



Submission by the  
Canadian Association of Broadcasters

With respect to:  
*Call for comments – Application for exemption from the  
Online News Act by Google*

Online News Notice of Consultation CRTC 2024-143

6 August 2024

1. As the national voice of small, medium and large, Canadian privately-owned and controlled radio, television and discretionary broadcasters, both independent and vertically integrated, including services operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its comments on the CRTC's *Call for comments – Application for exemption from the Online News Act by Google*, Online News Notice of Consultation CRTC 2024-143 (2024-143).
2. In addition to this submission, CAB, in partnership with our members, NMC and the CBC, has developed a set of principles we believe must govern the Commission's approach to the exemption of Google from the application of the bargaining regime set out in the ONA. These common principles are attached to this submission.

### EXECUTIVE SUMMARY

3. The CAB supports a process that facilitates rapid, efficient and fair distribution of compensation to the intended beneficiaries of the *Online News Act* and its Regulations (for ease of reference, collectively referred to as the "ONA" within this submission). We support the idea of an exemption order as the most efficient path to distribution of funding to qualified recipients. Our position is that funds should flow to qualified recipients as soon as possible. At the very least, the first tranche of funding, for CY2024, must be collected and distributed before the end of CY2024. We propose a path for accomplishing this outcome.
4. Google is requesting an exemption order for a period of five years under section 11(1) of the ONA or in the alternative, a one-year interim exemption order under section 12(1) of the ONA if the full exemption order cannot be granted at this time.<sup>1</sup>
5. The CAB is of the view that, at this time, the public record does not contain either the required documents or the information necessary for the Commission to grant the requested exemption order under section 11(1) of the Act. As noted by the Commission in its June 27th Call for Comments, "neither Google's application nor the Agreement contain detailed descriptions of the constitution, governance, policies or procedures of the CJC"<sup>2</sup> and "(w)ithout information on the governance and policies of the CJC, the Commission may not be able to determine if Google's agreement with the CJC satisfies the requirements of the Act and the Regulations."<sup>3</sup> The Collective's correspondence to the Commission dated July 15, 2024 demonstrates that it is unlikely to have the required structure in place to administer contribution funds this calendar year.

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<sup>1</sup> Google Application for Exemption from the Online News Act and the Regulations, June 7, 2024 at para 11.

<sup>2</sup> Online News Notice of Consultation CRTC 2024-143 at para 11.

<sup>3</sup> *Ibid* at para 30.

6. Despite the serious deficiencies in the application, and in order to permit the Google funds to be distributed quickly and efficiently in accordance with the ONA, the CAB respectfully requests that the Commission issue the exemption order in two stages:
  - I. In the first stage, the Commission should issue an immediate interim exemption order (the “IEO”) under section 12(1) of the ONA to enable the funds to be distributed from Google to the Collective within five (5) days of issuing the IEO. The IEO should contain specific instructions that the Collective direct the funds to be distributed to the intended recipients through an independent third-party accounting firm to be retained by the Canadian Journalism Collective (“CJC”). The Commission should provide specific criteria to CJC for the selection of the accounting firm. The IEO should remain in place until such time as the CJC has an appropriate structure in place to administer the funds.
  - II. In the second stage, once the Commission is satisfied that the CJC has an appropriate structure in place to administer the funds, we recommend that the Commission issue a full exemption order (the “FEO”) under section 11(1) of the ONA with effect for the duration of a term totalling five years. The FEO should provide specific direction to Google and CJC as outlined in detail in this submission.
7. CAB members are experiencing incredibly difficult economic conditions and will benefit from any timely financial help that they can get. It would not be in the interests of the news businesses that are expected to receive compensation under the exemption order to have Google’s exemption request denied outright and the process commenced anew.
8. The governance structure currently proposed by the CJC enshrines authority in entities that are may or may not be eligible for funding under the ONA, and thereby runs the risk of interfering with the distribution of funding in accordance with the ONA, as Parliament intended. For the Commission to issue a full exemption order, it is essential that the collective chosen to administer the funds under such an order have the ability and willingness to do so in strict accordance with the ONA. The CAB has identified significant problems with the proposal from the CJC, which the Commission can and should remedy pursuant to its powers to impose conditions under the ONA.<sup>4</sup>
9. Our submission proposes a broad range of solutions to alter the governance structure of the CJC to ensure that the mandate is narrowly focussed, and that all decisions are made by funding recipients. Specifically, the CAB recommends that the Commission:
  - Require the CJC to adopt a representative and effective governance structure including:
    - A single class of members that must be representatives of recipients of funding under the ONA;

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<sup>4</sup> See, for example, Telecom Decision CRTC 2007-130, Ottawa, 20 December 2007, Establishment of an independent telecommunications consumer agency, <https://crtc.gc.ca/eng/archive/2007/dt2007-130.htm>. See also, Telecom Regulatory Policy CRTC 2014-659, Ottawa, 18 December 2014, Structure and mandate of the video relay service administrator, <https://crtc.gc.ca/eng/archive/2014/2014-659.htm>.

- a Board of Directors with 3 directors, represented by the members as follows:
  - News Publishers – 1 representative from the news publishing sector;
  - News Broadcasters – 1 representative from the broadcast news sector; and
  - CBC/Radio-Canada – 1 representative from CBC/Radio-Canada.
- Sector Committees for each industry sector, with representatives elected by the members.
- Restrict the CJC to fund collection and distribution under the ONA with no ability to engage in advocacy;
- Require the CJC to develop and apply distribution guidelines that are fully compliant with the ONA including the following definitions:
  - **Eligible employee** – a full-time equivalent employee of an eligible news business (as defined in section 27 of the Online News Act), that spends at least 75% of their time engaged in the production of original news content, including researching, collecting information, verifying facts, conducting interviews, photographing, filming, recording, writing, editing, video-editing, photo-editing, audio-editing, designing, assembling, and otherwise preparing, delivering and/or presenting original news content. (Adapted from the definition used for the purposes of the Canadian Journalism Labour Tax Credit)
  - **Eligible news business** – as defined in Section 27(1) of the ONA.
  - **Employee** – a person who receives a T-4 slip from their employer, but does not include:
    - Consultants,
    - Independent contractors, including freelancers, or
    - Volunteers, including unpaid interns.
  - **Full time equivalent (FTE)** – 35 hours per week of work will be used to calculate FTE employees.
  - **News content** – means content – in any format, including an audio or audiovisual format – that reports on, investigates or explains current issues or events of public interest and includes such content that an Indigenous news outlet makes available by means of Indigenous storytelling.
  - **Original news content** – news content which originates from the eligible news business.
- Set the funding amount at \$100 million, adjusted for inflation on an annual basis, in addition to overhead expense, capped at 0.5%, for the CJC;
- Impose clear and rapid timelines on Google and the CJC for payments, such that the payment from Google to the CJC for 2024 is made within 5 days of the issuance of the interim exemption order to ensure distribution to news outlets can be completed before the end of CY2024;

- During each subsequent year of the term, whether by way of IEO or FEO, Google will pay the Contribution in a lump sum to the account of the Collective within five business days of the start of each year of the term. Any CPI adjustments required by subsection 9(2) of the Regulations shall be paid as a lump sum payment to the account of the Collective no later than June 1<sup>st</sup> of each year;
- Limit CJC overhead by imposing clear parameters relating to overhead and administrative costs;
- Restrict the CJC from assigning its responsibilities under the Agreement to a third party that was not involved in the exemption order process, while retaining the ability for the CJC to enter into contracts with third parties at the discretion of its Board of Directors; and
- Restrict CJC from making substantive decisions without the oversight of a properly constituted Board of Directors, including developing distribution guidelines, making any executive decisions, participating in any other non-ONA related initiatives, or hiring any staff including but not limited to an Executive Director.

### **Interim Mechanism for Immediate Distribution of Funds**

10. The CJC has clearly indicated that it is unlikely to have the required structure in place to administer funds this calendar year. This is entirely unacceptable. As the Commission is fully aware, this proceeding is the result of years of calls for action. There is an urgent need to take steps to begin the process of revenue sharing between Google and news businesses, and there is a profound need for clarity and certainty for news organizations that must make business decisions on an ongoing basis. The CAB proposes the following immediate interim mechanism to ensure funds are distributed as soon as possible.

