

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

S. 673

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. KLOBUCHAR

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Journalism Competi-
5 tion and Preservation Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ANTITRUST LAWS.—The term “antitrust
9 laws”—

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

4 (B) includes—

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

9 (ii) any State law (including regula-
10 tions) that prohibits or penalizes the con-
11 duct described in, or is otherwise incon-
12 sistent with, sections 3 or 4.

13 (2) COVERED PLATFORM.—The term “covered
14 platform” means an online platform that at any
15 point during the 12 months preceding the formation
16 of a joint negotiation entity under section 3(c)(1)—

17 (A) has at least 50,000,000 United States-
18 based monthly active users or subscribers on
19 the online platform;

20 (B) is owned or controlled by a person
21 with—

22 (i) United States net annual sales or
23 a market capitalization greater than
24 \$550,000,000,000, adjusted for inflation

1 on the basis of the Consumer Price Index;

2 or

3 (ii) not fewer than 1,000,000,000

4 worldwide monthly active users on the on-

5 line platform; and

6 (C) is not an organization described in sec-

7 tion 501(c)(3) of the Internal Revenue Code of

8 1986.

9 (3) ELIGIBLE BROADCASTER.—The term “eligi-
10 ble broadcaster” means a person that—

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

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

23 (C) updates its content on at least a week-
24 ly basis;

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

5 (E) is not a television network.

6 (4) ELIGIBLE DIGITAL JOURNALISM PRO-
7 VIDER.—The term “eligible digital journalism pro-
8 vider” means any eligible publisher or eligible broad-
9 caster.

10 (5) ELIGIBLE PUBLISHER.—The term “eligible
11 publisher” means any person that publishes 1 or
12 more qualifying publication.

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

20 (7) ONLINE PLATFORM.—The term “online
21 platform” means a website, online or mobile applica-
22 tion, operating system, digital assistant, or online
23 service that aggregates, displays, provides, distrib-
24 utes, or directs users to news articles, works of jour-
25 nalism, or other content, or portions thereof, gen-

1 erated, created, produced, or owned by eligible dig-
2 ital journalism providers.

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

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

12 (A) does not primarily display, provide,
13 distribute, or offer content generated, created,
14 produced, or owned by an eligible broadcaster
15 or television network; and

16 (B)(i) provides information to an audience
17 primarily in the United States;

18 (ii) performs a public-information function
19 comparable to that traditionally served by news-
20 papers and other periodical news publications;

21 (iii) engages professionals to create, edit,
22 produce, and distribute original content con-
23 cerning local, regional, national, or inter-
24 national matters of public interest through ac-
25 tivities, including conducting interviews, observ-

1 ing current events, or analyzing documents and
2 other information, and fact checking through
3 multiple firsthand or secondhand news sources;

4 (iv) updates its content on at least a week-
5 ly basis;

6 (v) has an editorial process for error cor-
7 rection and clarification, including a trans-
8 parent process for reporting errors or com-
9 plaints to the publication;

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

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

16 (III) is owned or controlled by an exempt
17 organization, as defined in section 501(c)(3) of
18 the Internal Revenue Code of 1986;

19 (vii) has not less than 25 percent of its
20 editorial content consisting of information about
21 topics of current local, national, or international
22 public interest;

23 (viii) employs not more than 1,500 exclu-
24 sive full-time employees; and

1 (ix) is not controlled or wholly or partially
2 owned by an entity that is—

3 (I) a foreign power or an agent of a
4 foreign power, as those terms are defined
5 in section 101 of the Foreign Intelligence
6 Surveillance Act of 1978 (50 U.S.C.
7 1801);

8 (II)(aa) designated as a foreign ter-
9 rorist organization pursuant to section
10 219(a) of the Immigration and Nationality
11 Act (8 U.S.C. 1189(a));

12 (bb) a terrorist organization, as de-
13 fined in section 212(a)(3)(B)(vi)(II) of the
14 Immigration and Nationality Act (8 U.S.C.
15 1182(a)(3)(B)(vi)(II));

16 (cc) designated as a specially des-
17 ignated global terrorist organization under
18 Executive Order 13224 (50 U.S.C. 1701
19 note; relating to blocking property and pro-
20 hibiting transactions with persons who
21 commit, threaten to commit, or support
22 terrorism); or

23 (dd) an affiliate of an entity described
24 in subclause (I), (II), or (III); or

1 (III) an entity that has been convicted
2 of violating, or attempting to violate, sec-
3 tion 2331, 2332b, or 2339A of title 18,
4 United States Code.

