

Statement of

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“Online Platforms and Market Power, Part 1: The Free and Diverse Press”

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Chairman Cicilline, Ranking Member Sensenbrenner, and Members of the Subcommittee, thank you for the opportunity to discuss these issues with you today. My name is Matt Schruers. I serve as Vice President of Law and Policy for the Computer and Communications Industry Association, an international trade association which represents Internet, technology, and communications firms. Since 1972 CCIA has promoted competition in the technology and communications industry. Today, our member companies created hundreds of thousands of jobs in states and districts across the country, with the digital economy as a whole contributing \$1.35 trillion to U.S. GDP and generating a trade surplus of \$172.5 billion each year.

My remarks today address four items. First, I will discuss how online digital services offer extensive benefits and opportunities to multiple groups, including users, content and media producers, and advertisers. Second, I acknowledge that success brings scrutiny. CCIA welcomes the examination of how the industry's successes have affected aspects of the economy, including news publishing. Third, I note that antitrust law is a specific tool for a specific goal: protecting consumer welfare through lower prices, higher quality, and greater innovation. Historically, attempts to exempt certain industries from complying with these protections have negatively affected consumers and the economy as a whole. Providing another antitrust exemption to news publishers in addition to the existing exemption—which is widely regarded as unsuccessful—is not advisable. My testimony concludes by observing that CCIA nevertheless supports the objective of encouraging the production of diverse public interest news content, and identifies other strategies that have been proposed to achieve this goal.

I. Online digital services benefit users, media and content producers, and advertisers

The availability of online digital services has provided enormous benefits and opportunities to Internet users, media and other content producers, and advertisers.

A. Benefits for users

Consumers greatly value the access to information and functionality that modern digital services provide. This includes providing a means for accessing news, but these services are not limited to—or even primarily focused on—providing news content. Economists have found that users attribute thousands of dollars in value to these free-to-the-user online services and turn to them for answers, education, entertainment, to engage in commerce, and to keep up with friends and family.¹

Digital services also provide Internet users with ready access to a broad range of choices of news media content, in convenient formats, on multiple devices, in a way that enables

¹ Erik Brynjolfsson, Avinash Collis & Felix Eggers, *Using massive online choice experiments to measure changes in well-being*, 15 Proceedings of the Nat'l Academy of Sciences 7250 (Mar. 2019), <https://www.pnas.org/content/116/15/7250>. The study's findings show that the median user would require compensation of \$17,530 to forgo search engines, \$8,414 to lose access to email, and \$3,648 to forgo digital maps for a year, among other services analyzed.

participation.² Unlike other media, users can easily engage with news online by sharing, commenting, and participating in communities of interest.

Internet-enabled distribution of news has fostered an ecosystem of communities that share and comment. Research suggests that the news sharing behavior increases readers' involvement and interest in news topics.³ The contribution of social media to news consumption and informal discussion networks has been found to promote civic engagement and individual participation in public affairs.⁴

Beyond the distribution and consumption of news, digital services have enabled individual Internet users to generate, disseminate, and commercialize their own content. In 2017, individual creators earned \$6.8 billion by posting their creations on nine popular digital platforms, including services like Amazon Publishing, eBay, Etsy, Instagram, and YouTube.⁵ Revenue sharing models have enabled independent content creators to convert followers and fan bases into revenue, thus contributing to aggregate growth in earnings and output in the creative industries. Digital services have further empowered individual entrepreneurs to build online and offline businesses. Small and medium-sized enterprises (SMEs) across the United States have leveraged online services to engage in global trade. These services have increased economic opportunity by erasing distances, enabling micro-enterprises to reach multiple foreign markets.⁶

B. Benefits for content and media producers

Content and media producers have used digital services to build and engage their audiences, to monetize content, gather information, and build informed communities.

These services enable publishers, journalists, and other content producers of all sizes to reach a larger, global audience at a fraction of the cost of traditional formats. This has permitted traditional publishers and media outlets to greatly expand their audience through their websites,

² See Elisa Shearer, *Social media outpaces print newspapers in the U.S. as a news source*, Pew Research Center (Oct. 10, 2018), <https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>.

