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**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 886 (Wicks)  
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**SUBJECT**

California Journalism Preservation Act

**DIGEST**

This bill establishes the California Journalism Preservation Act (CJPA), which establishes two mechanisms through which digital journalism providers, as defined, can obtain compensation from very large online platforms for the value that the platforms derive from accessing the digital journalism providers' websites and other digital services.

**EXECUTIVE SUMMARY**

Journalists and journalism providers hold power to account, expose fraud and corruption, and challenge official narratives. They shine light in dark corners and dig up what's been buried. They inform voters, foster communities, and bring people together. In words attributed to Walter Cronkite, "[f]reedom of the press is not just important to democracy, it *is* democracy."

The guarantee of a free press, however, is meaningless if there is no press. As this Committee heard at its December 2023 informational hearing, "The Importance of Journalism in the Digital Age," many of California's news providers are struggling. News outlets large and small are experiencing revenue losses that have led to staff cuts and reductions in coverage. Local news, in particular, is suffering; since the 1990s, many local news outlets have closed entirely, transforming communities that cannot sustain a print or digital news organization into "news deserts." The widespread loss of local news isn't just bad for the individual communities; as explained by Northwestern University's Medill School of Journalism, it's bad for society as a whole:

The loss of local journalism has been accompanied by the malignant spread of misinformation and disinformation, political polarization, eroding trust in media, and a yawning digital and economic divide among

citizens. In communities without a credible source of local news, voter participation declines, corruption in both government and business increases, and local residents end up paying more in taxes and at checkout.<sup>1</sup>

The author and sponsors of this bill assert that the problems facing news providers stem, in large part, from the shift from print news to digital news. They argue that the platform-based model of the internet – wherein a few platforms serve as curators of content and control a substantial portion of the ad sales market – unfairly deprives them of the actual value they provide to the platforms.

This bill establishes the California Journalism Preservation Act (CJPA), which is intended to require very large online platforms – those with net annual sales or market capitalization of \$550,000,000,000, or over 1,000,000,000 worldwide active monthly users – to pay digital news providers, as defined, for the value that the platforms gain from accessing the providers’ websites. The CJPA gives covered platforms two options for determining the size of the payment: (1) the platform may pay an annual lump sum – the amount of which will be determined further along in the legislative process – and distribute that sum to qualifying digital journalism providers; or (2) the covered platform may elect to arbitrate the amount of the annual payment, in which case the platform and the providers will engage in the arbitration procedure outlined in the bill. The funds received under either option will be distributed proportionally based on the number of journalists employed by each California digital news publisher, with an option for small publishers to be compensated for amounts spent on independent contractor-journalists. The bill requires that at least 70 percent of the payment received by a digital journalism provider – or 50 percent for small publishers – be spent on news journalists and support staff. The author has agreed to a number of amendments, which are set forth in the Appendix to this analysis.

This bill is sponsored by the California Broadcasters Association and the California News Publishers Association, and is supported by over 40 organizations, including labor groups, consumer protection groups, and publishers. This bill is opposed by over 30 organizations, including tech groups, business organizations, and publishers.

### **PROPOSED CHANGES TO THE LAW**

Existing constitutional law:

- 1) Provides that Congress and the States shall make no law abridging the freedom of the press. (U.S. Const., 1st & 14th amends.; see *Gitlow v. People of State of New York*

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<sup>1</sup> Penny Abernathy, *The State of Local News 2022*, Northwestern University (Jun. 29, 2022), available at <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/>. All links in this analysis are current as of June 20, 2024.

(1925) 268 U.S. 652, 666 (First Amendment guarantees apply to the states through the due process clause of the Fourteenth Amendment).)

- 2) Provides that no State shall deprive any person of life, liberty, or property without due process of law. (U.S. Const., 14th amend.)
- 3) Provides that a law may not restrain or abridge liberty of speech or press. (Cal. Const., art I, § 2.)

Existing federal law:

- 1) Establishes the Copyright Act of 1976 (the Copyright Act), which establishes copyright protections in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. (17 U.S.C. §§ 101 et seq.)
- 2) Provides that, on and after January 1, 1978, all legal or equitable rights equal to those within the scope of the Copyright Act are governed exclusively by the Copyright Act, and no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State. (17 U.S.C. § 301.)
- 3) Provides that nothing in 2) annuls or limits any rights or remedies under the common law or statutes of any State with respect to:
  - a) Subject matter that does not come within the subject matter of 1), including works of authorship not fixed in any tangible medium of expression.
  - b) Any cause of action arising from undertakings commenced before January 1, 1978.
  - c) Activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright, as defined.
  - d) State and local landmarks, historic preservation, zoning or building codes, relating to architectural works, as defined. (17 U.S.C. § 301(b).)
- 4) Establishes the Sherman Antitrust Act of 1890 (Sherman Antitrust Act), which prohibits every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce. (15 U.S.C. §§ 1-7.)

Existing state law:

- 1) Establishes the Public Broadcasting Act of 1975, which establishes the California Public Broadcasting Commission, which is tasked with developing and supporting a statewide policy to encourage the orderly growth and development of public broadcasting service responsive to the informational, cultural, and educational needs of the people of California. (Gov. Code, tit. 2, div. 1, ch. 10, §§ 8800 et seq.)

- 2) Requires the California Public Broadcasting Commission to perform its duties in a manner that will assure the maximum freedom of the public broadcasting stations and systems from interference with or control of program content, scheduling, or other activities. (Gov. Code, § 8827.)

This bill:

- 1) Establishes the California Journalism Preservation Act (CJPA).
- 2) Makes findings and declarations about the importance of a free and diverse press and quality local journalism.
- 3) Defines relevant terms, including:
  - a) "Access" means to acquire, to crawl, or to index.
  - b) "Advertising revenue" means revenue generated through the sale of digital advertising impressions that are served to customers in the State through an online platform, regardless of whether those impressions are served on internet websites or accessed through online or mobile applications.
  - c) "Covered platform":
    - i. Means an online platform that, any point during a 12-month period, either has at least 50,000,000 United States-based monthly active users on the online platform, or is owned or controlled by a person with either United States net annual sales or a market capitalization greater than \$550 billion adjusted annually for inflation on the basis of the Consumer Price Index, or at least one billion worldwide monthly active users on the online platform.
    - ii. Excludes a platform that is either a 501(c)(3) nonprofit or a company where at least 50 percent of its annual revenue, as calculated at the level of the ultimate corporate parent, is from the manufacturing and sales of company-branded devices and hardware to consumers.
  - d) "Digital journalism provider" means a publisher or eligible broadcaster that discloses its ownership to the public.
  - e) "Eligible broadcaster" means a person that meets specified criteria, engaging professionals to create, edit, produce, and distribute original content concerning local, regional, national, or international matters of public interest, and updating its content on at least a weekly basis.
  - f) "News journalist" means a natural person who is both (1) employed for an average of at least 30 hours per week during a calendar quarter by the digital journalism provider; and (2) 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.

- g) "Online platform" means an internet website, online or mobile application, digital assistant, or online service that accesses news articles, works of journalism, or other content, as specified.
  - h) "Publisher" means a person that publishes a qualifying publication.
  - i) "Qualified arbitrator" means an arbitration organization that has established arbitration rules and procedures for at least one year prior to the initiation of the arbitration.
  - j) "Qualifying publication" means an internet website, online or mobile application, or other digital service that meets specified criteria.
  - k) "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 applicable state or federal law.
- 4) Requires a covered platform to either:
- a) Make an annual payment, in an amount to be determined, to compensate digital journalism providers, as set forth in 13)-15).
  - b) Participate in the arbitration process set forth in 16)-29).
- 5) Requires a covered platform to make distributions of the payments required pursuant to 4) by doing either of the following:
- a) Engaging an approved claims administrator to administer the distributions, the cost of which shall be paid in addition to the amount paid under 5); the claims administrator must have experience administrating settlements in complex cases in the State of California, as specified.
  - b) Distributing the payments directly to the digital journalism providers, the cost of which shall be paid in addition to the amount under 4).
- 6) Requires an administrator engaged under 5)(a) to do all of the following:
- a) Prepare an annual statement of account related to the distribution activities, certified by a certified public accountant.
  - b) Identify a point of contact for digital journalism provider inquiries with timely redress.
  - c) Establish policies to resolve disputes, guard against fraud and abuse, and ensure that any undistributable funds are reallocated among participating digital journalism providers after a reasonable holding period.
  - d) Publish on its website and the covered platform's website an annual report detailing nonconfidential operations of the fund, including the digital journalism providers that received compensation and the amount paid.
- 7) Requires a platform that distributes the payments directly under 5)(b) to retain a qualified auditor to examine relevant books and records with respect to the distributions as part of an annual audit.