5 (10) TELEVISION NETWORK.—The term “tele-
6 vision network”—

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

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

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

16 (a) NOTICE.—

17 (1) PROCESS TO FORM A JOINT NEGOTIATION
18 ENTITY.—

19 (A) IN GENERAL.—An eligible digital jour-
20 nalism provider shall provide public notice to
21 announce the opportunity for other eligible dig-
22 ital journalism providers to join a joint negotia-
23 tion entity for the purpose of engaging in joint
24 negotiations with a covered platform under this
25 section, regarding the terms and conditions by

1 which the covered platform may access the con-
2 tent of the eligible digital journalism providers
3 that are members of the joint negotiation enti-
4 ty.

5 (B) APPLICATION.—During the 60-day pe-
6 riod beginning on the date public notice is made
7 under subparagraph (A), any eligible digital
8 journalism provider may apply to join the joint
9 negotiation entity.

10 (C) FORMATION.—A joint negotiation enti-
11 ty is established upon the agreement of 2 or
12 more eligible digital journalism providers, and
13 may create admission criteria for membership
14 unrelated to the size of an eligible digital jour-
15 nalism provider or the views expressed by its
16 content, including criteria to limit membership
17 to only eligible publishers or only eligible broad-
18 casters.

19 (D) GOVERNANCE.—By a majority vote of
20 its members, a joint negotiation entity formed
21 under this section shall establish rules and pro-
22 cedures to govern decision making by the entity
23 and each eligible digital journalism provider
24 shall be entitled to 1 vote on any matter sub-
25 mitted to a vote of the members.

1 (E) ADDITIONAL MEMBERS.—After the ex-
2 piration of the 60-day period described in sub-
3 paragraph (B), an eligible digital journalism
4 provider may apply to join the joint negotiation
5 entity, and may be admitted to the joint nego-
6 tiation entity upon a majority vote of its mem-
7 bers, if the applicant otherwise satisfies any cri-
8 teria for admission established by the joint ne-
9 gotiation entity.

10 (F) DESIGNATION.—A joint negotiation
11 entity may designate agents on a nonexclusive
12 basis—

13 (i) to engage in negotiations with a
14 covered platform conducted under this sec-
15 tion; and

16 (ii) to agree to pay or receive pay-
17 ments under or related to an agreement
18 negotiated under this section or an arbitra-
19 tion decision issued under section 4.

20 (G) OPT-OUT.—

21 (i) IN GENERAL.—After becoming a
22 member of the joint negotiation entity, an
23 eligible digital journalism provider may opt
24 out of the joint negotiation entity at any

1 time before notice is sent to the covered
2 platform under paragraph (2).

3 (ii) PROHIBITION ON REJOINING.—If
4 an eligible digital journalism provider opts
5 out of a joint negotiation entity under
6 clause (i), the eligible digital journalism
7 provider may not—

8 (I) rejoin the joint negotiation
9 entity; or

10 (II) receive any payment under
11 or related to an agreement negotiated
12 by the joint negotiation entity under
13 this section or an arbitration decision
14 issued under section 4.

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

17 (i) when the entity no longer has at
18 least 2 members;

19 (ii) upon a majority vote of its mem-
20 bers; or

21 (iii) upon the expiration or termi-
22 nation of an agreement negotiated under
23 this section or an arbitration decision
24 issued under section 4.

