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AMENDED IN ASSEMBLY MAY 30, 2023
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CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 886

Introduced by Assembly Member Wicks
(Coauthors: Assembly Members Lowenthal and Essayli)
(Coauthors: Senators McGuire and Skinner)

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 10 days of the close of each ~~month~~, *quarter*, 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. 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~~ *quarter* multiplied by the eligible digital journalism provider's allocation share, as defined, for that ~~month~~ *quarter*.

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, within 30 days of having received the notice, to challenge the sufficiency of the notice or the noticing party's qualification as an eligible digital journalism provider.

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. *The bill would require an eligible digital journalism provider with 5 or fewer employees, to spend at least 50% of funds received pursuant to these provisions on news journalists and support staff employed by the eligible digital journalism 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:

1 (a) A free and diverse fourth estate was critical in the founding
2 of our democracy and continues to be the lifeblood for a
3 functioning democracy.

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

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

15 (d) Over the past 10 years, newspaper advertising has decreased
16 66 percent, and newsroom staff have declined 44 percent.

17 (e) *Ethnic media has long been a distinctive genre of journalism*
18 *and communications, informing, engaging and advocating on*
19 *behalf of communities underserved by both the for-profit and*
20 *not-for-profit general market media. It plays a unique role in*
21 *upholding the fourth estate in our democracy by facilitating*
22 *cross-racial and cross-ethnic communications to facilitate social*
23 *integration, promote civic engagement, and address inequalities*
24 *among all of the underserved communities.*

25 (e)

26 (f) Given the important role of ethnic media, it is critical to
27 advance state policy that ensures their publishers are justly
28 compensated for the content they create and distribute. An excellent
29 example is the historic preamble, “We Wish to Plead Our Own
30 Cause,” a document penned by the African American journalist
31 and abolitionist Samuel Cornish in 1827. It marked a significant
32 milestone in the history of the Black press as it highlighted the
33 urgent need for African Americans to have their own platform to
34 voice their grievances, advocate for their rights, and challenge
35 racial inequality. This call to action spurred the establishment of
36 numerous Black-owned newspapers and publications, solidifying
37 the role of the Black press as a powerful tool for empowerment
38 and social change, and laid the groundwork in our country for
39 other ethnic media to plead their own cause.

40 (f)

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

~~(g)~~

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

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

TITLE 21. JOURNALISM USAGE FEES

3273.60. For purposes of this title, the following definitions apply:

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

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

(c) “Allocation share” means the percentage of a covered platform’s journalism usage fees that an eligible digital journalism provider is entitled to receive for a particular month computed by dividing the value derived pursuant to paragraph (1) by the value derived pursuant to paragraph ~~(2)~~. *(2), less any applicable amount pursuant to paragraph (3).*

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

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

(3) Any compensation received by an eligible digital journalism provider through commercial agreement prior to commencement of arbitration for access to content by the covered platform shall be deducted from its allocation accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) The person is responsible for gathering, developing,
5 preparing, directing the recording of, producing, collecting,
6 photographing, recording, writing, editing, reporting, designing,
7 presenting, distributing, or publishing original news or information
8 that concerns local, regional, national, or international matters of
9 public interest.

10 (i) “Notifying eligible digital journalism provider” means an
11 entity that has provided notice to a covered platform pursuant to
12 Section 3273.61 that the entity is an eligible digital journalism
13 provider.

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

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

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

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

25 (1) The internet website, online or mobile application, or other
26 digital service does not primarily display, provide, distribute, or
27 offer content generated, created, produced, or owned by an eligible
28 broadcaster.

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

31 (3) The internet website, online or mobile application, or other
32 digital service performs a public information function comparable
33 to that traditionally served by newspapers and other periodical
34 news publications.

35 (4) The internet website, online or mobile application, or other
36 digital service engages professionals to create, edit, produce, and
37 distribute original content concerning local, regional, national, or
38 international matters of public interest through activities, including
39 conducting interviews, observing current events, analyzing

1 documents and other information, or fact checking through multiple
2 firsthand or secondhand news sources.

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

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

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

11 (A) The internet website, online or mobile application, or other
12 digital service generated at least one hundred thousand dollars
13 (\$100,000) in annual revenue from its editorial content in the
14 previous calendar year.

15 (B) The internet website, online or mobile application, or other
16 digital service had an International Standard Serial Number
17 assigned to an affiliated periodical before ~~January 1, 2024.~~
18 *submitting notice to a covered platform under Section 3273.61.*

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

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

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

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

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

35 (C) The entity is a terrorist organization, as defined in Section
36 1182 of Title 8 of the United States Code.

