



National Press Photographers Association

120 Hooper Street • Athens.GA 30602
Phone: 716.983.7800 • Fax: 716.608.1509
Email: lawyer@nppa.org

VIA EMAIL

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

RE: S. 673, Journalism Competition and Preservation Act (JCPA)

Dear Chairwoman Klobuchar and Ranking Member Lee:

On behalf of the National Press Photographers Association (NPPA), I write to commend you and the members of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights for scheduling a hearing on *Journalism, Competition, and the Effects of Market Power on a Free Press*. We look forward to listening to a full and frank discussion of S. 673, “The Journalism Competition and Preservation Act” (JCPA) by the Subcommittee. NPPA wishes to express its *qualified* support for this bi-partisan bill creating “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.”

NPPA is a 501(c)(6) not-for-profit organization dedicated to the advancement of visual journalism in its creation, editing, and distribution. NPPA’s members include video and still photographers, editors, students, and representatives of businesses that serve the visual journalism community. Since its founding in 1946, the NPPA has been the *Voice of Visual Journalists*, vigorously promoting the constitutional and intellectual property rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

As both staff photographers and independent visual journalists, members of the NPPA create original intellectual property for publication and broadcast in all media. Our images and videos help Americans – and others – understand the important events taking place throughout the world. This fact could not be more evident than in the coverage of the pandemic, racial inequality protests and the January 6th insurrection by visual journalists who risked their health and safety to capture compelling images which could not be made by working from home. Their work was

rampantly misappropriated by others, in violation of their copyrights, while ISP's turned a blind eye and continued monetizing this ever-growing body of visual content which undeniably is the engine that drives pageviews and creates reader/viewership.

Because our members also rely on copyright law to protect their newsgathering and journalistic works, we greatly appreciate the legislative intent to allow print, broadcast, or digital news companies to collectively bargain with those same ISP's regarding the terms under which media company's content may be distributed; but we must respectfully request that Congress also consider the financial well-being of the thousands of visual journalists who create much of the "content" at issue here and whose works are infringed, recirculated and repurposed into online news content without permission, credit, or compensation.

While we readily acknowledge that media companies expend a great deal of time, money and effort into gathering and disseminating news, images and information to provide for an informed public and upholding the First Amendment principles of a free press, a great deal of the news content shared in that manner is the result of the hard work, dedication and sacrifice made by individual independent journalists, who may also own the copyright to the work at issue. The financial investment and personal risk undertaken by these journalists cannot be understated. In 2020 America saw an all-time high in the number of journalists arrested or assaulted and as the U.S. Press Freedom Tracker noted, "2021 still outpaced the years before it for press freedom violations" with 142 assaults, 59 arrests or detainments and reports of damaged equipment outpacing the same as those from 2017 to 2019 combined.¹

To be clear, these publishers are the employers and clients of our members and the work that our members do depends on the ability of these companies to be compensated properly. However, the publishers seeking relief from the unequal bargaining power of social media companies, themselves operate as monopsonies. Independent creators also desire to address publishers' "take-it-or-leave-it" contracts of adhesion, that demand far too many rights without commensurate compensation. To help those individuals and small businesses, we urge the Senate to support the rights of independent creators to have similar collective bargaining powers. Failure by Congress to provide such crucial support for visual journalists and other independent creators will continue to undermine the very protections for press publishers sought through the JCPA and create further disparity in the news ecosystem.

Amending and enacting the JCPA in these ways would represent a crucial step toward addressing these concerns and in bolstering press publishers' abilities to continue to produce and disseminate news content for the American public. In conjunction with a strong copyright law, the JCPA would give greater leverage to news organizations to determine whether, and on what terms, to allow online content distributors access to their content. The four-year safe harbor from antitrust laws for certain news content creators to collectively withhold content from, or negotiate with, certain online content distributors is long overdue. However, NPPA suggests that such collective negotiations be not only limited to large publishing and media companies, but also apply to similarly situated smaller news content creators and that the JCPA recognizes and broadens the definition of "news content creator" to include independent journalists and organizations

¹ See U.S. PRESS FREEDOM TRACKER, *Another record year for press freedom violations in the US* (January 12, 2022), [Another record year for press freedom violations in the US - U.S. Press Freedom Tracker](#)

representing them.

Alternatively, we suggest the bill include provisions for ensuring that any benefits (economic and non-economic) to certain news content creators resulting from such collective negotiations be passed along to staffers and independent news contributors (commonly known as freelancers) rather than just increasing the profit margins of news organizations owners and investors.

NPPA again commends the Subcommittee for holding this important hearing and for the opportunity to be heard on behalf of visual journalists, whose small businesses can only survive if they are fairly compensated for their work.

Thank you for your time and consideration. Should you have any further questions or issues you would like to discuss, we are always available.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher, General Counsel

Alicia Wagner Calzada

Alicia Wagner Calzada, Deputy General Counsel