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S. 1094

To provide a temporary safe harbor for publishers of online content to collectively negotiate with dominant online platforms regarding the terms on which content may be distributed.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Ms. KLOBUCHAR (for herself, Mr. KENNEDY, Mr. DURBIN, Mr. DAINES, Mr. BLUMENTHAL, Mr. CASSIDY, Mr. WHITEHOUSE, Mr. GRAHAM, Ms. COLLINS, Mr. MANCHIN, Ms. LUMMIS, Mr. BOOKER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide a temporary safe harbor for publishers of online content to collectively negotiate with dominant online platforms regarding the terms on which content may be distributed.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Journalism Competi-
5 tion and Preservation Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ACCESS.—The term “access” means acquir-
2 ing, crawling, or indexing content.

3 (2) ANTITRUST LAWS.—The term “antitrust
4 laws”—

5 (A) has the meaning given the term in
6 subsection (a) of the first section of the Clayton
7 Act (15 U.S.C. 12); and

8 (B) includes—

9 (i) section 5 of the Federal Trade
10 Commission Act (15 U.S.C. 45) to the ex-
11 tent that section applies to unfair methods
12 of competition; and

13 (ii) any State law (including regula-
14 tions) that prohibits or penalizes the con-
15 duct described in, or is otherwise incon-
16 sistent with, sections 3 or 4.

17 (3) COVERED PLATFORM.—The term “covered
18 platform” means an online platform that at any
19 point during the 12 months preceding the formation
20 of a joint negotiation entity under section 3(a)(1)—

21 (A) has at least 50,000,000 United States-
22 based monthly active users or subscribers on
23 the online platform;

24 (B) is owned or controlled by a person
25 with—

1 (i) United States net annual sales or
2 a market capitalization greater than
3 \$550,000,000,000, adjusted for inflation
4 on the basis of the Consumer Price Index;
5 or

6 (ii) not fewer than 1,000,000,000
7 worldwide monthly active users on the on-
8 line platform; and

9 (C) is not an organization described in sec-
10 tion 501(c)(3) of the Internal Revenue Code of
11 1986.

12 (4) ELIGIBLE BROADCASTER.—The term “eligi-
13 ble broadcaster” means a person that—

14 (A) holds or operates under a license
15 issued by the Federal Communications Commis-
16 sion under title III of the Communications Act
17 of 1934 (47 U.S.C. 301 et seq.);

18 (B) engages professionals to create, edit,
19 produce, and distribute original content con-
20 cerning local, regional, national, or inter-
21 national matters of public interest through ac-
22 tivities including conducting interviews, observ-
23 ing current events, analyzing documents and
24 other information, and fact checking through
25 multiple firsthand or secondhand news sources;

1 (C) updates its content on at least a week-
2 ly basis;

3 (D) uses an editorial process for error cor-
4 rection and clarification, including a trans-
5 parent process for reporting errors or com-
6 plaints to the station; and

7 (E) is not a television network.

8 (5) ELIGIBLE DIGITAL JOURNALISM PRO-
9 VIDER.—The term “eligible digital journalism pro-
10 vider” means any eligible publisher or eligible broad-
11 caster that discloses its ownership to the public.

12 (6) ELIGIBLE PUBLISHER.—The term “eligible
13 publisher” means any person that publishes 1 or
14 more qualifying publications.

15 (7) NETWORK STATION.—The term “network
16 station” means a television broadcast station, includ-
17 ing any translator station or terrestrial satellite sta-
18 tion that rebroadcasts all or substantially all of the
19 programming broadcast by a network station, that is
20 owned or operated by, or affiliated with, 1 or more
21 television networks.

22 (8) ONLINE PLATFORM.—The term “online
23 platform” means a website, online or mobile applica-
24 tion, operating system, digital assistant, or online
25 service that accesses news articles, works of jour-

1 nalism, or other content, or portions thereof, gen-
2 erated, created, produced, or owned by eligible dig-
3 ital journalism providers, and aggregates, displays,
4 provides, distributes, or directs users to such con-
5 tent.

6 (9) PERSON.—The term “person” includes an
7 individual or entity existing under or authorized by
8 the laws of the United States, the laws of any of ter-
9 ritory of the United States, the laws of any State,
10 the laws of the District of Columbia, or the laws of
11 any foreign country.

12 (10) PRICING, TERMS, AND CONDITIONS.—The
13 term “pricing, terms, and conditions” does not in-
14 clude any term or condition which relates to the use,
15 display, promotion, ranking, distribution, curation,
16 suppression, throttling, filtering, or labeling of the
17 content or viewpoint of any person.

