



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