1 (2) NOTICE TO A COVERED PLATFORM TO INI-
2 TATE A JOINT NEGOTIATION.—

3 (A) IN GENERAL.—A joint negotiation
4 under this section shall commence after a cov-
5 ered platform receives a notice, sent by or on
6 behalf of a joint negotiation entity.

7 (B) CONTENTS OF NOTICE.—The notice
8 described in subparagraph (A) shall—

9 (i) state that the joint negotiation en-
10 tity is initiating a negotiation under this
11 section to reach an agreement regarding
12 the terms and conditions by which the cov-
13 ered platform may access the content of
14 the eligible digital journalism providers
15 that are members of the joint negotiation
16 entity;

17 (ii) identify the eligible digital jour-
18 nalism providers that are members of the
19 joint negotiation entity; and

20 (iii) provide the physical mail address
21 (street address or post office box), tele-
22 phone number, and email address of an
23 representative authorized to receive a re-
24 sponse to the notice on behalf of the joint
25 negotiation entity.

1 (C) REPLY.—Not later than 30 days after
2 receiving the notice described in subparagraph
3 (A), the covered platform shall send a reply no-
4 tice to the authorized representative identified
5 by or on behalf of the joint negotiation entity
6 to acknowledge receipt of the notice.

7 (D) NOTICE TO FEDERAL ENFORCERS.—
8 Copies of any notice described in subparagraph
9 (A), shall be filed by or on behalf of the eligible
10 digital journalism providers that are members
11 of the joint negotiation entity with the Federal
12 Trade Commission and the Assistant Attorney
13 General in charge of the Antitrust Division of
14 the Department of Justice not later than 30
15 days after the notice is sent to the covered plat-
16 form.

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

20 (1) Any negotiation conducted under this sec-
21 tion shall be conducted in good faith and designed
22 to reach an agreement regarding the terms and con-
23 ditions by which the covered platform may access
24 the content of the eligible digital journalism pro-
25 viders.

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

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

9 (B) refuses to designate a representative
10 with authority to make binding representations;

11 (C) refuses to meet and negotiate at rea-
12 sonable times and locations or otherwise causes
13 unreasonable delay;

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

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

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

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

24 (3) A covered platform is not conducting nego-
25 tiations in good faith in accordance with paragraph

1 (1) if the covered platform enters into a separate
2 agreement with an eligible digital journalism pro-
3 vider that impedes the eligible digital journalism
4 provider from participating in a negotiation under
5 this section.

6 (4) During any negotiation conducted under
7 this section, the joint negotiation entity and the cov-
8 ered platform shall each make a reasonable offer re-
9 garding the terms and conditions by which the cov-
10 ered platform may access the content of the eligible
11 digital journalism providers that are members of the
12 joint negotiation entity, substantiated with com-
13 prehensive data and methodologies, including expert
14 analysis, that reflects—

15 (A) terms and conditions comparable to
16 those found in commercial agreements between
17 similarly situated entities, including price, dura-
18 tion, territory, value of data generated directly
19 or indirectly by the content, and the ranking,
20 identification, modification, branding, and
21 placement of the content on the platform;

22 (B) the fair market value to the covered
23 platform of having access to the content of the
24 eligible digital journalism providers that are
25 members of the joint negotiation entity and the

1 resulting incremental contribution to the rev-
2 enue of the covered platform, including direct
3 and indirect advertising or promotional reve-
4 nues, which shall not be offset by any value
5 conferred upon the eligible digital journalism
6 providers that are members of the joint negotia-
7 tion entity by the covered platform for aggreg-
8 ating or distributing their content; and

9 (C) the investment of the eligible digital
10 journalism providers, including the number of
11 journalists employed, that are members of the
12 joint negotiation entity in producing original
13 news and related content.