18 (11) QUALIFYING PUBLICATION.—The term
19 “qualifying publication” means any website, mobile
20 application, or other digital service that—

21 (A) does not primarily display, provide,
22 distribute, or offer content generated, created,
23 produced, or owned by an eligible broadcaster
24 or television network; and

1 (B)(i) provides information to an audience
2 primarily in the United States;

3 (ii) performs a public-information function
4 comparable to that traditionally served by news-
5 papers and other periodical news publications;

6 (iii) engages professionals to create, edit,
7 produce, and distribute original content con-
8 cerning local, regional, national, or inter-
9 national matters of public interest through ac-
10 tivities, including conducting interviews, observ-
11 ing current events, or analyzing documents and
12 other information, and fact checking through
13 multiple firsthand or secondhand news sources;

14 (iv) updates its content on at least a week-
15 ly basis;

16 (v) has an editorial process for error cor-
17 rection and clarification, including a trans-
18 parent process for reporting errors or com-
19 plaints to the publication;

20 (vi)(I) generated at least \$100,000 in an-
21 nual revenue from its editorial content in the
22 previous calendar year;

23 (II) has an International Standard Serial
24 Number assigned to an affiliated periodical be-
25 fore the date of enactment of this Act; or

1 (III) is owned or controlled by an exempt
2 organization described in section 501(c)(3) of
3 the Internal Revenue Code of 1986;

4 (vii) has not less than 25 percent of its
5 editorial content consisting of information about
6 topics of current local, national, or international
7 public interest;

8 (viii) employed not more than 1,500 exclu-
9 sive full-time employees during the 12-month
10 period prior to the date of enactment of this
11 Act; and

12 (ix) is not controlled or wholly or partially
13 owned by an entity that is—

14 (I) a foreign power or an agent of a
15 foreign power, as those terms are defined
16 in section 101 of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C.
18 1801);

19 (II)(aa) designated as a foreign ter-
20 rorist organization pursuant to section
21 219(a) of the Immigration and Nationality
22 Act (8 U.S.C. 1189(a));

23 (bb) a terrorist organization, as de-
24 fined in section 212(a)(3)(B)(vi)(II) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1182(a)(3)(B)(vi)(II));

3 (cc) designated as a specially des-
4 ignated global terrorist organization under
5 Executive Order 13224 (50 U.S.C. 1701
6 note; relating to blocking property and pro-
7 hibiting transactions with persons who
8 commit, threaten to commit, or support
9 terrorism); or

10 (dd) an affiliate of an entity described
11 in item (aa), (bb), or (cc); or

12 (III) an entity that has been convicted
13 of violating, or attempting to violate, sec-
14 tion 2331, 2332b, or 2339A of title 18,
15 United States Code.

16 (12) TELEVISION NETWORK.—The term “tele-
17 vision network”—

18 (A) means any person that, on February 8,
19 1996, offered an interconnected program serv-
20 ice on a regular basis for 15 or more hours per
21 week to at least 25 affiliated television licensees
22 in 10 or more States; and

23 (B) does not include any network station
24 that is owned or operated by, or affiliated with
25 a person described in subparagraph (A).

1 **SEC. 3. FRAMEWORK FOR CERTAIN JOINT NEGOTIATIONS.**

2 (a) NOTICE.—

3 (1) PROCESS TO FORM A JOINT NEGOTIATION
4 ENTITY.—

5 (A) IN GENERAL.—An eligible digital jour-
6 nalism provider shall provide public notice to
7 announce the opportunity for other eligible dig-
8 ital journalism providers to join a joint negotia-
9 tion entity for the purpose of engaging in joint
10 negotiations with a covered platform under this
11 section, regarding the pricing, terms, and condi-
12 tions by which the covered platform may access
13 the content of the eligible digital journalism
14 providers that are members of the joint negotia-
15 tion entity.

16 (B) APPLICATION.—During the 60-day pe-
17 riod beginning on the date public notice is made
18 under subparagraph (A), any eligible digital
19 journalism provider may apply to join the joint
20 negotiation entity.

21 (C) FORMATION.—A joint negotiation enti-
22 ty is established upon the agreement of 2 or
23 more eligible digital journalism providers, and
24 may create admission criteria for membership
25 unrelated to the size of an eligible digital jour-
26 nalism provider or the views expressed by its

1 content, including criteria to limit membership
2 to only eligible publishers or only eligible broad-
3 casters.

4 (D) GOVERNANCE.—By a majority vote of
5 its members, a joint negotiation entity formed
6 under this section shall establish rules and pro-
7 cedures to govern decision making by the entity
8 and each eligible digital journalism provider
9 shall be entitled to 1 vote on any matter sub-
10 mitted to a vote of the members.

11 (E) ADDITIONAL MEMBERS.—After the ex-
12 piration of the 60-day period described in sub-
13 paragraph (B), an eligible digital journalism
14 provider may apply to join the joint negotiation
15 entity, and may be admitted to the joint nego-
16 tiation entity upon a majority vote of its mem-
17 bers, if the applicant otherwise satisfies any cri-
18 teria for admission established by the joint ne-
19 gotiation entity.

20 (F) DESIGNATION.—A joint negotiation
21 entity may designate agents on a nonexclusive
22 basis—

23 (i) to engage in negotiations with a
24 covered platform conducted under this sec-
25 tion; and

1 (ii) to agree to pay or receive pay-
2 ments under or related to an agreement
3 negotiated under this section or an arbitra-
4 tion decision issued under section 4.