³ See, e.g., Anne Oddorf-Hirsch & Shyam Sundar, *Posting, Commenting, and Tagging: Effects of Sharing News Stories on Facebook*, 44 Comp. in Human Behavior 240 (2015). Observing other people's news sharing activities also leads to more news exposure and exposes segments of the population to news who might not have gotten it otherwise. See, e.g., Annika Bergstrom & Maria Jervelycke Belfrage, *News in Social Media: Incidental Consumption & the Role of Opinion Leaders*, 6 Digital Journalism 583 (2018).

⁴ See, e.g., Gary Tang & Francis Lee, *Facebook Use and Political Participation: The Impact of Exposure to Shared Political Information, Connections with Public Political Actors, and Network Structural Heterogeneity*, Social Science Computer Rev. (Jun. 20, 2013), <https://journals.sagepub.com/doi/abs/10.1177/0894439313490625>.

⁵ Robert Shapiro, *The Growth of America's New Creative Economy*, Re:Create Coalition (2019), <https://www.recreatecoalition.org/wp-content/uploads/2019/02/ReCreate-2017-New-Creative-Economy-Study.pdf>; Michael Masnick & Leigh Beadon, *The Sky Is Rising*, Copia Institute & Computer & Comm'n Industry Ass'n. (Apr. 2019), <https://skyisrising.com/TheSkyIsRising2019.pdf>.

⁶ *United States Small Online Business Trade and Inclusive Growth Report*, eBay Public Policy Lab (May 2019), <https://www.ebaymainstreet.com/unitedstates>. The transactions data from the eBay Marketplace in 2017 revealed that 96% of eBay's small businesses (sellers with sales of \$10,000 or more annually) export goods, and that these small business reach on average 17 different countries annually.

apps, and social sharing. Newspaper website traffic continues to grow. The average monthly unique visitors for the top 50 newspapers rose from 8.2 million in 2014 to 11.5 million in 2017, an increase of 40%.⁷

Publishers and journalists use digital services to engage with their audience to distribute better content. Social media platforms in particular have offered unique functionalities and features which have redefined user involvement.⁸ Users may share and amplify the reach of news stories, and help “road-test” journalists’ story ideas.⁹ Journalists and reporters may also solicit information from the news audience, crowdsource information, and involve them in the process of news construction. Newsrooms can use digital services to monitor their competition’s coverage, audience-posted feedback, and topics trending on social media to find stories they might have missed. Digital services have also empowered news audiences to provide immediate feedback, improving accuracy by holding publishers more accountable for their content.¹⁰

Digital services also offer new opportunities for news content monetization. Before the advent of modern advertising networks, the Internet introduced significant competition for media organizations. Many had enjoyed decades of profits stemming from the previously limited channels available to local advertisers (e.g., one local paper and a few local broadcasters). New websites like Craigslist disrupted publishers’ classic revenue models (such as lucrative classified listings), at the same time readers could obtain any news content online from around the world. This naturally led to a decline in local publishers’ revenues as advertising prices fell to more competitive rates.

In the face of these challenges, however, many publishers have embraced the opportunities provided by the Internet. A range of business models are available to today’s news publishers, including subscription-based, ad-based, and hybrid models. Many traditional publishers have opted for the subscription model, offering digital subscriptions that leverage many readers’ willingness to pay for high-quality journalism and premium content by specialists. Online targeted advertising provides news publishers significant revenue,¹¹ while high-priced display advertising is popular on digital-only publishers’ webpages that attract the most traffic.¹²

⁷ *Newspapers Fact Sheet*, Pew Research Center (June 13, 2018), <https://www.journalism.org/fact-sheet/newspapers/> (“According to the independently produced reports from The New York Times and The Wall Street Journal, however, both companies saw large gains in digital circulation in the past year: 42% for the Times and 26% for the Journal, on top of gains in 2016. If these independently produced figures were included in both 2016 and 2017, weekday digital circulation would have risen by 10%.”)

⁸ See Arne H. Krumsvik, *Redefining User Involvement in Digital News Media*, 12 *Journalism Practice* 19 (2018), <https://www.tandfonline.com/doi/abs/10.1080/17512786.2017.1279025>.

