

SB3591



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3591

Introduced 2/9/2024, by Sen. Steve Stadelman

SYNOPSIS AS INTRODUCED:

New Act

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

LRB103 38953 SPS 69090 b

A BILL FOR

1 AN ACT concerning journalism.

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

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

6 Section 5. Findings.

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

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

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

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

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

9 (f) Given the important role of ethnic media, it is
10 critical to advance State policy that ensures their publishers
11 are justly compensated for the content they create and
12 distribute. An example is the historic preamble, "We Wish to
13 Plead Our Own Cause," a document penned by the
14 African-American journalist and abolitionist Samuel Cornish in
15 1827. It marked a significant milestone in the history of the
16 Black press as it highlighted the urgent need for African
17 Americans to have their own platform to voice their
18 grievances, advocate for their rights, and challenge racial
19 inequality. This call to action spurred the establishment of
20 numerous Black-owned newspapers and publications, solidifying
21 the role of the Black press as a powerful tool for empowerment
22 and social change, and laid the groundwork in our country for
23 other ethnic media to plead their own cause.

24 (g) Quality local journalism is key to sustaining civic
25 society, strengthening communal ties, and providing
26 information at a deeper level that national outlets cannot

1 match.

2 (h) When surveyed, 73% of adults in the United States say
3 they have confidence in their local newspaper.

4 Section 10. Definitions. As used in this Act:

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

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

11 "Allocation share" means the percentage of a covered
12 platform's journalism usage fees that an eligible digital
13 journalism provider is entitled to receive for a particular
14 month computed by dividing (1) the total number of the covered
15 platform's Internet web pages displayed or presented to
16 Illinois residents during the month that link to, display, or
17 present the eligible digital journalism provider's news
18 articles, works of journalism, or other content, or portions
19 thereof by (2) the total number of the covered platform's
20 Internet web pages displayed or presented to Illinois
21 residents during the month that link to, display, or present
22 any eligible digital journalism provider's news articles,
23 works of journalism, or other content, or portions thereof,
24 less (3) any compensation received by an eligible digital
25 journalism provider through commercial agreement prior to

1 commencement of arbitration for access to content by the
2 covered platform.

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

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

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

10 (A) net annual sales in the United States or a
11 market capitalization greater than \$550,000,000,000,
12 adjusted annually for inflation on the basis of the
13 Consumer Price Index published by the United States
14 Bureau of Labor Statistics; or

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

17 "Covered platform" does not mean an organization exempt
18 from federal income taxation under Section 501(c)(3) of the
19 Internal Revenue Code of 1986.

20 "Eligible broadcaster" means a person that:

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

24 (2) engages professionals to create, edit, produce,
25 and distribute original content concerning local,
26 regional, national, or international matters of public

1 interest through activities, including conducting
2 interviews, observing current events, analyzing documents
3 and other information, or fact checking through multiple
4 firsthand or secondhand news sources;

5 (3) updates its content on at least a weekly basis;
6 and

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

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

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

15 "News journalist" means a natural person who:

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

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

26 "Notifying eligible digital journalism provider" means an

1 entity that has provided notice to a covered platform as
2 described in Section 15 that the entity is an eligible digital
3 journalism provider.

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

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

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

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

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

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

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

22 (4) engages professionals to create, edit, produce,
23 and distribute original content concerning local,
24 regional, national, or international matters of public
25 interest through activities, including conducting
26 interviews, observing current events, analyzing documents

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

3 (5) updates its content at least 52 weeks in a
4 calendar year;

5 (6) has an editorial process for error correction and
6 clarification, including a transparent process for
7 reporting errors or complaints to the publication; and

8 (7) meets any of the following criteria:

9 (A) generated at least \$100,000 in annual revenue
10 from its editorial content in the previous calendar
11 year;

12 (B) had an International Standard Serial Number
13 assigned to an affiliated periodical before submitting
14 notice to a covered platform under Section 15; or

15 (B) is owned or controlled by an organization
16 exempt from federal income taxation under Section
17 501(c)(3) of the Internal Revenue Code of 1986;

