

# Journalism's Bad Bargain

---

## U.S. legislation that lets media cartels collude is the wrong way to foster public-interest journalism

By Sanjay Jolly and Timothy Karr

Yes, journalism is in crisis in the United States. That's obvious to anyone observing the job losses and newspaper closures that have wreaked havoc on local news production over the past 20 years. But few of the lawmakers and lobbyists who claim they're responding to this national emergency seem willing to focus relief efforts where they're needed most.

Various proposals have gained momentum in Washington. Of these, the Journalism Competition and Preservation Act (JCPA) — inspired in large part by Australia's news media bargaining code — was recently voted out of the Senate Judiciary Committee with bipartisan support.<sup>i ii</sup>

JCPA backers describe the legislation as an antitrust measure, but it's a pro-cartel bill that ignores the fundamental problems faced by out-of-work and struggling journalists, and it does nothing for people in news deserts, those communities with few-to-no local-news outlets.<sup>iii</sup> Moreover, it doesn't address the dearth of news outlets and reporters covering issues of concern to Black and Brown communities.<sup>iv</sup>

The JCPA's supporters seem to believe that offering a convoluted mechanism for corporate handouts to profitable and consolidated media outlets will address the information needs of communities like these — but news deserts are the very places that these large chains routinely fail to serve.<sup>v</sup>

---

### Legislation for whom?

So what does the JCPA actually do? The legislation creates an exemption from antitrust laws, which would allow news publishers and broadcasters to coordinate and conduct joint negotiations with the two biggest tech platforms, Google and Meta. In other words, the JCPA would allow the news-media companies to form cartels and collude to extract higher payments when platforms host their content in any way.

The bill also sets forth an arcane set of rules for conducting these negotiations. Essentially, Congress is telling the platforms that they have to bargain with these new cartels, and if the two sides can't come to an agreement on their own, they'll be forced into a "baseball-style" arbitration, where each side submits a final offer and a panel made up of three lawyers chooses whichever offer they decide is more "fair."<sup>vi</sup> But fair for whom?

Supporters of the JCPA, including its lead sponsor Sen. Amy Klobuchar, believe that by creating otherwise-prohibited cartels and forcing Big Tech platforms to the negotiating table, media companies can generate enough new revenues to make journalism great again.

On its face, that sounds plausible (albeit complicated). But the whole thing falls apart on deeper scrutiny. Indeed, the case for the JCPA is built on a series of false assumptions, misleading connotations, bad economics and a fundamental misunderstanding of what and who needs support.

At its core, the JCPA isn't about sustaining a vibrant free press or protecting democracy or ensuring that ordinary people have access to vital information about their communities. Instead, it's about big corporations getting Congress to help them shake down even bigger corporations so they can get a few extra bucks for their shareholders.

"The case for the JCPA is built on a series of false assumptions, misleading connotations, bad economics and a fundamental misunderstanding of what and who needs support."

---

## Unrepresented: those who need relief the most

The most vocal proponents of the JCPA fall roughly into one of three camps.

First, there are the media companies. Lobbyists representing the largest corporate publishers and broadcasters, such as Gannett (which owns about 1,000 newspapers nationwide), Sinclair Broadcast Group (which owns and operates more than 200 local TV stations) and the predatory hedge fund Alden Global Capital (which owns more than 200 newspapers) have been most active on Capitol Hill.<sup>vii</sup> These companies advocate for the JCPA primarily through their Washington trade groups, including the News Media Alliance and the National Association of Broadcasters.

This first camp's interest in the JCPA is self-evident, as they stand to make tens of millions of dollars if the bill passes. The JCPA payout would provide an unneeded boost for profitable broadcasters in particular, at a time when the largest broadcast conglomerates have rebounded from the brief ad-market downturn caused by the COVID crisis to report billion-dollar revenues and a record-breaking season for midterm political-ad spending.<sup>viii ix</sup>

The second camp consists of people focused on antitrust and includes Sen. Klobuchar. She and advocates like the American Economic Liberties Project see Google and Meta as possessing far too much power, particularly in digital-advertising markets. They believe the JCPA will help level the playing field between the platforms and news-media companies.<sup>x</sup> The interest this second camp has in the JCPA is less about journalism than it is about reining in Big Tech.

“In a strategic sleight of hand, the large news-media companies want us to conflate the public importance of local journalism with their own bottom lines.”

The third camp is a group of Republican lawmakers like Sen. Ted Cruz who want to stick it to the social-media companies for deplatforming Donald Trump and attempting to curb the spread of his Big Lie about the outcome of the 2020 election. There's no real substance behind their argument beyond that. It has little to do with saving journalism — but Klobuchar is ignoring all of the red flags and rhetoric to preserve the bipartisan coalition needed to ensure the bill passes.<sup>xi</sup>

Lost in this mix are newsroom workers and the communities that have been hit hardest by the failed

economics of news production. A growing number of communities across the country lack access to the high-quality local journalism they need to stay informed and participate in civic affairs. That is the heart of the journalism crisis. The financial and technological headwinds faced by for-profit (and in most cases still profitable) news chains are certainly relevant, but they do not in and of themselves present a problem in need of a public-policy solution.

