

STATE OF NEW YORK

7811

2023-2024 Regular Sessions

IN ASSEMBLY

June 15, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Consumer Affairs and 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:

Section 1. Article 21-A of the general business law is renumbered 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

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

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1 on the basis of the consumer price index published by the United States
2 bureau of labor statistics.

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

5 b. "Covered platform" does not mean an organization exempt from feder-
6 al income taxation pursuant to Section 501(c)(3) of the Internal Revenue
7 Code of 1986.

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

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

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

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

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

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

25 6. "Eligible publisher" means an entity that publishes a qualifying
26 publication.

27 7. "Notifying eligible digital journalism provider" means an entity
28 that has provided notice to a covered platform pursuant to section three
29 hundred thirty-eight-a of this article that the entity is an eligible
30 digital journalism provider.

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

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

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

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

42 a. The internet website, online or mobile application, or other
43 digital service does not primarily display, provide, distribute, or
44 offer content generated, created, produced, or owned by an eligible
45 broadcaster or television network.

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

48 c. The internet website, online or mobile application, or other
49 digital service performs a public information function comparable to
50 that traditionally served by newspapers and other periodical news publi-
51 cations.

52 d. The internet website, online or mobile application, or other
53 digital service engages professionals to create, edit, produce, and
54 distribute original content concerning local, regional, national, or
55 international matters of public interest through activities, including
56 conducting interviews, observing current events, or analyzing documents

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

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

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

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

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

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

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

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

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

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

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

33 (iii) The entity is a terrorist organization, as defined in Section
34 1182 of Title 8 of the United States Code.

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

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

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

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

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

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

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

54 c. The notice identifies the root uniform resource locators for the
55 internet websites associated with the eligible digital journalism
56 provider's digital content.

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

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

11 3. The arbitration procedure authorized by this section shall commence
12 ten days after the receipt of the notice required by section three
13 hundred thirty-eight-a of this article.

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

20 5. The cost of administering the arbitration proceeding, including
21 arbitrator compensation, expenses, and administrative fees, shall be
22 shared equally between the covered platform and the eligible digital
23 journalism provider.

24 6. The arbitrators shall be appointed in accordance with the American
25 Arbitration Association's Commercial Arbitration Rules and Mediation
26 Procedures.

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

29 a. (i) Eligible digital journalism providers and covered platform may
30 demand the production of documents and information that are nonprivi-
31 leged, reasonably necessary, and reasonably accessible without undue
32 expense.

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

36 b. Rules regarding the admissibility of evidence applicable in federal
37 court shall apply.

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

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

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

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

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

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

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

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

17 § 2. This act shall take effect immediately.