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:

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 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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b. "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.

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

a. The entity 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.

b. The entity 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, and fact checking through multiple firsthand or secondhand news sources.

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

d. The entity uses an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the station.

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

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

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

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

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

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

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

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

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

c. The internet website, online or mobile application, or other digital service performs a public information function comparable to that traditionally served by newspapers and other periodical news publications.

d. The internet website, online or mobile application, or other digital service 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, or analyzing documents and other information, and fact checking through multiple firsthand or secondhand news sources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The notice identifies the eligible digital journalism provider.

b. 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.

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

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

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

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

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

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

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

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

a. (i) Eligible digital journalism providers and covered platform may demand the production of documents and information that are nonprivileged, reasonably necessary, and reasonably accessible without undue expense.

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

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

c. Eligible digital journalism providers and a covered platform shall each submit a final offer proposal for the remuneration that the eligible digital journalism provider should receive from the covered platform for access to the content of the eligible digital journalism provider during the period under arbitration based on the value such access provides to the platform, which shall include backup materials sufficient to permit the other party to replicate the proffered valuation.

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

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

(ii) In making a determination under subparagraph (i) of this paragraph, the arbitration panel shall do all of the following:

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

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

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

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

§ 2. This act shall take effect immediately.