SYNOPSIS AS INTRODUCED:

New Act

Creates the Journalism Preservation Act. Provides that specified online platforms shall track and record, on a monthly basis, the total number of times the online platform's websites link to, display, or present a digital journalism provider's news articles, works of journalism, or other content that are displayed or presented to Illinois residents and remit a journalism usage fee payment to each digital journalism provider who has satisfied specific requirements. Sets forth provisions concerning notice requirements; fee payments; calculation of fees; arbitration; non-retaliation; funding for journalists and support staff; reporting requirements; preservation of rights; and severability.
AN ACT concerning journalism.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Journalism Preservation Act.

Section 5. Findings.

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

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

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

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

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

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

(g) Quality local journalism is key to sustaining civic society, strengthening communal ties, and providing information at a deeper level that national outlets cannot
(h) When surveyed, 73% of adults in the United States say they have confidence in their local newspaper.

Section 10. Definitions. As used in this Act:

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

"Advertising revenue" means revenue generated through the sale of digital advertising impressions that are served to customers in this State through an online platform, regardless of whether those impressions are served on websites or accessed through online or mobile applications.

"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 (1) the total number of the covered platform's Internet web pages displayed or presented to Illinois 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 by (2) the total number of the covered platform's Internet web pages displayed or presented to Illinois 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, less (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.

"Covered platform" means an online platform that, at any
point during a 12-month period, either:

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

(2) is owned or controlled by a person that either
has:

(A) net annual sales in the United States or a
market capitalization greater than $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; or

(B) at least 1,000,000,000 worldwide monthly
active users on the online platform.

"Covered platform" does not mean an organization exempt
from federal income taxation under Section 501(c)(3) of the

"Eligible broadcaster" means a person that:

(1) holds or operates under a license issued by the
Federal Communications Commission under 47 U.S.C. 301 et
seq.;

(2) 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) updates its content on at least a weekly basis; and

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

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

"Eligible publisher" means a person that publishes a qualifying publication.

"News journalist" means a natural person who:

(1) is employed for an average of at least 30 hours per week during a calendar year by an eligible digital journalism provider; and

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

"Notifying eligible digital journalism provider" means an
entity that has provided notice to a covered platform as described in Section 15 that the entity is an eligible digital journalism provider.

"Online platform" means a website, online or mobile application, digital assistant, or online service that:

(1) accesses news articles, works of journalism, or other content, or portions thereof, generated, created, produced, or owned by an eligible digital journalism provider; and

(2) aggregates, displays, provides, distributes, or directs users to content described in paragraph (1) of this definition.

"Qualifying publication" means a website, online or mobile application, or other digital service that:

(1) does not primarily display, provide, distribute, or offer content generated, created, produced, or owned by an eligible broadcaster;

(2) provides information to an audience in this State;

(3) performs a public information function comparable to that traditionally served by newspapers and other periodical news publications;

(4) 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;
(5) updates its content at least 52 weeks in a calendar year;
(6) has an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the publication; and
(7) meets any of the following criteria:
   (A) generated at least $100,000 in annual revenue from its editorial content in the previous calendar year;
   (B) had an International Standard Serial Number assigned to an affiliated periodical before submitting notice to a covered platform under Section 15; or
   (B) is owned or controlled by an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;
(8) has at least 25% of its editorial content consisting of information about topics of current local, regional, national, or international public interest; or
(9) is not controlled, or wholly or partially owned by, an entity that:
   (A) is a foreign power or an agent of a foreign power, as those terms are defined in 50 U.S.C. 1801;
   (2) is designated as a foreign terrorist organization under 8 U.S.C. 1189;
(3) is a terrorist organization, as defined in 8 U.S.C. 1182;
(4) is designated as a specially designated global terrorist organization under federal Executive Order 13224;
(5) is an affiliate of an entity described in subparagraph (1), (2), (3), or (4); and
(6) has been convicted of violating, or attempting to violate 18 U.S.C. 2331, 2332b, or 2339A.

"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 State or federal law.

"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.

Section 15. Notice requirements for journalism usage fee payments.
(a) On or before January 1, 2025, all eligible digital journalism providers that want to receive journalism usage fee payments under this Act shall submit notice to a covered platform as described in subsection (b). All eligible digital journalism providers that submit the notice shall receive
journalism usage fee payments from covered platforms as described in Section 20 beginning no later than 30 days after the end of the arbitration process described in Section 25. Digital journalism providers may provide notice to a covered platform as described in subsection (b) after the initial arbitration has concluded; however, notice received from an eligible digital journalism provider after January 1, 2025, shall not prompt any adjustment to the percentage of advertising revenue that has previously been determined under the most recent arbitration proceeding conducted as described in Section 25.

(b) The notice described in subsection (a) shall:

1. identifies the eligible digital journalism provider and the authorized representative of the eligible digital journalism provider;

2. 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; and

3. identifies the root uniform resource locators for the websites associated with the eligible digital journalism provider's digital content.

(c) No later than 30 days after submitting a notice described in subsection (b), the eligible digital journalism provider shall distribute a copy of the notice to the news journalists and support staff that it employs and their
representatives, if any, and publish a copy of the notice online in a text-searchable format.

(d) No later than 30 days after the deadline described in subsection (a), or after receiving a notice as described in subsection (a), the covered platform shall send a reply notice to the authorized representative identified in subsection (b) to acknowledge the receipt of the notice.

(e) A covered platform that receives as described in paragraph (b) may, within 30 days after receiving the notice, challenge:

(1) the sufficiency of the notice; and
(2) the noticing party's qualification as an eligible digital journalism provider.

Section 20. Journalism usage fee calculations.