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

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

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

23 (1) **IN GENERAL.**—If the membership of a joint
24 negotiation entity consists only of eligible publishers,
25 on or after the date that is 180 days after the date

1 negotiations under section 3 begins, the joint nego-
2 tiation entity may initiate a final offer arbitration
3 against the covered platform for an arbitration panel
4 to determine the terms and conditions by which the
5 content displayed, provided, distributed, or offered
6 by a qualifying publication of any eligible publisher
7 that is a member of the joint negotiation entity will
8 be accessed by the covered platform if the parties
9 are unable to reach an agreement and regardless of
10 whether the joint negotiation entity, its members, or
11 the covered platform complied with the requirements
12 of section 3(b).

13 (2) EFFECT OF ADDITIONAL MEMBERS.—If an
14 additional member joins the joint negotiation entity
15 under section 3(a)(1)(E) more than 90 days after
16 the date negotiations under section 3 begins, the
17 joint negotiation entity may not initiate a final offer
18 arbitration under paragraph (1) until 180 days after
19 the date the last member joined the joint negotiation
20 entity.

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

1 (c) MEMBERSHIP.—If a joint negotiation entity initi-
2 ates final offer arbitration under this section, any indi-
3 vidual eligible publisher that is a member of the joint ne-
4 gotiation entity shall remain a member of the joint nego-
5 tiation entity until the completion of the arbitration, un-
6 less the eligible publisher provides written notice to the
7 joint negotiation entity of its intention to withdraw from
8 the joint negotiation entity within 7 days of receiving no-
9 tice under subsection (b).

10 (d) PROCEEDINGS.—

11 (1) RULES OF ARBITRATION.—The arbitration
12 shall be decided by a panel of 3 arbitrators under
13 the expedited procedures of the American Arbitra-
14 tion Association’s Commercial Arbitration Rules and
15 Mediation Procedures and Final Offer Arbitration
16 Supplementary Rules, except to the extent they con-
17 flict with this subsection.

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

1 (3) COMMENCEMENT AND FUNDING.—

2 (A) COMMENCEMENT.—A final offer arbi-
3 tration proceeding shall commence 10 days
4 after the date a final offer arbitration is initi-
5 ated under subsection (a).

6 (B) FUNDING.—The cost of administering
7 the arbitration proceeding, including arbitrator
8 compensation, claims-administrator compensa-
9 tion, and administrative charges, shall be
10 shared equally between the covered platform
11 and the joint negotiation entity.

12 (4) APPOINTMENT OF THE ARBITRATION
13 PANEL.—The arbitrators shall be appointed in ac-
14 cordance with rule E-4 of the expedited procedures
15 of the American Arbitration Association's Commer-
16 cial Arbitration Rules and Mediation Procedures, ex-
17 cept that the proposed arbitrators on the panel sub-
18 mitted to the parties under rule E-4(a) shall have
19 prior experience in mediating or arbitrating disputes
20 concerning digital journalism.

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

23 (A) the joint negotiation entity and the
24 covered platform may demand the production of
25 documents and information that are nonprivi-

1 leged, reasonably necessary, and reasonably ac-
2 cessible without undue expense;

3 (B) documents and information described
4 in subparagraph (A) shall be exchanged not
5 later than 30 days after the date the demand
6 is made;

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

9 (D) the joint negotiation entity and cov-
10 ered platform shall each submit a final offer
11 proposal for the terms and conditions by which
12 the content displayed, provided, distributed, or
13 offered by a qualifying publication of any eligi-
14 ble publisher that is a member of the joint ne-
15 gotiation entity will be accessed by the covered
16 platform, and which shall include the remunera-
17 tion that the eligible publishers should receive
18 from the covered platform for programmatic ac-
19 cess to the content of the eligible publishers
20 that are members of the joint negotiation entity
21 during the period under negotiation based on
22 the fair market value of such access, which
23 shall include backup materials sufficient to per-
24 mit the other party to replicate the proffered
25 valuation; and

1 (E) if applicable, each eligible publisher
2 that is a member of the joint negotiation entity
3 shall provide information and data to guide the
4 distribution of remuneration among the mem-
5 bers of the joint negotiation entity, including—