- The Commission should grant an IEO to Google, contingent on Google distributing the \$100 million to the Collective within five (5) business days of the IEO being granted, for distribution to eligible news outlets via an independent third-party accounting firm (the “Accounting Firm”) for distribution to eligible funding recipients before the close of the calendar year 2024.
- The Accounting Firm should be retained by the CJC in strict compliance with selection criteria established by the Commission. For example, the Accounting Firm should have experience in fund management, knowledge of each of Canada’s official language communities, familiarity with the digital news businesses, and the ability to manage the funds with minimal cost.
- The Accounting Firm should distribute funds on an interim basis to all eligible news businesses based on sworn officer attestations from each eligible news business as to the number of Full Time Equivalent (FTE) employees the news business has that meets the definition set out above. The CJC, when fully constituted, will be able to adjust any payments on a final basis.

- The Commission shall provide clear instruction and interpretive guidance to the accounting firm to facilitate distribution, including definitions outlined above and detailed in this submission.

11. Under the ONA, the IEO may contain conditions the Commission considers appropriate. The CAB submits that, at a minimum, the IEO should contain clear instruction to the CJC regarding the corporate governance structure and procedures necessary to support granting a final exemption order. The CJC shall undertake that work immediately on receipt of such instruction and put in place the conditions necessary to enable the receipt and distribution of the funds through the Collective in CY2025. CJC should be obligated to set up the appropriate structure to the satisfaction of the Commission prior to June 1, 2025.

### **CJC Envisions a Broader Role for itself than Contemplated by the Regulations**

12. Fundamentally, the CAB will support a collective that is focussed on ensuring efficient distribution of the maximum amount of funding to the highest number of eligible news businesses that employ qualified FTE journalists, as specified in the ONA. CJC's proposal makes clear that it envisions a broader role for itself, making policy and advocating for funds to be distributed to entities or individuals that are not eligible or qualified under the ONA. In particular, CJC has proposed a complex administrative structure that would be unnecessary if its true intention was to fulfill a narrow mandate.

13. With respect, Parliament has already done the work of determining who is a qualified recipient. This is enshrined in the ONA and is not subject to discretionary decision making. It is the job of the collective under this exemption order to simply distribute that funding to those qualified recipients. If the chosen collective cannot comply with the ONA, it is open to the Commission to deny the request for an exemption order and instruct Google to engage in bargaining effective immediately.

### **CAB's Experience in Collaborating with other Stakeholders**

14. It is helpful to note that the CAB joined a broad range of organizations including the National Campus and Community Radio Association, l'Association des radiodiffuseurs communautaires du Québec, Alberta Weekly Newspapers Association, BC & Yukon Community News Media Association, Hebdos Québec, Manitoba Community Newspapers Association, National Ethnic Press and Media Council of Canada, News Media Canada, Ontario Community Newspapers Association, Press Forward, the Saskatchewan Weekly Newspapers Association and the Canadian Broadcasting Corporation/Radio-Canada to prepare an expression of interest in response to Google's call for a "single collective" to manage and distribute funds pursuant to the ONA. The proposed collective was named the Online News Media Collective (the "ONMC"). As a result of the process of working together with this broad and diverse group, the CAB has direct and recent experience collaborating with the vast majority of ONA stakeholders.

15. Google has stated that it engaged in a rigorous process to select the Collective, and it ultimately selected the CJC. Following that selection, the Commission undertook this consultation in which we now make submissions.

16. Having itself already consulted with a wide variety and overwhelming majority of expected recipients of this funding, the CAB offers the following specific comments in response to the CRTC's questions in 2024-143.

## **CAB RESPONSES TO QUESTIONS**

**Q1. Please comment on whether Google met the requirements for conducting the open call as described in subsection 4(1) of the Regulations. If it did not, please describe how it did not meet the requirement.**

It appears that Google met the requirements described in subsection 4(1) of the Regulations as it conducted an open call process from February 28, 2024 to April 30, 2024 and made the final list of news businesses replying to the open call available on its website. The call was also published on the Commission's website. We have no reason to believe that Google failed to provide the Commission with the requested information pertaining to news businesses that responded to the notice. In addition, section 4(b) of the Agreement specifies that no portion of the contribution will be paid to the Collective as non-monetary compensation, which is in accordance with 4(1)(c) of the Regulations.

**Q2. Would it be appropriate to require an additional mechanism for allowing additional news businesses to receive compensation through the CJC that did not come forward during the initial call?**

Yes. It would be appropriate to require an additional mechanism for allowing news businesses that did not come forward during the initial call to receive compensation through the Collective. The Agreement with the Collective contemplates a 5-year term, and it is possible and likely that during that term there will be new news businesses that could be eligible for compensation that did not exist at the time of the original open call. As the purpose of this funding mechanism is to support Canadian journalism, it would be appropriate and reasonable to ensure that any eligible news businesses that employ qualified journalists during the term should be eligible to receive funding.

**Q3. Should the Commission include a condition of exemption requiring Google to conduct a periodic open call to add news businesses who have not previously submitted an attestation? If another mechanism for allowing additional news businesses to receive compensation through the CJC would be more appropriate, please explain the mechanism.**

The CAB has concerns about whether and to what extent eligible news businesses that participated in the open call process but are not properly represented by the CJC may be appropriately included going forward. There are other questions about parties that may or may not have met the requirements of the open call process. There is also the critical question as to whether some of the parties that responded to the open call process are actually eligible under the ONA.

The Commission takes the position at paragraph 16 and 17 of CRTC 2024-143 that it is not considering the validity of attestations as part of this proceeding:

*16. As part of this open call, interested news businesses had to attest to Google that they could meet the eligibility criteria under section 27 of the Act, that they operate a news outlet*



*that meets the criteria set out in section 31 of that Act, and that their news content is made available on the platform in question. Although the Regulations require news businesses to attest that they could be designated as eligible, a news business does not have to be designated as eligible under section 27 of the Act by the Commission to receive compensation through a group or collective. All news businesses that submit an attestation in the open call can receive compensation through a group or collective and no mechanism is provided under the Act or Regulations for the attestations to be disputed as part of that process.*

*17. As a result, the Commission will not consider the validity of attestations as part of this proceeding. ...*

The CAB respectfully disagrees with the position of the Commission that it will not designate news businesses as eligible for compensation under the ONA. We think it is within the purview of the Commission to do so and that there is nothing in the ONA preventing it from doing so. In fact, sections 27 and 29 of the ONA would appear to require the Commission to designate news businesses as eligible and publish a list of eligible news businesses. Moreover, the Commission is best placed among all the participants in this process to objectively apply the parameters as laid out in the ONA that qualify a news business as “eligible.”

We believe that the Commission can complete the eligibility analysis and designation in parallel with the current CRTC 2024-143 process, to ensure there is no delay in distributing the funds pursuant to our IEO framework proposal.

If the Commission does not itself undertake consideration of the validity of attestations and designate news business as eligible, we respectfully submit that it must place conditions on the Collective that ensure the Collective has the clear authority and guidance to assess the validity of attestations.

Additionally, it is essential that the Commission provide a definition of an “FTE employee”<sup>5</sup> and impose a requirement that the Collective undertake a process to allow for any additional eligible news businesses with qualifying FTE employees to submit a sworn attestation as to the number of FTEs it employs in accordance with the Commission’s definition, and a request for compensation. These requests should be accepted on a rolling basis and calculated at a fixed point in time once a year such that any eligible businesses with qualifying FTE employees that have submitted sworn attestations in advance of the annual deadline will be captured in that year’s distribution.

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<sup>5</sup> The CAB offers a definition in its response to Q8 below. CAB, in partnership with our members, NMC and the CBC, has developed a set of principles we believe must govern the Commission’s approach to the exemption of Google from the application of the bargaining regime set out in the ONA. Notably, this definition forms part of these common principles shared by the CAB, CBC/Radio Canada and News Media Canada.



