

The Journalism Competition and Preservation Act (JCPA)

Talking Points and Message Guidance

Background: A free and diverse press is the backbone of a healthy democracy. Yet, news outlets across the country that have been an essential component of the press throughout our nation's history now find their content generating significant value for Big Tech with little or no revenue flowing back to the news outlets. Without platforms compensating news publishers/broadcasters fairly, the ability of newsrooms to provide quality journalism is at risk.

The **Journalism Competition and Preservation Act (JCPA)** ([S. 1094](#)), sponsored by Senators Amy Klobuchar (D-MN) and John N. Kennedy (R-LA), is a bipartisan bill that was reintroduced in the Senate in March 2023, and passed by the Senate Judiciary Committee in June, to help sustain news publishers and therefore protect the American free press and the informed society it supports. The legislation is a tailored solution to counter the market imbalances imposed by Big Tech and to ensure that small and local news publishers/broadcasters can continue to provide vital information to communities across our country. It is limited in time and scope, pro-competitive, non-exclusionary, and is modeled after global legislation that currently rewards journalism in other countries and newsrooms around the world.

Summary of JCPA, S. 1094:

- Provides a time-limited antitrust "safe harbor" and process for news publishers and broadcasters to jointly negotiate and seek fair compensation from covered online platforms, such as Facebook and Google.
- Benefits news content providers across the ideological spectrum by ensuring that the definition of a news content provider is content neutral and inclusive of all viewpoints.
 - The JCPA prohibits exclusion from collective negotiation because of size or views expressed.
- Requires covered platforms and news publishers/broadcasters to negotiate in good faith, helping to ensure that all news publishers/broadcasters, including small outlets, are compensated.
 - The JCPA requires that during good faith negotiations, a reasonable offer be made by both publishers/broadcasters and covered platforms, which must include comparable and fair market terms (e.g., terms found in other commercial agreements); fair market value absent monopoly power; and consideration of investments made by news publishers/broadcasters in producing news, etc.)
- The JCPA allows for participating news publishers (i.e., *not* broadcasters) to access final offer arbitration after six months of good faith negotiations.

1. Status of the JCPA

The Journalism Competition and Preservation Act (JCPA) ([S. 1094](#)), sponsored by Senators Amy Klobuchar (D-MN) and John N. Kennedy (R-LA), was reintroduced in the Senate in March 2023 to help sustain news publishers and protect the American free press.

Supporting Points:

- With the broad support for the bill and Big Tech companies, namely Google and Facebook, continuing to jeopardize the future of local journalism, we must pass the JCPA in this Congress.
- The Senate Judiciary Committee voted favorably (14-7) for the JCPA in June.
- In January, seven leading journalism, media, and pro-consumer antitrust advocacy organizations – including the News/Media Alliance, National Newspaper Association, America’s Newspapers, Authors Guild, American Economic Liberties Project, Inter American Press Association, and the Radio Television Digital News Association – sent a joint [letter](#) to President Biden urging him to call on Congress to advance the JCPA. The letter outlines the plight of local news, in which news publishers have been forced to play by Big Tech’s rules of the digital advertising playing field for years, resulting in the loss of more than a quarter of U.S. newspapers since 2005 and the spread of news deserts across the country.
- The 2022 JCPA had broad, bipartisan support in both the House and the Senate, with 90 total co-sponsors. More than 300 consumer interest groups, unions, conservatives, advocacy groups, and third-party organizations sent letters of support; more than 24,000 individuals signed a Change.org petition for the bill; and nearly 1,000 editorials were published in support of the JCPA in 48 states across the country.
- **Key Ask: We urge you to support the JCPA to ensure that news publishers are fairly compensated by Big Tech for the value of their content.**

2. Free Press in Crisis

The Bottom Line: Quality journalism – which is vital to maintaining an informed and active citizenry – is under threat. By not paying them fairly for their content, Big Tech has driven many of these local outlets out of business. If Congress doesn’t pass the JCPA, even more communities across our country will lose their local news coverage.

- a) A free and diverse press is the backbone of a healthy and vibrant democracy, but local newspapers across the country are under incredible financial pressure and in jeopardy of going out of business.

Communities are increasingly left in news deserts, leading to a breakdown in the cohesion of communities and leaving no one to keep in check those in positions of power, including local politicians and other government officials.

Supporting Points:

- Since 2005, newsroom employment has [declined](#) by almost 60 percent.
- Despite a growing audience for news media, revenue produced by US news publications has [dropped](#) by 58% since 2005.
- Newspapers are continuing to vanish at a rapid rate. Since 2005, the country lost more than a quarter of its newspapers (2,500) and is on track to lose a third more by 2025.

- More than one-fifth of our nation’s citizens live in [news deserts](#)—with very limited access to local news—or in communities at risk of becoming news deserts. Lower-income communities are disproportionately impacted by the closure of local newspapers, which serve as a check on the local, state and federal governments.
 - Seventy percent of Americans surveyed said they supported Congress passing the JCPA.
 - The public rightfully trusts their local newspapers – 73% of US adults surveyed said they have confidence in their local newspaper, compared to 55% who have confidence in national network news.
- b) One of the largest problems facing journalism is that control of access to trustworthy news online has become concentrated on just two platforms: Meta and Google.

