

Congress of the United States
Washington, D.C. 20515

July 1, 2022

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

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

Dear Chair Lina Khan and Assistant Attorney General Jonathan Kanter,

We write to you as strong supporters of America’s creative workers to request that the Federal Trade Commission (FTC) and the Department of Justice (DOJ) submit their findings and policy recommendations to promote competitive labor markets and worker mobility in the creative economy that resulted from the workshop your agencies held last December. As Members of the House Committee on Small Business, we are always looking for ways to make the lives of small businesses creators easier and to bolster a worker friendly creative economy.

On December 6th and 7th, 2021, the FTC and DOJ hosted a virtual workshop titled, “*Making Competition Work: Promoting Competition in Labor Markets*,” aimed at exploring recent developments at the intersection of antitrust and labor, as well as implications for efforts to protect and empower workers through competition enforcement and rulemaking. The workshop concluded over six months ago, and we understand that multiple public comments have been submitted. We respectfully ask the agencies to brief the Committee on their findings, particularly on the relationship between antitrust law and collective bargaining efforts in the creative gig economy.

Although the creative workforce is a major player in the U.S. economy— according to the Bureau of Economic Analysis (BEA), arts and cultural economic activity accounted for \$919.7 billion of U.S. GDP in 2019¹—it is often, albeit unknowingly, neglected when it comes to worker protections. We have heard from workers that “[f]reelance creative professionals have no employee protections, no benefits, no minimum wages, and negligible ability to negotiate contracts.”² This could indicate that current antitrust and copyright law may no longer work the way they should when it comes to many American creators. It is our understanding that in most creative fields today, industry consolidation and the domination of a handful of online

¹ <https://www.bea.gov/data/special-topics/arts-and-culture>

² Comment from The Authors Guild on behalf of an informal coalition of creator organizations

distributors has caused an imbalanced marketplace. As stated by the Authors Guild in their submitted comments on behalf of an informal coalition of creator organizations, “This lack of competition has of course increased the bargaining power of representatives and middle marketers, leading in turn to a gradual erosion of contractual protections, benefits, and income for creators.”³

The House Small Business Committee has recently held hearings on these issues. First was a hearing titled, “*The Power, Peril, and Promise of the Creative Economy*” held on Wednesday, January 19th, 2022.⁴ At the hearing, we learned more about the impact of the COVID-19 pandemic on the arts sector and creative economy, while witnesses provided recommendations on investments for key infrastructure and spoke about the impact of the pandemic on their small businesses and the performing arts. A second hearing titled “*Competition and the Small Business Landscape: Fair Competition and a Level Playing Field*” held on Tuesday, March 1st, 2022 examined the history of antitrust law and the historical importance of encouraging fair competition and the impact on small firms. These hearings, along with the FTC and DOJ workshop, have helped to highlight issues the creative economy faces when it comes to collective bargaining and worker mobility.

Earlier this year, the U.S. Department of the Treasury, in consultation with the U.S. Department of Labor, the DOJ, and the FTC, issued a new report on competition in the labor market today. The report, “The State of Labor Market Competition in the U.S. Economy,” finds that due to employer concentration and anti-competitive labor practices, the American labor market falls far from the perfect competition that economists had long assumed. The report finds that:

“Employer practices such as requiring noncompete agreements and misclassifying employees as independent contractors, among others, have forced workers to accept lower wages and worse working conditions. Meanwhile, the decline in unionization has left workers with less bargaining power to counteract employers’ power. Overly burdensome licensing requirements have contributed to the challenges faced by workers. The report includes recommendations, such as increasing antitrust enforcement in labor markets, raising the minimum wage, and making it easier for workers to organize, that would revitalize competition in the labor market and strengthen workers’ bargaining power so that workers can get their fair share of the economy’s proceeds.”⁵

At a time when the global COVID-19 pandemic has devastated incomes for the creative industry, any policy recommendations—both administrative and legislative—that could help struggling creators are sorely needed. We, along with the public, are eager to see what the FTC and DOJ recommend helping our creative workers. Thank you for your attention to this matter, and we look forward to your response.

³ Comment from The Authors Guild on behalf of an informal coalition of creator organizations

⁴ <https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=4108>

⁵ <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf>

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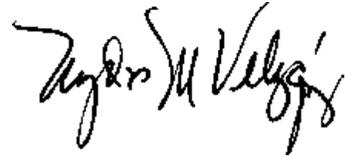
Sincerely,



Judy Chu
Member of Congress



Troy A. Carter, Sr.
Member of Congress



Nydia M. Velázquez
Chairwoman
Committee on Small Business
U.S. House of Representatives



Dean Phillips
Member of Congress