

**Calendar No. 135**118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**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.

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**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, Mr. WICKER, Ms. HIRONO, Mr. KING, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 18, 2023

Reported by Mr. DURBIN, without amendment

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**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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

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

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

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

13 (B) includes—

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

18 (ii) any State law (including regula-  
19 tions) that prohibits or penalizes the con-  
20 duct described in, or is otherwise incon-  
21 sistent with, sections 3 or 4.

22 (3) **COVERED PLATFORM.**—The term “covered  
23 platform” means an online platform that at any  
24 point during the 12 months preceding the formation  
25 of a joint negotiation entity under section 3(a)(1)—

1 (A) has at least 50,000,000 United States-  
2 based monthly active users or subscribers on  
3 the online platform;

4 (B) is owned or controlled by a person  
5 with—

6 (i) United States net annual sales or  
7 a market capitalization greater than  
8 \$550,000,000,000, adjusted for inflation  
9 on the basis of the Consumer Price Index;  
10 or

11 (ii) not fewer than 1,000,000,000  
12 worldwide monthly active users on the on-  
13 line platform; and

14 (C) is not an organization described in sec-  
15 tion 501(c)(3) of the Internal Revenue Code of  
16 1986.

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

19 (A) holds or operates under a license  
20 issued by the Federal Communications Commis-  
21 sion under title III of the Communications Act  
22 of 1934 (47 U.S.C. 301 et seq.);

23 (B) engages professionals to create, edit,  
24 produce, and distribute original content con-  
25 cerning local, regional, national, or inter-

1 national matters of public interest through ac-  
2 tivities including conducting interviews, observ-  
3 ing current events, analyzing documents and  
4 other information, and fact checking through  
5 multiple firsthand or secondhand news sources;

6 (C) updates its content on at least a week-  
7 ly basis;

8 (D) uses an editorial process for error cor-  
9 rection and clarification, including a trans-  
10 parent process for reporting errors or com-  
11 plaints to the station; and

12 (E) is not a television network.

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

17 (6) ELIGIBLE PUBLISHER.—The term “eligible  
18 publisher” means any person that publishes 1 or  
19 more qualifying publications.

20 (7) NETWORK STATION.—The term “network  
21 station” means a television broadcast station, includ-  
22 ing any translator station or terrestrial satellite sta-  
23 tion that rebroadcasts all or substantially all of the  
24 programming broadcast by a network station, that is

1 owned or operated by, or affiliated with, 1 or more  
2 television networks.

3 (8) ONLINE PLATFORM.—The term “online  
4 platform” means a website, online or mobile applica-  
5 tion, operating system, digital assistant, or online  
6 service that accesses news articles, works of jour-  
7 nalism, or other content, or portions thereof, gen-  
8 erated, created, produced, or owned by eligible dig-  
9 ital journalism providers, and aggregates, displays,  
10 provides, distributes, or directs users to such con-  
11 tent.

12 (9) PERSON.—The term “person” includes an  
13 individual or entity existing under or authorized by  
14 the laws of the United States, the laws of any of ter-  
15 ritory of the United States, the laws of any State,  
16 the laws of the District of Columbia, or the laws of  
17 any foreign country.

18 (10) PRICING, TERMS, AND CONDITIONS.—The  
19 term “pricing, terms, and conditions” does not in-  
20 clude any term or condition which relates to the use,  
21 display, promotion, ranking, distribution, curation,  
22 suppression, throttling, filtering, or labeling of the  
23 content or viewpoint of any person.

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

4           (A) does not primarily display, provide,  
5 distribute, or offer content generated, created,  
6 produced, or owned by an eligible broadcaster  
7 or television network; and

8           (B)(i) provides information to an audience  
9 primarily in the United States;

10          (ii) performs a public-information function  
11 comparable to that traditionally served by news-  
12 papers and other periodical news publications;

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

21          (iv) updates its content on at least a week-  
22 ly basis;

23          (v) has an editorial process for error cor-  
24 rection and clarification, including a trans-

1 parent process for reporting errors or com-  
2 plaints to the publication;

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

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

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

12 (vii) has not less than 25 percent of its  
13 editorial content consisting of information about  
14 topics of current local, national, or international  
15 public interest;