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

14 (ii) spending by the eligible publisher
15 on news journalists employed for an aver-
16 age of not fewer than 20 hours per week
17 during the calendar quarter by eligible dig-
18 ital journalism providers that are members
19 of the joint negotiation entity that is re-
20 sponsible for gathering, preparing, direct-
21 ing the recording of, producing, collecting,
22 photographing, recording, writing, editing,
23 reporting, presenting, or publishing origi-
24 nal news or information that concerns
25 local, regional, national, or international

1 matters of public interest in the previous
2 fiscal year as a proportion of its overall
3 budget for that period, which shall be used
4 to guide 65 percent of the distribution of
5 remuneration among the members of the
6 joint negotiation entity.

7 (e) DECISION.—

8 (1) IN GENERAL.—Not later than 60 days after
9 the date proceedings commence under subsection
10 (d)(3)(A), the arbitration panel shall issue a decision
11 that selects a proposal from 1 of the parties without
12 modification.

13 (2) REQUIREMENTS.—In issuing a decision
14 under paragraph (1), the arbitration panel—

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

20 (B) shall consider past incremental revenue
21 contributions as a guide to the future incre-
22 mental revenue contribution by any eligible pub-
23 lisher;

24 (C) shall consider the terms and conditions
25 of any available, comparable commercial agree-

1 ments between parties granting access to digital
2 content, including terms and conditions relating
3 to price, duration, territory, the value of data
4 generated by the content, and the ranking,
5 identification, modification, branding, or place-
6 ment of the content, accounting for any mate-
7 rial disparities in negotiating power between the
8 parties to such commercial agreements; and

9 (D) shall issue a binding, reasoned deci-
10 sion, including the factual and economic bases
11 of its decision, that applies for the number of
12 years set forth in the winning proposal, but not
13 fewer than 5 years.

14 (f) PAYMENTS.—

15 (1) IN GENERAL.—Not later than 90 days after
16 the date a decision is issued under subsection (e),
17 the covered platform shall begin paying any eligible
18 publisher that was a member of the joint negotiation
19 entity participating in the arbitration according to
20 the terms in the proposal selected by the arbitration
21 panel.

22 (2) DISBURSEMENT.—Payments made under
23 paragraph (1) shall be dispersed by a claims admin-
24 istrator to the individual claimants that comprise the
25 joint negotiation entity not later than 60 days after

1 the date the funds were received from the covered
2 platform.

3 (g) ENFORCEMENT AND JUDICIAL REVIEW.—

4 (1) IN GENERAL.—A decision made under sub-
5 section (e) shall be enforceable by the eligible pub-
6 lishers or the covered platform subject to the deci-
7 sion through a civil action brought before a district
8 court of the United States.

9 (2) EXPEDITED JUDICIAL PROCESS.—In any
10 civil action to enforce or seek judicial review of a de-
11 cision made under subsection (e), the court shall
12 adopt a rebuttable presumption that good cause ex-
13 ists to prioritize the action under section 1657 of
14 title 28, United States Code.

15 **SEC. 5. LIMITATION OF LIABILITY.**

16 (a) IN GENERAL.—Notwithstanding any provision of
17 the antitrust laws, in accordance with sections 3 and 4,
18 any eligible digital journalism providers that are members
19 of a joint negotiation entity—

20 (1) may jointly deny a covered platform access
21 to content for which the eligible digital journalism
22 providers, individually or jointly, have the right to
23 negotiate or arbitrate access with respect to the cov-
24 ered platform; and

1 (2) may participate in joint negotiations and ar-
2 bitration, as members of the joint negotiation entity,
3 with such covered platform regarding the terms and
4 conditions by which the covered platform may access
5 the content for which the eligible digital journalism
6 providers, individually or jointly, have the right to
7 negotiate or arbitrate access with respect to the cov-
8 ered platform.

9 (b) SAFE HARBOR.—

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

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

21 (B) with a person that is not a covered
22 platform, if the eligible digital journalism pro-
23 vider reasonably believes that the person is a
24 covered platform.

