

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—117th Cong., 2d Sess.

H. R. 4350

To authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by
_____ to the amendment (No. 3867)
proposed by Mr. REED

Viz:

1 At the appropriate place, insert the following:

2 **TITLE _____ —JOURNALISM**
3 **COMPETITION AND PRESER-**
4 **VATION**

5 **SEC. ____ 01. SHORT TITLE.**

6 This title may be cited as the “Journalism Competi-
7 tion and Preservation Act of 2022”.

1 **SEC. _____ 02. DEFINITIONS.**

2 In this title:

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

5 (2) **ANTITRUST LAWS.**—The term “antitrust
6 laws”—

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

10 (B) includes—

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

15 (ii) any State law (including regula-
16 tions) that prohibits or penalizes the con-
17 duct described in, or is otherwise incon-
18 sistent with, sections _____03 or
19 _____04.

20 (3) **COVERED PLATFORM.**—The term “covered
21 platform” means an online platform that at any
22 point during the 12 months preceding the formation
23 of a joint negotiation entity under section
24 _____03(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(e)(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; or

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

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

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

17 (ix) is not controlled or wholly or partially
18 owned by an entity that is—

19 (I) a foreign power or an agent of a
20 foreign power, as those terms are defined
21 in section 101 of the Foreign Intelligence
22 Surveillance Act of 1978 (50 U.S.C.
23 1801);

24 (II)(aa) designated as a foreign ter-
25 rorist organization pursuant to section

1 219(a) of the Immigration and Nationality
2 Act (8 U.S.C. 1189(a));

3 (bb) a terrorist organization, as de-
4 fined in section 212(a)(3)(B)(vi)(II) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1182(a)(3)(B)(vi)(II));

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

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

16 (III) an entity that has been convicted
17 of violating, or attempting to violate, sec-
18 tion 2331, 2332b, or 2339A of title 18,
19 United States Code; and

20 (x) is not—

21 (I) an organization described in sec-
22 tion 501(c)(4) of the Internal Revenue
23 Code of 1986 and exempt from tax under
24 section 501(a) of such Code;

1 (II) an organization described in sec-
2 tion 527 of the Internal Revenue Code of
3 1986;

4 (III) an organization—

5 (aa) described in section
6 501(c)(3) of the Internal Revenue
7 Code of 1986 and exempt from tax
8 under section 501(a) of such Code;
9 and

10 (bb) that is not a public broad-
11 casting entity, as defined in section
12 397 of the Communications Act of
13 1934 (47 U.S.C. 397); or

14 (IV) an organization that is owned or
15 controlled (directly or indirectly) by 1 or
16 more organizations described in subclause
17 (I), (II), or (III).

18 (12) TELEVISION NETWORK.—The term “tele-
19 vision network”—

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

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

4 **SEC. _____ 03. FRAMEWORK FOR CERTAIN JOINT NEGOTIA-**
5 **TIONS.**

6 (a) NOTICE.—

7 (1) PROCESS TO FORM A JOINT NEGOTIATION
8 ENTITY.—

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

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

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

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

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

1 (F) DESIGNATION.—A joint negotiation
2 entity may designate agents on a nonexclusive
3 basis—

4 (i) to engage in negotiations with a
5 covered platform conducted under this sec-
6 tion; and

7 (ii) to agree to pay or receive pay-
8 ments under or related to an agreement
9 negotiated under this section or an arbitra-
10 tion decision issued under section
11 _____04.

12 (G) OPT-OUT.—

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

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

24 (I) rejoin the joint negotiation
25 entity; or

1 (II) receive any payment under
2 or related to an agreement negotiated
3 by the joint negotiation entity under
4 this section or an arbitration decision
5 issued under section _____04.

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

8 (i) when the entity no longer has at
9 least 2 members;

10 (ii) upon a majority vote of its mem-
11 bers; or

12 (iii) upon the expiration or termi-
13 nation of an agreement negotiated under
14 this section or an arbitration decision
15 issued under section _____04.

16 (2) NOTICE TO A COVERED PLATFORM TO INI-
17 TIATE A JOINT NEGOTIATION.—

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

22 (B) CONTENTS OF NOTICE.—The notice
23 described in subparagraph (A) shall—

24 (i) state that the joint negotiation en-
25 tity is initiating a negotiation under this

1 section to reach an agreement regarding
2 the pricing, terms, and conditions by which
3 the covered platform may access the con-
4 tent of the eligible digital journalism pro-
5 viders that are members of the joint nego-
6 tiation entity;

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

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

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

22 (D) NOTICE TO FEDERAL ENFORCERS.—
23 Copies of any notice described in subparagraph
24 (A) shall be filed by or on behalf of the eligible
25 digital journalism providers that are members

1 of the joint negotiation entity with the Federal
2 Trade Commission and the Assistant Attorney
3 General in charge of the Antitrust Division of
4 the Department of Justice not later than 30
5 days after the notice is sent to the covered plat-
6 form.