5 (G) OPT-OUT.—

6 (i) IN GENERAL.—After becoming a
7 member of the joint negotiation entity, an
8 eligible digital journalism provider may opt
9 out of the joint negotiation entity at any
10 time before notice is sent to the covered
11 platform under paragraph (2).

12 (ii) PROHIBITION ON REJOINING.—If
13 an eligible digital journalism provider opts
14 out of a joint negotiation entity under
15 clause (i), the eligible digital journalism
16 provider may not—

17 (I) rejoin the joint negotiation
18 entity; or

19 (II) receive any payment under
20 or related to an agreement negotiated
21 by the joint negotiation entity under
22 this section or an arbitration decision
23 issued under section 4.

24 (H) TERMINATION.—A joint negotiation
25 entity will terminate and cease to exist—

- 1 (i) when the entity no longer has at
2 least 2 members;
- 3 (ii) upon a majority vote of its mem-
4 bers; or
- 5 (iii) upon the expiration or termi-
6 nation of an agreement negotiated under
7 this section or an arbitration decision
8 issued under section 4.

9 (2) NOTICE TO A COVERED PLATFORM TO INI-
10 TIATE A JOINT NEGOTIATION.—

11 (A) IN GENERAL.—A joint negotiation
12 under this section shall commence after a cov-
13 ered platform receives a notice, sent by or on
14 behalf of a joint negotiation entity.

15 (B) CONTENTS OF NOTICE.—The notice
16 described in subparagraph (A) shall—

- 17 (i) state that the joint negotiation en-
18 tity is initiating a negotiation under this
19 section to reach an agreement regarding
20 the pricing, terms, and conditions by which
21 the covered platform may access the con-
22 tent of the eligible digital journalism pro-
23 viders that are members of the joint nego-
24 tiation entity;

1 (ii) identify the eligible digital jour-
2 nalism providers that are members of the
3 joint negotiation entity; and

4 (iii) provide the physical mail address
5 (street address or post office box), tele-
6 phone number, and email address of a rep-
7 resentative authorized to receive a response
8 to the notice on behalf of the joint negotia-
9 tion entity.

10 (C) REPLY.—Not later than 30 days after
11 receiving a notice described in subparagraph
12 (A), the covered platform shall send a reply no-
13 tice to the authorized representative identified
14 by or on behalf of the joint negotiation entity
15 to acknowledge receipt of the notice.

16 (D) NOTICE TO FEDERAL ENFORCERS.—
17 Copies of any notice described in subparagraph
18 (A) shall be filed by or on behalf of the eligible
19 digital journalism providers that are members
20 of the joint negotiation entity with the Federal
21 Trade Commission and the Assistant Attorney
22 General in charge of the Antitrust Division of
23 the Department of Justice not later than 30
24 days after the notice is sent to the covered plat-
25 form.

1 (b) CONDUCT OF THE JOINT NEGOTIATIONS.—After
2 the date a reply notice is sent under subsection (a)(2)(C),
3 the following shall apply:

4 (1) Any negotiation conducted under this sec-
5 tion shall be conducted in good faith and solely to
6 reach an agreement regarding the pricing, terms,
7 and conditions under which the covered platform
8 may access the content of the eligible digital jour-
9 nalism providers.

10 (2) No pre-agreement discussions or agreement
11 reached regarding pricing, terms, and conditions
12 under this section may address whether or how the
13 covered platform or any such eligible digital jour-
14 nalism provider—

15 (A) displays, ranks, distributes, suppresses,
16 promotes, throttles, labels, filters, or curates
17 the content of the eligible digital journalism
18 providers; or

19 (B) displays, ranks, distributes, sup-
20 presses, promotes, throttles, labels, filters, or
21 curates the content of any other person.

22 (3) A party is not conducting negotiations in
23 good faith in accordance with paragraph (1) if the
24 party—

1 (A) refuses to negotiate, except where eligi-
2 ble digital journalism providers decide to jointly
3 deny a covered platform access to content li-
4 censed or produced by such eligible digital jour-
5 nalism providers under subsection (c);

6 (B) refuses to designate a representative
7 with authority to make binding representations;

8 (C) refuses to meet and negotiate at rea-
9 sonable times and locations or otherwise causes
10 unreasonable delay;

11 (D) refuses to put forth more than a sin-
12 gle, unilateral proposal;

13 (E) fails to respond to a proposal of the
14 other party, including the reasons for rejection;

15 (F) enters into a separate third-party
16 agreement that unreasonably impedes the party
17 from reaching an agreement with the negoti-
18 ating party; or

19 (G) refuses to execute a full and written
20 agreement that has been reached verbally.

21 (4) A covered platform is not conducting nego-
22 tiations in good faith in accordance with paragraph
23 (1) if the covered platform enters into a separate
24 agreement with an eligible digital journalism pro-
25 vider that impedes the eligible digital journalism

1 provider from participating in a negotiation under
2 this section.