Supporting Points:

- Meta and Google exert their dominance over the digital marketplace, setting the rules for news publishers and determining how journalism is displayed, prioritized, and monetized. News publishers have had no choice but to go along with these terms so as not to cannibalize what traffic they do get to their sites.
- Google and Facebook capture the vast majority (70%) of all digital advertising dollars, critical revenue that used to go to news publishers, leaving them with insufficient resources to reinvest in providing the journalism Americans need and rely on to stay informed and engaged.
 - Ad revenue for Facebook and Google is four times larger than for all US news publishers combined – which is why they have been the targets of multiple antitrust lawsuits. (Google’s Q1 2022 ad revenue: \$68 billion – an annual increase of 23%. Facebook’s Q1 2022 revenue: \$26.998 billion – an annual increase of 6%.)
- Research has found that two-thirds of searches on Google don’t end in a click to a third-party site because they use large segments of publishers’ content to keep users from leaving its platform.
- Small publishers on their own have no negotiating power to challenge the basic terms offered by the dominant tech platforms.

3. We Must Level the Playing Field

The Bottom Line: We must pass the JCPA to ensure that publishers – especially small and local publishers – are compensated fairly. Publishers invest heavily and work tirelessly to report news and write content, yet Big Tech companies are the ones who profit most from their work. This is fundamentally unfair, and the JCPA will bring about much-needed change.

- a) There must be a fair exchange for the significant value news publishers’ content provides to Google and Meta, so publishers can continue to invest in journalism.

Supporting Points:

- Despite record audiences, revenue produced by US news publications has dropped by more than 50%.
- Thousands of journalists have been laid off and local newspapers have shuttered because of diminished revenues and inadequate (or total lack of) compensation by the platforms.
- News publishers provide must-have content for the tech platforms to capture viewers. Publishers deserve fair compensation for the value they bring.
- The platforms increasingly come between news publishers and their readers, preventing publishers from accessing data and from having a direct relationship with readers.
- News publishers can't access data from the Big Tech platforms about users' engagement with their content that would allow publishers to better monetize their offerings, customize their content. and improve their advertising effectiveness.

4. Other Countries Have Passed Laws Compensating Publishers

The Bottom Line: Europe, Australia and Canada have successfully implemented legislation to promote balanced digital ecosystems that reward and protect local journalism. These laws promote high-quality, accessible news and shield outlets from predatory behavior from platforms like Facebook and Google.

- **France:** In 2021, the French Competition Authority [fined](#) Google €500 million for failing to negotiate in good faith with news organizations over the use of their content.
- **European Union:** The European Union (EU) passed the Copyright Directive in 2019 and in March 2022, adopted the Digital Markets Act (DMA) proposal, aimed at preventing dominant online platforms – like Google and Facebook – from abusing their market power.
- **Australia:** In 2021, Australia passed the News Media Bargaining Code (NMBC), which requires Big Tech platforms operating in Australia to pay local news publishers for the content shared on their platforms. Like the JCPA, the NMBC balances the playing field between publishers and online platforms, allowing for a more sustainable foundation for the preservation of high-quality journalism.
- **Canada:** In June 2023, Canada [passed](#) the Online News Act (C-18), which supports Canada's free press by requiring dominant online platforms to provide fair compensation to news publishers for the use of their content. While the legislation passed, tech giants Meta and Google are using their dominance to try to strongarm the Canadian government by removing news content on their platforms. This shows even more the need to rein in the Big Tech platforms in the U.S. by passing the JCPA.

5. How the JCPA Can Help

The Bottom Line: For American democracy to thrive, Congress must ensure that every industry of our economy is operating fairly and that major economic players are conducting business responsibly. Big Tech companies have used their power to manipulate the industry for their own financial gain. Elected officials must pass the JCPA now to rein in Big Tech and restore fairness to one of the most important institutions in American journalism.

- a) The JCPA is reasonably and specifically tailored to ensure that small and local news publishers can negotiate fair compensation with Big Tech to ensure local journalists are able to continue their critical work.

Supporting Points:

- The JCPA is a bipartisan bill that provides a narrow and limited antitrust safe harbor for news publishers to collectively negotiate with Facebook and Google for fair compensation for the use of their content.
- The JCPA would help flow subscription and advertising dollars back to publishers, helping to protect credible news and encourage competition.
- The main beneficiaries of the JCPA are small and local news outlets, with a cap that excludes the large national publications and broadcasters.
- The JCPA includes an arbitration mechanism to ensure the platforms participate in good faith negotiations and that small and local news publishers are fairly compensated.

Additional points often stressed by majority of Progressives:

- Big Tech's dominance over news distribution is threatening quality journalism, critical to a functioning democracy. The cost of inaction – the spread of misinformation, the decline of local journalism – is too great to continue to ignore.
- The dominant tech platforms are built to favor content that drives clicks, which favors dangerous misinformation that undermines the fabric of our democracy.
- The platforms' revenue models are structurally built around distributing content that divides us.
- Ironically, Big Tech is protected by US antitrust laws, which prevent small and local publishers from organizing and reflecting their market power.

Additional points often stressed by majority of Conservatives:

- As the JCPA is content-neutral, conservative publications such as the *Daily Caller*, *Newsmax*, *Washington Times*, and *Breitbart* cannot be excluded under the First Amendment.
- JCPA's benefit to conservative news publishers and broadcasters may be most valuable because conservative publications and journalists have proven more likely to be victims of viewpoint discrimination by the Big Tech companies.
- Collective bargaining under the JCPA is not compulsory. Any news outlet can choose not to negotiate at all.

Addressing Conservative Critiques:

- Some critics inaccurately claim that the JCPA would give Big Tech more power to discriminate against smaller publications – particularly those whose political views they don't agree with – to demonetize these outlets. This is incorrect. The JCPA is written to prevent this, with an arbiter from the federal government serving as an intermediary in all negotiations.