16 (viii) employed not more than 1,500 exclu-  
17 sive full-time employees during the 12-month  
18 period prior to the date of enactment of this  
19 Act; and

20 (ix) is not controlled or wholly or partially  
21 owned by an entity that is—

22 (I) a foreign power or an agent of a  
23 foreign power, as those terms are defined  
24 in section 101 of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C.  
2 1801);

3 (II)(aa) designated as a foreign ter-  
4 rorist organization pursuant to section  
5 219(a) of the Immigration and Nationality  
6 Act (8 U.S.C. 1189(a));

7 (bb) a terrorist organization, as de-  
8 fined in section 212(a)(3)(B)(vi)(II) of the  
9 Immigration and Nationality Act (8 U.S.C.  
10 1182(a)(3)(B)(vi)(II));

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

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

20 (III) an entity that has been convicted  
21 of violating, or attempting to violate, sec-  
22 tion 2331, 2332b, or 2339A of title 18,  
23 United States Code.

24 (12) TELEVISION NETWORK.—The term “tele-  
25 vision network”—



1 (A) means any person that, on February 8,  
2 1996, offered an interconnected program serv-  
3 ice on a regular basis for 15 or more hours per  
4 week to at least 25 affiliated television licensees  
5 in 10 or more States; and

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

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

10 (a) NOTICE.—

11 (1) PROCESS TO FORM A JOINT NEGOTIATION  
12 ENTITY.—

13 (A) IN GENERAL.—An eligible digital jour-  
14 nalism provider shall provide public notice to  
15 announce the opportunity for other eligible dig-  
16 ital journalism providers to join a joint negotia-  
17 tion entity for the purpose of engaging in joint  
18 negotiations with a covered platform under this  
19 section, regarding the pricing, terms, and condi-  
20 tions by which the covered platform may access  
21 the content of the eligible digital journalism  
22 providers that are members of the joint negotia-  
23 tion entity.

24 (B) APPLICATION.—During the 60-day pe-  
25 riod beginning on the date public notice is made

1 under subparagraph (A), any eligible digital  
2 journalism provider may apply to join the joint  
3 negotiation entity.

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

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

20 (E) ADDITIONAL MEMBERS.—After the ex-  
21 piration of the 60-day period described in sub-  
22 paragraph (B), an eligible digital journalism  
23 provider may apply to join the joint negotiation  
24 entity, and may be admitted to the joint nego-  
25 tiation entity upon a majority vote of its mem-

1           bers, if the applicant otherwise satisfies any cri-  
2           teria for admission established by the joint ne-  
3           gotiation entity.

4           (F) DESIGNATION.—A joint negotiation  
5           entity may designate agents on a nonexclusive  
6           basis—

7                   (i) to engage in negotiations with a  
8                   covered platform conducted under this sec-  
9                   tion; and

10                   (ii) to agree to pay or receive pay-  
11                   ments under or related to an agreement  
12                   negotiated under this section or an arbitra-  
13                   tion decision issued under section 4.

14           (G) OPT-OUT.—

15                   (i) IN GENERAL.—After becoming a  
16                   member of the joint negotiation entity, an  
17                   eligible digital journalism provider may opt  
18                   out of the joint negotiation entity at any  
19                   time before notice is sent to the covered  
20                   platform under paragraph (2).

21                   (ii) PROHIBITION ON REJOINING.—If  
22                   an eligible digital journalism provider opts  
23                   out of a joint negotiation entity under  
24                   clause (i), the eligible digital journalism  
25                   provider may not—

1 (I) rejoin the joint negotiation  
2 entity; or

3 (II) receive any payment under  
4 or related to an agreement negotiated  
5 by the joint negotiation entity under  
6 this section or an arbitration decision  
7 issued under section 4.

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

10 (i) when the entity no longer has at  
11 least 2 members;

12 (ii) upon a majority vote of its mem-  
13 bers; or

14 (iii) upon the expiration or termi-  
15 nation of an agreement negotiated under  
16 this section or an arbitration decision  
17 issued under section 4.

18 (2) NOTICE TO A COVERED PLATFORM TO INI-  
19 TIATE A JOINT NEGOTIATION.—

20 (A) IN GENERAL.—A joint negotiation  
21 under this section shall commence after a cov-  
22 ered platform receives a notice, sent by or on  
23 behalf of a joint negotiation entity.