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

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

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

15 (c) NOTIFICATION OF AGREEMENTS AND ARBITRA-
16 TION DECISIONS.—

17 (1) AGREEMENTS.—The parties to any written
18 agreement, resulting from a negotiation under sec-
19 tion 3 or implementing an arbitration decision issued
20 under section 4, shall file a copy of such agreement
21 with the Federal Trade Commission and the Assist-
22 ant Attorney General in charge of the Antitrust Di-
23 vision of the Department of Justice not later than
24 60 days after such agreement is executed.

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

8 **SEC. 6. NONDISCRIMINATION, RETALIATION, AND TRANS-**
9 **PARENCY.**

10 (a) **NONDISCRIMINATION.**—

11 (1) **JOINT NEGOTIATION ENTITIES.**—A joint ne-
12 gotation entity may not discriminate against any el-
13 igible digital journalism provider based on the size of
14 the eligible digital journalism provider or the views
15 expressed by the eligible digital journalism provider’s
16 content.

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

1 (b) PROHIBITION ON RETALIATION BY COVERED
2 PLATFORMS.—

3 (1) IN GENERAL.—No covered platform may re-
4 taliate against an eligible digital journalism provider
5 for participating in a negotiation conducted under
6 section 3, or an arbitration conducted under section
7 4, including by refusing to index content or changing
8 the ranking, identification, modification, branding,
9 or placement of the content of the eligible digital
10 journalism provider on the covered platform.

11 (2) EFFECT OF CONTRACT PROVISIONS.—Any
12 provision in an agreement that restricts an eligible
13 digital journalism provider from receiving compensa-
14 tion through a negotiation conducted under section
15 3 or an arbitration conducted under section 4 shall
16 be void.

17 (c) INVESTING IN JOURNALISM.—Without disclosing
18 confidential information regarding the terms and condi-
19 tions of an agreement reached under section 3, an agree-
20 ment implementing an arbitration decision issued under
21 section 4, or an arbitration decision issued under section
22 4, or confidential financial information, an eligible digital
23 journalism provider shall provide public transparency re-
24 garding the use of any funds received under or related
25 to such agreement or arbitration decision to support ongo-

1 ing and future operations to maintain or enhance the pro-
2 duction and distribution of news or information that con-
3 cerns local, regional, national, or international matters of
4 public interest, including public reporting regarding the
5 amount of funds received each year under or related to
6 each such agreement or decision.

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

8 (a) NEGOTIATIONS.—

9 (1) IN GENERAL.—Any eligible digital jour-
10 nalism provider, either jointly with other eligible dig-
11 ital journalism providers or through an authorized
12 representative, or covered platform that participated
13 in negotiations under section 3 may bring a civil ac-
14 tion in an appropriate district court of the United
15 States alleging a violation of section 3(b).

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

18 (A) approximating the value of the last
19 reasonable offer of the defendant if the defend-
20 ant did not conduct negotiations in good faith
21 in violation of section 3(b)(1);

22 (B) approximating the value of the last
23 reasonable offer of the plaintiff if the defend-
24 ant—

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

4 (ii) had not yet extended a reasonable
5 offer; or

6 (C) approximating the value of the plain-
7 tiff's last reasonable offer if the defendant did
8 not make a reasonable offer in violation of sec-
9 tion 3(b)(4).

10 (b) DISCRIMINATION.—

11 (1) JOINT NEGOTIATION ENTITIES.—

12 (A) IN GENERAL.—An eligible digital jour-
13 nalism provider that is denied membership in a
14 joint negotiation entity in violation of section
15 6(a)(1) may bring a civil action in an appro-
16 priate district court of the United States
17 against the joint negotiation entity and its
18 members not later than 30 days after the date
19 membership is denied.

