



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.¹ 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

¹ 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.²

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%.³ In the same vein, newsroom employment decreased by more than 50% from 2008 to 2020.⁴ 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

² 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.

³ See PEW RESEARCH CENTER, NEWSPAPER FACT SHEET, <https://www.pewresearch.org/journalism/fact-sheet/newspapers/> (last visited Jan. 28, 2022).

⁴ 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 the 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,

A handwritten signature in black ink, appearing to read 'Keith Kupferschmid', written over a light grey rectangular background.

Keith Kupferschmid
CEO
Copyright Alliance