

M E M O R A N D U M

January 11, 2024

From: Akin Gump Strauss Hauer & Feld LLP
Re: Summary of Senate Judiciary Subcommittee on Privacy, Technology, and the Law Hearing on AI and the Future of Journalism

On Wednesday, January 10, the Senate Judiciary Subcommittee on Privacy, Technology, and the Law held a [hearing](#) titled, “Oversight of A.I.: The Future of Journalism.” This memorandum provides a high-level summary of the hearing.

The following witnesses testified before the Subcommittee:

- [Jeff Jarvis](#), *Professor of Journalism Innovation*, CUNY Graduate School of Journalism
- [Danielle Coffey](#), *President and CEO*, News Media Alliance
- [Curtis LeGeyt](#), *President and CEO*, National Association of Broadcasters
- [Roger Lynch](#), *CEO*, Condé Nast

The following Senators participated in the hearing:

Chair Richard Blumenthal (D-CT)
Sen. Amy Klobuchar (D-MN)
Sen. Chris Coons (D-DE)
Sen. Mazie Hirono (D-HI)
Sen. Alex Padilla (D-CA)
Sen. Jon Ossoff (D-GA)

Ranking Member Josh Hawley (R-MO)
Sen. John Kennedy (R-LA)
Sen. Marsha Blackburn (R-TN)
Sen. Mike Lee (R-UT)
Sen. John Cornyn (R-TX)

Opening Statements

Chair Richard Blumenthal (D-CT) Opening Statement

- Local reporting is facing an existential crisis due to increasing costs and declining revenue, coupled with the rise of disinformation. Technologies like AI are contributing to this crisis.
- Local journalism is crucial for community awareness, accountability, and jobs. The decline in local reporting is alarming, with a third of newspapers lost in the last 20 years. Hedge funds are buying newspapers, often for real estate rather than news, leading to reduced publication frequency and staff layoffs.

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- Many Americans, particularly in rural areas and communities of color, now live in news deserts without local papers.
- Local news is as important as local emergency services, being the first informers in communities.
- Big Tech companies are a major factor in the decline of local news, using journalistic content without compensation to train AI models.
- AI models compete with journalistic institutions, cannibalizing their readership and revenue.
- The New York Times's lawsuit against OpenAI and Microsoft highlights issues of AI plagiarizing articles and bypassing paywalls.
- AI may also misrepresent media content, leading to misinformation and harming media outlets' credibility.
- There are concerns that AI could replace journalists, undermining the trust and local relevance of news.
- Our goal is to ensure that journalists and readers benefit from AI while avoiding its pitfalls.
- We need to act faster than we did with social media to avoid similar mistakes.
- Proposed measures include licensing for content use, an AI framework for transparency and copyright use, clarification on Section 230 not applying to AI, and updating antitrust laws to counter Big Tech's advertising practices.

Ranking Member Josh Hawley (R-MO) Opening Statement

- I've noticed a pattern in these hearings: AI enthusiasts vs. those with concerns.
- AI enthusiasts are often found within this building and among lobbyists.
- Real people outside this building express concerns about AI's impact on jobs, privacy, and children. I haven't met a Missourian who is an unreserved AI supporter; people express uncertainty and desire for Congress to act.
- Chair Blumenthal (D-CT) and I have introduced a bipartisan bill, the *No Section 230 Immunity for AI Act* ([S. 1993](#)), which prevents AI-generated tools from being covered under Section 230 protections.
- Technology companies often oppose safeguards that could affect their profits.
- AI is contributing to the monopolization of information and data by a few large companies.
- There is a need for practical steps to ensure people can protect their work, data, and rights.

Sen. Amy Klobuchar (D-MN) Opening Statement

- I am hopeful that there's a package on AI and that it will include a ban on deep fake ads.
- This issue is personal to me; my dad was a journalist who wrote extensively without AI. He wrote about local topics, including sports, highlighting the importance of local news.

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- Chair Blumenthal (D-CT) outlined the problems faced by local news, including their role in providing critical information like disaster alerts and local events.
- The decline in local news due to advertising revenue loss is alarming, with Google earning billions while newspapers' revenue plummeted.
- I am concerned that Generative AI (GAI) will exacerbate these trends.
- I am advocating for the *Journalism Competition and Preservation Act of 2023* ([S. 1094](#)), co-led with Senator Kennedy, to support local news.
- There have been successful negotiations in Canada and Australia that benefitted local news as examples of market-based solutions.
- I am concerned about the misuse of AI in creating fake images of trusted figures, including news anchors and politicians, not just celebrities.