⁹ Andrea Carson & Denis Muller, *The Future Newsroom*, Univ. Melbourne (Sept. 2017) (noting publications’ use of Twitter to “road test” story ideas, where high engagement was taken as a sign to publish a story).

¹⁰ Terry Flew, Fiona Suwana & Lisa Tam, *Digital Platforms and Australian News Media: Report*, QUT Creative Indus. (Apr. 2018). ABC political reporter Annabel Crabb describes the stark contrast between writing offline versus online, and how receiving feedback on news stories posted online holds journalists more accountable.

¹¹ According to the Pew Research Center, 31% of newspaper advertising revenue came from digital advertising in 2017, an increase from 17% in 2011. *Percentage of newspaper advertising revenue coming from digital advertising*, Pew Research Center (June 13, 2018), <https://www.journalism.org/chart/sotnm-newspapers-percentage-of-newspaper-advertising-revenue-coming-from-digital/>.

¹² *Id.*

Even when these monetization opportunities are facilitated by digital services, the intermediaries typically share the revenues with news publishers.¹³

News services are also experimenting with native advertising, selling access to databases, memberships and public donations, and crowdfunding. Content providers can also use online data analytical services to monitor web traffic, measure performance, and optimize timing and placement of news stories to drive revenue.

Digital technology has also permitted many new online-only news publishers to enter the market. Young digital-native news outlets now contribute to the reporting of political news, and can target niche audiences and underserved demographics, thus broadening the range of topics that are covered and the range of voices that are published.¹⁴ According to the Bureau of Labor Statistics, roughly 13,000 employees worked as reporters, editors, photographers or videographers in the newsrooms of these digital-native outlets in 2017.¹⁵ The existence of these digital-native news publishers has created new opportunities for journalists and readers, but has also engendered fierce competition for attention and advertisers.

C. Benefits for advertisers

As noted above, Internet advertising offers advertisers a new and effective medium through which to connect with audiences.¹⁶ Even as digital services have increased users' access to information, they have lowered costs for advertisers and provided many with a significantly higher return on investment (ROI). At the same time, advertisers can leverage the improved feedback available from ad technology to more accurately reach interested audiences.

Lower costs, higher return: With digital advertising services, entrepreneurs and small- and medium-sized businesses can reach interested national and global audiences to whom their content may be relevant. This is achieved through a large array of competing intermediaries and service providers, including ad networks, exchanges, and demand- and supply-side platforms. These intermediaries are essentially matchmakers working at scale, connecting advertisers, who bid for impressions, with publishers, who seek to maximize the value of their advertising 'stock.' Previously, most of these businesses would have been unable to afford the national print or television placements needed to achieve the same reach. Today, small businesses can effectively target focused groups of potential customers, worldwide. Of course, these services are only an

¹³ See, e.g., Richard Gingras, *Proposed copyright rules: bad for small publishers, European consumers and online services*, The Keyword, Dec. 6, 2018, <https://www.blog.google/around-the-globe/google-europe/proposed-copyright-rules-bad-small-publishers-european-consumers-and-online-services/> (stating that 70% of ad revenue generated by Google ad services is retained by publishers).

¹⁴ *Id.* For example, sites such as *HuffPost* have focused content produced by and for LGBTQIA communities.

¹⁵ *Digital News Fact Sheet*, Pew Research Center (June 6, 2018), <https://www.journalism.org/fact-sheet/digital-news/>.

¹⁶ Due to the overall growth of digital advertising opportunities, the global advertising market grew by a record 17% in 2018 to reach a total of \$552 billion across 70 countries. Non-digital advertising segments have not lost out to the growth of digital, holding steady at approximately \$300 billion. MAGNA, *Press release: MAGNA Advertising Forecasts (Winter 2018 update)* (Dec. 3, 2018), <https://magnaglobal.com/magna-advertising-forecasts-winter-2018-update/>.

option; news publishers and advertisers continue to strike direct deals for ad placement without the use of intermediary services.

