



January 30, 2023

Mr. Daniel Lee
Assistant U.S. Trade Representative for Innovation and Intellectual Property
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Re: News/Media Alliance Comments Regarding the 2023 Special 301 Review, Docket Number USTR-2022-0016.

Dear Mr. Lee,

The News/Media Alliance (“N/MA” or the “Alliance”) is a nonprofit organization headquartered in Washington, D.C., representing the news and magazine media industries, and empowering members to succeed in today’s fast-moving media environment. The Alliance’s members represent nearly 2,000 diverse news and magazine publishers in the United States and internationally, ranging from the largest news and magazine publishers to small, hyperlocal newspapers, and from digital-only and digital-first outlets to print papers and magazines.

In total, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States and includes nearly 100 magazine media companies with more than 500 individual magazine brands on topics including news, culture, sports, lifestyle, and virtually any other interest. The Alliance diligently advocates for news and magazine publishers on a broad range of current issues affecting them, including intellectual property protections.

The Alliance welcomes the opportunity to provide these comments to the Office of the United States Trade Representative (“USTR”) in response to the *Request for Comments and Notice of a Public Hearing Regarding the 2023 Special 301 Review*, Docket Number USTR-2022-0016, 87 Fed. Reg. 76,660 (December 15, 2022).

The news and magazine media industries make considerable contributions to the U.S. economy and society. Combined, the industries’ estimated revenues amounted to almost \$45 billion in 2020,¹ while newsrooms were estimated to employ approximately 31,000 people in 2020 – not including any indirect employment effects – and magazines over 73,000 people directly and over 219,000

¹ See PEW RESEARCH CENTER, Newspaper Fact Sheet (June 29, 2021), available at <http://www.journalism.org/fact-sheet/newspapers/> (last visited Jan. 26, 2023); ESTIMATED AGGREGATE REVENUE OF U.S. PERIODICAL PUBLISHERS FROM 2005 TO 2020, STATISTA, available at <https://www.statista.com/statistics/184055/estimated-revenue-of-us-periodical-publishers-since-2005/> (last visited Jan. 26, 2023).



jobs in total, including indirect employment effects, in 2021.² In addition to numerous societal benefits, news publishers reach an estimated online and print audience of 136 million Americans per week, representing approximately 40 percent of the total population, while the total audience of magazines – without duplication – amounted to over 221 million in 2020 with a total brand audience (including duplicates) of 1.56 billion.³ A reputation for quality and content that is accurate and reliable matters to many readers and subscribers,⁴ and as a result, publishers must continuously make considerable investments in producing and supporting high-quality journalism. This journalism keeps our communities informed, decision makers accountable, and supports a healthy democracy and self-government.

However, despite the importance of and strong audience for high-quality journalism and publishers' efforts to develop new business models and revenue streams, far too many publishers – especially small and local newspapers – are struggling. In less than 20 years, newspaper circulation and advertising revenues have dropped from \$57.4 billion in 2003 to an estimated \$20.6 billion in 2020, while magazines have witnessed a drop from \$46 billion in 2007 to \$23.92 billion in 2020.⁵ In short, news publishers' revenues have decreased by almost two-thirds and magazines have lost almost half of their revenues. As a result, thousands of communities are now news deserts with no local daily newspapers, while many magazine publishers have reduced frequency or cut print editions altogether, in an effort to survive.⁶

² See PEW RESEARCH CENTER, *NEWSPAPER FACT SHEET* (June 29, 2022), available at <http://www.journalism.org/fact-sheet/newspapers/> (last visited Jan. 26, 2023); Mason Walker, *U.S. Newsroom Employment Has Fallen 26% since 2008*, PEW RESEARCH CENTER (Jul. 13, 2021), available at <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>; MPA – THE ASSOCIATION OF MAGAZINE MEDIA, *MAGAZINE MEDIA HANDBOOK* (2021), available at https://www.newsmediaalliance.org/wp-content/uploads/2018/08/2021-MPA-Factbook_REVISED-NOV-2021.pdf (last visited Nov. 17, 2022).

³ See generally, NEWS/MEDIA ALLIANCE, *NEWS ADVERTISING PANORAMA* (2019) (publicly available to NMA members only; on file with author); The U.S. population was estimated at 333 million in July 2022, CENSUS BUREAU, *QUICK FACTS*, AVAILABLE AT <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Jan. 26, 2023); MPA – THE ASSOCIATION OF MAGAZINE MEDIA, *MAGAZINE MEDIA HANDBOOK* (2021), available at https://www.newsmediaalliance.org/wp-content/uploads/2018/08/2021-MPA-Factbook_REVISED-NOV-2021.pdf (last visited Jan. 26, 2023).