- 8) Requires a covered platform, on or before April 1, 2025, to identify a point of contact for email or other electronically communicated digital journalism provider inquiries.
- 9) Requires a digital journalism provider that wishes to receive payments under 4) to submit notice to the point of contact by May 1, 2025.
- 10) Provides that a digital journalism provider that, after utilizing the dispute resolution process established under 6), is aggrieved by the decision of the payment distributor may initiate an arbitration of the dispute by a qualified arbitrator; the payment distributor shall pay the cost of the arbitrator.
- 11) Provides that any compensation received by a digital journalism provider through a commercial agreement for access to content by the covered platform prior to the payment under 4) shall be deducted from its allocation.
- 12) Requires a covered platform, beginning no later than March 1, 2025, to compile and post on its website a list of digital journalism providers that the platform accessed for a California audience during the preceding 12 months.
  - a) The covered platform must establish a designated request to which a request for the list from a digital journalism provider may be submitted.
  - b) Upon request from a digital journalism provider, the covered platform must provide the list to the provider within three days after the request is submitted.
- 13) If a covered platform elects to make an annual payment under 4), the payment shall be made to compensate digital journalism providers for accessing the websites of the providers.
- 14) The annual payment under 13) shall be distributed as follows, with the amounts to be annually adjusted for increases in the Consumer Price Index:
  - a) No less than one percent of the amount shall be paid to digital journalism providers that would receive less than \$25,000 pursuant to (b), to be distributed proportionally among those providers based on the number of journalists employed at each provider.
  - b) The remaining amount shall be paid proportionally to each digital journalism provider based on the number of news journalists employed by each provider.
  - c) A digital journalism provider with five or fewer employees may elect the alternative formula for compensation set forth in 16).
- 15) A digital journalism provider with five or fewer employees may count money paid to freelancers as an employed news journalist for purposes of calculating its proportional share of the annual payment under 13), as follows:
  - a) The digital journalism provider may count only amounts paid to freelancers who perform the equivalent functions of a news journalist.

- b) The digital journalism provider must employ at least one news journalist for the primary purpose of producing content for a California audience.
  - c) Each \$40,000 spent by a digital journalism provider in the previous calendar year to compensate a natural person freelancer may claim to employ the equivalent of one news journalist, up to a maximum of \$160,000 (the equivalent of four news journalists), with these amounts annually adjusted for increases in the Consumer Price Index.
  - d) The total number of news journalists and their equivalents may not exceed the number of natural persons compensated by the digital journalism provider.
- 16) If a covered platform elects to participate in the arbitration process under 5), the covered platform shall pay an amount determined in the arbitration process as set forth below in 17)-29).
- 17) Provides that, in an arbitration initiated pursuant to 16), the arbitrator shall determine only the percentage of the covered platform's revenue remitted to participating digital journalism providers.
- 18) Provides that digital journalism providers participating in the arbitration process under 16) shall jointly participate in the arbitration process with a covered platform, and shall jointly determine a single proposed percentage of the covered platform's revenues to be distributed as ordered by the arbitrator.
- 19) Requires, within 30 days after a covered platform posts the list of journalism providers' websites that the covered platform accessed within the preceding year pursuant to 12), participating journalism providers to establish, by majority vote, rules and procedures to govern decisionmaking regarding the arbitration proposal or any settlement reached pursuant to 22); each eligible digital journalism provider shall be entitled to one vote on any matter submitted to a vote of the members.
- 20) Permits the covered platform or digital journalism providers to initiate a final offer arbitration with a qualified arbitrator for an arbitration panel to determine the percentage of the covered platform's advertising revenue remitted to the participating digital journalism providers; each digital journalism provider may be individually represented.
- 21) Requires, prior to commencement of the arbitration, a platform and digital journalism providers to engage in 60 days of mediation to attempt to reach a settlement.
- a) If no agreement is reached, the final offer arbitration shall commence 10 days after the conclusion of the mediation period.
  - b) If an agreement is reached, the arbitrator may approve the agreement and the parties will not proceed to arbitration.

- 22) Provides that the arbitration procedure in 16) shall be decided by a panel of three arbitrators affiliated with the qualified arbitrator under the rules of the arbitrator, except to the extent those rules conflict with the requirements of this bill.
- 23) Provides that the covered platform and the digital journalism providers shall each pay one-half of the cost of administering the arbitration proceeding, including arbitrator compensation, expenses, and administrative fees; the digital journalism providers' share of the costs shall be deducted from the amount awarded before the calculation in 27).
- 24) Provides that each party in the arbitration procedure may engage in discovery, as provided, that are relevant to the single percentage of a covered platform's advertising revenue to be awarded to participating digital journalism providers and that are nonprivileged, reasonably necessary, and reasonably accessible without undue expense; the documents must be exchanged not later than 30 days after the date the demand is filed.
- 25) Provides that the covered platform and the digital journalism providers shall each submit a final offer proposal for the remuneration that the digital journalism providers should receive from the covered platform for access to websites or other digital services of the 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.
- a) A final offer proposal shall not address whether or how the covered platform or any digital journalism provider displays, ranks, distributes, suppresses, promotes, throttles, labels, filters, or curates the content of the digital journalism providers or any other person.
  - b) The arbitration panel, in making its decision, shall do all of the following:
    - i. Refrain from considering any value conferred upon any 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 a digital journalism provider's website.
    - ii. Consider past incremental revenue contributions as a guide to the future incremental revenue contribution by any digital journalism provider.
    - iii. 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.
    - iv. Consider the eligible digital journalism provider's previous compliance with 32), if applicable.

- v. Issue a binding, reasoned determination of the percentage of the covered platform's advertising revenue remitted to participating digital journalism providers.
  - c) Any party to the arbitration may elect to appeal the decision of the arbitration panel to a second arbitration panel on the grounds of a procedural irregularity.
- 26) Provides, if the covered platform and journalism providers reach a settlement in lieu of arbitration, the settlement shall not waive the digital journalism provider's obligations pursuant to 31).
- 27) Provides that a final award under the arbitration procedure in 16) to a jointly participating group of digital journalism providers shall be distributed proportionally to each digital journalism provider by the number of journalists employed by each publication for the primary purpose of producing content for a California news audience, or their freelance equivalent, except as provided in 28).
  - a) A digital journalism provider with five or fewer employees, at least one of whom is a news journalist for the primary purpose of producing content in California, may elect to count dollars spent on the equivalent functions performed by news journalists.
  - b) A digital news journalism provider may claim to employ one news journalist for each \$40,000 spent to compensate natural persons performing the functions of news journalists, up to a maximum of \$160,000 (four journalists), with these amounts annually adjusted for increases in the Consumer Price Index.
  - c) The digital journalism provider may not claim journalist and journalist equivalents that exceed the number of natural persons compensated by the digital journalism provider.
- 28) Provides, notwithstanding 27), that no less than one percent of the arbitration award shall be paid collectively to digital journalism providers that would otherwise receive less than \$25,000, to be distributed proportionally under the same formula as in 28).
- 29) Permits any party to the proceeding, no fewer than 24 months after the end of an arbitration proceeding, may elect to reinstate the arbitration process.
- 30) Prohibits a covered platform from retaliating against a digital journalism provider for asserting its rights under the CIPA by refusing to access content or changing the ranking, identification, modification, branding, or placement of the content of the digital journalism provider on the covered platform.
  - a) A digital journalism provider that is retaliated against may bring a civil action against the covered platform.

- b) This does not affect the right of a covered platform to enforce its terms of service against a journalism provider.
- 31) Requires a digital journalism platform to spend at least 70 percent of funds received pursuant to 5) on news journalists and support staff employed by the digital journalism provider, unless the digital journalism provider has five or fewer employees, in which case it must spend at least 50 percent of the funds on news journalists or support staff employed by the digital journalism provider.
- a) A digital journalism provider with five or fewer employees and at least one news journalist employed for the primary purpose of producing content for a California audience may, in lieu of spending funds on employees, treat each \$40,000 spent in a calendar year to compensate freelancers performing journalism as funds spent to employ a news journalist, for up to an amount of \$160,000, adjusted for inflation. In no instance may a digital journalism provider claim more employees and equivalents than the number of persons compensated by the provider.
  - b) No later than 30 days after receiving a payment under 4), a digital journalism provider must provide notification in writing of its plan to comply with this obligation to the news journalists or support staff employed by the digital journalism provider and any representatives of those news journalists or support staff.
  - c) The digital journalism provider's plan to comply with this obligation 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 are not expected.
- 32) Requires a digital journalism provider, no later than one year after receiving a payment under 4), and each year thereafter, to compile a report that includes specified information, including the total number of payments under 5) received from covered platforms and the total number of news journalists and support staff, respectively, employed by the digital journalism news provider, including the number of news journalists and support staff, respectively, hired or terminated during the previous year.
- 33) Requires a digital journalism provider, no later than one year after receiving a payment under 4), to publish a copy of the report in 32) online in a text-searchable format and provide a copy to the news journalists and support staff employed by the digital journalism provider, any representatives of those news journalists or support staff, and the covered platforms making the payments to the digital journalism provider.
- 34) Provides that, if a digital journalism provider fails to comply with 32), a covered platform may withhold payments under 4) until the digital journalism provider has

provided a copy of the report to the covered platform and has published a copy of the report online.

- 35) Provides that nothing in the CJPA shall be construed as amending or repealing the availability of a digital journalism provider or a covered platform to avail themselves of injunctive relief pursuant to Code of Civil Procedure section 526.
- a) A digital journalism provider may seek and obtain injunctive relief to compel compliance with the act.
  - b) If a digital journalism provider brings an action for injunctive relief, court costs and attorney's fees shall be awarded to a prevailing digital journalism provider.
- 36) States that the CJPA does not:
- a) Modify, impair, expand, or in any way alter the rights pertaining to the Copyright Act or the Lanham Act.
  - b) Abridge or impair rights otherwise reserved by news journalists, support staff, or their representatives according to applicable law or existing collective bargaining agreements.
- 37) Contains a severability clause.

## COMMENTS

### 1. Author's comment

According to the author:

A free and diverse press is the backbone of a healthy and vibrant democracy. Studies show that communities without local journalism suffer consequences, from declining civic engagement and lower voter turnout, to higher taxes and increased corruption.

As news consumption has moved onto the internet, community news outlets have downsized and closed at alarming rates. California has lost more than 100 newspapers in the last decade. A Northwestern study published last year found an two and a half newspapers in the United States close every week, and that our nation has lost two-thirds of its newspaper journalists since 2005.