Both news publishers and advertisers can mix-and-match services throughout the ad tech “stack,” switching or “multi-homing” between competing providers. One study shows that advertisers will use, on average, more than four different demand-side platforms per month to buy inventory for advertising campaigns.¹⁷ Content publishers use roughly six different supply-side platforms per month to sell their advertising inventory.¹⁸ At the recent DOJ workshop on TV and digital advertising, one panelist observed that advertising media platforms have converged over time, such that advertisers can now place the same ads, to the same audiences, across local broadcast TV, cable, digital ad exchanges, and streaming video sites.¹⁹

Improved feedback: To paraphrase the observation of 19th century marketing pioneer John Wanamaker, an advertiser knows half his ad budget is wasted—he just doesn’t know which half. For the first time in the history of advertising, technology now enables advertisers to immediately assess how effective their message is and where their efforts are wasted. The availability of digital tools that allow advertisers to identify advertising channels with the best ROI and quickly steer advertising budgets accordingly has implications for innovation. Instantaneous feedback on an advertisement’s performance provides an easy, low-cost way for advertisers and marketers to evaluate the performance of a given service. Advertising networks and exchanges must therefore compete constantly to attract and retain customers—who can easily switch to other providers—whether it is by enhancing their ability to target specific groups of consumers, presenting the ads in ways that are more valuable to viewers, or improving metrics to measure ad performance.²⁰

II. Scrutiny of successful firms is appropriate

None of this encouraging information around the positive impact of digital services is to suggest that America’s leading technology firms are above scrutiny. We appreciate that large and successful businesses will receive additional examination by regulators and policymakers. In less than a generation, the Internet sector has become a significant part of the U.S. economy, a considerable portion of our exports and GDP growth, and the leaders of that industry are among the most admired brands in the world.²¹ Policymakers should want to examine these

¹⁷ Ross Benes, *Five Charts: The State of Programmatic Bidding*, eMarketer (June 5, 2018), <https://www.emarketer.com/content/five-charts-the-state-of-programmatic-bidding>.

¹⁸ Ross Benes, *Publishers Are Using Fewer Sell-Side Vendors*, eMarketer (July 17, 2018), <https://www.emarketer.com/content/publishers-purged-one-fourth-of-their-ssps-over-two-years>

¹⁹ Comments of Dave Lougee, President and CEO of TEGNA, <https://www.justice.gov/atr/public-workshop-competition-television-and-digital-advertising> (panel 3).

²⁰ Catherine Tucker, *ACCC Digital Platforms Inquiry Submission* (Nov. 27, 2018). Today, there are many competitive software options for cross-channel marketing campaigns, including Adobe Campaign, IBM Watson Marketing, Oracle Marketing Cloud, and Salesforce Marketing Cloud.

²¹ See, e.g., Daniel Roth, *Top Companies 2019: Where the U.S. wants to work now*, LinkedIn (Apr. 3, 2019), <https://www.linkedin.com/pulse/top-companies-2019-where-us-wants-work-now-daniel-roth/>; *The World’s Most Admired Companies*, Fortune (Jan. 2019), <http://fortune.com/worlds-most-admired-companies/>; *The Axios Harris*

developments, and we welcome evidence-driven discussions about the economic transformation that is happening and the firms that are driving it.

Nevertheless, CCIA believes that the primary subject of discussion in this hearing is not, at its root, the technology industry. Rather, as noted above, technology has challenged the business model of some news media producers, mainly by globalizing the advertising market and disrupting the dominant local advertising position that many publishers had held for decades. CCIA agrees that the production of objective and diverse public interest news coverage is important to a democracy, and discussion of how to ensure that continues is warranted.

III. Competition law and policy in the context of digital content

A. Objectives and approach of U.S. antitrust law

U.S. antitrust has evolved over time to focus on maximizing consumer welfare. As the legal regime has matured, enforcement actions have been guided by the metrics of lower prices, higher quality, and promotion of innovation. Separate public interest concerns are generally addressed through other legislative means. Firewalling off policy goals other than consumer welfare from the antitrust analysis has ensured a consistent application of the law by courts and enforcement authorities, limiting political considerations in the decision-making process. This characteristic of the U.S. competition system has benefited consumers and the economy as a whole, and should be preserved.