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

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

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

(I) “Representative” means a labor organization designated as the exclusive bargaining representative of news journalists or support staff for the purposes of collective bargaining in accordance with applicable state or federal law.

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

3273.61. (a) (1) On or before February 1, 2024, all eligible digital journalism providers that want to receive usage fee payments pursuant to this title shall submit notice to a covered platform pursuant to subdivision (b). Those eligible digital journalism providers that submit the notice shall receive journalism usage fee payments from covered platforms pursuant to Section 3273.63 beginning not more than 30 days following the end of the arbitration process described in Section 3273.64.

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

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

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

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

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

(c) Not later than 30 days after submitting a notice described in subdivision (b), the eligible digital journalism provider shall distribute a copy of the notice to the news journalists and support

1 staff it employs and their representatives, if any, and publish a
2 copy of the notice online in a text-searchable format.

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

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

11 (a) The sufficiency of the notice.

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

14 3273.63. (a) (1) For each ~~month~~, *quarter*, a covered platform
15 shall track and record, for each eligible digital journalism provider
16 that submits a notice pursuant to Section 3273.61, the total number
17 of the covered platform's internet websites that link to, display,
18 or present that eligible digital journalism provider's news articles,
19 works of journalism, or other content, or portions thereof, and that
20 the covered platform has displayed or presented to California
21 ~~residents~~, *residents, regardless of whether the content appears in*
22 *a language other than English.*

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

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

33 (c) *One percent of the journalism usage fee shall be paid to*
34 *eligible digital journalism providers that produce at least 30,000*
35 *annual search occurrences in California searches or 10,000 annual*
36 *Facebook impressions from California.*

37 (e)

38 (d) If an eligible digital journalism provider fails to comply with
39 Section 3273.67, a covered platform may withhold usage fee
40 payments until the eligible digital journalism provider has provided

1 a copy of the report described in subdivision (a) of Section 3273.67
2 to the covered platform and has published a copy of the report
3 online pursuant to subdivision (b) of Section 3273.67.

4 3273.64. (a) The percentage of the covered platform's
5 advertising revenue remitted to notifying eligible digital journalism
6 providers shall be determined pursuant to this section. Those
7 eligible digital journalism providers shall jointly participate in the
8 final offer arbitration process described in this section with each
9 covered platform to determine a single percentage of advertising
10 revenue from which future ~~monthly~~ quarterly allocation shares
11 will be allotted.

12 (b) ~~Eligible~~ *Within 10 days after the receipt of the reply notice*
13 *required by subdivision (d) of Section 3273.61, eligible* digital
14 journalism providers may initiate, pursuant to Rule R-4 of the
15 American Arbitration Association's Commercial Arbitration Rules
16 and Mediation Procedures, a final offer arbitration against the
17 covered platform for an arbitration panel to determine the
18 percentage of the covered platform's advertising revenue remitted
19 to the notifying eligible digital journalism providers.

20 (c) The arbitration procedure authorized by this section shall
21 commence 10 days after the receipt of the reply notice required
22 by subdivision (d) of Section 3273.61.

23 (d) The arbitration procedure authorized by this section shall
24 be decided by a panel of three arbitrators under the American
25 Arbitration Association's Commercial Arbitration Rules and
26 Mediation Procedures and the American Arbitration
27 Association-International Centre for Dispute Resolution Final
28 Offer Arbitration Supplementary Rules except to the extent they
29 conflict with this section.

30 (e) *The covered platform and the eligible digital journalism*
31 *providers shall each pay one-half of the cost of administering the*
32 *arbitration proceeding, including arbitrator compensation, expenses,*
33 *and administrative fees, shall be shared equally between the*
34 *covered platform and the eligible digital journalism providers.*
35 *fees.*

36 (f) The arbitrators shall be appointed in accordance with the
37 American Arbitration Association's Commercial Arbitration Rules
38 and Mediation Procedures.

39 (g) During a final offer arbitration proceeding under this section,
40 all of the following shall apply:

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

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

8 (2) Rules regarding the admissibility of evidence ~~applicable in~~
9 ~~federal court~~ *under the American Arbitration Association's*
10 *Commercial Arbitration Rules and Mediation Procedures* shall
11 apply.

12 (3) Eligible digital journalism providers and the covered
13 platform shall each submit a final offer proposal for the
14 remuneration that the eligible digital journalism providers should
15 receive from the covered platform for access to the content of the
16 eligible digital journalism providers during the period under
17 arbitration based on the value that access provides to the platform.
18 The final offer proposals shall include backup materials sufficient
19 to permit the other party to replicate the proffered valuation.

20 (4) ~~A discussion or final offer~~ *proposal* pursuant to this section
21 shall not address whether or how the covered platform or any
22 eligible digital journalism provider displays, ranks, distributes,
23 suppresses, promotes, throttles, labels, filters, or curates the content
24 of the eligible digital journalism providers or any other person.