⁴ See AMERICAN PRESS INSTITUTE, *Paths to Subscription: Why Recent Subscribers Chose to Pay for News* (Feb. 27, 2018), available at <https://www.americanpressinstitute.org/publications/reports/survey-research/paths-to-subscription/single-page/> (last visited Jan. 26, 2023).

⁵ See PEW RESEARCH CENTER, *Newspaper Fact Sheet* (June 29, 2021), available at <http://www.journalism.org/fact-sheet/newspapers/> (last visited Jan. 26, 2023); ESTIMATED AGGREGATE REVENUE OF U.S. PERIODICAL PUBLISHERS FROM 2005 TO 2020, STATISTA, available at <https://www.statista.com/statistics/184055/estimated-revenue-of-us-periodical-publishers-since-2005/> (last visited Jan. 26, 2023).

⁶ See generally University of NORTHWESTERN UNIVERSITY, LOCAL NEWS INITIATIVE, *The State of Local News 2022*, available at <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/> (last visited Jan. 26, 2023); Beth Braverman, *How Magazine Publishers Are Cutting Print Costs to Improve Profits* (Aug. 2, 2021), Folio Magazine,



These losses are, in large part, a result of decreasing print advertising revenues, which have not been offset by digital advertising, despite publishers' best attempts. Instead, the majority of digital advertising revenues, as well as user data, have been captured by a few dominant online platforms, who impose terms and conditions on publishers and others in the online ecosystem, while also controlling algorithms that decide what content gets promoted or demoted. These market imbalances have created an existential crisis for publishers of all sizes, with small, local publishers particularly affected.

Over the last four years, a wide range of countries and regions, including the European Union, Australia, Canada, India, and the United States, have recognized these power imbalances and the importance of addressing them in order to protect the sustainability of high-quality journalism. In 2019, the European Union set the stage by adopting the Directive on Copyright in the Digital Single Market, including Article 15 which requires EU member states to create an ancillary copyright for news publishers,⁷ providing publishers with an independent right to protect their content online and thereby effectively granting European news publishers the same fundamental rights that are already provided under U.S. law. Since its implementation into national law in France, Germany, and other member states, publishers small and large have reached significant deals with the platforms, despite efforts to avoid payments.⁸

Following the EU's example, in 2021, Australia adopted its News Media Bargaining Code, which is based on competition law instead of copyright law. The Code requires designated platforms to negotiate with eligible publishers and establishes a binding, final-offer arbitration mechanism in case negotiations fail. Despite no platforms having yet been designated under the Code, the mere threat of designation has led to multiple deals, amounting to estimated payments of AUS\$200 million to publishers and increased hiring of journalists. The overwhelmingly positive effects of the Code speak to the significance of these measures in advancing the important public policy goal of protecting the availability of and communities' access to professional journalism.

Other countries, including the UK, Canada, India, and Taiwan have since introduced or are reportedly considering introducing similar measures that would facilitate negotiations between

available at <https://archive.foliomag.com/magazine-publishers-cutting-print-costs-improve-profits/> (last visited Jan. 26, 2023).

⁷ EU Directive 2019/790, Art. 15, 2019 O.J. (L 130/92), available at <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

⁸ See, e.g., Giorgio Leali and Mark Scott, *France Accepts Google's Truce with Publishers*, POLITICO (Jun. 21, 2022), <https://www.politico.eu/article/french-competition-authority-greenlights-google-pledges-over-paying-news-publishers/>; EURONEWS, *Google Is Paying More Than 300 Publishers in the EU for News with More on the Horizon* (May 12, 2022), <https://www.euronews.com/next/2022/05/11/google-is-paying-more-than-300-eu-publishers-in-the-eu-for-news-with-more-on-the-horizon>.



publishers and the dominant online platforms.⁹ In the United States, Congress recently considered the *Journalism Competition and Preservation Act*, which garnered a total of 15 co-sponsors in the Senate and 75 in the House. The Senate Judiciary Committee marked up the bill before the end of the last session and it continues to enjoy strong bipartisan support in the current Congress as well as in the Administration. All of these measures are narrowly tailored, nondiscriminatory, and aimed at addressing a pressing public policy concern that underlies the health of our democratic institutions.