To facilitate this, it is incumbent on the Collective to have sufficiently robust policies and procedures in place to:

- Assess validity in order to exclude from funding news business that are not eligible; and
- Determine whether news businesses that later submit attestations outside the formal open call process are eligible to receive compensation.

If the Collective were to carry out the assessment it could ensure a seamless administrative process to ensure that all eligible news businesses in any given year were properly factored into the distribution of funds.

CAB also submits that there is no obvious reason for Google to be involved in reviewing attestations or requests for compensation beyond the initial open call process, which is now complete.

**Q4. How frequently should additional news businesses be able to be added to receive compensation through the CJC? For example, the requirement could be for a single additional opportunity at a specific point during the exemption period, or for an annual opportunity for news businesses to be added.**

As the Commission rightly points out, it would further the objectives of the Act even more if it were possible for new or growing businesses, or for news businesses that were not able to respond to the open call, to receive compensation as well. As such, it would be reasonable to provide an opportunity for additional news business to be added to receive compensation through the Collective on an annual basis. The Collective can do this by requiring all potential recipients to submit an annual sworn attestation and request for funding based on the previous year's FTE employee count. The news media landscape is not static and is likely to change throughout the term of the exemption period. It is important that the Collective be nimble enough to reflect the changing marketplace. However, requiring the Collective to adjust its membership and its distributions more than once a year will increase the administrative burden and administrative costs to the disadvantage of the recipients. An annual review of the membership and distributions can be planned to be efficient and manageable.

**Q5. Please comment on whether the Agreement meets the requirements of subsection 9(2) of the Regulations for determining the compensation to be paid per year. If the Agreement does not meet the requirements, please describe how it failed to meet the requirements.**

Subsection 9(2) of the Regulations states that for the "digital news intermediary that is the search engine with the greatest share of Canadian Internet advertising revenues among all search engines in respect of which the Act applies, the Commission must interpret the agreements as contributing to the sustainability of the Canadian news marketplace if and only if, for each year covered by the potential exemption order, the agreements provide for monetary compensation in accordance with the formula  $\$100 \text{ million} \times \text{CPI}_x \div \text{CPI}_{2023}$  where  $\text{CPI}_x$  is the highest Consumer Price Index for any calendar year beginning with 2023 and ending with the calendar year before the year for which the compensation is paid; and  $\text{CPI}_{2023}$  is the Consumer Price Index for 2023".

This would mean that the total amount that should flow through to the “Canadian news marketplace” from Google, as the “digital news intermediary that is the search engine with the greatest share of Canadian Internet advertising revenues” should be \$100 million for 2024.

We submit that Google and the CJC would meet the requirements of the Regulations if Google commits to providing \$100 million to the “Canadian news marketplace” in addition to any overhead required by the CJC. It is reasonable for Google to expect that the overhead of the CJC be capped at 0.5% since Google would have to pay this additional amount. Moreover, we do not think that CJC should require 2% overhead, as detailed in our response to Q8(a).

**Q6. Google and the CJC must comment on the expected schedule of payments in relation to the day that an exemption order is issued and on the time period to which the payments apply.**

It is critical that the \$100M payment for 2024 be released to the Collective within five (5) days of the issuance of an IEO to ensure distribution to news outlets can be completed before the end of CY2024.

The CJC has clearly indicated that it is unlikely to have the required structure in place to administer funds this calendar year. This is entirely unacceptable. The CAB proposes the following immediate interim mechanism to ensure funds are distributed as soon as possible.

- The Commission should issue an IEO that directs Google to pay the \$100 million in funds for CY2024 to the Collective to be directed to an independent accounting firm for immediate distribution to eligible funding recipients.
- A reputable accounting firm should be appointed by the Collective, in compliance with selection criteria imposed by the Commission, to ensure independence from the parties involved.
- The Commission shall provide clear instruction and interpretive guidance to the accounting firm to facilitate distribution, including definitions outlined above and parameters detailed in this submission.
- The IEO should apply until such time that a FEO can be implemented, to allow time for the CJC to do the work necessary to set itself up in order to administer the funds in accordance with the ONA.

The Commission should include in the IEO clear instruction to the CJC regarding the corporate governance structure and procedures necessary to support granting a FEO. The CJC should undertake that work immediately on receipt of such instruction and put in place the conditions necessary to enable the receipt and distribution of the funds for CY2025.

To facilitate the Commission’s direction in this regard, the CAB proposes conditions that seek to rectify the apparent lack of representation and lack of ability to achieve the objectives of the Collective in fulfilment of its role as the distributor of compensation under Google’s exemption request. Under the direction of the Commission, the CJC should be capable of acting as the single collective contemplated under the ONA.

Once the Commission is satisfied that the CJC is structured appropriately, it should issue a FEO for the duration of the five years.

**Q7. Google and the CJC must comment on the effect an interim order would have on the effective date of the Agreement or the schedule of payments to be made from Google to the CJC.**

- a) If Google would not make payments to the CJC in response to an interim exemption order based on the current language of the agreement, please comment on whether the Commission should require an amendment to the Agreement to ensure that payments would be made as a condition of an interim exemption order.**

As a starting position, the CAB requests that the Commission issue an immediate IEO with specific direction that the funds be distributed from Google through the CJC to be administered by an Accounting Firm, and that the IEO remain in place until such time as the CJC has fully satisfied the Commission that it is capable of administering the funds directly.

The Agreement between Google and the CJC should explicitly acknowledge that if an IEO is granted, payment should be made from Google to the CJC within five (5) business days of the issuance of the IEO.

The Agreement currently indicates at subsection 1(a) that the “obligations of Google under Sections 4 and 5 of this Agreement commence on the date that the Exemption comes into effect (the “Effective Date”).” Exemption is defined in the recitals as per the following statement: “Google and Collective enter into this Agreement for the purpose of complying with the Act and in support of an application by Google for an exemption order under section 11(1) of the Act (the “Exemption”)”. It appears that this language was carefully chosen to only allow for payment pursuant to an exemption order but not an interim exemption order as contemplated under section 12(1) of the Act.

We propose that the Commission amend the Agreement as follows to ensure payments would be made as a condition of an IEO:

- Modify the Agreement Recital C as follows: “Google and Collective enter into this Agreement for the purpose of complying with the Act and in support of an application by Google for an exemption order under section 11(1) and/or interim exemption order under section 12(1) of the Act (the “Exemption”).”
- Modify the Agreement s. 4(b) to state: “In the first year of the Term, Google will pay the Contribution to the account of Collective within five (5) business days of granting the Interim Exemption, and the Collective shall direct the Contribution to an independent public accountant which shall distribute the Contribution to eligible news outlets before December 31, 2024. Each subsequent year of the term, Google will pay the Contribution plus the accumulated CPI adjustment for the previous year, as required by subsection 9(2), in a lump sum to the account of the Collective within five business days of the start of each year of the term of this Agreement. Any additional CPI adjustments shall be paid as a lump sum payment to the account of the Collective no later than June 1st of each year of the term of this Agreement. No portion of the Contribution will be paid to the Collective as non-monetary compensation.”

**Q8. Please comment on whether the Agreement meets the requirements of Section 10 of the Regulations.**

Section 10(1)(a) of the Regulations states that the Agreement must provide for the equitable distribution among the news business that are members of the group, and section 10(2) states that equitable distribution is to be determined having regard to the number of full time equivalent employees 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. The strict parroting of this language from section 10 in section 7(b) of the Agreement represents the bare minimum required to comply with section 10 of the Regulations. However, the Agreement does not provide any clarity on what it means to “have regard to the number of FTE employees” which is a critical element of this exemption request. The CJC should provide this clarity in the form of a clearly articulated FTE employee distribution policy which it has so far failed to do.

