

The Honorable Amy Klobuchar
United States Senate
425 Dirksen
Washington, DC 20510

The Honorable John Kennedy
United States Senate
437 Russell
Washington, DC 20510

The 24 organizations listed below write today to express our disappointment that you have elected to reintroduce and sponsor the Journalism Competition & Preservation Act (JCPA), which would create an ill-advised antitrust exemption for publishers and broadcasters and compound some of the biggest issues in our information environment. Many of the organizations listed below [called out the issues with this bill](#) last September, and [again in December](#) when it was proposed for inclusion in the National Defense Authorization Act (NDAA). In fact, a wide range of civil society organizations; librarians and archivists; creators; technology companies; experts in antitrust, copyright, constitutional and digital rights law; media and news organizations; and groups from across the political spectrum have been advocating against this bill for over three years, and will continue to do so.

In January of this year, the [U.S. Government Accountability Office](#) (GAO), in a report to the Chair of the Federal Communications Commission, noted that the JCPA may be “based on insufficiently supported claims, and if not properly designed, could result in unintended consequences for smaller publishers and consumers.” They recounted the view of experts that “the primary goal of public policies should be to preserve the function of journalism rather than specific local news outlets,” and that “policies that aim to support [the goal of a well-informed society] need to be innovation-friendly, forward-looking, and inclusive.” The JCPA is none of these things.

Let us note again that we are well aware that local news (newspapers, in particular) is in [crisis](#). Many of the organizations whose names appear below have passionately advocated for public policy solutions to ensure citizens have the quality information they need to engage in civic life and the political process. But the JCPA is not and cannot be the answer.

Here are our ongoing concerns with the JCPA:

The JCPA will harm communities by increasing the amount of networked disinformation, hateful speech, and harassment on the internet. The bill forces platforms to carry and pay for the content of any digital journalism provider that becomes part of a joint negotiation entity, regardless of how extreme their content. The JCPA would also permit a digital journalism provider to bring legal action against a covered platform for limiting the reach of content the

platform owner finds offensive or contrary to its terms of service or community standards. We realize that for some, this is a feature, not a bug, but either way, it's a direct assault on a bedrock principle of content moderation on the internet. This form of government mandate for covered platforms to carry and pay for content is contrary to First Amendment and free expression principles. It is also an ironic twist, given the discussions currently in Congress about what some see as excessive government involvement in platform content moderation. Lastly, if success in the arbitration process is tied to a site's volume or traffic, it provides a perverse incentive for online publishers to amplify inflammatory content and clickbait.

The JCPA sets a legal and political precedent that some uses of content that were once free of charge - and should be - now require payment. Despite the addition of a copyright savings clause, the basic mechanism of the bill appears to create what is tantamount to an ancillary copyright obligation imposed exclusively on certain major platforms, an approach [recently rejected](#) by the Copyright Office. It unequivocally expands and distorts the rights of content owners beyond the traditional bounds of copyright law in ways that would prove detrimental to the public interest. Requiring payment for using facts also flies in the face of Supreme Court precedent, based on the First Amendment, that no one may own facts.

News industry lobbyists' press releases claiming that the JCPA is "[designed to benefit small and local publishers exclusively](#)" are baseless. The publisher employee cap of 1,500 would exclude exactly three of the nation's largest newspapers from eligibility. And the floor of \$100,000 in revenue means that a wide range of [local, independent](#), and [Black](#), Latino, and Asian outlets — considered the best at serving the distinct needs of their communities — won't even qualify. What's left? Largely, the ones in the middle: many are legacy newspapers that have been conglomerated and then decimated by financially backed owners. Among these, the employee cap will undoubtedly create incentives for even more layoffs or transitions to more part-time or freelance employees, which denies journalists any employee benefits. The "one publisher, one vote" provision for negotiating entities underplays the forms of soft power large conglomerates with brand-name news outlets can bring to the negotiations. In fact, the bill encourages — and may help fund — *more* consolidation among both newspapers and broadcasters.

