

 THE Authors Guild



 Romance Writers of America®
The Voice of Romance Writers



April 27, 2023

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Hakeem S. Jeffries
Minority Leader
United States House of Representatives
Washington, D.C. 20515

Re: Collective Action Rights for Professional Creators

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker McCarthy, and Minority Leader Jeffries:

We, the undersigned, are professional freelance creators—authors, journalists, translators, musicians and music workers, songwriters, composers, lyricists, playwrights and dramatists, screenwriters, visual artists, photographers, videographers, graphic artists, illustrators, and designers. Our creative endeavors power the entertainment, publishing, and media industries of America. Together, we seek the right to negotiate and act collectively, and ask you to pass legislation that will allow us to work together and share information in order to ensure we are fairly paid.

With the exception of an extraordinarily small group of superstars, freelance professional creators like us are middle class individuals and we are being exploited by big business in today's economy. The creative industries – including publishing, film, theater, television, music, software, gaming, newspapers, and magazines – combined – generate \$1.5 trillion in annual value to the U.S. GDP. That is equivalent to 7.41% of the entire U.S. economy. Yet, we freelancers, who are responsible for most of the creative works on which these industries rely, receive insufficient compensation for our work.

In today's economy, our lack of fair compensation is unsustainable. Despite investing in years of training and education, we are being paid less and less, while the giant media and entertainment conglomerates we work for report ever-growing profits. This is because virtually every sector of the creative economy is subject to monopsony conditions where one or a few firms control the markets for our work. We are customarily presented with one-sided contracts that are non-negotiable or negotiable only around the edges, while increasingly we are forced to hand over more rights for the same or less money. In some cases, corporations demand we hand over our copyrights, which is the very essence of our work and the basis of our economic livelihood. We are outgunned and unable to negotiate fairer terms, hindering most of us from making sufficient earnings from our work. This not only endangers our personal livelihoods, but the future of our creative professions and the enormous contribution they make to the American economy and culture.

The U.S. has long believed in the need to protect workers and their rights. For well over a century America has established fair-labor laws at both the state and federal levels, which provide traditional W-2 employees with important worker protections. Traditionally classified employees are legally entitled to a minimum wage, unemployment insurance, the right to paid time off, family leave, and other benefits. More importantly, employees have the right to act and negotiate collectively with their employers to better the terms of their employment. Freelancers like us – who are not employees – have none of those protections.

Because we are paid with 1099s instead of W-2s and, as freelancers, are classified as independent contractors, we are prohibited under U.S. law from acting collectively. Antitrust law treats independent contractors like other businesses and prevents them from acting in concert or colluding on economic issues. This might make sense for typical independent contractors such as lawyers, doctors, or house contractors who often have other employees and offer their services to the public at rates they set themselves, but it is unfair to freelance creators whose rates are typically set by large corporations wielding monopsony powers. In this sense, we are more like employees, and yet the antitrust law prevents us from collectively negotiating better terms, boycotting bad actors, or sharing information about terms of our work. U.S. law recognizes only two types of work statuses: employees and independent contractors. Under current law, freelance creative professionals are expected to conduct arms' length negotiations with corporate giants and accept take-it-or-leave-it contracts.

Employees per se are clearly exempted from antitrust law under the National Labor Relations Act and thus are permitted to engage in collective economic activity such as boycotts, rate and standard-setting, and collective negotiation. Despite the disparities in the bargaining positions we face, professional creative freelancers do not have access to these exemptions. Yet, we are not

simply misclassified workers. As copyright creators, we are uniquely positioned: we need to maintain our independent status in order to retain and administer our copyrights, the very basis for our livelihoods. We seek only to pierce the legal fiction that puts us in the same category as big business and exposes us to private lawsuits and antitrust enforcement for collusion for speaking or acting together with our colleagues in the creative profession.

We believe the antitrust prohibitions against individual freelancers communicating with each other on issues relating to their professions violates the right to free association guaranteed to all persons by the First Amendment.

Our legislative goal can be accomplished either by: 1) amending the National Labor Relations Act to cover freelance professional creators, as well as employees, or 2) by creating an express antitrust exemption for professional creators. Either of these legislative solutions is imperative, not only for the survival of our professions, but for a free and open culture which has long been the envy of the world. It is vital to ensure competition, diversity, vigor, and fairness in the intellectual property economy of the United States —the largest in the world and one of our most important export industries.

For more background information, and our draft legislative proposals, we invite you to read the attached FAQs.

Sincerely yours,

The Authors Guild, representing over 13,000 author members

Dramatists Guild

National Writers Union

Graphic Artists Guild

Music Workers Alliance

Romance Writers of America

Science Fiction and Fantasy Writers of America

Society of Composers & Lyricists

Songwriters Guild of America