



January 10, 2024

Chairman Richard Blumenthal  
Subcommittee on Technology, Privacy and the Law  
Committee on the Judiciary  
706 Hart Senate Office Building  
Washington, DC 20510

Ranking Member Josh Hawley  
Subcommittee on Technology, Privacy and the Law  
Committee on the Judiciary  
115 Russell Senate Office Building  
Washington, DC 20510

**Subject: “Oversight of AI: The Future of Journalism”**

Dear Chairman Blumenthal, Ranking Member Hawley, and members of the Subcommittee:

Public Knowledge appreciates the opportunity to submit this letter in regard to the upcoming hearing, “Oversight of AI: The Future of Journalism.” We applaud the focus of the Subcommittee on Technology, Privacy & the Law on the critically important intersection of AI and journalism in the latest hearing of the AI oversight series. It is one of many areas where, as Chairman Blumenthal has noted in the previous hearings, AI offers both “promise and peril.” Given Public Knowledge’s 20+ years of experience in communications law, intellectual property law, platform accountability, and news and media policy, we feel we can bring a distinctive perspective to the topic. We will encourage you to:

- Advance the Bipartisan Framework for U.S. AI Act
- Resist Calls for Congress To Pursue a Copyright Solution
- Advance Other Legislative Solutions for Local News
- Explore Other Big Tech Fund Options
- Acknowledge the JCPA Is Not a Suitable Solution
- Don’t Let a Good Sense of Urgency Go To Waste

**AI Represents Both Promise and Peril for Journalism**

As we have expressed in the past, journalism plays a vital role in ensuring community welfare, civic engagement, and corporate and government integrity.<sup>1</sup> Research shows that citizens

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<sup>1</sup> Lisa Macpherson, *The free press is a pillar of our democratic infrastructure — and it’s crumbling. Policymakers should support local news in the infrastructure bill*, PUBLIC KNOWLEDGE (May 26, 2021), <https://publicknowledge.org/the-free-press-is-a-pillar-of-our-democratic-infrastructure-and-its-crumbling-policymakers-should-support-local-news-in-the-infrastructure-bill/>

without access to local journalism feel less of a sense of cohesion and community, vote less, are less informed, are less likely to run for office, and experience higher corruption, costs, and corporate malfeasance in their communities.<sup>2</sup> We also recognize that local journalism is in a genuine crisis, with multiple contributing factors. These include technological disruption; consolidation and cost-cutting under financially-motivated owners; the hollowing out of local retail advertisers due to e-commerce (exacerbated by the COVID-19 pandemic); and growing distrust in all democratic institutions, including the free press. The latest data<sup>3</sup> shows that the loss of local newspapers – still the greatest source of local community news – accelerated in 2023 to an average of 2.5 per week, leaving more than 200 counties as “news deserts.” Now, more than half of all U.S. counties – spanning counties that are both bright blue and vivid red<sup>4</sup> – now have limited access to reliable local news and information. Further, researchers now predict another 228 counties are at high risk of losing local news.

To news organizations, the explosion in popularity and capabilities of AI, and generative AI models in particular, must feel like both a boon to the efficiency of their operations – and a potential death blow. Representative uses<sup>5</sup> of AI for journalists include augmenting reporting capacity, reducing variable costs, optimizing revenue, and increasing reader engagement. But news organizations in the coalitions we participate in also share concerns like these:

- Disinformation and misinformation generated by AI will be associated with or attributed to their organizations, tarnishing their brands.<sup>6</sup> Or, false content “written” by AI but passed off as being written by humans will further undermine trust in our information systems.<sup>7</sup>
- While the largest and most powerful news organizations may be able to secure voluntary licensing agreements<sup>8</sup> for their content, ensuring benefits to media as well as technology companies, news organizations with smaller archives and audiences will be left behind.