The approach of U.S. competition law is to preserve incentives for companies to become successful. It includes obligations that only apply in specific situations to successful firms that possess market power in a defined market. For antitrust law purposes, relevant markets are not defined on a subjective, ad hoc basis, or by arbitrary line-drawing. Rather, a relevant market is defined using economic analysis of the elasticity of demand -- that is, how significantly consumers respond to price changes in light of factors like competitors and substitutes. Enforcers and courts then assess whether or not a firm has the power to unilaterally raise prices in the relevant market. This economic analysis is crucial to understanding complex market dynamics, including those occurring in the digital sector.

A good example of these complexities are zero-price services, such as free digital services or free online news sites. These services are not excluded from antitrust analysis. As the Assistant Attorney General for antitrust recently observed, “[t]raditional conduct that is unlawful under the antitrust laws is still unlawful in the zero-price models more prevalent in today’s digital economy.”²²

Poll 100 reputation rankings, Axios (Mar. 6, 2019), <https://www.axios.com/axios-harris-poll-corporate-reputations-bcc0c03d-0bb5-4eb1-b591-4622bb4b01ed.html>.

²² Makan Delrahim, Assistant Att’y Gen., U.S. Dep’t of Justice Antitrust Division, Silicon Flatirons Annual Technology Policy Conference at The University of Colorado Law School (Feb. 11, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-silicon-flatirons>.

Digital services are often structured as what economists call “multi-sided business models,” meaning that they unite at least two different groups of customers in a match-making function, with one or more sides being charged a price for accessing the service, thus supporting the cost of service at no charge to the other sides. This business model, which has become popular in the digital sector, is not new. It can be observed elsewhere in the economy, including in free broadcast radio and television, credit cards, and shopping malls.

Understanding market definition is important to the question of market power, and when discussing competition dynamics among digital services this should not be misconceived. Many successful digital services are closely identified with a particular function they provide, such as search or social media. However, this function is not necessarily coterminous with a “relevant market” when the robust economic analysis described above is applied. An economic analysis of the advertising sector, for example, would show that ad-supported online news publishers and digital services compete against each other for advertising dollars.

Online services also compete with broadcast and cable. Television industry representatives state that there is “no doubt that national traditional TV is converging with digital video”,²³ and acknowledge “relentless competition for viewers and advertising” between television and digital platforms.²⁴ Thus, offline ads provide a competitive check on digital advertising companies, further incentivizing lower prices and higher quality across the board.

The intense competition taking place in the advertising sector is generally healthy and benefits the U.S. economy. It has given people more access to information at lower costs. But some traditional news publications have struggled to compete in the face of changing consumer habits and a new media environment. Policies to address this effect may be appropriate, but should tackle directly the news production problem, and not impair competition in the broader advertising market.

B. U.S. experiences with previous antitrust exemptions for news publishers

Antitrust exemptions generally have had limited success in achieving their stated goals, and are frequently criticized.²⁵ These exemptions or immunities typically invite competitors to cartelize, engage in price fixing, or collusive bargaining. These exemptions distort the free

²³ *Id.* “[T]his starts with the consumer and how she is consuming content across all different devices. So, what used to be traditional TV being consumed on one device in the household, now it’s being consumed on a number of devices—a connected TV, the set-top box, the mobile device, etc. And even actually different OTT apps, different app experiences where from the delivery standpoint it looks very fragmented, but for a consumer it’s a unified and single experience.” (remarks of Christina Beaumier (Vice President Product, TV Platform, Xandr), panel 4 video, at 45:17).

²⁴ Public Workshop on Competition in Television and Digital Advertising (May 2-3, 2019), *available at* <https://www.justice.gov/atr/public-workshop-competition-television-and-digital-advertising> (presentation of David Morgan, CEO, Simulmedia, Inc., p.7).

