

STATE OF NEW YORK

7866

IN SENATE

January 3, 2024

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to journalism usage fees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 21-A of the general business law is renumbered
2 article 21-B and a new article 21-A is added to read as follows:

ARTICLE 21-A

JOURNALISM USAGE FEES

Section 338. Definitions.

338-a. Journalism usage fee payments; notice.

338-b. Journalism usage fees; arbitration.

§ 338. Definitions. The following terms, whenever used or referred to in this article, shall have the following meanings:

1. "Access" means to acquire, crawl, or index content.

2. "Advertising revenue" means revenue generated through the sale of digital advertising impressions that are served to customers through an online platform, regardless of whether such impressions are served on internet websites or accessed through online or mobile applications, and contain references to content from eligible digital journalism providers.

3. a. "Covered platform" means an online platform that at any point during a twelve-month period meets either of the following criteria:

(i) The online platform has at least fifty million United States-based monthly active users or subscribers on the online platform.

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

(1) United States net annual sales or a market capitalization greater than five hundred fifty billion dollars, adjusted annually for inflation on the basis of the consumer price index published by the United States bureau of labor statistics.

(2) At least fifty billion worldwide monthly active users on the online platform.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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

4 4. "Eligible broadcaster" means an entity that meets all of the
5 following criteria:

6 a. The entity holds or operates under a license issued by the federal
7 communications commission under Subchapter III (commencing with Section
8 301) of Chapter 5 of Title 47 of the United States Code.

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

15 c. The entity updates its content on at least a weekly basis.

16 d. The entity uses an editorial process for error correction and clar-
17 ification, including a transparent process for reporting errors or
18 complaints to the station.

19 5. "Eligible digital journalism provider" means an eligible publisher
20 or eligible broadcaster that discloses its ownership to the public.

21 6. "Eligible publisher" means an entity that publishes a qualifying
22 publication.

23 7. "Notifying eligible digital journalism provider" means an entity
24 that has provided notice to a covered platform pursuant to section three
25 hundred thirty-eight-a of this article that the entity is an eligible
26 digital journalism provider.

27 8. "Online platform" means an internet website, online or mobile
28 application, digital assistant, or online service that does both of the
29 following:

30 a. Serves references to news articles, works of journalism, or other
31 content, or portions thereof, generated, created, produced, or owned by
32 an eligible digital journalism provider.

33 b. Aggregates, displays, provides, distributes, or directs users to
34 content described in paragraph a of this subdivision.

35 9. "Qualifying publication" means an internet website, online or
36 mobile application, or other digital service that meets all of the
37 following criteria:

38 a. The internet website, online or mobile application, or other
39 digital service does not primarily display, provide, distribute, or
40 offer content generated, created, produced, or owned by an eligible
41 broadcaster or television network.

42 b. The internet website, online or mobile application, or other
43 digital service provides information to an audience in the state.

44 c. The internet website, online or mobile application, or other
45 digital service performs a public information function comparable to
46 that traditionally served by newspapers and other periodical news publi-
47 cations.

48 d. The internet website, online or mobile application, or other
49 digital service engages professionals to create, edit, produce, and
50 distribute original content concerning local, regional, national, or
51 international matters of public interest through activities, including
52 conducting interviews, observing current events, or analyzing documents
53 and other information, and fact checking through multiple firsthand or
54 secondhand news sources.

55 e. The internet website, online or mobile application, or other
56 digital service updates its content on at least a weekly basis.

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

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

7 (i) The internet website, online or mobile application, or other
8 digital service generated at least one hundred thousand dollars in annu-
9 al revenue from its editorial content in the previous calendar year.

10 (ii) The internet website, online or mobile application, or other
11 digital service had an International Standard Serial Number assigned to
12 an affiliated periodical before January first, two thousand twenty-four.

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

17 h. The internet website, online or mobile application, or other
18 digital service has at least twenty-five percent of its editorial
19 content consisting of information about topics of current local,
20 national, or international public interest.

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

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

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

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

31 (iv) The entity is designated as a specially designated global terror-
32 ist organization under federal Executive Order 13224.

33 (v) The entity is an affiliate of an entity described in subparagraph
34 (i), (ii), (iii) or (iv) of this paragraph.