On this point, the CAB recommends that the Commission order the Collective to distribute funds in proportion to “the number of full-time equivalent employees 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.”<sup>6</sup>

To that end, the CAB proposes that for the purposes of that distribution, the following definitions shall apply:

- **Eligible employee** – a full-time equivalent employee of an eligible news business (as defined in section 27 of the Online News Act), that spends at least 75% of their time engaged in the production of original news content, including researching, collecting information, verifying facts, conducting interviews, photographing, filming, recording, writing, editing, video-editing, photo-editing, audio-editing, designing, assembling, and otherwise preparing, delivering and/or presenting original news content. (Adapted from the definition used for the purposes of the Canadian Journalism Labour Tax Credit)
- **Eligible news business** – as defined in Section 27(1) of the Online News Act (excerpted below).
- **Employee** – person who receives a T-4 slip from their employer, but does not include:
  - Consultants,
  - Independent contractors, including freelancers, or
  - Volunteers, including unpaid interns.
- **Full time equivalent (FTE)** – 35 hours per week of work will be used to calculate FTE employees.
- **News content** – (from the Act) – means content – in any format, including an audio or audiovisual format – that reports on, investigates or explains current issues or events of public interest and includes such content that an Indigenous news outlet makes available by means of Indigenous storytelling.
- **Original news content** – news content which originates from the eligible news business.

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<sup>6</sup> As set out in the *Online News Act Application and Exemption Regulations*.

Furthermore, paragraph 10(1)(a) includes a reference to subparagraph 11(1)(a)(iv) which requires that the businesses receiving compensation must contribute to the sustainability of the Canadian news marketplace. In the Agreement at section 7(d), the CJC states that where it has discretion, it will distribute the Contribution to Members in a manner that contributes to the sustainability of the Canadian news marketplace. The CJC has failed to articulate what this discretion will entail and how it will be exercised in a manner that contributes to the sustainability of the Canadian news marketplace. This leaves open the possibility that it may not have such discretion and therefore would not distribute the contribution in a manner that is consistent with the obligations outlined in subparagraph 11(1)(a)(iv).

In fact, in its current form, the CJC is incapable of contributing to the sustainability of the Canadian news marketplace because it does not allow for sufficient representation of the vast majority of eligible news businesses in Canada, such as the news producing members of News Media Canada, the Canadian Association of Broadcasters or the CBC/SRC. The fact that the CJC and Google have incorporated the discretionary language in this provision is evidence of their awareness that the CJC does not sufficiently represent any major producers of news in this country and therefore would be incapable of distributing the funds in a manner that contributes to the sustainability of the Canadian news marketplace. The CRTC should require that the Collective distribute the funds in a manner consistent with the obligations outlined in the ONA, and in accordance with the definitions as proposed by the CAB.

**If it does not meet the requirements, please explain why not. In particular:**

**a) Is the maximum of 2% for administrative expenses provided for in the Agreement reasonable?**

The CAB proposes that any expenses required to administer the funds be in addition to the \$100 million that is to be provided directly to eligible recipients, and not subtracted from that funding. This provides an incentive for Google to ensure the collective is as efficient as possible. The CAB and its partners had proposed a collective model that had minimal overhead and a plan to operate mostly on a cost recovery basis.

Our assessment of the costs of running a collective is based on our own experience in running a collective and administering funds. For the purposes of the CJC, it should expect to receive a transfer of \$100 million (plus inflationary adjustments) on a yearly basis. It will then disseminate that funding to qualified recipients according to a predetermined formula. It will have to validate the eligibility of each participant. It may also have to deal with over and underpayments and hold a reasonable reserve to address such adjustments. Finally, it will have legal, accounting and other reasonable administrative costs.

The “overhead” of a collective administering funds consists of the following expenses:

- **Annual audit expenses** – estimated in the range of \$25K maximum;
- **Legal fees** – should be minimal as anticipated disputes will likely be amongst stakeholders. It is possible that potential recipients may have issues with their level of compensation (or lack of compensation, as the case may be) and a reasonable withholding can be taken to address such possibilities; and

- **General administrative expenses**, such as the maintenance of a membership database and ongoing review of membership applications – *de minimus*.

Reflecting on what this Collective is intended to accomplish, which is to flow through funding to qualified recipients and not to engage in education, policymaking or advocacy, the 2% fee is excessive. Administrative expenses should not exceed 0.5%.

As the Commission is aware, both the Broadcasting Participation Fund and the Commission's National Contribution Fund operate with far smaller administrative budgets than that proposed by the CJC. If the mandate of the CJC is sufficiently focussed, it should be able to effectively administer the funds for an administrative fee of 0.5%.

**b) Is the mechanism in the Agreement for the CJC to admit news businesses that responded to the open call consistent with paragraph 10(1)(b) of the Regulations?**

In its agreement with Google, the CJC has stated the following regarding admitting news businesses:

7(f) The Collective will admit as a Member, from time to time, any news business that Google informs the Collective in writing that such news business has provided an attestation to Google meeting the requirements of the Exemption Regulations, is verified by the Collective as eligible to be included as a Member, and has signed a Members Agreement.

It is not clear whether this provision is consistent with paragraph 10(1)(b) of the Regulations as it does not specifically provide that any news business that responded to the open call process can join the Collective at any time. Instead, it states that any news business that wants to join the Collective must provide an attestation to Google, that Google must verify whether the attestation meets the requirements in the Regulations, that the CJC must verify its eligibility for membership, and the news business must sign a member's agreement. It is unclear why Google would continue to be involved in the process of receiving and verifying attestations.

Subject to our response to Q3 and our submissions regarding the role of the Commission, a preferable process would be for the Collective to receive the sworn attestations and then conduct the review itself in accordance with open and transparent procedures regarding membership (see for example, the membership review process articulated in the response to Q12 below). There is no reason for Google to be involved in the determination of funding recipients after the Collective has been selected and the exemption order issued.

**c) Is the Agreement sufficient to ensure the CJC will distribute funds in a manner consistent with the requirement for equitable distribution in subsections 10(2) and 10(3) of the Regulations?**

Subsection 27(1) of the ONA sets out the threshold requirements in order for a news business to be eligible for compensation under the ONA:

27 (1) At the request of a news business, the Commission must, by order, designate the business as eligible if it

(a) is a qualified Canadian journalism organization as defined in subsection 248(1) of the Income Tax Act, or is licensed by the Commission under paragraph 9(1)(b) of the Broadcasting Act as a campus station, community station or native station as those terms are defined in regulations made under that Act or other categories of licensees established by the Commission with a similar community mandate;

(b) produces news content of public interest that is primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes, and

(i) regularly employs two or more journalists in Canada, which journalists may include journalists who own or are a partner in the news business and journalists who do not deal at arm's length with the business,

(ii) operates in Canada, including having content edited and designed in Canada,

(iii) produces news content that is not primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment, and

(iv) is either a member of a recognized journalistic association and follows the code of ethics of a recognized journalistic association or has its own code of ethics whose standards of professional conduct require adherence to the recognized processes and principles of the journalism profession, including fairness, independence and rigour in reporting news and handling sources; or

(c) operates an Indigenous news outlet in Canada and produces news content that includes matters of general interest, including coverage of matters relating to the rights of Indigenous peoples, including the right of self-government and treaty rights.

The Regulations at subsection 10(2) provide additional clarity relating to the metric of “full-time equivalent employees”:

#### **Equitable distribution**

(2) For the purpose of paragraph (1)(a), the equitable distribution of monetary compensation is to be determined, subject to subsection (3), having regard to the number of full-time equivalent employees 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.

As the Commission is aware, the ONA leaves an interpretive gap when it comes to the specific definition of full-time equivalent employees. We request that the Commission make it a condition of the exemption order that the Collective adopt and apply the objective and fair interpretations set out in the response to Q8 above that allow for efficient fund distribution and minimize any efforts to manipulate or interfere in the distribution process.



The Regulations at subsection 10(3) address the share of compensation attributable to broadcasters:

Exception — broadcasters

(3) No more than 30% of the monetary compensation may be allocated to news businesses — other than the Canadian Broadcasting Corporation — that carry on a *programming undertaking* as defined in subsection 2(1) of the *Broadcasting Act*, in relation to news outlets that are or are part of a *broadcasting undertaking* as defined in that subsection, and no more than 7% of the monetary compensation may be allocated to the Canadian Broadcasting Corporation.

In our view, the Agreement addresses this provision sufficiently.

