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AMENDED IN ASSEMBLY APRIL 27, 2023
AMENDED IN ASSEMBLY MARCH 23, 2023
CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 886

**Introduced by Assembly Member Wicks
(Coauthors: Assembly Members Lowenthal and Essayli)**

February 14, 2023

An act to add Title 21 (commencing with Section 3273.60) to Part 4 of Division 3 of the Civil Code, relating to civil law.

LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Wicks. California Journalism Preservation Act.

Existing law generally regulates online platforms, including by requiring, on a semiannual basis and as specified, a social media company to submit to the Attorney General a terms of service report that includes, among other things, the current version of the terms of service of the social media platform.

This bill, the California Journalism Preservation Act, would require, ~~within an unspecified number of 10 days~~ of the close of each month, a covered platform, as defined, to remit a journalism usage fee payment to each eligible digital journalism provider, as defined, that submits to the covered platform a certain ~~notice that is~~ *notice*. *Under the bill, the journalism usage fee payment would be* equal to a percentage, as determined by a certain arbitration process, of the covered platform's advertising revenue generated during that month multiplied by the eligible digital journalism provider's allocation share, as defined, for that month. ~~The~~

This bill would require the notice described above to, among other things, certify, not under penalty of perjury, that the eligible digital journalism provider reasonably believes that it is either an eligible broadcaster, as defined, or an eligible publisher, as defined. The bill would authorize a covered platform that receives that notice to, platform, within an unspecified number of 30 days of having received the notice, to challenge the sufficiency of the notice and or the noticing party's qualification as an eligible digital journalism provider. The

This bill would prohibit a covered platform from retaliating against an eligible digital journalism provider for asserting its rights under the act 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. The bill would require an eligible digital journalism provider to spend at least 70% of funds received pursuant to the act on news journalists and support staff employed by the eligible digital journalism provider and maintaining or enhancing the production and distribution of news or information that concerns local, regional, national, or international matters of public interest. provider.

This bill would require, no later than one year after the end of an arbitration proceeding or a settlement, and each year thereafter, the eligible digital journalism provider to compile a report containing, among other things, the number of usage fees received from covered platforms, the name of each covered platform paying it a usage fee, and how it spent the usage fee payment. The bill would also require the eligible digital journalism provider at those times to publish a copy of the report online and to provide it to the news journalists and support staff it employs and the covered platforms paying the fees. The bill would state that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known as the California
- 2 Journalism Preservation Act.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) A free and diverse fourth estate was critical in the founding
- 5 of our democracy and continues to be the lifeblood for a
- 6 functioning democracy.

1 (b) Every day, journalism plays an essential role in California
2 and in local communities, and the ability of local news
3 organizations to continue to provide the public with critical
4 information about their communities and enabling publishers to
5 receive fair market value for their content that is used by others
6 will preserve and ensure the sustainability of local and diverse
7 news outlets.

8 (c) Communities without newspapers lose touch with
9 government, business, education, and neighbors. They operate
10 without journalists working to keep them informed, uncover truth,
11 expose corruption, and share common goals and experiences.

12 (d) Over the past 10 years, newspaper advertising has decreased
13 66 percent, and newsroom staff have declined 44 percent.

14 (e) *Given the important role of ethnic media, it is critical to*
15 *advance state policy that ensures their publishers are justly*
16 *compensated for the content they create and distribute. An excellent*
17 *example is the historic preamble, “We Wish to Plead Our Own*
18 *Cause,” a document penned by the African American journalist*
19 *and abolitionist Samuel Cornish in 1827. It marked a significant*
20 *milestone in the history of the Black press as it highlighted the*
21 *urgent need for African Americans to have their own platform to*
22 *voice their grievances, advocate for their rights, and challenge*
23 *racial inequality. This call to action spurred the establishment of*
24 *numerous Black-owned newspapers and publications, solidifying*
25 *the role of the Black press as a powerful tool for empowerment*
26 *and social change, and laid the groundwork in our country for*
27 *other ethnic media to plead their own cause.*

28 (e)

29 (f) Quality local journalism is key to sustaining civic society,
30 strengthening communal ties, and providing information at a deeper
31 level that national outlets cannot match.

