers to Entry**

In April 2020, Facebook and other social media groups were a source of news for 47 percent of Americans, and 73 percent reported getting news from any online source (including from social media).<sup>27</sup> Indeed, Facebook has become the world's most popular source of news.<sup>28</sup> According to testimony submitted to the Antitrust Judiciary Subcommittee, news publishers feel extremely beholden to Google and Facebook for accessing viewers and advertisers.<sup>29</sup> The Judiciary Report concludes that "several dominant firms have an outsized influence over the distribution and monetization of trustworthy sources of news online, undermining the availability of high-quality sources of journalism."<sup>30</sup> A small change in an algorithm by either platform can materially decrease traffic to news publishers sites.<sup>31</sup>

In interviews with staff of the Judiciary Antitrust Subcommittee, "numerous businesses described how dominant platforms [including Google and Facebook] exploit this gatekeeper power to dictate terms and extract concessions that third parties would not consent to in a competitive market."<sup>32</sup> News publishers in particular testified that "dominant firms can impose unilateral terms on publishers, such as take-it-or-leave-it revenue sharing agreements."<sup>33</sup> This evidence is consistent with monopsony power. In addition to the House Antitrust Subcommittee, which found Facebook is a monopolist over social networks, the UK's Competition and Markets Authority (CMA),<sup>34</sup> the UK's House of Lords,<sup>35</sup> Germany's

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<sup>27</sup> Oxford University's Reuters Institute for the Study of Journalism, Digital News Report 2020, at 10 available at [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR\\_2020\\_FINAL.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf).

<sup>28</sup> Farhad Manjoo, *The Frightful Five Want to Rule Entertainment. They Are Hitting Limits*, NEW YORK TIMES, Oct. 11, 2017, available at <https://www.nytimes.com/2017/10/11/technology/the-frightful-five-want-to-rule-entertainment-they-are-hitting-limits.html>.

<sup>29</sup> *Majority Report* at 62.

<sup>30</sup> *Id.* at 62-63.

<sup>31</sup> *Id.* at 63.

<sup>32</sup> *Id.* at 39.

<sup>33</sup> *Id.* at 64 (citing Submission of Source 140).

<sup>34</sup> Competition & Mkts. Auth., Online Platforms and Digital Advertising, Market Study Final Report 26 (July 1, 2020) (finding that Facebook's "market power derives in large part from strong network



Federal Cartel Office,<sup>36</sup> and the Australian Competition and Consumer Commission (ACCC)<sup>37</sup> have all found Facebook enjoy monopoly power in the output market for social networks. Indeed, the ACCC concluded that Facebook and Google have significant buying power over the distribution of news online: “Google and Facebook are the gateways to online news media for many consumers.”<sup>38</sup>

As demonstrated below, buying power can be proven directly via evidence of payments below competitive levels or the ability to exclude rivals. Buying power can also be demonstrated indirectly, via evidence of high market shares combined with high barriers to entry.

### 1. High Market Shares

In a competitive market for online search, news publishers could play one platform against another in an effort to extract as high a payment as possible for their input (legitimate news). But there are simply no other viable alternatives, as Google controls the vast majority of searches, and thus eyeballs. As of July 2020, Google accounted for a combined 89 percent of the U.S. desktop search (81 percent) and mobile search (94 percent) markets.<sup>39</sup> Impressively, Google has built upon this market share for more than a decade.<sup>40</sup> A 2009 internal Google document estimated Google’s share of general search in the United States to be 71.5 percent, followed by Yahoo with 17.0 percent, and Bing with 7.5 percent.<sup>41</sup> The United Kingdom’s CMA estimated that, as of mid-2020, Google’s index of the web is three to five times the size of Bing’s.<sup>42</sup> Google’s dominance in online search gives it dominance over the

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effects stemming from its large network of connected users and the limited interoperability it allows to other social media platforms.”).

<sup>35</sup> House of Lords Communications and Digital Committee, *Breaking News? The Future of UK Journalism*, 1st Report of Session 2019–21 (HL Paper 176) (Nov. 19, 2020) (“This change in the business model of journalism has created an existential threat to the industry, particularly combined with a host of other challenges ranging from a surge in ‘fake news’ to the ability of giant technology platforms such as Facebook and Google to undercut the power of publishers and their revenues.”) available at <https://committees.parliament.uk/publications/3707/documents/36111/default/>.

<sup>36</sup> See Bundeskartellamt, B6-22/16, Case Summary, Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing, 8 (Feb. 15, 2019) (“The facts that competitors can be seen to exit the market and that there is a downward trend in the user-based market shares of the remaining competitors strongly indicate a market tipping process which will result in Facebook.com becoming a monopolist.”), available at [https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?\\_\\_blob=publicationFile&v=4](https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=4).

<sup>37</sup> Austl. Competition & Consumer Comm’n Report at 9; 78.

<sup>38</sup> *Id.* at 226.

<sup>39</sup> *Id.* at 78 (citing Desktop & Mobile Search Engine Market Share United States Of America, January 2009 to September 2020, Statcounter, available at <https://gs.statcounter.com/search-engine-market-share/desktop-mobile/unitedstates-of-america/#monthly-200901-202009>).

<sup>40</sup> *Id.* at 177.

<sup>41</sup> *Id.* at 179 (citing Marissa Mayer email).

<sup>42</sup> Competition & Mkts. Auth. Report at 89.



search advertising market: As of 2019, Google controlled nearly three quarters of the search advertising market.<sup>43</sup>

Similarly, Facebook (including its acquisitions of Instagram and WhatsApp) is by far the most popular social networking platform on the planet. As of December 2019, Facebook had 1.8 billion monthly active persons (MAP), WhatsApp had 2.0 billion MAP, and Instagram had 1.4 billion MAP.<sup>44</sup> Its closest social networking competitors had far fewer monthly active users: Snapchat had 443 million MAP, Twitter had 582 million MAP, and LinkedIn had 260 million MAP.<sup>45</sup> Facebook reports 2.5 billion daily active users across its family of social networking platforms.<sup>46</sup> According to an internal report obtained by the House Subcommittee, from September 2017 to September 2018, Facebook alone reached more than 75 percent of U.S. Internet users.<sup>47</sup> Based on Facebook's production to the Subcommittee, social media users spent more time on Facebook (48.6 minutes per day) than on Snapchat (21 minutes) or Twitter (21.6 minutes) in 2018.<sup>48</sup>

The two platforms monetize access to their users via the sale of advertising. Given their control over end users, the market for digital advertising also is highly concentrated. According to eMarketer, Facebook accounted for 42.2 percent U.S. digital display advertising in 2019, while Google accounted for 10.6 percent.<sup>49</sup> The UK's CMA similarly found that Facebook and Instagram generated over half of display advertising revenues in 2019 in the United Kingdom.<sup>50</sup> Combined shares in excess of 50 percent are consistent with collective market power under U.S. antitrust jurisprudence.<sup>51</sup> Moreover, their combined shares are growing: As of 2017,

<sup>43</sup> Megan Graham, *Amazon Is Eating into Google's Most Important Business: Search Advertising*, CNBC (Oct. 15, 2019), available at <https://www.cnbc.com/2019/10/15/amazon-is-eating-into-googles-dominance-in-search-ads.html>.

<sup>44</sup> *Majority Report* at 132.

<sup>45</sup> *Id.* at 92. The House Report does not consider TikTok to be a social media platform. *Id.* at 93 ("Although it meets the broad definition of social media as a social app for distributing and consuming video content, TikTok is not a social network."). And LinkedIn has been relegated to a "niche strategy" of appealing to professional connections. *Id.* at 91. It bears noting that the FTC's recent antitrust complaint against Facebook does not include LinkedIn in the relevant market definition. *Facebook Complaint* ¶ 58 ("Personal social networking is distinct from, and not reasonably interchangeable with, specialized social networking services like those that focus on professional connections."). I nonetheless reference LinkedIn's statistics here to be over-inclusive.

<sup>46</sup> *Id.* at 132.

<sup>47</sup> *Id.* at 137 (citing Cunningham Memo).

<sup>48</sup> *Id.* at 138.

<sup>49</sup> eMarketer, *Leading Digital Display Ad Sellers in the US, June 2020*, available at <https://www.emarketer.com/chart/238193/leading-digital-display-ad-sellers-us-by-net-revenue-share-2019-2022-of-us-digital-display-ad-spending>

<sup>50</sup> Competition & Mkts. Auth. Report at 10.

<sup>51</sup> The concept of collective market power is well-understood in antitrust. *See, e.g.*, Remarks of J. Thomas Rosch Commissioner, Federal Trade Commission, June 1, 2009 ("But firms who are participants in a duopoly or a tight oligopoly market collectively enjoy power that is akin to monopoly power in the sense that that they have the power to increase prices and reduce output in the market as a whole."); Daniel Crane, 90 *Market Power Without Market Definition*, NOTRE DAME LAW REV. 31-79 (2014) ("The Justice Department's high-profile case against Apple<sup>220</sup> and five major book



Google and Facebook accounted for 99 percent of year-over-year growth in U.S. digital advertising revenue.<sup>52</sup> According to Morgan Stanley, in the first quarter of 2016, 85 cents of every new dollar spent in online advertising went to Google or Facebook.<sup>53</sup> This level of dominance implies that the two platforms can push down payments to news publishers below competitive levels.

Facebook and Google have leveraged their platform power into vertical markets that match advertisers to publishers, formerly occupied by independent “ad tech” intermediaries such as LiveRamp. CMA estimates that Google captures over 50 percent of the search and digital display advertising market across the ad tech stack.<sup>54</sup> This power over the ad tech stack allows Google to exercise buying power vis-à-vis all publishers, including news publishers, as noted at the Senate Judiciary Committee Hearing in September 2020.<sup>55</sup> And in December 2020, ten states brought an antitrust suit against Google alleging monopolization of the ad tech stack.<sup>56</sup> The House Antitrust Judiciary Subcommittee attributes these high shares of digital advertising to high barriers to entry, specifically to behavioral data online, which can be used in targeted advertising; advertisers can only access these data through engagement with Facebook’s and Google’s ad tech.<sup>57</sup> Their advantage also derives from the aforementioned network effects—the larger the platform, the more efficient for the advertiser who can measure frequency to particular consumers and can buy larger segments efficiently.

## 2. Barriers to Entry

The discussion in the Introduction pertained to artificial barriers to entry or tactics employed by the dominant platforms, some of which likely contribute to the power imbalance between platforms and news publishers. Other barriers to entry that limit outside options for news publishers derive from natural forces. For

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publishers concerning e-book pricing rests on seemingly obvious evidence of the exercise of collective market power creating anticompetitive effects.”); Einer Elhauge, *How Horizontal Shareholding Harms Our Economy—And Why Antitrust Law Can Fix It*, HARVARD BUS. LAW. REVIEW 207-286 (2020) (“To whatever extent one thinks managers do pay attention to vote share or re-election odds, this new economic analysis mathematically proves that prices will be increased by high levels of horizontal shareholding across a set of firms that have collective market power.”).

<sup>52</sup> Alex Heath, *Facebook and Google Completely Dominate the Digital Ad Industry*, BUSINESS INSIDER, Apr. 26, 2017, available at <https://www.businessinsider.com/facebook-and-google-dominate-ad-industry-with-a-combined-99-of-growth-2017-4>; Sarah Sluis, *Digital Ad Market Soars To \$88 Billion, Facebook And Google Contribute 90% Of Growth*, AD EXCHANGER (May 10, 2018), <https://adexchanger.com/online-advertising/digital-ad-market-soars-to-88-billion-facebookand-google-contribute-90-of-growth>.

<sup>53</sup> John Herrman, *Media Websites Battle Faltering Ad Revenue and Traffic*, NEW YORK TIMES, Apr. 17, 2016, available at [https://www.nytimes.com/2016/04/18/business/media-websites-battle-falteringad-revenue-and-traffic.html?\\_r=0](https://www.nytimes.com/2016/04/18/business/media-websites-battle-falteringad-revenue-and-traffic.html?_r=0).

<sup>54</sup> Competition & Mkts. Auth. Report at 10.

<sup>55</sup> *Stacking the Tech: Has Google Harmed Competition in Online Advertising?* Hearing Before S. Subcomm. on Antitrust and Consumer Rights of the S. Comm. on the Judiciary, 116th Cong. (2019).

<sup>56</sup> *Texas Complaint*, *supra*.

<sup>57</sup> *Majority Report* at 131.



example, Facebook and Google enjoy strong network effects that keep would-be rival social network platforms at bay. As the number of users on Google's online search platform increases, advertisers gain access to a larger trove of consumer data, which cannot be offered by a rival. And as more users engage with Facebook's social network, rival social networks have a harder time attracting customers, as no one wants to be alone on a network. Social network platforms must attract a critical mass of users to become attractive to advertisers.<sup>58</sup> Social *network* platforms "facilitate their users finding, interacting, and networking with other people they already know online;" in contrast, social *media* platforms "facilitate the distribution and consumption of content."<sup>59</sup> Unlike a social media sites such as YouTube, social *network* platforms have a "robust social graph" connecting content among a group of friends—that graph is extremely difficult to assemble for a social networking entrant.<sup>60</sup> Accordingly, the Majority Report concludes that YouTube and other social *media* sites do not compete against Facebook in any meaningful sense.

Switching costs also prevent competition for these platforms vis-à-vis news publishers. Facebook's users cannot take their photos and personal information to an upstart.<sup>61</sup> Google and Facebook also enjoy strong data advantages arising from their incumbency, providing further user lock-in.<sup>62</sup> Because website performance degrades with additional "crawlers" obtaining data to create a webpage index, most websites only allow one crawler, which is Google's "Googlebot," blocking any new search engine crawler.<sup>63</sup> The only English-language search engines that maintain their own comprehensive webpage index are Google and Bing; Yahoo and DuckDuckGo purchase access to the index from Google or Bing.<sup>64</sup> Finally, online search and social networking markets are prone to tipping towards monopoly because incumbents can exploit economies of scale and scope. Facebook can spread its fixed costs over a billion worldwide monthly active users,<sup>65</sup> a massive scale economy. Because Google offers complementary services in addition to general search (e.g., maps, local business answers, news, images, videos, definitions, and "quick answers"), Google enjoys additional scope economies; a rival search engine would have to offer a similar suite of products to compete effectively.

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<sup>58</sup> *Id.* at 89.

<sup>59</sup> *Id.* at 91.

<sup>60</sup> *Id.* at 91.

<sup>61</sup> *Id.* at 144 (citing Omidyar Network Report and Production of Facebook).

<sup>62</sup> *Id.* at 43-44.

<sup>63</sup> *Id.* at 79 (citing research by Zack Maril).

<sup>64</sup> *Id.* at 79.

<sup>65</sup> Statista, Leading Countries Based on Facebook Audience Size as of October 2020, available at <https://www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-users/> (estimating 2.7 billion monthly active users worldwide and 190 million in the United States). The House Judiciary Committee estimates Facebook has 1.8 billion "monthly active persons" (MAPs), not including the MAPs of Instagram and WhatsApp. *Majority Report* at 92 ("The social network marketplace is highly concentrated. Facebook (1.8 billion users) and its family of products—WhatsApp (2.0 billion users), Instagram (1.4 billion users)— have significantly more users and time spent on its platform than its closest competitors, Snapchat (443 million users) or Twitter (582 million users).").



**B. Direct Measures of Monopsony Power: Ability to Push Payments to Publishers Below Competitive Levels or Exclude Rival Search Engines (Google) or Rival Social Network Platforms (Facebook)**

At the Judiciary Antitrust Subcommittee's sixth hearing, Rep. Pramila Jayapal (D-WA) noted that Google's control over both the buy-side and sell-side of the ad stack allowed Google to "set rates very low as a buyer of ad space from newspapers, depriving them of their ad revenue, and then also to sell high to small businesses who are very dependent on advertising on your platform."<sup>66</sup> In Part II.C., I review the actual payments and offers made by Facebook and Google to newspapers to date; that the two platforms are able to impose payments significantly below competitive levels (in many cases, a payment of zero) and below the pay shares for other "must-have" input providers in comparable industries is direct evidence of their monopsony power.

In 2020, the ACCC found that the power imbalance between platforms and news publishers has "resulted in news media businesses accepting *less favourable* terms for the inclusion of news on digital platform services than they would otherwise agree to."<sup>67</sup> That news publishers are compelled to accept these take-it-or-leave-it terms is also consistent with the claim that platforms' enjoy significant buying power; if news publishers had alternative pathways to advertisers and viewers, and if other parameters of the contract such as pricing were held constant, they might not accept these "less favorable" terms.

Another form of direct evidence of monopsony power is the ability to exclude rival platforms, which would otherwise put upward pressure on payments to news publishers. Google has used exclusive agreements to ensure its prime real estate on the browser and home page of the mobile user screen. In particular, Google imposed exclusionary terms in contracts effectively requiring phone and tablet makers that used its Android operating system to pre-install both Chrome and Google Search.<sup>68</sup> Among desktop browsers, Google Search enjoys default placement in 87 percent of browsers, equal to the sum of Chrome (51 percent of the U.S. browser market), Safari (31 percent), and Firefox (5 percent).<sup>69</sup> Among mobile phones, Google Search is the default on Android and on Apple's iOS mobile operating system, accounting for nearly all smartphones in the United States.<sup>70</sup> According to the House

<sup>66</sup> CEO Hearing Transcript at 169 (Rep. Pramila Jayapal (D-WA), Member, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm on the Judiciary).

<sup>67</sup> AUSTL. COMPETITION & CONSUMER COMM'N, DRAFT NEWS MEDIA BARGAINING CODE, July 31, 2020, *available at* <https://www.accc.gov.au/focus-areas/digital-platforms/draft-news-media-bargaining-code> (emphasis added).

<sup>68</sup> *Majority Report* at 177.

<sup>69</sup> *Id.* at 81.

<sup>70</sup> *Id.* at 82.



Subcommittee's review, as well as antitrust analyses,<sup>71</sup> Google conditioned access to the Google Play Store on Android devices on making Google Search the default search engine, a requirement that gave Google a significant advantage over competing search engines; Google also used revenue-sharing agreements to establish default positions on Apple's Safari browser (on both desktop and mobile) and Mozilla's Firefox.<sup>72</sup> In October 2020, the Department of Justice Antitrust Division commenced litigation to challenge several of those exclusionary agreements.<sup>73</sup>

The platforms also excluded rivals from acquiring news content via acquisition. Facebook acquired two large rival social network platforms, Instagram in 2012 and WhatsApp in 2014. According to internal documents produced to the House Subcommittee, Facebook "acquired firms it viewed as competitive threats to protect and expand its dominance in the social networking market."<sup>74</sup> Similarly, Google acquired DoubleClick in 2007 and AdMob in 2010 in their infancies, both of whom could have evolved into serious horizontal rivals to Google in the market for digital advertising; indeed, DoubleClick arguably had reached significant scale to impose meaningful price discipline on Google at the time of its acquisition.<sup>75</sup>

Potential horizontal competitors to Facebook often enter as a complement to Facebook's offering by relying on the Facebook's application programming interfaces (APIs) called Facebook's Open Graph. When Facebook detects that an app is too close of a substitute or presents a threat to Facebook's monopoly, it can deny access to its API to foreclose competition. For example, Facebook restricted API access to Pinterest, a visual discovery engine for finding ideas like recipes or style inspiration, and Facebook's CEO admitted that Pinterest was a competitor to Facebook during the House hearings.<sup>76</sup> Internal documents reveal that Facebook perceived that Vine, a video-sharing app acquired by Twitter, had "replicated Facebook's core News Feed functionality," and cut off Vine's access to Facebook APIs;<sup>77</sup> Twitter shuttered the app in 2016. Other perceived rivals that lost access to

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<sup>71</sup> Benjamin G. Edelman & Damien Geradin, *Android and Competition Law: Exploring and Assessing Google's Practices in Mobile*, 12 EUROPEAN COMPETITION JOURNAL 159-194 (2016) ("... Google's MADA strategy leverages the company's market power in certain services and apps for which there is no clear substitute (most notably Google Play and YouTube) in order to compel device manufacturers wishing to manufacture commercially-viable devices to install other services and apps (including Google Search and Google Maps) for which there are substitutes. This is a clear case of tying.").

<sup>72</sup> *Majority Report* at 82.

<sup>73</sup> Complaint, U.S. v. Google, Case 1:20-cv-03010, Oct. 20, 2020, available at <https://www.justice.gov/opa/press-release/file/1328941/download>.

<sup>74</sup> *Majority Report* at 149.

<sup>75</sup> See, e.g., Robert Hahn & Hal Singer, An Antitrust Analysis of Google's Proposed Acquisition of DoubleClick, AEI-Brookings Joint Center Related Publication No. 07-24, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1016189](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1016189).

<sup>76</sup> Hal Singer, *Top 10 Admissions from Tech CEOs Secured at the Antitrust Hearing*, PROMARKET, July 30, 2020.

<sup>77</sup> *Majority Report* at 167.



Facebook's API include MessageMe (competing with Facebook Messenger) and Arc (competing with Facebook).<sup>78</sup>

Similarly, the most likely horizontal competitors to Google's search, such as local restaurant reviews, begin as complements in vertical search. When Google spies a potential threat, it can invade the vertical space and use its gatekeeping power to steer searches to its affiliated clone. Not only is this strategy effective at extending its monopoly into the edge for vertical search, but also at preserving its monopoly in general search. Google also demanded that certain verticals permit Google to scrape their user-generated content,<sup>79</sup> further impairing competition.

## **II. Newspapers Would Capture Nearly All of Their Incremental Revenue Contribution in the Absence of the Platforms' Buying Power**

This section demonstrates, using economic theory, that newspapers would capture something close to their MRP in the absence of Facebook's and Google's buying power. Using standard economic principles, I show how a buyer of news, such as Facebook or Google, can still earn substantial profit from the deployment of news, even when it obliged to compensate newspapers at a competitive rate, defined by the MRP.

### **A. Payments to Input Providers Under Competitive Conditions**

Under competitive conditions, standard economic models predict that each input to production receives compensation (the "factor price") equal its MRP, which in turn predicts the share of revenue paid to that input.<sup>80</sup> As illustrated in Figure 1 below, a firm that lacks monopsony power faces a *horizontal* (or "perfectly elastic") supply curve for each factor of production. For example, if the factor in question is labor—meaning that the employer is buyer—and if the employer faces a perfectly competitive labor market, then the employer takes the market wage as given, and can hire as much labor as it requires at the market wage,  $w_c$ . Accordingly, the price of labor cannot be affected by changes in the quantity demanded (purchased) by the employer,  $LD$ . As illustrated in Figure 1, the buyer has a downward-sloping demand curve for the factor of production, reflecting declining marginal productivity as more and more of the factor is used. As long as the demand curve for the factor is above the (horizontal) supply curve, it is economically rational for the employer to

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<sup>78</sup> *Id.* at 168-69.

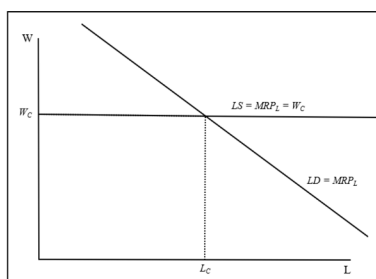
<sup>79</sup> *Id.* at 84.

<sup>80</sup> Elementary economics shows that competitive firms pay labor a share of revenue commensurate with labor's productivity, based on the marginal product of labor. *See, e.g.,* ROY RUFFIN & PAUL GREGORY, PRINCIPLES OF MICROECONOMICS 331-36 (Harper Collins 5th ed. 1993) (explaining that standard economic theory makes predictions regarding the share of payments made to labor that are borne out in the data; economic theory explains why the share of payments going to labor remained relatively constant over several decades (from 1948 to 1990) even though the capital stock more than doubled over this time period). *See also* MICHAEL KATZ & HARVEY ROSEN, MICROECONOMICS 264-265 (Irwin McGraw-Hill 3rd ed. 1998)



continue purchasing more of the factor, because the marginal benefits of doing so exceed the marginal costs.

FIGURE 1: COMPETITIVE (“PERFECTLY ELASTIC”) FACTOR SUPPLY CURVE



The same principles apply to any perfectly fungible, competitively supplied factor of production, such as paper clips: Virtually any businesses can presumably purchase as many perfectly interchangeable paper clips as it requires at the market price. Because the supply of paperclips is (from the point of view of any individual buyer) effectively unlimited, an individual business cannot bid up the market price of paperclips by purchasing “too many” of them, nor can it suppress the market price of paperclips by purchasing “too few.”

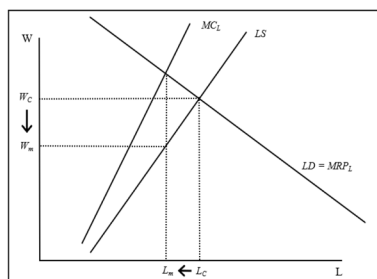
Importantly, that the factor price is equal to MRP does not necessarily imply that the buyer earns zero profit from the factor. As illustrated in Figure 1, whenever the factor demand curve is downward-sloping, the buyer can earn profit on the *inframarginal* units of the factor (to the left of competitive output along the labor demand curve, where the buyer is willing to pay more than the competitive wage). Even under perfect competition, the inframarginal units of the factor generate more revenue than they are paid. The buyer’s profit on the inframarginal units is given by the area of the triangle under the factor demand curve. It bears noting that even if newspapers were to capture 100 percent of their incremental revenue contribution under a regulated outcome, the platforms would continue to earn margins—equal to the difference between MRP and payments—on all of the other (non-newspaper) input providers to their platform.

## B. Payments to Input Providers Under Monopsony Conditions

In markets with monopsony power, buyers maximize profits by depressing factor prices below the MRP. This means that there is a gap between the amount that a factor is compensated and the amount of revenue the factor generates for the buyer at the margin. The more monopsony power that a buyer has, the larger is the gap, and the more compensation is suppressed below the competitive level.



FIGURE 2: IMPERFECTLY COMPETITIVE (UPWARD-SLOPING) FACTOR SUPPLY CURVE



As illustrated in Figure 2, a buyer with monopsony power faces an *upward-sloping* factor supply curve. The extent to which a buyer can push down factor prices is dictated by its monopsony power. Monopsony power can be measured using the elasticity of supply, which measures the responsiveness of the quantity of the factor supplied to changes in the factor price. A lower elasticity of supply implies a greater exercise of monopsony power—that is, a greater gap between a worker's wage and her MRP. To illustrate, note that the degree of factor price suppression in Figure 2 depends on how steep the factor supply curve is. Steeper factor supply curves are associated with lower supply elasticities, and thus greater suppression of factor prices.<sup>81</sup>

There is a direct parallel between a monopolist—a *seller* with market power—and a monopsonist—a *buyer* with market power. Just as the monopolist's optimal markup over marginal cost varies inversely with the elasticity of consumer *demand*, the monopsonist's optimal markdown below MRP is inversely related to the elasticity of factor *supply*. The solution to the monopolist's problem of what price to charge is given by  $(p-c)/p = 1/E_D$ , where  $p$  is the price,  $c$  is the marginal cost, and  $E_D$  is the elasticity of consumer demand. By symmetry, the solution to the monopsonist's problem of what factor price to pay is  $(MRP-w)/w = 1/E_S$ , where  $w$  is the factor price,  $MRP$  is the worker's marginal revenue product, and  $E_S$  is the elasticity of factor supply.<sup>82</sup> Buyers can suppress factor prices below (or further below) competitive levels by engaging in conduct that has the effect of dampening the factor supply elasticity.

<sup>81</sup> For a linear factor supply curve such as that depicted in Figure 2, the elasticity of supply varies with movements along the curve. Nevertheless, for any given point on the curve, an increase in the steepness of the curve implies a lower supply elasticity.

<sup>82</sup> See, e.g., ROGER BLAIR, *SPORTS ECONOMICS* 354 (Cambridge University Press 2012).



### C. Evidence That Payments to Newspapers Are Below Competitive Levels

In a competitive factor market, economic theory dictates that newspapers' compensation would approach their MRP. That is clearly not happening today, as indicated by public records of payments to newspapers.

#### 1. Current Payments to Newspapers

Facebook SEC Form 10-Ks show its maximum payment for content across all content providers, including newspapers. The 10-K includes information of Facebook's "cost of revenue," which includes, among other things, costs associated with partner arrangements, including traffic acquisition and content acquisition costs, credit card and other transaction fees related to processing customer transactions, and cost of consumer hardware device inventory sold. Between 2016 and 2018, Facebook's cost of revenue ranged between 13 and 17 percent of its total revenue.<sup>83</sup> Accordingly, Facebook's payment for content acquisition, a subset of this share, was less than 13 to 17 percent of its revenues. And Facebook's payment for newspaper content would be even smaller.

