

## **Savings Clause Proposed for Journalism Competition & Preservation Act**

### (c) Rules of Construction –

(1) Except as provided in this Act, this Act shall not be construed to modify, impair, or supersede the operation of the antitrust laws;

(2) Nothing in this Act shall be construed to modify, impair, or in any way alter any other law, nor to create any new rights pertaining to copyright or intellectual property generally, nor to expand, diminish or alter any existing rights, nor to in any way alter or effect rights of fair use in copyright or trademark. Nor may any court in the United States consider this Act or any finding, purpose or policy of this Act, or commercial deals entered into pursuant to this Act, when adjudicating any question pertaining to copyright, trademark, or fair use in either copyright or trademark.

#### (3) *Impact on, and implementation by, Federal Communications Commission.*

(A) Nothing in this Act shall be construed to in any way alter the authority of the Commission pursuant to the Communications Act of 1934, as amended, including the Commission's authority under §§ 1, 4(i), 201, 202, 214, 303, 307, 308, 309, 310(d), 316 or 613, or alter rules of ownership attribution for broadcast licensees, cable systems, or other media of mass communication (as defined by 47 U.S.C. § 309(i)(3)(C)(i)) existing or as promulgated by the Commission pursuant to its statutory authority. Nothing in this Act shall in any way alter the power of the Commission to impose merger conditions, ownership rules, or waiver conditions that prohibit entities under its authority from coordinating or communicating for any purpose, except as provided in paragraph (B).

(B) Any news content creator subject to the authority of the Commission wishing to participate in the negotiations described in Section (b) shall seek a waiver of any rule, license condition or other impediment solely for the express and limited purpose of participating in negotiations described in Section (b). The Commission may, at its discretion, grant such waiver, but may require whatever certifications or other safeguards deemed necessary to protect the public interest and promote diversity of voices in media consistent with the federal policy set forth in 47 U.S.C. § 257(b).

(C) Any violation of a condition imposed pursuant to this subsection shall constitute a lack of candor by the licensee. Upon discovering such a violation, the Commission shall designate the matter for hearing before an Administrative Law Judge to determine an appropriate penalty, up to and including revocation of any Commission license or fitness of character to hold a license in the future. In making the determination, the ALJ shall consider:

(i) the severity of the violation;

- (ii) whether the violation was an isolated incident or part of a repeated pattern of conduct, whether or not such conduct amounted to a separate violation;
- (iii) Whether the licensee acted with intent to violate the condition, or with reckless indifference to whether or not their conduct complied with the law;
- (iv) any other factors the Commission or ALJ shall deem relevant, or necessary in the public interest, in furthering the federal policy set forth in 47 U.S.C. § 257(b).

(d) *Reporting requirement.* Three years after the effective date of this Act, the Federal Trade Commission shall submit to the Judiciary Committee of the House and Senate a report on the impact of this legislation.

(1) This report shall include:

- (A) An assessment of the impact of this statute on news content creators;
- (B) An estimate of all payments, including in kind payments, made by online content distributors to news content creators. This estimate shall classify the extent to which these payments are made to local content creators unaffiliated with national, international, or other local content creators, affiliated local content creators, national content creators, and international content creators, and what percentage of payments are made to each category of news content creators.
- (C) An assessment of the impact of this statute on competition in the media market generally, and the news content creation market specifically;
- (D) A list of the number of times news organizations have withheld content, the length of time content was withheld, and the impact of withholding content – including impact on consumers.
- (E) An assessment of the market power of online distributors with regard to online news creators, and whether that market power has increased or declined since enactment of this statute.
- (F) An assessment of journalism jobs lost or gained since enactment of this statute with comparison to such trends prior to enactment of the statute.
- (G) Evidence that payments negotiated via this Act have been invested in creation of news content, particularly local news content, including through the retention or hiring of journalists.
- (H) The level of consolidation in the media industry since enactment of this statute with comparison to such trends prior to enactment of the statute.
- (I) Any other information the FTC may consider relevant in assessing the effectiveness of this law in promoting a free and vibrant press and a competitive media market.

(1)(A)(ii) is commercially marketed through subscriptions, advertising or sponsorship, or is supported through a non-profit, cooperative, public- or community-funded, membership, or a non-profit relying on a donor-funded business model;