



NEWS MEDIA
ALLIANCE

January 21, 2021

The Honorable Katherine Tai
United States Trade Representative-Designate
600 17th Street NW
Washington, DC 20508

Brian Deese
Director
United States National Economic Council
1650 Pennsylvania Avenue NW
Washington, DC 20502

Dear Director and Ambassador-Designate Tai,

I am writing to you on behalf of the News Media Alliance and our over 2,000 member publishers to express serious concerns over the letter sent in the last days of the previous Administration by two Assistant U.S. Trade Representatives to pressure the Australian government to suspend the country's planned online platform bargaining code and to "further study the markets, and if appropriate, develop a voluntary code." We believe such a request fails to represent wider U.S. trade and business interests, undermines the sustainability of high-quality journalism back home and abroad, and threatens the reputation of the United States internationally.

Australia's effort to establish a bargaining code for online platforms and news publishers comes at a time when news publishers around the world face an existential struggle to survive in a digital environment controlled by a few dominant platforms. As numerous studies, reports, and investigations have shown, these platforms impose unfair terms on news publishers and other actors in the online ecosystem and reap the majority of the benefits. Over the last fifteen years, the United States alone has witnessed the loss of more than a quarter of its newspapers, leaving thousands of communities as news deserts and leading to thousands of lost jobs. Demanding fair compensation for the use of news content online is vital in order to reverse this trend. These losses come as platforms are seeing enormous increases in their value – with Google's market capitalization exceeding \$1.2 trillion dollars – value derived in part from its exploitation of news without payment.

Australia is not alone in acknowledging and trying to tackle this problem. The European Union's Copyright Directive created an ancillary copyright for news publishers, while the U.S. Congress is considering measures to facilitate negotiations between news publishers and the online platforms. The more countries introduce such measures, the more effective they become as it will be harder to circumvent national policies. It is for this reason that our members – some of whom have direct financial interests in Australia – and the U.S. news industry as a whole have a strong interest in the proposed code, and we stand firmly behind our Australian colleagues. Continued attempts to undermine global efforts to ensure adequate and fair compensation for news publishers undermines the value of news publishers' intellectual property internationally and may result in thousands of job losses in the United States.

The USTR said it was “inappropriate” for the draft code to allow for collective bargaining, a measure introduced to allow smaller media players to band together, saying it was “a departure from broadly accepted competition principles.” In fact, broadly accepted competition principles suggest that monopsonists be regulated to ensure that consumers are protected, and the Australian proposal is a logical way to deal with failures of the marketplace. In the United States, House Antitrust Chairman David Cicilline (D-RI) and Senators Amy Klobuchar (D-MN) and John N. Kennedy (R-LA) of the Senate Antitrust Subcommittee have introduced the Journalism Competition and Preservation Act in their respective chambers, which would allow news publishers to collectively negotiate with the tech platforms. The House investigative report into the platforms abuse of dominance further supports why this manner of addressing a gross imbalance of power is strongly supported and justified. Senator Maria Cantwell (D-WA) has also included in a recent report on the impact to local news by the tech platforms a recommendation of support for collective negotiations. This letter from USTR is in stark contrast with the well-documented and highly-regarded views of leaders of the United States Congress.

Further, with regards to USTR’s request that Australia instead “develop a voluntary code,” it is important to remember that the mandatory arbitration is simply a backstop to free negotiations between the parties and, more importantly, that the Australian authorities already tried such an approach but, as the Australian Competition and Consumer Commission reported in April 2020, these negotiations failed, forcing the Australian government to order the ACCC to develop a mandatory code. To demand that Australia repeat this exercise would not only be futile but inappropriate. In any event, the reference to “broadly accepted competition principles” suggests policy grounded in solid economic theory – which has no place for reliance on voluntary payments.

The Office of the United States Trade Representative should represent the whole of the United States, not the interests of a few dominant companies. However, opposing Australia’s – and global – efforts to protect the sustainability of high-quality journalism risks doing just that while undermining the legitimate interests and financial incentives of both news publishers and the civil society at large. There has never been a more critical role for a free press supported by a solid economic foundation. Acknowledging the need for USTR to balance the views and interests of different U.S. industries, we therefore urge you to retract the recent outreach to Australia and refrain from taking positions that benefit one sector of the U.S. economy at the expense of others and undermine an important pillar of democracy.

Sincerely,



David Chavern
President & CEO
News Media Alliance

CC: Daniel Bahar
Karl Ehlers