Facebook reportedly made a deal in 2019 with a number of newspapers to pay "trusted news sources" an undisclosed amount for their services. According to *MarketWatch*, these deals could range from a couple hundred thousand dollars for smaller, regional publications to \$3 million for larger, national publications. According to the *Wall Street Journal*, Facebook was only offering payment to roughly 50 out of the 200 news providers on Facebook News.<sup>84</sup>

Google reportedly offered a total of \$1 billion over three years to a number of news providers in Germany, Brazil, Argentina, Canada, the U.K., and Australia. While many companies accepted this deal, one major German news source, Axel Springer, refused.<sup>85</sup> In the cases of France and Belgium, Google made indirect deals by putting money into a "Special Fund for French Media" and through supposedly buying ads on Belgian media websites as a fix to Belgian demands for copyright fees. Neither of these cases suggests an outright deal or offer to publishers.<sup>86</sup> Following France's

<sup>83</sup> Securities and Exchange Commission, Form 10-K, Facebook Inc. 2018, available at <https://www.sec.gov/Archives/edgar/data/1326801/000132680119000009/fb-12312018x10k.htm>.

<sup>84</sup> Lucas Alpert, *Facebook, Wall Street Journal publisher and others reach deal for news section*, MARKET WATCH, Oct. 10, 2019, available at <https://www.marketwatch.com/story/facebook-wall-street-journal-publisher-and-others-reach-deal-for-news-section-2019-10-18>; Paris Marineau, *Facebook Tries Again With News, This Time Paying Publishers*, WIRED, Oct. 25, 2019, available at <https://www.wired.com/story/facebook-tries-again-news-paying-publishers/>.

<sup>85</sup> David Meyer, *Why Google's \$1 billion deal with news publishers isn't the end of their war*, FORTUNE, Oct. 1, 2020, available at <https://fortune.com/2020/10/01/google-billion-dollar-news-showcase-axel-springer/>.

<sup>86</sup> Harro Ten Wolde & Eric Auchard, *Germany's top publisher bows to Google in news licensing row*, REUTERS, Nov. 5, 2014, available at <https://www.reuters.com/article/us-google-axel-sprngr/germanys-top-publisher-bows-to-google-in-news-licensing-row-idUSKBN0IP1YT20141105>;



implementation of a new rule enacted under a recent European Union law that creates “neighbouring rights,” in February 2021, Google agreed to pay \$76 million over three years to a group of 121 French news publishers to settle a dispute.<sup>87</sup> In October 2021, Facebook reached an agreement with the French press alliance to pay national and regional newspapers for “using excerpts of their articles when they are shared on the social network.”<sup>88</sup>

## 2. Converting Payment Levels to Pay Shares

Economists recognize that “[i]n a world of perfect competition, the output contribution of individual production factors equals their respective revenue shares.”<sup>89</sup> Thus, under competition, the share of total revenue that each factor receives is proportional to the relative importance of that factor in generating output. When factor markets are less than perfectly competitive, the share of revenue paid to the noncompetitive factor(s) may fall because (1) a monopsonist pays compensation below the competitive level; and (2) a monopsonist uses less of the factor than would be employed under competition.

For example, noted economist Professor Alan Manning has explained that, in professional sports, there is “a clear link between the removal of anti-competitive labor practices and rises in the share of revenue going to athletes.”<sup>90</sup> The same principles can be applied to the broader economy. A 2013 paper observes that “the constancy of the share of income that flows to labor has been taken to be one of the quintessential stylized facts of macroeconomics,”<sup>91</sup> but that in recent years “prominent measures of labor’s share in the United States have declined significantly.”<sup>92</sup>

More recent research has reached similar conclusions for both labor and capital, two critical inputs to production: A recently published paper in the *Journal of Finance* concludes that, in sectors throughout the economy, “the shares of both labor and capital are declining and are jointly offset by a large increase in the share of pure profits,” and that observed “increase[s] in industry concentration can

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Jeffrey Roberts, *Did Google pay Belgian newspapers a \$6M copyright fee? Sure looks like it*, GIGAOM, Dec. 13, 2012, available at <https://gigaom.com/2012/12/13/did-google-pay-belgian-newspapers-a-6m-copyright-fee-sure-looks-like-it/>.

<sup>87</sup> Mathieu Rosemain, *Google’s \$76 million deal with French publishers leaves many outlets infuriated*, REUTERS, Feb. 12, 2021, available at <https://reut.rs/3jrG74t>.

<sup>88</sup> Benoit Berthelot, *Facebook Will Pay French Newspapers for Using Their News*, YAHOO! FINANCE, Oct. 21, 2021, available at <https://yhoo.it/3E75YX9>.

<sup>89</sup> Sabien Dobbelaere & Jacques Mairesse, *Panel Data Estimates of the Production Function and Product and Labor Market Imperfections*, 28 JOURNAL OF APPLIED ECONOMETRICS 1-46, 2 (2013).

<sup>90</sup> Manning (2020) at 10.

<sup>91</sup> Michael Elsby, Bart Hobijn, & Aysegul Sahin, *The Decline of the U.S. Labor Share*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, 1-42, 2 (2013).

<sup>92</sup> *Id.* at 2.



account for most of the decline in the labor share.”<sup>93</sup> Similarly, a 2020 study published in the *Quarterly Journal of Economics* concludes that rising market power “can account for a number of secular trends in the past four decades, most notably the declining labor and capital shares as well as the decrease in labor market dynamism.”<sup>94</sup>

Conversion of newspaper payments to pay shares is straightforward. Google’s annual U.S. advertising revenues in 2020 was roughly \$49 billion.<sup>95</sup> Facebook’s annual U.S. advertising revenues in 2020 was roughly \$22 billion.<sup>96</sup> Accordingly, a one percent pay share for U.S. newspapers would amount to annual payments of \$490 million by Google and annual payments of \$220 million by Facebook. Based on the reported payments to U.S. newspapers reviewed above, it is reasonable to assume that the current pay shares are less than one percent. In the next section, I examine the pay shares in comparable industries.

### 3. Regulatory Benchmarks

Benchmarking is a common tool used by economic scholars and practitioners.<sup>97</sup> A benchmark is more informative when it reflects attributes with the “but-for world” envisioned here—that is, everything is the same except for the power imbalance between newspapers and platforms. The salient characteristics of that but-for world include (1) the group seeking fair-market compensation constitutes only one of several input providers for the dominant platform; (2) the payment to the input provider is governed directly or indirectly by an enforcement mechanism as opposed to being set entirely through market forces; and (3) the group seeking fair-market value bargains collectively. Even imperfect benchmarks,

<sup>93</sup> Simcha Barkai, *Declining Labor and Capital Shares*, 75(5) JOURNAL OF FINANCE, 2421-2463, 2421 (2020).

<sup>94</sup> Jan De Loecker & Jan Eeckhou, *The Rise of Market Power and the Macroeconomic Implications* 135 QUARTERLY JOURNAL OF ECONOMICS (2020).

<sup>95</sup> Per Google’s 10-K, total Google Search ad revenue in 2019 is \$98 billion globally and \$45 billion in the US, meaning 46% of Google Search ad revenues come from the US. Using Google’s quarterly 10-Q filings, I obtain actual quarterly revenues for Q1-3 2020 and estimate Q4 based on previous Q4 performance, implying forecasted 2020 global Google Search ad revenues of \$107 billion. I multiply this figure by the 46% share of global Google Search revenues that stem from the US to obtain \$49 billion for 2020.

<sup>96</sup> Per Facebook’s 10-K, total U.S. and Canada advertising revenue in 2019 is \$33.5 billion, and the total active users for U.S. and Canada is \$245.5 million, implying average revenue per user of \$136.4. Facebook also states that there are 220 million US users in 2019. Multiplying this figure by the ARPU from the U.S. and Canada aggregate, this implies U.S.-only advertising revenues of \$30 billion. Statista reports that in 2019, 31.8 percent of Facebook’s advertising revenues come from Instagram, to which newspapers make no contribution. To net out the advertising revenues from Instagram, I multiply \$30 billion by (1-0.318) to obtain US only, Facebook (non-Instagram) 2019 revenues of \$20.5 billion. Using Facebook’s quarterly reports for 2020 Q1-3, I perform a similar calculation and arrive at \$21.9 billion in U.S. (non-Instagram) advertising revenues for 2020.

<sup>97</sup> See e.g., Justin McCrary & Daniel Rubinfeld, *Measuring benchmark damages in antitrust litigation*, 3(1) JOURNAL OF ECONOMETRIC METHODS 63-74, 63 (2014) (“We have found the benchmark approach to be the most commonly used damages methodology.”).



which satisfy one or two of the criterion of the but-for world, can offer insight as to the reasonableness of the implied pay shares that are sought here. Table 1 presents an overview of potential benchmarks, discussed below, including the associated pay shares for the input providers.

TABLE 1: PAY SHARES IN POTENTIAL BENCHMARKS

Potential Benchmark	Pay Shares	Protected Class Represents Only One of Many Inputs	Regulated Allocation	Collective Bargaining
Artists and Publishers Under Music Streaming Royalties	65-70%	✗	✓	✓
Broadcasters Under Retransmission Consent	~11%	✓	✓	✗
Regional Sport Networks	~7%	✓	✗	✗
Athletes in Professional Sports Leagues	50-60%	✗	✗	✓

As Table 1 shows, none of the potential benchmarks satisfies all three salient characteristics of the but-for world. The derivation of these pay shares are provided in Appendix 1. While broadcasters and regional sports networks (RSNs) represent only one of many inputs on their respective platforms, making them a close comparable, broadcasters cannot bargain collectively vis-à-vis cable operators, and RSN licensing fees are not set in a regulated environment. Yet the pay shares for broadcasters (approximately eleven percent of cable revenues) and RSNs (approximately seven percent of cable revenues) vastly exceed the pay shares currently captured by U.S. newspapers from Google and Facebook (less than one percent). Relative to these comparables, this deficit in pay shares indicates that newspapers are not capturing anything close to competitive rates, and is thus indicative of Google's and Facebook's buying power vis-à-vis newspapers.

The pay shares for music rightsholders (65 to 70 percent) and athletes in professional sports leagues with unions and free agency (60 percent) likely overstate the fair-market value of pay shares here, as those input providers account for the totality of the relevant inputs in the production process in their respective fields. Nevertheless, those benchmarks are informative of a related but-for world in which *all* content providers, including but not limited to newspapers, broadcasters, bloggers, and video services, could achieve fair-market value for their revenue contributions to the platforms. In other words, if the platforms' monopsony power over all content providers were vanquished, Facebook and Google could be forced to pay content providers more than half of their advertising revenues.



### III. Underpayment to Newspapers Results in Myriad Social Harms

This section reviews the social harms flowing from the underpayments to news publishers. There are myriad social harms flowing from underpayments to newspapers, beginning with employment effects in the input market (e.g., journalism jobs).

#### A. Employment (Output) Effects in the Input Market

The net effect of shrinking advertising revenues—in part caused by underpayment from dominant platforms—is less cash flow to support journalists, a clear employment effect flowing from the exercise of monopsony power by the dominant platforms. Employment among newspaper employees fell from 71,000 in 2008 to 31,000 in 2020.<sup>98</sup> The Bureau of Labor Statistics predicts that over the next decade, the total employment of reporters, correspondents, and broadcast news analysts will continue to decline.<sup>99</sup>

The decline in newspaper advertising revenue coincides with the rise of platform power. From 1956 through 2005, advertising revenue for U.S. newspapers steadily increased, peaking around \$50 billion in 2005.<sup>100</sup> The rise of platform power was assisted by favorable legislation in the 1990s and early aughts.<sup>101</sup> In the mid-aughts, Facebook and Google began to consolidate their power, with competitors MySpace (Facebook's precursor), and Infoseek, Lycos, and Altavista (Google's precursors) steadily disappearing. Since 2006, U.S. newspaper advertising revenue declined from \$49 billion in 2006 to \$18 billion in 2016.<sup>102</sup> Figure 3 shows the rise and fall of newspaper advertising revenues since 1956.

<sup>98</sup> Mason Walker, U.S. newsroom employment has fallen 26% since 2008, Pew Research Center, July 13, 2021, available at <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>.

<sup>99</sup> Occupational Outlook Handbook: Reporters, Correspondents, and Broadcast News Analysts, U.S. Dep't Of Labor: Bureau of Labor Statistics, available at <https://www.bls.gov/ooh/media-and-communication/reporterscorrespondents-and-broadcast-news-analysts.htm>.

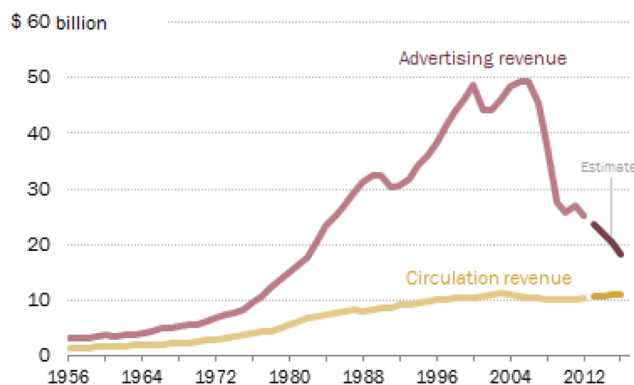
<sup>100</sup> Michael Barthel, Despite Subscription Surges for Largest U.S. Newspapers, Circulation and Revenue Fall for Industry Overall, Pew Research Center: Facttank (June 1, 2017), <https://www.pewresearch.org/fact-tank/2017/06/01/circulation-and-revenue-fall-for-newspaper-industry>.

<sup>101</sup> For example, Congress passed the Communications Decency Act in 1996 and the Digital Millennium Copyright Act in 1998, shielding platforms from certain liabilities, and gave the new platforms generous tax incentives.

<sup>102</sup> *Id.*



FIGURE 3: TOTAL ADVERTISING REVENUES FOR U.S. NEWSPAPERS, 1956-2016



Source: Pew Research, available at <https://www.pewresearch.org/fact-tank/2017/06/01/circulation-and-revenue-fall-for-newspaper-industry/>.

Platforms have contributed to shrinking newspaper advertising revenues in two ways. Platforms are not only a direct competitor to newspapers for advertising dollars (a horizontal relationship), but platform dominance can also be used to squeeze newspapers (a vertical relationship) for lower input prices. In 2016, the news industry incurred losses in total weekday circulation, despite gains for certain top-selling sites.<sup>103</sup> The news industry also incurred losses in advertising revenue in 2016, marking a steady decline since 2006.<sup>104</sup> According to one news publisher's testimony to the Antitrust Subcommittee, "digital subscription revenues remain a minor revenue stream and do not appear to be on a path to replace the decline in print subscriptions" for the vast majority of newspapers.<sup>105</sup>

Since dominant platforms aggregate content on their sites, newspapers have little choice but to permit sharing their content this way, as they are dependent on the platforms for traffic. But by providing snippets of content, the platforms permit users to obtain the news without clicking through to the underlying source, depriving the publisher of traffic and its associated ad revenues.<sup>106</sup> This, in turn, also creates less of a need to subscribe to the newspaper platform. The platforms do not compensate newspapers for this lost traffic.

<sup>103</sup> Barthel, *supra*.

<sup>104</sup> *Id.*

<sup>105</sup> Submission from Source 220, to H. Comm. on the Judiciary, 7 (Oct. 14, 2019) (on file with Comm.).

<sup>106</sup> News Media Alliance, How Google Abuses Its Position As A Market Dominant Platform To Strong-Arm News Publishers And Hurt Journalism 2, 12 (2020), available at <http://www.newsmediaalliance.org/wpcontent/uploads/2020/06/Final-Alliance-White-Paper-June-18-2020.pdf>.



## B. Removal of Economic Stimulus to Local Economies

The negative employment trends among newspapers, exacerbated by underpayments from the dominant platforms,<sup>107</sup> can have ripple effects throughout local economies. When reporters, correspondents, and broadcasts news analysts, along with the other supporting employees at a publishing firm, lose their jobs, they lose incomes to spend at grocers, restaurants, and other local businesses. This reduction in spending can have a multiplier effect that ripples throughout a local economy and removes stimulus that was once there.<sup>108</sup>

Local newspapers also provide a valuable service to local businesses by creating a way to connect with community members and advertise their products and services.<sup>109</sup> When underpayments intensify news publisher closure, local businesses no longer have access to this mode of communication and advertising. Furthermore, research has shown that there is a causal link between local newspaper closures and higher municipal borrowing costs, likely due to the reduction in independent oversight.<sup>110</sup> This translates into an approximate increase of \$650,000 per average municipal bond issuance.<sup>111</sup> Higher borrowing costs are ultimately borne by local taxpayers, thereby reducing real disposable incomes and removing further stimulus from local economies.<sup>112</sup>

## C. Threats to Democracy from News Deserts

As a result of the deteriorating news media landscape described above, hundreds of local newspapers have been acquired or declared bankruptcy.<sup>113</sup> One study estimates that the United States has lost nearly 1,800 newspapers since 2004

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<sup>107</sup> See Part III.B.1

<sup>108</sup> Josh Bivens, *Updated employment multipliers for the U.S. economy*, ECONOMIC POLICY INSTITUTE, January 23, 2019, available at <https://www.epi.org/publication/updated-employment-multipliers-for-the-u-s-economy/>.

<sup>109</sup> *The benefits of local newspapers*, COVINGTON NEWS, available at <https://www.covnews.com/nie/benefits-local-newspapers/#:~:text=Small%20business%20owners%20often%20connect,strengthen%20local%20schools%20and%20infrastructure>.

<sup>110</sup> Pengjie Gao, Chang Lee, and Dermot Murphy, *Financing dies in darkness? The impact of newspaper closures on public finance*, 135(2) JOURNAL OF FINANCIAL ECONOMICS (2020).

<sup>111</sup> *Id.* at 446.

<sup>112</sup> Dermot Murphy, *When local papers close, costs rise for local governments*, COLUMBIA JOURNALISM REVIEW, June 27, 2018, available at [https://www.cjr.org/united\\_states\\_project/public-finance-local-news.php](https://www.cjr.org/united_states_project/public-finance-local-news.php).

<sup>113</sup> Penelope Muse Abernathy, Univ. N.C. Sch. Of Media And Journalism, *The Expanding News Desert* 33 (2018), available at [https://www.cislm.org/Wp-Content/Uploads/2018/10/The-Expanding-News-Desert-10\\_14-Web.Pdf](https://www.cislm.org/Wp-Content/Uploads/2018/10/The-Expanding-News-Desert-10_14-Web.Pdf).



either to closure or merger, leaving the majority of counties in America beholden to a single publisher of local news, and 200 counties are without any paper.<sup>114</sup>

The elimination of local news threatens democracy. A critical function of a local newsroom is coverage of local and state government affairs.<sup>115</sup> Without this coverage, Americans are more likely to rely on national news and partisan heuristics to make political decisions.<sup>116</sup> A robust local news business is also a natural pipeline by which government officials effectively communicate to an electorate (and vice versa). Research shows that in areas with higher local news coverage, voters are better informed on their congressmen and that politicians more actively pursue their constituents' interests through moderating their partisan voting, more frequently standing witness to committee hearings, and generating more federal funding for their districts.<sup>117</sup> Local newsrooms may also provide a check on local government corruption and mismanagement.<sup>118</sup> Moreover, robust local news coverage is positively correlated with higher rates of voter turnout,<sup>119</sup> more support for local services,<sup>120</sup> and greater levels of social cohesion.<sup>121</sup>

#### D. The Rise of Fake News and Disinformation Campaigns

As professional news dwindles, fake news fills the void. The House Judiciary Report notes that “the gap created by the loss of trustworthy and credible news sources has been increasingly filled by false and misleading information.”<sup>122</sup> This comes as no surprise since the dominant platforms “face little financial consequence when misinformation and propaganda are promoted online.”<sup>123</sup> Instead, these platforms incentivize publishers to gain the most attention possible, regardless of

<sup>114</sup> Penelope Muse Abernathy, Univ. N.C. Sch. of Media and Journalism, *The Expanding News Desert* 10-11 (2018), [https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10\\_14-Web.pdf](https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf).

<sup>115</sup> Free and Diverse Press Hearing at 3-4 (statement of Kevin Riley, Editor, The Atlanta Journal-Constitution).

<sup>116</sup> Joshua P Darr, Matthew P Hitt, & Johanna L Dunaway, *Newspaper Closures Polarize Voting Behavior*, 68(6) JOURNAL OF COMMUNICATION 1007-1028 (2018).

<sup>117</sup> James M. Snyder & David Strömberg, *Press Coverage and Political Accountability*, 118(2) JOURNAL OF POLITICAL ECONOMY 355-408 (2010).

<sup>118</sup> Mary Ellen Klas, *Less Local News Means Less Democracy*, Nieman Reports (Sept. 20, 2019), available at <https://niemanreports.org/articles/less-local-news-means-less-democracy/>.

<sup>119</sup> Matthew Gentzkow, et al., *The Effects of Newspaper Entry and Exit on Electoral Politics*, 101 AM. ECON. REV. 2980 (2011); Danny Hayes & Jennifer L. Lawless, *As Local News Goes, So Goes Citizen Engagement: Media, Knowledge, and Participation in U.S. House Elections*, 77 JOURNAL OF POLITICS 447, 447 (2014).

<sup>120</sup> Noah Smith, *Goodbye Newspapers. Hello, Bad Government*, BLOOMBERG (June 1, 2018), available at <https://www.bloomberg.com/opinion/articles/2018-06-01/goodbye-newspapers-hello-bad-government>.

<sup>121</sup> Amy Mitchell, et al., *Civic Engagement Strongly Tied to Local News Habits*, Pew Research Center (Nov. 3, 2016), available at <https://www.journalism.org/2016/11/03/civic-engagement-strongly-tied-to-local-news-habits>.

<sup>122</sup> *Majority Report* at 62.

<sup>123</sup> *Id.* at 67.



the methods or integrity.<sup>124</sup> Using preference-based algorithms, the platforms create echo chambers in which fragmented views of the news are reinforced, leading to further mistrust.<sup>125</sup> This is in contrast to traditional news outlets, which focus instead on forming audience relationships and building a reputation for quality and trust.<sup>126</sup>

The reduction in these traditional newspapers has coincided with more Americans using social media platforms to access news.<sup>127</sup> This shift is expected to lead to a greater spread of both partisanship and misinformation,<sup>128</sup> leading to significant social harms. For instance, misinformation could have resulted in hastening the COVID-19 epidemic by influencing citizens' behavior and response to government countermeasures.<sup>129</sup> In an August 2020 survey, "relatively high levels of misperception" could be found among those receiving news information from social media sources, while the "lowest levels of misperceptions" was found among those receiving information from "local television news, news websites or apps, and community newspapers[.]"<sup>130</sup> Underpayment to these trusted news sources has contributed to their lower prevalence, proliferating this shift to less reliable sources.

#### E. Harms to Community and Culture

There are also social harms that can be harder to quantify—such as the negative impacts of news publisher closure on a community. A well-functioning media creates a shared understanding of the world. It creates a way for residents to become more active in their community and to learn about what their neighbors care about. Being informed on events like local theater productions, carnivals, and community events allow residents to not only be in close *physical* proximity to those in our area, but to be in close *social* proximity as well.<sup>131</sup>

<sup>124</sup> Michael Clay Carey, *Local News and Community Resiliency in Appalachia*, CENTER FOR JOURNALISM & LIBERTY, 23-24, Sept. 22, 2020.

<sup>125</sup> *Id.*

<sup>126</sup> Comments of News Media Alliance Before the Federal Trade Commission Regarding the Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century, August 20, 2018, 15, available at [https://www.ftc.gov/system/files/documents/public\\_comments/2018/08/ftc-2018-0048-d-0088-155244.pdf](https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0088-155244.pdf).

<sup>127</sup> Peter Suci, *More Americans Are Getting Their News From Social Media*, FORBES, October 11, 2019, available at <https://www.forbes.com/sites/petersuci/2019/10/11/more-americans-are-getting-their-news-from-social-media/?sh=1eebb4723e17>.

<sup>128</sup> Robert Faris, et al., *Partisanship, Propaganda, and Disinformation: Online Media and the 2016 U.S. Presidential Election*, BERKMAN KLEIN CENTER FOR INTERNET & SOCIETY AT HARVARD UNIVERSITY, No. 2017-6, available at <https://cyber.harvard.edu/publications/2017/08/mediacloud>.

<sup>129</sup> Matteo Cinelli, et al., *The COVID-19 social media infodemic*, 10(16598) SCI REP (2020).

<sup>130</sup> Matthew Baum, et al., *The State of the Nation: A 50-State COVID-19 Survey, Report #14: Misinformation and Vaccine Acceptance*, THE COVID-19 CONSORTIUM FOR UNDERSTANDING THE PUBLIC'S POLICY PREFERENCES ACROSS STATES (a joint project of Northeastern University, Harvard University, Rutgers University, and Northwestern University), September 2020, at 11, available at <http://www.kateto.net/covid19/COVID19%20CONSORTIUM%20REPORT%2014%20MISINFO%20SEP%202020.pdf>.

<sup>131</sup> *The benefits of local newspapers*, COVINGTON NEWS, available at <https://bit.ly/3og6gU2>.



Furthermore, the absence of local news reduces the diversity of viewpoints. For example, minority owned media outlets have historically focused on issues that larger news providers do not cover or have underreported.<sup>132</sup> However, while there are over 100 African American-owned newspapers, only one has a circulation above 50,000.<sup>133</sup> Small, community-oriented, local news sources are integral for reporting on issues that impact minority groups. Underpayment to these local news sources can amplify their chance of shutting down or result in consolidation, which can also general social ills. According to former Harvard Law School dean and professor, Martha Minow, “Concentrated ownership displaces local control of media and shifts editorial decisions to people without a stake in particular local communities.”<sup>134</sup> Ultimately, the reduction of local news leaves a gap in the diversity of opinions.

#### **IV. The Likely Arguments Against Assigning Coordination Rights to News Publishers Are Unavailing**

This section anticipates and “prebuts” three economic arguments that the platforms are likely to make in opposition to this proposal offered here.

##### **A. Argument One: The Effort Is Meant to Enrich the Largest Newspapers**

One of the favorite talking points of the bill’s detractors is that it would consolidate power among the largest news publishers at the expense of new publishers.<sup>135</sup> Although it is true that large newspapers benefit by coordinating with smaller newspapers in their dealings with Google, smaller newspapers benefit by even more, as small newspapers would be subjected to even greater levels of exploitation if they were compelled to deal with Google unilaterally. A handful of the very largest newspapers have a modicum of countervailing bargaining power against the platforms. This is not so for the vast majority of newspapers. Accordingly, the largest beneficiaries of this proposal are the smallest newspapers.

The argument that this proposal is meant to enrich the largest newspapers also ignores the likely allocation mechanism of a collective, which would prevent large publishers from appropriating the entirety of the award. Even if the allocation were done purely in proportion to a newspaper’s pro-rata share of clicks, no single

<sup>132</sup> Barack Obama & John F. Kerry, *Media consolidation silences diverse voices*, POLITICO, Nov. 7, 2007, available at <https://www.politico.com/story/2007/11/media-consolidation-silences-diverse-voices-006758>.

<sup>133</sup> Sara Atske, Michael Barthel, Galen Stocking, & Christine Tamir, *7 facts about black Americans and the news media*, PEW RESEARCH CENTER, Aug. 7, 2019, available at <https://www.pewresearch.org/fact-tank/2019/08/07/facts-about-black-americans-and-the-news-media/>.

<sup>134</sup> Judith Miller, *News Deserts: No News is Bad News*, MANHATTAN INSTITUTE, Ch.4, 60, 2018, available at [https://media4.manhattan-institute.org/sites/default/files/MI\\_Urban\\_Policy\\_2018.pdf#page=71](https://media4.manhattan-institute.org/sites/default/files/MI_Urban_Policy_2018.pdf#page=71).

<sup>135</sup> See, e.g., Matthew Boyle, *House GOP Leader Kevin McCarthy Slams Establishment Media-Pushed Journalism Act: ‘Antithesis of Conservatism’*, BREITBART, Apr. 1, 2021 (“the system [the JCPA] would create that essentially allows the creation of establishment media cartels that would hurt new media companies.”).



newspaper would achieve all of the payments, as the allocation of clicks across newspapers is well distributed. To the extent newspapers elect to distribute some portion of funds according to full-time journalists, high-quality news sites that deliver informative yet non-clickworthy news could achieve payments in excess of their pro-rata share of clicks.

