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SIIA



May 22, 2024

Illinois State Senate
Senate Executive Committee
401 S 2nd St, Room 212
Springfield, Illinois 62706

RE: SB 3591 (Stadelman) “Journalism Preservation Act” – Oppose

Dear Chair Castro and Members of the Senate Executive Committee:

The 11 undersigned civil society and industry organizations value free speech and local journalism. However, we write to respectfully oppose SB 3591, the Journalism Preservation Act.

The bill starts from the false premise that there is a “current marketplace imbalance” between digital services and publishers.¹ While there is a serious crisis in local journalism, this crisis has many causes, as explained by a recent report from the U.S. Copyright Office.² There is little evidence that online services’ linking to news sites is the cause of this crisis. On the contrary, news sites depend on this linking. The bill itself recognizes this by prohibiting so-called “retaliation;” the news sites get much of their traffic from search engines and news aggregators.

Further, SB 3591 is unconstitutional in numerous ways:

- It interferes with interstate commerce, by imposing a tax on linking to out-of-state content by Illinoisans.

¹ Press Release, Stadelman bills to rescue local journalism called 'most ambitious' in the country (Feb. 28, 2024), <https://www.senatorstadelman.com/news/521-stadelman-bills-to-rescue-local-journalism-called-most-ambitious-in-the-country>.

² Copyright Protections for Press Publishers: A Report of the Register of Copyrights (June 2022), <https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>, at 7-16.

- It violates the First Amendment by forcing websites to link to content against their choice.
- It is in conflict with the Supremacy Clause because it requires payment for the display of headlines, ledes, facts, and other elements of copyrightable works that the Copyright Act provides are freely accessible. For the same reason, SB 3591 is expressly preempted by Section 301(a) of the U.S. Copyright Act.

Putting these serious legal and economic problems aside, this bill would start the internet down a slippery slope. The internet depends on linking, and once Illinois starts taxing links, there would be no end to Illinois (and other states) taxing all kinds of links to other industries favored by legislatures.

The bill would also provide little help to local newspapers or reporters in Illinois. Most of the money would go to large out-of-state publications or out-of-state publications owned by hedge funds or broadcasting conglomerates.³ At the same time, it would provide financial incentives for clickbait rather than quality journalism, and it would require the subsidization of all kinds of potentially problematic publications that could fit under the bill's broad definitions.

While we have concerns about this bill, we stand ready to work with you on truly supporting local journalism and free expression on the internet.

Respectfully submitted,

Chamber of Progress - Todd O'Boyle
 Chicagoland Chamber of Commerce - Brad Tietz
 Computer & Communications Industry Association – Jordan Rodell
 Illinois Chamber of Commerce - Keith Wheeler
 James Madison Institute – Lindsay Killen
 Library Futures - Jennie Rose Halperin
 NetChoice – Carl Szabo
 R Street Institute – Josh Withrow
 ReCreate – Charlotte McCoy
 Software & Information Industry Association – Morten Skroejer
 TechNet – Tyler Diers

³ Tricia McCleary, *New York Hedge Fund Mobilizes Local Publications in Search of California Payout*, Disruptive Competition Project (April 22, 2024), <https://www.project-disco.org/competition/new-york-hedge-fund-mobilizes-local-publications-in-search-of-california-payout/>.