3 (5) During any negotiation conducted under
4 this section, the joint negotiation entity and the cov-
5 ered platform shall each make a reasonable offer re-
6 garding the pricing, terms, and conditions by which
7 the covered platform may access the content of the
8 eligible digital journalism providers that are mem-
9 bers of the joint negotiation entity, substantiated
10 with comprehensive data and methodologies, includ-
11 ing expert analysis, that reflects—

12 (A) the pricing, terms, and conditions com-
13 parable to those found in commercial agree-
14 ments between similarly situated entities, in-
15 cluding price, duration, territory, value of data
16 generated directly or indirectly by the content;

17 (B) the fair market value to the covered
18 platform of having access to the content of the
19 eligible digital journalism providers that are
20 members of the joint negotiation entity and the
21 resulting incremental contribution to the rev-
22 enue of the covered platform, including direct
23 and indirect advertising or promotional reve-
24 nues, which shall not be offset by any value
25 conferred upon the eligible digital journalism

1 providers that are members of the joint negotia-
 2 tion entity by the covered platform for aggreg-
 3 ating or distributing their content; and

4 (C) the investment of the eligible digital
 5 journalism providers that are members of the
 6 joint negotiation entity in producing original
 7 news and related content, including the number
 8 of journalists employed by each.

9 (c) **JOINT WITHHOLDING OF CONTENT.**—At any
 10 point after a notice is sent to the covered platform to ini-
 11 tiate joint negotiations under subsection (a)(2), the eligi-
 12 ble digital journalism providers that are members of the
 13 joint negotiation entity may jointly deny the covered plat-
 14 form access to content licensed or produced by such eligi-
 15 ble digital journalism providers.

16 **SEC. 4. ARBITRATION FOR ELIGIBLE PUBLISHERS.**

17 (a) **RIGHT TO FINAL OFFER ARBITRATION.**—

18 (1) **IN GENERAL.**—If the membership of a joint
 19 negotiation entity consists only of eligible publishers,
 20 on or after the date that is 180 days after the date
 21 negotiations under section 3 begin, the joint negotia-
 22 tion entity may initiate a final offer arbitration
 23 against the covered platform for an arbitration panel
 24 to determine the pricing, terms, and conditions by
 25 which the content displayed, provided, distributed, or

1 offered by a qualifying publication of any eligible
2 publisher that is a member of the joint negotiation
3 entity will be accessed by the covered platform if the
4 parties are unable to reach an agreement and re-
5 gardless of whether the joint negotiation entity, its
6 members, or the covered platform complied with the
7 requirements of section 3(b).

8 (2) EFFECT OF ADDITIONAL MEMBERS.—If an
9 additional member joins the joint negotiation entity
10 under section 3(a)(1)(E) more than 90 days after
11 the date negotiations under section 3 begin, the joint
12 negotiation entity may not initiate a final offer arbi-
13 tration under paragraph (1) until 180 days after the
14 date the last member joins the joint negotiation enti-
15 ty. No additional members may join the joint nego-
16 tiation entity after the arbitration has commenced.

17 (b) NOTICE.—The joint negotiation entity shall pro-
18 vide notice of its intention to initiate final offer arbitration
19 under this section to all of the members of the joint nego-
20 tiation entity no less than 10 days prior to initiating such
21 final offer arbitration.

22 (c) MEMBERSHIP.—If a joint negotiation entity initi-
23 ates final offer arbitration under this section, any indi-
24 vidual eligible publisher that is a member of the joint ne-
25 gotiation entity shall remain a member of the joint nego-

1 tiation entity until the completion of the arbitration, un-
2 less the eligible publisher provides written notice to the
3 joint negotiation entity of its intention to withdraw from
4 the joint negotiation entity within 7 days of receiving no-
5 tice under subsection (b).

6 (d) PROCEEDINGS.—

7 (1) RULES OF ARBITRATION.—The arbitration
8 shall be decided by a panel of 3 arbitrators under
9 the American Arbitration Association’s Commercial
10 Arbitration Rules and Mediation Procedures and the
11 American Arbitration Association-International Cen-
12 tre for Dispute Resolution Final Offer Arbitration
13 Supplementary Rules, except to the extent they con-
14 flict with this subsection.

15 (2) INITIATION OF ARBITRATION.—A final offer
16 arbitration under subsection (a) shall be initiated as
17 provided in Rule R-4 of the American Arbitration
18 Association’s Commercial Arbitration Rules and Me-
19 diation Procedures, except that the joint negotiation
20 entity initiating the arbitration shall refer to this
21 Act in its demand for arbitration, rather than sub-
22 mitting contractual arbitration provisions.

23 (3) COMMENCEMENT AND FUNDING.—

24 (A) COMMENCEMENT.—A final offer arbi-
25 tration proceeding shall commence 10 days

1 after the date a final offer arbitration is initi-
2 ated under subsection (a).

3 (B) FUNDING.—The cost of administering
4 the arbitration proceeding, including arbitrator
5 compensation, expenses, and administrative
6 fees, shall be shared equally between the cov-
7 ered platform and the joint negotiation entity.

