AMENDMENT NO.______ Calendar No.______

Purpose: In the nature of a substitute.


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

(B) includes—

(i) section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section applies to unfair methods of competition; and

(ii) any State law (including regulations) that prohibits or penalizes the conduct described in, or is otherwise inconsistent with, sections 3 or 4.

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

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

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

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

or

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

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

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

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

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

(C) updates its content on at least a week-
ly basis;
(D) uses an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the station; and

(E) is not a television network.

(4) Eligible Digital Journalism Provider.—The term “eligible digital journalism provider” means any eligible publisher or eligible broadcaster.

(5) Eligible Publisher.—The term “eligible publisher” means any person that publishes 1 or more qualifying publication.

(6) Network Station.—The term “network station” means a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, 1 or more television networks.

(7) Online Platform.—The term “online platform” means a website, online or mobile application, operating system, digital assistant, or online service that aggregates, displays, provides, distributes, or directs users to news articles, works of journalism, or other content, or portions thereof, gen-
erated, created, produced, or owned by eligible dig-
tal journalism providers.

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

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

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

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

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

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

(iv) updates its content on at least a weekly basis;

(v) has an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the publication;

(vi) (I) generated at least $100,000 in annual revenue from its editorial content in the previous calendar year;

(II) has an International Standard Serial Number assigned to an affiliated periodical before the date of enactment of this Act; or

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

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

(viii) employs not more than 1,500 exclusive full-time employees; and
(ix) is not controlled or wholly or partially owned by an entity that is—

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

(II)(aa) designated as a foreign terrorist organization pursuant to section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));


(cc) designated as a specially designated global terrorist organization under Executive Order 13224 (50 U.S.C. 1701 note; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism); or

(dd) an affiliate of an entity described in subclause (I), (II), or (III); or
(III) an entity that has been convicted of violating, or attempting to violate, section 2331, 2332b, or 2339A of title 18, United States Code.

(10) TELEVISION NETWORK.—The term “television network”—

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

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

SEC. 3. FRAMEWORK FOR CERTAIN JOINT NEGOTIATIONS.

(a) Notice.—

(1) Process to Form a Joint Negotiation Entity.—

(A) IN GENERAL.—An eligible digital journalism provider shall provide public notice to announce the opportunity for other eligible digital journalism providers to join a joint negotiation entity for the purpose of engaging in joint negotiations with a covered platform under this section, regarding the terms and conditions by
which the covered platform may access the content of the eligible digital journalism providers that are members of the joint negotiation entity.

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

(C) FORMATION.—A joint negotiation entity is established upon the agreement of 2 or more eligible digital journalism providers, and may create admission criteria for membership unrelated to the size of an eligible digital journalism provider or the views expressed by its content, including criteria to limit membership to only eligible publishers or only eligible broadcasters.

(D) GOVERNANCE.—By a majority vote of its members, a joint negotiation entity formed under this section shall establish rules and procedures to govern decision making by the entity and each eligible digital journalism provider shall be entitled to 1 vote on any matter submitted to a vote of the members.
(E) ADDITIONAL MEMBERS.—After the expiration of the 60-day period described in sub-paragraph (B), an eligible digital journalism provider may apply to join the joint negotiation entity, and may be admitted to the joint negotiation entity upon a majority vote of its members, if the applicant otherwise satisfies any criteria for admission established by the joint negotiation entity.

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

(i) to engage in negotiations with a covered platform conducted under this section; and

(ii) to agree to pay or receive payments under or related to an agreement negotiated under this section or an arbitration decision issued under section 4.

(G) OPT-OUT.—

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

(ii) Prohibition on Rejoining.—If
an eligible digital journalism provider opts
out of a joint negotiation entity under
clause (i), the eligible digital journalism
provider may not—

(I) rejoin the joint negotiation
entity; or

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

(H) Termination.—A joint negotiation
entity will terminate and cease to exist—

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

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

(iii) upon the expiration or termi-
nation of an agreement negotiated under
this section or an arbitration decision
issued under section 4.
(2) Notice to a covered platform to initiate a joint negotiation. —

(A) In general. — A joint negotiation under this section shall commence after a covered platform receives a notice, sent by or on behalf of a joint negotiation entity.