**(c) (continued) Please address whether any of the terms agreed to by the CJC, such as its responsibility to indemnify Google, could put its ability to distribute the compensation at risk.**

The obligation found in section 7(h) requires further clarification. The CAB does not see a requirement for any indemnity provision given the narrow scope of the exemption being requested by Google. However, through this Agreement, Google appears to be attempting to force news outlets to give up rights that stand outside the scope of the ONA. This is completely unacceptable.

If the Agreement is not changed to remove that risk, the language of the indemnity provision should be amended to ensure that is limited only to claims arising under the ONA, and to clearly state that while the Collective and its members, as the case may be, will not initiate or participate in any case relating to “infringement in relation to making available news content of Members by Intermediaries in the manner permitted by the Act,” any party can initiate or participate in an infringement proceeding relating to uses that fall outside of those permitted under the Act, in particular any generative AI applications or any uses by affiliates or subsidiaries that are not Intermediaries.

Additionally, the Agreement attempts to impose an inviolable obligation on the Collective to “ensure” performance and enforce compliance of its members in respect of certain actions of its members. We believe that this obligation is excessive and creates a burden on the Collective to police its members’ activities at its own time and expense. This is unreasonable and could result in unnecessary expenses and the possibility of default under the Agreement if a commitment is not enforced to Google’s satisfaction. The CAB prefers a “best efforts” approach to such commitments and considers any attempt to bind the Collective to the actions of its members to be unprecedented and unreasonable.

To that end, we propose the following modifications to the Agreement, with alternative language reflected in the CAB column:

Provision	Current CJC Agreement Language	Proposed CAB Language
Recital C	Google and Collective enter into this Agreement for the purpose of complying with the Act and in support of an application by Google for an exemption order under section 11(1) of the Act (the “Exemption”) in respect of all of the digital news intermediaries that are operated, through any means, by Google and to which the Act applies (“Intermediaries”).	Google and Collective enter into this Agreement for the purpose of complying with the Act and in support of an application by Google for an exemption order under section 11(1) of the Act or an interim exemption order under section 12(1) of the Act (the “Exemption”) in respect of all of the digital news intermediaries that are operated, through any means, by Google and to which the Act applies (“Intermediaries”).
1(b)	Unless earlier terminated as permitted elsewhere in this Agreement, the obligations of the Parties under this Agreement will terminate on the earlier of: (i) the date of the expiry of the Exemption, (ii) the effective date of the repeal of the Exemption or the Act, or other termination of the Exemption by the Commission or any Canadian court of competent jurisdiction, and (iii) the day immediately before the fifth anniversary of the Effective Date.	The obligations of the Parties under this Agreement will terminate on the earlier of: (i) the date of the expiry of the Exemption, (ii) the effective date of the repeal of the Exemption or the Act, or other termination of the Exemption by the Commission or any Canadian court of competent jurisdiction, and (iii) the day immediately before the fifth anniversary of the Effective Date.
4(b)	In the first year of the Term, Google will (i) pay to the account of the Collective \$250,000 of the Contribution within 60 days of the submission of an invoice to the online portal specified by Google according to the portal’s instructions and (ii) shall pay the balance of the Contribution to the account of the Collective within 60 days of the granting of the Exemption. Each subsequent year of the term, Google will pay the Contribution in a lump sum to the account of the Collective within 60 days of the start of each year of the term of this Agreement, or the first Business Day thereafter if the date for payment is not a Business Day. No portion of the Contribution will be paid to the Collective as non-monetary compensation.	In the first year of the Term, Google will pay the Contribution to the account of Collective within five (5) business days of granting the Interim Exemption, and the Collective shall direct the Contribution to an independent public accountant which shall distribute the Contribution to eligible news outlets before December 31, 2024. Each subsequent year of the term, Google will pay the Contribution plus the accumulated CPI adjustment for the previous year, as required by subsection 9(2), in a lump sum to the account of the Collective within five business days of the start of each year of the term of this Agreement. Any outstanding CPI adjustments shall be paid as a lump sum payment to the account of the Collective no later than June 1st of each year of the term of this Agreement. No portion of the Contribution will be paid to the Collective as non-monetary compensation

Provision	Current CJC Agreement Language	Proposed CAB Language
4(d)	The Collective may deduct an amount in respect of reasonable administrative expenses, not to exceed 2 percent of the Contribution, provided that the deducted amount is solely used in respect of activities relating to the administration of the Contribution. The Collective agrees that it will not charge any fees to a news business or group of news businesses in order to become or continue as a Member of the Collective.	The Collective may incur an amount in respect of reasonable administrative expenses, not to exceed 0.5 percent of the Contribution, provided that the incurred amount be solely used in respect of activities relating to the administration of the Contribution. The Collective agrees that it will not charge any fees to a news business or group of news businesses in order to become a Member of the Collective. Google shall pay for all such reasonable administrative expenses.
5(b)	Google will comply, and cause its Intermediaries to comply, with any conditions (i) set out in subsection 11(1) of the Act that are applicable to Google or its Intermediaries, and/or (ii) contained in the Exemption.	Google will comply, and cause its Intermediaries to comply, with any conditions (i) set out in subsections 11(1) and 12(1) of the Act that are applicable to Google or its Intermediaries, and/or (ii) contained in the Exemption.
6(f)	Each Member is a news business that operates one or more news outlets that produce news content primarily for the Canadian news marketplace.	<p><i>These provisions should be removed as they are not fundamental to the entry of a valid contract and should not trigger a potential ability for Google to argue for contract rescission and/or to claim damages.</i></p>
6(g)	The Collective has the necessary resources, competence and qualifications, including knowledge, skill and experience to perform its obligations under this Agreement.	
6(h)	All information provided by the Collective, or to the Collective's knowledge based on the information provided by the Members in its respective Member Agreement—information provided by a Member, in connection with the Exemption, the Act or this Agreement to Google, Commission or Treasury Board, including all information contained in an attestation referenced in section 5 of the Exemption Regulations, is true and complete.	
6(i)	The Collective has sufficient right and authority to enter into this Agreement, to grant the rights granted hereunder, and to represent the Members in respect hereof.	

Provision	Current CJC Agreement Language	Proposed CAB Language
6(j)	The Collective is authorized by the Members to bargain in relation to news content in which copyright subsists.	
6(k)	Member owns the copyright or is otherwise authorized to bargain in relation to the news content in which copyright subsists.	Based on a best-efforts assessment, each Member owns the copyright or is otherwise authorized to bargain in relation to the news content in which copyright subsists.
7(a)	The Collective will comply, and ensure the compliance of all of its Members, with (i) the Act and the Regulations; and (ii) any conditions applicable to them contained in the Exemption.	The Collective will comply, and <u>direct</u> the compliance of all of its Members, with (i) the Act and the Regulations; and (ii) any conditions applicable to them contained in the Exemption.
7(b)	The Collective is solely responsible for, and will ensure the timely and equitable distribution of the Contribution to the Members in accordance with the Act, this Agreement, applicable law, and any Members Agreement. The equitable distribution of the Contribution is to be determined having regard to the number of full-time equivalent employees who, in the previous calendar year, were employed by each Member for the purpose of producing, for news outlets operated by that business, original news content that is intended to be made available online	Subject to any conditions imposed by way of an interim exemption order, the Collective is solely responsible for and will ensure the timely and equitable distribution of the Contribution to its Members in accordance with the Act, this Agreement, applicable law including applicable regulations, and any Members Agreement. The equitable distribution of the Contribution is to be determined in proportion to the number of full-time equivalent employees who, in the previous calendar year, were employed by each Member for the purpose of producing, for news outlets operated by that business, original news content that is intended to be made available online.