32 (f)

33 (g) Seventy-three percent of United States adults surveyed said
34 they have confidence in their local newspaper.

35 SEC. 3. Title 21 (commencing with Section 3273.60) is added
36 to Part 4 of Division 3 of the Civil Code, to read:

1 TITLE 21. JOURNALISM USAGE FEES

2
3 3273.60. ~~(a)~~ *For purposes of this title, the following definitions*
4 *apply:*

5 (a) “Access” means to acquire, to crawl, or to index content.

6 (b) “Advertising revenue” means revenue generated through
7 the sale of digital advertising impressions that are served to
8 customers in the state through an online platform, regardless of
9 whether those impressions are served on internet websites or
10 accessed through online or mobile applications.

11 (c) “Allocation share” means the percentage of a covered
12 platform’s journalism usage fees that an eligible digital journalism
13 provider is entitled to receive for a particular month computed by
14 dividing the value derived pursuant to paragraph (1) by the value
15 derived pursuant to paragraph (2).

16 (1) The total number of the covered platform’s internet web
17 pages displayed or presented to California residents during the
18 month that link to, display, or present the eligible digital journalism
19 provider’s news articles, works of journalism, or other content, or
20 portions thereof.

21 (2) The total number of the covered platform’s internet web
22 pages displayed or presented to California residents during the
23 month that link to, display, or present any eligible digital journalism
24 provider’s news articles, works of journalism, or other content, or
25 portions thereof.

26 (d) (1) “Covered platform” means an online platform that at
27 any point during a 12-month period meets either of the following
28 criteria:

29 (A) The online platform has at least 50,000,000 United
30 States-based monthly active users or subscribers on the online
31 platform.

32 (B) The online platform is owned or controlled by a person with
33 either of the following:

34 (i) United States net annual sales or a market capitalization
35 greater than five hundred fifty billion dollars (\$550,000,000,000),
36 adjusted annually for inflation on the basis of the Consumer Price
37 Index published by the United States Bureau of Labor Statistics.

38 (ii) At least 1,000,000,000 worldwide monthly active users on
39 the online platform.

1 (2) “Covered platform” does not mean an organization exempt
2 from federal income taxation pursuant to Section 501(c)(3) of the
3 Internal Revenue Code of 1986.

4 (e) “Eligible broadcaster” means a person that meets all of the
5 following criteria:

6 (1) The person holds or operates under a license issued by the
7 Federal Communications Commission under Subchapter III
8 (commencing with Section 301) of Chapter 5 of Title 47 of the
9 United States Code.

10 (2) The person engages professionals to create, edit, produce,
11 and distribute original content concerning local, regional, national,
12 or international matters of public interest through activities,
13 including conducting interviews, observing current events,
14 analyzing documents and other information, or fact checking
15 through multiple firsthand or secondhand news sources.

16 (3) The person updates its content on at least a weekly basis.

17 (4) The person uses an editorial process for error correction and
18 clarification, including a transparent process for reporting errors
19 or complaints to the station.

20 (f) “Eligible digital journalism provider” means an eligible
21 publisher or eligible broadcaster that discloses its ownership to
22 the public.

23 (g) “Eligible publisher” means a person that publishes a
24 qualifying publication.

25 ~~(h) “Network station” means a television broadcast station,
26 including a translator station or terrestrial satellite station that
27 rebroadcasts all, or substantially all, of the programming broadcast
28 by a network station that is owned or operated by, or affiliated
29 with, one or more television networks.~~

30 ~~(i)~~

31 (h) “News journalist” means a natural person who meets both
32 of the following criteria:

33 (1) The person is employed for an average of at least ~~20~~ 30
34 hours per week during a calendar quarter by the eligible digital
35 journalism provider.

36 (2) The person is responsible for gathering, developing,
37 preparing, directing the recording of, producing, collecting,
38 photographing, recording, writing, editing, reporting, designing,
39 presenting, distributing, or publishing original news or information

1 that concerns local, regional, national, or international matters of
2 public interest.

3 (j)

4 (i) “Notifying eligible digital journalism provider” means an
5 entity that has provided notice to a covered platform pursuant to
6 Section 3273.61 that the entity is an eligible digital journalism
7 provider.