It's not that no one reads or watches news anymore. It's the fact that as news moved online, massive, monopolistic technology platforms coerced newsrooms to share the original content journalists produce, which the platforms sell advertising against, while providing little to no compensation in return.

The California Journalism Preservation Act (CJPA) directs the very largest tech platforms to compensate journalism publications for accessing content. Platforms

are provided a choice: either pay journalism providers a predetermined annual fee or enter into arbitration and pay an amount determined by a neutral party.

Money is distributed to individual publishers based on a headcount of journalists they employ. To be counted, a journalist must be employed for the primary purpose of producing content for a California audience. In newsrooms of 6 or more, 70% of any payout must be invested back into journalism jobs. The bill also provides special consideration to small publications, even those with only one employee who work with freelancers. These publishers – with 5 or less staff – are compensated relative to their newsroom budgets.

The CJPA provides a lifeline for news outlets. The economies which support quality journalism and the technological advances that impact its vitality have never been ignored by American government. Whether adapting to telegraph, radio, broadcast television, and now the Internet, our Fourth Estate has always had the help of lawmakers to bolster its standing because of our shared belief that a free press is vital to our democracy. Allowing rank-and-file journalism to continue to atrophy has never been this country's approach when journalism has faced challenges. We've always made space for the Fourth Estate in our discourse, because without it, our civic health is at great risk.

Framers of the US Constitution understood that a government of, for, and by the people requires an informed citizenry. No enterprise is more important to this precept than a thriving, free press.

## 2. Democracy needs news, and news needs journalists

The First Amendment to the United States Constitution states that “congress shall make no law...abridging the freedom...of the press.”<sup>2</sup> As explained by Justice Hugo Black, with this guarantee,

...the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government.<sup>3</sup>

To that end, courts have recognized that the First Amendment protects the publication of matters ranging from the federal government's national security policy<sup>4</sup> to vituperative accounts of local politics<sup>5</sup> to crass political satire.<sup>6</sup>

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<sup>2</sup> U.S. Const., 1st amend.

<sup>3</sup> *New York Times Co. v. U.S.* (1971) 403 U.S. 713, 717 (conc. opn. of Black, J.)

<sup>4</sup> *Id.*, at p. 714 (maj. opn., per curium).

<sup>5</sup> *Greenbelt Co-op. Pub. Ass'n v. Bresler* (1970) 398 U.S. 6, 14-15.

For the most part, discussions about the importance of a free press or the availability of news are, more fundamentally, discussions about the importance of journalists. A newspaper that merely reprints stories gathered and written by others – sometimes known as a “ghost paper”<sup>7</sup> – does not add meaningful societal value. For communities to thrive, they need local news sources with actual journalists who can chase down stories, follow leads, and ask the questions that powerful people hope they don’t ask.

The indispensability of journalists has taken on new urgency with the rise of generative AI.<sup>8</sup> Bot-generated articles have been around for a while, and now several tech companies, including Google, Meta, and ChatGPT, are developing increasingly sophisticated AI tools that can scour the internet for information and produce news summaries that obviate the reader’s need to click through to an actual publisher. Publishers themselves are also reportedly relying on AI, rather than journalists, to generate stories.<sup>9</sup> The point is not that AI does not have its uses in journalism,<sup>10</sup> but that, without journalists doing actual reporting, AI-generated news will be useless – an ouroboros of summaries of summaries. Accordingly, any discussion of saving news must include a discussion of how to make sure that there are paying jobs for journalists.

### 3. Background on the rise of digital news, the decline of print media, and the loss of local news

In the 1970s and 1980s, around 60 million to 64 million daily U.S. newspapers were circulated each day.<sup>11</sup> Circulation began falling in the 1990s, and took a sharp downward turn in the mid-aughts.<sup>12</sup> This curve coincides with the widespread adoption of the internet, as more individuals turned to online sources for news.

Today, Americans consume their news on digital devices rather than in print by a significant margin: according to the Pew Research Center, as of 2022, 49 percent of U.S. adults often, and 33 percent sometimes, got their news from digital devices, while 8 percent of adults often, and 25 percent sometimes, got their news from print

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<sup>6</sup> *Hustler Magazine, Inc. v. Falwell* (1988) 485 U.S. 46, 50-51.

<sup>7</sup> See, e.g., Cross, *Rural Mirages: Shattered papers and ‘ghosts’ without local news*; (Dec. 5, 2023), <https://localnewsinitiative.northwestern.edu/posts/2023/12/05/ghost-newspaper-solutions/>.

<sup>8</sup> “AI” stands for “artificial intelligence.”

<sup>9</sup> E.g., Wu, *Gannett halts AI-written sports recaps after readers mocked the stories*, *Washington Post* (Aug. 31, 2023), <https://www.washingtonpost.com/nation/2023/08/31/gannett-ai-written-stories-high-school-sports/>.

<sup>10</sup> For example, reporters used data mining technology to organize and make sense of the documents that led to the Panama Papers story. (Guevara, *How Artificial Intelligence Can Help Us Crack More Panama Papers Stories*, *International Consortium of Investigative Journalists* (Mar. 25, 2019), <https://www.icij.org/inside-icij/2019/03/how-artificial-intelligence-can-help-us-crack-more-panama-papers-stories/>.)

<sup>11</sup> Pew Research Center, *Newspaper Fact Sheet* (Jun. 29, 2021), <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>.

<sup>12</sup> *Ibid.*

publications.<sup>13</sup> Conversely, a mere 8 percent of adults reported that they never consumed news on digital devices, and 33 percent of adults reported that they never got their news in print.<sup>14</sup>

Since 2005, the country has lost almost one-third of its newspapers, or almost 2,900 publications.<sup>15</sup> Newspaper closures disproportionately affect smaller communities and, in most cases, no digital or print replacement comes to fill the gap, leaving these communities without a reliable source of local news.<sup>16</sup> Northwestern University's Medill School of Journalism reports that "more than half of U.S. counties have no, or very limited, access to a reliable local news source – either print, digital, or broadcast."<sup>17</sup> "In addition to losing almost a third of its newspapers, the country has lost almost two-thirds of its newspaper journalists...many of the large dailies owned by chains employ less than a fifth of the journalists on staff in 2005."<sup>18</sup> The quality of local news also appears to decrease when local newspapers are purchased by private equity firms, consistent with these firms' interest in cutting costs (including labor costs) so as to maximize profits.<sup>19</sup> As of 2021, hedge funds or private equity firms were estimated to control half of U.S. daily newspapers.<sup>20</sup>

Research also suggests that users who get their news online increasingly rely on social media platforms for news – such as TikTok, Instagram, and YouTube – rather than traditional news sources.<sup>21</sup> While relying on social media for news is not a problem per se, it is unclear how much of the news consumed on social media platforms comes from a source that results in compensation for the organization that paid for the news to be gathered. In other words, it's fine to get news through video on TikTok; but when a video is made by a person who summarizing or discussing facts gathered by journalists and published in a newspaper, the ad revenue goes to the summarizer, not the journalist and newspaper that made the video possible.

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<sup>13</sup> Forman-Katz & Matsa, News Platform Fact Sheet, Pew Research Center (Sept. 20, 2022),

<https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

<sup>14</sup> *Ibid.* Television and radio sources are in the middle, popularity-wise, with 31 percent and 13 percent of adults, respectively, reporting consuming from those sources "often." (*Ibid.*)

<sup>15</sup> Abernathy, The State of Local News 2023, Northwestern Medill Local News Initiative (Nov. 16, 2023), <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/report/#executive-summary>.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Ewens, Gupta, & Howell, *Local Journalism under Private Equity Ownership* (April 2, 2023) pp. 19-23, available at <https://ssrn.com/abstract=3939405>.

<sup>20</sup> Helmore, *Fears for future of American journalism as hedge funds flex power*, The Guardian (Jun. 21, 2021), <https://www.theguardian.com/media/2021/jun/21/us-newspapers-journalism-industry-hedge-funds>.

<sup>21</sup> Lorenz, *Content creators surge past legacy media as news hits a tipping point*, Washington Post (Oct. 31, 2023), <https://www.washingtonpost.com/technology/2023/10/31/creator-economy-news-outlets-influencers/>.

#### 4. The economics of news

In the 20th century, print media generally got most of their revenues from ad sales, with subscription payments providing a respectable, but much smaller, portion.<sup>22</sup> The transition from exclusively print media to a predominantly digital media landscape wrought havoc on that model.<sup>23</sup> As paper subscriptions declined, thereby reducing ad revenues from print media, the revenues from digital advertising did not make up for those losses.<sup>24</sup> As a result, U.S. newspapers' revenues are significantly lower than they were at the end of the 20th century and the beginning of the 21st.<sup>25</sup> The reduced revenues have, in turn, led to a loss of employment in newsrooms.<sup>26</sup>

As more news is consumed digitally, publishers are increasingly reliant on online platforms to disseminate their content and for the generation of ad revenues.<sup>27</sup> Two of those platforms—Google (which owns YouTube) and Meta (which owns Facebook and Instagram)—are the two largest advertising companies in the world.<sup>28</sup> Google's parent company, Alphabet Inc., reported \$307,394,000,000 in revenues in 2023; 77 percent of those revenues, or \$237,855,000,000, was ad revenue from Google and YouTube.<sup>29</sup> For the same year, Meta reported \$134,902,000,000 in revenues, of which \$131,948,000,000—or 97.8 percent—was ad revenue.<sup>30</sup> Together, the two companies account for over 50 percent of all digital ad revenues in the United States.<sup>31</sup>

According to the author and sponsors, these platforms' practices—and other large platforms, such as Amazon and TikTok—have reduced news providers' revenues in two ways.