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

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

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

21 (A) displays, ranks, distributes, suppresses,
22 promotes, throttles, labels, filters, or curates
23 the content of the eligible digital journalism
24 providers; or

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

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

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

12 (B) refuses to designate a representative
13 with authority to make binding representations;

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

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

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

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

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

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

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

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

24 (B) the fair market value to the covered
25 platform of having access to the content of the

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

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

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

23 **SEC. _____ 04. ARBITRATION FOR ELIGIBLE PUBLISHERS.**

24 (a) RIGHT TO FINAL OFFER ARBITRATION.—

1 (1) IN GENERAL.—If the membership of a joint
2 negotiation entity consists only of eligible publishers,
3 on or after the date that is 180 days after the date
4 negotiations under section _____03 begin, the joint
5 negotiation entity may initiate a final offer arbitra-
6 tion against the covered platform for an arbitration
7 panel to determine the pricing, terms, and conditions
8 by which the content displayed, provided, distrib-
9 uted, or offered by a qualifying publication of any el-
10 ible publisher that is a member of the joint nego-
11 tiation entity will be accessed by the covered plat-
12 form if the parties are unable to reach an agreement
13 and regardless of whether the joint negotiation enti-
14 ty, its members, or the covered platform complied
15 with the requirements of section _____03(b).

16 (2) EFFECT OF ADDITIONAL MEMBERS.—If an
17 additional member joins the joint negotiation entity
18 under section _____03(a)(1)(E) more than 90 days
19 after the date negotiations under section _____03
20 begin, the joint negotiation entity may not initiate a
21 final offer arbitration under paragraph (1) until 180
22 days after the date the last member joins the joint
23 negotiation entity. No additional members may join
24 the joint negotiation entity after the arbitration has
25 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 title 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 _____03 for access
24 to content by the covered platform during
25 any part of the period under negotiation,

1 which shall be deducted from its allocation
2 accordingly; 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. _____ 05. LIMITATION OF LIABILITY.**

6 (a) IN GENERAL.—In accordance with sections
7 _____03 and _____04, it shall not be in violation of
8 the antitrust laws for any eligible digital journalism pro-
9 viders that are members of 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 _____03 or arbitration under section
5 _____04—

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

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

15 (2) JOINT NEGOTIATION ENTITIES.—A joint ne-
16 gotation entity shall not be in violation of the anti-
17 trust laws if the joint negotiation entity engages in
18 negotiations under section _____03 or arbitration
19 under section _____04—

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

1 (B) with a person that is not a covered
2 platform, if the joint negotiation entity reason-
3 ably believes that the person is a covered plat-
4 form.

5 (c) NOTIFICATION OF AGREEMENTS AND ARBITRA-
6 TION DECISIONS.—

7 (1) AGREEMENTS.—The parties to any written
8 agreement, resulting from a negotiation under sec-
9 tion _____03 or implementing an arbitration deci-
10 sion issued under section _____04, shall file a copy
11 of such agreement with the Federal Trade Commis-
12 sion and the Assistant Attorney General in charge of
13 the Antitrust Division of the Department of Justice
14 not later than 60 days after such agreement is exe-
15 cuted.

16 (2) ARBITRATION DECISIONS.—The parties to
17 any arbitration decision issued under section
18 _____04, shall file a copy of such decision with the
19 Federal Trade Commission and the Assistant Attor-
20 ney General in charge of the Antitrust Division of
21 the Department of Justice not later than 60 days
22 after such decision is issued.

23 (3) PUBLIC DISCLOSURE.—The Federal Trade
24 Commission shall make the documents submitted

1 under this subsection available to the public on the
2 Federal Trade Commission’s website.

3 (d) **LIMITATION REGARDING THE SCOPE OF LIMITA-**
4 **TION OF LIABILITY.**—No antitrust immunity shall apply
5 to any negotiations, discussions, agreements, or arbitra-
6 tions relating to the use, display, promotion, ranking, dis-
7 tribution, curation, suppression, throttling, filtering, or la-
8 beling of the content of the eligible digital journalism pro-
9 vider or of any other person. The limitation of liability
10 under this section shall apply only to negotiations, discus-
11 sions, agreements, or arbitrations regarding the pricing,
12 terms, and conditions under which the covered platform
13 may access the content of the eligible digital journalism
14 provider, not to any discussions or agreements that dif-
15 ferentiate content based on the viewpoint expressed by
16 such content.