Witness Testimony

Coffey Testimony

- I am President and CEO of the News Media Alliance, representing over 2200 news publications, magazines, and digital outlets.
- Our members, some established before the Constitutional Convention, produce content that informs, educates, and connects with readers.
- We cover a wide range of topics, investing significantly in journalism to serve readers nationwide.
- Our publications adhere to high standards for verification, accuracy, and fidelity to facts, with correction policies to maintain reporting accuracy.
- However, the rest of the internet often lacks this accountability, threatening public discourse and an informed electorate.
- GAI poses risks to the information ecosystem, potentially spreading inaccuracies without quality content from news publications.
- Our industry faces economic decline, with revenue halved over the past decade, even as demand for our content has grown.
- Dominant distributors of our content use it for engagement and advertising, impacting our revenue.
- Investigations and litigation have found anti-competitive conduct by monopoly news distributors, exacerbating our financial challenges.
- We appreciate Sens. Klobuchar (D-MN) and Kennedy (R-LA) for their leadership on the *Journalism Competition and Preservation Act of 2023* ([S. 1094](#)) to address market imbalances.

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- GAI exacerbates market imbalances by using copyrighted content in training and outputs, often beyond fair use.
- We're not opposed to AI but seek responsible development and potential licensing solutions for reliable access to trustworthy content.
- Some GAI developers engage in positive licensing agreements, and we encourage this practice.
- Congress can address issues like transparency, copyright, accountability, and competition.
- We advocate for the coexistence and thriving of a free press alongside new technologies for the benefit of society.

Jarvis Testimony

- I've been a journalist for 50 years and a journalism professor for 18 years.
- I've learned three key lessons from my book, *The Gutenberg Parenthesis*:
 - The 1790 Copyright Act only covered maps, charts, and books, not newspapers.
 - The 1792 Post Office Act allowed free newspaper exchanges, fostering a national news network.
 - A century ago, print media, feeling threatened by radio, limited its news reporting and accused it of stealing content.
- Despite past resistance to new media, I see potential benefits in news collaborating with AI technology.
- AI shouldn't be used where factual accuracy is crucial, but it offers many opportunities in translation, summarizing documents, analyzing extensive texts, enhancing literacy and storytelling, and assisting in creative writing.
- AI could allow readers to interact with content, offering new business models for publishers.
- Open internet access is crucial for AI development and knowledge dissemination.
 - Common Crawl archives the web, but actions like the New York Times demanding content removal are concerning.
 - I'm pleased my books contribute to AI training, as AI can spread ideas and knowledge.
- There's a risk to democracy and information access if authoritative news is confined behind paywalls.
- I've experienced the economic challenges of journalism, but we need to discuss journalism's role in democracy.
- My upcoming book, *The Web We Weave*, calls for mutual obligations for the Internet's future.
- I propose a "Hippocratic Oath for the Internet", which should do the following: (1) Protect speech and assembly rights enabled by the Internet; (2) Base Internet-related decisions on

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proven harms, not media panic; (3) Avoid fragmenting the internet by national borders; and, (4) Encourage competition and openness, avoiding regulatory capture favoring incumbents.

LeGeyt Testimony

- I am President and CEO of the National Association of Broadcasters (NAB), which represents thousands of trusted local TV and radio stations.
- Broadcasters are combating misinformation with trustworthy reporting on critical issues, like child sex trafficking and school shootings.
- We're adopting AI tools to enhance journalism, especially in breaking news and emergency information.
- AI helps our journalists sift through tips and translate stories, improving community service.
- However, GAI poses significant risks to broadcast newsrooms, as it can use our content unauthorized, preventing us from receiving competition and depriving us of control. Furthermore, AI platforms can copy our content without our permission, manipulate broadcaster personalities to spread misinformation and create deepfakes, which can make it hard for newsrooms and audiences to discern real from fake content.
- Our newsrooms are investing heavily in vetting AI-generated content, but it's costly and complex.
- While we embrace AI's potential, we caution against its exploitation, which can undermine local news.

