



June 14, 2023

The Honorable Richard Durbin  
Chair  
Senate Committee on the Judiciary  
Washington, DC 20510

The Honorable Lindsey Graham  
Ranking Member  
Senate Committee on the Judiciary  
Washington, DC 20510

*Re: June 15 Senate Judiciary Committee Markup on S. 1094, The Journalism Competition and Preservation Act of 2023*

Dear Chair Durbin and Ranking Member Graham:

On behalf of the Computer & Communications Industry Association (“CCIA”), I write to express concerns with S. 1094, the Journalism Competition and Preservation Act of 2023 (“JCPA”), and request that this statement be included in the record of the markup scheduled for Thursday, June 15, 2023.

CCIA respects the valuable role that journalism plays in democracy and supports responsible efforts that foster local journalism. We would respectfully urge the Committee, however, to reject passage of the JCPA because it will hinder content moderation efforts targeting hate speech and misinformation, legalize cartels, and violate the Constitution.

The JCPA would mandate that private companies carry certain publishers’ speech, forbid removal of that speech, and pay the publishers to link to that speech. This mandate is inconsistent with the First Amendment, which prevents the government from requiring private entities to carry speech, and pay for speech, that they do not wish to carry.

The JCPA also would harm content moderation practices by inhibiting digital services’ ability to take down hate speech and fight misinformation and disinformation. As such, JCPA would hamper online services’ ability to protect their users and to create a platform they feel comfortable using while exacerbating harms to vulnerable populations that find communities of interest and support online.

The link is a fundamental building block of the free Internet and the JCPA would tax links on the Internet for the first time under American law. This new government regulation of links would conflict with established copyright policy like the fair use doctrine, while opening the door for countless new taxes and fees on essential components of the Internet. Further, any link tax established would largely benefit large companies at the expense of smaller outlets.



The JCPA also would grant a partial antitrust exemption which would permit favored businesses to form cartels, contrary to established U.S. antitrust principles. The provisions on forced arbitration and collective bargaining would diminish competition in the market for news content. Under JCPA, news publishers and broadcasters would receive a ‘get-out-of-antitrust-jail-free’ card to collude against digital services.

Further, the JCPA would exclude local publishers who make less than \$100,000 from the arbitration regime while allowing large newspaper chains with up to 1,500 employees (often owned by hedge funds) to benefit. In addition, since broadcasters are not bound by the 1,500-employee cap, small publishers would be dominated during negotiations by larger publishers and broadcasters who would be likely to benefit most from a JCPA cartel.

There can be no question that objective journalism is critical to informing voters, or that an informed electorate is a public good. But giving news publishers an antitrust exemption is doubling down on failed policies. Newspapers *already* have had a partial antitrust exemption for over 50 years. The U.S. experience with preserving newspaper diversity through antitrust exemptions is not encouraging. Unfortunately, the Newspaper Preservation Act of 1970 (“NPA”) failed to achieve the stated goal of Congress to maintain independent competing voices. In fact, historians and journalists have argued that the NPA has led to fostering monopolies and chains instead of producing independent voices.

Finally, even assuming the envisioned cartel successfully negotiates licenses with news aggregators, the JCPA provides no effective mechanism to ensure that funds for those licenses will be used to address publishers’ key economic problems like relieving news deserts, modernizing technology, and eliminating debts. Consumers, again, are likely to suffer—as it is more likely that the JCPA leads to further consolidation of news publishers, not less, so the diversity of publishers will decline.

Respectfully submitted,

Joshua Rogin  
Vice President of Federal Affairs  
Computer & Communications Industry Association (CCIA)