18 (8) has at least 25% of its editorial content
19 consisting of information about topics of current local,
20 regional, national, or international public interest; or

21 (9) is not controlled, or wholly or partially owned
22 by, an entity that:

23 (A) is a foreign power or an agent of a foreign
24 power, as those terms are defined in 50 U.S.C. 1801;

25 (2) is designated as a foreign terrorist
26 organization under 8 U.S.C. 1189;

1 (3) is a terrorist organization, as defined in 8
2 U.S.C. 1182;

3 (4) is designated as a specially designated global
4 terrorist organization under federal Executive Order
5 13224;

6 (5) is an affiliate of an entity described in
7 subparagraph (1), (2), (3), or (4); and

8 (6) has been convicted of violating, or attempting
9 to violate 18 U.S.C. 2331, 2332b, or 2339A.

10 "Representative" means a labor organization designated as
11 the exclusive bargaining representative of news journalists or
12 support staff for the purposes of collective bargaining in
13 accordance with State or federal law.

14 "Support staff" means a natural person who performs
15 nonexecutive functions, including payroll, human resources,
16 fundraising and grant support, advertising and sales,
17 community events and partnerships, technical support,
18 sanitation, and security.

19 Section 15. Notice requirements for journalism usage fee
20 payments.

21 (a) On or before January 1, 2025, all eligible digital
22 journalism providers that want to receive journalism usage fee
23 payments under this Act shall submit notice to a covered
24 platform as described in subsection (b). All eligible digital
25 journalism providers that submit the notice shall receive

1 journalism usage fee payments from covered platforms as
2 described in Section 20 beginning no later than 30 days after
3 the end of the arbitration process described in Section 25.
4 Digital journalism providers may provide notice to a covered
5 platform as described in subsection (b) after the initial
6 arbitration has concluded; however, notice received from an
7 eligible digital journalism provider after January 1, 2025,
8 shall not prompt any adjustment to the percentage of
9 advertising revenue that has previously been determined under
10 the most recent arbitration proceeding conducted as described
11 in Section 25.

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

13 (1) identifies the eligible digital journalism
14 provider and the authorized representative of the eligible
15 digital journalism provider;

16 (2) certifies, not under penalty of perjury, that the
17 eligible digital journalism provider reasonably believes
18 that it is either an eligible broadcaster or an eligible
19 publisher; and

20 (3) identifies the root uniform resource locators for
21 the websites associated with the eligible digital
22 journalism provider's digital content.

23 (c) No later than 30 days after submitting a notice
24 described in subsection (b), the eligible digital journalism
25 provider shall distribute a copy of the notice to the news
26 journalists and support staff that it employs and their

1 representatives, if any, and publish a copy of the notice
2 online in a text-searchable format.

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

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

11 (1) the sufficiency of the notice; and

12 (2) the noticing party's qualification as an eligible
13 digital journalism provider.

14 Section 20. Journalism usage fee calculations.

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

24 (b) A covered platform shall, on a monthly basis, use the
25 data collected under subsection (a) to calculate the

1 allocation share for each notifying eligible digital
2 journalism provider.

3 (c) One percent of the journalism usage fee shall be paid
4 to eligible digital journalism providers that produce at least
5 30,000 annual search occurrences in Illinois searches or
6 10,000 annual social media impressions from Illinois.

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

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

20 Section 25. Arbitration.

21 (a) The percentage of the covered platform's advertising
22 revenue remitted to notifying eligible digital journalism
23 providers shall be determined as described in this Section.
24 Eligible digital journalism providers shall jointly
25 participate in the final offer arbitration process described

1 in this Section with each covered platform to determine a
2 single percentage of advertising revenue from which future
3 monthly allocation shares will be allotted.

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

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

16 (d) The arbitration procedure authorized by this
17 subsection shall be decided by a panel of 3 arbitrators under
18 the American Arbitration Association's Commercial Arbitration
19 Rules and Mediation Procedures and the American Arbitration
20 Association-International Centre for Dispute Resolution Final
21 Offer Arbitration Supplementary Rules, except to the extent
22 they conflict with this Section.