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<sup>2</sup> Josh Stearns & Christine Schmidt, *How we know journalism is good for democracy*, DEMOCRACY FUND (Sep. 15, 2022), <https://democracyfund.org/idea/how-we-know-journalism-is-good-for-democracy/>

<sup>3</sup> Penelope Muse Abernathy, *The State of Local News, The 2023 Report*, NORTHWESTERN (Nov. 16, 2023), <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/>

<sup>4</sup> Steven Waldman and Lori Henson, *Some of the Biggest Victims of News Deserts are Conservative Voters in Conservative Counties*, POYNTER (Dec. 7, 2023), <https://www.poynter.org/author/lori-henson-2/https://www.poynter.org/commentary/2023/news-deserts-conservative-areas-political/>

<sup>5</sup> John Keefe, Youyou Zhou and Jeremy B. Merrill, *The Present and Potential of AI in Journalism*, KNIGHT FOUNDATION (May 12, 2021), <https://knightfoundation.org/articles/the-present-and-potential-of-ai-in-journalism/>

<sup>6</sup> Lisa Macpherson, *Lies, Damn Lies, and Generative Artificial Intelligence: How GAI Automates Disinformation and What We Should Do About It*, PUBLIC KNOWLEDGE (Aug. 7, 2023), <https://publicknowledge.org/lies-damn-lies-and-generative-artificial-intelligence-how-gai-automates-disinformation-and-what-we-should-do-about-it/>

<sup>7</sup> Pranshu Verma, *The Rise of AI Fake News is Creating a ‘Misinformation Superspreader’*, THE WASHINGTON POST (Dec. 17, 2023), <https://www.washingtonpost.com/technology/2023/12/17/ai-fake-news-misinformation/>

<sup>8</sup> Sahil Patel and Stephanie Palazzolo, *OpenAI Offers Publishers as Little as \$1 Million a Year*, THE INFORMATION (Jan. 4, 2024), <https://www.theinformation.com/articles/openai-offers-publishers-as-little-as-1-million-a-year>

While they could use voluntary technical standards like robots.txt to avoid their content being scraped and reproduced to train models, that leaves them at a distinct disadvantage relative to large players and may impact their visibility in search results.

- Online distribution of news content that is created by AI – to draft stories, fact-check, or perform other editorial functions – without strong professional standards and transparency will contribute to declining trust in the integrity of news.

We understand and appreciate the Committee’s sense of urgency to forestall potentially yet another blow to local news. Here, we review our recommendations for Congressional engagement.

### **Advance the Bipartisan Framework for U.S. AI Act**

We know this series of hearings on AI oversight is designed in part to help translate the Bipartisan Framework for U.S. AI Act into legislative language. We support this framework in principle and feel there are several elements in it that are highly relevant to AI and journalism.

For example, we have called for the creation of a dedicated regulatory body for digital platforms.<sup>9</sup> The Framework’s call for an independent oversight body with the authority to require licensing, audits, research and reporting on economic and employment impacts of AI is a beneficial step. We also support clarification that Section 230 of the Communications Decency Act does not apply to AI, including large language models. (We think it’s already clear that the companies that deploy LLMs are not automatically protected by Section 230 since they don’t merely publish, or republish, content from other sources, and they generate their own new content using neural networks that were trained on user content.<sup>10</sup> Nonetheless, it’s a complex question that may benefit from clarification and legal certainty.) Also, we support requirements for transparency from companies developing and deploying AI systems, including about training data, limitations, accuracy and safety; affirmative notices that users are interacting with an AI model; and advancing research into watermarking or other methods<sup>11</sup> to detect content created by generative AI. These may help ensure citizens are aware when they are interacting with AI models and AI content.

### **Resist Calls for Congress To Pursue a Copyright Solution**

News organizations, most notably The New York Times, have initiated lawsuits posing complex questions about the role of copyright in shaping how technology companies use news content, both to train the large language models underlying chatbots, and to generate text and image

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<sup>9</sup> Digital Regulator Resources, PUBLIC KNOWLEDGE (2019-2022),

<sup>10</sup> John Bergmayer, *Sorry Sydney: Generative AI Doesn’t (and Shouldn’t) Have a Liability Shield*, PUBLIC KNOWLEDGE (Mar. 8, 2023), <https://publicknowledge.org/digital-regulator-resources/>

<sup>11</sup> ITI, *Authenticating AI-Generated Content January 2024 Exploring Risks, Techniques & Policy Recommendations* (Jan. 2024), [https://www.itic.org/policy/ITI\\_AIContentAuthorizationPolicy\\_122123.pdf](https://www.itic.org/policy/ITI_AIContentAuthorizationPolicy_122123.pdf)

outputs.<sup>12</sup> The Times' suit complements lawsuits with highly specific fact patterns in several other creative sectors, and in aggregate they will allow courts to weigh in on how fair use standards (e.g., transformation, substitutability) apply to AI tools. We believe these suits regarding training models will likely be determined to be fair use, and that any violative outputs can be addressed under current copyright law.

