

# THE JOURNALISM COMPETITION AND PRESERVATION ACT

## CREATING AN EVEN PLAYING FIELD FOR THE FREE AND DIVERSE PRESS

The Journalism Competition and Preservation Act creates a temporary safe harbor for news publishers to band together to negotiate with online platforms to protect Americans' access to trustworthy sources of news online. The Journalism Competition and Preservation Act was introduced by Representatives David N. Cicilline, the Ranking Member of the House Judiciary Antitrust Subcommittee, on March 7, 2018.

- **Restoring Trust Online.** The free and diverse press—particularly local press—is the backbone of a healthy and vibrant democracy. More than a quarter of Americans visited “fake news” sites in 2016, but the problem is far bigger than that. The control of access to trustworthy news online has become centralized by just two platforms. Last year, the [Pew Research Center](#) reported that the majority of Americans access news through only two platforms—Facebook and Google—noting that “Facebook outstrips all other social media sites as a source of news.” Recent [market reports](#) also indicate that these same companies control the vast majority of all digital advertising revenue, growth, and traffic referral for news online. As a result, revenue for news publishers has [plummeted](#) by \$31 billion since 2006.
- **Limited Safe Harbor.** The Journalism Competition and Preservation Act establishes a 48-month safe harbor for the free press to band together to negotiate with online platforms to improve the access and quality of news online. Importantly, the safe harbor is narrowly tailored to ensure that coordination by news publishers is only in the interest in promoting trust and quality journalism. The Journalism Competition and Preservation Act only allows coordination by news publishers if it (1) directly relates to the quality, accuracy, attribution or branding, and interoperability of news; (2) benefits the entire industry, rather than just a few publishers, and are non-discriminatory to other news publishers; and (3) is directly related to and reasonably necessary for these negotiations, instead of being used for ulterior purposes.
- **Protects the Free Market, Jobs, and the Marketplace of Ideas.** Free markets depend on an even playing field. But in the absence of a truly competitive landscape, innovation suffers, businesses fail, workers are laid off, and consumers are harmed through less choice and worse service. Sally Hubbard, a former antitrust enforcer, [wrote](#) recently that the online platforms “compete against legitimate news publishers for user attention, data and advertising dollars,” but instead of competing on equal ground, the platforms “pull levers that harm publishers’ business models and advantage their own.”

The majority of Americans are “more concerned” that not enough is being done to address the “relentless spread of fake news on their platforms,” representing “a seismic shift in the public’s perception” in a short time on the issue, according to a [recent Axios-SurveyMonkey poll](#). According to the Edelman Trust Barometer, 63% of people say they can’t tell the difference between good journalism and falsehood online. And at a recent conference at MIT, former President Barack Obama reportedly referred to the online platforms as a duopoly, stating that “[w]e have to have a conversation about their business model that recognizes they are a public good as well as a commercial enterprise. They’re not just an invisible platform, they’re shaping our culture in powerful ways.”

The Journalism Competition and Preservation Act as introduced is supported by the News Media Alliance, which represents 2,000 local and national news publications—including *The New York Times*, *The Washington Post*, and *The Wall Street Journal*—as well as the Open Markets Institute, experts on competition and the free press, and others, including:

“This is a very important step toward leveling the playing field online. If independent media organizations can't collectively bargain for better terms, we should expect media concentration to accelerate as journalists scramble for some bargaining power against massive platforms. This bill is a commonsense way to realize the original intent of America's antitrust laws.” – **Frank Pasquale, Professor of Law, University of Maryland Carey School of Law.**

“The DOJ and FTC have for years pursued a completely irresponsible policy of letting Google and Facebook monopolize the market for news media advertising, in part by manipulating how reporters and readers connect. These actions have harmed the rights of citizens to free and unfettered access to news, and have seriously harmed the financial well-being of trustworthy sources of information. At OMI, we have great confidence the agencies will soon realize their error. Meanwhile it is not fair to prevent publishers from bargaining collectively or jointly exploring other ways to distribute their news. At OMI, we will continue to fight for a completely open market for news and information. Until that's possible, a temporary antitrust immunity is the best way to counter the already extreme and dangerous concentration of power by platform monopolists over the free press in America.” – **Barry Lynn, the Executive Director of the Open Markets Institute (OMI).**

“A strength of community newspapers is that they are small and intensely local. But when it comes to standing up to large national or international aggregates that want to take advantage of our unique news-gathering abilities, this strength can hold us back. Our papers need to be able to band together to negotiate with giants like Facebook or Google, although we value those platforms to extend our reach. This legislation will help to ensure that we are treated fairly. We want our investment in our communities to come back to us in the form of just compensation so we can continue to cover the news. We know members of Congress value what we do, and we hope they will move quickly on this legislation.” – **Susan Rowell, president of National Newspaper Association (NNA).**