Finally, large news publishers are hardly flush with cash, yet deliver large social benefits. Absent any intervention, we are heading towards a dystopia in which citizens rely exclusively on tech platform for all news. The effort is not meant to enrich large publishers, but instead meant to address a power imbalance that is producing communication distortions and too few journalists.

**B. Argument Two: It Is Better to Attack Platform Power with a Mix of Antitrust Enforcement and Other Regulations**

Some traditional anti-monopoly groups have stated their resistance to granting countervailing bargaining power to newspapers in their dealings with dominant platforms. In a joint statement, the American Antitrust Institute (AAI), Public Knowledge, Consumer Reports, and Consumer Federation of America stated their opposition to an antitrust exemption for newspapers, arguing that while “[c]ongressional action, along with more vigorous enforcement of existing law, to help promote more vibrant competition in the changing markets for news may well be warranted[,] a new antitrust exemption will only hurt consumers, citizens, and businesses that are not invited to the negotiations that this exemption is supposed to facilitate.”<sup>136</sup>

The AAI subsequently published a white paper that expanded on the supposed “pitfalls of countervailing power” as a policy response to the dominant platforms.<sup>137</sup> The AAI recognizes that the imbalance in bargaining power is a “serious social and economic problem,” but argues that an antitrust exemption is not the proper solution.<sup>138</sup> The AAI argues that an exemption would not lead to competitive outcomes, could foster collusion between the bargaining collective, could harm the small entities in the market, and would be inconsistent with antitrust’s consumer-welfare standard.<sup>139</sup> It bears noting that antitrust’s much beleaguered consumer-welfare standard, propagated by Judge Bork and the Chicago

<sup>136</sup> AAI Joins with Leading Advocacy Groups in Highlighting Risks of Antitrust Exemptions for News Content Creators, American Antitrust Institute, Oct. 28, 2019, *available at* <https://www.antitrustinstitute.org/work-product/aai-joins-with-leading-advocacy-groups-in-highlighting-risks-of-antitrust-exemptions-for-news-content-creators/>.

<sup>137</sup> Laura Alexander, Countervailing Power: a Comprehensive Assessment of a Persistent but Troubling Idea, American Antitrust Institute, Oct. 15, 2020 [hereafter *Alexander*], *available at* <https://www.antitrustinstitute.org/work-product/new-aai-white-paper-analyzes-the-pitfalls-of-countervailing-power-as-a-response-to-rising-market-concentration/>.

<sup>138</sup> *Id.* at 15.

<sup>139</sup> *Id.* at 15-17. *Id.* at 13 (“But, these long-circulating ideas have recently been picked up by some progressives seeking to expand the antitrust laws to account for goals beyond or instead of consumer welfare or even total welfare.”).



School,<sup>140</sup> cannot capture the social harms at issue here—namely, the threat posed to *workers* in the journalism industry or the associated harm to the democratic process from a news desert.

The AAI also worries that granting an antitrust exemption for newspapers could lead to a slippery slope of other industries seeking the same sort of exemption:

Today, it is the news content providers seeking an industry-specific exemption from the antitrust rules to countervail the power of Big Tech. But, if they are successful, other industries will follow. Such industry-specific exemptions should be resisted. Instead of reacting to innovation that is upending traditional business models by abandoning competition, we must instead adapt our competition laws, enforcement strategies, and policies to ensure they can effectively safeguard and promote competition in new and changing markets. To do otherwise risks converting the antitrust laws from a tool to foster competition into a tool for creating and maintaining monopolistic market structures.<sup>141</sup>

The AAI's slippery-slope argument would have condemned the antitrust exemption originally extended to labor and to farm cooperatives, as they were the first exemptions granted. From a policy perspective, it sometimes makes sense to permit *atomistic* economic agents to bargain against a monopolist (or monopsonist), as it does here. In any event, given the extremely limited scope of the antitrust exclusion proposed—newspapers would not be allowed to coordinate in their dealings with consumers—it is unclear how collective bargaining of newspapers vis-à-vis the dominant platforms would have unintended consequences in the form “increased prices” for consumers,<sup>142</sup> as suggested in the white paper.

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<sup>140</sup> See, e.g., Herbert Hovenkamp, *Antitrust Harm and Causation*, 99 Washington University Law Review 1-66, 35 (2021) (“Nevertheless, the term “consumer welfare” has been so contaminated by Bork’s inclusion of producer profits in its definition that it is no longer helpful. ... Describing antitrust’s goal as the promotion of “consumer welfare” focuses on monopolistic prices paid by consumers. While that is true as far as it goes, articulating the goal in this way raises conceptual problems when we think about suppliers of inputs, including labor.”).

<sup>141</sup> Alexander at 20 (“Today, it is the news content providers seeking an industry-specific exemption from the antitrust rules to countervail the power of Big Tech. But, if they are successful, other industries will follow. Such industry-specific exemptions should be resisted. Instead of reacting to innovation that is upending traditional business models by abandoning competition, we must instead adapt our competition laws, enforcement strategies, and policies to ensure they can effectively safeguard and promote competition in new and changing markets. To do otherwise risks converting the antitrust laws from a tool to foster competition into a tool for creating and maintaining monopolistic market structures.”)

<sup>142</sup> *Id.* at 2 (“The arguments in favor of countervailing power as a response to increasing and seemingly intractable market concentration are not driven by methodological, fact-based analysis; indeed, the economic evidence strongly suggests that countervailing market power, particularly among intermediaries in the supply chain, *leads to increased prices*, inefficiency, and worse outcomes for consumers in most cases.”) (emphasis added).



The AAI recommends three alternative policies to an antitrust exemption. *First*, the AAI advocates for increased antitrust enforcement against consolidation and monopolistic practices.<sup>143</sup> By “preventing concentration in the first place,” the AAI hopes to head off market concentration before anticompetitive effects can be felt. *Second*, if current law—when fully enforced—is insufficient to reduce market concentration, the AAI recommends an “enhancement” of antitrust law to tackle entrenched monopolies where market power was lawfully obtained.<sup>144</sup> *Third*, the AAI recommends other public policy tools outside of antitrust, but does not offer any specific policy remedy to do so, at least in the white paper.<sup>145</sup> In a follow-up paper, the AAI expands that these public policy tools could take the form of new legal or regulatory protections that would aid in facilitating “consumer differentiation between real and fake news.”<sup>146</sup> In what follows, I briefly explain why each of these alternatives fails to effectively address the power imbalance here. It follows that no combination of these alternatives would effectively address the power balance.

With respect to the AAI’s first option, greater enforcement of existing antitrust laws against Google or Facebook, even if successful, could recover only a fraction of the underpayment described here, which flows from the platforms’ appropriation of value added from the newspapers, including from impressions,

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<sup>143</sup> *Id.* at 20 (“By preventing concentration in the first place and attacking monopolization directly, we can get at the root of the problem that countervailing power seeks to solve. This enforcement should include not just Section 1 of the Sherman Act, but Sections 2 and 7, as well.”).

<sup>144</sup> *Id.* at 21 (“Unlike many other countries, the United States’ antitrust laws do not prohibit entrenched monopoly or market power, provided it was lawfully obtained and is not illegally maintained. Nor does the U.S. law contain an analogue to the laws against abuse of superior bargaining position that many jurisdictions have enacted. If the current laws, when fully enforced, are insufficient to prevent the growth and entrenchment of market power, a better solution than further loosening those laws to allow countervailing power would be to enhance existing antitrust laws to allow them to better prevent market concentration, reduce accumulated market power, or deter exploitation of market power. Done thoughtfully, such a solution has the potential to increase competition, consistent with the fundamental principles of antitrust policy”).

<sup>145</sup> *Id.* at 21 (“Antitrust is but one means for preventing and countering undesirable market behavior. The increased concentration and imbalanced bargaining power driving the current interest in countervailing power stems not just from lax antitrust enforcement or ineffective competition policy, but from a wide range of public policy trends and failures. And in some cases, the ills people seek to correct with countervailing power are actually the result of competition working and industries changing. Rather than gutting antitrust by opening up a new line of merger defense and undermining the per se rule against competitor collaborations, we should seek *multifaceted solutions* that check corporate power, decrease inequality, and unwind the incentives for winner-take-all approaches to markets”) (emphasis added).

<sup>146</sup> Randy Stutz, Antitrust Law and Dominant-firm Behavior in the Digital Technology Sector: Toward an Actionable Agenda for Policymakers, American Antitrust Institute, June 28, 2021 at 10, *available at* <https://www.antitrustinstitute.org/wp-content/uploads/2021/06/AAI-Knight-Paper-2-FINAL.pdf>, (“Policymakers should recognize that antitrust litigation may not be sufficient if they wish to help preserve the business models of legitimate news producers or ensure that citizens do not consume misinformation and disinformation. Other legal or regulatory protections, including to facilitate consumer differentiation between real and fake news, should be deployed in tandem with antitrust litigation if policymakers wish to prevent the proliferation of problematic news content.”).



regardless of whether a news story is clicked on by a user. A Sherman Act Section 2 complaint against a platform would require publisher plaintiffs (or an agency) to (1) challenge a restraint of trade, preferably in a contract with a third-party publishers or advertisers; and (2) establish a causal connection between said restraint and the underpayment to newspapers. While restraints in contracts with publishers or advertisers might be contributing to artificially suppressed newspaper pay shares *on ads sold against newspaper stories generated by click-throughs*, there are myriad factors, including network effects, customer lock-in, and other natural barriers to entry, also potentially contributing to the underpayment from ads sold against newspaper stories; at best, a successful antitrust lawsuit challenging a platform's restraints would raise payments from that platform by the increment attributable to the restraints for ads sold against newspaper stories. Such a lawsuit would not address the platform's appropriation of newspaper value-added from *impressions* that do not result in a click-through, and thus would not restore the payments to competitive levels for the entirety of the value-added by newspapers to platforms. Moreover, a successful antitrust lawsuit against (say) Google would provide zero relief for publishers in their dealings with Facebook. Finally, a successful antitrust lawsuit against Google or Facebook would require several years to adjudicate, and the appeals might not be resolved for nearly a decade. In the interim, newspapers would be left twisting in the wind. Given the newspapers' precarious financial state, it is not clear how long many could survive without an intervention today.

With regard to the AAI's second proposed remedy, an "enhancement" of antitrust law to attack market concentration could, in theory, solve the power imbalance between platforms and news publishers, depending on what that enhancement was. Yet the AAI paper never defines what the enhancement would entail.<sup>147</sup> Whatever enhancement is in mind, any solution to fundamentally reform antitrust law appears extremely unlikely to occur. One solution to address the power imbalance, not articulated in the paper, would be to break up the dominant platforms into smaller entities. A breakup via antitrust enforcement of a *new* antitrust law, however, could take a decade or more to achieve, as the legislation was crafted and voted on, and the follow-on case applying the new law wound itself through the courts. While a breakup via legislative fiat, as contemplated in Rep. Jayapal's bill, might occur sooner, it is not clear the AAI supports structural separation. Although such an enhancement of the antitrust law might solve the present problem in the distant future, until a fundamental rewrite of antitrust law becomes a political possibility, it is more practical and realistic to carve out an

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<sup>147</sup> Alexander at 21 ("If the current laws, when fully enforced, are insufficient to prevent the growth and entrenchment of market power, a better solution than further loosening those laws to allow countervailing power would be to *enhance existing antitrust laws to allow them to better prevent market concentration, reduce accumulated market power, or deter exploitation of market power*. Done thoughtfully, such a solution has the potential to increase competition, consistent with the fundamental principles of antitrust policy. Moreover, it is far preferable to locking in a second-best outcome based on monopoly or collusion at every level.") (emphasis added). That is the extent of the enhancement discussion.



exemption from existing law. In contrast to the AAI's second proposal, the JCPA would provide immediate relief to news publishers.

With regard to the AAI's third proposal, it is not clear how additional regulations, such as a protection that could "facilitate consumer differentiation between real and fake news," would solve the power imbalance between platforms and news publishers.<sup>148</sup> Even assuming that Congress or a regulatory agency devised a method to perfectly identify what news was "real" and what news was "fake" to consumers, and assuming the program did not violate the First Amendment, such a program would have zero effect on the power imbalance between small "real" news publications and the dominant platforms.<sup>149</sup> The rise of "fake news" may be a symptom of tech platform dominance, but it is not the cause of it. In the presence of such a news-differentiation program, a newspaper whose content online was correctly labeled as "real" news would presumably generate more impressions than a "fake" news content generator. But because the newspapers are not presently rewarded for their contribution to platform engagement through impressions, they would still be maximally exploited and receive near-zero compensation for the increase in popularity on the platforms.

**C. Argument Three: Newspapers Derive Significant Value Via Referrals from Platforms, Which Should Be Deducted from the Value Added by Newspapers to Platforms When Determining Compensation**

The dominant platforms might argue that they are generating traffic for newspapers, and they are thus owed payments by the newspapers, or at least such incremental benefits should be deducted from the value added by newspapers to platform advertising revenues. But platforms are already being compensated for this traffic generation via a tax imposed on the advertising revenue. Indeed, the payments to newspapers from traffic generated by the platforms is potentially taxed at monopoly levels, and the allegedly anticompetitive restraints that support that tax are the subject of fresh antitrust litigation.<sup>150</sup> Accordingly, such "offsets" should be ignored.

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<sup>148</sup> *Id.* at 10.

<sup>149</sup> The AAI appears to note that if such a protection were offered, any legal challenge to a platform's facilitation of fake news would likely lead to failure in the courts. *Id.* at 24. ("To the extent harmful qualitative effects of platform-based news distribution are provable, they appear to move in an opposite direction than the quantitative effects: As the overall quality of news content appears to have declined, the overall quantity (counting both real and fake news) appears to have increased. Because these incommensurable effects appear to diverge, courts likely would struggle to craft an effective competition-restoring remedy even if a case based on qualitative harm could be won. To the extent the remedy would lead to higher quality news but less news content (or higher prices), the court may be uncertain whether, on balance, the competitive benefits of the remedy would outweigh the competitive costs relative to the status quo.)

<sup>150</sup> Sarah Fischer & Kristal Dixon, *Over 200 papers quietly sue Big Tech*, AXIOS, Dec. 7, 2021, available at <https://www.axios.com/1-local-newspapers-lawsuits-facebook-google-3c3dee3a-cce3-49ef-b0a2-7a98c2e15c91.html>.



The purpose of granting the antitrust exemption and placing some structure on the ensuing collective bargaining is to compensate newspapers for the uncompensated value they bring to the platforms. Recall that the platforms are reframing news stories in rich previews containing headlines, summaries, and photos. And they are also curating the content alongside advertisements. This reframing and curation decreases the likelihood of a user clicking into the article, thereby depriving news publishers of clicks while enriching the dominant tech platforms.<sup>151</sup> This reframing and curation also creates less of a need for users to subscribe to the newspaper platform. The platforms are not compensating newspapers for any of this lost traffic or lost subscription revenues. The proper focus of the inquiry should be the incremental platform advertising revenues generated by the newspapers. After all, this value added to the platforms would be the payments to newspapers in a competitive input market.

### Conclusion

Allowing current market forces to dictate the newspapers' pay shares ensures that newspapers are compensated at rates significantly below competitive levels. This underpayment results in underemployment of journalists and other news employees, as well as host of social ills associated with local news deserts, including less competent local governments, greater spread of partisanship and misinformation, removal of economic stimulus to local economies, and a reduction in the diversity of viewpoints, particularly among minority populations. The best way to correct this market failure is for the government to permit the news publishers (either newspapers alone, or all news publishers) to coordinate in their dealings with the digital platforms over payment terms and conditions, followed by an enforcement mechanism to ensure that fair market value is being paid for the access being granted to the publishers' content.

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<sup>151</sup> Damien Cave, *An Australia With No Google? The Bitter Fight Behind a Drastic Threat*, NEW YORK TIMES, Jan. 22, 2021 (citing Tama Leaver, a professor of internet studies at Curtin University in Perth).



## Appendix 1: Pay Shares in Comparable Industries

### A. Pay Shares for Music Rightsholders

Like the newspaper industry, the music industry was disrupted by new forms of digital consumption, which caused traditional revenue sources to decline significantly.<sup>152</sup> Music industry stakeholders (such as music publishers, record labels) worked with digital streaming platforms to establish a sustainable monetization system, which has greatly improved the health of the industry and benefited content providers.<sup>153</sup> Compensation for music publishers is driven by royalty rates set by the Copyright Royalty Board (CRB), a tribunal that sets rates for five-year periods. Digital streaming platforms must pay music publishers per the rates defined by the CRB. Accordingly, this benchmark entails a regulated allocation that permits collective bargaining among input providers to a dominant platform. Unlike the but-for world contemplated here, the protected stakeholders (record labels, artists, publishers, and songwriters) constituted the totality of input providers to the platform.<sup>154</sup>

Once collected, music publisher royalty rates result in a lump sum payout that is distributed to artists and publishers proportionally to the consumption of their music. The mechanical royalty rates for music publishers apply to all publishers simultaneously—that is, the publishers do not have to negotiate individually with the platforms covered by the statutes. In that sense, the bargaining is collective. According to the late economist Alan Krueger, streaming services such as Spotify typically pay 65 to 70 percent of their revenue in royalties to music right holders.<sup>155</sup>

### B. Pay Shares for Broadcasters in Retransmission Consent Arrangements

In the 1980s, cable subscribers grew rapidly to more than 50 million, but cable operators did not compensate broadcasters for what has been widely

<sup>152</sup> See ALAN B. KRUEGER, *ROCKONOMICS: A BACKSTAGE TOUR OF WHAT THE MUSIC INDUSTRY CAN TEACH US ABOUT ECONOMICS AND LIFE* 31 (Crown Publishing 2019) (showing declining record industry revenue beginning in 2000).

<sup>153</sup> See, e.g., Katie Jones, *Cents and Sounds: How Music Streaming Makes Money*, VISUAL CAPITALIST, Dec. 20, 2019, available at <https://www.visualcapitalist.com/how-music-streaming-money/>.

<sup>154</sup> Federal Register, *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*, A Rule by the Copyright Royalty Board on 02/05/2019, available at <https://www.federalregister.gov/documents/2019/02/05/2019-00249/determination-of-royalty-rates-and-terms-for-making-and-distributing-phonorecords-phonorecords-iii>.

<sup>155</sup> KRUEGER, *supra*, at 181 (Crown Publishing 2019) (“Streaming services such as Spotify typically pay 65 percent to 70 percent of their revenues in royalties to music rights holders (record labels, artists, publishers, and songwriters).”). See also Jem Award & Janko Roettgers, *With 70 Million Subscribers and a Risky IPO Strategy, Is Spotify Too Big to Fail?*, *Variety*, Jan. 24, 2018 (“One way to get there would be more favorable deals with labels. Its business model calls for paying out around 70% of its annual revenue in royalties.”).



considered “must-have” programming.<sup>156</sup> Instead, cable operators were offering customers local broadcast stations via their cable subscription with no remuneration for the local broadcasters. Congress grew worried that broadcasters were subsidizing the growth of their competitors, and that the potential long-term health of the U.S. television industry could be impaired. As a result, Congress enacted retransmission consent rules in the 1992 Cable Act. Sections 531 through 537 of the Act established a regulatory mechanism to compensate broadcasters for carriage of their broadcast signals by cable operators and direct broadcast satellite providers.

The new law required all multichannel video distributors, including cable operators and digital broadcast satellite providers, to obtain permission from broadcasters before carrying their programming. It provided that once every three years, broadcast stations could elect between must-carry and retransmission consent; if the cable operator rejects the broadcaster’s proposal, the station can prohibit the cable operator from retransmitting its signal. In essence, these rules altered the bargaining dynamic between a dominant platform and input providers, thereby affecting payments to input providers; thus, this benchmark can be considered a regulated allocation. But unlike the but-for world contemplated here, broadcasters—presumably because they are not atomistic relative to cable operators—were not allowed to coordinate in their dealings against cable operators.

While popular network-affiliated stations tended to opt for a retransmission fee, unaffiliated local stations tended to choose must carry and profited from advertisements only. For those that choose retransmission fees, broadcasters negotiate directly with the cable company; the Federal Communications Commission (FCC) does not specify fees or get involved in disputes.<sup>157</sup> Between 1992 and 2005, broadcasters were primarily paid in kind (e.g., providing advertising spots, carrying affiliate channels) by cable operators. Yet retransmission fees grew rapidly from \$0.2 billion in 2006 to \$12.2 billion in 2020.<sup>158</sup> The cable companies’ revenues are estimated at \$116.8 billion in 2020.<sup>159</sup> Accordingly, the broadcasters’ implied pay share in 2020 is approximately 11 percent.<sup>160</sup>

<sup>156</sup> See, e.g., Federal Communications Commission, *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control*, MB Dkt. No. 03-124, Memorandum Opinion and Order (released Jan. 14, 2004) ¶¶ 87, 201 (finding that regional sports programming and local broadcast programming were “must-have” inputs, which if were denied to distribution rivals, would impair their ability to compete effectively).

<sup>157</sup> See, e.g., Jeffrey Eisenach, *The Economics of Retransmission Consent*, Mar. 31, 2009, at 24.

<sup>158</sup> Justin Nielson, *Broadcast Investor Retrans Projections Update: Sub Rates Continue To Rise*, Jul. 25, 2019, <https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise>

<sup>159</sup> Wayne Friedman, *Total U.S. MVPD Revs Up, OTT Rising Faster*, Media Post, Mar. 14, 2017. (“BMO Capital Markets says there will be 1% revenue growth for U.S. MVPDs (multichannel video program distributors) to \$116.8 billion in 2020, from \$115.5 billion in 2015.”)

<sup>160</sup> Equal to \$12.2B / \$116.8B.



### C. Pay Shares for Regional Sports Networks

Staying in the cable space, another must-have input for cable operators is local sports programming,<sup>161</sup> often supplied by independent regional sports networks (RSNs). Although there is no requirement that cable operators carry RSNs, independent RSNs can (and have) submitted discrimination complaints to the FCC pursuant to section 616 of the Cable Act, asserting that a cable operator that is vertically integrated into competing content afforded the RSN inferior carriage due to its lack of affiliation and horizontal rivalry. These protections also (weakly) alter the bargaining dynamics between cable operators and RSNs relative to pure market forces, and thus can be considered a regulated allocation. Unlike the but-for world contemplated here, RSNs cannot coordinate in their dealings with cable operators. Because RSNs, like broadcasters, account for only one of several input providers to a dominant platform, this benchmark can be informative. According to Kagan, the RSNs' affiliate fees averaged approximately \$6 per subscriber per month in 2017,<sup>162</sup> while the average revenue per user per month for Comcast was \$85 around the same period,<sup>163</sup> implying a pay share of roughly seven percent. While RSN are must-have inputs and thus have some countervailing power, RSNs' pay shares are likely deflated relative to a competitive equilibrium due to the lingering power imbalance between cable operators and RSNs that was not sufficiently addressed in the 1992 Act.

### D. Pay Shares for Athletes in Professional Sports Leagues

De-unionization has been cited as a contributing factor in the long-term decline in the labor share in the U.S. economy.<sup>164</sup> Economists recognize that "[t]he bargaining power of unions tends to increase workers' share of the surplus generated in the production process."<sup>165</sup> Athletes in the major U.S. professional sports leagues, by contrast, are unionized. Moreover, they have acquired free

<sup>161</sup> See, e.g., John Ourand, *Comcast's Burke takes on critics of company's dual strategies*, SPORTS BUSINESS JOURNAL, Apr. 13, 2009.

<sup>162</sup> Ben Munson, *Total U.S. TV retransmission fees expected to reach \$12.8B by 2023, Kagan says*, FIERCE VIDEO, June 20, 2017 ("Kagan anticipated seven RSNs—YES Network (\$6.74), FOX Sports Detroit (\$6.69), MSG Network (\$5.69), SportsNet LA (\$5.60), FOX Sports Arizona (\$5.48), Comcast SportsNet Philadelphia (\$5.32) and Spectrum SportsNet/Deportes (\$5.08)—are projected to come in above the \$5 mark.").

<sup>163</sup> Comcast video average revenue per user (ARPU) from 1st quarter 2010 to 4th quarter 2018, Statista, available at [https://www.statista.com/statistics/778799/comcast-video-arpu/#:~:text=Comcast's%20video%20ARPU%20\(average%20revenue,in%20the%20same%20time%20period](https://www.statista.com/statistics/778799/comcast-video-arpu/#:~:text=Comcast's%20video%20ARPU%20(average%20revenue,in%20the%20same%20time%20period).

<sup>164</sup> Anne Stansbury and Lawrence Summers, *Declining worker power and American economic performance*, Brookings Papers on Economic Activity, Spring 2020, available at <https://www.brookings.edu/bpea-articles/declining-worker-power-and-american-economic-performance/>.

<sup>165</sup> See, e.g., Barry Hirsch, *Unions, Dynamism, and Economic Performance*, in RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW (Edward Elgar Series of Research Handbooks in Law and Economics 2012).



agency, which allows them to play one team against another in the quest to capture as much of their MRP as possible.<sup>166</sup> Scully calculated compensation as a share of revenue for Major League Baseball, the National Basketball Association, the National Football League, and the National Hockey League; for each sport, he found that compensation increased substantially to around 50 percent of league revenue after free agency was introduced.<sup>167</sup> Similarly, Vrooman, another sports economist, explains that “[a]s the result of internal competition among sportsman owners, monopsonistic exploitation has virtually vanished over the last decade in all [major professional sports] leagues. All leagues have similar carrying capacities for player costs at *two-thirds of revenues* and current payroll cap percentages are almost identical at about 60 percent.”<sup>168</sup> In contrast, athlete compensation as share of revenue is substantially lower among (non-unionized) mixed martial arts (MMA) athletes,<sup>169</sup> or among collegiate athletes,<sup>170</sup> neither of which are unionized or permit free agency. Although this benchmark captures two elements of the but-for world contemplated here—regulated allocation and collective bargaining—athletes represent most if not all of the inputs (save things like venues and entertainers) into the sports platforms. Accordingly, this benchmark is informative but likely overstates the but-for pay shares for newspapers.

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<sup>166</sup> Lawrence Kahn, *The Sports Business as a Labor Market Laboratory*, 14(3) JOURNAL OF ECONOMIC PERSPECTIVES 75-94, 81 (2000) (“[B]aseball salaries as a percentage of team revenues rose from 17.6 percent in 1974 to 20.5 percent in 1977 to 41.1 percent in 1982, further suggesting that free agency has had a structural effect on baseball salary determination.”).

<sup>167</sup> Gerald Scully, *Player Salary Share and the Distribution of Player Earnings*, 25(2) MANAGERIAL AND DECISION ECONOMICS, 77-86, 77-78 (2004) (“Is 50% or so as the player share the upper bound in professional team sport? One suspects that it is not... If all players were free agents, salary as a share of revenues would rise substantially.”).

<sup>168</sup> John Vrooman, *Theory of the Perfect Game: Competitive Balance in Monopoly Sports Leagues*, 34(1) REVIEW OF INDUSTRIAL ORGANIZATION 5-44, 42 (2009) (“[a]s the result of internal competition among sportsman owners, monopsonistic exploitation has virtually vanished over the last decade in all [major professional sports] leagues. All leagues have similar carrying capacities for player costs at two-thirds of revenues and current payroll cap percentages are almost identical at about 60 percent.”).

<sup>169</sup> See, e.g., John Nash, *What we now know about the UFC's finances*, BLOODY ELBOW, Sept. 9, 2019, available at <https://www.bloodyelbow.com/2019/9/9/20851990/what-we-now-know-about-the-ufc-finances>.

<sup>170</sup> See, e.g., *White v. NCAA*, 2006 WL 8066803, Class Certification Order, at \*5 & n.4 (C.D. Cal. Oct. 19, 2006) (“[P]layer costs are less than 15.5 percent of revenues of NCAA member institutions. This percentage is extremely low... In the NBA and NFL, player compensation is approximately 55-65 percent of total revenues. These percentages offer a reasonable comparison and estimate of player inputs in the production of sports entertainment.”).



## GAINOR RESPONSES 9-6-2022

September 6, 2022

Senate Committee on the Judiciary  
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 Re: Hearing entitled "Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press"

Senators:

Just as it was my pleasure to testify in front of your committee earlier this year, it is again my pleasure to follow up and respond to your inquiries and give you feedback on this legislation. First one point of clarification, when I first testified I was a vice president for the Media Research Center. I have since left that job and now respond to these questions as an independent media expert with 40+ years experience. I will respond to this specific inquiries and then I will include some feedback on the changed legislation:

*[Questions from Ranking Member Grassley]*

1. I'm particularly concerned with the censorship happening to conservatives on online platforms. One major story that I've been vocal about is the censoring of the Hunter Biden story back during the 2020 election. Twitter took it upon themselves to say that reporting being done by a respected publication was fake news and stopped them from sharing the story, even banning them from posting to their account. This was a gross example of Big Tech stepping in to help shield then presidential candidate Joe Biden from a bad news story that was actually true. In your view, what does Congress need to do to address the continuing censoring that we see?