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<sup>22</sup> Pew Research Center, *Newspapers Fact Sheet* (Nov. 10, 2023), <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>.

<sup>23</sup> See, e.g., Adgate, *Global Ad Revenue For Print Struggles, As Total Ad Revenue Nears \$1 Trillion*, *Forbes* (Mar. 7, 2023), <https://www.forbes.com/sites/bradadgate/2023/03/07/global-ad-revenue-for-print-struggles-as-total-ad-revenue-nears-1-trillion/?sh=155a2a70275a> (in 1980, print media advertising accounted for 62.4 percent of global ad spending).

<sup>24</sup> E.g., Chung, Kim, & Song, *The Comprehensive Effects of a Digital Paywall Sales Strategy*, Harvard Business School Working Paper 19-118 (2019) p. 2.

<sup>25</sup> E.g., Pew Research Center, *Newspaper Fact Sheet*, *supra*.

<sup>26</sup> *Ibid.*

<sup>27</sup> Bell & Owen, *The Platform Press: How Silicon Valley reengineered journalism*, *Columbia Journalism Review* (Mar. 29, 2017), [https://www.cjr.org/tow\\_center\\_reports/platform-press-how-silicon-valley-reengineered-journalism.php](https://www.cjr.org/tow_center_reports/platform-press-how-silicon-valley-reengineered-journalism.php).

<sup>28</sup> E.g., Adgate, *supra*.

<sup>29</sup> Alphabet Inc., Form 10-K for the fiscal year ended December 31, 2023, pp. 34-35, available at <https://www.abc.xyz/assets/43/44/675b83d7455885c4615d848d52a4/goog-10-k-2023.pdf>.

<sup>30</sup> Meta Platforms, Inc., Form 10-K for the fiscal year ended December 31, 2023, pp. 74, 75, available at <https://investor.fb.com/financials/sec-filings-details/default.aspx?FilingId=17229405>.

<sup>31</sup> Statista, *Shares of ad-selling companies in digital advertising revenue in the United States from 2020 to 2025* (Mar. 20, 2024), <https://www.statista.com/statistics/242549/digital-ad-market-share-of-major-ad-selling-companies-in-the-us-by-revenue/>.

First, they argue that the platforms display news providers' content on their own pages (e.g., in a Google search result or a Facebook post) in a way that displays so much of the linked content that the reader does not click through to the news site. In this case, the reader gets the information provided by the news provider – who in turn paid for the work of the journalist – but, because the reader never clicked through to the news provider's page, the news provider gets no ad revenue for the information they spent money to generate.

Second, the author and sponsors argue that the platforms' market power allows them, in their roles as ad sales brokers, to keep a higher percentage of ad revenues than a news provider would have had to pay to a print ad broker. For example, Google's AdX – also known as DoubleClick for Publishers – connects publishers who want to sell ad space to companies that want to buy digital ads; the author and sponsors argue that Google's cut of the payment from the advertiser to the publisher is far higher than it would be in a truly competitive digital ad market. The United States Department of Justice, the State of California, and 15 other states have alleged something similar, in a pending antitrust lawsuit against Google.<sup>32</sup> The suit alleges that Google, through its dominance in the search market<sup>33</sup> and strategic acquisitions of ad tech firms, has taken control of both sides of the digital ad sales transaction so effectively that potential competitors are unable to enter the market.<sup>34</sup> As a result, the suit alleges, Google is able to charge higher prices for ads and extract a far higher fee for connecting publishers to advertisers than it would in an efficient market – upwards of 30 percent of each advertising dollar spent.<sup>35</sup> The lawsuit is set for a bench trial in September 2024.

#### 5. This bill requires very large online platforms to pay digital news providers for the value they provide to the platforms

This bill establishes the California Journalism Preservation Act (CJPA), which is intended to require very large online platforms – those with over \$550,000,000 in net annual sales or market capitalization, or over 1,000,000,000 worldwide active monthly users – to pay digital news providers, as defined, for the value the providers provide to the platforms. The CJPA was originally adapted from a federal bill introduced in 2022 and held up in committee,<sup>36</sup> but recent author's amendments move it further away from the federal model.

The CJPA requires online platforms covered by the bill to compensate digital journalism providers who provide news services to readers in the state, on an annual basis, for the

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<sup>32</sup> See *U.S. v. Google LLC* (E.D. Va.) Case No. 1:23-cv-00108\_LMB-JFA.

<sup>33</sup> The United States Department of Justice and 49 states – all of them except Alabama – have filed an antitrust suit against Google for allegedly engaging in anticompetitive practices with respect to its search engine. (See *U.S. v. Google LLC* (D.D.C.) Case No. 1:20-cv-03010.) The trial concluded in May of this year and the court has yet to issue an opinion. (See *ibid.*)

<sup>34</sup> See *U.S. v. Google LLC* (E.D. Va.) Case No. 1:23-cv-00108-LMB-JFA, Amended Complaint (Dkt. No. 120).

<sup>35</sup> *Ibid.*

<sup>36</sup> See S. 673, H.R. 1735 (117th Cong, 2021-2011).

value that the platforms gain from accessing the providers' websites. The CJPA gives covered platforms two options for determining the size of the annual payment: (1) the covered platform may pay a lump sum – the amount of which will be determined further along in the legislative process – and distribute that sum to qualifying digital journalism providers; or (2) the covered platform may elect to arbitrate the amount of the value, in which case the platform and the providers will engage in an arbitration procedure.

If the platform chooses option (1), it may elect to distribute the money to eligible digital journalism providers directly, or it may retain a qualified claims administrator to perform that role. The bill establishes procedures by which digital journalism providers may opt in to receive annual payments and the procedures by which the payments will be distributed.

If the platform chooses option (2), the arbitration will proceed in a two-party manner: the platform on one side, and all of the participating digital journalism providers on the other. After conducting discovery, each side presents to a three-arbitrator panel its proposal for how much of the platform's revenue should be awarded to the digital journalism providers, based on the party's assessment of the value the platform obtains by accessing the providers' websites. The arbitration panel will select one of the two offers and enter an order for the covered platform to pay that amount to the digital journalism providers on an annual basis. The arbitration process can be reinitiated no fewer than 24 months after an arbitration order is entered, at which point a new valuation will be assessed and a superseding order will be entered.

Under both options, the annual payments will be disbursed to participating digital journalism providers proportionally on a per-journalist basis; small publishers may also obtain compensation for amounts spent on freelance reporters, provided certain conditions are met. Additionally, participating digital journalism providers who would receive less than \$25,000 under this formula will receive, to split among themselves, at least one percent of the total award. Digital journalism providers must spend at least 70 percent – or 50 percent, for small publishers – of the funds received through the CJPA on journalists and support staff. Each digital journalism provider must publish an annual report setting forth how it has used the funds.

The bill provides procedures and remedies for disputes that arise and for alleged noncompliance. The bill also prohibits an online platform from retaliating against a digital journalism provider for exercising its rights under the CJPA; retaliation includes refusing to access the provider's content, or changing the ranking, identification, modification, branding, or placement of the content on the online platform.

The author has agreed to a number of amendments in response to concerns from stakeholders and this Committee. Those amendments are discussed further in Part 8 of this analysis and set forth in the Appendix.

## 6. Similar efforts in other countries

While federal legislation in this space has stalled, several other countries have enacted similar regimes intended to compel online platforms to pay digital news providers for the value they provide. The most salient examples come from Australia and Canada.

### *a. Australia*

In March 2021, Australia implemented a mandatory code of conduct that requires online platforms “designated” by the government to engage in arbitration with Australian news publishers in a procedure similar to the one in this bill (but without the express option of a lump-sum payment).<sup>37</sup> The law was intended address a “significant bargaining power imbalance” between Australian news businesses and certain online platforms.<sup>38</sup> No platforms have been designated under the law, however; Google and Meta worked out deals with Australian publishers that allowed them to avoid designation for arbitration.<sup>39</sup> The exact amounts paid under these deals are unknown and the details are “guarded like they’re nuclear launch codes.”<sup>40</sup>

At one point in the legislative process, Facebook pulled all news links from its platform, but it resumed linking to news a deal was reached.<sup>41</sup> This year, Meta again announced that it will stop paying Australia news publishers for content;<sup>42</sup> it is yet to be seen whether Australia will designate Facebook or Instagram to force an arbitration.

### *b. Canada*

In 2023, Canada enacted the Online News Act. Like the Australian law, the Online News Act requires large platforms to arbitrate with news providers; unlike the Australian law, it includes an express off-ramp for platforms that reach payment deals with Canadian news providers.<sup>43</sup> Meta, rather than arbitrate or bargain, stopped

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<sup>37</sup> Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act of 2021 (No. 21, 2021), available at <https://www.legislation.gov.au/C2021A00021/latest/text>.

<sup>38</sup> See Australian Competition & Consumer Commission, News media bargaining code, <https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code>.

<sup>39</sup> Grueskin, *Australia pressured Google and Facebook to pay for journalism. Is America next?*, Columbia Journalism Review (Mar. 9, 2022), available at [https://www.cjr.org/business\\_of\\_news/australia-pressured-google-and-facebook-to-pay-for-journalism-is-america-next.php](https://www.cjr.org/business_of_news/australia-pressured-google-and-facebook-to-pay-for-journalism-is-america-next.php).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Kaye & Jackson, *Facebook owner Meta angers Australia with plan to stop paying for news content*, Reuters (Mar. 1, 2024), <https://www.reuters.com/technology/meta-says-will-no-longer-pay-traditional-news-content-australia-france-germany-2024-03-01/>.