We also await the results of the U.S. Copyright Office's study of the copyright law and policy issues raised by generative artificial intelligence. In our comments to the Copyright Office, we expressed the view that our existing copyright laws and doctrines are generally suited to address the challenges posed by generative AI.

Against that backdrop, we strongly urge Congress not to consider new, news-specific copyright legislation. First and foremost, we want to protect the ability for any service to link and excerpt content on the web as a means of open access to information. The fair use provisions of copyright law are designed to protect speech and enable the creation of new works. This is the essence of innovation and creativity. Fair use also, by protecting such things as criticism and commentary, protects the ability to engage in civic discourse – both inside and outside of the newsroom. Any change to these provisions will necessarily affect all creators, not just news organizations.

### **Pursue Other Legislative Solutions for Local News**

The complexity of the contemporary information landscape requires more than one solution to help local news. If it's inevitable that large legacy media players will be the primary beneficiaries of paid agreements with the largest tech companies<sup>13</sup>, it's incumbent on Congress to pursue other solutions for smaller and more diverse outlets and alternative business models. For example, Public Knowledge strongly supports the House introduction of the Community News & Small Business Support Act<sup>14</sup>, a bipartisan federal bill to strengthen local news and small businesses. Derived from the Local Journalism Sustainability Act, which got inches away from adoption in 2022, the bill empowers small businesses and newsrooms themselves through tax credits designed to encourage advertising or hiring in local newspapers or websites.

There are other good ideas. One non-commercial business model for news that has gained particular momentum is a nonprofit structure. Their (generally) small size, mission orientation, lack of commercial interests, and beneficent funding model often allow nonprofit news outlets to be closer and more connected to their communities. A bill introduced in the 117th Congress, the

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<sup>12</sup> Will Oremus and Elahe Izadi, AI's Future Could Hinge on One Thorny Legal Question, THE WASHINGTON POST (Jan. 4, 2024), <https://www.washingtonpost.com/technology/2024/01/04/nyt-ai-copyright-lawsuit-fair-use/>

<sup>13</sup> Abubakar Idris, *Big Tech Dumped \$17 Billion Into AI Companies in 2023 Despite Frozen Market*, THE MESSENGER TECH (Dec. 27, 2023), <https://themessenger.com/tech/big-tech-dumped-17-billion-into-ai-companies-in-2023-despite-frozen-market>

<sup>14</sup> H.R.4756 - Community News and Small Business Support Act, <https://www.congress.gov/bill/118th-congress/house-bill/4756/text>

Saving Local News Act<sup>15</sup>, would make it easier for “written news organizations” (including those that distribute their content digitally) to claim nonprofit status. It would address concerns about the strict requirement for educational value of news content that have slowed down IRS approvals. Public Knowledge supported this proposal.

There are also ways to demonstrate government commitment to local news in less direct ways that don’t impact the taxpayer or require new Congressional authorization. We have seen several states and localities direct their government agencies to focus the public interest advertising *they already do* in local news outlets, including newspapers, radio and TV stations, and digital sites. (Advertising spending by the federal government has been estimated at \$1 billion.<sup>16</sup>) These types of initiatives, which Public Knowledge generally supports, must be executed in ways that ensure government agencies are still reaching their intended audiences effectively and efficiently, and that the advertising monies are not being allocated unfairly or punitively.

There are also more structural solutions. For example, the AMERICA Act would break up adtech monopolies so that online publishers can have better competition for the advertising space adjacent to their content, and allow for better prices for their ad inventory by cutting down the take rate of adtech middlemen. Public Knowledge supports the AMERICA Act.<sup>17</sup>

### **Explore Other Big Tech Fund Options**

If local news is a public good, there are policy precedents for imposing funding obligations on dominant players in an industry. We have proposed our own solution for a public interest fund from Big Tech monies: a Superfund for the Internet.<sup>18</sup> We proposed a mandatory federal user fee based on qualifying platforms’ number of monthly active users, which can reasonably be correlated with scale and breadth of distribution. While our focus was on mitigating disinformation, the proposal could be restructured to be more squarely focused on supporting local journalism. (In fact, the ultimate outcome of Canada’s Online News Act – a Google-funded pool to allocate to news organizations based on headcount – bears an uncanny resemblance to