**Gainor:** You are correct to be concerned. The Hunter Biden story was silenced by social media companies apparently at the behest of the federal government. That's not my opinion, that's the stated commentary of Facebook CEO Mark Zuckerberg.

When the federal government contacts social media companies and tells them the content that they think should be taken down, then the First Amendment ceases to exist. That's the situation we are under right now. Sadly, that doesn't appear to be an isolated incident.

Like it or not, social media has become the new town square. While it was initially envisioned as a way for people to communicate with family and to discuss hobbies and such, social media now dominates our political discourse. We cannot continue to have free elections and free speech if the most dominant form of communication is restricted the way it is now.

Many academics and foreign NGOs are campaigning aggressively to have an internet where free speech, freedom of religion and more don't exist. They want international organizations and foreign governments to limit American free speech online. Effectively, that's already happening. Today. These organizations have deployed vague terms like "hate speech" to limit what can be discussed. By doing so, they actively interfere in American elections in concert with Big Tech.



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Twitter, which is by far the most pro-censorship of all the major social media sites, has banned the previous president of the United States and perceived 2024 Republican presidential candidate. But it allows foreign dictators like Iran's Ayatollah Khamenei who leads a nation that is the No. 1 exporter of terrorism.

Both Russia and China are well-represented on social media, despite Russia's criminal invasion of Ukraine and China's genocide of Uyghur Muslims. According to one study by the Media Research Center, ["Forty accounts on Facebook, amassing over 751 million followers, are managed by Chinese state-controlled media outlets."](#) Yet numerous American accounts are banned or restricted.

Put simply, social media companies cannot be trusted with our freedoms. Just as Congress needs to tackle privacy legislation online, it needs to pass legislation that guarantees our constitutional freedoms don't stop at the internet.

Most American government organizations are located on social media, but social media companies determine who can interact with them. Social media companies regularly ban conservatives or restrict who can see their content. This even includes political candidates and local governmental boards and organizations. Further, they employ biased so-called fact-checkers and give them massive power over who can interact on social media.

If this is allowed to continue, no nation that has free elections will be able to choose candidates the social media companies oppose. That is not an idle threat. Simply look at how social media companies have banned former President Donald Trump. Then imagine they choose to do so against the candidate who wants to break them up, tax them or give them other mandates. They could ban or shadow ban that candidate. Google could prioritize his/her opponent's content ensuring a lopsided result.

Many in D.C. politics talk about election security, but never discuss this danger. Republicans, especially, should be concerned about it. Just look at how skewed toward one political party – Democrats – donations from Big Tech tend to be. Their donations are not exclusively monetary.

2. It seems like the definition of "misinformation" is just what opponents label something they don't like. How is Big Tech using the pretext of "misinformation" to silence conservative voices?

**Gainor:** The entire infrastructure of social media companies is designed to restrict conservative speech. It wasn't always that way, but he has evolved into that in the last several years. The system is rigged at every level. This is the danger with the bill that expects these companies to treat content in a neutral way. They don't ever do that.

Here are the key ways that social media companies restrict speech:

- **So-called fact-checkers:** The fact-checking movement was created by journalists to reclaim the narrative from bloggers. These organizations are overwhelmingly liberal and biased against conservatives. They rarely fact-check major media



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outlets even when those outlets get things wrong. And small organizations spend countless hours dealing with the most obscure minutiae fending off aggressive fact-checks from often inexperienced, college-age fact-checkers.

- **Flagging:** All of the major social media sites operate on user flagging or reporting of so-called bad content. The problem with this is that the left has gamed the system and does mass reporting of content it doesn't like. Conservatives, who at this point are more pro-free speech, have no such organized efforts, nor should they.
- **Artificial intelligence:** This is a misnomer. Artificial intelligence is simply computer programs written by people. Those computer programs are used to target words, phrases, concepts and people that the liberal employees of these organizations want to block. Companies then blame biased actions on the algorithm. But that means they did it.
- **NGOs:** Big Tech pays great attention to what globalist non-governmental organizations say about content. For example, the U.K.-based Center for Countering Digital Hate periodically releases reports attacking American organizations and pushing to have them removed from social media sites. The CCDH issued a report in 2021 called the "[Disinformation Dozen](#)" calling for people who dared question mainstream narratives on COVID-19 to be banned for pushing what it determined to be "digital misinformation about Covid vaccines." The White House promoted that report and Facebook took action against those mentioned in the report.
- **The news media:** Several news outlets have social media reporters or what are called disinformation reporters who specifically target conservative accounts on social media. Social media companies then restrict or ban the accounts. The companies pay little attention when conservatives write about excesses of the left. Libs of TikTok, a prominent Twitter account that reposts TikTok video from leftists, is one such regular target. Activist liberal journalists then bully social media firms to ban content they don't like.
- **Government entities:** This includes agencies like the FBI that had been in contact with Big Tech, as well as the White House, the CDC and international government organizations like the World Health Organization (WHO). Throughout the pandemic, Big Tech relied on the government to set rules about what we could and could not say online. However, it has been clearly established that Dr. Anthony Fauci lied on at least one occasion – [herd immunity](#). WHO was allegedly another reliable source, but even the [New York Times admitted](#) that WHO's rules about open borders in a pandemic obeyed neither medicine nor science. They were based on an agenda.
- **The appeals:** It is important to understand that when conservatives appeal takedowns of content, restrictions, bans, etc., they then appeal to the overwhelmingly liberal staff of these Big Tech companies. Facebook created an oversight board, then stocked it with internationalists and liberals guaranteeing that the American view of free speech would not be upheld. And they're the final level of complaint.
- **Foreign governments:** Big Tech is made up of global companies. That means regulations in other countries or the EU influence what happens to Americans.



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Several tech companies have signed on to the Christchurch Call, which further restricts what we can say and do online. If American politicians and regulators don't take action to protect our rights online, then foreign regulators and governments will determine them.

3. I strongly believe in the First Amendment and believe that more speech, not censorship, is the solution to bad speech. In your opinion, how can we encourage quality news and reporting?

**Gainor:** Quality journalism requires an entire infrastructure to produce. That means we should start in colleges and universities. Right now there is a limited number of mostly very liberal schools that offer journalism. Journalism has gone from a trade to a profession that requires college or even postgraduate education. The result is that journalists are elite. Many graduate with large student loans. Unsurprisingly, they then tend to support government bailouts of those loans.

At the same time, the common tools of journalism have become widely available. It is easy for ordinary Americans to produce video or to blog and post their comments online. The First Amendment freedom of the press was designed for all of us, not just for an elite few. That means we should be encouraging ordinary people to learn the basics of good journalism. Without the built-in bias and indoctrination included in many college courses.

I would love to see more courses available from nonprofits to teach mid-career professionals and even young people the basics of good journalism. This also might solve one of the ongoing huge problems that elite liberal journalism has created – lack of diversity. While the industry is aware of the problem in one way – race, ethnicity, gender, etc. – it makes no attempt to diversify thought. Conservatives are not welcome and they know it.

This shouldn't be the role of Congress. Other than perhaps to suggest it. It is incumbent upon ordinary Americans to embrace freedom of the press and use it to get their thoughts out there.

The core problem is that, if they do so and Big Tech doesn't agree with those thoughts, it will censor them. And that takes us back to the foundational problem: that Big Tech has far too much power over our constitutional rights.

4. I support strong local news organizations and quality journalism. Local newspapers serve an important role, especially in rural communities. A recent CRS report highlighted concentration in the industry and the fact that many daily newspapers are now owned by private equity firms, hedge funds, or other investment groups. How do we make sure that we aren't just further enriching wealthy investors but actually benefitting local publications?

**Gainor:** In short, we can't. The reason hedge funds and investment groups purchased media properties is that no one else really wants to. Other than a few of what we would call verticals – media properties that focus on one specific topic – most news outlets are not seen as profitable in the long term. Content creation is extraordinarily expensive. It is staff-intensive and to maintain a



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staff of experienced, knowledgeable employees is difficult for any but the largest news organizations.

Loss of staff has put many smaller news organizations into a downward spiral. They cover less local information and people then become less interested in reading. The best verticals have skimmed off some of the diehard readership. Sports sites do a better job of covering pro teams than local outlets do. Other verticals – real estate, help wanted ads, personals, etc. – are all handled better by specific sites.

There is another factor that has been little explored by journalism professionals. When weekly newspapers grew to prominence that reflected a trend of movement from the cities to the suburbs. The trend now for most readers, especially younger ones, is to get their news and information online.

They don't live locally. They live on the internet and their information stream is global. One of the most popular social media outlets is China's TikTok. Entertainment is global as well, such as K-pop or Korean pop. Two years of COVID-19 lockdowns made this more of an issue.

We are asking why people don't read their local news source but the better question might be: Why aren't people more involved in their local communities? That involvement drives readership. Many Americans go to church far less than they used to and they belong to fewer civic organizations. If Americans are not engaged as local residents, then it is unrealistic to expect them to be engaged as local readers.

**FURTHER COMMENTS**

I wanted to make a few points about the proposed legislation as it is currently written. A premise of the bill seems to be that Big Tech can be easily coerced into treating conservative media in a content neutral way. That is false and any parts of the bill that are vague would be used against the right. It is great to say big Tech can't discriminate based on content type, but they do and they will. Nothing in this bill stops them. And given the ongoing struggles between so-called fact-checkers and the conservative movement, no bill should include any reliance on those biased organizations.

Some additional thoughts:

- The reliance on fact-checking is dangerous. "(D) uses an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the station;" This seems deliberately vague. The left dominates the so-called fact-checking industry. Fact-checkers regularly demand changes on conservative content on things that are not errors but simply points of disagreement. This is a huge potential problem for conservatives and would be used to kick them out of the planned cooperatives.
- The act says that websites can't discriminate. That sounds great, but they already do. A lot. They actively suppress conservative content and employ so-called fact-checkers who



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use biased gauges to further restrict conservative content. This act does nothing to fix that. So making companies like Facebook negotiate with conservatives is fruitless because they suppress conservative content and aren't likely to change.

- The 1,500-person staff limit is still indicative of a large news organization. If Congress wishes to aid small news outlets then that number should still be much smaller, perhaps 300. But whatever limit you put on it, you simply discourage companies from passing that threshold. As an example, Politico claims to have 700 employees in North America and another 200 in Europe. No one can argue that Politico is a small news organization. Yet it falls easily under the cap of 1,500. Politico sold in October for \$1 billion. Hardly a small outlet.
- I may have missed it, but if this bill goes through then all such agreements made by parties covered in this proposal should be public. How else can one group of publishers determine if they are being treated fairly when compared to another group of publishers?
- This proposal tries to make social media companies pay for something that private publishers pay them to make happen and that's linking to their content. Private publishers buy ads to promote content on all these platforms so that people click through and read it. If social media companies stopped linking to news organizations tomorrow, news organizations would suffer massively. The Electronic Frontier Foundation notes Big Tech's "control of digital advertising markets and the vast majority of data in those markets means they can squeeze publications *and* advertisers by extracting higher shares of advertising revenue." They suggested this is a good way to go after the Big Tech cartels, instead, and I agree.

Ultimately, it is still a mistake to make journalism organizations beholden to Congress. I respect the attempt to improve this bill and commend politicians on both sides of the aisle for that effort. However, a news organization that relies on politicians for funding cannot be expected to report on those same politicians in an aggressive manner. Cartels are bad. Trying to fix one set of cartels by creating another set of cartels is a bad solution.

In 2022, we live our lives online. We work, shop, order clothes and food, go to school, go to church and interact with our government. But only if Big Tech allows us to. If Congress doesn't act, Americans will only have the freedoms allowed to us by social media companies and foreign regulators. This bill fails to address those concerns.

Congress must clearly and legislatively protect the rights of all Americans to go online to express their opinions on politics, sports, religion and more and not be censored. We must declare that social media and search media companies above a certain size cannot discriminate based on beliefs. This will put us at odds with much of the world, which scoffs at American constitutional freedoms. But standing on the side of freedom means we're standing on the right side of history.

Thank you,  
Dan Gainor





February 2, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
361A Russell Senate Office Building  
Washington, DC 20510

RE: Journalism Competition and Preservation Act

Dear Chairwoman Klobuchar and Ranking Member Lee:

Thank you for your leadership in holding today's hearing on *Journalism, Competition, and the Effects of Market Power on a Free Press*. We write to voice our support for S. 673, the Journalism Competition and Preservation Act (JCPA).

The Association of American Publishers (AAP) represents the leading book, journal, and education publishers in the United States on matters of law and policy, including large, small, commercial, and not-for-profit houses. Our principal mission is to advocate for outcomes that incentivize and protect the publication of creative expression, professional content, and learning solutions in the modern world.

For far too long, a small number of dominant online platforms have exerted outsized control over the marketplace, leveraging their market power to stifle competition and manipulate consumer outcomes, including in the marketplace for journalism and news publishing. Similar to the book, journal, and education publishers that AAP represents, there are significant costs and risks associated with creating quality news content, and our society and democracy greatly benefit from journalism and the content created by press publishers.

The limited safe harbor from antitrust laws provided for in the JCPA would allow news publishers to collectively negotiate with online platforms to ensure fair terms and compensation for the use of their content. We support these legislative efforts that will protect the ability of news publishers to continue providing quality news to the public, as well as the Subcommittee's other initiatives to hold dominant online platforms accountable for their anticompetitive conduct.

Thank you once again for holding today's hearing on this important issue. We look forward to working with you as you continue your efforts to examine the impact of dominant online platforms on the marketplace.

Sincerely,

A handwritten signature in black ink that reads "Maria A. Pallante". The signature is fluid and cursive, with the first name "Maria" being the most prominent.

Maria. A. Pallante  
President and CEO





February 7, 2022

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
United States Senate  
425 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: American Innovation and Choice Online Act

Dear Chairwoman Klobuchar:

Thank you for introducing the American Innovation and Choice Online Act (S.2992) and advancing it out of the Senate Judiciary Committee. The Association of American Publishers (AAP) is sincerely grateful for your leadership in sponsoring this important legislation and taking a critical step to address the anticompetitive behavior of dominant online platforms.

For far too long, a small number of dominant platforms have exerted outsized control over the marketplace, leveraging their market power to stifle competition and manipulate consumer outcomes, including in the marketplace for published works. These platforms no longer compete on a level playing field, but rather own and manipulate the playing field, operating well outside of fair and transparent competition and at a scale that often makes it impossible for businesses to reach their customers without them.

The American Innovation and Choice Online Act takes important steps to address this growing problem. The legislation would improve the government's ability to take meaningful action against dominant platforms that inhibit competition through self-preferencing or unfairly limiting the ability of business users to compete on the platform, including by manipulating search or ranking functionality to treat their own products and services more favorably. The legislation would also strengthen existing law by prohibiting dominant platforms from unfairly tying access to the platform—or preferred status or placement on the platform—to the purchase of other products or services. Additionally, the legislation would make it harder for dominant platforms to leverage non-public data generated on the platform, or to restrict business users' access to data, in order to gain an unfair advantage.

We look forward to working with you to further advance this bill and to support the strongest possible legislation to level the playing field and hold dominant online platforms accountable for their anticompetitive conduct. Thank you again for your critical efforts. Please do not hesitate to contact me if AAP can ever be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria A. Pallante".

Maria. A. Pallante  
President and CEO



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Frederic Martini  
Viet Thanh Nguyen  
Cathleen Schine  
Meg Wolitzer

## CHIEF EXECUTIVE OFFICER

Mary Rasenberger

February 1, 2022

The Honorable Amy Klobuchar  
Chairwoman

Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
425 Dirksen Senate Office Building Washington, DC 20510

The Honorable Mike Lee

Ranking Member

Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
361A Russell Senate Office Building Washington, D.C. 20510

## Re: Journalism, Competition, and the Effects of Market Power on a Free Press

Dear Chairwoman Klobuchar and Ranking Member Lee:

We write to thank you for holding a hearing on *Journalism, Competition, and the Effects of Market Power on a Free Press*, and for your commitment to leveling the playing field between the press and big tech companies. Legislation such as the Journalism Competition and Preservation Act (S.673) would help stem some of the devastating losses in revenue that news producers have experienced in recent years and buttress newsrooms and local news throughout the country. The Authors Guild supports the JCPA, which would give print, broadcast, and digital news companies limited immunity from antitrust laws and enable them to collectively negotiate with large internet platforms—provided that language is added to ensure that additional funds collected by news organizations are reinvested in the production of news.

The Authors Guild is a national non-profit association of more than 12,000 professional writers, including over 3,000 journalists and thousands of book authors who regularly contribute to newspapers and magazines. Since its founding in 1912, the Guild has worked to promote the rights and professional interests of authors in various areas, including copyright, freedom of expression, contracts, taxation, and antitrust. Our members cover current events and topical news, as well as important issues in history, biography, science, politics, medicine, business, arts, and other areas; they are frequent contributors to the most influential and well-respected publications in every field. The Guild has a strong interest in ensuring the survival of a robust press publishing ecosystem to protect our members' professional interests and livelihoods, and because we believe that a free and diverse press is essential to democracy.

During the last two decades, U.S. newspaper and magazine publishers have lost enormous amounts of advertising revenue to the Facebook (Meta) and Google duopoly over the online ad market. According to the nonpartisan Pew Center for Research, newspaper and magazine advertising revenues have fallen from approximately \$50 billion in 2005 to an estimated \$8.8 billion in 2020.<sup>1</sup> As a result of the decline, approximately 2,100 newspapers and magazines have been



shuttered or sold to large national media holdings since 2004, creating vast news deserts and depriving communities of much-needed transparency at the local level.<sup>i</sup> Further, these losses have had a direct effect on writers' incomes and their ability to research and write. Newspaper newsroom employment fell 57% between 2008 and 2020, from roughly 71,000 jobs to about 31,000.<sup>ii</sup> At the same time, freelance writer rates in the last decade and a half have significantly declined.<sup>iv</sup>

Concentrations of market power in the form of monopolies and monopsonies are dangerous wherever they occur, but nothing can be more threatening to our democracy than allowing a handful of powerful internet platforms undermine the value of quality, fact-checked news production. Professional journalists and news publishers, in accordance with their missions, invest considerable time, money, and other resources into producing accurate news content. On the other hand, the mega internet platforms that aggregate news—and where many Americans access news today—are interested only in the number of eyeballs they can capture to maximize their profits from advertising revenues, regardless of the quality or indeed the veracity of what users view on their platforms.

The Authors Guild believes that legislation such as the JCPA can help level the playing field between the giant internet platforms like Facebook (Meta) and Google and the news producers, who with a fairer share of the advertising revenue attributable to their content, could better support the production of local, as well as regional and national news, and could thereby revitalize the labor market for journalists and freelance writing. Similar laws in Europe and Australia have shown positive results for the news producers. To ensure the success of the JCPA, however, it is crucial that it include language that requires the increasingly large newspaper conglomerates to reinvest new revenue generated from collective negotiations with the platforms in jobs and wages for news production, rather than to line the pockets of corporate investors. Quality news journalism relies on the individuals who report, write, and edit the news, and they must be fairly compensated. We must also ensure that there are incentives to publish more local journalism. Providing corporate news organizations with the potential to earn a greater and fairer return on their investment will do little to solve the real news drought in this country or to ensure a robust healthy fact-based journalism in the future—unless we can ensure that more newsroom workers are employed, that the workers who report, write, and edit the news are fairly paid, and that more local news outlets are created.

We again thank you for your stewardship in ensuring that Americans are not deprived of well-researched, trustworthy news and journalism, and that the talents and hard work of those who make it possible are fairly compensated.

Sincerely,



Mary E. Rasenberger  
CEO  
The Authors Guild

<sup>i</sup> Pew Research Center, Newspaper Fact Sheet, <http://www.journalism.org/fact-sheet/newspapers/>

<sup>ii</sup> <https://www.usnewsdeserts.com/#1536249049294-115f3533-f5e9>

<sup>iii</sup> <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>





February 2, 2022

Senator Amy Klobuchar  
 Chairwoman  
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 425 Dirksen Senate Office Building  
 Washington, DC 20510

Senator Mike Lee  
 Ranking Member  
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 361A Russell Senate Office Building  
 Washington, D.C. 20510

**Re: The Journalism Competition and Preservation Act (currently S. 673)**

Chairwoman Klobuchar and Ranking Member Lee,

In advance of the February 2 hearing on competition and the press, we write to express our strong opposition to the Journalism Competition & Preservation Act (JCPA). EFF shares the concerns of many that media consolidation and the diversion of advertising revenue to large social media platforms is decimating the news sources on which we all rely, particularly local news and smaller outlets.

But the proposed antitrust exemption is the wrong solution, for several reasons.

First, the exemption will help only those who are in a position to negotiate. News giants with the greatest leverage would dominate the negotiations, drowning out small outlets with diverse or dissenting voices. In other words, the hedge funds, private equity firms, and giant media near-monopolies that have already benefitted from Big Tech's ad takeover, snapping up and gutting news outlets at bargain prices, will use the exemption to consolidate their power.

Second, the proposal implicitly depends on a de facto rewrite of copyright law, to the detriment of all users, by allowing news publishers to extract revenue for linking and sharing brief excerpts. Those activities are not only lawful under the Copyright Act, they are a common practice online. For the proposed negotiations to be meaningful, i.e., to give news organizations something to bargain with, Congress would have to give them the right to restrict such common uses. Such an alternation of the traditional contours of copyright would be both unconstitutional and a dangerous disruption of ordinary internet communications.

Third, while there is no question that news media is struggling—present tense—the fundamental problem is that news media *has* struggled, past tense. Allowing this exemption will not bring back the papers that have been shut down, employ the journalists who have been laid off, or unwind the



Senator Amy Klobuchar  
Senator Mike Lee  
February 2, 2022  
Page 2 of 2

media mergers that have occurred in the meantime. Proponents have suggested that the JCPA could help revitalize small and local press while more substantive changes to the law were made. But that doesn't answer the question of where journalists are supposed to get startup funds to build new outlets to replace the ones that are gone.

The days where newspapers could rely on funding from classifieds and advertising are clearly over. This exemption doesn't fix that. And it doesn't even throw a lifeline where it is most needed. We urge Congress to focus its attention on making the sweeping changes to antitrust law we so desperately need to directly curb the dominance of Big Tech. That will do the most to help news media in this century, rather than trying to return them to the last one.

Sincerely,

Corynne McSherry  
Ernesto Falcon  
Joe Mullin  
Electronic Frontier Foundation



February 2, 2022

Senator Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
425 Dirksen Senate Office Building  
Washington, DC 20510

Senator Mike Lee  
Ranking Member  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
361A Russell Senate Office Building  
Washington, D.C. 20510

**Re: The Journalism Competition and Preservation Act (currently S. 673)**

**Chairwoman Klobuchar and Ranking Member Lee,**

The group of public interest, copyright, technology and media organizations listed below are writing to make clear that we oppose the Journalism Competition & Preservation Act, which may be a subject of the hearing, "Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press," in the Subcommittee on Competition Policy, Antitrust, and Consumer Rights on Wednesday, February 2. We wholeheartedly support the aims of the bill, which are to protect Americans' access to trustworthy sources of news and information and mitigate any market power of Google and Facebook in relevant product markets. However, we believe the JCPA will entrench existing power relationships among both news organizations and digital platforms and alter the free and open nature of the internet -- while doing little to ensure more reporters on the beat, help the kind of news organizations that represent local journalism's brightest potential future, or allow news organizations to be compensated fairly for their work. Some of us have already shared these concerns with your offices.

**JCPA Could Entrench Existing Power Relationships in Media**

As some of us have noted before, including in Congressional testimony, allowing a news media cartel by statute (as the JCPA explicitly proposes) may actually hurt local publishers by entrenching existing power relationships between the largest platforms and largest publishers. News giants with the greatest leverage would dominate the negotiations and small outlets with diverse or dissenting voices would be unheard if not hurt. Proponents of the bill point to its current requirement that negotiations with online content distributors must be nondiscriminatory as to similarly situated news content creators. But that doesn't change the fact that the larger news outlets stand to grab the lion's share of any benefits, as they would dominate their side of the negotiations. In fact, the bill may actually *encourage* further consolidation in the news industry since scale is the primary source of leverage in negotiations.

We believe this is a fundamental flaw in the use of an antitrust exemption to achieve these aims. That is why a number of organizations that, in principle, support a thriving journalistic ecosystem are deeply skeptical of the model proposed in JCPA and propose a more direct approach to the issue.



### JCPA Could Alter the Free and Open Nature of the Internet

Our second concern, shared by organizations interested in copyright law, is that the law as drafted represents, at best, a fundamental mischaracterization (or, at worst, a planned alteration) of U.S. copyright law. News outlets, *even when banded together*, lack any legal right to prohibit third parties from linking to their content. Linking is properly outside the ambit of copyright law, while brief excerpts or previews of news stories are long-established fair uses and do not require permission from the copyright holder. These basic fair uses are essential to millions of websites and online services, as they use links to connect content to online communities large and small. A right to restrict third parties from linking to external content would go far beyond any right that *any* copyright owner has ever enjoyed, in the history of our intellectual property system. More importantly, changing this foundational aspect of the internet could have a wide ranging impact far beyond dominant players like Google and Facebook.

Even in the absence of direct language to this effect in the JCPA, a court seeking to give the statute meaningful effect could easily read the text as implicitly granting news publishers such exclusive rights. The “reading-in” of such a right could stymie the ability of users to share news articles online without some sort of payment, which in turn would limit the availability of credible information online. The outcome – limiting access to news and information – would be the opposite of the goal to ensure a healthy free press.

This concern is particularly grave in light of Congress’s request that the Copyright Office conduct “a public study to evaluate the effectiveness of current copyright protections for publishers in the United States.” This seems to us like confirmation that the JCPA inevitably requires a drastic expansion of intellectual copyright law.

Some organizations have suggested that Congress should incorporate a savings clause in the JCPA that would make it clear that copyright protections wouldn’t be impacted by the law. This could mitigate but not necessarily eliminate concerns about an unprecedented expansion of intellectual property rights.

### JCPA May Not Help the Kind of News We Need Most

As we understand it, the JCPA has no requirements that the funds gained through collective bargaining will be used to hire or retain journalists. It would be fair game -- at least as far as the proposed law is concerned -- for news organizations (or the conglomerates, venture capital firms, and hedge funds that own them) to use the funds to pad profits, pay down debt, or reward private equity or shareholders.

The current definition of “news content creator” in the JCPA focuses on commercial business models (advertising, subscriptions, or sponsorships). Yet most experts believe that the brightest future for civic journalism lies in business models such as community ownership, non-profits, and philanthropy. It’s also troubling that major broadcasters, who are not suffering the same financial challenges as newspapers, and who do far less original reporting to support communities, could benefit substantially from the collective bargaining under the bill.

Many have pointed to the Australian News Media and Digital Platforms Mandatory Bargaining Code as a model for the benefits of allowing collective bargaining for compensation for news content. But thanks to a last-minute amendment, Facebook and Google have avoided even being designated as subject to



that law. Their negotiations with news outlets for rights to content for Google's News Showcase and Facebook's News Tab have been without any transparency or public oversight. Report after report has confirmed that the confidential and platform-dominated negotiations have left small publishers struggling for fair compensation, or even a seat at the table in negotiations. Google has acknowledged its payment structure for News Showcase favors large publishers, and smaller publishers have already complained to regulators they are not being remunerated fairly by Google or Facebook.

We suggest that Congress include language that defines the allowable uses of funds obtained through negotiation, specifically precluding transfer to other financial or legal entities, use of the funds to conduct financial transactions (including debt payments), or allocating them to shareholders. We also suggest that Congress include language to expand eligibility from "commercial" news organizations to encompass other business models, such as non-profit, cooperative, public- or community-funded, membership, or a non-profit relying on a donor-funded business model. We would also like to see language that preferences smaller, local, or civic news organizations. In particular, such language would encourage support for publications in under-served communities, including communities of color and rural news deserts. It should also exclude eligibility from news organizations owned by conglomerates, venture capitalists, or hedge funds; or establish a size limit for news organizations able to bargain collectively.