Lynch Testimony

- I am the CEO of Conde Nast, which includes iconic brands like The New Yorker, Vogue, Vanity Fair, Wired, and others.
- Our mission is to produce culture-defining journalism and creative content, a human endeavor with rigorous standards and fact-checking.
- Our stories, like those in The New Yorker, have a societal impact and help inform decisions and empower the electorate.
- I have experience in leading companies through technological changes, but GAI cannot replace the human essence of journalism.
- Journalism is a human pursuit vital for democracy, requiring human creativity and integrity.
- Successful businesses I've led were built on licensing content rights, fostering innovation and profits for creating more content.
- GAI companies are using our content without permission, claiming it's 'Fair Use', but they retain all value and train consumers away from sources.

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- GAI models do not learn like humans; they keep complete copies of content, undermining our customer relationships and market.
- Fair Use is meant for criticism, parody, and research, not for technology companies to exploit without impacting the market for original content.
- GAI can spread misinformation on a massive scale, damaging trust in information sources like ours.
- We propose a sustainable model where GAI use of publisher content, both for training and output, must be licensed and compensated.
- We urge Congress to act immediately to ensure journalism's viability by clarifying licensing and compensation requirements for GAI's use of publisher content.

Member Questions

Chair Richard Blumenthal (D-CT) Questions

- Is it currently impractical for media companies to enforce their rights through litigation due to financial and time costs?
 - **Lynch:** Yes, the current situation is impractical. AI companies do not agree to pay for copyrighted content, as they argue that it is covered under fair use. This has led to numerous lawsuits.
- Are smaller media entities at a disadvantage in negotiating with AI companies compared to larger ones like The New York Times?
 - **Lynch:** Yes, smaller companies are at a significant disadvantage. The lengthy process of litigation and appeals can cause many of them to go out of business before a legal resolution is reached.
- How does the secrecy of AI companies in using copyrighted materials affect the rights of news media?
 - **Coffey:** The lack of transparency makes it hard for news media to protect their rights. AI models often use quality, vetted news content without permission, stripping any tags or authentication, making it hard to track usage and enforce rights.
- Would a searchable database of how content is used by AI companies help protect the rights of content creators?
 - **Coffey:** Yes, a searchable database or similar measures would help content creators understand how their work is used and enable them to enforce their rights more effectively.
- Should Congress act to clarify that AI-generated content is not covered by Section 230 immunity?

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- **Coffey:** Yes, it's crucial to hold AI creators accountable. They should license content and attribute sources, creating a healthier ecosystem for users and content creators.
- Who should be liable for content generated by AI - the AI model, the platform, or the user?
 - **Jarvis:** Liability should be on the application or user level. If AI is misused, the person who misuses it should be liable, not the AI model itself.
- What if a major platform like Meta or Google misuses AI to create false, defamatory content?
 - **Jarvis:** In such cases, the platform (like Meta) would be the creator and thus liable, similar to any other publication.
- How do Big Tech companies affect the financial stability of news organizations?
 - **LeGeyt:** Big Tech has significantly harmed the market for local journalism. The lack of transparency in AI usage exacerbates this harm, and Congress should clarify licensing needs for AI technologies.
- What impact would a 30% drop in traffic due to AI adoption by tech companies have on news organizations?
 - **Coffey:** It would be devastating, leading to reduced hiring, layoffs of quality journalists, and a decline in content quality.
- Any closing comments?
 - **Coffey:** I would like to emphasize the importance of a balance between emerging technologies and existing content creation, advocating for responsible licensing.
 - **Jarvis:** We need to nurture innovation in journalism, particularly from smaller, independent sources.
 - **LeGeyt:** There is an existential threat posed by Big Tech to the news industry and urged Congress to support the *Journalism Competition and Preservation Act*.
 - **Lynch:** We need a simple clarification that the use of publisher content by AI is not fair. Tech companies need to license content as they have in other domains.

Ranking Member Josh Hawley (R-MO) Questions

- How can we establish a content licensing framework for AI that respects existing copyright laws?
 - **Lynch:** Congress could clarify that using content for training and output of AI models is not fair use. This would allow the free market to manage licenses, similar to models in the music industry (e.g., American Society of Composers, Authors, and Publishers (ASCAP) or Broadcast Music Inc. (BMI)). These

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organizations simplify licensing for all content producers, not just large companies.