Provision	Current CJC Agreement Language	Proposed CAB Language
7(c)	<p>Within 30 days of making the first payment to Members, the Collective will provide a disclosure to Google and to the Members, and publish such disclosure online in a publicly accessible location on its website, containing:</p> <p>(i) policies and procedures with respect to determining eligibility and FTE verification;</p> <p>(ii) a list of all Members and the amounts paid to each Member;</p> <p>(iii) FTE count per industry segment and other statistics if so determined by the Collective;</p> <p>(iv) administrative fees drawn by the Collective.</p> <p>Within 30 days of the end of each quarter, the Collective will update the disclosure to include any activity that occurred during the quarter.</p>	<p><i>*Policies and Procedures should be available from the Collective independent of funding from Google</i></p> <p>At the Annual Meeting, the Collective will provide a report to its Members setting out the amounts paid to each Member.</p>
7(d)	<p>The Collective will: (i) include the following requirements in the Members Agreements (and enforce all such requirements in the Members Agreements to the fullest extent and in a timely manner):</p> <p>(A) Members use a majority of the Contribution to support the production of local, regional and national news content;</p> <p>(B) Members not allow corporate influence to undermine the freedom of expression and journalistic independence enjoyed by news outlets;</p>	<p>(c) The Collective will, in accordance with the Act and the Exemption Regulations:</p> <p>(i) use its best efforts to ensure that Members use a majority of the Contribution to support the production of local, regional and national news content;</p> <p>(ii) not allow corporate influence to undermine the freedom of expression and journalistic independence enjoyed by news outlets;</p>
7(d)(ii)	<p><u>where it has discretion</u>, distribute the Contribution to Members in a manner that contributes to the sustainability of the Canadian news marketplace;</p>	<p>distribute the Contribution to Members in a manner that contributes to the sustainability of the Canadian news marketplace;</p>

Provision	Current CJC Agreement Language	Proposed CAB Language
7(e)	<p>The Collective will, and will ensure that the Members Agreement includes provisions requiring Members agree to, provide a timely response to any reasonable requests for information made by Google, the Commission or Treasury Board in connection with this Agreement, including providing copies of any Member Agreement or financial records in connection with the Contribution. Any information so provided to Google, the Commission or Treasury Board in connection with the Exemption, the Act or this Agreement will be true, accurate and complete. If a claim on confidentiality is to be made in connection with information so disclosed, the Collective will designate such information as confidential if it falls within the categories set out in subsection 55(1) of the Act. The Collective will enforce such provision in the Members Agreements to the fullest extent and in a timely manner.</p>	<p>The Collective will, and will use its best efforts to ensure that Members will, provide a timely response to any reasonable requests for information made by the Commission or Treasury Board in connection with this Agreement, including providing copies of any Member Agreement or financial records directly in connection with the Contribution. Any information so provided to the Commission or Treasury Board in connection with the Exemption, the Act or this Agreement will be true, accurate and complete. If a claim on confidentiality is to be made in connection with information so disclosed, the Collective will designate such information as confidential if it falls within the categories set out in subsection 55(1) of the Act.</p>
7(f)	<p>The Collective will admit as a Member, from time to time, any news business that Google informs the Collective in writing that such news business has provided an attestation to Google meeting the requirements of the Exemption Regulations, is verified by the Collective as eligible to be included as a Member, and has signed a Members Agreement.</p>	<p>The Collective will admit as a Member, from time to time, any news business that has provided a sworn attestation meeting the requirements of the Exemption Regulations.</p>
7(g)	<p>The Collective will, and will include in the Members Agreement a requirement that the Members will, comply with the applicable obligations under this Agreement and the Act. The Collective will enforce such provision in the Members Agreements to the fullest extent and in a timely manner.</p>	<p>The Members Agreement will reflect the obligations of the Members and the Collective under this Agreement and the Act.</p>

7(h)	The Collective will not initiate or participate in, and will include a similar requirement of the Members in the Members Agreement, from initiating or participating in, (i) any bargaining process or (ii) proceeding before the Commission, a mediator, an arbitration panel, or a court of competent jurisdiction, in each case related to (A) any bargaining process in connection with Google, any of its Affiliates, or any Intermediaries pursuant to the Act or the Regulations, or (B) infringement of copyright in relation to making available news content of Members by Intermediaries in the manner permitted by the Act. The Collective will enforce such provision in the Members Agreements to the fullest extent and in a timely manner.	The Collective will not initiate or participate in, and through its Members Agreement will prohibit its Members from initiating or participating in, (i) any bargaining process or (ii) proceeding before the Commission, a mediator, an arbitration panel, or a court of competent jurisdiction, in each case related to any bargaining process in connection with Google, any of its Affiliates, or any Intermediaries in relation to making available news content of Members by Intermediaries pursuant to the Act or the Regulations.
8(d)	any repeal, suspension or amendment of the Exemption as a result of the Collective or any Member not complying with any condition applicable to the Collective or a Member that is referred to in subsection 11(1) of the Act or contained in the Exemption.	any repeal, suspension or amendment of the Exemption as a result of the Collective or any Member not complying with any condition applicable to the Collective or a Member that is referred to in subsections 11(1) or 12(1) of the Act or contained in the Exemption.
10	Set-off. In the event Google is entitled to indemnification under Section 8, Google may, at its sole option, set off the amount of Loss subject to the indemnification against the Contribution payable hereunder.	Set-off. In the event Google is entitled to indemnification under Section 8, Google may, at its sole option, and acting reasonably, set off the amount of Loss subject to the indemnification against the Contribution payable hereunder.
16	Amendment and Waivers. No modification of, or amendment to, this Agreement will be valid or binding unless set forth in writing and executed by duly authorized officers of the Parties hereto, and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.	Amendment and Waivers. No modification of, or amendment to, this Agreement will be valid or binding unless set forth in writing and executed by duly authorized officers of the Parties hereto, and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived. For the avoidance of doubt, nothing in this Agreement is meant to amend the Act or Exemption Regulations.



		Notwithstanding anything to the contrary in this Agreement, in the event of a conflict between this Agreement and the Act or the Exemption Regulations, the Act or the Exemption Regulations, as applicable, will prevail.
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**Q9. The CJC must comment on the steps that were taken to ensure that, in negotiating and signing the Agreement, it acted independently of Google and protected the interests of the news businesses that will receive compensation. For instance, did the CJC receive independent legal and financial advice?**

We reserve the right to comment in the reply phase.

**Q10. Where such documents have already been created, the CJC is required to file each of the documents mentioned in clauses 7(c)(i) and 7(d)(v) of the Agreement. To ensure other interested parties may comment on the documents, the CJC is directed to file them no later than 8 July 2024.**

As of July 15, 2024, the CJC has stated that it did not have sufficient time to finalize its documents or policies in response to the Commission's questions. However, the CJC has provided some conceptual indications of how it expects to operate. The CAB offers the following comments.

- a. Please comment on whether the information provided in the application and in the documents filed in response to this question demonstrate that the CJC is able to enforce the obligations on member news businesses that are contained in the Agreement, and whether there will be sufficient monitoring and transparency to allow all parties to verify whether the obligations are being met.**

As the CJC has not provided the requested documents, the CAB's comments pertain to the conceptual information CJC has provided. A primary concern with the information provided by the CJC is that it has not articulated the conditions for becoming a member in the Collective. The CJC proposes a large number of separate classes of members but it does not specify the conditions for eligibility in each class or the voting authority associated with the classes or the membership within the classes.

The CJC has proposed a Board of Directors with enshrined roles for classes of members that may or may not include funding recipients. It is not clear what authority these directors will have to enforce obligations on member news businesses or whether there will be sufficient monitoring and transparency to allow all parties to verify whether the obligations are being met. The model proposed by the CJC attempts to channel representativeness on the CJC Board. In doing so, it will upend the ability of the CJC to engage in effective collection and distribution of funding to the intended recipients of the CJC who are themselves representative of the broad landscape of news production in Canada. In our view, this is a critical flaw that must be remedied.

It is also possible under the structure that has been proposed that the CJC could be engaged in policymaking rather than mere oversight of compliance and distribution. For example, the CJC proposed a Board of Directors that would include enshrined positions for entities that may or may not be recipients of funding under the ONA, which calls into question why such entities would want to be on the Board of the CJC other than to seek to expand the scope of who is eligible for funding. This is clearly outside the scope of what is required for a collective, the mandate of which should be narrowly focussed on the distribution of funds to eligible news businesses in compliance with the ONA.