24 (B) CONTENTS OF NOTICE.—The notice  
25 described in subparagraph (A) shall—

1 (i) state that the joint negotiation en-  
2 tity is initiating a negotiation under this  
3 section to reach an agreement regarding  
4 the pricing, terms, and conditions by which  
5 the covered platform may access the con-  
6 tent of the eligible digital journalism pro-  
7 viders that are members of the joint nego-  
8 tiation entity;

9 (ii) identify the eligible digital jour-  
10 nalism providers that are members of the  
11 joint negotiation entity; and

12 (iii) provide the physical mail address  
13 (street address or post office box), tele-  
14 phone number, and email address of a rep-  
15 resentative authorized to receive a response  
16 to the notice on behalf of the joint negotia-  
17 tion entity.

18 (C) REPLY.—Not later than 30 days after  
19 receiving a notice described in subparagraph  
20 (A), the covered platform shall send a reply no-  
21 tice to the authorized representative identified  
22 by or on behalf of the joint negotiation entity  
23 to acknowledge receipt of the notice.

24 (D) NOTICE TO FEDERAL ENFORCERS.—  
25 Copies of any notice described in subparagraph

1 (A) shall be filed by or on behalf of the eligible  
2 digital journalism providers that are members  
3 of the joint negotiation entity with the Federal  
4 Trade Commission and the Assistant Attorney  
5 General in charge of the Antitrust Division of  
6 the Department of Justice not later than 30  
7 days after the notice is sent to the covered plat-  
8 form.

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

12 (1) Any negotiation conducted under this sec-  
13 tion shall be conducted in good faith and solely to  
14 reach an agreement regarding the pricing, terms,  
15 and conditions under which the covered platform  
16 may access the content of the eligible digital jour-  
17 nalism providers.

18 (2) No pre-agreement discussions or agreement  
19 reached regarding pricing, terms, and conditions  
20 under this section may address whether or how the  
21 covered platform or any such eligible digital jour-  
22 nalism provider—

23 (A) displays, ranks, distributes, suppresses,  
24 promotes, throttles, labels, filters, or curates

1 the content of the eligible digital journalism  
2 providers; or

3 (B) displays, ranks, distributes, sup-  
4 presses, promotes, throttles, labels, filters, or  
5 curates the content of any other person.

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

9 (A) refuses to negotiate, except where eligi-  
10 ble digital journalism providers decide to jointly  
11 deny a covered platform access to content li-  
12 censed or produced by such eligible digital jour-  
13 nalism providers under subsection (c);

14 (B) refuses to designate a representative  
15 with authority to make binding representations;

16 (C) refuses to meet and negotiate at rea-  
17 sonable times and locations or otherwise causes  
18 unreasonable delay;

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

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

23 (F) enters into a separate third-party  
24 agreement that unreasonably impedes the party

1 from reaching an agreement with the negoti-  
2 ating party; or

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

5 (4) A covered platform is not conducting nego-  
6 tiations in good faith in accordance with paragraph  
7 (1) if the covered platform enters into a separate  
8 agreement with an eligible digital journalism pro-  
9 vider that impedes the eligible digital journalism  
10 provider from participating in a negotiation under  
11 this section.

12 (5) During any negotiation conducted under  
13 this section, the joint negotiation entity and the cov-  
14 ered platform shall each make a reasonable offer re-  
15 garding the pricing, terms, and conditions by which  
16 the covered platform may access the content of the  
17 eligible digital journalism providers that are mem-  
18 bers of the joint negotiation entity, substantiated  
19 with comprehensive data and methodologies, includ-  
20 ing expert analysis, that reflects—

21 (A) the pricing, terms, and conditions com-  
22 parable to those found in commercial agree-  
23 ments between similarly situated entities, in-  
24 cluding price, duration, territory, value of data  
25 generated directly or indirectly by the content;



1           (B) the fair market value to the covered  
2 platform of having access to the content of the  
3 eligible digital journalism providers that are  
4 members of the joint negotiation entity and the  
5 resulting incremental contribution to the rev-  
6 enue of the covered platform, including direct  
7 and indirect advertising or promotional reve-  
8 nues, which shall not be offset by any value  
9 conferred upon the eligible digital journalism  
10 providers that are members of the joint negotia-  
11 tion entity by the covered platform for aggre-  
12 gating or distributing their content; and

13           (C) the investment of the eligible digital  
14 journalism providers that are members of the  
15 joint negotiation entity in producing original  
16 news and related content, including the number  
17 of journalists employed by each.