(B) Contents of notice. — The notice described in subparagraph (A) shall—

(i) state that the joint negotiation entity is initiating a negotiation under this section to reach an agreement regarding the terms and conditions by which the covered platform may access the content of the eligible digital journalism providers that are members of the joint negotiation entity;

(ii) identify the eligible digital journalism providers that are members of the joint negotiation entity; and

(iii) provide the physical mail address (street address or post office box), telephone number, and email address of an representative authorized to receive a response to the notice on behalf of the joint negotiation entity.
(C) Reply.—Not later than 30 days after receiving the notice described in subparagraph (A), the covered platform shall send a reply notice to the authorized representative identified by or on behalf of the joint negotiation entity to acknowledge receipt of the notice.

(D) Notice to Federal Enforcers.—Copies of any notice described in subparagraph (A), shall be filed by or on behalf of the eligible digital journalism providers that are members of the joint negotiation entity with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice not later than 30 days after the notice is sent to the covered platform.

(b) Conduct of the Joint Negotiations.—After the date a reply notice is sent under subsection (a)(2)(C), the following shall apply:

(1) Any negotiation conducted under this section shall be conducted in good faith and designed to reach an agreement regarding the terms and conditions by which the covered platform may access the content of the eligible digital journalism providers.
(2) A party is not conducting negotiations in good faith in accordance with paragraph (1) if the party—

(A) refuses to negotiate, except where eligible digital journalism providers decide to jointly deny a covered platform access to content licensed or produced by such eligible digital journalism providers under subsection (c);

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

(C) refuses to meet and negotiate at reasonable times and locations or otherwise causes unreasonable delay;

(D) refuses to put forth more than a single, unilateral proposal;

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

(F) enters into a separate third-party agreement that unreasonably impedes the party from reaching an agreement with the negotiating party; or

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

(3) A covered platform is not conducting negotiations in good faith in accordance with paragraph
(1) if the covered platform enters into a separate agreement with an eligible digital journalism provider that impedes the eligible digital journalism provider from participating in a negotiation under this section.

(4) During any negotiation conducted under this section, the joint negotiation entity and the covered platform shall each make a reasonable offer regarding the terms and conditions by which the covered platform may access the content of the eligible digital journalism providers that are members of the joint negotiation entity, substantiated with comprehensive data and methodologies, including expert analysis, that reflects—

(A) terms and conditions comparable to those found in commercial agreements between similarly situated entities, including price, duration, territory, value of data generated directly or indirectly by the content, and the ranking, identification, modification, branding, and placement of the content on the platform;

(B) the fair market value to the covered platform of having access to the content of the eligible digital journalism providers that are members of the joint negotiation entity and the
resulting incremental contribution to the revenue of the covered platform, including direct and indirect advertising or promotional revenues, which shall not be offset by any value conferred upon the eligible digital journalism providers that are members of the joint negotiation entity by the covered platform for aggregating or distributing their content; and

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

(e) JOINT WITHHOLDING OF CONTENT.—At any point after a notice is sent to the covered platform to initiate joint negotiations under subsection (a)(2), the eligible digital journalism providers that are members of the joint negotiation entity may jointly deny the covered platform access to content licensed or produced by such eligible digital journalism providers.

SEC. 4. ARBITRATION FOR ELIGIBLE PUBLISHERS.

(a) RIGHT TO FINAL OFFER ARBITRATION.—

(1) IN GENERAL.—If the membership of a joint negotiation entity consists only of eligible publishers, on or after the date that is 180 days after the date
negotiations under section 3 begins, the joint negotiation entity may initiate a final offer arbitration against the covered platform for an arbitration panel to determine the terms and conditions by which the content displayed, provided, distributed, or offered by a qualifying publication of any eligible publisher that is a member of the joint negotiation entity will be accessed by the covered platform if the parties are unable to reach an agreement and regardless of whether the joint negotiation entity, its members, or the covered platform complied with the requirements of section 3(b).

(2) Effect of Additional Members.—If an additional member joins the joint negotiation entity under section 3(a)(1)(E) more than 90 days after the date negotiations under section 3 begins, the joint negotiation entity may not initiate a final offer arbitration under paragraph (1) until 180 days after the date the last member joined the joint negotiation entity.