(a) A covered platform shall track and record, on a monthly basis, for each eligible digital journalism provider that submits a notice as described in Section 15, the total number of times the covered platform's websites link to, display, or present the eligible digital journalism provider's news articles, works of journalism, or other content, or portions thereof, and that the covered platform has displayed or presented to Illinois residents, regardless of whether the content appears in a language other than English.

(b) A covered platform shall, on a monthly basis, use the data collected under subsection (a) to calculate the
allocation share for each notifying eligible digital journalism provider.

(c) One percent of the journalism usage fee shall be paid to eligible digital journalism providers that produce at least 30,000 annual search occurrences in Illinois searches or 10,000 annual social media impressions from Illinois.

(d) Within 10 days after the end of each month, a covered platform shall remit a journalism usage fee payment to each notifying eligible digital journalism provider that is equal to a percentage of the covered platform's advertising revenue generated during that month multiplied by the eligible digital journalism provider's allocation share for that month.

(e) If an eligible digital journalism provider fails to comply with Section 40, a covered platform may withhold journalism usage fee payments until the eligible digital journalism provider has provided a copy of the report described in subsection (a) of Section 40 to the covered platform and has published a copy of the report online as described in subsection (b) of Section 40.

Section 25. Arbitration.

(a) The percentage of the covered platform's advertising revenue remitted to notifying eligible digital journalism providers shall be determined as described in this Section. Eligible digital journalism providers shall jointly participate in the final offer arbitration process described
in this Section with each covered platform to determine a single percentage of advertising revenue from which future monthly allocation shares will be allotted.

(b) Within 10 days after the receipt of the reply notice required by subsection (d) of Section 15, an eligible digital journalism provider may initiate, under Rule R-4 of the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures, a final offer arbitration against the covered platform for an arbitration panel to determine the percentage of the covered platform's advertising revenue remitted to the notifying eligible digital journalism providers.

(c) The arbitration procedure authorized by this subsection shall commence 10 days after the receipt of the reply notice described in subsection (d) of Section 15.

(d) The arbitration procedure authorized by this subsection shall be decided by a panel of 3 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.

(e) The covered platform and the eligible digital journalism providers shall each pay one-half of the cost of administering the arbitration proceeding, including arbitrator compensation, expenses, and administrative fees.
(f) The arbitrators shall be appointed in accordance with the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures.

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

1. Eligible digital journalism providers and the covered platform may demand the production of documents and information that are non-privileged, reasonably necessary, and reasonably accessible without undue expense. Documents and information shall be exchanged no later than 30 days after the date the demand is filed.

2. Rules regarding the admissibility of evidence under the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures shall apply.

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

4. A final offer proposal 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 providers or any other person.

(h) No later than 60 days after the date proceedings begin as described in subsection (c), the arbitration panel shall determine the percentage of the covered platform's advertising revenue remitted to notifying eligible digital journalism providers from a final offer from one of the parties without modification.

(1) In making a determination, the arbitration panel shall:

(A) 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, unless the covered platform does not automatically access and extract information from an eligible digital journalism provider's website;

(B) consider past incremental revenue contributions as a guide to the future incremental revenue contribution by any eligible digital journalism provider;

(C) 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;

(D) if submitted with a final offer proposal, consider the eligible digital journalism provider's previous compliance with Section 40, if applicable; and

(E) issue a standard binding arbitration award of the percentage of the covered platform's advertising revenue remitted to notifying eligible digital journalism providers.

(2) Any party to the arbitration proceeding may elect to appeal the decision of the arbitration panel as described in subsection (j) on the grounds of a procedural irregularity.

(i) If the covered platform and any eligible digital journalism providers have given notice under Section 15 reach a settlement in lieu of arbitration, the settlement shall not waive the eligible digital journalism provider's obligations as described in Section 40 and shall not settle for an amount other than the final offer proposals submitted by the parties as described in paragraph (3) of subsection (g).
(j) No fewer than 24 months after the end of an arbitration proceeding, any party to the proceeding may elect to restart the arbitration process.

Section 30. Non-retaliation.

(a) A covered platform shall not retaliate against an eligible digital journalism provider for asserting its rights under this 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.

(b) An eligible digital journalism provider that is retaliated 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.

Section 35. Funding for journalists and support staff.

(a) An eligible digital journalism provider shall spend at least 70% of funds received under this Act on news journalists and support staff employed by the eligible digital journalism provider, except that an eligible digital journalism provider with 5 or fewer employees shall spend at least 50% of funds received under this Act 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 25 or upon 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 subsection (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 subsection (a) shall include a 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.

Section 40. Reporting requirements.

(a) No later than one year after the end of an arbitration proceeding described in Section 25 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:

(1) an attestation as to whether the eligible digital journalism provider has complied with subsection (a) of Section 35;

(2) the text of the digital journalism provider's plan
to comply with subsection (a) of Section 35;

(3) the total number of journalism usage fees received from covered platforms;

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

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

(b) No later than one year after the end of an arbitration proceeding described in Section 25 or reaching a settlement in lieu of an arbitration proceeding, and each year thereafter, the eligible digital journalism provider shall publish a copy of the report described in subsection (a) online in a text-searchable format and provide a copy to the news journalists and support staff employed by the eligible digital journalism provider, any representatives of those news journalists or support staff, and the covered platforms paying journalism usage fees to the eligible digital journalism provider.
Section 45. Preservation of rights.

(a) Nothing in this Act shall be construed as amending or repealing the ability of an eligible digital journalism provider or a covered platform to seek a preliminary or permanent injunction or any other existing remedy at law or equity.

(b) This Act does not modify, impair, expand, or in any way alter rights pertaining to the federal Lanham Act (15 U.S.C. 1051 et seq).

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

Section 50. Severability. The provisions of this Act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.