<sup>43</sup> Online News Act, C-18, S.C. 2023, c. 23., available at <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent>.

allowing users to display news content on its platforms.<sup>44</sup> Google chose Option B and, in a deal reflected in the Online News Act's regulations, agreed to pay Canadian news outlets C\$100 million annually (around \$70 million).<sup>45</sup> Google recently selected a media collective that will distribute the payments to eligible Canadian news publishers.<sup>46</sup>

There is no consensus on whether Canadian news publishers – or Canadians – are better or worse off as a result of the Online News Act. Some trumpet the law and the deal with Google as a victory for publishers.<sup>47</sup> Others fear that it has done more harm than good. Some argue that the C\$100 million payment is less of a boost than it sounds: in reaching the overall deal, Google ended its existing deals with individual publishers, so they argue that the C\$100 million needs be offset by those losses. Others argue that, taking into account the revenues lost due to being blocked on Facebook, news publishers might actually be worse off. Some small publishers, including Indigenous publishers, reported significant losses in site traffic, and some have gone on hiatus due to the loss of revenues.

It also appears that Meta's refusal to carry news in Canada has led to a sharp rise in "misleading viral clickbait."<sup>48</sup> One preliminary study found that 33 percent of Canadians still used Facebook or Instagram to get news, even though there are no legitimate news sources on the site,<sup>49</sup> giving rise to concerns about the quality of the "news" being consumed.

## 7. Legal issues

### *a. Copyright questions*

Opponents of the bill argue that the CIPA forces platforms to pay digital news providers for accessing their copyrighted works, and is therefore preempted by federal copyright law. The Copyright Act of 1976 (Copyright Act) preempts all state "legal or

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<sup>44</sup> See Meta, Changes to News Availability on Our Platforms in Canada (Jun. 1, 2023),

<https://about.fb.com/news/2023/06/changes-to-news-availability-on-our-platforms-in-canada/>.

<sup>45</sup> Montgomery, *Google to pay Canada news publishers \$73m a year to keep news in search*, The Guardian (Nov. 29, 2023), <https://www.theguardian.com/technology/2023/nov/29/google-canada-online-news-act-agreement-publishers>.

<sup>46</sup> Djuric, *Google signs deal with organizations to distribute \$100M to Canadian news companies*, CBC (Jun. 7, 2024), <https://www.cbc.ca/news/politics/google-canadian-news-companies-1.7228190>.

<sup>47</sup> E.g., Business Wire, *Canada's News Publishers Welcome Online News Act's Final Regulations* (Dec. 15, 2023), <https://www.businesswire.com/news/home/20231215142087/en/Canada%E2%80%99s-News-Publishers-Welcome-Online-News-Act%E2%80%99s-Final-Regulations>.

<sup>48</sup> Cecco & Taylor, *Misleading clickbait is prevalent on Facebook and Instagram and Canada after Meta's news ban. Could it happen in Australia?*, The Guardian (Mar. 5, 2024),

<https://www.theguardian.com/technology/2024/mar/06/misleading-clickbait-is-prevalent-on-facebook-and-instagram-in-canada-after-metas-news-ban-could-it-happen-in-australia>.

According to one professor, "A real-world, newsless Facebook turns out to be more toxic than I had anticipated." (*Ibid.*)

<sup>49</sup> Parker, et al., *When journalism is turned off: Preliminary findings on the effects of Meta's news ban in Canada* (Apr. 2024), p. 2, available at <https://www.mediaecosystemobservatory.com/reports/state-of-the-canadian-media-ecosystem-ldra7>.

equitable rights that are the equivalent of” the rights set forth in the Copyright Act.<sup>50</sup> The Copyright Act does not, however, preempt a state law if “an extra element is required instead of or in addition to the acts of reproduction, performance, distribution or display.”<sup>51</sup> The author and sponsors of the bill argue that the bill’s amended language – requiring a platform to pay for the value platforms derive from “accessing” news providers’ websites – makes clear that the CJPA seeks more than to have the platforms pay for clicks. They assert that matters such as the value of the data collected by platforms through access to publishers’ platforms, the value of the facts made available to the platforms as a result of publishers’ news-gathering efforts,<sup>52</sup> and, more recently, the use of publishers’ works to train AI platforms are all relevant to the necessary valuation, and therefore that the CJPA seeks to vindicate rights not covered by the Copyright Act. No U.S. state has attempted a bill like the CJPA, so there is no precedent to clearly answer this question.

*b. First Amendment questions*

Opponents of the bill argue that the bill’s anti-retaliation provision – or as they call it, a “must-carry” provision – violates the First Amendment of the United States Constitution by forcing a platform to carry content against its will. Private actors generally have a First Amendment right to choose what *not* to publish, because the right to speak freely includes the right not to speak.<sup>53</sup> In February of this year, the United States Supreme Court heard oral argument in two cases on the question of whether that right extends to online social media platforms, thereby allowing them to block or deprioritize content, or ban speakers, at will.<sup>54</sup> The Court invited the Solicitor General of the United States to weigh in; the Solicitor General took the position that platforms’ content-moderation activities are protected speech under the First Amendment.<sup>55</sup> The outcome of these cases – which, unfortunately, might be published after this analysis is released but before the hearing on this bill – will be relevant to this question.

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<sup>50</sup> 17 U.S.C. § 301(a).

<sup>51</sup> *Wrench LLC v. Taco Bell Corp.* (6th Cir. 2001) 256 F.3d 446, 456; *see also* 1 Nimmer on Copyright (2024) The Nature of the Rights Subject to Preemption, § 1.15.

<sup>52</sup> The Berne convention expressly exempts from its protections “news of the day or to miscellaneous facts having the character of mere items of press information,” so while publishers’ *compilations* of facts (i.e., articles and broadcasts) are covered by the Copyright Act, the facts themselves are not. (Berne Convention (Paris text), art. 2, § 8.)

<sup>53</sup> *Miami Herald Pub. Co. v. Tornillo* (1974) 418 U.S. 241, 258.

<sup>54</sup> *See* United States Supreme Court Docket for *NetChoice, LLC v. Paxton*, Case No. 21-51178; United States Supreme Court Docket for *Moody v. NetChoice*, Case No. 21-12355.

<sup>55</sup> Brief for the United States as Amicus Curiae in *Moody v. NetChoice LLC*; *NetChoice LLC v. Moody*; and *NetChoice LLC v. Paxton*, available at

<https://www.supremecourt.gov/docket/docketfiles/html/public/22-555.html>.

*c. Due Process questions*

Opponents of the bill argue that this bill violates the Due Process Clause of the Fourteenth Amendment.<sup>56</sup> They argue that the bill's provision for appealing the award, which permits an appeal only on the basis of procedural irregularity, deny them of the requisite due process. As discussed below, the author has agreed to amend the bill to provide a right to appeal the arbitration award on any basis permitted under the Federal Arbitration Act.

8. Amendments

The author has agreed to a number of amendments to respond to concerns raised by stakeholders and by this Committee. The full mock-up of the amendments is set forth at the Appendix of this analysis. The amendments include:

- Clarifying that a covered platform's payment, under both the lump-sum and arbitration paths, is based on value produced in connection with a California audience.
- Modifying the provisions relating to when a platform is exempt from the CJPA's payment requirement.
- Requiring, as a condition of eligibility for payments, a digital news provider to be in the news business for at least two years.
- Clarifying the payment distribution process, including the procedures by which a digital journalism provider can seek compensation.
- Adding protections for digital journalism providers that publish or broadcast in a language other than English; these were inadvertently removed in the most recent set of amendments.
- Clarifying the arbitration process, including the procedure for the issuance of a final order and commencing a new arbitration procedure for a subsequent order.
- Making clear that a covered platform can offset, from its arbitration-ordered payment, amounts paid in separate commercial agreements with digital journalism providers participating in the arbitration; those amounts will be subtracted from the shares of the digital journalism providers who received the funds pursuant to their commercial agreements, thereby avoiding duplicative payments.
- Permitting a party to appeal the arbitration order under any basis set forth in subdivision (a) of Section 10 of Title 9 of the United States Code.

9. Arguments in support

The bill's supporters all argue that a robust press is vital to democracy, and that this bill is necessary to provide news outlets with the funds to continue their important work. For example, a coalition of consumer advocates argue that:

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<sup>56</sup> U.S. Const., 14th amend.

When it comes to Google/YouTube, Facebook, and threats to ensuring the kind of informed electorate necessary for a minimally functioning democracy, much of the public debate has been about so-called “fake news” spreading and aggressively being algorithmically disseminated via social media sites and so-called “news aggregators”. However there is another, perhaps even more serious, threat to democracy related to these companies: the threat of no news at all.

Large numbers of Californians are increasingly living in what are called “news deserts.” Two local newspapers close every week in the United States. Since 2005, the nation has lost over a quarter of its local publications. That trend is expected to continue, and by 2025, researchers predict the US will lose one third of its local newspapers...

In Europe and Australia, measures similar to AB 886 have successfully improved the bargaining position of news outlets that have zero market power to contest whatever business terms behemoth tech giants like Google and Facebook impose upon them. The result is that, in Europe and Australia, news outlets are hiring again. Rarely are there issues that cut across all of the issues public interest groups care about. Ensuring a vital free press is one of them.