17 **SEC. _____ 06. NONDISCRIMINATION, RETALIATION, AND**
18 **TRANSPARENCY.**

19 (a) **NONDISCRIMINATION.**—

20 (1) **JOINT NEGOTIATION ENTITIES.**—A joint ne-
21 gotiation entity may not discriminate against any el-
22 igible digital journalism provider based on the size of
23 the eligible digital journalism provider or the views
24 expressed by the eligible digital journalism provider’s
25 content.

1 (2) COVERED PLATFORMS.—No covered plat-
2 form may discriminate against any eligible digital
3 journalism provider that is a member of a joint ne-
4 gotiation entity in connection with a negotiation con-
5 ducted under section _____03, or an arbitration
6 conducted under section _____04, based on the size
7 of the eligible digital journalism provider or the
8 views expressed by the eligible digital journalism
9 provider’s content.

10 (b) PROHIBITION ON RETALIATION BY COVERED
11 PLATFORMS.—

12 (1) IN GENERAL.—No covered platform may re-
13 taliate against an eligible digital journalism provider
14 for participating in a negotiation conducted under
15 section _____03, or an arbitration conducted under
16 section _____04, including by refusing to index
17 content or changing the ranking, identification,
18 modification, branding, or placement of the content
19 of the eligible digital journalism provider on the cov-
20 ered platform.

21 (2) EFFECT OF CONTRACT PROVISIONS.—Any
22 provision in an agreement that restricts an eligible
23 digital journalism provider from receiving compensa-
24 tion through a negotiation conducted under section

1 _____03 or an arbitration conducted under section
2 _____04 shall be void.

3 (c) INVESTING IN JOURNALISM.—

4 (1) IN GENERAL.—Without disclosing confiden-
5 tial information regarding the pricing, terms, and
6 conditions of an agreement reached under section
7 _____03, an agreement implementing an arbitra-
8 tion decision issued under section _____04, or an
9 arbitration decision issued under section _____04,
10 or confidential financial information, any eligible
11 digital journalism provider that receives funds under
12 or related to such agreement or arbitration decision
13 shall provide to the Federal Trade Commission, on
14 an annual basis, information regarding the use of
15 any such funds during the prior year to support on-
16 going and future operations to maintain or enhance
17 the production and distribution of news or informa-
18 tion that concerns local, regional, national, or inter-
19 national matters of public interest, including—

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

22 (B) a good-faith estimate of the amount of
23 funds that went to news journalists employed
24 for an average of not fewer than 20 hours per

1 week during the calendar year by the eligible
2 digital journalism provider.

3 (2) PUBLIC DISCLOSURE.—The Federal Trade
4 Commission shall make the disclosures submitted
5 under paragraph (1) available to the public on the
6 Federal Trade Commission’s website.

7 **SEC. _____07. 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 _____03 may bring a
14 civil action in an appropriate district court of the
15 United States alleging a violation of section
16 _____03(b).

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

19 (A) approximating the value of the last
20 reasonable offer of the plaintiff if the defendant
21 did not conduct negotiations in good faith in
22 violation of section _____03(b)(1);

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

1 (i) did not conduct negotiations in
2 good faith in violation of section
3 _____03(b)(1); 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 _____03(b)(5).

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

13 (b) DISCRIMINATION.—

14 (1) JOINT NEGOTIATION ENTITIES.—

15 (A) IN GENERAL.—An eligible digital jour-
16 nalism provider that is denied membership in a
17 joint negotiation entity in violation of section
18 _____06(a)(1) may bring a civil action in an
19 appropriate district court of the United States
20 against the joint negotiation entity and its
21 members not later than 30 days after the date
22 membership is denied.

23 (B) REMEDIES.—

24 (i) BEFORE AGREEMENT OR ARBITRA-
25 TION DECISION.—

1 (I) IN GENERAL.—An eligible
2 digital journalism provider that pre-
3 vails in an action under subparagraph
4 (A) before the date an agreement is
5 executed under section _____03 or
6 an arbitration decision is issued under
7 section _____04, as applicable, re-
8 garding the pricing, terms, and condi-
9 tions by which the covered platform
10 may access the content of the eligible
11 digital journalism providers that are
12 members of the joint negotiation enti-
13 ty, may join the joint negotiation enti-
14 ty and participate in the negotiation
15 under section _____03 or the arbi-
16 tration under section _____04, as
17 applicable.