8 (4) APPOINTMENT OF THE ARBITRATION
9 PANEL.—The arbitrators shall be appointed in ac-
10 cordance with the American Arbitration Associa-
11 tion’s Commercial Arbitration Rules and Mediation
12 Procedures.

13 (5) OTHER REQUIREMENTS.—During a final
14 offer arbitration proceeding under this section—

15 (A) the joint negotiation entity and the
16 covered platform may demand the production of
17 documents and information that are nonprivi-
18 leged, reasonably necessary, and reasonably ac-
19 cessible without undue expense;

20 (B) documents and information described
21 in subparagraph (A) shall be exchanged not
22 later than 30 days after the date the demand
23 is filed;

24 (C) rules regarding the admissibility of evi-
25 dence applicable in Federal court shall apply;

1 (D) the joint negotiation entity and cov-
2 ered platform shall each submit a final offer
3 proposal for the pricing, terms, and conditions
4 under which the content displayed, provided,
5 distributed, or offered by a qualifying publica-
6 tion of any eligible publisher that is a member
7 of the joint negotiation entity will be accessed
8 by the covered platform, and which shall in-
9 clude the remuneration that the eligible pub-
10 lishers should receive from the covered platform
11 for programmatic access to the content of the
12 eligible publishers that are members of the joint
13 negotiation entity during the period under nego-
14 tiation based on the fair market value of such
15 access, which shall include backup materials
16 sufficient to permit the other party to replicate
17 the proffered valuation;

18 (E) no discussion or final offer under this
19 section may address whether or how the covered
20 platform or any such eligible digital journalism
21 provider—

22 (i) displays, ranks, distributes, sup-
23 presses, promotes, throttles, labels, filters,
24 or curates the content of the eligible digital
25 journalism providers; or

1 (ii) displays, ranks distributes, sup-
2 presses, promotes, throttles, labels, filters
3 or curates the content of any other person;
4 and

5 (F) if applicable, each eligible publisher
6 that is a member of the joint negotiation entity
7 shall provide information and data to guide the
8 distribution of remuneration among the mem-
9 bers of the joint negotiation entity, including—

10 (i) any compensation received by the
11 eligible publisher through commercial
12 agreement prior to commencement of nego-
13 tiations under section 3 for access to con-
14 tent by the covered platform during any
15 part of the period under negotiation, which
16 shall be deducted from its allocation ac-
17 cordingly; and

18 (ii) spending by the eligible publisher
19 on news journalists, which are employed
20 for an average of not fewer than 20 hours
21 per week during the calendar quarter by
22 the eligible digital journalism provider and
23 are responsible for gathering, preparing,
24 directing the recording of, producing, col-
25 lecting, photographing, recording, writing,

1 editing, reporting, presenting, or pub-
2 lishing original news or information that
3 concerns local, regional, national, or inter-
4 national matters of public interest in the
5 previous fiscal year, as a proportion of its
6 overall budget of the eligible digital jour-
7 nalism provider for that period, which shall
8 be used to guide 65 percent of the dis-
9 tribution of remuneration among the mem-
10 bers of the joint negotiation entity.

11 (e) AWARD.—

12 (1) IN GENERAL.—Not later than 60 days after
13 the date proceedings commence under subsection
14 (d)(3)(A), the arbitration panel shall issue an award
15 that selects a final offer from 1 of the parties with-
16 out modification.

17 (2) REQUIREMENTS.—In issuing an award
18 under paragraph (1), the arbitration panel—

19 (A) may not consider any value conferred
20 upon any eligible publisher by the covered plat-
21 form for distributing or aggregating its content
22 as an offset to the value created by such eligible
23 publisher;

24 (B) shall consider past incremental revenue
25 contributions as a guide to the future incre-

1 mental revenue contribution by any eligible pub-
2 lisher;

3 (C) shall consider the pricing, terms, and
4 conditions of any available, comparable com-
5 mercial agreements between parties granting
6 access to digital content, including pricing,
7 terms, and conditions relating to price, dura-
8 tion, territory, the value of data generated di-
9 rectly or indirectly by the content accounting
10 for any material disparities in negotiating
11 power between the parties to such commercial
12 agreements; and

13 (D) shall issue a binding, reasoned award,
14 including the factual and economic bases of its
15 award, that applies for the number of years set
16 forth in the winning proposal, but not fewer
17 than 5 years.

18 (f) PAYMENTS PURSUANT TO AWARD.—

19 (1) IN GENERAL.—Not later than 90 days after
20 the date an award is issued under subsection (e), the
21 covered platform shall begin paying any eligible pub-
22 lisher that was a member of the joint negotiation en-
23 tity participating in the arbitration according to the
24 terms in the final offer selected by the arbitration
25 panel.

1 (2) **DISBURSEMENT.**—Payments made under
2 paragraph (1) shall be dispersed by a claims admin-
3 istrator to the individual claimants that comprise the
4 joint negotiation entity not later than 60 days after
5 the date the funds were received from the covered
6 platform.

