Written Comments
**U.S. Senate AI Insight Forum: AI, Transparency, Explainability,
Intellectual Property, & Copyright**

Jon Schleuss, President
The NewsGuild-CWA
November 29, 2023

Thank you Senate Majority Leader Schumer, Senators Rounds, Heinrich, and Young for inviting me to share the viewpoints of America's journalists regarding artificial intelligence.

I'm Jon Schleuss, president of The NewsGuild-CWA, which is the largest union of journalists in North America. I'm a journalist myself, having worked at the Los Angeles Times and the Arkansas Democrat-Gazette. We represent about 26,000 workers, including those in media, interpretation, nonprofits and staff in the labor movement itself. About 80% of our U.S. membership works in the media, so that's where I'm focusing my comments.

For journalists, AI is not some distant concept. It is already in our lives. NewsGuild-CWA members are seeing companies try and fail to implement generative AI to write news articles and create other content. And generative AI is exploding the amount of misinformation and disinformation online, making it hard for viewers and journalists to determine what's real and what's not.

It seems there's more low quality content online than ever before and that's because we have lost tens of thousands of working journalists. Between 2008 and 2021, newsroom employment fell by 26%, a loss of 30,000 jobs. Most of those job losses impacted newspaper workers.[1]

That's why The NewsGuild-CWA and Communications Workers of America strongly support The Community News & Small Business Support Act, a bipartisan effort to provide tax credits for newsrooms that hire and retain local journalists. The bill was introduced in the House in July by Representatives Tenney and DelBene. U.S. democracy depends on journalism, and working journalists are the people who inform our nation and shine light on a dark world. Journalists cannot be replaced by bots.

---

[1] Mason Walker, "U.S. newsroom employment has fallen 26% since 2008" Pew Research Center, July 13, 2021

Generative artificial intelligence is expanding the spread of misinformation and disinformation and the strongest antidote is to incentivize the hiring of journalists, especially at the local level in the communities where we live.

While many of our members use artificial intelligence as a helpful tool in their work, there is industry-wide concern that corporations will seek to replace journalists with generative AI tools that do not meet the ethical standards of our industry.

Transparency is a core tenet of our ethics code and our members are concerned that news companies are attempting to implement AI to juice profit and cut costs. We have a long history of bargaining over the implementation of new technology and we join other unions calling on Congress to support the right of workers to bargain over AI and its use in the workplace.

In September, we surveyed our members to learn their views of artificial intelligence. The results were clear: journalists and other members do not trust their employers to use AI responsibly or ethically.[2]

In August, the Columbus Dispatch, a local Gannett owned newspaper in Ohio, discontinued its use of AI to report on local sports events after the publication faced major criticism on social media for the quality of the reporting.[3] Gannett refused to respond to comments on whether newsrooms were even reviewing these AI-produced recaps before being published.

More recently, journalists at Reviewed, a product review site also owned by Gannett, raised concerns about reviews that were published without notice and appeared to be generated by AI with bylines of people who didn't appear to exist.[4] The articles included reviews of products that the publication does not cover because they violate company policy, including dietary supplements.

Likewise, the Associated Press has provided little transparency on a deal it reached with OpenAI in July. Artificial intelligence companies ingest large troves of written works to train large language models. Readers and journalists don't know the extent of the access OpenAI has to AP's copyrighted archive and AP's intended use of OpenAI's technology. AP's management has refused to provide details of the deal to the unionized journalists. This comes at the heels of the Federal Trade Commission opening an investigation into whether OpenAI has violated consumer protection laws.[5]

At the same time, the AP has published good standards cautioning staff not to use generative AI to create publishable content.[6] "Any output from a generative AI tool should be treated as

---

[2] "Artificial Intelligence Member Survey Report" The NewsGuild-CWA, November 2023
[3] Tyler Buchanan, "Dispatch pauses AI sports writing program" *Axios*, August 28, 2023
[4] Will Sommer "Mysterious bylines appeared on a USA Today site. Did these writers exist?" *Washington Post*, October 26, 2023
[5] David Hamilton "FTC investigating ChatGPT creator OpenAI over consumer protection issues" *Associated Press*, July 13, 2023
[6] Amanda Barrett "Standards around generative AI" *Associated Press*, August 16, 2023

unvetted source material," the AP wrote and urged staff not to put confidential or sensitive information into AI tools.

Because large language models are essentially text prediction tools, they do not operate in a world of facts. It takes a team of working journalists to collect, organize, verify and publish facts as news stories. "We do not see AI as a replacement of journalists in any way," AP management wrote.

However, AP management has so far refused to formally commit to their own standards in a collective bargaining agreement with their workers.

Media giant Axel Springer, which owns Business Insider and Politico, said this summer it would accelerate implementing artificial intelligence in its newsrooms to free up journalists for so-called core reporting.[7] At the same time, an internal email warned that the technology would lead to significant job losses. The publisher said its strategy would mean many jobs would become redundant. Journalists at these publications are fighting back and organizing to prevent job losses.

In October, Politico journalists highlighted the role of photographers, copy editors and other journalists in a campaign called "Journalists, Not Robots." By highlighting the people who power Politico's journalism, workers are demonstrating their necessity to our democracy despite the corporation wanting to cut jobs and that journalists "can't be replaced by AI."[8]

Journalists have used artificial intelligence for years to support data analysis, automation and other newsgathering. Journalists rely on factual information to produce news stories and ethical journalists explain how they got those facts through transparency. Many recent AI tools, by contrast, do not provide any transparency on what material they're trained on or how they output content. Therefore, AI should not be used to create publishable content. All publishable content should be produced by a human.