We also believe the inclusion of broadcasters in this legislation directly implicates the Federal Communication Commission's (FCC) jurisdiction to ensure that media ownership promotes a diverse set of views as well as diversity in ownership. Combined with the concerns outlined regarding the impact on how our free and open internet operates, this bill rightly deserves a referral to the Senate Commerce Committee for its consideration, given that Committee's jurisdiction over the FCC, the FTC, and its interests in ensuring a thriving internet.

#### **JCPA Will Not Ensure News Organizations Are Compensated for the Value of Their Work**

Allowing collective bargaining for compensation will not solve for the fundamentally different views of the financial value of news between publishers and platforms. Both the News Media Alliance and the National Association of Broadcasters have published studies estimating the value that news produces for platforms (in the form of advertising revenue) in the billions of dollars. However, Google maintains that the direct economic value it gets from news content in search is "very small" since they don't run ads on Google News or the news results tab on Google Search, and that the indirect value it gets is also low because news-related queries in search account for just over 1 percent of total queries. Facebook also claims the business gain from news is minimal and that news makes up less than 4 percent of the content people see in their News Feed.

In both situations, it's hard to know which side is correct. But Facebook and Google can continue to say they don't experience significant financial harm when they do not provide access to news. As we saw in Australia, they may seek to prove the point by restricting publishers and people from sharing or viewing news content.

#### **JCPA May Be Hard to Police...and Hard to End**

Past efforts of this nature in the media industry prove it will be very difficult to police the actual behavior of those participating in the collective bargaining, or to ensure the intended outcomes are achieved.



Although the bill includes a sunset date, it may be hard to actually move on when the four years (or any number of years) lapse.

We suggest that Congress include a reporting requirement in the bill, in which the Federal Trade Commission will submit to the Judiciary Committee of the House and Senate a report on the impact of the legislation. The report would include assessments of the impact of the statute on news content creators, competition, and consolidation, and require evidence that payments negotiated have been invested in creation of news content. The bill could also include an oversight function and require transparency on the outcome of each negotiation. This would give Congress some basis on which to assess the merits of an extension.

We want to again affirm our collective commitment to ensuring a strong and free press as a critical component of democratic participation, and to mitigating any market power of the dominant digital platforms, Facebook and Google, in their relevant markets. However, the Journalism Competition and Preservation Act would not have either of those effects, nor will it have its asserted one: ensuring that citizens have access to local, credible, independent news. Although we have offered solutions to address specific issues, even in aggregate they are unlikely to overcome the fundamental challenge of using antitrust immunity to address the crisis in local news, and we will continue to oppose this bill.

Sincerely,

Common Cause

Copia Institute

Creative Commons

Fight for the Future

Free Press Action

Library Futures

Medical Library Association

Public Knowledge

Wikimedia Foundation

Aram Sinnreich PhD, Professor and Director, Communication Studies, American University





4600 E. 53<sup>rd</sup> St.  
Davenport, IA 52807

Mary E. Junck  
Chairman  
563-383-2154

February 2, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
Committee on the Judiciary  
United States Senate  
425 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar:

Thank you for holding today's hearing entitled "Breaking the News – Journalism, Competition and the Effects of Market Power on a Free Press." We appreciate your dedication to preserving a thriving free press and your continued support for local journalism.

Lee Enterprises, Inc. ("Lee") is a leading provider of local news and information and a major platform for local advertising. Based in Davenport, Iowa, we have nearly 350 weekly and specialty publications serving 77 markets in 26 states, and our robust local and national digital media and advertising platforms are the fastest growing in the industry, attracting more than 44 million unique visitors monthly.

Lee was founded in 1890 in Iowa by A.W. Lee, and most of our local news platforms trace their beginnings to the mid-1800s. Among our alumni, teenage Sam Clemens wrote for the *Muscatine Journal* in Iowa before becoming world-renowned as Mark Twain. A reporter from our newspaper in Bismarck, North Dakota died with George Custer at the Battle of the Little Big Horn. And, in 1973, our newspaper in Davenport, Iowa, became the first in the world to be produced totally by computer.

Lee is proud to be one of the few remaining independent news businesses concentrated on promoting local journalism. We are a strong and profitable business executing a clear strategy to capture attractive opportunities for future growth.

Our dedicated focus on local audiences allows us to better engage and make meaningful connections, and we are consistently among the top performing companies in our industry. Today, as throughout our history, in every one of the communities we serve, no competitor can match the indispensable local news, information and advertising we deliver to huge audiences of all ages.



We are not standing still and will not allow our proud past to become a relic of history. We are investing in our digital transformation to ensure our local news and information remains accessible to communities and broad audiences on the modern platforms they prefer. Our asset portfolio includes digital subscription platforms; daily, weekly, and monthly newspapers; and niche publications, all delivering original local news and information. Our products offer print and digital editions, and our content and advertising is available in real time through our websites and mobile apps. We operate in predominately mid-sized communities with products ranging from large daily newspapers and associated digital products, such as the *St. Louis Post-Dispatch* and *The Buffalo News*, to non-daily newspapers with news websites and digital platforms serving smaller communities. Across our expansive geographic scope, each of our publications is dedicated to providing quality content that reflects the diversity of the communities they serve.

Lee has always been focused on delivering relevant, local information to our audience and assisting local and national businesses in reaching their audiences. We have transformed from traditional newspapers to a digital-centric business, and we remain on track to achieving our goal of having 900,000 digital-only subscribers by the end of 2026. Our full-service digital marketing services agency, Amplified, is also growing rapidly. We are making great progress transforming from a traditional newspaper publisher into a digital-first business with unparalleled local brand recognition and presence in our markets. We have confidence that our strategy and execution will continue to generate great local news coverage while also creating significant value for shareholders over the near- and long-term.

We recognize, however, that the landscape of our industry is shifting, with the financial sector acquiring larger and larger amounts of local news businesses. In fact, recent estimates show that about half of America's daily newspapers are controlled by private equity, hedge funds, and other investment groups.<sup>1</sup> Such ownership can, in certain circumstances, pose concerns not only for the state of local journalism but for the long-term sustainability, value, and success of companies like Lee. In many cases, financial firms amass local news companies, gut their newsrooms, and slash their budgets to maximize short-term profits while permanently impairing the capability of local newsrooms to provide communities with vital information. The watchdogs of our democracy are being starved so these financial firms can binge on short-term profits.

This disturbing trend of buying newspapers and wringing dollars from them while making drastic staff and cost cuts is highly detrimental to local journalism and out of line with Lee's values, not to mention bad for business and contrary to the interests of our shareholders. While these tactics may work for vulture capitalists focused on short-term profits, they simply do not reflect the way we operate, nor are they conducive to the long-term, sustainable value we aim to create. At Lee, we are proud of the resilience of our team, our powerful brands, and—most importantly—our deep-rooted commitment to consistently delivering high-quality, impactful journalism to the communities we serve.

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<sup>1</sup> Anna Nicolaou and James Fontanella-Khan, The Fight for the Future of America's Local Newspapers, *FIN. TIMES* (Jan. 21, 2021), <https://www.ft.com/content/5c22075c-flaf-431d-bf39-becf9c54758b>; Sunny Kim, How Hedge Funds Took Over America's Struggling Newspaper Industry, *CNBC* (June 11, 2021), <https://www.cnbc.com/2021/06/11/how-hedge-funds-took-over-americas-struggling-newspaper-industry-.html>; Edward Helmore, Fears for Future of American Journalism as Hedge Funds Flex Power, *THE GUARDIAN* (June 21, 2021), <https://www.theguardian.com/media/2021/jun/21/us-newspapers-journalism-industry-hedge-funds>.



Again, thank you for your important work to protect local journalism. We are encouraged to see leaders like you calling attention to these issues, and we stand ready to partner with you as best we can to help preserve the organizations that keep our communities informed.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Junck", with a long, sweeping horizontal line extending to the right.

Mary Junck, Chairman  
Lee Enterprises, Inc.

cc: The Honorable Mike Lee  
The Honorable Chuck Grassley





January 28, 2022

The Honorable Amy Klobuchar  
Chair, Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Letter for the Record: Senate Committee on the Judiciary, Subcommittee on Competition Policy, Antitrust, and Consumer Rights Hearing, "Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press"**

Dear Senator Klobuchar:

The Alliance for Audited Media is a not-for-profit media auditing organization comprised of advertisers, advertising agencies and publishers. We audit more than 1,100 news media publications and provide their verified information to the marketplace. This gives us unique insights into the challenges and opportunities of local journalism in the United States.

We commend the Committee for Wednesday's hearing "Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press." News media organizations provide critical content to their communities, and they need to operate on a level playing field to earn subscription and advertising revenue to support this high-value content. We encourage the Committee to examine the question of market power in the distribution of digital news and consider solutions that would begin to level the playing field for news publishers.

Respectfully,

Tom Drouillard  
AAM CEO, President and Managing Director



**AMERICA'S NEWSPAPERS**

4850 Sugarloaf Pkwy., Suite 209-229,  
Lawrenceville, GA 30044  
[www.newspapers.org](http://www.newspapers.org) | 847-282-9850 Ext 5



February 1, 2022

The Honorable Amy Klobuchar, Chairwoman, Subcommittee on Competition Policy, Antitrust,  
and Consumer Rights, United States Senate  
425 Dirksen Senate Building 361A Russell Senate Office Building  
Washington, DC 20510 Washington, D.C. 20510

The Honorable Mike Lee, Ranking Member, Subcommittee on Competition Policy, Antitrust, and  
Consumer Rights, United States Senate  
425 Dirksen Senate Building 361A Russell Senate Office Building  
Washington, DC 20510 Washington, D.C. 20510

The Honorable David Cicilline, Chairman, Subcommittee on Antitrust, Commercial, and  
Administrative Law  
United States House of Representatives  
2233 Rayburn HOB 2455  
Washington, DC 20515

The Honorable Ken Buck, Ranking Member, Subcommittee on Antitrust, Commercial, and  
Administrative Law  
United States House of Representatives  
2233 Rayburn HOB 2455  
Washington, DC 20515

Dear Chairwoman Klobuchar, Ranking Member Lee, Chairman Cicilline, and Ranking Member  
Buck:

On behalf of many of the daily and weekly newspapers across America, we would like to ask for  
your support of H.R. 1735 / S.673, the Journalism Competition and Preservation Act.

Local journalism is facing an existential crisis. The actions of Google and Facebook of using  
newspapers' content without compensation have created a crisis for local journalism. The  
Journalism Competition and Preservation Act would create a more level playing field, which  
would be a game-changer for newspapers.

Newspapers provide their local communities with the critical news that is needed, and their  
reporters and editors are an important part of their communities. The coverage of city council,  
the school board, local business developments and much more are needed to keep the citizens  
informed about what's going on in their communities.



**AMERICA'S NEWSPAPERS**

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Page 2

When a newspaper closes or reduces its coverage, the communities suffer. Without the vetted voice of strong and independent local news organizations, communities see increased costs and the lack of oversight has often led to increased corruption.

Newspapers need the ability to protect their content and be compensated for creating it. We are asking Congress to give newspapers the tools that they need to be able to fairly negotiate. The Journalism Competition and Preservation Act will provide those tools.

If you would like additional details or more information about the impact of communities losing their newspaper, please let me know.

Sincerely,

Two handwritten signatures in black ink. The first signature is "Dean Ridings" and the second is "Alan Fisco".

Dean Ridings, CEO

Alan Fisco, Chair, Legislative Committee &  
President, Seattle Times

*America's Newspapers has more than 1,600 daily, weekly and online members across the US. Its members are family owned, independent and corporate groups. [www.newspapers.org](http://www.newspapers.org)*



# ARKANSAS press ASSOCIATION

"Serving the newspapers of Arkansas since 1873"

## Arkansas Press Association

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**Executive Director**

December 22, 2021

The Honorable Tom Cotton  
United States Senate  
124 Russell Senate Office Building  
Washington DC 20510

Dear Senator Cotton,

I represent more than 100 news publishers in the state of Arkansas, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism both in Arkansas and across the country. We need your support now to sustain coverage of issues of vital importance to the communities you represent.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

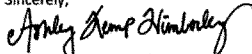
The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism would ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers – one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Arkansas news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,



Ashley Kemp Wimberley  
Executive Director



Statement on S.673, the Journalism Competition and Preservation Act (JCPA) from Augustine Fou, Fou Analytics:

"The digital platforms have for the last two decades exercised their monopoly power to unjustly extract value for themselves, maximize profits, and drive their own share prices. This came at the extreme and undeniable expense of publishers, which depended on advertising revenue to support quality journalism. By taking tolls on all ad revenue passing through their systems and by failing to prevent ad dollars flowing to low quality, fake news, hate speech, and disinformation sites, the platforms have brought good publishers to the brink of extinction. Eighteen hundred local news sites have already died in the last 15 years. This bill is a temporary step that brings publishers and platforms together at the table to achieve a more balanced and sustainable way forward."





4 North Second Street, Suite 700 | San Jose, CA 95113 [www.bayareanewsgroup.com](http://www.bayareanewsgroup.com)

January 31, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

Dear Ms. Klobuchar,

My name is Sharon Ryan and I am the President and Publisher of the Bay Area News Group in San Jose, CA. I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in California and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

Existing laws make it difficult for news publishers – especially small, local and regional publishers – to obtain fair compensation from the platforms for the use of their content. As a result, the newspapers that are vital to bringing our communities together are strained financially if not struggling to survive. The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

The moment to act in the U.S. is now. It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to stand with Californian journalists in support of the Journalism Competition and Preservation Act.

Sincerely,

Sharon Ryan  
President & Publisher  
Bay Area News Group

A Digital First Media Company





4 North Second Street, Suite 700 | San Jose, CA 95113 [www.bayareanewsgroup.com](http://www.bayareanewsgroup.com)

January 31, 2022

The Honorable Mike Lee  
 Ranking Member  
 Subcommittee on Competition Policy,  
 Antitrust, and Consumer Rights  
 U.S. Senate  
 361A Russell Senate Office Building  
 Washington, D.C. 20510

Dear Mr. Lee,

My name is Sharon Ryan and I am the President and Publisher of the Bay Area News Group in San Jose, CA. I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in California and across the country.

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Sincerely,

Sharon Ryan  
 President & Publisher  
 Bay Area News Group

A Digital First Media Company



The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear the Honorable Amy Klobuchar and the Honorable Mike Lee:

My name is Michael Yamashita and I am the Publisher of the Bay Area Reporter in San Francisco, California – since 1971, the nation’s oldest news publication serving the LGBTQ communities. We are just one of many independent publishers operating as small businesses serving specific, diverse communities, whether they be local, ethnic, non-English language, etc., whose viability has been compromised by dominant tech platforms.

I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in California and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

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Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to stand with Californian journalists in support of the Journalism Competition and Preservation Act.

Sincerely,

Michael Yamashita



Publisher/President  
Bay Area Reporter  
San Francisco



 **California News Publishers Association**  
2701 K St. • Sacramento CA 95816 • 916-288-6000

December 22, 2021

The Honorable Alex Padilla  
United States House of Representatives  
112 Hart Senate Office Building  
Washington, DC 20510

**VIA EMAIL**

Dear Sen. Padilla:

I represent news publishers in the state of California and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in our state and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism would ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support California news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Charles F. Champion II  
President & CEO



 **California News Publishers Association**  
2701 K St. • Sacramento CA 95816 • 916-288-6000

January 31, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear the Honorable Amy Klobuchar and the Honorable Mike Lee:

I represent news publishers in the state of California and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in our state and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

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**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great.



 **California News Publishers Association**  
2701 K St. • Sacramento CA 95816 • 916-288-6000

I respectfully urge you to support the well over 600 news publishers in California by voting AYE on the Journalism Competition and Preservation Act.

Sincerely,  
Charles F. Champion II  
President & CEO





**CherryRoad**  
Media

CherryRoad Media  
6 Upper Pond Road  
2<sup>nd</sup> Floor  
Parsippany, New Jersey 07054

TEL: 973-402-7802  
FAX: 973-402-7808  
[www.cherryroad.com](http://www.cherryroad.com)

February 1, 2022

Senator Richard Durbin  
Senator Charles Grassley  
Senate Judiciary Committee  
Washington D.C.

Dear Senators Durbin, Grassley and members of the Judiciary Committee:

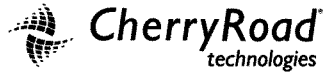
I write to express support for the Journalism and Competition and Preservation Act which is scheduled for a hearing this week before your committee. Our company, CherryRoad Technologies Inc., has been a provider of technology services since 1983. In late 2020, we launched an initiative to invest in community newspapers around the country because we saw the detrimental impacts that the market dominance and business practices of the Big Tech companies were having on small business generally, and the newspaper industry specifically. CherryRoad began its journey by acquiring the Cook County News-Herald in Grand Marais, Minnesota. We followed up by purchasing over forty newspapers in Minnesota, Iowa, Missouri, Nebraska, Kansas, Arkansas, Colorado, Alabama, Oklahoma, and Texas. We also started two newspapers from the ground up in International Falls and Two Harbors, Minnesota to replace newspapers that had been closed by their prior owners. We did all this because we believe in the importance of community newspapers as a source of truth and reality in communities.

If you were to stop by the offices of the Hamburg Reporter in Hamburg, Iowa; the Constitution-Tribune in Chillicothe, Missouri; the Mountaineer Echo in Flippin, Arkansas; or the Alice Echo News-Journal in Alice, Texas you would find our dedicated staff of two or three people working hard to keep their communities informed. A trip to one of our more highly staffed locations like the Nebraska City News-Press would introduce you to four or five staffers juggling the tasks of reporting, designing layouts, handling subscriptions and trying to sell advertisements. The sad reality is that these are the staffing levels you will find at many community newspapers because the revenue levels of these newspapers only support a handful of staff. The dramatic decline in revenue at newspapers over the last twenty years is a direct result of how readers are accessing news.

Every day we lose print subscribers and attempt to gain digital subscribers. Our challenge to gain digital subscribers is made difficult by the fact that most online readers utilize either Google or Facebook as their entry point when searching for news. These two dominant companies have positioned themselves as gatekeepers between readers and the content our newspapers publish online. They determine what content to display to online readers, and they control how much of the advertising revenue associated with our content flows through to us. Both companies have programs which are designed to engage with news publishers, however these programs are far from ideal. These companies utilize their scale to make what are essentially take it or leave it offers to publishers. The terms and conditions are complicated, one sided, and unforgiving. A publisher would need extensive technical and legal expertise to be able to engage, because even unintentional violations of terms and conditions can be met with permanent expulsion from the programs.

In short, there is no practical way for a small newspaper with a handful of staffers to engage in an equitable business relationship with Google or Facebook. Over the last year as I have become acquainted with the





Page 2 of 2  
Senator Richard Durbin  
Senator Charles Grassley  
Senate Judiciary Committee  
February 1, 2022

newspaper business, I have met many smart and creative leaders. The combined talents and resources of multiple organizations and leaders is what would be needed to engage on a level field with Google and Facebook. Unfortunately, such activity would run afoul of current anti-trust laws. That is why the Journalism and Competition and Preservation Act is so important. This law would be a measured step towards correcting the improperly functioning market that currently exists between publishers and Big Tech platforms such as Google and Facebook.

Last July 24<sup>th</sup> Senator Klobuchar delivered an eloquent statement to the Senate about the loss of the Journal in International Falls, Minnesota. That day the Journal had printed its last edition. Earlier that week I had attended a meeting in International Falls to meet with community leaders to discuss launching a new publication to replace the Journal. That meeting brought together around twenty people who were determined to see to it that International Falls continued to have a newspaper. We launched the Rainy Lake Gazette two weeks to the day after the Journal closed. I am pleased to report that we are approaching 2,000 subscribers, which is more than the Journal had when it closed. I share this story because I think it shows that there are a lot of people in our communities who want to see their local newspapers survive as the trusted source of local news. There are many of us who are willing to do the hard work that is needed to return this industry to its past glory, but we need your help.

Thank you very much for your consideration of the Journalism and Competition and Preservation Act.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jeremy Gulban".

Jeremy Gulban  
Chief Executive Officer





February 1, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee:

We want to take this opportunity to thank you and the members of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights for holding a hearing on *Journalism, Competition, and the Effects of Market Power on a Free Press*. During the hearing we anticipate that the Subcommittee will focus on the Journalism Competition and Preservation Act (JCPA), S. 673. We write to the Subcommittee today to voice our support for legislation, such as the JCPA, that would create a limited safe harbor from antitrust laws for print, broadcast, or digital news companies to collectively negotiate with social media companies and other online content distributors regarding the terms on which the news companies' content may be distributed by online content distributors.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines.<sup>1</sup> Our members include reporters, journalists, writers, editors, photographers, newspaper publishers, magazine publishers and other members of the press publishing community who all rely on copyright law to protect the product of their newsgathering and journalistic efforts.

A healthy democracy requires an informed citizenry, and press publishers play that critical role by reporting on the events, opinions, facts, ideas, and circumstances that mold and shape the world we live in. Press publishers are the stewards of this powerful form of storytelling, but the creation of news content comes with significant costs. Press publishers of a spectrum of disciplines, political backgrounds, and regional scales invest incredible amounts of time, labor, and money to create, facilitate, and deliver timely news content to hundreds of millions of Americans through specialized and developed information gathering, collaborating, reporting, writing, and editing decisions and techniques.

Journalism is often an expensive endeavor; investigative or international reporting on major issues can cost a press publisher anywhere from tens of thousands per day to millions of dollars

<sup>1</sup> A list of Copyright Alliance members can be found [here](#).



in the aggregate. There are also significant nonmonetary costs associated with creating quality news content. For one, journalists often take incredible risks to investigate and report on dangerous stories. In 2020, there were 438 physical attacks on reporters in America, which was three times greater than the number of attacks *combined* from the previous three years.<sup>2</sup>

Despite these efforts and in the face of rising costs, press publishers are finding that the returns for these risky, expensive, and highly developed creative endeavors are in a freefall. According to the Pew Research Center, from 2005 to 2020, press publishers' advertising revenues fell from \$50 billion to \$8.8 billion—an astounding 80%.<sup>3</sup> In the same vein, newsroom employment decreased by more than 50% from 2008 to 2020.<sup>4</sup> This is because the current digital environment has made it exceedingly difficult for press publishers to generate meaningful returns to enable them to continue their important societal endeavors at the level they and the public demand.

Enacting legislation like the JCPA would represent a crucial step toward addressing these concerns and to bolstering press publishers' abilities to continue generate and disseminate news content for the American public. By working alongside copyright law, such legislation would give greater leverage to news organizations to determine whether, and on what terms, to allow online content distributors access to their content and would help reporters, journalists, writers, editors, publishers and other in the press publishing community get fairly compensated for their work when it is used by others. As we noted in our previous letter (attached hereto), the JCPA does not change the scope of copyright law.

We again thank the Subcommittee for holding this important hearing and for considering the important issues raised during the hearing and by the JCPA. Should you have any further questions or issues you would like to discuss, we would be delighted to discuss them further with you.

Sincerely,



Keith Kupferschmid  
CEO  
Copyright Alliance

<sup>2</sup> See REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, PRESS FREEDOMS IN THE UNITED STATES 8 (May 2021), [https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020\\_FINAL.pdf](https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020_FINAL.pdf).

<sup>3</sup> See PEW RESEARCH CENTER, NEWSPAPER FACT SHEET, <https://www.pewresearch.org/journalism/fact-sheet/newspapers/> (last visited Jan. 28, 2022).

<sup>4</sup> Mason Walker, *U.S. Newsroom Employment Has Fallen 26% Since 2008*, PEW RESEARCH CENTER (July 13, 2021), <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>.





July 12, 2021

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U.S. Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable David Cicilline  
Chairman  
Subcommittee on Antitrust, Commercial and  
Administrative Law  
2233 Rayburn House Office Building  
Washington, DC 20515

The Honorable Ken Buck  
Ranking Member  
Subcommittee on Antitrust, Commercial and  
Administrative Law  
2455 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairwoman Klobuchar, Chairman Cicilline, Ranking Member Lee, and Ranking Member Buck:

We write to you today to address a letter each of your offices received, dated June 17, 2021, from the Authors Alliance, Public Knowledge, and a handful of other of other organizations (“the PK Letter”) suggesting that the Journalism Competition and Preservation Act (JCPA) (H.R.1735 and S. 673) threatens to alter U.S. copyright law and proposing the addition of a savings clause to the bills. The concerns expressed in the letter are unfounded and we urge that no additional text be added to this bill to address those unfounded concerns.

The Copyright Alliance is a non-profit, non-partisan organization whose mission is to foster policies that promote and preserve the value of copyright, and to protect the rights of creators and innovators. We are the unified voice of the copyright community, representing the copyright interests of more than 1.8 million individual creators and over 13,000 organizations across the spectrum of copyright disciplines in the United States. Our members rely on the exclusive rights afforded by copyright law and the exceptions to those rights, like fair use.

The JCPA would “create[] a four-year safe harbor from antitrust laws for print, broadcast, or digital news companies to collectively negotiate with online content distributors (e.g., social media companies) regarding the terms on which the news companies' content may be distributed by online content distributors.” Importantly, nothing in the JCPA would directly or indirectly implicate copyright law. Further, the term “copyright” is not included in the JCPA, nor are any copyright terms. As a result, it is neither necessary nor appropriate to include a savings clause related to copyright in the JCPA and doing so runs the significant risk of unduly altering the



scope of copyright protection provided in the Copyright Act, which is exactly what the signatories are hoping to accomplish.

The PK Letter states that the JCPA changes the scope of copyright law. This is patently false. The JCPA addresses antitrust issues and does not mention or implicate copyright law. At best, this misstatement represents a fundamental misunderstanding of both the legislation itself and copyright law; at worst, it represents an opportunistic attempt to use this legislation as a vehicle for changing copyright law.

The JCPA aims to give greater leverage to news organizations to determine whether, and on what terms, to allow online content distributors access to their content. Nothing in U.S. copyright law, including fair use, conflict with that aim. The PK Letter misrepresents copyright law in several respects in an attempt to bolster its claim that a savings clause is necessary. While we are happy to set up time to discuss and clarify these misrepresentations, since the JCPA is not a copyright bill and does not implicate copyright law, we don't want to waste your time with a line-by-line discussion of how the PK letter is incorrect.

The JCPA is not the proper forum for attempting to change copyright law. We appreciate your attention on this matter, and the opportunity to voice our concerns about the PK Letter's mischaracterization of copyright law and the JCPA. We would be delighted to discuss these issues with you further if you have any questions.

Sincerely,



Keith Kupferschmid  
CEO  
Copyright Alliance





The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition  
Policy, Antitrust, and Consumer Rights United  
States Senate  
425 Dirksen Senate Building  
Washington, D.C. 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and Consumer  
Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee:

My name is Robin Ritch and I am the President and Publisher of the Deseret News in Salt Lake City, Utah. We have been in the news publishing business for nearly 172 years. For all the reasons listed below, sustaining vibrant and vital news reporting is important to our city, state, and republic.

I write to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Utah and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers like us to come together to negotiate with the platforms for the compensation we deserve, and an enforcement mechanism will ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

The moment to act in the U.S. is now. It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support news publishers across the country and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Robin Ritch  
President & Publisher





## Georgia Press Association

GEORGIA PRESS BUILDING • 140 LOCUST STREET, AVONDALE ESTATES, GA 30002 • 770.454.6776 • FAX: 770.454.6778  
[www.gapress.org](http://www.gapress.org)  
e-mail: [mail@gapress.org](mailto:mail@gapress.org)

The Honorable Jon Ossoff  
United States Senate  
Russell Senate Office Building  
Suite 455  
Washington, DC 20510

Via fax: 202 224 2575

Dear Senator Ossoff,

I represent news publishers in the state of Georgia, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Georgia and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

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**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.



Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Georgia news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Robin Rhodes  
Executive Director  
Georgia Press Association

The Albany Herald  
Athens Banner Herald  
Daily Report, Atlanta  
The Augusta Chronicle  
The Brunswick News  
Times-Georgian, Carrollton  
The Daily Tribune News, Cartersville  
Ledger Enquirer, Columbus  
Daily Citizen News, Dalton  
The Courier Herald, Dublin  
The Griffin Daily News  
LaGrange Daily News  
Gwinnett Daily Post, Lawrenceville  
The Telegraph, Macon  
Marietta Daily Journal  
The Union Recorder, Milledgeville  
Rome News-Tribune  
Savannah Morning News  
Thomasville Times-Enterprise  
Valdosta Daily Times  
Adel News-Tribune  
Wheeler County Eagle, Alamo  
Americus Times Recorder  
The Post-Searchlight, Bainbridge  
The Herald-Gazette, Barnesville  
The Baxley News Banner  
The Blackshear Times  
The North Georgia News, Blairsville  
Early County News, Blakely  
The News Observer, Blue Ridge  
The Braselton News  
The Journal, Buena Vista  
Taylor County News, Butler  
The Cairo Messenger  
Calhoun Times  
Mitchell County Enterprise-Journal, Camilla

The Cherokee Tribune, Canton  
The Polk County Standard Journal, Cedartown  
The Chatsworth Times  
The Claxton Enterprise  
The Clayton Tribune  
White County News, Cleveland  
The Cochran Journal  
Miller County Liberal, Colquitt  
Rockdale Citizen, Conyers  
The Cordele Dispatch  
The Northeast Georgian, Cornelia  
The Covington News  
Newton Citizen, Conyers  
Dahlonega Nugget  
The Dallas New Era  
The Madison County Journal, Danielsville  
The Darien News  
The Dawson News  
The Champion, Decatur  
Donalsonville News  
The Douglas Enterprise  
Douglas County Sentinel, Douglasville  
The Dodge County News, Eastman  
The Eatonton Messenger  
The Elberton Star  
Times-Courier, Ellijay  
Columbia County News-Times, Evans  
Fayette County News, Fayetteville  
The Herald Leader, Fitzgerald  
Charlton County Herald, Folkston  
Monroe County Reporter, Forsyth  
The Leader Tribune, Fort Valley  
The News and Banner, Franklin  
The Jones County News, Gray  
The Herald Journal, Greensboro



Lake Oconee Enterprise, Greensboro	The Montgomery Monitor, Mount Vernon
The Hartwell Sun	The Berrien Press, Nashville
Hawkinsville Dispatch and News	The Newnan Times-Herald
Jeff Davis Ledger, Hazlehurst	Atkinson County Citizen, Pearson
Towns County Herald, Hiawassee	Houston Home Journal, Perry
The Banks County News, Homer	Quitman Free Press
The Clinch County News, Homerville	The Journal Sentinel, Reidsville
The Wilkinson County Post, Irwinton	The Catoosa County News, Ringgold
Jackson Progress-Argus	The Georgia Post, Roberta
Pickens County Progress, Jasper	The Sandersville Progress
The Jackson Herald, Jefferson	The Soperton News
The Twiggs Times New Era, Jeffersonville	Tribune and Georgian, St. Mary's
The Press-Sentinel, Jesup	The Islander, St. Simons
Clayton News, Jonesboro	The Summerville News
Walker County Messenger, LaFayette	The Forest-Blade, Swainsboro
Troup County News, LaGrange	The Sylvania Telephone
The Lanier County Advocate, Lakeland	The Sylvester Local News
Franklin County Citizen Leader, Lavonia	Upton Beacon, Thomaston
The Lee County Ledger, Leesburg	The McDuffie Progress, Thompson
The Oglethorpe Echo, Lexington	The Tifton Gazette
Jefferson Reporter/News and Farmer, Louisville	The Toccoa Recorder
Morgan County Citizen, Madison	The Advance, Vidalia
Manchester Star-Mercury	The News-Reporter, Washington
Henry Herald, McDonough	The Oconee Enterprise, Watkinsville
The Telfair Enterprise, McRae	Waycross Journal-Herald
The Metter Advertiser	The True Citizen, Waynesboro
The Baldwin Bulletin, Milledgeville	Barrow County News, Winder
The Walton Tribune, Monroe	The Johnson Journal, Wrightsville
The Moultrie Observer	Pike County Journal and Reporter, Zebulon





## 2022 NNA OFFICERS

### Chair

**Brett Wesner**  
Wesner Publications  
Cordell, OK

### Vice Chair

**John Galer**  
The Hillsboro Journal-New  
Hillsboro, IL

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**Jeff Mayo**  
Cookson Hills Publishing  
Sallisaw, OK

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Detroit, MI

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*NNA Immediate Past-President*

**Matt Adelman**  
Douglas Budget  
Douglas, WY

**Matthew Paxton**  
The News-Gazette Corporation  
Lexington, VA

January 31, 2022

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable David Cicilline  
Chairman, Subcommittee on Antitrust,  
Commercial, and Administrative Law United  
States House of Representatives  
2233 Rayburn HOB  
Washington, DC 20515

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Ken Buck  
Ranking Member, Subcommittee on  
Antitrust, Commercial, and Administrative  
Law United States House of Representatives  
2455 Rayburn House Office Building  
Washington, DC 20515

Dear Chairwoman Klobuchar, Ranking Member Lee, Chairman Cicilline, and Ranking Member Buck:

We write as publishers, editors and journalists at the nation's community newspapers to urge your support of H.R. 1735 / S.673, the Journalism Competition and Preservation Act.

The impact upon the local news economies and audiences from social media companies has been dramatic and damaging. While news aggregators sell advertising on their websites and media feeds, the content they gather to draw people to the ads comes from others. Local newspapers that support journalists and news-gathering operations are compelled to participate in this new economy, but they are not always compensated for the news they publish when social media platforms like Facebook and Google link to the local news.

**News publishers provide must-have content for platforms to capture viewers. Between 16% and 40% of Google search results are news content. Publishers deserve fair compensation for the value they offer.**

Communities suffer when their local newspapers cannot carry out their journalistic missions. The trust that readers have in local newspapers—a value that has been demonstrated by many surveys, including NNA's Community Newspaper Readership Survey—is violated when the economic support for local journalism dries up. Sometimes the damage is so severe that a local community becomes a news desert, with no trusted local newspaper at all.

**People trust their local news publishers – 73% of U.S. adults have confidence in their local newspaper.**

Because the social media platforms are large, vertically integrated and influential, local news organizations acting alone do not have the market power to protect their content. Allowing group negotiations, similar to those already recognized under antitrust laws for professional baseball, is a good way to remedy the imbalance. Congress can help to solve the problem of unfair use of local journalism by simply giving news organizations the tools they need to negotiate.

The National Newspaper Association has been protecting, promoting and enhancing community newspapers since 1885. Please help our mission by showing your support and sponsoring the Journalism Competition and Preservation Act.

Sincerely,

Brett Wesner  
President, Wesner Publications in Oklahoma, Texas and New Mexico  
And Chair, National Newspaper Association  
www.nna.org





The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition  
Policy, Antitrust, and Consumer Rights United  
States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and Consumer  
Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

2022 Jan. 27

Dear Chairwoman Klobuchar and Ranking Member Lee:

My name is Erika Brown, and I am the publisher of *The Manchester Cricket*, an independent local weekly newspaper serving Cape Ann, Massachusetts since 1888. I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism here in Massachusetts and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as our members to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism will ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support news publishers across the country and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Erika Brown  
Publisher, *The Manchester Cricket*



May 7, 2021

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition Policy, Antitrust and Consumer Rights  
United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable John Kennedy  
United States Senate  
416 Russell Senate Building  
Washington, DC 20510

The Honorable David Cicilline  
Chairman, Subcommittee on Antitrust, Commercial and Administrative Law  
United States House of Representatives  
2233 Rayburn HOB  
Washington, DC 20515

The Honorable Ken Buck  
Ranking Member, Subcommittee on Antitrust, Commercial and Administrative Law  
United States House of Representatives  
2455 Rayburn House Office Building  
Washington, DC 20515

Dear Chairwoman Klobuchar, Sen. Kennedy, Chairman Cicilline, and Ranking Member Buck:

On behalf of our media organizations, we request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality journalism, including news and opinion, across the country.

In their wisdom, the Founding Fathers enshrined protections for a press free from government regulation in the First Amendment to the U.S. Constitution. But the Founders could not have envisioned a future in which nearly all news and information would be controlled by two private entities. Today, Google and Facebook use their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would benefit all publications—large and small, national and regional—that create original news content online. Its benefit to news publishers and broadcasters with an editorial voice is critical, as we are all potential victims of viewpoint discrimination by the big tech companies.



Existing laws make it difficult for news organizations to obtain fair compensation from tech platforms for the use of their content. The JCPA would address this problem by allowing publishers and broadcasters to work together for a temporary period in order to negotiate for the compensation we deserve.

Australians and Europeans have recognized the challenge the tech giants pose to a free press, too, and are moving towards new compensation models for publishers. These models seek to ensure that equitable terms are offered to all publishers and that tech platforms negotiate in good faith. The JCPA deregulates our industry to enable a new compensation model in the U.S. too.

It is more important than ever to protect quality journalism that is independent both from government and from powerful Silicon Valley companies. We urge you to support the Journalism Competition and Preservation Act.

Sincerely,

Christopher Dolan  
President and Executive Editor  
*The Washington Times*

Wyatt Emmerich  
President, Emmerich Newspapers  
*Clarksdale Press Register*  
*Charleston Sun-Sentinel*  
*Greenwood Commonwealth*  
*Indianola Enterprise-Tocsin*  
*Delta Democrat Times*  
*Yazoo Herald*  
*Northside Sun*  
*Rankin Record*  
*Magee Courier*  
*Simpson County News*  
*McComb Enterprise-Journal*  
*Columbian Progress*  
*The Hattiesburg Post*  
*The Lamar Times*  
*The Petal News*  
*The Chronicle*  
*Clarke County Tribune*  
*Newton County Appeal*  
*Scott County Times*  
*The Star-Herald*  
*Winston County Journal*  
*Choctaw Plain Dealer*  
*Webster Progress-Times*



*Winona Times*  
*The Conservative*  
*Madison Journal*  
*Franklinton Era-Leader*  
*Dumas Clarion*

Charles Hill Morris, Jr.  
 Morris Multimedia  
*Bryan County News*  
*Coastal Courier*  
*Effingham Herald*  
*Frontline*  
*Statesboro Herald*  
*Connect Savannah*  
*Bulloch County Pennysaver*  
*Effingham Living*  
*Statesboro Magazine*  
*Statesboro MOMents*  
*The Journal Sentinel*  
*Clayton County Times Register*  
*Ellsworth County Independent Reporter*  
*Great Bend Tribune*  
*Marquette Tribune*  
*Blythewood Country Chronicle*  
*Camden Horse & Equestrian*  
*Chronicle Independent*  
*Fort Jackson Leader*  
*Lee County Observer*  
*The Shaw News*  
*Wimmsboro/Fairfield County Country Chronicle*  
*Smithville Review*  
*Southern Standard*  
*The Boscobel Dial*  
*Courier Press*  
*Crawford County Independent and Kickapoo Scout*  
*Fennimore Times*  
*Grant County Herald Independent*  
*The Monroe Times*  
*Muscoda Progressive*  
*The Platteville Journal*  
*Reminder*  
*Republican Journal*  
*Round Up*  
*The Richland Observer*  
*The Trader*  
*Tri County Press*



Neil Patel  
Co-Founder and Publisher  
*The Daily Caller*

Chris Reen  
President and CEO  
Clarity Media Group, Inc.  
*The Washington Examiner*  
*The Denver Gazette*  
*The Colorado Springs Gazette*

Christopher Ruddy  
CEO  
Newsmax Media, Inc.

David Santrella  
President Broadcast Media  
Salem Media Group

Jonathan Garthwaite  
Vice President  
Townhall Media

cc: Chairman Richard Durbin, Ranking Member Charles Grassley, Chairman Jerrold Nadler,  
Ranking Member James Jordan





**Kansas Press Association, Inc.**

*Dedicated to serving and advancing the interests of Kansas newspapers*

#351, 4021 SW 10<sup>th</sup> St. • Topeka, Kansas 66604 • Phone (785) 271-5304 • Fax (785) 271-7341 • [www.kspress.com](http://www.kspress.com)

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition  
Policy, Antitrust, and Consumer Rights  
United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee:

My name is Emily Bradbury and I am the Executive Director of the Kansas Press Association located in Topeka, KS. I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Kansas and across the country. I represent over 190 news publishers in Kansas.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as our members to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism will ensure equitable compensation to ALL news publishers big and small.

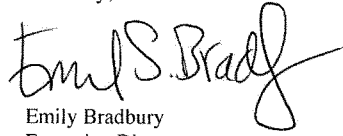
Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support news publishers across the country and sponsor the Journalism Competition and Preservation Act.



Sincerely,

A handwritten signature in black ink that reads "Emily S. Bradbury". The signature is written in a cursive, flowing style with a large, prominent "E" and a long, sweeping underline.

Emily Bradbury  
Executive Director  
Kansas Press Association



## ***The Dallas Morning News***

**Grant S. Moise**  
Publisher

January 31, 2022

The Honorable Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U. S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Klobuchar,

A democracy functions best when it has a healthy fourth estate. The media in the United States has played an important role in our democracy by allowing its citizens to be informed on critical matters that impact their daily lives.

The duopoly of Google and Facebook have disrupted media as we know it by single handedly changing the way consumers access their news. Here at *The Dallas Morning News*, we have attracted the largest audiences in our 132 year history over the past 24 months. The irony is that our ability to monetize these audiences has been forever changed by Google and Facebook's interjection in the middle of that relationship.

I write to you today to thank you for your support of the "Journalism Competition and Preservation Act" (JCPA). As you know, this safe harbor bill would allow news publishers to collectively negotiate with Facebook and Google for fair compensation for the use of our content. The bill would help protect pro- competitive solutions that would allow subscription and advertising dollars to properly flow back to publishers and help protect quality journalism and a healthy democracy.

Sincerely,



Grant Moise



## **The Dallas Morning News**

**Grant S. Moise**  
Publisher

January 31, 2022

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
U. S. Senate  
361A Russell Senate Office Building  
Washington, DC 20501

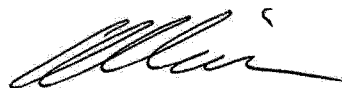
Dear Honorable Lee,

A democracy functions best when it has a healthy fourth estate. The media in the United States has played an important role in our democracy by allowing its citizens to be informed on critical matters that impact their daily lives.

The duopoly of Google and Facebook have disrupted media as we know it by single handedly changing the way consumers access their news. Here at *The Dallas Morning News*, we have attracted the largest audiences in our 132 year history over the past 24 months. The irony is that our ability to monetize these audiences has been forever changed by Google and Facebook's interjection in the middle of that relationship.

I write to you today to ask for your support of the "Journalism Competition and Preservation Act" (JCPA) which has been introduced in the House by Representative David Cicilline (D-RI) and Representative Ken Buck (R-CO), and in the Senate by Senator Amy Klobuchar (D-MN) and Senator John Kennedy (R-LA). This safe harbor bill would allow news publishers to collectively negotiate with Facebook and Google for fair compensation for the use of our content. The bill would help protect pro-competitive solutions that would allow subscription and advertising dollars to properly flow **back** to publishers and help protect quality journalism and a healthy democracy.

Sincerely,



Grant Moise





The Honorable Amy Klobuchar  
 Chairwoman, Subcommittee on  
 Competition Policy, Antitrust, and  
 Consumer Rights United States Senate  
 425 Dirksen Senate Building  
 Washington, DC 20510

Dear Chairwoman Klobuchar,

Thank you again for speaking at the MNA convention Friday. MNA's 270 members appreciate your work on their behalf and we are reaching out to applaud you for your sponsorship of H.R. 1735 / S. 673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Minnesota and across the country. We need congressional support now to sustain coverage of issues of vital importance to our communities.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism would ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you and your colleagues to support Minnesota's news publishers and pass the Journalism Competition and Preservation Act.

Sincerely,  
 Lisa Hills, Executive Director  
 MNA President Chad Koenen, Citizen's Advocate, Henning



## List of MNA Members by County

<b>Aitkin</b>		<b>Carlton</b>	
# Aitkin Independent Age	2461	Cloquet - Pine Journal	1623
McGregor - The Voyageur Press	1000	Cloquet - Pine Knot News	1919
		Moose Lake - Star-Gazette	1168
<b>Anoka</b>		<b>Carver</b>	
# Anoka County Union Herald	2405	Chanhassen Villager	5608
Blaine / Spring Lake Park / Columbia Heights / Fridley Life	8421	# Chaska Herald	6903
Circle Pines - Quad Community Press	6501 A	Norwood Young America / Watertown - News & Times	1022
		Waconia Patriot	2103
<b>Becker</b>		<b>Cass</b>	
# Detroit Lakes Tribune	2629	Cass Lake Times	479
Frazee Vergas Forum	1295	Longville - Pine Cone Press-Citizen	6351
Lake Park Journal	1626	Outing / Crosslake - Northland Press	5451 A
White Earth - Anishinaabeg Today**	13600*	# Walker Pilot-Independent	1651
<b>Beltrami</b>		<b>Chippewa</b>	
# Bemidji - The Bemidji Pioneer	3850	Clara City Herald	1090
Blackduck - The American	352	# Montevideo American-News	1563
<b>Benton</b>		<b>Chisago</b>	
# Foley - Benton County News	1342	Lindstrom - Chisago County Press	3413
Sauk Rapids Herald	5306		
<b>Big Stone</b>		<b>Clay</b>	
Clinton - The Northern Star	1576*	Barnesville Record-Review	1414
# Ortonville Independent	1500*	# Fargo / Moorhead - The Forum	19860
<b>Blue Earth</b>		Hawley Herald	1626
Lake Crystal Tribune	874	# Moorhead - The Extra Newspaper	3056*
# Mankato - The Free Press	12705	Ulen - Clay County Union	992
<b>Brown</b>		<b>Clearwater</b>	
Comfrey Times / Darfur Gazette	333	# Bagley - Farmers Independent	1980
Hanska Herald	197	Gonvick - The Leader-Record	1207
# New Ulm - The Journal	4680		
Sleepy Eye Herald-Dispatch	996	<b>Cook</b>	
Springfield Advance-Press	1370	# Grand Marais - Cook County News-Herald	2667



**Cottonwood**

Mountain Lake - Observer/Advocate	810
Westbrook Sentinel/Tribune	576
# Windom - Cottonwood County Citizen	2210

**Crow Wing**

# Brainerd - NewsHopper	15089 A
# Brainerd Dispatch	6742
Crosby - Ironton Courier, Inc.	3165
Pequot Lakes - Pineandlakes Echo Journal	1839

**Dakota**

Apple Valley / Farmington / Rosemount - Dakota County Tribune	9128
Burnsville / Eagan - Sun Thisweek	9004
# Hastings Journal	1499*
Lakeville - Sun ThisWeek	6745

**Dodge**

Kasson - Dodge County Independent	1647
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**Douglas**

# Alexandria Echo Press	5551
Brandon -The Douglas County Record	1418 A

**Faribault**

# Blue Earth - Faribault County Register	2428
Minnesota Lake Tribune	611*
Wells / Kiester - South Central News	1148*

**Fillmore**

Chatfield - The Chatfield News Co.	1070
# Preston - Fillmore County Journal	17995 A

**Freeborn**

# Albert Lea Tribune	3367
Alden Advance	568

**Goodhue**

Cannon Falls Beacon	2569
Kenyon Leader	635
# Red Wing Republican Eagle	3440
Zumbrota / Pine Island / Goodhue / Mazeppa / Wanamingo - News-Record	2786

**Grand Forks (ND)**

# Grand Forks Herald**	Sun 15060, Tue-Sat 13390 A
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**Grant**

# Elbow Lake / Herman / Hoffman - Grant County Herald	1903
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**Hennepin**

Bloomington / Richfield Sun Current	14148
Brooklyn Center / Brooklyn Park Sun Post	5574
Crystal / Robbinsdale / New Hope / Golden Valley Sun Post	6401
Edina Sun Current	6119
# Minneapolis - Finance & Commerce	1336
# Minneapolis - Insight News	35000*
# Minneapolis - Longfellow Nokomis Messenger**	21000*
# Minneapolis - Minnesota Women's Press**	35000*
# Minneapolis - North News**	28300*
# Minneapolis - Northeast**	30639 A
# Minneapolis - Southwest Connector**	32000*
# Minneapolis - Star Tribune	Sun 351180, Mon-Fri 242270 A
# Minneapolis/St. Paul Business Journal	8320*
Minnesota Outdoor News**	47839*
# Minnesota Spokesman-Recorder	9800*
Minnetonka / Excelsior / Eden Prairie Sun Sailor	9318
Mound / Long Lake - The Laker Pioneer	5760
Osseo / Maple Grove / Champlin / Dayton Press	1157
Plymouth / Wayzata Sun Sailor	5970
St. Louis Park / Hopkins Sun Sailor	5792



**Houston**

# Caledonia Argus	1600
La Crescent - Houston County News	572*

**Hubbard**

Nevis - Northwoods Press	960
# Park Rapids Enterprise	2634

**Isanti**

# Cambridge - Isanti-Chisago County Star	10606 A
# Cambridge / North Branch - County News Review	1443

**Itasca**

Bovey - Scenic Range NewsForum	1508
# Grand Rapids Herald Review	4521

**Jackson**

Heron Lake - The Tri County News	646
# Jackson County Pilot	1196
Lakefield Standard	576

**Kanabec**

# Mora - Kanabec County Times	2671
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**Kandiyohi**

New London / Spicer - Lakes Area Review	6830*
# Willmar - West Central Tribune	5055

**Kittson**

# Hallock - Kittson County Enterprise	1154
Karlstad - North Star News	705

**Koochiching**

# International Falls - Rainy Lake Gazette**	1863
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**Lac Qui Parle**

Dawson Sentinel	1550
# Madison - The Western Guard	1553

**Lake of the Woods**

# Baudette - Northern Light Region	1854
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**Le Sueur**

Le Sueur County News	784
Montgomery Messenger	957
New Prague - The New Prague Times	2980
Waterville LifeEnterprise	1070

**Lincoln**

Hendricks Pioneer	619
# Ivanhoe Times	795
Lake Benton Valley Journal	536
Tyler Tribute	890

**Lyon**

Balaton - Press Tribune	351*
Cottonwood Tri-County News	362
# Marshall Independent	3540
Minnesota Mascot	1193
Tracy Area Headlight Herald	1210

**Mahnomen**

# Mahnomen Pioneer	1256
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**Marshall**

Grygla Eagle	474
Middle River - The Middle River Honker	774*
Stephen Messenger	1061*
# Warren Sheaf	1374

**Martin**

# Fairmont - Sentinel	2939
Sherburn - Martin County Star	682
Truman Tribune	1039*

**McLeod**

# Glencoe - The McLeod County Chronicle	2452
Hutchinson Leader	3192



**Meeker**

Eden Valley Watkins Voice	651*
# Litchfield Independent Review	1815

**Mille Lacs**

Isle - Mille Lacs Messenger	2470
Princeton / Milaca - Union-Times	1703

**Morrison**

# Little Falls - Morrison County Record	22073
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**Mower**

# Austin Daily Herald	2263
LeRoy / Adams / Grand Meadow - Mower County Independent	1292*

**Murray**

Fulda Free Press	905
# Slayton - Murray County News	770
# Slayton - Murray County Wheel-Herald	6850 A

**Nicollet**

Lafayette-Nicollet Ledger	727
# St. Peter Herald	1009

**Nobles**

Adrian - Nobles County Review	836
# Worthington - The Globe	3507

**Norman**

# Ada - Norman County Index	1427
Twin Valley Times	1417

**Olmsted**

# Rochester - Post Bulletin	13250
Stewartville Star	1340

**Otter Tail**

Battle Lake Review	1667
# Fergus Falls - The Daily Journal	2641
Henning - Citizen's Advocate	860
New York Mills Dispatch	746
Parkers Prairie - The Parkers Prairie Independent	938
Pelican Rapids Press	1837
Perham Focus	1173

**Pennington**

# Thief River Falls Times	2856
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**Pine**

Askov American	711
Hinckley News	643
# Pine City Pioneer	1862
Sandstone - Pine County Courier	834

**Pipestone**

Edgerton Enterprise	1306
# Pipestone County Star	1798

**Polk**

# Crookston Times	733
East Grand Forks - The Exponent	848
Ersline Echo	816
Fertile Journal	1275*
Fosston - The Thirteen Towns	1671
McIntosh Times	560

**Pope**

# Glenwood - Pope County Tribune	2618
Senior Perspective**	57500*
Starbuck Times	757



**Ramsey**

Shoreview Press	6060 A
# St. Paul - Access Press**	13600*
# St. Paul - Midway Como Frogtown Monitor**	25000*
# St. Paul - The Park Bugle**	14500*
# St. Paul Legal Ledger - Minnesota Lawyer	965
# St. Paul Pioneer Press	Sun 182902, Thu 124981 A
# St. Paul Voice**	16500*
White Bear Lake - White Bear Press	13800 A

**Red Lake**

Oklee Herald	630
# Red Lake Falls - The Gazette	1001*

**Redwood**

Lamberton News	1483
# Redwood Falls - Redwood Gazette	1480

**Renville**

Fairfax - Standard-Gazette & Messenger	1063
Hector / Bird Island - News*Mirror Union	1026
# Renville County Register	1482

**Rice**

# Faribault Daily News	2542
Lonsdale Area News-Review	2551*
Northfield News	2343

**Rock**

# Luverne - Rock County Star Herald	2050
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**Roseau**

Greenbush - The Tribune	631
# Roseau Times-Region	2329

**Scott**

Jordan Independent	830
Prior Lake American	7516
Savage Pacer	4937
# Shakopee Valley News	8110

**Sherburne**

Becker - Patriot	16380 A
# Elk River - Star News	19968

**Sibley**

Arlington Enterprise	1069*
# Gaylord - The Gaylord Hub	1424*
Henderson Independent	874*
Winthrop News	939

**St. Louis**

Babbitt - The New Babbitt Weekly News	833
# Duluth News Tribune	16589
Ely Echo	3200
Floodwood - The Forum	719*
Hermantown Star	1523*
Hibbing / Virginia - Mesabi Tribune	7952
Proctor Journal	1811*
Tower / Ely / Cook-Orr Timberjay	3091
Tower News	902*

**Stearns**

Albany / Melrose - The Star Post	2674
Belgrade - The Observer	733
Brooten - Bonanza Valley Voice	1690
Cold Spring Record	2912
Kimball - Tri-County News	1110
Paynesville - The Paynesville Press	1677*
Sartell-St. Stephen Newsleader	9108 A
Sauk Centre Herald	1819
# St. Cloud Times	8598
St. Joseph Newsleader	3841 A



**Steele**

Blooming Prairie - Steele County Times	2020
# Owatonna People's Press	2962

**Stevens**

Chokio Review	606
# Morris / Hancock - Stevens County Times	1807

**Swift**

Appleton Press	1148
# Benson - Swift County Monitor-News	1295*
Kerkhoven - The Kerkhoven Banner	928

**Todd**

Clarissa - Independent News Herald	2210*
# Long Prairie Leader	1660*
# Long Prairie Lider**	1500*
Staples World	1105*

**Traverse**

# Wheaton Gazette	1134
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**Wabasha**

Lake City Graphic	2247
Plainview News	2001
# Wabasha County Herald	3051

**Wadena**

Sebeka - The Review Messenger	2272
Verndale Sun	800*
# Wadena Pioneer Journal	1275

**Waseca**

New Richland - NRHEG Star Eagle	1300*
# Waseca County News	1289

**Washington**

Forest Lake / St. Croix - The Lowdown**	4500*
Forest Lake Times	1448
Hugo - The Citizen	4212
Scandia - Country Messenger	857*
# Stillwater Gazette	1269

**Watonwan**

Madelia Times-Messenger	718
# St. James Plaindealer	930

**Wilkin**

# Wahpeton / Breckenridge - Daily News	1832
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**Winona**

St. Charles Press & Lewiston Journal	2097
# Winona Daily News	2540 A
# Winona Post	Sun 20243, Wed 21665 A

**Wright**

Annandale Advocate	1837
# Buffalo - Wright County Journal-Press	3129
Cokato - Dassel-Cokato Enterprise	1519
Dispatch	
Delano Herald Journal	1631
Howard Lake - Herald Journal	2073
Maple Lake Messenger	1210
Monticello Times	983
St. Michael / Rockford Crow River News	1099

**Yellow Medicine**

Canby News	1289
# Granite Falls / Clarkfield - Advocate	1491
Tribune	

**All Minnesota Counties**

Minnesota Legionnaire**	67717
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## MISSOURI PRESS ASSOCIATION

802 Locust Street / Columbia, Missouri 65201  
Phone: 573-449-4167 / Fax: 573-874-5894 / [www.mopress.com](http://www.mopress.com)



January 7, 2022

The Honorable Josh R. Hawley  
United States Senate  
212 Russell Building  
Washington, DC 20510

Dear Senator Hawley,

I represent news publishers in the state of Missouri, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Missouri and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism would ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**2022 MPA Board of Directors -- President:** Roger Dillon, *Shannon County Current Wave, Eminence* - **First Vice President:** Beth Durrenman, *Leader Publications, Festus* - **Second Vice President:** Amos Bridges, *The Springfield News Leader* - **Secretary:** Marion Jordon, *The Kansas City Globe* - **Treasurer:** Bryan Chester, *Columbia Missourian* - **Past President:** Liz Irwin, *Missouri Lawyers Media* - **Directors:** Hannah Spaar, *The Odessan, Odessa* - Bryan E. Jones, *Morgan County Statesman* - Kevin Jones, *St. Louis American* - Gary Castor, *Jefferson City News Tribune* - Donna Bischoff, *St. Louis Post-Dispatch* - Tim Schmidt, *Montgomery Standard* - Sandy Nelson, *Courier Tribune, Kearney and Liberty* - Lucas Presson, *Southeast Missourian, Cape Girardeau* - **National Newspaper Association Representative:** Peggy Scott, *Jefferson County Leader, Festus*



## MISSOURI PRESS ASSOCIATION

802 Locust Street / Columbia, Missouri 65201

Phone: 573-449-4167 / Fax: 573-874-5894 / [www.mopress.com](http://www.mopress.com)



**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Missouri news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

*Mark Maassen*

Mark Maassen  
Executive Director  
Missouri Press Association

**2022 MPA Board of Directors -- President:** Roger Dillon, *Shannon County Current Wave, Eminence* - **First Vice President:** Beth Durreman, *Leader Publications, Festus* - **Second Vice President:** Amos Bridges, *The Springfield News Leader* - **Secretary:** Marion Jordon, *The Kansas City Globe* - **Treasurer:** Bryan Chester, *Columbia Missourian* - **Past President:** Liz Irwin, *Missouri Lawyers Media* - **Directors:** Hannah Spaar, *The Odessan, Odessa* - Bryan E. Jones, *Morgan County Statesman* - Kevin Jones, *St. Louis American* - Gary Castor, *Jefferson City News Tribune* - Donna Bischoff, *St. Louis Post-Dispatch* - Tim Schmidt, *Montgomery Standard* - Sandy Nelson, *Courier Tribune, Kearney and Liberty* - Lucas Presson, *Southeast Missourian, Cape Girardeau* - **National Newspaper Association Representative:** Peggy Scott, *Jefferson County Leader, Festus*





25 W 52nd Street, 15th Floor  
New York, NY 10019  
(212) 332-6301  
[www.newsguardtech.com](http://www.newsguardtech.com)

January 27, 2022

**Statement by NewsGuard in Support of the  
Journalism Competition and Preservation Act (JCPA)**

The digital platforms have allowed misinformation and hoaxes to be hugely popular on social media and in search results. The platforms fail to provide their users with tools to tell the difference between high-quality journalism and purveyors of misinformation. It's time the trustworthy news publishers of all stripes are allowed to join forces to push back against these irresponsible platforms and re-establish sustainable revenue models to support newsrooms across the country.