---

### Propping up the cartels

By presenting the journalism crisis simply in terms of news companies' lost revenues, JCPA proponents suggest that the government must prop up incumbent commercial publishers and broadcasters without considering whether this would help address communities' information needs.<sup>xii</sup> In a strategic sleight of hand, the large news-media companies want us to conflate the public importance of local journalism with their own bottom lines. But what's good for Gannett and Sinclair is not what's good for America.

Local-accountability journalism — including coverage of city-hall beats and investigative reporting — is a public good that the commercial markets have been unable (or unwilling) to produce effectively or profitably. That's because today's local-news giants spent decades buying up local outlets, driven by the idea that consolidated ownership would create economies of scale and generate profits that could be extracted from local communities. Their buying sprees burdened many of these conglomerates with massive debts that they've had to service by laying off newsroom staff and downsizing daily editions.

While they once dominated the distribution of news and information in local markets, news chains were reluctant or slow to adapt to a digital world that opened up audiences to numerous other ways to engage with information, newsworthy or otherwise. These companies responded to these changes in consumption by cutting costs further or shuttering operations altogether. Between 2005 and 2020, the United States lost more than a quarter of its newspapers, and the number of newspaper-newsroom employees shrank by more than half.<sup>xiii</sup>

They're often depicted solely as victims of the big, bad platforms, even though consolidated news-media companies have played their own part in the demise of their brand of local news. Ironically, the companies that stand to benefit most from the JCPA are the ones that have slashed news production while continuing to buy back stocks, go deeper into debt as they acquire more outlets, and use other financial gimmicks to enrich their owners, executives and shareholders.<sup>xiv xv xvi</sup>

Their self-inflicted wounds don't mean we should ignore the evolution of digital technology and its impact on news production. Communications advances over the past 20 years have laid bare the reality that the commercial market for local journalism — and print news in particular — was always precarious. The advent of online news consumption brought down high barriers to entry (printing presses and distribution networks) and undermined the traditional business of local news as well.

Once we recognize the miscues and market failures driving the journalism crisis, the justification for simply handing money over to these same incumbents evaporates — while the case for treating local-accountability journalism as a public good becomes unequivocal.

---

## Distorted economics

More than ever before, the newspaper industry is dominated by consolidated corporations, with less than a third of the nation's 5,000 or so weeklies and only 10 of the 100 largest circulation dailies remaining independent.<sup>xvii</sup> Time and again, we have seen newspaper chains that are owned by investment firms, hedge funds and private equity groups lay off journalists en masse to help pay for debt-fueled mergers and stock

buybacks.<sup>xviii</sup> It's all too likely that the news-media companies would allocate any income from the JCPA to accelerate these types of actions or fatten the wallets of their own executives — rather than spending this money on local civic-affairs reporting.

The JCPA doesn't require news-media companies to actually invest the money they would receive from the platforms in journalists. Even if a small fraction of that additional income went toward increasing the ranks of local reporters, cartel bargaining is just about the least efficient means of achieving that end. It's no surprise, then, that journalist unions and associations of small news publishers, which comprise the real beating heart of the Fourth Estate, have expressed serious concerns about the bill for its failure to tie revenue distribution to the hiring of newsroom workers.<sup>xix xx</sup>

While large news outlets claim they are just trying to get their “fair value” when platforms link to their published content, the JCPA expressly prohibits the arbitration panel from considering the economic benefits that accrue to news-media companies when platforms distribute or aggregate their content. This is a dead giveaway that the JCPA isn't about economic fairness at all. Instead, it's a classic shakedown. As the journalist Cory Doctorow noted last spring, the JCPA's negotiating framework is “just a way to force two different groups of rapacious monopolists to divide up their ill-gotten gains in a slightly different way.”<sup>xxi</sup>

“Waiving antitrust restrictions is likely to harm competition and consumers, entrench incumbents, and increase their unhealthy codependency with the platforms.”

Waiving antitrust restrictions is likely to harm competition and consumers, entrench incumbents, and increase their unhealthy codependency with the platforms. This will only create larger barriers to entry for new and innovative models for engaged, independent, local journalism.

---

## Accountability journalism as a public good

The JCPA is based on a misdiagnosis of the problem. Bad policy interventions like this only further distort markets when better and more direct remedies are at hand.