20 (B) REMEDIES.—

21 (i) BEFORE AGREEMENT OR ARBITRA-
22 TION DECISION.—

23 (I) IN GENERAL.—An eligible
24 digital journalism provider that pre-
25 vails in an action under this sub-

1 section before the date an agreement
2 is executed under section 3 or an arbi-
3 tration decision is issued under sec-
4 tion 4, as applicable, regarding the
5 terms and conditions by which the
6 covered platform may access the con-
7 tent of the eligible digital journalism
8 providers that are members of the
9 joint negotiation entity, may join the
10 joint negotiation entity and partici-
11 pate in the negotiation under section
12 3 or the arbitration under section 4,
13 as applicable.

14 (II) NOTICE.—A notice, by or on
15 behalf of the joint negotiation entity,
16 shall be sent to the covered platform
17 to identify the eligible digital jour-
18 nalism provider that joins the negotia-
19 tion or arbitration under subclause
20 (I).

21 (ii) AFTER AGREEMENT OR ARBITRA-
22 TION DECISION.—

23 (I) IN GENERAL.—An eligible
24 digital journalism provider that pre-
25 vails in an action under this sub-

1 section after the date an agreement is
2 executed under section 3 or an arbi-
3 tration decision is issued under sec-
4 tion 4, as applicable, regarding the
5 terms and conditions by which the
6 covered platform may access the con-
7 tent of the eligible digital journalism
8 providers that are members of the
9 joint negotiation entity, such eligible
10 digital journalism provider may join
11 the joint negotiation entity and be eli-
12 gible for the same terms and condi-
13 tions by which the covered platform
14 may access the content of the other
15 eligible digital journalism providers
16 that are members of the joint negotia-
17 tion entity.

18 (II) NOTICE.—A notice, by or on
19 behalf of the joint negotiation entity,
20 shall be sent to the covered platform
21 to identify the eligible digital jour-
22 nalism provider that joins the joint
23 negotiation entity under subclause (I)
24 and that is eligible to receive the same
25 terms and conditions under the agree-

1 ment negotiated under section 3 or
2 the arbitration decision issued under
3 section 4, as applicable, by which the
4 covered platform may access the con-
5 tent of the other eligible digital jour-
6 nalism providers.

7 (2) COVERED PLATFORMS.—

8 (A) IN GENERAL.—An eligible digital jour-
9 nalism provider that is discriminated against in
10 violation of section 6(a)(2) may bring a civil ac-
11 tion in an appropriate district court of the
12 United States against the covered platform.

13 (B) REMEDIES.—An eligible digital jour-
14 nalism provider that prevails under this para-
15 graph shall be entitled to—

16 (i) recover the actual damages sus-
17 tained by the eligible digital journalism
18 provider as a result of the discrimination,

19 (ii) injunctive relief on such terms as
20 the court may deem reasonable to prevent
21 or restrain the covered platform from dis-
22 criminating against the eligible digital
23 journalism provider; and

24 (iii) the costs of the suit, including
25 reasonable attorneys' fees.

1 (c) RETALIATION.—

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

7 (2) REMEDIES.—An eligible digital journalism
8 provider that prevails in an action under paragraph
9 (1) shall be entitled to—

10 (A) recover the actual damages sustained
11 by the eligible digital journalism provider as a
12 result of the retaliation,

13 (B) injunctive relief on such terms as the
14 court may deem reasonable to prevent or re-
15 strain the covered platform from retaliating
16 against the eligible digital journalism provider;
17 and

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

20 **SEC. 8. SUNSET.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), this Act shall cease to have effect on the date that
23 is 8 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 date de-
4 scribed in subsection (a), this Act shall cease to be effec-
5 tive on the earlier of the date such negotiation concludes
6 or 180 days after the date described in subsection (a).

7 **SEC. 9. RULE OF CONSTRUCTION.**

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

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

16 **SEC. 10. SEVERABILITY.**

17 If any provision of this Act, or the application of such
18 provision to any person or circumstance, is held to be un-
19 constitutional, the remainder of this Act, and the applica-
20 tion of the remaining provisions of this Act to any person
21 or circumstance shall not be affected.