8 (k)

9 (j) “Online platform” means an internet website, online or
10 mobile application, digital assistant, or online service that does
11 both of the following:

12 (1) Accesses news articles, works of journalism, or other content,
13 or portions thereof, generated, created, produced, or owned by an
14 eligible digital journalism provider.

15 (2) Aggregates, displays, provides, distributes, or directs users
16 to content described in paragraph (1).

17 (l)

18 (k) “Qualifying publication” means an internet website, online
19 or mobile application, or other digital service that meets all of the
20 following criteria:

21 (1) The internet website, online or mobile application, or other
22 digital service does not primarily display, provide, distribute, or
23 offer content generated, created, produced, or owned by an eligible
24 ~~broadcaster or television network.~~ *broadcaster.*

25 (2) The internet website, online or mobile application, or other
26 digital service provides information to an audience in the state.

27 (3) The internet website, online or mobile application, or other
28 digital service performs a public information function comparable
29 to that traditionally served by newspapers and other periodical
30 news publications.

31 (4) The internet website, online or mobile application, or other
32 digital service engages professionals to create, edit, produce, and
33 distribute original content concerning local, regional, national, or
34 international matters of public interest through activities, including
35 conducting interviews, observing current events, analyzing
36 documents and other information, or fact checking through multiple
37 firsthand or secondhand news sources.

38 (5) The internet website, online or mobile application, or other
39 digital service updates its content on at least a weekly basis.

1 (6) The internet website, online or mobile application, or other
2 digital service has an editorial process for error correction and
3 clarification, including a transparent process for reporting errors
4 or complaints to the publication.

5 (7) The internet website, online or mobile application, or other
6 digital service meets any of the following criteria:

7 (A) The internet website, online or mobile application, or other
8 digital service generated at least one hundred thousand dollars
9 (\$100,000) in annual revenue from its editorial content in the
10 previous calendar year.

11 (B) The internet website, online or mobile application, or other
12 digital service had an International Standard Serial Number
13 assigned to an affiliated periodical before January 1, 2024.

14 (C) The internet website, online or mobile application, or other
15 digital service is owned or controlled by an organization exempt
16 from federal income taxation pursuant to Section 501(c)(3) of the
17 Internal Revenue Code of 1986.

18 (8) The internet website, online or mobile application, or other
19 digital service has at least 25 percent of its editorial content
20 consisting of information about topics of current local, regional,
21 national, or international public interest.

22 (9) The internet website, online or mobile application, or other
23 digital service is not controlled, or wholly or partially owned by,
24 an entity that meets any of the following criteria:

25 (A) The entity is a foreign power or an agent of a foreign power,
26 as those terms are defined in Section 1801 of Title 50 of the United
27 States Code.

28 (B) The entity is designated as a foreign terrorist organization
29 pursuant to Section 1189 of Title 8 of the United States Code.

30 (C) The entity is a terrorist organization, as defined in Section
31 1182 of Title 8 of the United States Code.

32 (D) The entity is designated as a specially designated global
33 terrorist organization under federal Executive Order 13224.

34 (E) The entity is an affiliate of an entity described in
35 subparagraph (A), (B), (C), or (D).

36 (F) The entity that has been convicted of violating, or attempting
37 to violate, Section 2331, 2332b, or 2339A of Title 18 of the United
38 States Code.

39 (l) *“Representative” means a labor organization designated as*
40 *the exclusive bargaining representative of news journalists or*

1 support staff for the purposes of collective bargaining in
2 accordance with applicable state or federal law.

3 (m) “Support staff” means a natural person who performs
4 nonexecutive functions, including payroll, human resources,
5 fundraising and grant support, advertising and sales, community
6 events and partnerships, technical support, sanitation, and security.

7 3273.61. (a) ~~An~~(1) On or before February 1, 2024, all eligible
8 digital journalism ~~provider that submits a~~ providers that want to
9 receive usage fee payments pursuant to this title shall submit notice
10 to a covered platform pursuant to subdivision ~~(b)~~ (b). Those eligible
11 digital journalism providers that submit the notice shall receive
12 journalism usage fee payments from ~~that covered platform~~
13 platforms pursuant to Section 3273.63 beginning not more than
14 30 days following the end of the arbitration ~~proceeding~~
15 process described in Section 3273.64.