7 (g) **ENFORCEMENT AND JUDICIAL REVIEW.**—

8 (1) **IN GENERAL.**—An award made under sub-
9 section (e) shall be enforceable by the eligible pub-
10 lishers or the covered platform subject to the award
11 through a civil action brought before a district court
12 of the United States.

13 (2) **EXPEDITED JUDICIAL PROCESS.**—In any
14 civil action to enforce or seek judicial review of an
15 award made under subsection (e), the court shall
16 adopt a rebuttable presumption that good cause ex-
17 ists to prioritize the action under section 1657 of
18 title 28, United States Code.

19 **SEC. 5. LIMITATION OF LIABILITY.**

20 (a) **IN GENERAL.**—In accordance with sections 3 and
21 4, it shall not be in violation of the antitrust laws for any
22 eligible digital journalism providers that are members of
23 a joint negotiation entity to—

24 (1) jointly deny a covered platform access to
25 content for which the eligible digital journalism pro-

1 viders, individually or jointly, have the right to nego-
2 tiate or arbitrate access with respect to the covered
3 platform; or

4 (2) participate in joint negotiations and arbitra-
5 tion, as members of the joint negotiation entity, with
6 such covered platform solely regarding the pricing,
7 terms, and conditions under which the covered plat-
8 form may access the content for which the eligible
9 digital journalism providers, individually or jointly,
10 have the right to negotiate or arbitrate access with
11 respect to the covered platform.

12 (b) SAFE HARBOR.—

13 (1) ELIGIBLE DIGITAL JOURNALISM PRO-
14 VIDERS.—An eligible digital journalism provider
15 shall not be in violation of the antitrust laws if the
16 eligible digital journalism provider participates, as a
17 member of a joint negotiation entity, in negotiations
18 under section 3 or arbitration under section 4—

19 (A) with a person that is not an eligible
20 digital journalism provider, if the eligible digital
21 journalism provider reasonably believes that the
22 person is another eligible digital journalism pro-
23 vider; or

24 (B) with a person that is not a covered
25 platform, if the eligible digital journalism pro-

1 vider reasonably believes that the person is a
2 covered platform.

3 (2) JOINT NEGOTIATION ENTITIES.—A joint ne-
4 gotiation entity shall not be in violation of the anti-
5 trust laws if the joint negotiation entity engages in
6 negotiations under section 3 or arbitration under
7 section 4—

8 (A) with or on behalf of a person that is
9 not an eligible digital journalism provider, if the
10 joint negotiation entity reasonably believes that
11 the person is an eligible digital journalism pro-
12 vider; or

13 (B) with a person that is not a covered
14 platform, if the joint negotiation entity reason-
15 ably believes that the person is a covered plat-
16 form.

17 (c) NOTIFICATION OF AGREEMENTS AND ARBITRA-
18 TION DECISIONS.—

19 (1) AGREEMENTS.—The parties to any written
20 agreement, resulting from a negotiation under sec-
21 tion 3 or implementing an arbitration decision issued
22 under section 4, shall file a copy of such agreement
23 with the Federal Trade Commission and the Assist-
24 ant Attorney General in charge of the Antitrust Di-

1 vision of the Department of Justice not later than
2 60 days after such agreement is executed.

3 (2) ARBITRATION DECISIONS.—The parties to
4 any arbitration decision issued under section 4, shall
5 file a copy of such decision with the Federal Trade
6 Commission and the Assistant Attorney General in
7 charge of the Antitrust Division of the Department
8 of Justice not later than 60 days after such decision
9 is issued.

10 (3) PUBLIC DISCLOSURE.—The Federal Trade
11 Commission shall make the documents submitted
12 under this subsection available to the public on the
13 Federal Trade Commission’s website.

14 (d) LIMITATION REGARDING THE SCOPE OF LIMITA-
15 TION OF LIABILITY.—No antitrust immunity shall apply
16 to any negotiations, discussions, agreements, or arbitra-
17 tions relating to the use, display, promotion, ranking, dis-
18 tribution, curation, suppression, throttling, filtering, or la-
19 beling of the content of the eligible digital journalism pro-
20 vider or of any other person. The limitation of liability
21 under this section shall apply only to negotiations, discus-
22 sions, agreements, or arbitrations regarding the pricing,
23 terms, and conditions under which the covered platform
24 may access the content of the eligible digital journalism
25 provider, not to any discussions or agreements that dif-

1 ferentiate content based on the viewpoint expressed by
2 such content.

3 **SEC. 6. NONDISCRIMINATION, RETALIATION, AND TRANS-**
4 **PARENCY.**

5 (a) NONDISCRIMINATION.—

6 (1) JOINT NEGOTIATION ENTITIES.—A joint ne-
7 gotation entity may not discriminate against any el-
8 igible digital journalism provider based on the size of
9 the eligible digital journalism provider or the views
10 expressed by the eligible digital journalism provider’s
11 content.

12 (2) COVERED PLATFORMS.—No covered plat-
13 form may discriminate against any eligible digital
14 journalism provider that is a member of a joint ne-
15 gotation entity in connection with a negotiation con-
16 ducted under section 3, or an arbitration conducted
17 under section 4, based on the size of the eligible dig-
18 ital journalism provider or the views expressed by
19 the eligible digital journalism provider’s content.