Similarly, the California News Publishers Association, one of the bill’s sponsors, writes:

AB 886 remedies a digital advertising injustice whereby Big Tech aggregates local news to the enrichment of their own sites without bearing any of the costs that publishers incur to employ local journalists and gather and report news vital to their communities. It’s time for big tech to pay market value for the content they siphon from local print, digital and broadcast news publishers. Doing so will help preserve vital local journalism and, under AB 886, produce investments in newsroom expansion.

And the California Labor Federation writes:

Like all workers, journalists’ labor produces value. News workers win their fair share of it through collective bargaining with employers, as protected by the National Labor Relations Act. But, if that value is unfairly captured by third-party tech websites instead of the news publishers that employ journalists, these workers cannot bargain for pay that reflects their actual economic productivity. Meanwhile, newsroom jobs keep disappearing.

AB 886 will require a covered social media website to remit a journalism usage fee to an eligible digital journalism provider, as defined, in an amount determined by a prescribed arbitration process. Specifically, the bill requires the provider to spend at least 70% of the fee received on news journalists and

support staff employed by the provider and 50% on small providers with 5 or fewer employees.

With these reforms, AB 886 will address the growing disparity between the revenue journalists create and the amount available to their employers. By bringing this value back from the social media companies currently collecting so much of it, we can take a major step towards protecting journalism jobs and promoting fairness throughout the industry.

#### 10. Arguments in opposition

The bill's opponents have a range of reasons for their opposition. One frequently raised concern is that the bill's structure will unduly benefit out-of-state publishers rather than enriching local California news providers. For example, the Chamber of Progress argues:

Though intended to help small local news organizations, the CJPA would primarily line the pockets of national conservative media outlets like Fox News, The Daily Caller, and Newsmax.

Our analysis of the CJPA estimates that Fox News would make 643 times as much money as small papers in news deserts, 151 times as much as Latino news outlets, and 844 times as much money as Black California news outlets under the legislation.

Google argues that the CJPA is predicated on misconceptions about the value of news to platforms:

News websites constitute a small slice of the information on the internet. News-seeking queries on Search accounted for under 2% of total queries on Google Search globally in 2022. We do not show ads — or make money — on the vast majority of searches. And we do not run ads on Google News or the news results tab on Google Search. We *do* help news organizations show ads on their websites, apps, and videos. Many news publishers choose to use our advertising tools and platforms. In fact, top news publishers using Ad Manager keep more than 95% of the revenue on average. Every year, we pay out billions of dollars directly to the publishing partners in our ad network.

And a coalition made up of small publishers and digital organizations states:

New language in the bill gives covered platforms two options: either pay an unknown annual fee for “accessing the internet websites of the providers” or enter into arbitration with media outlets producing articles to access their content. That means at its core, the bill remains a tax on content being linked to on websites or on search engines. This approach undermines local publications

seeking to engage with audiences, foster online communities, and generate ad revenue at a grassroots level.

The bill starts from the false premise that digital services somehow “siphon” revenue away from news sites by linking to them and then sending them traffic.<sup>1</sup> While there is a serious crisis in local journalism, this crisis has many causes, as explained by a 2022 report from the U.S. Copyright Office. There is little evidence that online services’ linking to news sites is the cause of this crisis. On the contrary, news sites depend on this linking. The bill itself recognizes this by prohibiting so-called “retaliation;” the news sites get much of their traffic from search engines and news aggregators.

#### 11. Statements of concern

This bill was referred to this Committee over a year ago. In that time, many publishers and organizations representing publishers have weighed in with comments which do not rise to the level of opposition, but which express profound concerns about how the CJPA might affect their businesses. These concerns include:

- Concerns that they will lose more revenues from Google (in the form of Google News licenses) or Meta (in the form of site impressions generated from Facebook or Meta) than they gain from their CJPA payout.
- Concerns that this model will further widen the gap between smaller news providers – including start-ups and ethnic media outlets – and established, legacy news providers, because the pay-out model is based on the publishers’ existing size.
- Concerns that the payments will be paid out to enrich investors rather than to strengthen newsrooms and hire more journalists. While the CJPA requires a portion of the payments received from a platform to go to newsroom staff, money is fungible; there is nothing to stop a hedge fund from replacing its existing payroll funds with CJPA funds, and using those newly freed funds for other purposes.
- Concerns that Meta will follow through on its threat to stop linking to news in California rather than provide payments under the CJPA;<sup>57</sup> many digital-native publications have stated that they could not operate without traffic from Facebook.
- Concerns that Google will follow through on its threat to stop linking to news in California rather than provide payments under the CJPA. Google tested a process for removing links to California news sites in April of this year, “to

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<sup>57</sup> E.g., Li, *Meta threatens to pull news from Facebook, Instagram if California bill passes*, L.A. Times (Jun. 1, 2023), available at <https://www.latimes.com/business/story/2023-06-01/meta-threatens-to-pull-news-from-facebook-instagram-if-california-bill-passes>.

prepare for the possible implications of” the CIPA.<sup>58</sup> Because Google is the most-used search engine by an order of magnitude, being unsearchable on Google would likely cause irreparable damage to many publishers.

### SUPPORT

California Broadcasters Association (co-sponsor)  
California News Publishers Association (co-sponsor)  
Asian-American Journalists Association, Los Angeles  
California Labor Federation  
CAMEO  
CCNMA: Latino Journalists of California  
Children’s Advocacy Institute  
Chino Champion  
Communications Workers of America, District 9  
Consumer Federation of California  
Consumer Protection Policy Center, University of San Diego School of Law  
Consumer Watchdog  
Consumers for Auto Reliability and Safety  
Justice2Jobs Coalition  
Lompoc Record  
Media Alliance  
Media Guild of the West, TheNewsGuild-CWA Local 39213  
Monterey County Weekly  
NABET-CWA  
NABET-CWA Local 51  
NABET-CWA Local 53  
NABET-CWA Region 5  
National Press Photographers Association  
National Writers Union  
News/Media Alliance  
Ojai Valley News  
Orange County Press Club  
Outlook Newspapers  
Pacific Media Workers Guild, TheNewsGuild-CWA Local 39521  
Patterson Irrigator  
Picket Fence Media  
Press Banner  
Public Good Law Center  
Radio Television Digital News Association  
SAG-AFTRA

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<sup>58</sup> E.g., Khan, *Why Is Google Removing News Links for Some Californians?*, KQED (Apr. 18, 2024), <https://www.kqed.org/news/11983333/why-is-google-removing-news-links-for-some-californians> (internal quotation marks omitted).

San Fernando Valley Sun/el Sol  
San Francisco Board of Supervisors  
San Francisco Chronicle/SF Gate  
Santa Maria Times  
Santa Ynez Valley News  
Society of Professional Journalists Los Angeles  
Southern California News Group  
The Hanford Sentinel  
The Kingsburg Recorder  
The Selma Enterprise  
TheNewsGuild-CWA  
Tracy Press  
Transparency Coalition.AI

**OPPOSITION**

Access Humboldt  
ACLU California Action  
Alameda Post  
Author's Alliance  
Broke-Ass Stuart  
BuzzMachine  
California Chamber of Commerce  
CalTax  
Chamber of Progress  
Computer & Communications Industry Association  
Creative Commons  
Crosstown LA  
edhat Santa Barbara  
El Timpano  
Electronic Frontier Foundation  
Free Press Action  
Google  
Internet Society  
James Madison Institute  
Library Futures  
LION Publishers  
Lost Coast Outpost  
NetChoice  
R Street Institute  
Re:Create  
Shasta Scout  
Software & Information Industry Association  
Techdirt

TechFreedom  
TechNet  
The Ingleside Light  
Times of San Diego  
YubaNet.com

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 1327 (Glazer, 2024) imposes a tax on gross receipts derived from data extraction transactions, as defined, and appropriates a certain portion of those revenues for grants to eligible local news organizations, as defined. SB 1327 is pending on the Senate Floor.

AB 1511 (Santiago, 2023) establishes the Ethnic and Community Media Program in the Office of Community Partnerships and Strategic Communications for the purpose of helping state departments integrate ethnic and community media into their marketing, advertising, and outreach strategies. AB 1511 is pending before the Senate Governmental Organization Committee.

Prior Legislation: SB 911 (Glazer, 2022) would have created the California Board to Fund Public Interest Media which would, among other things, encourage independent, local public service news coverage and award grants to individuals or organizations. SB 911 died in the Assembly Appropriations Committee.

AB 1776 (Levine, 2019) would have provided two separate sales and use tax exemptions designed to benefit the newspaper industry. AB 1776 died in the Assembly Appropriations Committee.

#### **PRIOR VOTES:**

Assembly Floor (Ayes 55, Noes 6)  
Assembly Judiciary Committee (Ayes 10, Noes 0)  
Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)

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## Appendix

The proposed amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel make. Additions are bold and in underline; deletions are in strikethrough.

### **THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** This act shall be known as the California Journalism Preservation Act.

**SEC. 2.** The Legislature finds and declares all of the following:

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

(b) California has a compelling interest in protecting businesses that report and distribute news from unfair business practices and competition. Every day, journalism plays an essential role in California 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 percent, and newsroom staff have declined 44 percent.

(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 market media. 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 excellent 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 match.

(h) Seventy-three percent of United States adults surveyed said they have confidence in their local newspaper.

**SEC. 3.** Title 23 (commencing with Section 3273.80) is added to Part 4 of Division 3 of the Civil Code, to read:

**TITLE 23.** Compensation for Journalism Usage

**3273.80.** For purposes of this title, the following definitions apply:

(a) "Access" means to acquire, to crawl, or to index content.