A handwritten signature in black ink, appearing to read "G. Crovitz".

Gordon Crovitz  
Co-CEO, NewsGuard  
[gordon.crovitz@newsguardtech.com](mailto:gordon.crovitz@newsguardtech.com)

A handwritten signature in black ink, appearing to read "S. Brill".

Steven Brill  
Co-CEO, NewsGuard  
[steven.brill@newsguardtech.com](mailto:steven.brill@newsguardtech.com)









**National Press Photographers Association**

120 Hooper Street • Athens, GA 30602  
 Phone: 716.983.7800 • Fax: 716.608.1509  
 Email: [lawyer@nppa.org](mailto:lawyer@nppa.org)

**VIA EMAIL**

February 1, 2022

The Honorable Amy Klobuchar  
 Chairwoman  
 Subcommittee on Competition Policy,  
 Antitrust, and Consumer Rights  
 U.S. Senate  
 425 Dirksen Senate Office Building  
 Washington, DC 20510

The Honorable Mike Lee  
 Ranking Member  
 Subcommittee on Competition Policy,  
 Antitrust, and Consumer Rights  
 U.S. Senate  
 361A Russell Senate Office Building  
 Washington, D.C. 20510

**RE: S. 673, Journalism Competition and Preservation Act (JCPA)**

Dear Chairwoman Klobuchar and Ranking Member Lee:

On behalf of the National Press Photographers Association (NPPA), we write to commend you and the members of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights for scheduling a hearing on *Journalism, Competition, and the Effects of Market Power on a Free Press*. We look forward to listening to a full and frank discussion of S. 673, “The Journalism Competition and Preservation Act” (JCPA) by the Subcommittee. NPPA wishes to express its *qualified* support for this bi-partisan bill creating “a four-year safe harbor from antitrust laws for print, broadcast, or digital news companies to collectively negotiate with online content distributors (e.g., social media companies) regarding the terms on which the news companies’ content may be distributed by online content distributors.”

NPPA is a 501(c)(6) not-for-profit organization dedicated to the advancement of visual journalism in its creation, editing, and distribution. NPPA’s members include video and still photographers, editors, students, and representatives of businesses that serve the visual journalism community. Since its founding in 1946, the NPPA has been the *Voice of Visual Journalists*, vigorously promoting the constitutional and intellectual property rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

As both staff photographers and independent visual journalists, members of the NPPA create original intellectual property for publication and broadcast in all media. Our images and videos help Americans – and others – understand the important events taking place throughout the world. This fact could not be more evident than in the coverage of the pandemic, racial inequality protests and the January 6th insurrection by visual journalists who risked their health and safety to capture compelling images which could not be made by working from home. Their work was



rampantly misappropriated by others, in violation of their copyrights, while ISP's turned a blind eye and continued monetizing this ever-growing body of visual content which undeniably is the engine that drives pageviews and creates reader/viewership.

Because our members also rely on copyright law to protect their newsgathering and journalistic works, we greatly appreciate the legislative intent to allow print, broadcast, or digital news companies to collectively bargain with those same ISP's regarding the terms under which media company's content may be distributed; but we must respectfully request that Congress also consider the financial well-being of the thousands of visual journalists who create much of the "content" at issue here and whose works are infringed, recirculated and repurposed into online news content without permission, credit, or compensation.

While we readily acknowledge that media companies expend a great deal of time, money and effort into gathering and disseminating news, images and information to provide for an informed public and upholding the First Amendment principles of a free press, a great deal of the news content shared in that manner is the result of the hard work, dedication and sacrifice made by individual independent journalists, who may also own the copyright to the work at issue. The financial investment and personal risk undertaken by these journalists cannot be understated. In 2020 America saw an all-time high in the number of journalists arrested or assaulted and as the U.S. Press Freedom Tracker noted, "2021 still outpaced the years before it for press freedom violations" with 142 assaults, 59 arrests or detentions and reports of damaged equipment outpacing the same as those from 2017 to 2019 combined.<sup>1</sup>

To be clear, these publishers are the employers and clients of our members and the work that our members do depends on the ability of these companies to be compensated properly. However, the publishers seeking relief from the unequal bargaining power of social media companies, themselves operate as monopsonies. Independent creators also desire to address publishers' "take-it-or-leave-it" contracts of adhesion, that demand far too many rights without commensurate compensation. To help those individuals and small businesses, we urge the Senate to support the rights of independent creators to have similar collective bargaining powers. Failure by Congress to provide such crucial support for visual journalists and other independent creators will continue to undermine the very protections for press publishers sought through the JCPA and create further disparity in the news ecosystem.

Amending and enacting the JCPA in these ways would represent a crucial step toward addressing these concerns and in bolstering press publishers' abilities to continue to produce and disseminate news content for the American public. In conjunction with a strong copyright law, the JCPA would give greater leverage to news organizations to determine whether, and on what terms, to allow online content distributors access to their content. The four-year safe harbor from antitrust laws for certain news content creators to collectively withhold content from, or negotiate with, certain online content distributors is long overdue. However, NPPA suggests that such collective negotiations not only be limited to large publishing and media companies, but also apply to similarly situated smaller news content creators and that the JCPA recognizes and broadens the definition of "news content creator" to include independent journalists and organizations

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<sup>1</sup> See U.S. PRESS FREEDOM TRACKER, *Another record year for press freedom violations in the US* (January 12, 2022), [Another record year for press freedom violations in the US - U.S. Press Freedom Tracker](#)



representing them.

Alternatively, we suggest the bill include provisions for ensuring that any benefits (economic and non-economic) to certain news content creators resulting from such collective negotiations be passed along to staffers and independent news contributors (commonly known as freelancers) rather than just increasing the profit margins of news organizations owners and investors.

NPPA again commends the Subcommittee for holding this important hearing and for the opportunity to be heard on behalf of visual journalists, whose small businesses can only survive if they are fairly compensated for their work.

Thank you for your time and consideration. Should you have any further questions or issues you would like to discuss, we are always available.

Very truly yours,

*Mickey H. Osterreicher*

Mickey H. Osterreicher, General Counsel

*Alicia Wagner Calzada*

Alicia Wagner Calzada, Deputy General Counsel





**RADIO TELEVISION DIGITAL NEWS ASSOCIATION  
RADIO TELEVISION DIGITAL NEWS FOUNDATION**

The Honorable Amy Klobuchar  
Chairwoman  
Senate Subcommittee on Competition Policy,  
Antitrust and Consumer Rights  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Senate Subcommittee on Competition Policy,  
Antitrust and Consumer Rights  
224 Dirksen Senate Office Building  
Washington, DC 20510

**DELIVERED BY ELECTRONIC MAIL VIA MESSRS. LANOUE AND MEADOR**

January 31, 2022

Dear Chairwoman Klobuchar and Ranking Member Lee:

I write today on behalf of the Radio Television Digital News Association (RTDNA), the world's largest professional association devoted exclusively to broadcast and digital journalism, to voice its **strong support for the Journalism Competition and Preservation Act (JCPA)**.

As I know you are aware, Americans' online access to trustworthy news coverage of matters of public concern is currently facing a near-existential crisis, precisely because Big Tech corporations are reaping billions of dollars of advertising revenue directly from the work of local journalists and the companies that employ them. Journalists and the companies for which they work have no ability to stop these corporations from unfairly profiting off of their work, which is threatening their ability to employ people who report stories that are critical to a vibrant and healthy constitutional republic.

These Big Tech giants not only profit off of the work of journalists, but they also have total control over how responsible journalism is prioritized, displayed and monetized. They pocket the vast majority of revenue generated when news consumers access journalism through their platforms. The JCPA would finally give journalists and their employers the ability to negotiate fair compensation from Big Tech for its use of their work.

Moreover, the JCPA is a bipartisan bill that would greatly aid news publishers' ability to counter disinformation and misinformation in a content-neutral manner, ensuring that news outlets perceived as progressive, moderate or conservative all have the opportunity to take advantage of a narrow and limited antitrust safe harbor collectively to negotiate with Big Tech if they so choose.

The ultimate beneficiary of the JCPA would not be news publishers, although they would be able to hire more journalists to cover important issues in their communities; rather, it would be members of the public, too many of whom are currently denied the ability to benefit from news coverage because of Big Tech's stranglehold on the economic pipeline that fuels the gathering and dissemination of vital information.

Please let me know how RTDNA can best help in further advocating for this legislation. And I respectfully request that this letter be entered into the record at your upcoming hearing on this matter.

Sincerely,

CC: Marc Lanoue, Subcommittee Chief Antitrust and Competition Counsel  
Mark Meador, Subcommittee Deputy Chief Counsel, Antitrust and Competition Policy

**Dan Shelley ♦ Executive Director ♦ Chief Operating Officer**  
**National Press Building ♦ 529 14<sup>th</sup> Street NW Suite 1240 ♦ Washington, DC 20045 ♦ dans@rtdna.org ♦ 212.246.3872**  
**rtdna.org**





January 31, 2022

The Honorable Amy Klobuchar  
 Chairwoman, Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 United States Senate  
 425 Dirksen Senate Building  
 Washington, DC 20510

Dear Senator Klobuchar,

My name is Ron Hasse and I am the president and publisher of Southern California News Group, a company including 11 local newspapers in Southern California covering Los Angeles, Orange, Riverside and San Bernardino counties. Our company also publishes three Spanish newspapers and numerous community weeklies. **I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA).** This bipartisan bill is critically important to protecting the future of high-quality, local journalism in California and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

Existing laws make it difficult for news publishers – especially small, local and regional publishers – to obtain fair compensation from the platforms for the use of their content. As a result, the newspapers that are vital to bringing our communities together are strained financially if not struggling to survive. The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve.

The moment to act in the U.S. is now. It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to stand with Californian journalists in support of the Journalism Competition and Preservation Act.

Sincerely,

Ron Hasse  
 President and Publisher  
 Southern California News Group

1771 S. Lewis Street  
 Anaheim, CA 92805  
 socalnewsgroup.com • 877-289-5264

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Thursday, May 13, 2021

The Honorable John Thune  
United States Senate  
Washington, DC 20510  
*via email*

Dear Senator Thune,

On behalf of the 118 member newspapers of South Dakota Newspaper Association, I am reaching out to request your support for S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in South Dakota and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

Existing laws make it difficult for news publishers – especially small, local and regional publishers – to obtain fair compensation from the platforms for the use of their content. As a result, the newspapers that are vital to bringing our communities together are strained financially if not struggling to survive. The JCPA would help address these problems by allowing publishers such as us to come together to negotiate with the platforms for the compensation they deserve.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

The moment to act in the U.S. is now. It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to stand with journalists in our state in support of the Journalism Competition and Preservation Act.

Sincerely,

David Bordewyk  
Executive Director

---

1125 32<sup>nd</sup> Avenue, Brookings, South Dakota 57006  
PH: 800.658.3697 FAX: 605.692.6388  
[www.sdna.com](http://www.sdna.com)





Michael J. Klingensmith  
Publisher and CEO

p 612.673.7576  
michael.klingensmith@startribune.com

February 1, 2022

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

Dear Chairwoman Klobuchar:

I write on behalf of the Star Tribune, the largest daily news organization in Minnesota to express our unequivocal support for the JCPA. This legislation is important and ***urgently needed*** to aid in the survival of local journalism and local news.

The past two years have been stressful for the nation and for the people in Minnesota. They have needed to know and understand the truth about many things, from the facts about Covid-19, how to sign up for vaccinations, where to get tests, what was happening in terms of case numbers, school closures, and work from home to the horrific events which surrounded the murder of George Floyd and Daunte Wright and the criminal trials of the perpetrators. During that time, our news organization worked round the clock to provide our readers and community up to date and valuable information.

Meanwhile, Facebook and Google exploited the content of our newspaper and website, depriving us of the revenue critical to the performance of this important newsgathering. Sadly, millions of Americans get their news from Facebook and Google today. And news organizations are paid pennies from those large multinational organizations, who enjoy an incremental benefit from the news content.

Local journalism is in crisis. In Minnesota alone, with the rise of big tech over the past decades, 82 newspapers have closed and today eight counties have only one local news outlet. This trend is appalling and underlines the need for this legislation now.

Other countries have recognized that this system requires a fair exchange for the significant value news organizations and local journalism contribute to those two gigantic companies. Local journalism in America needs congressional intervention and it needs it now.



The JCPA is specifically and reasonably tailored to ensure local news can:

1. Negotiate together for fair compensation. Today we are mostly numerous small and independent local organizations. We do not have the resources to negotiate with the two behemoths of the tech world. And we are prevented from doing so as a collective by the antitrust laws. We need a safe harbor, which the act provides, so that as a group, we can negotiate for fair compensation for the use of our content.
2. Have an enforcement mechanism which will ensure fair compensations after a period of negotiation.
3. Have a return of revenue that ensures that the fair value of local news flows back to those who create it. This will ensure the health of journalism for generations to come.

Thank you for considering this letter as you consider the JCPA before you.

Local journalism is critical to an educated and civil society.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Klingensmith". The signature is written in a cursive, slightly slanted style.

Michael J. Klingensmith



January 28, 2022

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable David Cicilline  
Chairman, Subcommittee on Antitrust,  
Commercial, and Administrative Law United  
States House of Representatives  
2233 Rayburn HOB  
Washington, DC 20515

The Honorable Ken Buck  
Ranking Member, Subcommittee on  
Antitrust, Commercial, and Administrative  
Law United States House of Representatives  
2455 Rayburn House Office Building  
Washington, DC 20515

Dear Chairwoman Klobuchar, Ranking Member Lee, Chairman Cicilline, and Ranking Member Buck:

We, the undersigned, strongly support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality journalism, including news and opinion, across the country. We need your support now to sustain coverage of issues of vital importance to your communities. Enhancements are being made to the bill to ensure all publishers are paid equitable terms through joint negotiations.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers such as our members to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism will ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.



January 28, 2022

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support news publishers across the country and sponsor the Journalism Competition and Preservation Act.

Sincerely,

- News Media Alliance
- National Newspaper Association
- America's Newspapers
- Alabama Press Association
- Arizona Newspapers Association
- Arkansas Press Association
- California News Publishers Association
- Colorado Press Association
- Connecticut Daily Newspaper Association
- MDDC Press Association
- Florida Press Association
- Georgia Press Association
- Illinois Press Association
- Hoosier State Press Association
- Iowa Newspaper Association
- Kansas Press Association
- Kentucky Press Association
- Louisiana Press Association
- Massachusetts Newspaper Publishers Association
- Michigan Press Association
- Minnesota Newspaper Association
- Mississippi Press Association
- Missouri Press Association
- Montana Newspaper Association
- Nebraska Press Association
- Nevada Press Association
- New Jersey Press Association
- New Mexico Press Association
- New York Press Association
- New York News Publishers Association
- North Carolina Press Association
- North Dakota Newspaper Association
- Ohio News Media Association
- Oklahoma Press Association
- Oregon Newspaper Publishers Association
- Pennsylvania News Media Association
- New England Newspaper & Press Association
- South Carolina Press Association
- South Dakota Newspaper Association
- Tennessee Press Association
- Texas Press Association
- Utah Press Association
- Vermont Press Association
- Virginia Press Association
- Allied Daily Newspapers of Washington
- Washington Newspaper Publishers Association
- West Virginia Press Association
- Wisconsin Newspaper Association
- Wyoming Press Association



The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition  
Policy, Antitrust, and Consumer Rights United  
States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on  
Competition Policy, Antitrust, and Consumer  
Rights United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee:

My name is LuAnn Schindler and I am the Publisher of the Summerland Advocate-Messenger in Clearwater, Nebraska. I am reaching out to request your support for H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Nebraska and across the country.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

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**The moment to act in the U.S. is now.** It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support news publishers across the country and sponsor the Journalism Competition and Preservation Act.

Sincerely,

LuAnn Schindler  
Publisher  
Summerland Advocate-Messenger  
PO Box 277  
Clearwater, NE 68726  
402-485-2101



January 28, 2022

Senator Dick Durbin  
Senator Charles Grassley  
Senate Judiciary Committee  
Washington D.C.

Dear Senators Durbin, Grassley and fellow members of the Judiciary Committee:

I write in full-throated support for the Journalism Competition and Preservation Act, scheduled for a hearing before your committee next week. As someone who has made a career in local journalism, I cannot overstate the strain on news organizations caused by the monopoly position of the Internet behemoths. The peril is not just to news providers, but to communities and to democracy itself.

Others have documented the dreary numbers, so I need not repeat the details. The general point is this: Google and Facebook collect our work under their banners and then siphon off the advertising that once helped pay for that journalism. They have taken a huge share of our revenues while contributing only a pittance toward the great expense of covering the news. No wonder their profits are so fat.

The Tampa Bay Times remains the largest news organization in Florida, and we have made enormous strides into the digital age. We have 30,000 subscribers who read us only on their phones and computers. Even so, when it comes to "negotiating" for the rights to our work, we are a very small David going up against enormous Goliaths. The JCPA would give local publishers a fighting chance, by letting us stand together on a more level footing with Google and Facebook.

I came to this newspaper as a kid reporter 47 years ago, and I hope that the people of Florida and Tampa Bay can count on the Times for thorough, original and independent reporting far into the future. The JCPA would improve those chances significantly. I implore you to give the bill your full consideration and advance it toward passage into law.

With respect and appreciation,



Paul Tash



The Honorable Marsha Blackburn  
United States Senate  
357 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Blackburn,

As Executive Director of the Tennessee Press Association, I represent our 134 member news publishers in the state of Tennessee, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Tennessee and across the country. We need your support now to sustain coverage of issues of vital importance to your Tennessee communities, both large and small.

As you know, a free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

The JCPA would help address these problems by allowing publishers across the country to come together to negotiate with the platforms for the compensation they deserve, and an enforcement mechanism would ensure equitable compensation to ALL news publishers big and small.

Recent experiences in Australia and Europe demonstrate that other countries recognize the disparity in bargaining power between news publishers and Facebook and Google and are moving towards a new compensation model for publishers, one that ensures that equitable terms are offered to all publishers and that platforms participate in good faith.

The moment to act in the U.S. is now. It is more important than ever to protect quality journalism and ensure that the people who create journalistic content are compensated fairly for their often-painstaking work.

Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Tennessee's news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Carol Daniels, Executive Director  
Tennessee Press Association



Bristol - Bristol Herald Courier (VA)	Dickson - The Dickson Herald
Chattanooga - Chattanooga Times Free Press	Dickson - Dickson Post
Clarksville - The Leaf Chronicle	Dover - The Stewart County Standard
Columbia - The Daily Herald	Dover - The Stewart Houston Times
Greenville - The Greenville Sun	Dresden - Dresden Enterprise
Jackson - The Jackson Sun	Dunlap - The Dunlap Tribune
Johnson City - Johnson City Press	Dyer - The Tri City Reporter
Kingsport - Kingsport Times News	Dyersburg - State Gazette
Knoxville - News Sentinel	Elizabethton - Elizabethton Star
Maryville - The Daily Times	Erwin - The Erwin Record
Memphis - The Commercial Appeal	Fairview - The Fairview Observer
Memphis - The Daily News	Fairview - Main Street Fairview
Morristown - Citizen Tribune	Farragut - Farragut Press
Murfreesboro - The Daily News Journal	Fayetteville - The Elk Valley Times
Nashville - The Tennessean	Fulton - The Current
Oak Ridge - The Oak Ridger	Gainesboro - Jackson County Sentinel
Paris - The Paris Post Intelligencer	Gallatin - The Gallatin News
Sevierville - The Mountain Press	Germantown - Germantown News
Alamo - Crocket County Times	Hartsville - The Hartsville Vidette
Ardmore - Your Community Shopper	Henderson - Chester County Independent
Ashland City - Ashland City Times	Hendersonville - Hendersonville Standard
Athens - The Daily Post Athenian	Hohenwald - Lewis County Herald
Bartlett - The Bartlett Express	Humboldt - The Humboldt Chronicle
Bean Station - Grainger Today	Huntingdon - Carroll County News Leader
Benton-Polk County Times	Jamestown - Fentress Courier
Bolivar - Bulletin Times	Jefferson City - The Standard Banner
Brownsville - Brownsville Press	Jonesborough - Herald & Tribune
Byrdstown - Pickett County Press	Kimball-South Pittsburg Marion County News
Camden - The Camden Chronicle	Kingston - Roane County News
Carthage - Carthage Courier	Knoxville - The Knoxville Ledger
Celina - Citizen Statesman	Lafayette - Macon County Chronicle
Celina - Dale Hollow Horizon	Lafayette - Macon County Times
Centerville - Hickman County Times	LaFollette - The LaFollette Press
Chattanooga - Hamilton County Herald	Lawrenceburg - The Democrat Union
Clarksville-Ft Campbell Courier	Lebanon - The Lebanon Democrat
Clarksville-Main Street Clarksville	Lebanon - The Wilson Post
Cleveland Daily Banner	Lenoir City - News Herald
Clinton - The Courier News	Lewisburg - Marshall County Tribune
Collierville - The Collierville Herald	Lexington - The Lexington Press
Cookeville - Herald Citizen	Linden - Buffalo River Review
Covington - The Leader	Livingston - Livingston Enterprise
Crossville - Crossville Chronicle	Livingston - Overton County News
Dayton - The Herald News	Lynchburg - The Moore County News



Manchester - Manchester Times	Waverly - The News Democrat
Martin - Weakley County Press	Waynesboro - The Wayne County News
Maynardville - The Union News Leader	Winchester - The Herald Chronicle
McKenzie - The McKenzie Banner	Woodbury - Cannon Courier
McMinnville - Southern Standard	
Memphis - The New Tri State Defender	
Memphis - West Tennessee News	
Milan - The Mirror Exchange	
Millington - The Millington Star	
Mt. Juliet - The Chronicle of Mt. Juliet	
Mt. Juliet - Mt. Juliet News	
Mountain City - The Tomahawk	
Murfreesboro - Murfreesboro Post	
Nashville-Main Street Nashville	
Nashville - The Nashville Ledger	
Nashville - The Tennessee Tribune	
Newport - The Newport Plain Talk	
Oneida - Scott County News	
Parsons - The News Leader	
Pikeville - The Bledsonian Banner	
Pleasant View - Cheatham County Exchange	
Portland - The Portland Leader	
Portland - Portland Sun	
Pulaski - Pulaski Citizen	
Ripley - The Lauderdale County Enterprise	
Ripley - The Lauderdale Voice	
Rogersville - The Rogersville Review	
Savannah - The Courier	
Selmer - Independent Appeal	
Selmer-McNairy County News	
Shelbyville - Shelbyville Times Gazette	
Smithville - Smithville Review	
Somerville - The Fayette Falcon	
Sparta - The Sparta Expositor	
Springfield - Robertson County Connection	
Springfield - Robertson County Times	
Sweetwater - The Advocate & Democrat	
Tazewell - Claiborne Progress	
Tiptonville - Lake County Banner	
Tracy City - Grundy County Herald	
Trenton - The Gazette	
Tullahoma - The Tullahoma News	
Union City - Union City Daily Messenger	
Wartburg - Morgan County News	





The Honorable Sen. John Cornyn  
United States Senate  
517 Hart SOB  
Washington, DC 20510

Dear Sen. Cornyn,

I represent news publishers in the state of Texas, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Texas and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

A free and diverse press is the backbone of a healthy and vibrant democracy. Yet the control of access to trustworthy news online has become concentrated in the hands of two dominant tech platforms, Facebook and Google. Despite news being the reason for which a significant portion of users turn to Facebook and Google, these companies leverage their dominance over the digital marketplace to set the rules for news publishers and determine how journalism is displayed, prioritized, and monetized.