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

38 § 338-a. Journalism usage fee payments; notice. 1. An eligible digital
39 journalism provider that submits a notice to a covered platform pursuant
40 to subdivision two of this section shall receive journalism usage fee
41 payments from such covered platform pursuant to section three hundred
42 thirty-eight-b of this article beginning not more than thirty days
43 following the submission of such notice.

44 2. The notice described in subdivision one of this section shall meet
45 all of the following criteria:

46 a. The notice identifies the eligible digital journalism provider.

47 b. The notice certifies, not under penalty of perjury, that the eligi-
48 ble digital journalism provider reasonably believes that it is either an
49 eligible broadcaster or an eligible publisher.

50 c. The notice identifies the root uniform resource locators for the
51 internet websites associated with the eligible digital journalism
52 provider's digital content.

53 § 338-b. Journalism usage fees; arbitration. 1. The percentage of a
54 covered platform's advertising revenue remitted to notifying eligible
55 digital journalism providers shall be determined pursuant to this
56 section.

1 2. Eligible digital journalism providers may initiate, pursuant to
2 rule R-4 of the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures, a final offer arbitration
3 against a covered platform for an arbitration panel to determine the
4 percentage of the covered platform's advertising revenue remitted to the
5 notifying eligible digital journalism provider.

6
7 3. The arbitration procedure authorized by this section shall commence
8 ten days after the receipt of the notice required by section three
9 hundred thirty-eight-a of this article.

10 4. The arbitration procedure authorized by this section shall be
11 decided by a panel of three arbitrators under the American Arbitration
12 Association's Commercial Arbitration Rules and Mediation Procedures and
13 the American Arbitration Association-International Centre for Dispute
14 Resolution Final Offer Arbitration Supplementary Rules except to the
15 extent they conflict with this section.

16 5. The cost of administering the arbitration proceeding, including
17 arbitrator compensation, expenses, and administrative fees, shall be
18 shared equally between the covered platform and the eligible digital
19 journalism provider.

20 6. The arbitrators shall be appointed in accordance with the American
21 Arbitration Association's Commercial Arbitration Rules and Mediation
22 Procedures.

23 7. During a final offer arbitration proceeding under this section all
24 of the following shall apply:

25 a. (i) Eligible digital journalism providers and covered platform may
26 demand the production of documents and information that are nonprivi-
27 leged, reasonably necessary, and reasonably accessible without undue
28 expense.

29 (ii) Documents and information described in subparagraph (i) of this
30 paragraph shall be exchanged not later than thirty days after the date
31 the demand is filed.

32 b. Rules regarding the admissibility of evidence applicable in federal
33 court shall apply.

34 c. Eligible digital journalism providers and a covered platform shall
35 each submit a final offer proposal for the remuneration that the eligi-
36 ble digital journalism provider should receive from the covered platform
37 for access to the content of the eligible digital journalism provider
38 during the period under arbitration based on the value such access
39 provides to the platform, which shall include backup materials suffi-
40 cient to permit the other party to replicate the proffered valuation.

41 d. A discussion or final offer under this section shall not address
42 whether or how the covered platform or any eligible digital journalism
43 provider displays, ranks, distributes, suppresses, promotes, throttles,
44 labels, filters, or curates the content of the eligible digital journal-
45 ism provider or any other person.

46 e. (i) Not later than sixty days after the date proceedings commence
47 pursuant to subdivision three of this section, the arbitration panel
48 shall determine the percentage of the covered platform's advertising
49 revenue remitted to notifying eligible journalism providers from a final
50 offer from one of the parties without modification.

51 (ii) In making a determination under subparagraph (i) of this para-
52 graph, the arbitration panel shall do all of the following:

53 (1) Refrain from considering any value conferred upon any eligible
54 digital journalism provider by the covered platform for distributing or
55 aggregating its content as an offset to the value created by that eligi-
56 ble digital journalism provider.

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

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

10 (4) Issue a binding, reasoned determination of the percentage of the
11 covered platform's advertising revenue remitted to notifying eligible
12 digital journalism providers.

13 § 2. This act shall take effect immediately.