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

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

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

3 (1) **IN GENERAL.**—If the membership of a joint  
4 negotiation entity consists only of eligible publishers,  
5 on or after the date that is 180 days after the date  
6 negotiations under section 3 begin, the joint negotia-  
7 tion entity may initiate a final offer arbitration  
8 against the covered platform for an arbitration panel  
9 to determine the pricing, terms, and conditions by  
10 which the content displayed, provided, distributed, or  
11 offered by a qualifying publication of any eligible  
12 publisher that is a member of the joint negotiation  
13 entity will be accessed by the covered platform if the  
14 parties are unable to reach an agreement and re-  
15 gardless of whether the joint negotiation entity, its  
16 members, or the covered platform complied with the  
17 requirements of section 3(b).

18 (2) **EFFECT OF ADDITIONAL MEMBERS.**—If an  
19 additional member joins the joint negotiation entity  
20 under section 3(a)(1)(E) more than 90 days after  
21 the date negotiations under section 3 begin, the joint  
22 negotiation entity may not initiate a final offer arbi-  
23 tration under paragraph (1) until 180 days after the  
24 date the last member joins the joint negotiation enti-  
25 ty. No additional members may join the joint nego-  
26 tiation entity after the arbitration has commenced.

1 (b) NOTICE.—The joint negotiation entity shall pro-  
2 vide notice of its intention to initiate final offer arbitration  
3 under this section to all of the members of the joint nego-  
4 tiation entity no less than 10 days prior to initiating such  
5 final offer arbitration.

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

15 (d) PROCEEDINGS.—

16 (1) RULES OF ARBITRATION.—The arbitration  
17 shall be decided by a panel of 3 arbitrators under  
18 the American Arbitration Association’s Commercial  
19 Arbitration Rules and Mediation Procedures and the  
20 American Arbitration Association-International Cen-  
21 tre for Dispute Resolution Final Offer Arbitration  
22 Supplementary Rules, except to the extent they con-  
23 flict with this subsection.

24 (2) INITIATION OF ARBITRATION.—A final offer  
25 arbitration under subsection (a) shall be initiated as

1 provided in Rule R-4 of the American Arbitration  
2 Association's Commercial Arbitration Rules and Me-  
3 diation Procedures, except that the joint negotiation  
4 entity initiating the arbitration shall refer to this  
5 Act in its demand for arbitration, rather than sub-  
6 mitting contractual arbitration provisions.

7 (3) COMMENCEMENT AND FUNDING.—

8 (A) COMMENCEMENT.—A final offer arbi-  
9 tration proceeding shall commence 10 days  
10 after the date a final offer arbitration is initi-  
11 ated under subsection (a).

12 (B) FUNDING.—The cost of administering  
13 the arbitration proceeding, including arbitrator  
14 compensation, expenses, and administrative  
15 fees, shall be shared equally between the cov-  
16 ered platform and the joint negotiation entity.

17 (4) APPOINTMENT OF THE ARBITRATION  
18 PANEL.—The arbitrators shall be appointed in ac-  
19 cordance with the American Arbitration Associa-  
20 tion's Commercial Arbitration Rules and Mediation  
21 Procedures.

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

24 (A) the joint negotiation entity and the  
25 covered platform may demand the production of

1 documents and information that are nonprivi-  
2 leged, reasonably necessary, and reasonably ac-  
3 cessible without undue expense;

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

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

10 (D) the joint negotiation entity and cov-  
11 ered platform shall each submit a final offer  
12 proposal for the pricing, terms, and conditions  
13 under which the content displayed, provided,  
14 distributed, or offered by a qualifying publica-  
15 tion of any eligible publisher that is a member  
16 of the joint negotiation entity will be accessed  
17 by the covered platform, and which shall in-  
18 clude the remuneration that the eligible pub-  
19 lishers should receive from the covered platform  
20 for programmatic access to the content of the  
21 eligible publishers that are members of the joint  
22 negotiation entity during the period under nego-  
23 tiation based on the fair market value of such  
24 access, which shall include backup materials