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

(c) (1) "Covered platform" means an online platform that at any point during a 12-month period meets both of the following criteria:

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

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

(i) United States net annual sales or a market capitalization greater than five hundred fifty billion dollars (\$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.

(ii) At least 1,000,000,000 worldwide monthly active users on the online platform.

(2) "Covered platform" does not mean either of the following:

(A) An organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986.

(B) A company ~~where at least~~ **that earns fewer than 50** percent of its annual revenue, as calculated at the level of the ultimate corporate parent, ~~is from the manufacturing and sales of company-branded devices and hardware to consumers~~ **from its online platform, advertising, and search services.**

(d) "Digital journalism provider" means a publisher or eligible broadcaster that discloses its ownership to the public.

(e) "Eligible broadcaster" means a person that meets all of the following criteria:

(1) The person 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, **and has held or operated under the license for the prior two years.**

(2) The person 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) The person updates its content on at least a weekly basis.

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

(f) "News journalist" means a natural person who meets both of the following criteria:

(1) The person is employed for an average of at least 30 hours per week during a calendar quarter by the digital journalism provider.

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

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

(1) Accesses news articles, works of journalism, or other content, or portions thereof, generated, created, produced, or owned by a digital journalism provider.

(2) Aggregates, displays, provides, distributes, or directs users to content described in paragraph (1).

(h) "Publisher" means a person that publishes a qualifying publication.

(i) "Qualified arbitrator" means an arbitration organization that has established arbitration rules and procedures for at least one year prior to the initiation of the arbitration.

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

(1) 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.

(2) The internet website, online or mobile application, or other digital service provides information to an audience in the state **and has done so for the prior two years.**

(3) 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.

(4) The internet website, online or mobile application, or other digital service engages professionals to create, edit, produce, and distribute original content or original content for which a valid license has been obtained 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) The internet website, online or mobile application, or other digital service updates its content on at least a weekly basis.

(6) 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.

(7) The internet website, online or mobile application, or other digital service meets any of the following criteria:

(A) The internet website, online or mobile application, or other digital service generated at least one hundred thousand dollars (\$100,000) in annual revenue from its editorial content in the previous calendar year.

(B) The internet website, online or mobile application, or other digital service had an International Standard Serial Number assigned to an affiliated periodical before January 1, 2025.

(C) 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.

(8) The internet website, online or mobile application, or other digital service has at least 25 percent of its editorial content consisting of information about topics of current local, regional, national, or international public interest.

(9) 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:

(A) 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.

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

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

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

(E) The entity is an affiliate of an entity described in subparagraph (A), (B), (C), or (D).

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

(k) "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 applicable state or federal law.

(l) "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.

**3273.81.** A covered platform shall do either of the following:

(a) Pay at least \_\_\_\_ dollars (\$\_\_\_\_) annually to compensate digital journalism providers for accessing the internet websites of the providers **for a California audience**, where those amounts are annually adjusted for increases in the Consumer Price Index and annually distributed to digital journalism providers as follows:

(1) No less than 1 percent of this amount shall be paid to digital journalism providers that would receive less than twenty-five thousand dollars (\$25,000) pursuant to paragraph (2) to be distributed annually proportionally by the number of news journalists and, subject to subparagraph (B) of paragraph (2) of subdivision (a) of Section 3273.86, freelancers who, in the previous calendar year, were employed by each qualifying publication for the primary purpose of producing content for a California audience among those digital journalism providers, in addition to the amount those providers would receive pursuant to paragraph (2).

(2) Proportionally by the number of news journalists and, subject to subparagraph (B) of paragraph (2) of subdivision (a) of Section 3273.86, freelancers, who, in the previous calendar year, were employed by each qualifying publication for the primary purpose of producing content for a California audience.

(b) Participate in a final arbitration process under Section 3273.84 and fully pay the arbitration award, if any, to the administrator engaged pursuant to subdivision (a) of Section 3273.82 within 30 days of the award, or to each participating digital journalism provider within 90 days of the award.

**3273.82.** (a) A covered platform shall make distributions pursuant to Section 3273.81 by doing either of the following:

(1) Engaging an approved claims administrator to **distribute the annual payments to digital journalism providers** ~~administer the distributions.~~

(A) In selecting an approved claims administrator the covered platform shall ensure that the administrator is well qualified to perform the distribution and has administered multiple settlements in the State of California that comply with complex civil litigation class action settlement guidelines in at least three state or federal courts in California.

(B) The cost of the claims administrator shall be in addition to the amount specified in Section 3273.81.

(2) Distributing **the annual** payments to digital journalism providers itself, the costs of which shall be in addition to the amount specified in Section 3273.81.

(b) An administrator distributing payments pursuant to paragraph (1) of subdivision (a) or a covered platform distributing payments pursuant to paragraph (2) of subdivision (a) shall do all of the following:

(1) Prepare an annual statement of account related to the distribution activities, certified by a certified public accountant.

(2) Identify a point of contact for digital journalism provider inquiries with timely redress.

(3) Establish policies to resolve disputes, guard against fraud and abuse, and ensure that any undistributable funds are reallocated among participating digital journalism providers after a reasonable holding period pursuant to Section 3273.81.

(4) Publish on its internet website ~~and the covered platform's internet website~~ an annual report detailing nonconfidential operations of the fund, including the digital journalism providers that received compensation and the amount paid. **If the covered platform has engaged a claims administrator to administer the distribute the payments, the administrator shall provide the report to the covered platform and the covered platform shall also publish the report on its internet website.**

(c) (1) On or before April 1, 2025, a covered platform shall identify a point of contact for email or other electronically communicated digital journalism provider inquiries.

(2) ~~(A) A digital~~ journalism providers that ~~want~~ wishes to receive an annual payments pursuant to subdivision (a) of Section 3273.81 shall submit notice to the point of contact by May 1, 2025. **The notice shall include, at a minimum, the name of the digital journalism provider, the number of eligible journalists employed or claimed pursuant to Section 3273.86, and a contact person for the publication. The covered platform may institute reasonable measures to verify that the notice was sent by an actual representative of the publication.**

~~(d) (1) A digital journalism provider who, after utilizing in good faith the dispute resolution process established pursuant to paragraph (3) of subdivision (b), is aggrieved by the decision of the payment distributor may initiate an arbitration of the dispute by a qualified arbitrator.~~

~~(2) In an arbitration pursuant to paragraph (1), the payment distributor shall pay the cost of the qualified arbitrator.~~

~~(de)~~ A covered platform distributing payments pursuant to paragraph (2) of subdivision (a) shall retain a qualified auditor to examine relevant books and records with respect to the distributions as part of an annual audit.

~~(ef)~~ A final arbitration award under Section 3273.84 to a jointly participating group of digital journalism providers shall be distributed proportionally by the number of news journalists and, subject to subparagraph (B) of paragraph (2) of subdivision (a) of Section 3273.86, freelancers, who, in the previous calendar year, were employed by each

participating provider for the primary purpose of producing content for a California audience.

~~(fg) Any~~ **The amount of any** compensation received by a digital journalism provider through a commercial agreement for access to content by the covered platform ~~prior to commencement of arbitration or payment by a covered platform pursuant to subdivision (a) of Section 3273.81~~ **that was offset pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 3273.84** shall be deducted from that digital journalism provider's ~~its~~ allocation accordingly.

**(d) (1) A digital journalism provider that disagrees with the determination of their eligibility or the amount of compensation awarded can seek a review of the determination as follows:**

**(A) If the covered platform has retained a claims administrator, the digital journalism provider must seek redress through the dispute resolution process established pursuant to paragraph (3) of subdivision (b). If the digital journalism provider disagrees with the result of the dispute resolution process, the digital journalism provider may initiate an arbitration of the dispute by a qualified arbitrator.**

**(B) If the covered platform has not retained a claims administrator, the digital journalism provider may initiate an arbitration of the dispute by a qualified arbitrator.**

**(2) Any challenge pursuant to paragraph (1) must be made within 10 days of receiving notice of the eligibility decision or compensation determination to be challenged.**

**(3) In an arbitration pursuant to paragraph (1), the claims administrator or covered platform, as applicable, shall pay the cost of the qualified arbitrator.**

**(e) A digital journalism provider shall not be denied compensation under this section on the basis that the provider publishes or broadcasts, in whole or in part, in a language other than English.**

**3273.83.** (a) Commencing no later than March 1, 2025, a covered platform shall compile and post on its internet website a list of digital journalism providers that the platform accessed for a California audience during the preceding 12 months.

(b) A covered platform shall provide that list to any digital journalism provider upon request within three days after the request is submitted and shall establish a designated email address to which a request may be submitted.

**(c) A digital journalism provider shall not be excluded from the list or the arbitration under Section 3273.84 on the basis that the provider publishes or broadcasts, in whole or in part, in a language other than English.**

**3273.84.** (a) (1) In an arbitration initiated pursuant to subdivision (b) of Section 3273.81, the arbitrator shall ~~solely~~ determine the percentage of the covered platform's advertising revenue **to be** remitted to participating digital journalism providers **on an annual basis** pursuant to this section.

**(2)** Digital journalism providers shall jointly participate in ~~the~~ **a** final offer arbitration process **with a covered platform** described in this section ~~with each covered platform~~ to determine a single percentage of the covered platform's advertising revenue from which the distributions described in subdivision (f) of Section 3273.82 will be allotted. **Covered platforms may not participate jointly in a final offer arbitration process.**

~~(3)~~ Within 30 days after a covered platform posts the list of digital journalism providers pursuant to subdivision (a) of Section 3273.83, by a majority vote, participating digital journalism providers shall establish rules and procedures to govern decisionmaking regarding the arbitration proposal or any settlement reached pursuant to subdivision (c) and each ~~eligible~~ digital journalism provider shall be entitled to one vote on any matter submitted to a vote of the members.