Speaking of broadcasters: not only are they included, but also the bill favors big ones. The bill's 1,500-employee cap doesn't apply to broadcasters, so the nation's largest broadcasters such as News Corp, Sinclair, iHeart, and Comcast/NBCU are favored over other forms of journalism. Although the bill purports to exclude television networks as beneficiaries, it excludes from the definition of "television network" any network station "owned and operated" by a network. So while Comcast/NBCUniversal cannot participate as an eligible broadcaster by virtue of providing NBC News, its twelve wholly owned and operated affiliates can participate as "eligible broadcasters." The bill further privileges large group owners by permitting their individual licensees to each count as individual members of joint negotiating entities — each therefore receiving one vote despite their common ownership and control. And the bill applies to all radio licensees, so, again, the largest group owners will benefit disproportionately. And in another note of irony, the GAO report also noted that "the continued inclusion of broadcasters is problematic given that revenue [for these entities] is stable."

The claim that the JCPA will allow payment for the “fair value” of news is also without foundation. [Publishers](#) and [broadcasters](#) have each come out with their estimates of the value of news to platforms, each in the billions of dollars. [Facebook](#) and [Google](#), conversely, claim the value of news (and advertising run adjacent to news) is low and declining, or that estimates from the news industry are wildly inaccurate. The values are simply irreconcilable: by definition, the arbitrators will be choosing from wildly inflated or deflated offers. The bill is also artificially one-sided — it precludes consideration of any benefit provided to any negotiating publisher or broadcaster for being listed in search or gaining reach on a platform. And any negotiation structured so that one party cannot walk away from the table is inherently not “fair” or “level.”

The JCPA will not ensure that funds gained through joint negotiation or arbitration will be paid to journalists. In fact, there is no enforceable requirement of any investment in local journalism or in journalism at all. Proponents’ arguments that this is impossible to address because money is fungible are belied by the inclusion of a provision ensuring it in both the House version of the bill and the California Journalism Preservation Act. The bill and its proponents are also co-opting the notion of “collective bargaining” to advance the interests of some news organizations that are actively denying their own journalists these hard-won rights.

The JCPA interferes with antitrust policy to achieve outcomes that are well outside the scope of antitrust. This bill is often described as having the power to “rein in big tech” and create a more “level playing field” for news organizations. Instead, due to the incentives it creates for large, legacy news organizations, the JCPA will cement and even stimulate more consolidation in the news industry and create new barriers to entry for innovative and entrepreneurial models of truly independent, local, community-focused journalism.

The JCPA is not the right policy instrument through which to determine the implications of generative artificial intelligence for news providers. As if the concerns above weren’t sufficient, both the JCPA’s [chief lobbyists](#) and some of [its sponsors](#) now claim that the bill would allow publishers to control “access” to their content for platforms covered by the bill to train large language models like ChatGPT. The groups listed below may have different views on the copyright implications of generative AI, and the technology may require new policy solutions. Whatever the case, we all agree that the complexity of the debate should not be tossed into a bill focused on creating an antitrust exemption for giant media conglomerates.

There are other policy solutions to the crisis in local journalism. We strongly urge you not to pass the Journalism Competition & Preservation Act.

Sincerely,

American Civil Liberties Union (ACLU)
Authors Alliance
Center for Democracy & Technology
Chamber of Progress

Cityside Journalism Initiative
Coalition for Creativity (C4C)
Common Cause
Computer & Communications Industry Association (CCIA)
Copia Institute
Creative Commons
Electronic Frontier Foundation
Embarcadero Media
Fight for the Future
Free Press Action
Jeff Jarvis, Professor of Journalism
Internet Archive
Library Futures
Local Independent Online News (LION) Publishers
Lookout Local, Inc
National Association of Hispanic Publications (NAHP)
Public Knowledge
Re:Create
Richland Source
R Street Institute
Wikimedia Foundation

CC:

Sen. Dick Durbin
Sen. Steve Daines
Sen. Richard Blumenthal
Sen. Bill Cassidy
Sen. Sheldon Whitehouse
Sen. Lindsey Graham
Sen. Susan Collins
Sen. Joe Manchin
Sen. Cynthia Lummis
Sen. Cory Booker
Sen. Roger Wicker
Sen. Diane Feinstein
Sen. Mazie Hirono
Sen. Angus King, Jr.