16 (2) Digital journalism providers may provide notice to a covered
17 platform pursuant to subdivision (b) after the initial arbitration
18 has concluded; however, notice received from an eligible digital
19 journalism provider after February 1, 2024, shall not prompt any
20 adjustment to the percentage of advertising revenue that has
21 previously been determined pursuant to the most recent arbitration
22 proceeding conducted pursuant to Section 3273.64.

23 (b) The notice described in subdivision (a) shall meet all of the
24 following criteria:

25 (1) The notice identifies the eligible digital journalism ~~provider.~~
26 provider and the authorized representative of the eligible digital
27 journalism provider.

28 (2) The notice certifies, not under penalty of perjury, that the
29 eligible digital journalism provider reasonably believes that it is
30 either an eligible broadcaster or an eligible publisher.

31 (3) The notice identifies the root uniform resource locators for
32 the internet websites associated with the eligible digital journalism
33 provider’s digital content.

34 (c) Not later than 30 days after submitting a notice described
35 in subdivision (b), the eligible digital journalism provider shall
36 distribute a copy of the notice to the news journalists and support
37 staff it employs and their representatives, if any, and publish a
38 copy of the notice online in a text-searchable format.

39 (e)

1 (d) Not later than 30 days after ~~receiving a notice~~ *the deadline*
2 described in *paragraph (1) of subdivision (a), or after receiving*
3 *a notice pursuant to paragraph (2) of subdivision (a)*, the covered
4 platform shall send a reply notice to the authorized representative
5 identified in subdivision (b) to acknowledge receipt of the notice.

6 3273.62. A covered platform that receives a notice pursuant
7 to Section 3273.61 may, within _____ 30 days of having received
8 the notice, challenge both of the following:

9 (a) The sufficiency of the notice.

10 (b) The noticing party's qualification as an eligible digital
11 journalism provider.

12 3273.63. (a) (1) For each month, a covered platform shall
13 track and record, for each eligible digital journalism provider that
14 submits a notice pursuant to Section 3273.61, the total number of
15 the covered platform's internet websites that link to, display, or
16 present that eligible digital journalism provider's news articles,
17 works of journalism, or other content, or portions thereof, and that
18 the covered platform has displayed or presented to California
19 residents.

20 (2) For each month, a covered platform shall use the data
21 collected pursuant to paragraph (1) to calculate the allocation share
22 for each notifying eligible digital journalism provider.

23 (b) Within _____ 10 days of the close of each month, a covered
24 platform shall remit a journalism usage fee payment to each
25 notifying eligible digital journalism provider that is equal to a
26 percentage, determined pursuant to Section 3273.64, of the covered
27 platform's advertising revenue generated during that month
28 multiplied by the eligible digital journalism provider's allocation
29 share for that month.

30 (c) *If an eligible digital journalism provider fails to comply with*
31 *Section 3273.67, a covered platform may withhold usage fee*
32 *payments until the eligible digital journalism provider has provided*
33 *a copy of the report described in subdivision (a) of Section 3273.67*
34 *to the covered platform and has published a copy of the report*
35 *online pursuant to subdivision (b) of Section 3273.67.*

36 3273.64. (a) The percentage of the covered platform's
37 advertising revenue remitted to notifying eligible digital journalism
38 providers shall be determined pursuant to this section. *Those*
39 *eligible digital journalism providers shall jointly participate in*
40 *the final offer arbitration process described in this section with*

1 *each covered platform to determine a single percentage of*
2 *advertising revenue from which future monthly allocation shares*
3 *will be allotted.*

4 (b) Eligible digital journalism providers may initiate, pursuant
5 to Rule R-4 of the American Arbitration Association's Commercial
6 Arbitration Rules and Mediation Procedures, a final offer
7 arbitration against the covered platform for an arbitration panel to
8 determine the percentage of the covered platform's advertising
9 revenue remitted to the notifying eligible *digital* journalism
10 ~~provider.~~ *providers.*

11 (c) The arbitration procedure authorized by this section shall
12 commence 10 days after the receipt of the *reply* notice required
13 by subdivision ~~(e)~~ (d) of Section 3273.61.

