

115TH CONGRESS
2D SESSION

H. R. 5190

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2018

Mr. CICILLINE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Journalism Competi-
5 tion and Preservation Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) A free and vibrant press is essential to the
2 health of our democracy.

3 (2) Fair and competitive markets are integral
4 to maintaining a thriving press that can meet the
5 demands of consumers and an informed citizenry.

6 (3) More and more Americans prefer to read
7 news online. While some readers may go directly to
8 a publisher's website, many more find news through
9 the use of one or more online platforms, such as
10 search engines and social media websites.

11 (4) Over the past decade, digital audiences for
12 news publications have increased by over 200 per-
13 cent. Nevertheless, over that same time period, dig-
14 ital news publishers' revenues have fallen by nearly
15 half.

16 (5) In the absence of the robust enforcement of
17 the antitrust laws to ensure a free and open market-
18 place of ideas, some dominant platforms serve as a
19 de facto gateway to all online content for many web
20 users, wielding an enormous amount of control over
21 how readers find and interact with content produced
22 by the press.

23 (6) Dominant platforms often are able to die-
24 tate the terms on which a publisher's content may
25 appear on their platform, and some hold so much

1 sway in the online ecosystem that they can control
2 whether their users are able to find a creator’s con-
3 tent at all.

4 (7) An entity with the power to dictate the
5 terms of distribution of news has the power to dic-
6 tate the content of the news.

7 (8) America benefits from, and depends upon,
8 not only a free marketplace for goods and services,
9 but also a free marketplace of ideas.

10 (9) The antitrust laws were intended to and do
11 provide both economic and civic benefits.

12 (10) A central purpose of the antitrust laws is
13 to promote and protect open markets, including
14 those for the free and diverse press.

15 (11) While antitrust exemptions are generally
16 disfavored, should the application of the antitrust
17 laws ever be applied in a manner that conflicts with
18 their stated purpose—such as protecting the free
19 and open marketplace of ideas online—it is the duty
20 and prerogative of the Congress to resolve the con-
21 flict.

22 **SEC. 3. SAFE HARBOR FOR CERTAIN COLLECTIVE NEGOTIATIONS.**
23

24 (a) DEFINITIONS.—For purposes of this section:

25 (1) The term “news content creator” means—

1 (A) any print or digital news organization
2 that—

3 (i) has a dedicated professional edi-
4 torial staff that creates and distributes
5 original news and related content con-
6 cerning local, national, or international
7 matters of public interest on at least a
8 weekly basis; and

9 (ii) is commercially marketed through
10 subscriptions, advertising, or sponsorship;
11 and

12 (B) provides original news and related con-
13 tent, with the editorial content consisting of not
14 less than 25 percent current news and related
15 content.

16 (2) The term “Online Content Distributor”
17 means any entity that—

18 (A) operates a website or other online serv-
19 ice that displays, distributes, or directs users to
20 news articles, works of journalism, or other con-
21 tent on the internet that is generated by third-
22 party news content creators; and

23 (B) has not fewer than 1,000,000,000
24 monthly active users, in the aggregate, of all of
25 its websites or online services worldwide.

1 (3) The term “antitrust laws” has the meaning
2 given such term in subsection (a) of the first section
3 of the Clayton Act (15 U.S.C. 12), and includes—

4 (A) section 5 of the Federal Trade Com-
5 mission Act (15 U.S.C. 45) to the extent that
6 such section applies to unfair methods of com-
7 petition; and

8 (B) any State law, rule, or regulation that
9 prohibits or penalizes the conduct described in,
10 or is otherwise inconsistent with, subsection (b)
11 of this section.

12 (4) The term “negotiation period” means the
13 period of time beginning on the date this Act goes
14 into effect and ending 48 months later.

15 (b) LIMITATION OF LIABILITY.—A news content cre-
16 ator shall not be held liable under the antitrust laws for
17 engaging in negotiations with other news content creators
18 during the negotiation period to collectively withhold con-
19 tent from, or negotiate with, an Online Content Dis-
20 tributor regarding the terms on which the news content
21 creators’ news content may be distributed by the Online
22 Content Distributor, if—

23 (1) the negotiations with the Online Content
24 Distributor—

1 (A) are not limited to price and are non-
2 discriminatory as to similarly situated news
3 content creators, and directly relate to the qual-
4 ity, accuracy, attribution or branding, and
5 interoperability of news; and

6 (B) pertain to terms that would be avail-
7 able to all news content creators;

8 (2) the coordination among the news content
9 creators is directly related to and reasonably nec-
10 essary for negotiations with an Online Content Dis-
11 tributor that are otherwise consistent with this Act;
12 and

13 (3) the negotiations do not involve any person
14 that is not a news content creator or an Online Con-
15 tent Distributor.

16 (c) RULE OF CONSTRUCTION.—Except as provided in
17 this Act, this Act shall not be construed to modify, impair,
18 or supersede the operation of the antitrust laws.

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