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Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Texas news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Micheal Hodges  
Executive Director  
Texas Press Association

Donnis Baggett  
Executive Vice President  
Texas Press Association



## List of our member newspaper publications:

Abernathy Advocate	Buffalo Express	Dallas, Texas Jewish Post
Abilene Reporter-News	Buna, The Buna Beacon	Dallas, The Dallas Examiner
Albany News	Burkburnett Informer Star	Dallas, The Dallas Morning News
Aledo, The Community News	Burnet Bulletin	De Leon Free Press
Alice Echo-News Journal	Burnet, Citizens Gazette	Decatur, Wise County Messenger
Alpine Avalanche	Caldwell, Burleson County Tribune	Denton Record-Chronicle
Alvin Sun	Cameron, The Cameron Herald	Denver City Press
Amarillo, Globe-News	Canadian, The Canadian Record	Deport Times-Blossom Times
Anahuac, The Progress	Canton Herald	Detroit Weekly
Andrews County News	Canyon, The Canyon News	Devine, The Devine News
Anson, Western Observer	Carrizo Springs Javelin	Dimmitt, The Castro County News
Aransas Pass Progress	Carthage, The Panola Watchman	Dripping Springs Century News
Archer City, Archer County News	Cedar Park, Hill Country News Weekender	Dripping Springs, News-Dispatch
Athens Daily Review	Celina Record	Dublin, The Dublin Citizen
Atlanta, Cass Co. Citizens Journal-Sun	Center, The Light & Champion	Dumas, Moore County News-Press
Austin American-Statesman	Centerville News	East Bernard Express
Austin Business Journal	Childress, The Red River Sun	Eastland County Today
Austin, West Austin News	Clarendon Enterprise	Eden Echo
Austin, Westlake Picayune	Clarksville Times	Edna, Jackson County Herald-Tribune
Azle News	Claude, The Claude News	El Campo Leader-News
Baird Banner	Cleburne Times-Review	El Paso Times
Ballinger, Runnels County Register	Clifton, The Clifton Record	Eldorado Success
Bandera Bulletin	Clute, The Facts	Electra Star-News
Bartlett, Tribune Progress	Clyde Journal	Elgin Courier
Bastrop Advertiser	Coleman, Chronicle & Democrat-Voice	Emory, Rains County Leader
Bay City, The Bay City Tribune	Colorado City Record	Ennis, The Ennis News
Baytown Sun	Columbus, Colorado County Citizen	Fairfield, Freestone County Times
Beaumont, The Beaumont Enterprise	Columbus, The Banner Press Newspaper	Fairfield, The Fairfield Recorder
Beeville Bee-Picayune	Comanche, The Comanche Chief	Falfurrias Facts
Bellville, The Bellville Times	Comfort, The Comfort News	Farmersville, The Farmersville Times
Belton, The Belton Journal	Cooper Review	Farwell, State Line Tribune
Big Lake Wildcat	Copperas Cove Leader Press	Ferris, The Ellis County Press
Big Sandy-Hawkins Journal	Corpus Christi Caller-Times	Flatonia, The Flatonia Argus
Big Spring Herald	Corpus Christi, Coastal Bend Legal & Business News	Floresville, Wilson County News
Blanco County News	Corsicana Daily Sun	Floydada, Floyd County
Boerne Star	Crane News	Hesperian-Beacon
Bogata News-Talco Times	Crockett, Houston County Courier	Forney Messenger
Booker News	Cross Plains Review	Fort Davis, Jeff Davis Co. Mt. Dispatch
Borger News-Herald	Crowell, Foard County News	Fort Hancock, Hudspeth County Herald
Bowie, The Bowie News	Crystal City, Zavala County Sentinel	Fort Stockton Pioneer
Brackettville, Kinney County Post	Cuero Record	Fort Worth Business Press
Brady Standard-Herald	Daingerfield, The Steel Country Bee	Fort Worth Star-Telegram
Breckenridge American	Dalhart, The Dalhart Texan	Fort Worth, Commercial Recorder
Brenham Banner-Press	Dallas, Daily Commercial Record	
Brownfield News		
Brownsville, The Brownsville Herald		
Brownwood Bulletin		
Bryan, The Eagle		



Fort Worth, Tarrant County Commercial Record	Houston, Daily Court Review	Lubbock Avalanche-Journal
Franklin Advocate	Houston, Jewish Herald-Voice	Lufkin Daily News
Franklin News Weekly	Huntsville, The Huntsville Item	Luling Newsboy and Signal
Fredericksburg, Standard-Radio Post	Idalou Beacon	Mabank, The Monitor
Friendswood Reporter News	Ingleside Index	Madisonville Meteor
Friona Star	Ingram, West Kerr Current	Marble Falls, The Highlander
Fritch, The Eagle Press	Iowa Park Leader	Marfa, The Big Bend Sentinel
Gail, Borden Star	Irving, The Irving Rambler	Marlin, The Marlin Democrat
Gainesville Daily Register	Jacksboro Herald-Gazette	Marshall News Messenger
Galveston, The Daily News	Jacksonville Progress	Mason County News
Gatesville Messenger & Star Forum	Jasper, The Jasper Newsboy	McAllen, The Monitor
Georgetown, Sunday Sun	Jefferson Jimplecute	McGregor Mirror & Crawford Sun
Georgetown, Williamson County Sun	Johnson City Record-Courier	McKinney, Collin County Commercial Record
Giddings Times & News	Junction Eagle	Menard News and Messenger
Gilmer Mirror	Karnes City, The Karnes Countywide	Mercedes, The Mercedes Enterprise
Gladewater Mirror	Katy Times	Meridian Tribune
Glen Rose Reporter	Kaufman, The Kaufman Herald	Mexia, The Mexia News
Goldthwaite Eagle	Kermit, The Winkler County News	Miami Chief
Goliad Advance-Guard	Kerrville Daily Times	Midland Reporter-Telegram
Gonzales Inquirer	Kerrville, Hill Country	Miles Messenger
Graham, The Graham Leader	Community Journal	Mineola, Wood County Monitor
Granbury, Hood County News	Kilgore News Herald	Mission, Progress Times
Grand Saline Sun	Killeen Daily Herald	Monahans, The Monahans News
Grapeland, The Messenger	Kingsville Record	Moulton Eagle
Greenville, Herald-Banner	Kirbyville Banner	Mount Pleasant Tribune
Groesbeck Journal	Kyle, Hays Free Press	Muenster Enterprise
Groom, The Groom News	La Feria News	Muleshoe Journal
Groveton, Trinity County News- Standard	La Grange, The Fayette County Record	Munday, Knox County News- Courier
Hallettsville Tribune-Herald	La Porte, Bay Area Observer	Murphy Monitor
Hamilton Herald-News	La Vernia News	Nacogdoches, The Daily Sentinel
Hamlin, The Hamlin Herald	Lakeway, Lake Travis View	Navasota, The Navasota Examiner
Harlingen, Valley Morning Star	Lamesa Press Reporter	Needville, Hometown Journal
Hearne, Robertson County News	Lampasas Dispatch Record	New Boston, Bowie County
Hebbronville, The Enterprise	Laredo Morning Times	Citizens Tribune
Hemphill, Sabine County Reporter	Leonard, The Leonard Graphic	New Braunfels, Herald-Zeitung
Hempstead, Waller County Express	Levelland & Hockley County News-Press	New Ulm Enterprise
Henderson, The Henderson News	Lexington Leader	Newton County News
Henrietta, Clay County Leader	Liberty Hill, The Liberty Hill Independent	Nocona News
Hereford Brand	Liberty, The Vindicator	Normangee, The Normangee Star
Hico News Review	Lindale News & Times	O'Donnell Index-Press
Highlands Star / Crosby Courier	Lindsay Letter	Odessa American
Hillsboro Reporter	Littlefield, The Lamb County Leader-News	Olney Enterprise
Hondo Anvil Herald	Livingston, Polk County Enterprise	Orange, The Orange Leader
Houston Chronicle	Llano, The Llano News	Ozona Stockman
	Lockhart Post-Register	Paducah Post
	Longview News-Journal	Palacios Beacon



Palestine Herald Press	San Augustine Tribune	Victoria Advocate
Pampa, The Pampa News	San Benito News	Vidor Vidorian
Panhandle Herald/White Deer News	San Marcos Daily Record	Waco Tribune-Herald
Paris, The Paris News	San Saba News & Star	Waxahachie Daily Light
Pearland Reporter News	Schulenburg Sticker	Waxahachie Sun
Pearsall, Frio-Nueces Current	Sealy, The Sealy News	Weatherford Democrat
Pecos Enterprise	Seguin Gazette	Weimar Mercury
Perryton Herald	Seminole Sentinel	West, The West News
Pharr, Advance News Journal	Seymour, Baylor County Banner	Wharton Journal-Spectator
Pilot Point Post-Signal	Shamrock, County Star-News	Wheeler, The Wheeler Times
Pittsburg, The Pittsburg Gazette	Shepherd, San Jacinto News-Times	White Oak Independent
Plainview Herald	Sherman, Herald Democrat	Whitesboro News-Record
Pleasanton Express	Shiner, The Shiner Gazette	Whitewright, The Whitewright Sun
Port Aransas South Jetty	Silsbee, The Bee	Wichita Falls Times-Record-News
Port Arthur, The Port Arthur News	Silverton, Caprock Courier	Wills Point Chronicle
Port Isabel South Padre Press	Slaton, The Slatonite	Wills Point, Van Zandt News
Port Lavaca Wave	Smithville Times	Wimberley View
Portland, The News of San	Snyder, The Snyder News	Winnie, The Hometown Press
Patricio	Sonora, Devil's River News	Winnie, The Seabreeze Beacon
Post, The Post Dispatch	Spearman, Hansford County Reporter-Statesman	Winnsboro News
Presidio, The International	Springtown Epigraph	Woodville, Tyler County Booster
Princeton, The Princeton Herald	Spur, Texas Spur	Wylie, The Wylie News
Quannah Tribune-Chief	Stamford, The New Stamford American	Yoakum Herald-Times
Quitaque, Valley Tribune	Stamford, The Stamford Star	Yorktown News-View
Ralls, Crosby County News	Stanton, Martin County Messenger	Zapata County News
Raymondville Chronicle & Willacy Co. News	Stephenville Empire Tribune	
Refugio County Press	Stratford, Sherman County Gazette	
Riesel Rustler	Sulphur Springs, News-Telegram	
Robert Lee, Observer/Enterprise	Sweetwater Reporter	
Robstown, Nueces County Record-Star	Tahoka, Lynn County News	
Rockdale Reporter	Taylor Press	
Rockport, The Rockport Pilot	Teague Chronicle	
Rocksprings, Texas Mohair Weekly	Temple Daily Telegram	
Rosebud News	Terrell, The Terrell Tribune	
Rosenberg, Fort Bend Herald	Texarkana Gazette	
Rotan, Double Mountain Chronicle	Texas City, The Post Newspaper	
Round Rock Leader	Thorndale Champion	
Roxton Progress	Three Rivers, The Progress	
Royse City Herald Banner	Throckmorton Tribune	
Rusk, Cherokeean Herald	Tulia, Swisher County News	
Sachse, The Sachse News	Tyler Morning Telegraph	
Saint Jo Tribune	Uvalde Leader-News	
Salado Village Voice	Valley Mills Progress	
San Angelo Standard-Times	Van Alstyne Leader	
San Antonio Business Journal	Van Horn, The Van Horn Advocate	
San Antonio, Express-News	Vega Enterprise	
San Antonio, Hart Beat	Vernon Daily Record	



## BIG TECH IS THREATENING LOCAL JOURNALISM.

### THE JOURNALISM COMPETITION & PRESERVATION ACT (JCPA) CAN SAVE IT.

H.R. 1735 || S. 673

#### Congress Must Preserve Quality Local Journalism in TEXAS

A free and diverse press is the backbone of a healthy and vibrant democracy. However, local newspapers across the country are being forced to give content and revenue to Facebook and Google with inadequate return. Consumers are harmed by Big Tech's content filtering, data collection motives, and ultimately reducing the output of quality journalism.

#### Big tech leverages its monopoly power to STRIP NEWS PUBLISHERS OF REVENUE

The JCPA is a bipartisan bill, sponsored by Senators Amy Klobuchar (D-MN) and John N. Kennedy (R-LA) and Reps. David Cicilline (D-RI) and Ken Buck (R-CO). The bill would:

Enable news publishers to **collectively negotiate** with Big Tech, driving billions of dollars of earned subscription and ad dollars back to the news publishers who produce journalism

Include an **enforcement mechanism** to ensure that negotiations result in payments, that such payments are evenly distributed to small and local papers, and that payments reflect investments in reporters and newsrooms

Allow **market forces**, not two companies or government, to determine how and for what price news publishers' content is offered

#### Help local news fight big tech BY SUPPORTING THE THE JCPA

## QUALITY JOURNALISM FUELS BIG TECH PROFITS, BUT BIG TECH WON'T PAY UP

- News publishers employ 32,540 Texas reporters and newsroom staff.
- Big Tech's ad tech tax takes
- 50-70% of every ad dollar from news publishers while hiring zero reporters.
- Local papers could hire more reporters if Google and Facebook paid for the quality journalism that fuels their platforms and profits.

## BIG TECH CONTROLS DATA AND INFORMATION PEOPLE RECEIVE

- Google and Facebook capture
- 60% of all digital ad dollars because of their ability to collect consumer data.

53% 

of Texas residents get their news from Facebook.

51% 

of Texas residents use Google as their primary source of news.

#### KEY ENDORSEMENTS:

- Texas Press Association
- Denton Record-Chronicle
- Texas Association of Broadcasters





The Honorable Sen. Ted Cruz  
 United States Senate  
 127A Russell SOB  
 Washington, DC 20510

Dear Sen. Cruz,

I represent news publishers in the state of Texas, and I am reaching out to request your sponsorship of H.R. 1735 / S.673, the Journalism Competition and Preservation Act (JCPA). This bipartisan bill is critically important to protecting the future of high-quality, local journalism in Texas and across the country. We need your support now to sustain coverage of issues of vital importance to your communities.

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Journalism is critical to a functioning democracy, and the price of inaction – the disappearance of local news – is too great. I urge you to support Texas news publishers and sponsor the Journalism Competition and Preservation Act.

Sincerely,

Micheal Hodges  
 Executive Director  
 Texas Press Association

Donnis Baggett  
 Executive Vice President  
 Texas Press Association



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Albany News	Burkburnett Informer Star	Dallas, The Dallas Morning News
Aledo, The Community News	Burnet Bulletin	De Leon Free Press
Alice Echo-News Journal	Burnet, Citizens Gazette	Decatur, Wise County Messenger
Alpine Avalanche	Caldwell, Burleson County Tribune	Denton Record-Chronicle
Alvin Sun	Cameron, The Cameron Herald	Denver City Press
Amarillo, Globe-News	Canadian, The Canadian Record	Deport Times-Blossom Times
Anahuac, The Progress	Canton Herald	Detroit Weekly
Andrews County News	Canyon, The Canyon News	Devine, The Devine News
Anson, Western Observer	Carrizo Springs Javelin	Dimmitt, The Castro County News
Aransas Pass Progress	Carthage, The Panola Watchman	Dripping Springs Century News
Archer City, Archer County News	Cedar Park, Hill Country News Weekender	Dripping Springs, News-Dispatch
Athens Daily Review	Celina Record	Dublin, The Dublin Citizen
Atlanta, Cass Co. Citizens Journal-Sun	Center, The Light & Champion	Dumas, Moore County News-Press
Austin American-Statesman	Centerville News	East Bernard Express
Austin Business Journal	Childress, The Red River Sun	Eastland County Today
Austin, West Austin News	Clarendon Enterprise	Eden Echo
Austin, Westlake Picayune	Clarksville Times	Edna, Jackson County Herald-Tribune
Azle News	Claude, The Claude News	El Campo Leader-News
Baird Banner	Cleburne Times-Review	El Paso Times
Ballinger, Rannels County Register	Clifton, The Clifton Record	Eldorado Success
Bandera Bulletin	Clute, The Facts	Electra Star-News
Bartlett, Tribune Progress	Clyde Journal	Elgin Courier
Bastrop Advertiser	Coleman, Chronicle & Democrat-Voice	Emory, Rains County Leader
Bay City, The Bay City Tribune	Colorado City Record	Ennis, The Ennis News
Baytown Sun	Columbus, Colorado County Citizen	Fairfield, Freestone County Times
Beaumont, The Beaumont Enterprise	Columbus, The Banner Press Newspaper	Fairfield, The Fairfield Recorder
Beeville Bee-Picayune	Comanche, The Comanche Chief	Falfurrias Facts
Belville, The Bellville Times	Comfort, The Comfort News	Farmersville, The Farmersville Times
Belton, The Belton Journal	Cooper Review	Farwell, State Line Tribune
Big Lake Wildcat	Copperas Cove Leader Press	Ferris, The Ellis County Press
Big Sandy-Hawkins Journal	Corpus Christi Caller-Times	Flatonia, The Flatonia Argus
Big Spring Herald	Corpus Christi, Coastal Bend Legal & Business News	Floresville, Wilson County News
Blanco County News	Corsicana Daily Sun	Floydada, Floyd County
Boerne Star	Crane News	Hesperian-Beacon
Bogata News-Talco Times	Crockett, Houston County Courier	Forney Messenger
Booker News	Cross Plains Review	Fort Davis, Jeff Davis Co. Mt. Dispatch
Borger News-Herald	Crowell, Foard County News	Fort Hancock, Hudspeth County Herald
Bowie, The Bowie News	Crystal City, Zavala County Sentinel	Fort Stockton Pioneer
Brackettville, Kinney County Post	Cuero Record	Fort Worth Business Press
Brady Standard-Herald	Daingerfield, The Steel Country Bee	Fort Worth Star-Telegram
Breckenridge American	Dalhart, The Dalhart Texan	Fort Worth, Commercial Recorder
Brenham Banner-Press	Dallas, Daily Commercial Record	
Brownfield News		
Brownsville, The Brownsville Herald		
Brownwood Bulletin		
Bryan, The Eagle		



Fort Worth, Tarrant County Commercial Record	Houston, Daily Court Review	Lubbock Avalanche-Journal
Franklin Advocate	Houston, Jewish Herald-Voice	Lufkin Daily News
Franklin News Weekly	Huntsville, The Huntsville Item	Luling Newsboy and Signal
Fredericksburg, Standard-Radio Post	Idalou Beacon	Mabank, The Monitor
Friendswood Reporter News	Ingleside Index	Madisonville Meteor
Friona Star	Ingram, West Kerr Current	Marble Falls, The Highlander
Fritch, The Eagle Press	Iowa Park Leader	Marfa, The Big Bend Sentinel
Gail, Borden Star	Irving, The Irving Rambler	Marlin, The Marlin Democrat
Gainesville Daily Register	Jacksboro Herald-Gazette	Marshall News Messenger
Galveston, The Daily News	Jacksonville Progress	Mason County News
Gatesville Messenger & Star Forum	Jasper, The Jasper Newsboy	McAllen, The Monitor
Georgetown, Sunday Sun	Jefferson Jimplecute	McGregor Mirror & Crawford Sun
Georgetown, Williamson County Sun	Johnson City Record-Courier	McKinney, Collin County Commercial Record
Giddings Times & News	Junction Eagle	Menard News and Messenger
Gilmer Mirror	Karnes City, The Karnes Countywide	Mercedes, The Mercedes Enterprise
Gladewater Mirror	Katy Times	Meridian Tribune
Glen Rose Reporter	Kaufman, The Kaufman Herald	Mexia, The Mexia News
Goldthwaite Eagle	Kermit, The Winkler County News	Miami Chief
Goliad Advance-Guard	Kerrville Daily Times	Midland Reporter-Telegram
Gonzales Inquirer	Kerrville, Hill Country Community Journal	Miles Messenger
Graham, The Graham Leader	Kilgore News Herald	Mineola, Wood County Monitor
Granbury, Hood County News	Killeen Daily Herald	Mission, Progress Times
Grand Saline Sun	Kingsville Record	Monahans, The Monahans News
Grapeland, The Messenger	Kirbyville Banner	Moulton Eagle
Greenville, Herald-Banner	Kyle, Hays Free Press	Mount Pleasant Tribune
Groesbeck Journal	La Feria News	Muenster Enterprise
Groom, The Groom News	La Grange, The Fayette County Record	Muleshoe Journal
Groveton, Trinity County News- Standard	La Porte, Bay Area Observer	Munday, Knox County News- Courier
Hallettsville Tribune-Herald	La Vernia News	Murphy Monitor
Hamilton Herald-News	Lakeway, Lake Travis View	Nacogdoches, The Daily Sentinel
Hamlin, The Hamlin Herald	Lamesa Press Reporter	Navasota, The Navasota Examiner
Harlingen, Valley Morning Star	Lampasas Dispatch Record	Needville, Hometown Journal
Hearne, Robertson County News	Laredo Morning Times	New Boston, Bowie County
Hebbronville, The Enterprise	Leonard, The Leonard Graphic	Citizens Tribune
Hemphill, Sabine County Reporter	Levelland & Hockley County News-Press	New Braunfels, Herald-Zeitung
Hempstead, Waller County Express	Lexington Leader	New Ulm Enterprise
Henderson, The Henderson News	Liberty Hill, The Liberty Hill Independent	Newton County News
Henrietta, Clay County Leader	Liberty, The Vindicator	Nocona News
Hereford Brand	Lindale News & Times	Normangee, The Normangee Star
Hico News Review	Lindsay Letter	O'Donnell Index-Press
Highlands Star / Crosby Courier	Littlefield, The Lamb County Leader-News	Odessa American
Hillsboro Reporter	Livingston, Polk County Enterprise	Olney Enterprise
Hondo Anvil Herald	Llano, The Llano News	Orange, The Orange Leader
Houston Chronicle	Lockhart Post-Register	Ozona Stockman
	Longview News-Journal	Paducah Post
		Palacios Beacon



Palestine Herald Press	San Augustine Tribune	Victoria Advocate
Pampa, The Pampa News	San Benito News	Vidor Vidorian
Panhandle Herald/White Deer News	San Marcos Daily Record	Waco Tribune-Herald
Paris, The Paris News	San Saba News & Star	Waxahachie Daily Light
Pearland Reporter News	Schulenburg Sticker	Waxahachie Sun
Pearsall, Frio-Nueces Current	Sealy, The Sealy News	Weatherford Democrat
Pecos Enterprise	Seguin Gazette	Weimar Mercury
Perryton Herald	Seminole Sentinel	West, The West News
Pharr, Advance News Journal	Seymour, Baylor County Banner	Wharton Journal-Spectator
Pilot Point Post-Signal	Shamrock, County Star-News	Wheeler, The Wheeler Times
Pittsburg, The Pittsburg Gazette	Shepherd, San Jacinto News-Times	White Oak Independent
Plainview Herald	Sherman, Herald Democrat	Whitesboro News-Record
Pleasanton Express	Shiner, The Shiner Gazette	Whitewright, The Whitewright Sun
Port Aransas South Jetty	Silsbee, The Bee	Wichita Falls Times-Record-News
Port Arthur, The Port Arthur News	Silverton, Caprock Courier	Wills Point Chronicle
Port Isabel South Padre Press	Slaton, The Slatonite	Wills Point, Van Zandt News
Port Lavaca Wave	Smithville Times	Wimberley View
Portland, The News of San	Snyder, The Snyder News	Winnie, The Hometown Press
Patricio	Sonora, Devil's River News	Winnie, The Seabreeze Beacon
Post, The Post Dispatch	Spearman, Hansford County Reporter-Statesman	Winnsboro News
Presidio, The International	Springtown Epigraph	Woodville, Tyler County Booster
Princeton, The Princeton Herald	Spur, Texas Spur	Wylie, The Wylie News
Quannah Tribune-Chief	Stamford, The New Stamford American	Yoakum Herald-Times
Quitaque, Valley Tribune	Stamford, The Stamford Star	Yorktown News-View
Ralls, Crosby County News	Stanton, Martin County Messenger	Zapata County News
Raymondville Chronicle & Willacy Co. News	Stephenville Empire Tribune	
Refugio County Press	Stratford, Sherman County Gazette	
Riesel Rustler	Sulphur Springs, News-Telegram	
Robert Lee, Observer/Enterprise	Sweetwater Reporter	
Robstown, Nueces County	Tahoka, Lynn County News	
Record-Star	Taylor Press	
Rockdale Reporter	Teague Chronicle	
Rockport, The Rockport Pilot	Temple Daily Telegraph	
Rocksprings, Texas Mohair Weekly	Terrell, The Terrell Tribune	
Rosebud News	Texarkana Gazette	
Rosenberg, Fort Bend Herald	Texas City, The Post Newspaper	
Rotan, Double Mountain Chronicle	Thorndale Champion	
Round Rock Leader	Three Rivers, The Progress	
Roxton Progress	Throckmorton Tribune	
Royse City Herald Banner	Tulia, Swisher County News	
Rusk, Cherokeean Herald	Tyler Morning Telegraph	
Sachse, The Sachse News	Uvalde Leader-News	
Saint Jo Tribune	Valley Mills Progress	
Salado Village Voice	Van Alstyne Leader	
San Angelo Standard-Times	Van Horn, The Van Horn Advocate	
San Antonio Business Journal	Vega Enterprise	
San Antonio, Express-News	Vernon Daily Record	
San Antonio, Hart Beat		



## BIG TECH IS THREATENING LOCAL JOURNALISM.

### THE JOURNALISM COMPETITION & PRESERVATION ACT (JCPA) CAN SAVE IT.

H.R. 1735 || S. 673

#### Congress Must Preserve Quality Local Journalism in TEXAS

A free and diverse press is the backbone of a healthy and vibrant democracy. However, local newspapers across the country are being forced to give content and revenue to Facebook and Google with inadequate return. Consumers are harmed by Big Tech's content filtering, data collection motives, and ultimately reducing the output of quality journalism.

#### Big tech leverages its monopoly power to STRIP NEWS PUBLISHERS OF REVENUE

The JCPA is a bipartisan bill, sponsored by Senators Amy Klobuchar (D-MN) and John N. Kennedy (R-LA) and Reps. David Cicilline (D-RI) and Ken Buck (R-CO). The bill would:

Enable news publishers to **collectively negotiate** with Big Tech, driving billions of dollars of earned subscription and ad dollars back to the news publishers who produce journalism

Include an **enforcement mechanism** to ensure that negotiations result in payments, that such payments are evenly distributed to small and local papers, and that payments reflect investments in reporters and newsrooms

Allow **market forces**, not two companies or government, to determine how and for what price news publishers' content is offered

#### Help local news fight big tech BY SUPPORTING THE JCPA

## QUALITY JOURNALISM FUELS BIG TECH PROFITS, BUT BIG TECH WON'T PAY UP

- News publishers employ  
→ **32,540** Texas reporters and newsroom staff.
- Big Tech's ad tech tax takes  
→ **50-70%** of every ad dollar from news publishers while hiring zero reporters.
- Local papers could hire more reporters if Google and Facebook paid for the quality journalism that fuels their platforms and profits.

## BIG TECH CONTROLS DATA AND INFORMATION PEOPLE RECEIVE

- Google and Facebook capture  
→ **60%** of all digital ad dollars because of their ability to collect consumer data.

**53%** 

of Texas residents get their news from Facebook.

**51%** 

of Texas residents use Google as their primary source of news.

#### KEY ENDORSEMENTS:

- Texas Press Association
- Denton Record-Chronicle
- Texas Association of Broadcasters





February 2, 2022

The Honorable Amy Klobuchar, Chairwoman  
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 U.S. Senate  
 425 Dirksen Senate Office Building  
 Washington, DC 20510

The Honorable Mike Lee, Ranking Member  
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
 U.S. Senate  
 361A Russell Senate Office Building  
 Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee:

Thank you for your interest and leadership on legislation to protect and promote journalism and the free press. MPA -- The Association of Magazine Media (MPA) writes in advance of the Feb. 3 hearing of the Subcommittee on Competition Policy, Antitrust and Consumer Rights, entitled *Journalism, Competition, and the Effects of Market Power on a Free Press*, to express our support for the Journalism Competition & Preservation Act (JCPA) (H.R. 1735 and S. 673).

We believe the JCPA's allowance of collective negotiations by publishers of online content with dominant online platforms can be an important step toward levelling a market playing field gone askew because of unfair and monopolistic practices by tech platforms. As the Committee considers and deliberates on the JCPA, we trust that magazine media publishers will be clearly included as covered entities that may utilize the collective negotiations mechanism.

MPA is the national trade association for the consumer magazine industry, representing more than 500 magazine media brands, including some of the nation's largest and best-known publications, that span a vast range of genres across print, online, mobile, and video media. Magazine media is a long-standing, trusted cornerstone of the publishing industry and an economic force in the United States.<sup>1</sup> Even amid a downturn in public trust in media,

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<sup>1</sup> While changes in recent years have led to a drop in employment, what has traditionally been considered the periodical publishing industry in America still directly employs close to 75,000 people in the U.S., according to the



Americans have expressed their faith in magazines – magazine media (defined as “traditional media”) continues to rank well above both owned and social media in public trust, according to the 2021 Edelman Trust Barometer.<sup>2</sup> This is largely because magazines have spent years, and in most cases decades, building relationships with consumers, fine-tuning and fact-checking content, and establishing editorial expertise. Our industry’s commitment to producing quality news and related content has not, however, mitigated the negative impact of platform dominance.

Though the magazine media industry has faced numerous challenges on the road to multi-media dissemination of content, the rise and ongoing dominance of news aggregators and platforms, born from and sustained via scraping, distributing, and monetizing publishers’ original content, has landed the biggest blow to the industry. Magazine publishers’ ability to monetize original content has weakened along with their power to negotiate with the platforms for fair terms related to access to, and distribution of, their content. The JCPA would provide a mechanism to remedy this imbalance by allowing press publishers to negotiate collectively, to be paid fairly for their content, and to set reasonable terms for access and use of its professionally curated and valued journalism.

Thank you very much again for your work on this critical issue. We look forward to providing helpful information to the subcommittee as you move forward with your deliberations.

Respectfully,



Michelle De Mooy

Senior Director of Policy

MPA The Association of Magazine Media (a list of our members can be found [here](#))

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Bureau of Labor Statistics, and supports almost 150,000 indirect and induced jobs. Wages for direct jobs in the industry total about \$7.5 billion. This is in addition to the industry’s use of freelance contractors.

<sup>2</sup> 2021 Edelman Trust Barometer. MPA 2021 Magazine Media Factbook, Page 19. Available here [http://fipp.com/wp-content/uploads/2021/09/2021-MPA-Factbook\\_PDF.pdf](http://fipp.com/wp-content/uploads/2021/09/2021-MPA-Factbook_PDF.pdf)