(b) Notice.—The joint negotiation entity shall provide notice of its intention to initiate final offer arbitration under this section to all of the members of the joint negotiation entity no less than 10 days prior to initiating such final offer arbitration.
(c) Membership.—If a joint negotiation entity initiates final offer arbitration under this section, any individual eligible publisher that is a member of the joint negotiation entity shall remain a member of the joint negotiation entity until the completion of the arbitration, unless the eligible publisher provides written notice to the joint negotiation entity of its intention to withdraw from the joint negotiation entity within 7 days of receiving notice under subsection (b).

(d) Proceedings.—

(1) Rules of Arbitration.—The arbitration shall be decided by a panel of 3 arbitrators under the expedited procedures of the American Arbitration Association’s Commercial Arbitration Rules and Mediation Procedures and Final Offer Arbitration Supplementary Rules, except to the extent they conflict with this subsection.

(2) Initiation of Arbitration.—A final offer arbitration under subsection (a) shall be initiated as provided in Rule R-4 of the American Arbitration Association’s Commercial Arbitration Rules and Mediation Procedures, except that the joint negotiation entity initiating the arbitration shall refer to this Act in its demand for arbitration, rather than submitting contractual arbitration provisions.
(3) Commencement and funding.—

(A) Commencement.—A final offer arbitration proceeding shall commence 10 days after the date a final offer arbitration is initiated under subsection (a).

(B) Funding.—The cost of administering the arbitration proceeding, including arbitrator compensation, claims-administrator compensation, and administrative charges, shall be shared equally between the covered platform and the joint negotiation entity.

(4) Appointment of the arbitration panel.—The arbitrators shall be appointed in accordance with rule E–4 of the expedited procedures of the American Arbitration Association’s Commercial Arbitration Rules and Mediation Procedures, except that the proposed arbitrators on the panel submitted to the parties under rule E–4(a) shall have prior experience in mediating or arbitrating disputes concerning digital journalism.

(5) Other requirements.—During a final offer arbitration proceeding under this section—

(A) the joint negotiation entity and the covered platform may demand the production of documents and information that are nonprivi-
leged, reasonably necessary, and reasonably ac-

cessible without undue expense;

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

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

(D) the joint negotiation entity and cov-
ered platform shall each submit a final offer
proposal for the terms and conditions by which
the content displayed, provided, distributed, or
offered by a qualifying publication of any eligi-
ble publisher that is a member of the joint ne-
gotiation entity will be accessed by the covered
platform, and which shall include the remunera-
tion that the eligible publishers should receive
from the covered platform for programmatic ac-
cess to the content of the eligible publishers
that are members of the joint negotiation entity
during the period under negotiation based on
the fair market value of such access, which
shall include backup materials sufficient to per-
mit the other party to replicate the proffered
valuation; and
(E) if applicable, each eligible publisher that is a member of the joint negotiation entity shall provide information and data to guide the distribution of remuneration among the members of the joint negotiation entity, including—

(i) any compensation received by the eligible publisher through commercial agreement prior to commencement of negotiations under section 3 for access to content by the covered platform during any part of the period under negotiation, which shall be deducted from its allocation accordingly; and

(ii) spending by the eligible publisher on news journalists employed for an average of not fewer than 20 hours per week during the calendar quarter by eligible digital journalism providers that are members of the joint negotiation entity that is responsible for gathering, preparing, directing the recording of, producing, collecting, photographing, recording, writing, editing, reporting, presenting, or publishing original news or information that concerns local, regional, national, or international
matters of public interest in the previous fiscal year as a proportion of its overall budget for that period, which shall be used to guide 65 percent of the distribution of remuneration among the members of the joint negotiation entity.

(e) Decision.—

(1) In general.—Not later than 60 days after the date proceedings commence under subsection (d)(3)(A), the arbitration panel shall issue a decision that selects a proposal from 1 of the parties without modification.

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

(A) may not consider any value conferred upon any eligible publisher by the covered platform for distributing or aggregating its content as an offset to the value created by such eligible publisher;

(B) shall consider past incremental revenue contributions as a guide to the future incremental revenue contribution by any eligible publisher;

(C) shall consider the terms and conditions of any available, comparable commercial agree-
ments between parties granting access to digital content, including terms and conditions relating to price, duration, territory, the value of data generated by the content, and the ranking, identification, modification, branding, or placement of the content, accounting for any material disparities in negotiating power between the parties to such commercial agreements; and

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

(f) PAYMENTS.—

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

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

(g) Enforcement and Judicial Review.—

(1) In general.—A decision made under subsection (e) shall be enforceable by the eligible publishers or the covered platform subject to the decision through a civil action brought before a district court of the United States.