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<sup>15</sup> H.R.6068 - Saving Local News Act, <https://www.congress.gov/bill/117th-congress/house-bill/6068/text>

<sup>16</sup> United States Government Accountability Office (GAO), *Contracting with Small Disadvantaged Businesses and Those Owned by Minorities and Women Has Increased in Recent Years*, GAO HIGHLIGHTS (Jul. 2018), <https://www.gao.gov/assets/gao-18-554.pdf>

<sup>17</sup> *Joint Letter on Competition Bills AICOA, OAMA, and AMERICA Act*, PUBLIC KNOWLEDGE (May 3, 2023), <https://publicknowledge.org/policy/joint-letter-on-competition-bills/>

<sup>18</sup> Lisa H. Macpherson, *Addressing Information Pollution with a “Superfund for the Internet,”* YALE LAW SCHOOL WIII BLOG (Mar. 2, 2021), <https://law.yale.edu/isp/initiatives/wikimedia-initiative-intermediaries-and-information/wiii-blog/addressing-information-pollution-superfund-internet>

our proposal.) We have also supported the proposals of several<sup>19</sup> other<sup>20</sup> experts<sup>21</sup> and organizations<sup>22</sup> to introduce versions of a digital ad tax.

### **Acknowledge the JCPA Is Not a Suitable Solution**

Since the explosion of focus on generative AI, the existing bill that failed to pass Congress for the past three years has been reframed by its advocates to address the use of news content to train large language models. However, we believe<sup>23</sup> the JCPA actually undermines well-established copyright law, strongly discourages content moderation by platforms, entrenches existing power structures in media and technology, and will do little to put more reporters on the beat, especially in underserved communities. Recent efforts to quantify the “unjust enrichment” of platforms at the expense of news organizations to justify the JCPA have been exaggerated<sup>24</sup> as they have in the past. And in its prior determination, the Copyright Office agreed<sup>25</sup> the creation of an ancillary right for publishers would be neither necessary nor effective, and in fact would raise “significant policy and Constitutional concerns.”

### **Don’t Let a Good Sense of Urgency Go To Waste**

As Ranking Member Hawley noted in the previous AI oversight hearings, “the advent of generative AI should add urgency” to efforts to ensure that technological advances benefit American citizens and not just the technology companies themselves. We hope it will also add urgency to finding additional solutions to the crisis in local news.

Members of the Subcommittee have often pointed to the efforts in other democratic countries – including Australia and Canada – to provide support to journalism in light of technological disruption and other factors. But those countries have also acknowledged the need for multiple solutions to address the complexity of the news crisis and to advance promising new business models to solve it for the long term. We encourage you to do the same.

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<sup>19</sup> American Academy of Arts and Sciences, *Our Common Purpose: Reinventing American Democracy for the 21st Century* (2020),

[https://www.amacad.org/sites/default/files/publication/downloads/2020-Democratic-Citizenship\\_Our-Common-Purpose.pdf](https://www.amacad.org/sites/default/files/publication/downloads/2020-Democratic-Citizenship_Our-Common-Purpose.pdf)

<sup>20</sup> Lucia Walinchus, *We Need a News Utility*, POYNTER (Jun. 16, 2022),

<https://www.poynter.org/commentary/2022/national-tax-support-journalism/>

<sup>21</sup> Paul Romer, *Taxing Digital Advertising*, PAUL ROMER, (May 17, 2021), <https://adtax.paulromer.net/>

<sup>22</sup> *Free Press Calls for Tax on Targeted Ads to Fund Civic-Minded Journalism*, FREE PRESS (Feb. 26, 2019),

<https://www.freepress.net/news/press-releases/free-press-calls-tax-targeted-ads-fund-civic-minded-journalism>

<sup>23</sup> JCPA Resources, PUBLIC KNOWLEDGE (2021-2023), <https://publicknowledge.org/jcpa-resources/>

<sup>24</sup> Lisa Macpherson, *Why Google and Facebook Don’t Owe Publishers \$14 Billion a Year*, PUBLIC KNOWLEDGE (Dec. 21, 2023),

<https://publicknowledge.org/why-google-and-facebook-dont-owe-publishers-14-billion-a-year/>

<sup>25</sup> The Registrar of Copyrights of the United States of America, *Copyright Protections for Press Publishers: A Report of the Register of Copyrights* (Jun. 2022),

<https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>

Sincerely,

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