25 (h) (1) Not later than 60 days after the date proceedings begin
26 pursuant to subdivision (c), the arbitration panel shall determine
27 the percentage of the covered platform's advertising revenue
28 remitted to notifying eligible digital journalism providers from a
29 final offer from one of the parties without modification.

30 (2) In making a determination pursuant to paragraph (1), the
31 arbitration panel shall do all of the following:

32 (A) Refrain from considering any value conferred upon any
33 eligible digital journalism provider by the covered platform for
34 distributing or aggregating its content as an offset to the value
35 created by that eligible digital journalism provider, unless the
36 covered platform does not automatically access and extract
37 information from an eligible digital journalism provider's internet
38 website.

1 (B) Consider past incremental revenue contributions as a guide
2 to the future incremental revenue contribution by any eligible
3 digital journalism provider.

4 (C) Consider the pricing, terms, and conditions of any available,
5 comparable commercial agreements between parties granting
6 access to digital content, including pricing, terms, and conditions
7 relating to price, duration, territory, and the value of data generated
8 directly or indirectly by the content accounting for any material
9 disparities in negotiating power between the parties to those
10 commercial agreements.

11 (D) ~~Consider~~ *If submitted with a final offer proposal, consider*
12 the eligible digital journalism provider's previous compliance with
13 Section 3273.66, if applicable.

14 (E) ~~Issue a binding, reasoned determination~~ *standard binding*
15 *arbitration award* of the percentage of the covered platform's
16 advertising revenue remitted to notifying eligible digital journalism
17 providers.

18 (3) Any party to the arbitration proceeding may elect to appeal
19 the decision of the arbitration panel ~~to a second arbitration panel~~
20 *pursuant to Section 3273.68* on the grounds of a procedural
21 irregularity.

22 (i) If the covered platform and ~~the~~ any eligible digital journalism
23 providers *have given notice under Section 3273.61* reach a
24 settlement in lieu of arbitration, the settlement shall not waive the
25 eligible digital journalism provider's obligations pursuant to
26 Section 3273.66 and shall not settle for an amount other than the
27 final offer proposals submitted by the parties pursuant to paragraph
28 (3) of subdivision (g).

29 (j) No fewer than 24 months after the end of an arbitration
30 proceeding, any party to the proceeding may elect to reinitiate the
31 arbitration process.

32 3273.65. (a) A covered platform shall not retaliate against an
33 eligible digital journalism provider for asserting its rights under
34 this title by refusing to index content or changing the ranking,
35 identification, modification, branding, or placement of the content
36 of the eligible digital journalism provider on the covered platform.

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

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

3273.66. (a) ~~An~~(1) *Except as provided in paragraph (2), an eligible digital journalism provider shall spend at least 70 percent of funds received pursuant to this title on news journalists and support staff employed by the eligible digital journalism provider.*

(2) *An eligible digital journalism provider with five or fewer employees shall spend at least 50 percent of funds received pursuant to this title on news journalists and support staff employed by the eligible digital journalism provider.*

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

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

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

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

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

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

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

1 (5) The total number of news journalists and support staff
2 employed by the eligible digital journalism provider, including
3 the number of news journalists and support staff hired or terminated
4 during the previous year.

5 (b) No later than one year after the end of an arbitration
6 proceeding described in Section 3273.64 or reaching a settlement
7 in lieu of an arbitration proceeding, and each year thereafter, the
8 eligible digital journalism provider shall publish a copy of the
9 report described in subdivision (a) online in a text-searchable
10 format and provide a copy to the news journalists and support staff
11 employed by the eligible digital journalism provider, any
12 representatives of those news journalists or support staff, and the
13 covered platforms paying usage fees to the eligible digital
14 journalism provider.

15 *3273.68. Nothing in this title shall be construed as amending*
16 *or repealing the ability of an eligible digital journalism provider*
17 *or a covered platform to avail themselves of Section 526 of the*
18 *Code of Civil Procedure or any other existing remedy at law.*

19 ~~3273.68.~~

20 3273.69. (a) This title does not modify, impair, expand, or in
21 any way alter rights pertaining to Title 17 of the United States
22 Code or the Lanham Act (15 U.S.C. 1051 et seq.).

23 (b) This title does not abridge or impair rights otherwise reserved
24 by news journalists, support staff, or their representatives according
25 to applicable law or existing collective bargaining agreements.

26 SEC. 4. The provisions of this act are severable. If any
27 provision of this act or its application is held invalid, that invalidity
28 shall not affect other provisions or applications that can be given
29 effect without the invalid provision or application.