~~(4)~~ The covered platform or digital journalism providers may initiate a final offer arbitration with a qualified arbitrator for an arbitration panel to determine the percentage of the covered platform's advertising revenue remitted to the participating digital journalism providers.

(b) Nothing in this section shall be interpreted as preventing a digital journalism provider from being individually represented in the joint arbitration process in subdivision (a).

(c) Prior to the commencement of the final offer arbitration, there shall be 60 days of mediation between the **covered** platforms and digital journalism providers to reach a settlement. If no agreement is reached, the final offer arbitration shall commence 10 days after the conclusion of the mediation period. If an agreement is reached through mediation, the arbitrator may approve the agreement, in which case the group will not proceed to arbitration.

(d) The arbitration procedure authorized by this section shall be decided by a panel of three arbitrators affiliated with the qualified arbitrator under the rules of the arbitrator except to the extent they conflict with this section.

(e) The covered platform and the digital journalism providers shall each pay one-half of the cost of administering the arbitration proceeding, including arbitrator compensation,

expenses, and administrative fees. The costs for the digital journalism providers shall be deducted from the amount awarded before the calculation in subdivision (f) of Section 3273.82.

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

(1) (A) (i) Digital journalism providers and the covered platform may demand the production of business records that are relevant to the single percentage of a covered platform's advertising revenue to be awarded to participating digital journalism providers and that are nonprivileged, reasonably necessary, and reasonably accessible without undue expense.

(ii) A covered platform seeking the production of business records of a For digital journalism providers that qualifies for a distribution pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 3273.81, ~~documents and information requested~~ shall be limited to one request for documents and information and the covered platform requesting the information shall, within 10 days, reimburse the provider for the reasonable costs of production, including reasonable attorneys' fees.

(B) Documents and information described in subparagraph (A) shall be exchanged not later than 30 days after the date the demand is filed.

(2) Digital journalism providers and the covered platform shall each submit a final offer proposal for the remuneration that the digital journalism providers should receive, on an annual basis, from the covered platform for access to the internet websites or other digital services of the digital journalism providers for an audience in California ~~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.

(3) A final offer proposal pursuant to this section shall not address whether or how the covered platform or any digital journalism provider displays, ranks, distributes, suppresses, promotes, throttles, labels, filters, or curates the content of the digital journalism providers or any other person.

(g) (1) Not later than 60 days after the date arbitration proceedings begin pursuant to subdivision (c), the arbitration panel shall determine ~~the percentage of the covered platform's advertising revenue to be remitted by the covered platform to the participating digital journalism providers from a final offer from one of the parties without modification~~ which of the parties' final offer proposals to accept pursuant to paragraph (2) of subdivision (f). The arbitration panel must accept one of the two offers without modification.

(2) In making a determination pursuant to paragraph (1), the arbitration panel shall do all of the following:

(A) Refrain from considering any value conferred upon any digital journalism provider by the covered platform for distributing or aggregating its content, other than monetary compensation agreed to by the digital journalism provider in a written commercial agreement with the platform, as an offset to the value created by that digital journalism provider, unless the covered platform does not automatically access and extract information from a digital journalism provider's internet website.

(B) Consider past incremental revenue contributions as a guide to the future incremental revenue contribution by any 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 digital journalism provider's previous compliance with Section 3273.86, if applicable.

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

**(3) Within 15 days of accepting a final offer proposal, the panel shall issue an order setting forth the final amount that the covered platform pay pursuant on an annual basis to Section 3273.81. The order shall do all of the following:**

**(A) Set forth the amount of the final offer accepted by the panel.**

**(B) Require the covered platform to pay the final offer amount on an annual basis.**

**(C) (i) If applicable, authorize the covered platform to reduce the total payment by the total amount of all commercial agreements the covered platform has with any participating digital journalism provider that participated in the arbitration for the covered period.**

**(ii) To receive an offset under this subparagraph, the covered platform must provide to the arbitration panel copies of all of the commercial agreements for which it seeks an offset.**

**(iii) The platform may offset its annual payment for a payment made pursuant to a commercial agreement only by the amount actually paid under that agreement each year.**

**(D) The date of the order.**

~~(43)~~ Any party to the arbitration proceeding may elect to appeal the decision of the arbitration panel pursuant to Section 3273.88 on **any ground permitted under subdivision (a) of Section 10 of Title 9 of the United States Code** ~~the grounds of a procedural irregularity.~~

(h) If the covered platform and digital journalism providers reach a settlement in lieu of arbitration, the settlement shall not waive the digital journalism provider's obligations pursuant to Section 3273.86.

(i) No less than 1 percent of each arbitration award shall be paid to digital journalism providers that would receive less than twenty-five thousand dollars (\$25,000), to be distributed annually proportionally by the number of news journalists and, subject to subparagraph (B) of paragraph (2) of subdivision (a) of Section 3273.86, freelancers who, in the previous calendar year, were employed by each qualifying publication for the primary purpose of producing content for a California audience among those digital journalism providers, in addition to the amount those providers would receive pursuant to paragraph (1) of subdivision (g).

~~(j) No fewer than 24 months after the end of an arbitration proceeding, any~~ **Any** party to the proceeding may elect to reinstate the arbitration process **on a date no fewer than 24 months from the date of the order in paragraph (3). The order shall remain in effect until the issuance of a superseding order.**

**3273.85.** (a) A covered platform shall not retaliate against a digital journalism provider for asserting its rights under this title by refusing to access content or changing the ranking, identification, modification, branding, or placement of the content of the digital journalism provider on the covered platform.

(b) A 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 a journalism provider.

**3273.86.** (a) (1) Except as provided in paragraph (2), a digital journalism provider shall spend at least 70 percent of funds received pursuant to this title on news journalists and support staff employed by the digital journalism provider.

(2) (A) A digital journalism provider with five or fewer employees shall spend at least 50 percent of funds received pursuant to this title on news journalists and support staff employed by the digital journalism provider.

(B) For the purpose of calculating an allocation from a covered platform pursuant to subdivision (a) of Section 3273.81 and subdivision (f) of Section 3273.82, or for establishing a digital journalism provider's minimum allocation to news journalists and support staff pursuant to this section, a digital journalism provider with five or fewer employees may elect to count dollars spent on the equivalent functions performed by news journalists as follows:

(i) The digital journalism provider shall employ at least one news journalist for the primary purpose of producing content for a California audience.

(ii) Each forty thousand dollars (\$40,000) spent by a digital journalism provider in the previous calendar year to compensate other natural persons performing the functions defined by paragraph (2) of subdivision (f) of Section 3273.80 may claim to employ the equivalent of one news journalist, up to a maximum of one hundred sixty thousand dollars (\$160,000) or the equivalent of four news journalists, with those amounts subsequently annually adjusted for increases in the Consumer Price Index. In no instance may the total number of news journalists and their equivalents claimed pursuant to this clause exceed the number of natural persons compensated by the digital journalism provider.

(b) No later than 30 days after the end of an arbitration proceeding described in Section 3273.84, reaching a settlement in lieu of an arbitration proceeding, or receiving a payment pursuant to subdivision (a) of Section 3273.81, the digital journalism provider shall provide notification in writing of its plan to comply with subdivision (a) to the news journalists and support staff employed by the digital journalism provider and any representatives of those news journalists or support staff.

(c) The digital journalism provider's plan to comply with subdivision (a) shall include a good faith estimate of the number of news journalists and support staff, respectively, 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.

**3273.87.** (a) No later than one year after the end of an arbitration proceeding described in Section 3273.84, or reaching a settlement in lieu of an arbitration proceeding, or receiving a payment pursuant to subdivision (a) of Section 3273.81, and each year thereafter, the digital journalism provider shall compile a report that includes all of the following:

(1) An attestation as to whether the digital journalism provider has complied with subdivision (a) of Section 3273.86.

(2) The text of the digital journalism provider's plan to comply with subdivision (a) of Section 3273.86.

(3) The total number of payments under this title received from covered platforms.

(4) The name of each covered platform paying the digital journalism provider a payment under this title and a description of how the digital journalism provider spent the payment, including any amount of payments under this title remaining unspent.

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

(b) No later than one year after the end of an arbitration proceeding described in Section 3273.84 or reaching a settlement in lieu of an arbitration proceeding, or receiving a payment pursuant to subdivision (a) of Section 3273.81, and each year thereafter, the digital journalism provider shall publish a copy of the report described in subdivision (a) online in a text-searchable format and provide a copy to the news journalists and support staff employed by the digital journalism provider, any representatives of those news journalists or support staff, and the covered platforms making payments under this title to the digital journalism provider.

(c) If a digital journalism provider fails to comply with this section, a covered platform may withhold payments under this title until the digital journalism provider has provided a copy of the report to the covered platform and has published a copy of the report online pursuant to subdivision (b).

**3273.88.** (a) Nothing in this title shall be construed as amending or repealing the ability of a digital journalism provider or a covered platform to avail themselves of Section 526 of the Code of Civil Procedure or any other existing remedy at law.

(b) A digital journalism provider may seek and obtain injunctive relief to compel compliance with this ~~act~~section, and court costs and reasonable attorney's fees shall be awarded to a prevailing provider.

**3273.89.** (a) This title does not modify, impair, expand, or in any way alter rights pertaining to Title 17 of the United States Code or the Lanham Act (15 U.S.C. 1051 et seq.).

(b) This title 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.

**SEC. 4.** 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.

**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.