

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify that the scope of the limitation of liability under the bill or any joint negotiation, agreement, or arbitration award under the bill must relate to the pricing, terms, and conditions under which covered platforms may access the content of eligible digital journalism providers, and to strike the language added under amendment HEN22775.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

S. 673

To provide a temporary safe harbor for publishers of online content to collectively negotiate with dominant online platforms regarding the terms on which content may be distributed.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Ms. KLOBUCHAR to the amendment (No. _____) proposed by Ms. KLOBUCHAR

Viz:

1 On page 26, strike line 12 and all that follows
2 through page 27, line 10, and insert the following:

3 (c) NOTIFICATION OF AGREEMENTS AND ARBITRA-
4 TION DECISIONS.—

5 (1) AGREEMENTS.—The parties to any written
6 agreement, resulting from a negotiation under sec-
7 tion 3 or implementing an arbitration decision issued

1 under section 4, shall file a copy of such agreement
2 with the Federal Trade Commission and the Assist-
3 ant Attorney General in charge of the Antitrust Di-
4 vision of the Department of Justice not later than
5 60 days after such agreement is executed.

6 (2) ARBITRATION DECISIONS.—The parties to
7 any arbitration decision issued under section 4, shall
8 file a copy of such decision with the Federal Trade
9 Commission and the Assistant Attorney General in
10 charge of the Antitrust Division of the Department
11 of Justice not later than 60 days after such decision
12 is issued.

13 (3) PUBLIC DISCLOSURE.—The Federal Trade
14 Commission shall make the documents submitted
15 under subsection (c) available to the public on the
16 Federal Trade Commission’s website.

17 **SEC. 6. NONDISCRIMINATION, RETALIATION, AND TRANS-**
18 **PARENCY.**

19 (a) NONDISCRIMINATION.—

20 At the appropriate place in section 2, add the fol-
21 lowing:

22 (_____) TERMS AND CONDITIONS.—The term
23 “terms and conditions” does not include any term or
24 condition which relates to the use, display, pro-

1 motion, ranking, distribution, curation, suppression,
2 throttling, filtering, or labeling of the content or
3 viewpoint of any person.

4 In section 2(10)(B), strike clause (viii) and insert the
5 following:

6 (viii) employed not more than 1,500 exclu-
7 sive full-time employees during the 12-month
8 period prior to the date of enactment of this
9 Act; and

10 In section 3(a)(1)(A), strike “terms” and insert
11 “pricing, terms,”.

12 In section 3(a)(2)(B)(i), strike “terms” and insert
13 “pricing, terms,”.

14 Strike section 3(b)(1) and insert the following:

15 (1) Any negotiation conducted under this sec-
16 tion shall be conducted in good faith and solely to
17 reach an agreement regarding the pricing, terms,
18 and conditions under which the covered platform
19 may access the content of the eligible digital jour-
20 nalism providers.

1 (2) No pre-agreement discussions or agreement
2 reached regarding pricing, terms, and conditions
3 under this section may address whether or how the
4 covered platform or any such eligible digital jour-
5 nalism provider—

6 (A) displays, ranks, distributes, suppresses,
7 promotes, throttles, labels, filters, or curates
8 the content of the eligible digital journalism
9 providers; or

10 (B) displays, ranks, distributes, sup-
11 presses, promotes, throttles, labels, filters, or
12 curates the content of any other person.

13 In section 3(b)(4), in the matter preceding subpara-
14 graph (A), strike “terms” and insert “pricing, terms,”.

15 In section 3(b)(4)(A), strike “terms” and insert “the
16 pricing, terms,”.

17 In section 4(a)(1), strike “terms” and insert “pric-
18 ing, terms,”.

19 Strike section 4(d)(5)(D) and insert the following:

20 (D) the joint negotiation entity and cov-
21 ered platform shall each submit a final offer

1 proposal for the pricing, terms, and conditions
2 under which the content displayed, provided,
3 distributed, or offered by a qualifying publica-
4 tion of any eligible publisher that is a member
5 of the joint negotiation entity will be accessed
6 by the covered platform, and which shall in-
7 clude the remuneration that the eligible pub-
8 lishers should receive from the covered platform
9 for programmatic access to the content of the
10 eligible publishers that are members of the joint
11 negotiation entity during the period under nego-
12 tiation based on the fair market value of such
13 access, which shall include backup materials
14 sufficient to permit the other party to replicate
15 the proffered valuation;

16 (E) no discussion or final offer under this
17 section may address whether or how the covered
18 platform or any such eligible digital journalism
19 provider—

20 (i) displays, ranks, distributes, sup-
21 presses, promotes, throttles, labels, filters,
22 or curates the content of the eligible digital
23 journalism providers; or

24 (ii) displays, ranks distributes, sup-
25 presses, promotes, throttles, labels, filters

1 or curates the content of any other person;
2 and

3 In section 4(e)(2)(C), strike “terms” and insert
4 “pricing, terms.”

5 Strike section 5(a) and insert the following:

6 (a) IN GENERAL.—In accordance with sections 3 and
7 4, it shall not be in violation of the antitrust laws for any
8 eligible digital journalism providers that are members of
9 a joint negotiation entity to—

10 (1) jointly deny a covered platform access to
11 content for which the eligible digital journalism pro-
12 viders, individually or jointly, have the right to nego-
13 tiate or arbitrate access with respect to the covered
14 platform; and

15 (2) participate in joint negotiations and arbitra-
16 tion, as members of the joint negotiation entity, with
17 such covered platform solely regarding the pricing,
18 terms, and conditions under which the covered plat-
19 form may access the content for which the eligible
20 digital journalism providers, individually or jointly,
21 have the right to negotiate or arbitrate access with
22 respect to the covered platform.

1 At the end of section 5, add the following:

2 (d) LIMITATION REGARDING THE SCOPE OF LIMITA-
3 TION OF LIABILITY.—No antitrust immunity shall apply
4 to any negotiations, discussions, agreements, or arbitra-
5 tions relating to the use, display, promotion, ranking, dis-
6 tribution, curation, suppression, throttling, filtering, or la-
7 beling of the content of the eligible digital journalism pro-
8 vider or of any other person. The limitation of liability
9 under this section shall apply only to negotiations, discus-
10 sions, agreements, or arbitrations regarding the pricing,
11 terms, and conditions under which the covered platform
12 may access the content of the eligible digital journalism
13 provider, not to any discussions or agreements that dif-
14 ferentiate content based on the viewpoint expressed by
15 such content.

16 In section 6(e)(1), in the matter preceding subpara-
17 graph (A), strike “terms” and insert “pricing, terms,”.

18 In section 7(b)(1)(B), strike “terms” each place the
19 term appears and insert “pricing, terms,”.