Again, any solution to the journalism crisis must start by treating local journalism as a public good — and that means increased public subsidies directly tied to the production of local journalism.<sup>xxii</sup> As in other cases of market failure, it is a routine function of governments to support public goods when the commercial market cannot produce them efficiently. The U.S. government has always played a crucial public role in media markets,

from postal subsidies that allowed newspapers to proliferate in the early republic, to assigning public-interest obligations in exchange for news broadcasters' free use of spectrum, to creating the computer network that later became known as the internet.

As with other public goods like parks and libraries, high-quality local journalism requires public funding, and these funds need to be specifically targeted to invest in local reporting. Fortunately, state-level initiatives can help point the way for larger federal efforts. In New Jersey, the independent nonprofit New Jersey Civic Information Consortium is distributing millions of dollars of state-funded grants to community-journalism projects.<sup>xxiii</sup> And in California, the state recently allocated \$25 million to subsidize the salaries of early-career journalists in underserved communities.<sup>xxiv</sup> Free Press Action organized and advocated for both of these results.

“Any solution to the journalism crisis must start by treating local journalism as a public good — and that means increased public subsidies directly tied to the production of local journalism.”

As Free Press Action has long advocated, Congress also could establish a public trust funded by a tax on digital advertising that could be administered by a new independent agency or by a retooled Corporation for Public Broadcasting.<sup>xxv</sup> In turn, the funds would be disbursed to locally situated grantmaking bodies — such as municipal foundations, community boards, state universities and public libraries — that are best suited to identify their communities' information needs.

This approach would still use massive digital-advertising revenues as a source of funding, without depending on hoped-for trickle-down impacts from cartels and conglomerate collusion. Unlike the JCPA, this sort of publicly administered and community-centered approach would invigorate the production of high-quality local journalism while strengthening communities and safeguarding a free and independent press.

*Sanjay Jolly is the C. Edwin Baker fellow at Free Press Action, where Timothy Karr is the senior director of strategy and communications.*

---

<sup>i</sup> “S.673 - Journalism Competition and Preservation Act of 2021,” Congress.Gov, March 10, 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/673>

<sup>ii</sup> “News Media Bargaining Code,” Australian Competition and Consumer Commission, Feb, 25, 2021. <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/final-legislation>

<sup>iii</sup> For thorough analysis of the costs resulting from the tens of thousands of reporters laid off in the United States from 2005 to 2020, see: S. Derek Turner, “How Big is the Reporting Gap,” Free Press, June 2020. [https://www.freepress.net/sites/default/files/2020-06/free\\_press\\_reporting\\_gap\\_analysis\\_report.pdf](https://www.freepress.net/sites/default/files/2020-06/free_press_reporting_gap_analysis_report.pdf)

