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

APRIL 3, 2019

Mr. Cicilline (for himself, Mr. Collins of Georgia, and Mr. DeSaulnier) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Journalism Competition and Preservation Act of 2019”.

SEC. 2. SAFE HARBOR FOR CERTAIN COLLECTIVE NEGOTIATIONS.

(a) DEFINITIONS.—For purposes of this section:
(1) The term “news content creator” means—

(A) any print or digital news organization that—

(i) has a dedicated professional editorial staff that creates and distributes original news and related content concerning local, national, or international matters of public interest on at least a weekly basis; and

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

(B) provides original news and related content, with the editorial content consisting of not less than 25 percent current news and related content.

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

(A) operates a website or other online service that displays, distributes, or directs users to news articles, works of journalism, or other content on the internet that is generated by third-party news content creators; and
(B) has not fewer than 1,000,000,000 monthly active users, in the aggregate, of all of its websites or online services worldwide.

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

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

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

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

(b) LIMITATION OF LIABILITY.—A news content creator shall not be held liable under the antitrust laws for engaging in negotiations with other news content creators during the negotiation period to collectively withhold content from, or negotiate with, an Online Content Distributor regarding the terms on which the news content creators’ news content may be distributed by the Online Content Distributor, if—
(1) the negotiations with the Online Content Distributor—

(A) are not limited to price and are non-discriminatory as to similarly situated news content creators, and directly relate to the quality, accuracy, attribution or branding, and interoperability of news; and

(B) pertain to terms that would be available to all news content creators;

(2) the coordination among the news content creators is directly related to and reasonably necessary for negotiations with an Online Content Distributor that are otherwise consistent with this Act; and

(3) the negotiations do not involve any person that is not a news content creator or an Online Content Distributor.

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