20 (b) PROHIBITION ON RETALIATION BY COVERED
21 PLATFORMS.—

22 (1) IN GENERAL.—No covered platform may re-
23 taliate against an eligible digital journalism provider
24 for participating in a negotiation conducted under
25 section 3, or an arbitration conducted under section

1 4, including by refusing to index content or changing
2 the ranking, identification, modification, branding,
3 or placement of the content of the eligible digital
4 journalism provider on the covered platform.

5 (2) EFFECT OF CONTRACT PROVISIONS.—Any
6 provision in an agreement that restricts an eligible
7 digital journalism provider from receiving compensa-
8 tion through a negotiation conducted under section
9 3 or an arbitration conducted under section 4 shall
10 be void.

11 (c) INVESTING IN JOURNALISM.—

12 (1) IN GENERAL.—Without disclosing confiden-
13 tial information regarding the pricing, terms, and
14 conditions of an agreement reached under section 3,
15 an agreement implementing an arbitration decision
16 issued under section 4, or an arbitration decision
17 issued under section 4, or confidential financial in-
18 formation, any eligible digital journalism provider
19 that receives funds under or related to such agree-
20 ment or arbitration decision shall provide to the
21 Federal Trade Commission, on an annual basis, in-
22 formation regarding the use of any such funds dur-
23 ing the prior year to support ongoing and future op-
24 erations to maintain or enhance the production and
25 distribution of news or information that concerns

1 local, regional, national, or international matters of
2 public interest, including—

3 (A) the amount of funds received under or
4 related to each such agreement or decision; and

5 (B) a good-faith estimate of the amount of
6 funds that went to news journalists employed
7 for an average of not fewer than 20 hours per
8 week during the calendar year by the eligible
9 digital journalism provider.

10 (2) PUBLIC DISCLOSURE.—The Federal Trade
11 Commission shall make the disclosures submitted
12 under paragraph (1) available to the public on the
13 Federal Trade Commission’s website.

14 **SEC. 7. PRIVATE RIGHTS OF ACTION.**

15 (a) NEGOTIATIONS.—

16 (1) IN GENERAL.—Any eligible digital jour-
17 nalism provider, either jointly with other eligible dig-
18 ital journalism providers or through an authorized
19 representative, or covered platform that participated
20 in negotiations under section 3 may bring a civil ac-
21 tion in an appropriate district court of the United
22 States alleging a violation of section 3(b).

23 (2) DAMAGES.—A court shall award damages
24 to a prevailing plaintiff under this subsection—

1 (A) approximating the value of the last
2 reasonable offer of the plaintiff if the defendant
3 did not conduct negotiations in good faith in
4 violation of section 3(b)(1);

5 (B) approximating the value of the last
6 reasonable offer of the plaintiff if the defend-
7 ant—

8 (i) did not conduct negotiations in
9 good faith in violation of section 3(b)(1);
10 and

11 (ii) had not yet extended a reasonable
12 offer; or

13 (C) approximating the value of the plain-
14 tiff's last reasonable offer if the defendant did
15 not make a reasonable offer in violation of sec-
16 tion 3(b)(5).

17 (3) ATTORNEYS FEES.—A court shall award at-
18 torney's fees to the prevailing party under this sub-
19 section.

20 (b) DISCRIMINATION.—

21 (1) JOINT NEGOTIATION ENTITIES.—

22 (A) IN GENERAL.—An eligible digital jour-
23 nalism provider that is denied membership in a
24 joint negotiation entity in violation of section
25 6(a)(1) may bring a civil action in an appro-

1 priate district court of the United States
2 against the joint negotiation entity and its
3 members not later than 30 days after the date
4 membership is denied.

5 (B) REMEDIES.—

6 (i) BEFORE AGREEMENT OR ARBITRA-
7 TION DECISION.—

8 (I) IN GENERAL.—An eligible
9 digital journalism provider that pre-
10 vails in an action under subparagraph
11 (A) before the date an agreement is
12 executed under section 3 or an arbi-
13 tration decision is issued under sec-
14 tion 4, as applicable, regarding the
15 pricing, terms, and conditions by
16 which the covered platform may ac-
17 cess the content of the eligible digital
18 journalism providers that are mem-
19 bers of the joint negotiation entity,
20 may join the joint negotiation entity
21 and participate in the negotiation
22 under section 3 or the arbitration
23 under section 4, as applicable.

24 (II) NOTICE.—A notice, by or on
25 behalf of the joint negotiation entity,

1 shall be sent to the covered platform
2 to identify the eligible digital jour-
3 nalism provider that joins the negotia-
4 tion or arbitration under subclause
5 (I).

