

United States Senate
WASHINGTON, DC 20510

September 10, 2024

The Honorable Jonathan Kanter
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Assistant Attorney General Kanter and Chair Khan:

We write to highlight the risks that new generative artificial intelligence (“AI”) features pose to content creators, including journalists who report local news, and to urge you to investigate whether the design of these features violates the antitrust laws. It is crucial that we ensure that big tech platforms do not misappropriate content from journalists and other content creators, leading to less local news reporting and credible sources of information, along with lower levels of competition, investment, innovation in the digital marketplace.

Local news is facing a crisis. A recent study found that the U.S. has lost approximately 2,900 newspapers, and that a third of the newspapers that existed in 2005 will have disappeared by the end of this year.¹ At the same time, dominant online platforms, such as Google and Meta, generate billions of dollars per year in advertising revenue from news and other original content created by others. New generative AI features threaten to exacerbate these problems.

Recently, multiple dominant online platforms have introduced new generative AI features that answer user queries by summarizing, or, in some cases, merely regurgitating online content from other sources or platforms. The introduction of these new generative AI features further threatens the ability of journalists and other content creators to earn compensation for their vital work. While a traditional search result or news feed links may lead users to the publisher’s website, an AI-generated summary keeps the users on the original search platform, where that platform alone can profit from the user’s attention through advertising and data collection. Although these features may provide partial citations or links to sources, they are often hidden behind tabs or at the bottom of a page where users are unlikely to scroll after already reading an answer. Moreover, some generative AI features misappropriate third-party content and pass it off as novel content generated by the platform’s AI.

These products also have significant competitive consequences that distort markets for content. When a generative AI feature answers a query directly, it often forces the content creator—whose content has been relegated to a lower position on the user interface—to compete with content generated from their own work. For example, if a user searches for a recipe, a search engine would have previously directed the user to a content-creator’s website. But today, many generative AI features will instead copy information from those websites (without authorization) and present it as an AI-generated recipe directly to the user, in direct competition with those websites. Publishers who wish to avoid having their content summarized in the form of AI-

¹ Penelope Muse Abernathy, *The State of Local News: The 2023 Report*, Northwestern Medill Local News Initiative (Nov. 16, 2023), <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/report/>.


generated search results can only do so if they opt out of being indexed for search completely, which would result in a materially significant drop in referral traffic. In short, these tools may pit content creators against themselves without any recourse to profit from AI-generated content that was composed using their original content. This raises significant competitive concerns in the online marketplace for content and advertising revenues.

Dominant online platforms in areas like search, social media, e-commerce, operating systems, and app stores already abuse their gatekeeper power over the digital marketplace in ways that harm small businesses and content creators and eliminate choices for consumers. These platforms have long employed strategies to profit off users' engagement with third-party content without fairly compensating the creators of that content. We are concerned about the potentially devastating impact of some new generative AI features, introduced by these same dominant platforms, on news organizations and other content creators.

For the reasons outlined above, we urge the Department of Justice Antitrust Division and the Federal Trade Commission to investigate whether the design of some generative AI features, introduced by already dominant platforms, are a form of exclusionary conduct or an unfair method of competition in violation of the antitrust laws.

We look forward to your prompt response.

Sincerely,



Amy Klobuchar
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator



Tammy Duckworth
United States Senator



Elizabeth Warren
United States Senator



Tina Smith
United States Senator

cc: Ms. Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office