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 HOUSE OF REPRESENTATIVES

MARCH 10, 2021

Mr. Cicilline (for himself, Mr. Buck, Mr. DeSaulnier, Mr. Raskin, Mrs. Spartz, Ms. Scanlon, Ms. Wild, Mr. Steube, and Mr. Gaetz) introduced the following bill; which was referred to the Committee on the Judiciary

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.

Be it enacted by the Senate and House of Representa-

tives 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 2021”.
SEC. 2. SAFE HARBOR FOR CERTAIN COLLECTIVE NEGOTIATIONS.

(a) DEFINITIONS.—In this section:

(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, subsection (b).

(2) NEWS CONTENT CREATOR.—The term “news content creator” means—

(A) any print, broadcast, 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 marketed through subscriptions, advertising, or sponsorship; and

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

(ii) broadcasts original news and related content pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.).

(3) ONLINE CONTENT DISTRIBUTOR.—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.
(b) LIMITATION OF LIABILITY.—A news content creator may not be held liable under the antitrust laws for engaging in negotiations with any other news content creator during the 4-year period beginning on the date of enactment of this Act to collectively withhold content from, or negotiate with, an online content distributor regarding the terms on which the news content of the news content creator may be distributed by the online content distributor, if—

(1) the negotiations with the online content distributor—

(A) are not limited to price;

(B) are nondiscriminatory as to similarly situated news content creators;

(C) directly relate to the quality, accuracy, attribution or branding, and interoperability of news; and

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

(2) the coordination between 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.