1 sufficient to permit the other party to replicate  
2 the proffered valuation;

3 (E) no discussion or final offer under this  
4 section may address whether or how the covered  
5 platform or any such eligible digital journalism  
6 provider—

7 (i) displays, ranks, distributes, sup-  
8 presses, promotes, throttles, labels, filters,  
9 or curates the content of the eligible digital  
10 journalism providers; or

11 (ii) displays, ranks distributes, sup-  
12 presses, promotes, throttles, labels, filters  
13 or curates the content of any other person;  
14 and

15 (F) if applicable, each eligible publisher  
16 that is a member of the joint negotiation entity  
17 shall provide information and data to guide the  
18 distribution of remuneration among the mem-  
19 bers of the joint negotiation entity, including—

20 (i) any compensation received by the  
21 eligible publisher through commercial  
22 agreement prior to commencement of nego-  
23 tiations under section 3 for access to con-  
24 tent by the covered platform during any  
25 part of the period under negotiation, which

1 shall be deducted from its allocation ac-  
2 cordingly; and

3 (ii) spending by the eligible publisher  
4 on news journalists, which are employed  
5 for an average of not fewer than 20 hours  
6 per week during the calendar quarter by  
7 the eligible digital journalism provider and  
8 are responsible for gathering, preparing,  
9 directing the recording of, producing, col-  
10 lecting, photographing, recording, writing,  
11 editing, reporting, presenting, or pub-  
12 lishing original news or information that  
13 concerns local, regional, national, or inter-  
14 national matters of public interest in the  
15 previous fiscal year, as a proportion of its  
16 overall budget of the eligible digital jour-  
17 nalism provider for that period, which shall  
18 be used to guide 65 percent of the dis-  
19 tribution of remuneration among the mem-  
20 bers of the joint negotiation entity.

21 (e) AWARD.—

22 (1) IN GENERAL.—Not later than 60 days after  
23 the date proceedings commence under subsection  
24 (d)(3)(A), the arbitration panel shall issue an award

1 that selects a final offer from 1 of the parties with-  
2 out modification.

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

5 (A) may not consider any value conferred  
6 upon any eligible publisher by the covered plat-  
7 form for distributing or aggregating its content  
8 as an offset to the value created by such eligible  
9 publisher;

10 (B) shall consider past incremental revenue  
11 contributions as a guide to the future incre-  
12 mental revenue contribution by any eligible pub-  
13 lisher;

14 (C) shall consider the pricing, terms, and  
15 conditions of any available, comparable com-  
16 mercial agreements between parties granting  
17 access to digital content, including pricing,  
18 terms, and conditions relating to price, dura-  
19 tion, territory, the value of data generated di-  
20 rectly or indirectly by the content accounting  
21 for any material disparities in negotiating  
22 power between the parties to such commercial  
23 agreements; and

24 (D) shall issue a binding, reasoned award,  
25 including the factual and economic bases of its



1           award, that applies for the number of years set  
2           forth in the winning proposal, but not fewer  
3           than 5 years.

4           (f) PAYMENTS PURSUANT TO AWARD.—

5           (1) IN GENERAL.—Not later than 90 days after  
6           the date an award is issued under subsection (e), the  
7           covered platform shall begin paying any eligible pub-  
8           lisher that was a member of the joint negotiation en-  
9           tity participating in the arbitration according to the  
10          terms in the final offer selected by the arbitration  
11          panel.

12          (2) DISBURSEMENT.—Payments made under  
13          paragraph (1) shall be dispersed by a claims admin-  
14          istrator to the individual claimants that comprise the  
15          joint negotiation entity not later than 60 days after  
16          the date the funds were received from the covered  
17          platform.

18          (g) ENFORCEMENT AND JUDICIAL REVIEW.—

19          (1) IN GENERAL.—An award made under sub-  
20          section (e) shall be enforceable by the eligible pub-  
21          lishers or the covered platform subject to the award  
22          through a civil action brought before a district court  
23          of the United States.