“Readers are increasingly finding news online via platforms like Facebook, Google and others which are not just social media platforms and search engines, but aggregators who are in direct competition with our members. We are forced to make choices based on algorithms rather than our own editorial judgment and we really have no say in that process. This bill will help level the playing field in the discussions with the large corporations who hold a disproportionate amount of power in the presentation of news and information to the public and accentuate the free flow of information to the citizenry.” – **Alfredo Carbajal, President of the American Society of News Editors (ASNE).**

“AAN members have been among the leading innovators when it comes to digital distribution of our content but struggle to find a foothold in getting that content distributed through major platforms. This problem is only getting worse as those platforms are also now competitors in terms of content aggregation and distribution, as well as advertising. The Journalism Competition and Preservation Act offers a short term opportunity to level the playing field and allow us to find workable solutions that benefit all participants involved in the digital distribution of news and information. We look forward to working with Rep. Cicilline and other members of Congress to pass this bill.” – **Molly Willmott, President of Association of Alternative Newsmedia (AAN).**

The Journalism Competition and Preservation Act is also supported by 44 state press associations representing 47 states, including:

- News Media Alliance
- Open Markets Institute
- Alabama Press Association
- Arizona Newspapers Association
- Arkansas Press Association
- California News Publishers Association
- Colorado Press Association
- Connecticut Daily Newspaper Association
- MDDC Press Association
- Florida Press Association
- Georgia Press Association
- Illinois Press Association
- Hoosier State Press Association
- Iowa Newspaper Association
- Kansas Press Association
- Kentucky Press Association
- Louisiana Press Association
- Massachusetts Newspaper Publishers Association
- Michigan Press Association
- Minnesota Newspaper Association
- Mississippi Press Association
- Missouri Press Association
- Montana Newspaper Association
- Nebraska Press Association
- Nevada Press Association
- New Jersey Press Association
- New Mexico Press Association
- New York Press Association
- New York News Publishers Association
- North Carolina Press Association
- North Dakota Newspaper Association
- Ohio News Media Association
- Oklahoma Press Association
- Oregon Newspaper Publishers Association
- Pennsylvania News Media Association
- New England Newspaper & Press Association
- South Carolina Press Association
- South Dakota Newspaper Association
- Texas Press Association
- Utah Press Association
- Virginia Press Association
- Allied Daily Newspapers of Washington
- Washington Newspaper Publishers Association
- West Virginia Press Association
- Wisconsin Newspaper Association
- Wyoming Press Association

**Q. Will the Journalism Competition and Preservation Act harm competition, unfairly prejudice platforms, or allow publishers to collude on price?**

*A. No. The Journalism Competition and Preservation Act establishes an even playing field for negotiations; it does not pick winners and losers or allow publishers to collude on price. The bill only allows the press to band together to negotiate with platforms on conditions so long as it directly relates to the quality, accuracy, attribution or branding, and interoperability of news. Coordination that is limited to price, is not directly related and reasonable necessary to the goals of the bill, or is not directly related to promoting access to quality journalism is prohibited.*

**Q. Why is the bill necessary? Can't consumers easily find news online?**

*A. The importance of the Journalism Competition and Preservation Act is demonstrated by the ability of even subtle changes to how Americans access their news through platforms can wipe out competition online. In January, Facebook changed its News Feed algorithm to deprioritize content from news publishers, [decimating traffic](#) to some digital publishers. A similarly steep decline occurred in 2017 following Facebook's [decision](#) to prioritize video traffic over some news publishers. These examples underscore the great disparity in power between the free press and online platforms, as well as the pattern of dominance in how platforms have life-and-death power over access to news online.*

**Q. Will the Journalism Competition and Preservation Act advantage large publishers over smaller publishers?**

*A. No. The Journalism Competition and Preservation Act requires the negotiation pertain to terms that would be available to all news content creators, including local publishers, and prohibits coordination to discriminate against similarly situated publishers.*

**Q. Does the bill harm competition? Does it justify other exemptions?**

*A. No. Ensuring that the free press is on an even playing field with online platforms is a uniquely important prerogative for Congress. Protecting the free and diverse press is a constitutional value that directly relates to a functioning of our democracy. Without a vibrant press and marketplace of ideas, our system of government—and others—will suffer.*

**Q. Isn't platform dominance just an example of the free market working?**

*A. No. Platform dominance affects newer digital news publishers and legacy publishers alike. In December, BuzzFeed CEO Jonah Peretti said that the “media is in crisis” precisely because “Google and Facebook are taking the vast majority of advertising revenue, and paying content creators far too little for the value they deliver to users,” disadvantaging high-quality creators in favor of cheap media.*