- 
- <sup>iv</sup> Katti Gray, “The racial divide on news coverage, and why representation matters,” Knight Foundation, Sept. 25, 2020. <https://knightfoundation.org/articles/the-racial-divide-on-news-coverage-and-why-representation-matters/>
- <sup>v</sup> Penelope Muse Abernathy, “The Expanding News Desert,” UNC Hussman School of Journalism and Media, 2020 Report. <https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/the-news-landscape-in-2020-transformed-and-diminished/the-new-media-giants/>
- <sup>vi</sup> For more on baseball arbitration, see: Lochlin B. Samples, “Resolving Construction Disputes Through Baseball Arbitration,” American Bar Association, March 12, 2019. [https://www.americanbar.org/groups/construction\\_industry/publications/under\\_construction/2019/spring/resolving-dispute-baseball/](https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/resolving-dispute-baseball/)
- <sup>vii</sup> Ownership tallies from the latest updates on the corporate websites of Gannett and Sinclair Broadcast Group. For Alden Global Capital, see: McKay Coppins, “A Secretive Hedge Fund is Gutting Newsrooms,” *The Atlantic*, Oct. 14, 2021. <https://www.theatlantic.com/magazine/archive/2021/11/alden-global-capital-killing-americas-newspapers/620171/>
- <sup>viii</sup> Wayne Friedman, “Nexstar Tops All TV Station Groups In 2021 Revenue, Up 10% From 2020,” *Television News Daily*, July 7, 2022. <https://www.mediapost.com/publications/article/375479/nexstar-tops-all-tv-station-groups-in-2021-revenue.html>
- <sup>ix</sup> George Winslow, “Political Ad Spending on Pace to Hit Record \$9.7B,” *tvtech*, Aug. 10, 2022. <https://www.tvtechnology.com/news/political-ad-spending-on-pace-to-hit-record-dollar97b>
- <sup>x</sup> “Klobuchar, Kennedy, Cicilline, Buck, Durbin, Nadler Release Updated Bipartisan Journalism Bill,” Sen. Amy Klobuchar website, Aug. 22, 2022. <https://www.klobuchar.senate.gov/public/index.cfm/2022/8/klobuchar-kennedy-cicilline-buck-durbin-nadler-release-updated-bipartisan-journalism-bill>
- <sup>xi</sup> Rebecca Klar, “Klobuchar, Cruz strike deal to advance journalism antitrust bill,” *The Hill*, Sept. 22, 2022. <https://thehill.com/blogs/blog-briefing-room/news/3655847-klobuchar-cruz-strike-deal-to-advance-journalism-antitrust-bill/>
- <sup>xii</sup> Editorial Board, “A devastating trend: Local newspapers are shrinking or disappearing. Congress must act.” *USA Today*, July 19, 2022, <https://www.usatoday.com/story/opinion/todaysdebate/2022/07/19/local-news-organizations-financial-crisis/10085190002/>
- <sup>xiii</sup> Abernathy, “The Expanding News Desert,” UNC Hussman School of Journalism and Media, 2020 Report. <https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/the-news-landscape-in-2020-transformed-and-diminished/>
- <sup>xiv</sup> Bram Berkowitz, “Why is Gannett stock up? A stock buyback plan and updated credit terms,” *The Motley Fool*, Feb. 2, 2022, <https://www.usatoday.com/story/money/investing/2022/02/02/why-gannett-shares-are-rising/49749577/>
- <sup>xv</sup> “Sinclair Taking On Significant Debt To Complete Purchase Of RSNs,” *Sports Business Journal*, May 6, 2019. <https://www.sportsbusinessjournal.com/Daily/Issues/2019/05/06/Media/Sinclair>
- <sup>xvi</sup> Ken Doctor, “Newsonomics: Alden Global Capital is making so much money wrecking local journalism it might not want to stop anytime soon,” May 1, 2018. <https://www.niemanlab.org/2018/05/newsonomics-alden-global-capital-is-making-so-much-money-wrecking-local-journalism-it-might-not-want-to-stop-anytime-soon/>
- <sup>xvii</sup> Abernathy, “The State of Local News 2022,” Northwestern University’s Medill School of Journalism, Media, Integrated Marketing Communications, June 29, 2022. <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/>
- <sup>xviii</sup> “Gannett can’t be trusted to invest in journalists as it begs for special powers,” *The News Guild/CWA*, Aug. 4, 2022, <https://newsguild.org/gannett-cant-be-trusted-to-invest-in-journalists-as-it-begs-for-special-powers/>
- <sup>xix</sup> The News Guild/CWA Letter to the U.S. Senate Judiciary Committee, Sept. 7, 2022. <https://static1.squarespace.com/static/5dc4d9a691d92155f36cba0d/t/63190f587fa5af7b18171b1b/1662586712706/NewsGuild+locals+-+9-7-22+Senate+JCPA+letter.pdf>
- <sup>xx</sup> Chris Krewson, “A letter to LION members about the Journalism Competition Preservation Act and the Online News Act,” *Lion Publishers*, Sept. 5, 2022. <https://www.lionpublishers.com/a-letter-to-lion-members-about-the-journalism-competition-preservation-act-and-the-online-news-act/>
- <sup>xxi</sup> Cory Doctorow, “Big Tech Isn’t Stealing News Publishers’ Content,” *Cory Doctorow’s Blog*, April 10, 2022. <https://doctorow.medium.com/big-tech-isnt-stealing-news-publishers-content-a97306884a6b>
- <sup>xxii</sup> Victor Pickard, “In the Digital Era, Journalism Should Be Considered a Public Good,” *Centre for International Governance Innovation*. Sept. 2, 2021. <https://www.cigionline.org/articles/in-the-digital-era-journalism-should-be-considered-a-public-good/>
- <sup>xxiii</sup> Kevin Davis, Amy Kroin and Mike Rispoli, “New Jersey’s Civic Information Bill: The Story of the Campaign to Transform Local Media,” *Free Press Action*, Sept. 28, 2022. [https://www.freepress.net/sites/default/files/2022-09/nj\\_civic\\_info\\_bill\\_case\\_study\\_september\\_2022.pdf](https://www.freepress.net/sites/default/files/2022-09/nj_civic_info_bill_case_study_september_2022.pdf)
- <sup>xxiv</sup> Ivan Natividad, “State funds Berkeley Journalism \$25 million to strengthen California’s local news coverage,” *Berkeley News*, Sept. 7, 2022. <https://news.berkeley.edu/2022/09/07/state-funds-berkeley-journalism-25-million-to-strengthen-californias-local-news-coverage/>
- <sup>xxv</sup> Timothy Karr and Craig Aaron, “Beyond Fixing Facebook,” *Free Press*, Feb. 2019, [https://www.freepress.net/sites/default/files/2019-02/Beyond-Fixing-Facebook-Final\\_0.pdf](https://www.freepress.net/sites/default/files/2019-02/Beyond-Fixing-Facebook-Final_0.pdf)