

117TH CONGRESS  
1ST SESSION

# 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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 10, 2021

Ms. KLOBUCHAR (for herself, Mr. KENNEDY, Mr. BOOKER, Mr. PAUL, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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.

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 2021”.

6 **SEC. 2. SAFE HARBOR FOR CERTAIN COLLECTIVE NEGO-**  
7 **TATIONS.**

8 (a) **DEFINITIONS.**—In this section:

1           (1) ANTITRUST LAWS.—The term “antitrust  
2 laws”—

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

6           (B) includes—

7           (i) section 5 of the Federal Trade  
8 Commission Act (15 U.S.C. 45) to the ex-  
9 tent that section applies to unfair methods  
10 of competition; and

11           (ii) any State law (including regula-  
12 tions) that prohibits or penalizes the con-  
13 duct described in, or is otherwise incon-  
14 sistent with, subsection (b).

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

17           (A) any print, broadcast, or digital news  
18 organization that—

19           (i) has a dedicated professional edi-  
20 torial staff that creates and distributes  
21 original news and related content con-  
22 cerning local, national, or international  
23 matters of public interest on at least a  
24 weekly basis; and

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

3 (B)(i) provides original news and related  
4 content with the editorial content consisting of  
5 not less than 25 percent current news and re-  
6 lated content; or

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

12 (3) ONLINE CONTENT DISTRIBUTOR.—The  
13 term “online content distributor” means any entity  
14 that—

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

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

23 (b) LIMITATION OF LIABILITY.—A news content cre-  
24 ator may not be held liable under the antitrust laws for  
25 engaging in negotiations with any other news content cre-

1 ator during the 4-year period beginning on the date of en-  
2 actment of this Act to collectively withhold content from,  
3 or negotiate with, an online content distributor regarding  
4 the terms on which the news content of the news content  
5 creator may be distributed by the online content dis-  
6 tributor, if—

7 (1) the negotiations with the online content dis-  
8 tributor—

9 (A) are not limited to price;

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

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

15 (D) pertain to terms that would be avail-  
16 able to all news content creators;

17 (2) the coordination between the news content  
18 creators is directly related to and reasonably nec-  
19 essary for negotiations with an online content dis-  
20 tributor that are otherwise consistent with this Act;  
21 and

22 (3) the negotiations do not involve any person  
23 that is not a news content creator or an online con-  
24 tent distributor.

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

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