6 (ii) AFTER AGREEMENT OR ARBITRA-
7 TION DECISION.—

8 (I) IN GENERAL.—An eligible
9 digital journalism provider that pre-
10 vails in an action under subparagraph
11 (A) after the date an agreement is ex-
12 ecuted under section 3 or an arbitra-
13 tion decision is issued under section 4,
14 as applicable, regarding the pricing,
15 terms, and conditions by which the
16 covered platform may access the con-
17 tent of the eligible digital journalism
18 providers that are members of the
19 joint negotiation entity, may join the
20 joint negotiation entity and be eligible
21 for the same pricing, terms, and con-
22 ditions by which the covered platform
23 may access the content of the other
24 eligible digital journalism providers

1 that are members of the joint negotia-
2 tion entity.

3 (II) NOTICE.—A notice, by or on
4 behalf of the joint negotiation entity,
5 shall be sent to the covered platform
6 to identify the eligible digital jour-
7 nalism provider that joins the joint
8 negotiation entity under subclause (I)
9 and that is eligible to receive the same
10 pricing, terms, and conditions under
11 the agreement negotiated under sec-
12 tion 3 or the arbitration decision
13 issued under section 4, as applicable,
14 by which the covered platform may
15 access the content of the other eligible
16 digital journalism providers that are
17 members of the joint negotiation enti-
18 ty.

19 (2) COVERED PLATFORMS.—

20 (A) IN GENERAL.—An eligible digital jour-
21 nalism provider that is discriminated against in
22 violation of section 6(a)(2) may bring a civil ac-
23 tion in an appropriate district court of the
24 United States against the covered platform.

1 (B) REMEDIES.—An eligible digital jour-
2 nalism provider that prevails under subpara-
3 graph (A) shall be entitled to—

4 (i) recover the actual damages sus-
5 tained by the eligible digital journalism
6 provider as a result of the discrimination;

7 (ii) injunctive relief on such terms as
8 the court may deem reasonable to prevent
9 or restrain the covered platform from dis-
10 criminating against the eligible digital
11 journalism provider; and

12 (iii) the costs of the suit, including
13 reasonable attorneys' fees.

14 (c) RETALIATION.—

15 (1) IN GENERAL.—An eligible digital journalism
16 provider that is retaliated against in violation of sec-
17 tion 6(b)(1) may bring a civil action in an appro-
18 priate district court of the United States against the
19 covered platform.

20 (2) REMEDIES.—An eligible digital journalism
21 provider that prevails in an action under paragraph
22 (1) shall be entitled to—

23 (A) recover the actual damages sustained
24 by the eligible digital journalism provider as a
25 result of the retaliation;

1 (B) injunctive relief on such terms as the
2 court may deem reasonable to prevent or re-
3 strain the covered platform from retaliating
4 against the eligible digital journalism provider;
5 and

6 (C) the costs of the suit, including reason-
7 able attorneys' fees.

8 **SEC. 8. REPORT.**

9 (a) STUDY.—The Comptroller General shall study the
10 impact of the joint negotiations authorized under this Act,
11 including a summary of the deals negotiated, the impact
12 of such deals on local and regional news, the effect on the
13 free, open, and interoperable Internet including the ability
14 of the public to share and access information, and the ef-
15 fect this Act has had on employment for journalists.

16 (b) REPORT.—Not later than 5 years after the date
17 of enactment of this Act, the Comptroller General shall
18 submit to Congress a report on the study required under
19 subsection (a).

20 **SEC. 9. SUNSET.**

21 (a) IN GENERAL.—Except as provided in subsections
22 (b) and (c), this Act shall cease to have effect on the date
23 that is 6 years after the date of its enactment.

24 (b) EXCEPTION IN CASE OF INITIATED BUT INCOM-
25 PLETE JOINT NEGOTIATION OR ARBITRATION.—With re-

1 spect to eligible digital journalism providers that have ini-
2 tiated but not concluded a negotiation under section 3 or
3 an arbitration under section 4 on or before the sunset date
4 described in subsection (a), this Act shall cease to be effec-
5 tive on the date such negotiation or arbitration concludes
6 or 180 days after the date described in subsection (a),
7 whichever occurs first.

8 (c) LIMITATION OF LIABILITY EXCEPTION.—Section
9 5 shall remain effective without cessation for any—

10 (1) negotiation conducted or agreement exe-
11 cuted under section 3;

12 (2) arbitration conducted or arbitration decision
13 issued under section 4; or

14 (3) agreement implementing an arbitration de-
15 cision issued under section 4;

16 during the period of effectiveness of this Act.

17 **SEC. 10. RULE OF CONSTRUCTION.**

18 (a) ANTITRUST LAWS.—Nothing in this Act may be
19 construed to modify, impair, or supersede the operation
20 of the antitrust laws except as otherwise expressly pro-
21 vided in this Act.

22 (b) COPYRIGHT AND TRADEMARK LAW.—Nothing in
23 this Act may be construed to modify, impair, expand, or
24 in any way alter rights pertaining to title 17, United
25 States Code, or the Lanham Act (15 U.S.C. 1051 et seq.)

1 **SEC. 11. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person or circumstance, is held to be un-
4 constitutional, the remainder of this Act, and the applica-
5 tion of the remaining provisions of this Act to any person
6 or circumstance shall not be affected.

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