²⁵ AM. ANTITRUST INST., WORKING GRP. ON IMMUNITIES & EXEMPTIONS, COMMENTS OF THE ANTITRUST INSTITUTE 2 (2005), *available at* <http://www.antitrustinstitute.org/files/433.pdf> (noting that many antitrust exemptions are unnecessary, harmful to competition, and the “product of special interest pressure”).

market and impair its efficiency.²⁶ When competitors collude to collectively set prices or agree on terms in negotiations against other relevant market players, consumers lose. Prices tend to be higher, and quality decreases for lack of a competitive incentive to improve.

The Journalism Competition and Preservation Act of 2019, H.R. 2054, proposes such an exemption to the U.S. antitrust laws. It would allow competing news publishers to collude in negotiations with digital services with large user bases. Although these negotiations cannot be limited solely to price, price can nevertheless be a focal point.²⁷

Attempting to preserve public interest news with another antitrust exemption for news publishers is unlikely to succeed. Permitting favored businesses to cartelize runs counter to U.S. antitrust norms and would disrupt an otherwise functioning market economy.

Moreover, the U.S. experience with preserving newspaper diversity through antitrust exemptions is not encouraging. The Internet is not the first new communications medium to challenge print news publishers. Arguably, it is the third, following broadcast radio and then broadcast television, which could provide news instantaneously and at zero marginal cost to an entire locality. The competitive threat of broadcast news prompted previous proposals to exempt the newspaper industry from antitrust norms. This was eventually implemented with the Newspaper Preservation Act (NPA) of 1970, 15 U.S.C. §§ 1801-04, which exempted from antitrust scrutiny certain agreements between otherwise competing newspapers in the same geographic vicinity. The goal was to keep competing newspapers publishing in areas where readership was declining by allowing them to reduce costs by eliminating overlapping costs, including non-editorial/reportorial personnel and facilities. Unfortunately, the Act failed to achieve the stated goal of Congress to maintain independent competing voices. In fact, historians and journalists have argued the NPA fostered monopolies and chains instead of producing independent voices.²⁸ Given the cautionary history of the previous exemption for local newspapers, another would be ill-advised.

Due to experiences with the NPA and other antitrust exemptions, the 2007 report of the Congressionally chartered Antitrust Modernization Commission criticized existing exemptions

²⁶ ANTITRUST MODERNIZATION COMM'N, REPORT AND RECOMMENDATIONS 335–37 (2007), https://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf (“Typically, antitrust exemptions create economic benefits that flow to small, concentrated interest groups, while the costs of the exemption are widely dispersed, usually passed on to a large population of consumers through higher prices, reduced output, lower quality, and reduced innovation.”).

²⁷ H.R. 2054, § 2(b)(1)(A).

²⁸ Felicity Barringer, *A 1970s Act to Preserve Faltering Newspapers Seems Only to Delay the Inevitable End*, *The N.Y. Times* (Aug. 16, 1999), <https://www.nytimes.com/1999/08/16/business/media-1970-s-act-preserve-faltering-newspapers-seems-only-delay-inevitable-end.html>; Daniel Gross, *JOA DOA: It's time to kill the antitrust exemption that allows rival newspapers to act like partners*, *Slate* (May 8, 2003), <https://slate.com/business/2003/05/the-folly-of-joint-operating-agreements.html>.

and cautioned against new ones.²⁹ Similarly, antitrust enforcers in this Administration and the previous Administration have criticized antitrust exemptions.³⁰

IV. Potential policy solutions for promoting public interest news reporting

Given the widely shared objective of preserving news media production, how can we meet these challenges, consistent with existing U.S. policy? While CCIA has not endorsed any one particular strategy, studies have suggested other policy options that may be considered. In fact, U.S. policymakers have previously devoted attention to this subject. A 2009 FTC staff discussion draft on this topic explored various measures to promote public interest news reporting in the Internet era.³¹ The proposed measures included options that have since been proposed or implemented in other jurisdictions, such as federal tax deductions and grants to universities to conduct investigative journalism.