23 (e) The covered platform and the eligible digital
24 journalism providers shall each pay one-half of the cost of
25 administering the arbitration proceeding, including arbitrator
26 compensation, expenses, and administrative fees.

1 (f) The arbitrators shall be appointed in accordance with
2 the American Arbitration Association's Commercial Arbitration
3 Rules and Mediation Procedures.

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

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

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

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

25 (4) A final offer proposal under this Section shall
26 not address whether or how the covered platform or any

1 eligible digital journalism provider displays, ranks,
2 distributes, suppresses, promotes, throttles, labels,
3 filters, or curates the content of the eligible digital
4 journalism providers or any other person.

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

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

13 (A) refrain from considering any value conferred
14 upon any eligible digital journalism provider by the
15 covered platform for distributing or aggregating its
16 content as an offset to the value created by that
17 eligible digital journalism provider, unless the
18 covered platform does not automatically access and
19 extract information from an eligible digital
20 journalism provider's website;

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

25 (C) consider the pricing, terms, and conditions of
26 any available, comparable commercial agreements

1 between parties granting access to digital content,
2 including pricing, terms, and conditions relating to
3 price, duration, territory, and the value of data
4 generated directly or indirectly by the content
5 accounting for any material disparities in negotiating
6 power between the parties to those commercial
7 agreements;

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

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

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

20 (i) If the covered platform and any eligible digital
21 journalism providers have given notice under Section 15 reach
22 a settlement in lieu of arbitration, the settlement shall not
23 waive the eligible digital journalism provider's obligations
24 as described in Section 40 and shall not settle for an amount
25 other than the final offer proposals submitted by the parties
26 as described in paragraph (3) of subsection (g).

1 (j) No fewer than 24 months after the end of an arbitration
2 proceeding, any party to the proceeding may elect to restart
3 the arbitration process.

4 Section 30. Non-retaliation.

5 (a) A covered platform shall not retaliate against an
6 eligible digital journalism provider for asserting its rights
7 under this Act by refusing to index content or changing the
8 ranking, identification, modification, branding, or placement
9 of the content of the eligible digital journalism provider on
10 the covered platform.

11 (b) An eligible digital journalism provider that is
12 retaliated against may bring a civil action against the
13 covered platform.

14 (c) This Section does not prohibit a covered platform
15 from, and does not impose liability on a covered platform for,
16 enforcing its terms of service against an eligible journalism
17 provider.

18 Section 35. Funding for journalists and support staff.

19 (a) An eligible digital journalism provider shall spend at
20 least 70% of funds received under this Act on news journalists
21 and support staff employed by the eligible digital journalism
22 provider, except that an eligible digital journalism provider
23 with 5 or fewer employees shall spend at least 50% of funds
24 received under this Act on news journalists and support staff

1 employed by the eligible digital journalism provider.

2 (b) No later than 30 days after the end of an arbitration
3 proceeding described in Section 25 or upon reaching a
4 settlement in lieu of an arbitration proceeding, the eligible
5 digital journalism provider shall provide notification in
6 writing of its plan to comply with subsection (a) to the news
7 journalists and support staff employed by the eligible digital
8 journalism provider and any representatives of those news
9 journalists or support staff.

10 (c) The eligible digital journalism provider's plan to
11 comply with subsection (a) shall include a good faith estimate
12 of the number of news journalists and support staff, if any,
13 expected to be hired, details regarding proposed compensation
14 adjustments, if any, and a disclosure if either hiring or
15 compensation adjustments are not expected.

16 Section 40. Reporting requirements.

17 (a) No later than one year after the end of an arbitration
18 proceeding described in Section 25 or reaching a settlement in
19 lieu of an arbitration proceeding, and each year thereafter,
20 the eligible digital journalism provider shall compile a
21 report that includes:

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

25 (2) the text of the digital journalism provider's plan

1 to comply with subsection (a) of Section 35;

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

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

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

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

1 Section 45. Preservation of rights.

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

7 (b) This Act does not modify, impair, expand, or in any way
8 alter rights pertaining to the federal Lanham Act (15 U.S.C.
9 1051 et seq).

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

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