Employers have a legal obligation to bargain with unions over if and how AI technology may be used to produce work that is within the union's jurisdiction. Absent a contractual waiver from the union, employers should not be able to implement new technology, such as generative AI, to perform work that would otherwise be done by union members. Additional bargaining obligations attach when union members are credited with bylines, which provide transparency to readers showing who reported the story. This can allow us to negotiate transparency rules for all bylined stories to ensure clear public labeling of any AI content and advance notice to Guild members where their content has been edited, supplemented or supplanted to any degree by AI. We can also bargain the right to pull bylines from stories that reflect any element of AI-generated content or decision making.

---

[7] "After jobs warning, Germany's Axel Springer says AI can liberate journalists" *Reuters*, June 22, 2023
[8] "Journalists, Not Robots" X, formerly Twitter, October 26, 2023

But our union is facing more employers that are trying to force broad waivers that would allow them unilateral discretion to implement AI without having to bargain. These employers, including Gannett, want the ability to use AI to replace workers who have dedicated themselves to understanding how best to do the work and why fairness and accuracy are at stake. NewsGuild-CWA members across the United States are fighting back against the idea that anonymous tech is better than trained journalists. They're fighting not only to protect the jobs of our members, but also to protect the American people, who will suffer from a lack of accountability and transparency if guardrails are not implemented and enforced.

Journalists and other media workers can foresee the harm to communities if government proceedings were reported on by AI that relied on computer-generated transcripts and press releases instead of journalists who witness, fact check and report based on ethical standards. These are not unfounded fears, they are the likely result if employers are competing with one another to produce more with less and are not subject to adequate restrictions.

The stakes are too high for unions to fight these battles alone in America's newsrooms. We need government policy to recognize the need for collective bargaining and worker consultation to play central roles in adoption of AI and other new technologies, and seek to strengthen and complement workers' bargaining power.

Workers are the experts on their jobs and workplaces, and are therefore best positioned to identify risks and guardrails needed. The National Labor Relations Board should act upon its authority to issue guidance mandating bargaining over implementation of AI, not just its effects, because the adoption of this technology has widespread impacts on our workplaces and American democracy. Further, lawmakers need strategies to shore up workers' ability to engage in meaningful bargaining over adoption of new technologies in the workplace.

Inherent in the duty to bargain is a requirement that employers provide requested data that is relevant to negotiating or enforcing contract terms. This allows unions to request and receive information on the third party vendors that produce and support AI tools, the managers who implement them, and what personal employee data, if any, is shared or sold to vendors or third parties under data use agreements governing tech platforms and tools.

The Guild also has a clear statutory right to information about the hiring process where there are well-founded concerns regarding discrimination in hiring – especially in the face of contractual prohibitions on workplace discrimination. A further limitation is that while employers can be forced to provide this information that it possesses, there is generally no access to details about the large quantities of material that are used as training models for the AI technology. So workers may have to wait until biases can be identified on the back end before challenging the use of the technology for pre-hire decision making.

Despite the legal requirements, The NewsGuild regularly deals with employers that balk at such requests for information and require us to compel enforcement through the NLRB. Policy

makers should play a greater role in compelling compliance with these legal obligations as this level of transparency is crucial to reigning in the potential harm of AI technology.

Bargaining rights related to copyright and intellectual property are more limited for NewsGuild members. There is no employee copyright claim regarding content produced as a "work for hire" for an employer, or regarding its derivative use by AI technology, absent express contractual language reserving copyright to the employee. Copyright and revenue sharing are permissive subjects that are hard-to-win protections for through bargaining, although some NewsGuild bargaining units have succeeded. Absent contractual protections, employees can have years of their work product fed into and used to train generative AI, and that technology can then be used to supplement or replace the employee's work. Workers need more policy protections to ensure their rights to bargain over the compensation and reuse of their work.

Additional concerns for some of our members include the reuse or alteration of their voices or personal images in order to "narrate" or "participate" in AI-generated audio or video content. We bargain for safeguards to workers' journalistic and personal reputations such as allowing them to refuse the use of their image or likeness for content that they do not agree with or that compromises their professional integrity. We believe the same legal reasoning that makes byline clauses mandatory subjects of bargaining also holds for use of employees' voice and image. The NLRB should clearly uphold workers' bargaining rights in this area so employers are more likely to engage in good-faith bargaining.

Another concern for our members is source and note protection if they use AI technology to supplement their work. For example, if a journalist uses AI to transcribe an interview with a confidential source, is the transcription secure or does it become a part of a large language model? Is it susceptible to hacking or leaks? If the technology is not guaranteed to be secure, should workers be allowed to use it? Employers should be held to a clearly defined standard for the safe and secure handling of sensitive data as part of AI systems implemented in workplaces. This should include the requirement to follow data minimization principles.

Conclusion
NewsGuild-CWA members, like all workers, need more policy protections to ensure they have the right to bargain over the implementation of AI and other technology in their workplaces. Journalists are the working people who make sure our world is informed. We need more journalists to combat the threats posed by disinformation and misinformation which are exploding with generative AI.

Journalists are democracy's watchdogs. We must support the working people who shine a light on a dark world and we must ensure they have a seat at the table when we are making policy decisions on AI.