It is not the purpose of the ONA, and it should not be the mandate of the Collective, for it to act as an advocacy association for small and/or emerging journalism entities. This is undoubtedly important work, however, there are other existing entities that serve this function. The CJC has to be narrowly focussed on collecting and distributing funds to eligible news businesses in compliance with the ONA. This can be done with a much leaner and more efficient governance and administrative structure than what has been proposed by the CJC.

- b. If the available information on the CJC's operation and governance is not sufficient for the Commission to make a determination, please comment on the appropriateness of the Commission issuing an interim exemption order and setting a condition requiring that final versions of those documents be submitted. Those documents must demonstrate, to the satisfaction of the Commission, that the funds will be distributed in accordance with the Regulations prior to the Commission issuing a final exemption order.**

The CAB strongly recommends that the Commission take the necessary steps to immediately issue an IEO, as outlined above, to ensure prompt distribution of funding to eligible recipients in CY2024. To the extent the CJC's proposed model does not provide the Commission with comfort that it would be able to do so effectively and efficiently, the CAB recommends that the Commission direct that CY2024 funding be distributed through an independent, reputable third-party accounting firm, retained by the CJC in compliance with selection criteria from the Commission, and that the Commission instruct the CJC to do the work necessary to ensure it can properly serve as the single collective contemplated in the ONA.

Prior to issuing a FEO, the CAB proposes that the Commission impose conditions on the Collective to ensure compliance with the ONA.

Under the *Canada Not for Profit Corporations Act, S.C. 2009, c.23 (CNCA)*, directors cannot be appointed and instead must be elected by the members. The model proposed by the CJC effectively circumvents that transparency and empowerment of the membership by creating classes of members so narrow that their ability to elect directors is effectively automatic. In addition to being highly inefficient, this model reflects a clear intent to disenfranchise the majority of intended funding recipients.

The CJC model does not specifically create a membership class for commercial broadcasters, but it does specifically create six separate membership classes that are non-commercial broadcasters. As commercial broadcasters employ the largest number of FTE news employees, as compared to non-commercial broadcasters, and would therefore represent the vast majority of eligible recipients of funding, this governance model is completely unrepresentative of the funding recipients. At most, the vast majority of eligible recipients would be represented by only 2 of 9 broadcaster directors. A similar structure is proposed for the directors from the publishing sector where, again, the majority of publisher directors do not represent the commercial publishers and therefore do not represent the vast majority of funding recipients.

As an alternative to what has been proposed by the CJC, we propose that the Collective need only have one class of members. This simplifies decision-making and enables the collective to be nimble if changes are required. Under the model proposed by the CJC, there are 16 classes of members. This is unduly cumbersome and would require conducting 16 separate super-majority voting procedures to make any changes relating to the eligibility and qualification of members in any of the 16 classes. That presupposes that the individuals running the collective will have anticipated every possible scenario prior to creating the collective because it will be so difficult to make any changes after the classes have been created. The only reason to create so many classes of members is to enshrine the ability of each independent news association to appoint a person to the board and preserve their ability to have a “dedicated seat”, rather than allow the actual funding recipients to vote for their representatives on the Collective’s board in proportion to their entitlement.

Under our proposed model, to be a member of the Collective, an entity must be an eligible news business as defined under subsection 27(1) of the ONA and must have at least two qualifying FTE employees. All members of the Collective would be permitted to vote, and votes would be allocated based on the number of FTE news employees employed by the member. For example, a member with two qualifying FTEs will have two votes and a member with 25 eligible FTEs will have 25 votes. This ensures that the members are represented in proportion to the qualifying FTEs they employ and will ensure that the Board of Directors remains focused on maximizing distribution to qualified recipients.

Under the governance structure proposed by the CJC there is no direct tie to funding recipients, so it is possible that the Board of Directors could be comprised of individuals with a desire to achieve certain objectives other than maximizing distribution to qualified recipients and, in fact, would be incentivized to make decisions to direct funding to flow other than to qualified recipients under the ONA, either to policy-making and advocacy initiatives or to news businesses that do not meet the criteria under the ONA.

With clear parameters for membership eligibility and clear definitions of what constitutes a qualifying FTE employee, the job of the collective should simply be to administer the funds in accordance with the Act, Regulations and guidelines.

The governance structure should be simple, and structured as follows. The Collective should have a Board of Directors with 3 directors, represented by the members as follows:

- News Publishers – 1 representative from the news publishing sector;
- News Broadcasters – 1 representative from the broadcast news sector; and
- CBC/Radio-Canada – 1 representative from CBC/Radio-Canada.

All decisions of this Board of Directors will require a consensus vote and where consensus is not achieved, simple majority vote will rule. The Board of Directors would have the authority to do all things not legally required to be done by the members, including:

- Oversight of the collective to ensure compliance with the ONA;
- Appoint sector committees to represent the specific interests of the broadcasting and publishing sectors respectively;
- Oversight of sector committees to ensure cohesion and consistency with distribution of the funds and acceptance of member attestation and funding requests, including audit and review;
- Establish reporting requirements;
- Ensuring sound financial direction of the collective; and
- Make decisions regarding disputes that cannot be resolved at the sector committees.

The CAB notes that these are many of the authorities identified by the CJC to be properly delegated to an Executive Committee, with the notable exceptions of hiring, dismissing and providing direction to the Executive Director, and appointing advisors, an ombudsperson and an independent dispute arbitrator. The CAB is strongly of the view that with a simplified and focussed mandate, the collective does not need such staff, advisors or consultants. The CAB is also of the view that a narrow Board of Directors will be more efficient and focussed on the mandate as anticipated in the ONA.

The CJC also proposed term, election and nomination procedures. The CAB agrees with the proposals relating to the timing of the first annual meeting, and generally with the idea that terms should be staggered to avoid simultaneous turnover of all elected representatives. However, the CAB disagrees with the number of directors, the existence of beneficiary vs non-beneficiary directors, the need for a nominating committee, and the overall complexity of the CJC's proposal. Under our model, the three Directors should be elected by the membership at the annual meeting and would be eligible to be re-elected. The Sector Committee representatives should initially be elected by members in the respective sectors to varying one-, two- and three-year terms to prevent simultaneous turnover. It should be open to the Sector Committees to appoint sector-specific nomination committees if it was determined to be necessary.

As noted, we propose that the Board of Directors should oversee Sector Committees (one for News Broadcasters and one for News Publishers) and delegate to these Committees the authority to manage sector-specific issues.

The Broadcaster Committee should be elected by the members that are representatives of broadcast news businesses that are eligible under subsection 27(1) of the ONA and meet other eligibility criteria in the Collective's by-laws. The Broadcaster Committee should permit eligible broadcast news businesses that responded to the open call and have been approved as eligible to join the membership and receive compensation in accordance with the ONA.

As with voting for Directors, each eligible broadcast news business should be entitled to vote for representatives on the Broadcaster Committee with an allocation based on the number of FTE employees 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.

The Broadcaster Committee should have a maximum of 9 representatives and be comprised of the following:

- 2 representatives from English language commercial television;
- 1 representative from French language commercial television;
- 1 representative from ethnic commercial television or ethnic commercial radio;
- 2 representatives from commercial radio (English and/or French);
- 1 representative from an Indigenous broadcaster (radio or television);
- 1 representative from non-commercial radio; and
- 1 representative from non-commercial television.

The Broadcaster Committee should manage, or supervise the management of, the activities and affairs of the Collective as it relates to broadcasters. The powers of the Broadcaster Committee should include, but not be limited to, reviewing and accepting applications for membership as a broadcaster, oversight and management of distribution of funds, and all such powers and actions as are not required to be carried out by the members under the CNCA. Each news business under common ownership should not be represented by more than one individual at a time. Committee Representatives should not be compensated in their capacity as such. Effort shall be made to ensure that the governance structure allows for non-commercial broadcasters to have appropriate control over their director representatives.

A similar model should apply to the News Publisher Committee and be sufficiently representative of the news publishing sector.

