



22 April 2024

Submitted via online form

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

**Re: REPLY of the Canadian Association of Broadcasters with respect to
Online News Notice of Consultation CRTC [2024-55](#)
*Call for comments – Framework under the Online News Act (formerly Bill C-18)***

1. As the national voice of small, medium and large Canadian privately-owned and controlled radio, TV and discretionary broadcasters both independent and vertically integrated, including those operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its **reply comments** on the above noted call for comments.
2. Of note, most intervenors generally supported the Commission's preliminary views on the functioning of the bargaining process under the *Online News Act*. This should permit the Commission to move forward with its plan quickly, as recommended by the CAB and several other parties, including Bell Media, CBC/Radio-Canada, and Quebecor. As stated by CBC/Radio Canada:

We encourage the Commission to adopt timelines that recognize the fragile state of journalism today and the underlying rationale of the Act to address an imbalance in bargaining power that has been allowed to persist for far too long – and with ruinous impact.

3. With respect to Google's claim that the bargaining process may be weighted in favour of news businesses, we wish to remind the Commission that the entire framework is designed to address a significant bargaining power *imbalance*. The very purpose of the Act is to support Canadian news businesses in their negotiations with massive global companies who hold considerable strategic advantage over them.

4. By definition, the bargaining framework must ensure that Google – who holds an effective monopoly in search¹ and dominates the digital advertising market² – cannot use its power inappropriately in negotiations with Canadian news businesses, either to thwart or delay those negotiations, or to impose unacceptable or disadvantageous terms.
5. On the issue of data collection, we wish to reiterate that broadcasters already supply the Commission with detailed data on their news expenditures. As noted by Channel Zero Inc., the CRTC does not need to impose any additional reporting requirements on radio and television stations/services. It need only seek similar information from news businesses that are not already reporting.
6. Though some parties have requested access to detailed information in the guise of “increased transparency”, we urge the Commission to continue to respect its practices and procedures relating to confidentiality, as outlined in *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC [2010-961](#):

A party filing information can “designate” it as confidential at the time it is filed with the Commission if it falls into one of the following categories:

- a. *information that is a trade secret;*
 - b. *financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or*
 - c. *information the disclosure of which could reasonably be expected*
 - (i) *to result in material financial loss or gain to any person;*
 - (ii) *to prejudice the competitive position of any person; or*
 - (iii) *to affect contractual or other negotiations of any person.*
7. We believe the Commission – and by extension the external auditor – should have access to information on news expenditures and FTEs³, and copies of any agreements signed under the Act. Based on these, the auditor may provide information to the public in an appropriately aggregated manner. In fact, the annual report of the independent auditor should include an analysis regarding the news expenditures of the eligible news businesses.⁴ As such, we disagree with Google’s suggestion that eligible news businesses should report to the Commission on how they use the compensation received and the single collective should provide information on which eligible news businesses received monies and how much they received.

¹ Recent [Statista](#) estimates suggest that Google held about 82% of the global search market as of July 2023.

² [Statista](#) estimates Google’s share of global digital advertising revenue in 2023 at 39%.

³ Filed as part of the CRTC’s designation of eligibility process.

⁴ Online News Act, s. 86(2) b) and c).

8. As regards expenditures on news, although we agree with those who suggest that the definition of what qualifies as a news expenditure should encompass all budget items that support the production of news, we oppose the inclusion of “voluntary labour” as a news expenditure since there is no actual spending involved.
9. With respect to providing guidance on undue preference, disadvantage or discrimination, we continue to believe that assessing complaints on a case-by-case basis is the most appropriate approach, particularly in these early days when the industry and the Commission lack experience in the administration of this new regime. As stated by Rogers:

it would be premature to establish any such guidance or additional factors before the bargaining process has been implemented and before the Commission has had an opportunity to examine and address complaints related to undue preference, disadvantage, or discrimination in the context of the application of the Act. The Commission has no experience in resolving complaints under the Act and should not, therefore, identify additional factors beyond those set out in subsection 52(2) [of the Act] until it has developed a body of precedent related to undue preference, disadvantage, and discrimination. The Commission can turn its mind to these questions again once it has concrete examples of issues that have arisen, at which point both the Commission and the industry will be better positioned to determine what type of guidance is needed.

10. Although the Commission needs no such reminder, we note that this proceeding is not an opportunity to revisit Bill C-18 or the [Online News Act Application and Exemption Regulations](#) (the Regulations). Much as we respect the role that community broadcasters and smaller independent journalism organizations play in the Canadian news ecosystem, this legislation is not about compensating them in preference to other vital purveyors of news in this country, such as radio and television stations and services.
11. The Commission must keep in mind that the legislation was designed, in large part, in recognition of the massive impact of digital platforms on the advertising market and the disruption they have caused for those radio and television stations that rely on advertising revenue to support the production and presentation of news. This underlying logic is acknowledged in the opening paragraph of the Regulatory Impact Analysis Statement attached to the Regulations:

Digital platforms, such as search engines and social media networks, have emerged as common gateways that Canadians use to access news content. At the same time, a small number of digital platforms have come to dominate the online advertising market. The Canadian news sector has been impacted by these developments, seeing a significant decline in advertising revenues and an increase in the closures of news businesses over the past decade. Canadian news businesses continue to produce content that attracts web traffic and adds value to digital platforms, while seeing their advertising revenues dwindle as a result of the market control exerted by large digital platforms. The Online News Act (the Act) was enacted to address the growing

imbalance between digital platforms and news businesses in Canada by establishing a bargaining regime to ensure news businesses are fairly compensated for the news they produce.

12. Further, we note that online news services, print organizations and community-based undertakings have access to funding that is not available to commercial radio and television, namely the [Local Journalism Initiative](#). It is also worth noting that under section 10(3) of the Regulations, the lion's share of the \$100 million expected from Google will go to news businesses *other* than programming undertakings (63%); CBC will receive 7% and all other broadcast news businesses combined will receive only 30% of the compensation under this regime despite being the top choice for news among the vast majority of Canadians.
13. Finally, as set out in our initial comments, we urge the Commission to immediately create a simple registration process through which news businesses may request to be designated by the Commission and added to its public list (as required under Section 29(1) of the Act). This process should also require news businesses to provide information on the number of full-time equivalent employees (FTEs) who, in the previous calendar year, were employed by each news business for the purpose of producing, for news outlets operated by that business, original news content that is intended to be made available online.
14. We recommend that the list of designated eligible businesses be made public by at least June 16th, the date by which digital news intermediaries must notify the Commission that the Act applies to them. In accordance with the principles of administrative law, the Commission's designation process should allow for intervention if a party considers a news business does not respond to the criteria to be eligible or has overstated their FTEs.
15. In conclusion, we encourage the Commission to move as expeditiously as possible to identify designated eligible news businesses and to articulate its framework under the *Online News Act*.
16. All of which is respectfully submitted.

Yours sincerely,



Kevin Desjardins
President

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