(2) Expedited Judicial Process.—In any civil action to enforce or seek judicial review of a decision made under subsection (e), the court shall adopt a rebuttable presumption that good cause exists to prioritize the action under section 1657 of title 28, United States Code.

SEC. 5. LIMITATION OF LIABILITY.

(a) In general.—Notwithstanding any provision of the antitrust laws, in accordance with sections 3 and 4, any eligible digital journalism providers that are members of a joint negotiation entity—

(1) may jointly deny a covered platform access to content for which the eligible digital journalism providers, individually or jointly, have the right to negotiate or arbitrate access with respect to the covered platform; and
(2) may participate in joint negotiations and arbitration, as members of the joint negotiation entity, with such covered platform regarding the terms and conditions by which the covered platform may access the content for which the eligible digital journalism providers, individually or jointly, have the right to negotiate or arbitrate access with respect to the covered platform.

(b) Safe Harbor.—

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

(A) with a person that is not an eligible digital journalism provider, if the eligible digital journalism provider reasonably believes that the person is another eligible digital journalism provider; or

(B) with a person that is not a covered platform, if the eligible digital journalism provider reasonably believes that the person is a covered platform.
(2) **Joint Negotiation Entities.**—A joint negotiation entity shall not be in violation of the antitrust laws if the joint negotiation entity engages in negotiations under section 3 or arbitration under section 4—

(A) with or on behalf of a person that is not an eligible digital journalism provider, if the joint negotiation entity reasonably believes that the person is an eligible digital journalism provider; or

(B) with a person that is not a covered platform, if the joint negotiation entity reasonably believes that the person is a covered platform.

(c) **Notification of Agreements and Arbitration Decisions.**—

(1) **Agreements.**—The parties to any written agreement, resulting from a negotiation under section 3 or implementing an arbitration decision issued under section 4, shall file a copy of such agreement with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice not later than 60 days after such agreement is executed.
(2) ARBITRATION DECISIONS.—The parties to any arbitration decision issued under section 4, shall file a copy of such decision with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice not later than 60 days after such decision is issued.

SEC. 6. NONDISCRIMINATION, RETALIATION, AND TRANSPARENCY.

(a) NONDISCRIMINATION.—

(1) JOINT NEGOTIATION ENTITIES.—A joint negotiation entity may not discriminate against any eligible digital journalism provider based on the size of the eligible digital journalism provider or the views expressed by the eligible digital journalism provider’s content.

(2) COVERED PLATFORMS.—No covered platform may discriminate against any eligible digital journalism provider that is a member of a joint negotiation entity in connection with a negotiation conducted under section 3, or an arbitration conducted under section 4, based on the size of the eligible digital journalism provider or the views expressed by the eligible digital journalism provider’s content.
(b) Prohibition on Retaliation by Covered Platforms.—

(1) In general.—No covered platform may retaliate against an eligible digital journalism provider for participating in a negotiation conducted under section 3, or an arbitration conducted under section 4, including by refusing to index content or changing the ranking, identification, modification, branding, or placement of the content of the eligible digital journalism provider on the covered platform.

(2) Effect of contract provisions.—Any provision in an agreement that restricts an eligible digital journalism provider from receiving compensation through a negotiation conducted under section 3 or an arbitration conducted under section 4 shall be void.

(c) Investing in Journalism.—Without disclosing confidential information regarding the terms and conditions of an agreement reached under section 3, an agreement implementing an arbitration decision issued under section 4, or an arbitration decision issued under section 4, or confidential financial information, an eligible digital journalism provider shall provide public transparency regarding the use of any funds received under or related to such agreement or arbitration decision to support ongo-
ing and future operations to maintain or enhance the pro-
duction and distribution of news or information that con-
cerns local, regional, national, or international matters of
public interest, including public reporting regarding the
amount of funds received each year under or related to
each such agreement or decision.

SEC. 7. PRIVATE RIGHTS OF ACTION.