24          (2) EXPEDITED JUDICIAL PROCESS.—In any  
25          civil action to enforce or seek judicial review of an

1 award made under subsection (e), the court shall  
2 adopt a rebuttable presumption that good cause ex-  
3 ists to prioritize the action under section 1657 of  
4 title 28, United States Code.

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

6 (a) IN GENERAL.—In accordance with sections 3 and  
7 4, it shall not be in violation of the antitrust laws for any  
8 eligible digital journalism providers that are members of  
9 a joint negotiation entity to—

10 (1) jointly deny a covered platform access to  
11 content for which the eligible digital journalism pro-  
12 viders, individually or jointly, have the right to nego-  
13 tiate or arbitrate access with respect to the covered  
14 platform; or

15 (2) participate in joint negotiations and arbitra-  
16 tion, as members of the joint negotiation entity, with  
17 such covered platform solely regarding the pricing,  
18 terms, and conditions under which the covered plat-  
19 form may access the content for which the eligible  
20 digital journalism providers, individually or jointly,  
21 have the right to negotiate or arbitrate access with  
22 respect to the covered platform.

23 (b) SAFE HARBOR.—

24 (1) ELIGIBLE DIGITAL JOURNALISM PRO-  
25 VIDERS.—An eligible digital journalism provider

1 shall not be in violation of the antitrust laws if the  
2 eligible digital journalism provider participates, as a  
3 member of a joint negotiation entity, in negotiations  
4 under section 3 or arbitration under section 4—

5 (A) with a person that is not an eligible  
6 digital journalism provider, if the eligible digital  
7 journalism provider reasonably believes that the  
8 person is another eligible digital journalism pro-  
9 vider; or

10 (B) with a person that is not a covered  
11 platform, if the eligible digital journalism pro-  
12 vider reasonably believes that the person is a  
13 covered platform.

14 (2) JOINT NEGOTIATION ENTITIES.—A joint ne-  
15 gotation entity shall not be in violation of the anti-  
16 trust laws if the joint negotiation entity engages in  
17 negotiations under section 3 or arbitration under  
18 section 4—

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

24 (B) with a person that is not a covered  
25 platform, if the joint negotiation entity reason-

1           ably believes that the person is a covered plat-  
2           form.

3           (c) NOTIFICATION OF AGREEMENTS AND ARBITRA-  
4           TION DECISIONS.—

5           (1) AGREEMENTS.—The parties to any written  
6           agreement, resulting from a negotiation under sec-  
7           tion 3 or implementing an arbitration decision issued  
8           under section 4, shall file a copy of such agreement  
9           with the Federal Trade Commission and the Assist-  
10          ant Attorney General in charge of the Antitrust Di-  
11          vision of the Department of Justice not later than  
12          60 days after such agreement is executed.

13          (2) ARBITRATION DECISIONS.—The parties to  
14          any arbitration decision issued under section 4, shall  
15          file a copy of such decision with the Federal Trade  
16          Commission and the Assistant Attorney General in  
17          charge of the Antitrust Division of the Department  
18          of Justice not later than 60 days after such decision  
19          is issued.

20          (3) PUBLIC DISCLOSURE.—The Federal Trade  
21          Commission shall make the documents submitted  
22          under this subsection available to the public on the  
23          Federal Trade Commission’s website.

24          (d) LIMITATION REGARDING THE SCOPE OF LIMITA-  
25          TION OF LIABILITY.—No antitrust immunity shall apply

1 to any negotiations, discussions, agreements, or arbitra-  
2 tions relating to the use, display, promotion, ranking, dis-  
3 tribution, curation, suppression, throttling, filtering, or la-  
4 beling of the content of the eligible digital journalism pro-  
5 vider or of any other person. The limitation of liability  
6 under this section shall apply only to negotiations, discus-  
7 sions, agreements, or arbitrations regarding the pricing,  
8 terms, and conditions under which the covered platform  
9 may access the content of the eligible digital journalism  
10 provider, not to any discussions or agreements that dif-  
11 ferentiate content based on the viewpoint expressed by  
12 such content.

13 **SEC. 6. NONDISCRIMINATION, RETALIATION, AND TRANS-**  
14 **PARENCY.**

15 (a) NONDISCRIMINATION.—

16 (1) JOINT NEGOTIATION ENTITIES.—A joint ne-  
17 gotation entity may not discriminate against any el-  
18 igible digital journalism provider based on the size of  
19 the eligible digital journalism provider or the views  
20 expressed by the eligible digital journalism provider’s  
21 content.