For example, the recent Cairncross review requested by the United Kingdom Department for Digital, Culture, Media & Sport, suggests that tax incentives for news productions and news subscriptions could help the news business.³² Another possible point of reference is the recent Canadian tax benefits package. Last year, the Canadian federal government introduced a CAN\$595 million tax package to bolster the country's journalism market over 5 years, including a temporary tax credit allowing news subscribers to deduct a portion of eligible digital news media subscriptions, a new tax category for qualified non-profit journalism organizations,³³ and a refundable tax credit for qualifying news organizations that “produce a wide variety of news and information of interest to Canadians.”³⁴

Several EU Member States also have state aid programs that directly subsidize news or media producers, particularly to promote diversity of independent news producers in small

²⁹ *Id.*, *supra* Antitrust Modernization Comm'n, at 337.

³⁰ Christine A. Varney, Assistant Att'y Gen., U.S. Dep't of Justice Antitrust Division, Remarks for the Newspaper Association of America on Dynamic Competition in the Newspaper Industry (Mar. 21, 2011), <https://www.justice.gov/atr/speech/dynamic-competition-newspaper-industry> (“The antitrust laws are flexible and adaptive, and do not stand in the way of procompetitive solutions to the challenges facing the newspaper industry. At the same time, it is important to note that government needs to tread lightly when dealing with newspapers because a news industry free from government management is important to our democracy.”); Makan Delrahim, Assistant Att'y Gen., U.S. Dep't of Justice Antitrust Division, Remarks at the Antitrust Division's First Competition and Deregulation Roundtable (Mar. 14, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-antitrust-division-s-first>.

³¹ Public Workshops and Roundtables: From Town Crier to Bloggers: How will Journalism Survive the Internet Age? Fed. Trade Comm'n (Dec. 2009), https://www.ftc.gov/sites/default/files/documents/public_events/how-will-journalism-survive-internet-age/090930mediaworkshopnotice_1.pdf.

³² Dame Frances Cairncross, *The Cairncross Review: A sustainable future for future of journalism* (Feb. 12, 2019), <https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>.

³³ Christine Schmidt, *Canada introduces a \$595 million package in support of journalism*, NiemanLab (Nov. 26, 2018), <https://www.niemanlab.org/2018/11/canada-introduces-a-595-million-package-in-support-of-journalism/>. This package aims to help digital news organizations achieve a “more financially sustainable business model.”

³⁴ The tax credit will apply to the labor costs associated with producing original content and will be open to both nonprofit and for-profit news organizations. The measure will allow outlets to claim a portion of their labor costs.

geographic and language markets.³⁵ CCIA cautions against a European-style “link tax,” however, which was piloted unsuccessfully in Germany and Spain and resulted in lost traffic for local publishers.³⁶ Such a tax was nevertheless incorporated in the controversial Digital Single Market Copyright Directive earlier this year. This new Directive is more expansive than German and Spanish laws, and appears to violate international commitments and treaty obligations.³⁷

V. Conclusion

In conclusion, the value that digital services provide to users, content publishers, and advertisers is considerable, but have also affected some traditional business models, including news producers. While antitrust exemptions have proven to be an inadvisable solution to the business model challenges of news publishers, other potential solutions remain.

Thank you for the opportunity to provide an industry perspective today. CCIA welcomes the opportunity to work with the committee in its ongoing inquiry.

³⁵ 2013 O.J. (C 371) 56—Production and innovation aid to media in DK; 2013 O.J. (C 077) 56—Slovenia Promotion of publishing industry in Slovenia; 2016 O.J. (C 369) 59—Spain Aid to local media published in the Basque language. This is a non-exhaustive list of examples from EU Member states.

³⁶ Joe Mullin, *New study shows Spain’s “Google tax” has been a disaster for publishers*, Ars Technica (July 30, 2015), <https://arstechnica.com/tech-policy/2015/07/new-study-shows-spains-google-tax-has-been-a-disaster-for-publishers/>; Greg Sterling, *German Publishers To Google: We Want Our Snippets Back*, Search Engine Land (Oct. 23, 2014), <https://searchengineland.com/german-publishers-google-want-snippets-back-206520>.

³⁷ By imposing a levy on quotations, these entitlements violate quotation rights under the Berne Convention, including Berne Article 10(1)’s mandate that “quotations from a work . . . lawfully made available to the public” shall be permissible, and Berne Article 2(8)’s exception for “news of the day” and “miscellaneous facts having the character of mere items of press information.”