(a) Negotiations.—

(1) In general.—Any eligible digital journal-
ism provider, either jointly with other eligible dig-
ital journalism providers or through an authorized
representative, or covered platform that participated
in negotiations under section 3 may bring a civil ac-
tion in an appropriate district court of the United
States alleging a violation of section 3(b).

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

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

(B) approximating the value of the last
reasonable offer of the plaintiff if the defend-
ant—
(i) did not conduct negotiations in good faith in violation of section 3(b)(1); and

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

(C) approximating the value of the plaintiff’s last reasonable offer if the defendant did not make a reasonable offer in violation of section 3(b)(4).

(b) DISCRIMINATION.—

(1) JOINT NEGOTIATION ENTITIES.—

(A) IN GENERAL.—An eligible digital journalism provider that is denied membership in a joint negotiation entity in violation of section 6(a)(1) may bring a civil action in an appropriate district court of the United States against the joint negotiation entity and its members not later than 30 days after the date membership is denied.

(B) REMEDIES.—

(i) BEFORE AGREEMENT OR ARBITRATION DECISION.—

(I) IN GENERAL.—An eligible digital journalism provider that prevails in an action under this sub-
section before the date an agreement is executed under section 3 or an arbitration decision is issued under section 4, as applicable, regarding the terms and conditions by which the covered platform may access the content of the eligible digital journalism providers that are members of the joint negotiation entity, may join the joint negotiation entity and participate in the negotiation under section 3 or the arbitration under section 4, as applicable.

(II) NOTICE.—A notice, by or on behalf of the joint negotiation entity, shall be sent to the covered platform to identify the eligible digital journalism provider that joins the negotiation or arbitration under subclause (I).

(ii) AFTER AGREEMENT OR ARBITRATION DECISION.—

(I) IN GENERAL.—An eligible digital journalism provider that prevails in an action under this sub-
section after the date an agreement is executed under section 3 or an arbitration decision is issued under section 4, as applicable, regarding the terms and conditions by which the covered platform may access the content of the eligible digital journalism providers that are members of the joint negotiation entity, such eligible digital journalism provider may join the joint negotiation entity and be eligible for the same terms and conditions by which the covered platform may access the content of the other eligible digital journalism providers that are members of the joint negotiation entity.

(II) Notice.—A notice, by or on behalf of the joint negotiation entity, shall be sent to the covered platform to identify the eligible digital journalism provider that joins the joint negotiation entity under subclause (I) and that is eligible to receive the same terms and conditions under the agree-
ment negotiated under section 3 or the arbitration decision issued under section 4, as applicable, by which the covered platform may access the content of the other eligible digital journalism providers.

(2) COVERED PLATFORMS.—

(A) IN GENERAL.—An eligible digital journalism provider that is discriminated against in violation of section 6(a)(2) may bring a civil action in an appropriate district court of the United States against the covered platform.

(B) REMEDIES.—An eligible digital journalism provider that prevails under this paragraph shall be entitled to—

(i) recover the actual damages sustained by the eligible digital journalism provider as a result of the discrimination,

(ii) injunctive relief on such terms as the court may deem reasonable to prevent or restrain the covered platform from discriminating against the eligible digital journalism provider; and

(iii) the costs of the suit, including reasonable attorneys’ fees.
(c) Retaliation.—

(1) In general.—An eligible digital journalism provider that is retaliated against in violation of section 6(b)(1) may bring a civil action in an appropriate district court of the United States against the covered platform.

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

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

(B) injunctive relief on such terms as the court may deem reasonable to prevent or restrain the covered platform from retaliating against the eligible digital journalism provider; and

(C) the costs of the suit, including reasonable attorneys’ fees.

SEC. 8. SUNSET.

(a) In general.—Except as provided in subsection (b), this Act shall cease to have effect on the date that is 8 years after the date of its enactment.

(b) Exception in case of initiated but incomplete joint negotiation or arbitration.—With re-
spect to eligible digital journalism providers that have ini-
tiated but not concluded a negotiation under section 3 or 
an arbitration under section 4 on or before the date de-
scribed in subsection (a), this Act shall cease to be effec-
tive on the earlier of the date such negotiation concludes 
or 180 days after the date described in subsection (a).

SEC. 9. RULE OF CONSTRUCTION.

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

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

SEC. 10. SEVERABILITY.

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