22 (2) COVERED PLATFORMS.—No covered plat-  
23 form may discriminate against any eligible digital  
24 journalism provider that is a member of a joint ne-  
25 gotation entity in connection with a negotiation con-

1       ducted under section 3, or an arbitration conducted  
2       under section 4, based on the size of the eligible dig-  
3       ital journalism provider or the views expressed by  
4       the eligible digital journalism provider's content.

5       (b) PROHIBITION ON RETALIATION BY COVERED  
6 PLATFORMS.—

7           (1) IN GENERAL.—No covered platform may re-  
8       taliatiate against an eligible digital journalism provider  
9       for participating in a negotiation conducted under  
10      section 3, or an arbitration conducted under section  
11      4, including by refusing to index content or changing  
12      the ranking, identification, modification, branding,  
13      or placement of the content of the eligible digital  
14      journalism provider on the covered platform.

15          (2) EFFECT OF CONTRACT PROVISIONS.—Any  
16      provision in an agreement that restricts an eligible  
17      digital journalism provider from receiving compensa-  
18      tion through a negotiation conducted under section  
19      3 or an arbitration conducted under section 4 shall  
20      be void.

21      (c) INVESTING IN JOURNALISM.—

22          (1) IN GENERAL.—Without disclosing confiden-  
23      tial information regarding the pricing, terms, and  
24      conditions of an agreement reached under section 3,  
25      an agreement implementing an arbitration decision

1 issued under section 4, or an arbitration decision  
2 issued under section 4, or confidential financial in-  
3 formation, any eligible digital journalism provider  
4 that receives funds under or related to such agree-  
5 ment or arbitration decision shall provide to the  
6 Federal Trade Commission, on an annual basis, in-  
7 formation regarding the use of any such funds dur-  
8 ing the prior year to support ongoing and future op-  
9 erations to maintain or enhance the production and  
10 distribution of news or information that concerns  
11 local, regional, national, or international matters of  
12 public interest, including—

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

15 (B) a good-faith estimate of the amount of  
16 funds that went to news journalists employed  
17 for an average of not fewer than 20 hours per  
18 week during the calendar year by the eligible  
19 digital journalism provider.

20 (2) PUBLIC DISCLOSURE.—The Federal Trade  
21 Commission shall make the disclosures submitted  
22 under paragraph (1) available to the public on the  
23 Federal Trade Commission’s website.

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

25 (a) NEGOTIATIONS.—

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

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

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

14           (B) approximating the value of the last  
15           reasonable offer of the plaintiff if the defend-  
16           ant—

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

19           and

20           (ii) had not yet extended a reasonable  
21           offer; or

22           (C) approximating the value of the plain-  
23           tiff's last reasonable offer if the defendant did  
24           not make a reasonable offer in violation of sec-  
25           tion 3(b)(5).



1           (3) ATTORNEYS FEES.—A court shall award at-  
2           torney’s fees to the prevailing party under this sub-  
3           section.

4           (b) DISCRIMINATION.—

5           (1) JOINT NEGOTIATION ENTITIES.—

6           (A) IN GENERAL.—An eligible digital jour-  
7           nalism provider that is denied membership in a  
8           joint negotiation entity in violation of section  
9           6(a)(1) may bring a civil action in an appro-  
10          priate district court of the United States  
11          against the joint negotiation entity and its  
12          members not later than 30 days after the date  
13          membership is denied.

14          (B) REMEDIES.—

15          (i) BEFORE AGREEMENT OR ARBITRA-  
16          TION DECISION.—

17               (I) IN GENERAL.—An eligible  
18               digital journalism provider that pre-  
19               vails in an action under subparagraph  
20               (A) before the date an agreement is  
21               executed under section 3 or an arbi-  
22               tration decision is issued under sec-  
23               tion 4, as applicable, regarding the  
24               pricing, terms, and conditions by  
25               which the covered platform may ac-

1           cess the content of the eligible digital  
2           journalism providers that are mem-  
3           bers of the joint negotiation entity,  
4           may join the joint negotiation entity  
5           and participate in the negotiation  
6           under section 3 or the arbitration  
7           under section 4, as applicable.