It is therefore disheartening that some stakeholder groups have in recent years called on the USTR to express concerns over these measures in various proceedings, including the request for comments for the Special 301 Review.¹⁰ During the previous review cycle, one stakeholder specifically argued that the Office could address these issues under the Special 301 process as it “should not only account for gaps in enforcement but also identify areas where countries ... have used intellectual property regulation to target leading U.S. firms.”¹¹ The Alliance strongly disagrees with this characterization of the scope of the Special 301 Review process, in addition to which the underlying assumption is factually inaccurate. These bills do not “target leading U.S. firms,” but are narrowly tailored to correct market imbalances in order to protect professional journalism, regardless of the national origin or the place of incorporation of the platform in question. The fact that the majority of the platforms engaging in harmful market behaviors that make these measures necessary in the first place are American does not make them discriminatory. Neither are these measures a violation of international law, despite arguments to the contrary.¹²

⁹ See, e.g., Parliament of Canada, An Act Respecting Online Communications Platforms That Make News Content Available to Persons in Canada (C-18), <https://www.parl.ca/legisinfo/en/bill/44-1/c-18>; William Turvill, *UK Reveals Plans to Force Google and Meta Pay for News*, Press Gazette (May 5, 2022), <https://pressgazette.co.uk/news/uk-government-sets-out-plans-to-force-big-tech-to-pay-for-news/>; Devika Bhattacharya, *Government Plans Law to Make Google, Facebook Pay for News*, India Today (Jul. 18, 2022), <https://www.indiatoday.in/india/story/government-plans-law-to-make-google-facebook-pay-for-news-what-this-means-1976391-2022-07-16>; Xu Yuan, *Taiwan’s New Digital Ministry to Lead Potential Legislation on Payment to Publishers by Online Platforms*, Official Says, MLex (May 7, 2021), <https://mlexmarketinsight.com/news/insight/taiwan-s-new-digital-ministry-to-lead-potential-legislation-on-payment-to-publishers-by-online-platforms>.

¹⁰ See, e.g., Comments of the Computer & Communications Industry Association (CCIA), Docket No. USTR-2021-0021 (Jan. 21, 2022), https://ccianet.org/wp-content/uploads/2022/01/CCIA_2022-Special-301_Review_Comment.pdf; ITI’s Comments Regarding Foreign Trade Barriers to U.S. Exports for 2023 Reporting (Oct. 28, 2022), <https://www.itic.org/documents/trade/2022.10.28ITIresponse2023NationalTradeEstimateReport.pdf>.

¹¹ Comments of the Computer & Communications Industry Association (CCIA), Docket No. USTR-2021-0021, 2-3 (Jan. 31, 2022), https://ccianet.org/wp-content/uploads/2022/01/CCIA_2022-Special-301_Review_Comment.pdf.

¹² See, e.g., NEWS/MEDIA ALLIANCE, *News Media Alliance Written Comments in Response to U.S. Copyright Office’s Publishers’ Protection Study: Notice and Request for Public Comment* 34 (Oct. 12, 2021), <http://www.newsmediaalliance.org/wp-content/uploads/2018/08/11-23-2021-News-Media-Alliance-Comments-on-USCOs-Publishers-Protections-Study.pdf>.





While the Special 301 Review Report has in the past referred to the EU’s Copyright Directive as a potential issue, the Alliance has been encouraged by the Office’s recent Special 301 Review reports that have left competition-based approaches to news compensation unaddressed while simply noting that “U.S. stakeholders have expressed views” regarding the EU’s Copyright Directive in general and encouraging consistent and transparent implementation of the obligations at national level.¹³ Considering that the measures to ensure fair and adequate compensation for the use of news content online are arguably not within the scope of the Special 301 Review, and that there exist considerable differences of opinion within the U.S. stakeholders on these issues, we strongly urge the Office to continue to remain silent. While these comments relate to the Special 301 Review, we believe that this principle is sound and should be followed in other proceedings and communications as well.

Considering the strong international consensus for measures to protect publishers and the importance of high-quality journalism for healthy democracies, the Alliance believes it is vital that the U.S. Government support policies globally that enhance and strengthen protections for professional journalism. The Alliance welcomes this opportunity to provide the USTR with these comments, and we look forward to continuing to support the Administration in its efforts to address challenges facing American businesses abroad and to make trade work better for all Americans.

Sincerely,

A handwritten signature in black ink that reads "Daboffy".

Danielle Coffey
Executive Vice President & General Counsel
News/Media Alliance

¹³ See, e.g., OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2022 Special 301 Report, 34 (2022), <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>.