14 (d) The arbitration procedure authorized by this section shall
15 be decided by a panel of three arbitrators under the American
16 Arbitration Association's Commercial Arbitration Rules and
17 Mediation Procedures and the American Arbitration
18 Association-International Centre for Dispute Resolution Final
19 Offer Arbitration Supplementary Rules except to the extent they
20 conflict with this section.

21 (e) The cost of administering the arbitration proceeding,
22 including arbitrator compensation, expenses, and administrative
23 fees, shall be shared equally between the covered platform and the
24 eligible digital journalism ~~provider.~~ *providers.*

25 (f) The arbitrators shall be appointed in accordance with the
26 American Arbitration Association's Commercial Arbitration Rules
27 and Mediation Procedures.

28 (g) During a final offer arbitration proceeding under this ~~section~~
29 *section*, all of the following shall apply:

30 (1) (A) Eligible digital journalism providers and the covered
31 platform may demand the production of documents and information
32 that are nonprivileged, reasonably necessary, and reasonably
33 accessible without undue expense.

34 (B) Documents and information described in subparagraph (A)
35 shall be exchanged not later than 30 days after the date the demand
36 is filed.

37 (2) Rules regarding the admissibility of evidence applicable in
38 federal court shall apply.

39 (3) Eligible digital journalism providers and ~~a~~ *the* covered
40 platform shall each submit a final offer proposal for the

1 remuneration that the eligible digital journalism ~~provider~~ *providers*
2 should receive from the covered platform for access to the content
3 of the eligible digital journalism providers during the period under
4 arbitration based on the value that access provides to the ~~platform,~~
5 ~~which platform.~~ *The final offer proposals* shall include backup
6 materials sufficient to permit the other party to replicate the
7 proffered valuation.

8 (4) A discussion or final offer ~~under~~ *pursuant to* this section
9 shall not address whether or how the covered platform or any
10 eligible digital journalism provider displays, ranks, distributes,
11 suppresses, promotes, throttles, labels, filters, or curates the content
12 of the eligible digital journalism providers or any other person.

13 (h) (1) Not later than 60 days after the date proceedings
14 ~~commence~~ *begin* pursuant to subdivision (c), the arbitration panel
15 shall determine the percentage of the covered platform's advertising
16 revenue remitted to notifying eligible *digital* journalism providers
17 from a final offer from one of the parties without modification.

18 (2) In making a determination ~~under~~ *pursuant to* paragraph (1),
19 the arbitration panel shall do all of the following:

20 (A) Refrain from considering any value conferred upon any
21 eligible digital journalism provider by the covered platform for
22 distributing or aggregating its content as an offset to the value
23 created by that eligible digital journalism ~~provider~~ *provider, unless*
24 *the covered platform does not automatically access and extract*
25 *information from an eligible digital journalism provider's internet*
26 *website.*

27 (B) Consider past incremental revenue contributions as a guide
28 to the future incremental revenue contribution by any eligible
29 digital journalism provider.

30 (C) Consider the pricing, terms, and conditions of any available,
31 comparable commercial agreements between parties granting
32 access to digital content, including pricing, terms, and conditions
33 relating to price, duration, territory, and the value of data generated
34 directly or indirectly by the content accounting for any material
35 disparities in negotiating power between the parties to those
36 commercial agreements.

37 (D) *Consider the eligible digital journalism provider's previous*
38 *compliance with Section 3273.66, if applicable.*

39 (E)

1 (E) Issue a binding, reasoned determination of the percentage
2 of the covered platform’s advertising revenue remitted to notifying
3 eligible digital journalism providers.