8                   (II) NOTICE.—A notice, by or on  
9           behalf of the joint negotiation entity,  
10          shall be sent to the covered platform  
11          to identify the eligible digital jour-  
12          nalism provider that joins the negotia-  
13          tion or arbitration under subclause  
14          (I).

15                   (ii) AFTER AGREEMENT OR ARBITRA-  
16          TION DECISION.—

17                   (I) IN GENERAL.—An eligible  
18          digital journalism provider that pre-  
19          vails in an action under subparagraph  
20          (A) after the date an agreement is ex-  
21          ecuted under section 3 or an arbitra-  
22          tion decision is issued under section 4,  
23          as applicable, regarding the pricing,  
24          terms, and conditions by which the  
25          covered platform may access the con-

1           tent of the eligible digital journalism  
2           providers that are members of the  
3           joint negotiation entity, may join the  
4           joint negotiation entity and be eligible  
5           for the same pricing, terms, and con-  
6           ditions by which the covered platform  
7           may access the content of the other  
8           eligible digital journalism providers  
9           that are members of the joint negotia-  
10          tion entity.

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

1 members of the joint negotiation enti-  
2 ty.

3 (2) COVERED PLATFORMS.—

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

9 (B) REMEDIES.—An eligible digital jour-  
10 nalism provider that prevails under subpara-  
11 graph (A) shall be entitled to—

12 (i) recover the actual damages sus-  
13 tained by the eligible digital journalism  
14 provider as a result of the discrimination;

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

20 (iii) the costs of the suit, including  
21 reasonable attorneys' fees.

22 (c) RETALIATION.—

23 (1) IN GENERAL.—An eligible digital journalism  
24 provider that is retaliated against in violation of sec-  
25 tion 6(b)(1) may bring a civil action in an appro-

1        appropriate district court of the United States against the  
2        covered platform.

3            (2) REMEDIES.—An eligible digital journalism  
4        provider that prevails in an action under paragraph  
5        (1) shall be entitled to—

6            (A) recover the actual damages sustained  
7        by the eligible digital journalism provider as a  
8        result of the retaliation;

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

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

16 **SEC. 8. REPORT.**

17        (a) STUDY.—The Comptroller General shall study the  
18       impact of the joint negotiations authorized under this Act,  
19       including a summary of the deals negotiated, the impact  
20       of such deals on local and regional news, the effect on the  
21       free, open, and interoperable Internet including the ability  
22       of the public to share and access information, and the ef-  
23       fect this Act has had on employment for journalists.

24        (b) REPORT.—Not later than 5 years after the date  
25       of enactment of this Act, the Comptroller General shall

1 submit to Congress a report on the study required under  
2 subsection (a).

3 **SEC. 9. SUNSET.**

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

7 (b) EXCEPTION IN CASE OF INITIATED BUT INCOM-  
8 PLETE JOINT NEGOTIATION OR ARBITRATION.—With re-  
9 spect to eligible digital journalism providers that have ini-  
10 tiated but not concluded a negotiation under section 3 or  
11 an arbitration under section 4 on or before the sunset date  
12 described in subsection (a), this Act shall cease to be effec-  
13 tive on the date such negotiation or arbitration concludes  
14 or 180 days after the date described in subsection (a),  
15 whichever occurs first.

16 (c) LIMITATION OF LIABILITY EXCEPTION.—Section  
17 5 shall remain effective without cessation for any—

18 (1) negotiation conducted or agreement exe-  
19 cuted under section 3;

20 (2) arbitration conducted or arbitration decision  
21 issued under section 4; or

22 (3) agreement implementing an arbitration de-  
23 cision issued under section 4;  
24 during the period of effectiveness of this Act.

1 **SEC. 10. RULE OF CONSTRUCTION.**

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

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

10 **SEC. 11. SEVERABILITY.**

11 If any provision of this Act, or the application of such  
12 provision to any person or circumstance, is held to be un-  
13 constitutional, the remainder of this Act, and the applica-  
14 tion of the remaining provisions of this Act to any person  
15 or circumstance shall not be affected.

**Calendar No. 135**

118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session  
**S. 1094**

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**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.

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JULY 18, 2023

Reported without amendment