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 negotia-
23 tion or arbitration under subclause
24 (I).

1 (ii) AFTER AGREEMENT OR ARBITRA-
2 TION DECISION.—

3 (I) IN GENERAL.—An eligible
4 digital journalism provider that pre-
5 vails in an action under subparagraph
6 (A) after the date an agreement is ex-
7 ecuted under section _____03 or an
8 arbitration decision is issued under
9 section _____04, as applicable, re-
10 garding the pricing, terms, and condi-
11 tions by which the covered platform
12 may access the content of the eligible
13 digital journalism providers that are
14 members of the joint negotiation enti-
15 ty, may join the joint negotiation enti-
16 ty and be eligible for the same pric-
17 ing, terms, and conditions by which
18 the covered platform may access the
19 content of the other eligible digital
20 journalism providers that are mem-
21 bers of the joint negotiation entity.

22 (II) NOTICE.—A notice, by or on
23 behalf of the joint negotiation entity,
24 shall be sent to the covered platform
25 to identify the eligible digital jour-

1 nalism provider that joins the joint
2 negotiation entity under subclause (I)
3 and that is eligible to receive the same
4 pricing, terms, and conditions under
5 the agreement negotiated under sec-
6 tion _____03 or the arbitration deci-
7 sion issued under section _____04,
8 as applicable, by which the covered
9 platform may access the content of
10 the other eligible digital journalism
11 providers that are members of the
12 joint negotiation entity.

13 (2) COVERED PLATFORMS.—

14 (A) IN GENERAL.—An eligible digital jour-
15 nalism provider that is discriminated against in
16 violation of section _____06(a)(2) may bring a
17 civil action in an appropriate district court of
18 the United States against the covered platform.

19 (B) REMEDIES.—An eligible digital jour-
20 nalism provider that prevails under subpara-
21 graph (A) shall be entitled to—

22 (i) recover the actual damages sus-
23 tained by the eligible digital journalism
24 provider as a result of the discrimination;

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

6 (iii) the costs of the suit, including
7 reasonable attorneys' fees.

8 (c) RETALIATION.—

9 (1) IN GENERAL.—An eligible digital journalism
10 provider that is retaliated against in violation of sec-
11 tion _____06(b)(1) may bring a civil action in an
12 appropriate district court of the United States
13 against the covered platform.

14 (2) REMEDIES.—An eligible digital journalism
15 provider that prevails in an action under paragraph
16 (1) shall be entitled to—

17 (A) recover the actual damages sustained
18 by the eligible digital journalism provider as a
19 result of the retaliation;

20 (B) injunctive relief on such terms as the
21 court may deem reasonable to prevent or re-
22 strain the covered platform from retaliating
23 against the eligible digital journalism provider;
24 and

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

3 **SEC. _____ 08. REPORT.**

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

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

15 **SEC. _____ 09. SUNSET.**

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

19 (b) EXCEPTION IN CASE OF INITIATED BUT INCOM-
20 PLETE JOINT NEGOTIATION OR ARBITRATION.—With re-
21 spect to eligible digital journalism providers that have ini-
22 tiated but not concluded a negotiation under section
23 _____03 or an arbitration under section _____04 on or
24 before the sunset date described in subsection (a), this
25 title shall cease to be effective on the date such negotiation

1 or arbitration concludes or 180 days after the date de-
2 scribed in subsection (a), whichever occurs first.

3 (c) **LIMITATION OF LIABILITY EXCEPTION.**—Section
4 _____05 shall remain effective without cessation for
5 any—

6 (1) negotiation conducted or agreement exe-
7 cuted under section _____03;

8 (2) arbitration conducted or arbitration decision
9 issued under section _____04; or

10 (3) agreement implementing an arbitration de-
11 cision issued under section _____04;
12 during the period of effectiveness of this title.

13 **SEC. _____10. RULE OF CONSTRUCTION.**

14 (a) **ANTITRUST LAWS.**—Nothing in this title may be
15 construed to modify, impair, or supersede the operation
16 of the antitrust laws except as otherwise expressly pro-
17 vided in this title.

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

22 **SEC. _____11. SEVERABILITY.**

23 If any provision of this title, or the application of
24 such provision to any person or circumstance, is held to
25 be unconstitutional, the remainder of this title, and the

- 1 application of the remaining provisions of this title to any
- 2 person or circumstance shall not be affected.