4 (3) *Any party to the arbitration proceeding may elect to appeal*
5 *the decision of the arbitration panel to a second arbitration panel*
6 *on the grounds of a procedural irregularity.*

7 (i) *If the covered platform and the eligible digital journalism*
8 *providers reach a settlement in lieu of arbitration, the settlement*
9 *shall not waive the eligible digital journalism provider’s*
10 *obligations pursuant to Section 3273.66 and shall not settle for*
11 *an amount other than the final offer proposals submitted by the*
12 *parties pursuant to paragraph (3) of subdivision (g).*

13 (j) *No fewer than 24 months after the end of an arbitration*
14 *proceeding, any party to the proceeding may elect to reinstate the*
15 *arbitration process.*

16 3273.65. (a) A covered platform shall not retaliate against an
17 eligible digital journalism provider for asserting its rights under
18 this title by refusing to index content or changing the ranking,
19 identification, modification, branding, or placement of the content
20 of the eligible digital journalism provider on the covered platform.

21 (b) An eligible digital journalism provider that is retaliated
22 against may bring a civil action against the covered platform.

23 (c) *This section does not prohibit a covered platform from, and*
24 *does not impose liability on a covered platform for, enforcing its*
25 *terms of service against an eligible journalism provider.*

26 3273.66. (a) An eligible digital journalism provider shall spend
27 at least 70 percent of funds received pursuant to this title on news
28 journalists *and support staff* employed by the eligible digital
29 journalism provider ~~and maintaining or enhancing the production~~
30 ~~and distribution of news or information that concerns local,~~
31 ~~regional, national, or international matters of public interest.~~
32 *provider.*

33 (b) *No later than 30 days after the end of an arbitration*
34 *proceeding described in Section 3273.64 or reaching a settlement*
35 *in lieu of an arbitration proceeding, the eligible digital journalism*
36 *provider shall provide notification in writing of its plan to comply*
37 *with subdivision (a) to the news journalists and support staff*
38 *employed by the eligible digital journalism provider and any*
39 *representatives of those news journalists or support staff.*

1 (c) *The eligible digital journalism provider's plan to comply*
2 *with subdivision (a) shall include a good-faith estimate of the*
3 *number of news journalists and support staff, if any, expected to*
4 *be hired, details regarding proposed compensation adjustments,*
5 *if any, and a disclosure if either hiring or compensation*
6 *adjustments are not expected.*

7 3273.67. (a) *No later than one year after the end of an*
8 *arbitration proceeding described in Section 3273.64 or reaching*
9 *a settlement in lieu of an arbitration proceeding, and each year*
10 *thereafter, the eligible digital journalism provider shall compile*
11 *a report that includes all of the following:*

12 (1) *An attestation as to whether the eligible digital journalism*
13 *provider has complied with subdivision (a) of Section 3473.66.*

14 (2) *The text of the digital journalism provider's plan to comply*
15 *with subdivision (a) of Section 3473.66.*

16 (3) *The total number of usage fees received from covered*
17 *platforms.*

18 (4) *The name of each covered platform paying the eligible digital*
19 *journalism provider a usage fee and a description of how the*
20 *eligible digital journalism provider spent the usage fee payment,*
21 *including any amount of usage fees remaining unspent.*

22 (5) *The total number of news journalists and support staff*
23 *employed by the eligible digital journalism provider, including*
24 *the number of news journalists and support staff hired or*
25 *terminated during the previous year.*

26 (b) *No later than one year after the end of an arbitration*
27 *proceeding described in Section 3273.64 or reaching a settlement*
28 *in lieu of an arbitration proceeding, and each year thereafter, the*
29 *eligible digital journalism provider shall publish a copy of the*
30 *report described in subdivision (a) online in a text-searchable*
31 *format and provide a copy to the news journalists and support*
32 *staff employed by the eligible digital journalism provider, any*
33 *representatives of those news journalists or support staff, and the*
34 *covered platforms paying usage fees to the eligible digital*
35 *journalism provider.*

36 ~~3273.67.—This~~

37 3273.68. (a) *This title does not modify, impair, expand, or in*
38 *any way alter rights pertaining to Title 17 of the United States*
39 *Code or the Lanham Act (15 U.S.C. 1051 et seq.).*

1 **(b)** *This title does not abridge or impair rights otherwise*
2 *reserved by news journalists, support staff, or their representatives*
3 *according to applicable law or existing collective bargaining*
4 *agreements.*

5 **SEC. 4.** *The provisions of this act are severable. If any*
6 *provision of this act or its application is held invalid, that invalidity*
7 *shall not affect other provisions or applications that can be given*
8 *effect without the invalid provision or application.*