- What should be done about the proliferation of deep fake images and videos?
 - **LeGeyt:** There is a challenge in distinguishing between harmful deep fakes and protected expressive content. I support the committee's focus on this issue, as it is an existential threat to local news and democracy.
- Could you clarify your stance on fair use and compensation for content?
 - **Lynch:** Tech companies, particularly AI companies, are broadly interpreting fair use to mean that they shouldn't have to compensate for any content at all. My company has not received any licensing or compensation from these companies, and their starting position is often not wanting to pay for content.
 - **LeGeyt:** It's difficult to generalize across all tech companies and the newer players in the field, but many of them do take the stance of not wanting to pay for content.

Sen. Amy Klobuchar (D-MN) Questions

- Why are newspapers shutting down, and is the decline in newsroom jobs related to this?
 - **Coffey:** The decline is due to the dominance of intermediaries like search engines and social media platforms, which use newspaper content but do not provide adequate revenue in return. These platforms control access to content and audience, leading to reduced revenue for newspapers and consequently, loss of newsroom jobs.
- Do publishers have control over their content being used to train AI models or being scraped?
 - **Lynch:** The control is limited. AI models have already been trained using existing content. Opting out now is too late and ineffective. Also, opting out of search engines, which are vital for traffic, is not feasible without significantly harming the business.
- How does the current system of content usage by tech platforms affect news organizations financially?
 - **Coffey:** News organizations face an ad tech tax, where fees are paid to Big Tech for web traffic. Opting out of AI models would mean opting out of the dominant search engine system, further harming news sites' ability to reach audiences.
- Has the Australian news media bargaining code been effective in supporting journalism?
 - **Lynch:** Yes, the Australian model has been successful. It led to financial compensation for news content used by tech platforms, resulting in the rehiring of journalists and a stop to the decline in journalism jobs. This model shows that

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compensating news organizations for their content does not harm the business models of tech companies and benefits journalism.

- **Coffey:** Following the Australian model, there was a spike in journalism jobs, which shows the positive impact of proper compensation for news content.

Sen. Marsha Blackburn (R-TN) Questions

- Should content creators be compensated when AI-generated content competes with them commercially?
 - **Jarvis:** I am concerned about limiting fair use, as it is essential for journalistic freedom and the ability to share and use information. We should be cautious of licensing all content for all uses, which could affect journalists and small open-source efforts.
- Do you support a broader or narrower application of fair use?
 - **Jarvis:** We need a broader allowance of fair use, based on its usefulness and transformative nature.
- Is bias in AI algorithms, especially against conservatives, acceptable?
 - **Jarvis:** AI models reflect societal biases. We should be mindful of the dangers of legislating truth versus falsehood and bias, as media biases influence what AI ingests.

Sen. Mazie Hirono (D-HI) Questions

- How should AI platforms compensate content creators, and what expertise exists for licensing copyrighted material?
 - **LeGeyt:** Local broadcasters have extensive experience negotiating content licensing with cable and satellite systems. The industry, both in television and radio, has successfully managed the licensing of content, suggesting that tech industry claims of licensing complexity are unfounded.
- Is there a need for new legislation for AI content licensing?
 - **LeGeyt:** It may be premature to discuss new legislation. Current laws, if clarified to apply to GAI, might suffice. However, the Subcommittee must monitor court decisions and tech industry actions regarding current laws.
- Should current laws be relied upon for AI-related cases, or is there a need for clarity through new legislation?
 - **Coffey:** While existing laws and markets for licensing are robust, there's room for Congress to act, especially in terms of copyright law and responsibility. However,

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current laws provide adequate protection, and licensing agreements between AI developers and news publishers should be encouraged to avoid litigation.

- **LeGeyt:** If AI technologies are not licensing content as they should under current law, Congress might need to intervene. However, current laws should generally be sufficient for these purposes.

Sen. Alex Padilla (D-CA) Questions

- How will consumer behaviors adapt to an AI environment, especially regarding news consumption and its impact on the news industry?
 - **Coffey:** AI tools like GAI can pose an existential threat to the news industry. Studies in the EU and Australia show that AI-generated summaries reduce the need for original content, leading to reduced revenue for content creators. This situation could worsen with AI, as consumers stay within 'walled gardens' and don't engage with original content.
 - **LeGeyt:** The use of AI in news can lead to misinformation and confusion. There's a lack of control over how news content is used by AI systems, leading to potential misuse and misrepresentation. Also, deep fakes can severely damage the trust in local news and broadcasters.
 - **Jarvis:** Consumers might initially distrust AI-generated content due to reliability issues. However, they may find beneficial uses for AI in certain applications, like language assistance. The perception of AI is currently like a parlor trick, but its utility may evolve as its applications broaden.

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