Finally, the CJC proposal includes a requirement that the Executive Committee appoint a panel of advisors, including a financial expert, a legal expert and a policy/regulatory advisor. This panel would be in addition to the Executive Director and an ombudsperson. Taken together with all other aspects of the CJC model, this indicates that administrative costs associated with the CJC proposal would be unnecessarily high.

The CAB is of the view that the operations of the CJC can be managed by the Board of Directors, and that the members of the CJC, as anticipated under our proposed model, would have a high degree of experience and expertise that can be relied upon without the need to incur additional costs. At most, the collective would need the services of an administrator to manage the receipt and distribution of funds and maintain a membership database.

Based on the CAB's experience with the administration of the Canadian Broadcasters Rights Agency (the "CBRA"), this could be done on a part-time basis. Legal and accounting expertise could be on an as-needed basis and permanent advisors should not be required. As stated above, if definitions and parameters relating to distribution and membership are clear, disputes should be minimal and there should be no need for a full-time person to manage them or to "identify systemic challenges and recommend improvements to prevent future conflicts to the boards... [or to] publish clarifications or concerns publicly, taking into account privacy concerns." The administrative structure contemplated by the CJC demonstrates that it intends to broaden the mandate of the collective far beyond the mere collection and administration of funds. The CAB is strongly opposed to this unnecessary and expensive expansion of the role of the Collective.

Taking a step back, it is important to observe that the media landscape in Canada, and particular the state of Canada's news media, is in critical condition. The ONA is intended to help staunch the rapid outflow of advertising capital that helped fund news media for much of recent history. We cannot emphasize how acutely this capital is required. Excessive and unneeded complexity, layers of administration and other impediments will only serve to slow the distribution of funding to those who need it most and are entitled to it under the ONA.

**Q11. Are there any additional conditions related to the operation of the CJC that should be included if the Commission grants an interim exemption order? Explain the intended effect and the rationale for any conditions you propose to be included.**

The CJC should be mandated to develop and promulgate by-laws "as soon as practicable" upon appointment and under the purview of a representative Board of Directors pursuant to our proposal as outlined in our response to Q10. The by-laws should direct, among other things, that the CJC only be engaged in the collection and distribution of funding pursuant to the ONA and the Regulations and directly related activities. The Commission should retain discretion to approve or request modifications to these by-laws, but such approval should not be a prerequisite for issuing the IEO. The CJC should be ordered not to engage in any additional work including advocacy, policymaking and self-promotion.

**Q12. If the Commission grants a final exemption order, should it impose any additional conditions related to the operation of the CJC? Explain the intended effect and the rationale for any conditions you propose to be included. In particular, please comment on the appropriateness of the Commission imposing conditions related to the following and on what those conditions should be:**

As noted elsewhere in this submission, the CAB recommends that the Commission issue an immediate IEO. Before the Commission grants the FEO in respect of this Agreement between Google and the CJC, it should impose the above-noted additional conditions to ensure an appropriate and workable governance structure to support a narrowly focussed mandate.

It is clear that the CJC, as it is currently constituted, does not have the capacity or ability to manage this large a fund in a manner that is reasonable or appropriate for an industry of this size and scale. To ensure proper administration of this funding in support of Canadian journalism, it is essential that the collective responsible be professional and organized and narrowly focussed on compliance with the ONA, and it is incumbent on the Commission to establish parameters in the absence of the CJC's willingness or ability to do so itself.

**a) How funds should be handled prior to disbursement, including use of trust accounts and disbursement of interest.**

The Collective should operate with a high degree of efficiency and transparency in its handling of the funds. After funding for CY2024, which should occur as soon as possible and be administered by an independent third-party accounting firm, retained by the CJC on the basis of selection criteria imposed by the Commission, the Collective should receive its compensation from Google in a lump sum payment on an annual basis on January 1, directly deposited into a savings account or GICs in trust for its members.

Interest should accumulate on the account, ultimately to be paid out to the members on a pro rata basis in accordance with the FTE-based distribution policy. The goal should always be to distribute as much of the funds as possible, with minimal holdbacks.

The Collective should ensure ongoing, professional accounting in accordance with the requirements for not-for-profit corporations under the CNCA, including the requirement that a Public Accountant be engaged and approved by the membership on an annual basis. Financial statements and an accounting review should be prepared and reported to the membership.

The Collective should have the ability to review and audit information filed by its members to ensure ongoing compliance with the ONA, and there should be a process in place to correct errors discovered on audit.

**b) Timelines for procedures, including processing memberships and disbursement of funds.**

The Collective should retain responsibility for processing membership and disbursement of funds, following this schedule:

(1) Membership Review

- Eligible news business may submit sworn attestations for funding at any time during the year; such attestations are reviewed when they come in and news businesses are notified whether they qualify for funding or not.
- Subject to our response to Q3 and our submissions regarding the role of the Commission, we submit that the Collective should retain responsibility for determining whether such sworn attestations are qualifying in accordance with the FTE distribution policy and membership agreement.



- If additional news businesses qualify, they should be added to the list for the next calendar year distribution; if they do not, they should be told why and given an opportunity to correct and resubmit their sworn attestation for the following year.
- Membership calculation should be done in February each year; any eligible news businesses whose sworn attestations were sent in by December 31 of the prior year shall be processed and approved prior to February 15 and will receive funding in that year's distribution. If the sworn attestation comes in after the December 31 deadline, the additional eligible news business should be added to the distribution list for the subsequent year.
- The Collective should retain an audit right and have discretion to exercise the audit right on reasonable notice to the news businesses.
- Any existing news businesses should provide reporting regarding the number of qualifying FTE employees they represent, also in compliance with the December 31 deadline.
- Calculation should then be done by the Collective to determine the allocation of funds across the qualifying FTE employees, and disbursements paid out to the members on the basis of the number of qualifying FTE employees submitted by December 31.

## (2) Disbursement of Funds

- Google should pay the \$100M lump sum directly to an account of the Collective to be directed to an independent third-party accounting firm, in trust on behalf of the CJC, within 5 days of the issuance of the IEO, and such firm shall be instructed to ensure complete distribution of the funds before the end of CY2024 in accordance with interpretive instruction from the Commission as to the determination of eligible recipients.
- Every year thereafter, Google should pay the \$100M lump sum plus a top up of any accumulated CPI owing from the previous year directly to the Collective's account on January 1 of each year to be held in trust for the members. Google should provide accounting reports to accompany this deposit.
- Google should pay a top-up for outstanding CPI adjustment to the previous year's payment, directly deposited into the Collective's account, no later than June 1<sup>st</sup> of each year to allow time for annual CPI adjustments to be calculated and published. This should be done on a rolling basis, year over year, to ensure the top-up is accurately calculated and paid. Google should provide accounting reports to accompany this deposit.
- Disbursement calculation should be done on or around February 15, on the basis of the total number of qualifying FTEs per member as per the information submitted by members by December 31 of the preceding year.
- Total amount owing to each FTE will be a *pro rata* share of the Google \$100M contribution, split into 3 tranches for each of the news publishers (\$63M), broadcasters excluding CBC (\$30M) and CBC (\$7M), plus the pro rata share of any accumulated interest, plus the pro rata share of any CPI adjustment payments received from Google the previous year.

- Other adjustments to the funds to be distributed as a result of any changes required to the calculation of number of FTEs resulting from new information that came to light after the distribution deadline would be accounted for the following year.
- Funds should then be distributed in accordance with the FTE distribution policy.

**c) Voting procedures for leadership of the CJC, or on matters of importance such as accepting agreements or changes to the organization's procedures.**

Members in the non-profit corporation (CJC) should be anyone who qualifies under the ONA to receive compensation. Eligible news businesses with two or more FTEs should qualify for membership and each member will receive the number of votes commensurate with the number of FTE employees in any given year. This voting mechanism should be prescribed in the Articles of the Corporation, in accordance with subsection 154(5) of the CNCA. This calculation should be done once a year to support calculations for distribution and voting.

Like all non-profit corporations acting in accordance with the CNCA, there should be a division of responsibility for voting. All matters listed under subsection 197(1) of the CNCA will require voting from the full membership. This includes all fundamental changes relating to the corporations' name, the registered office, any activities the corporation may carry on, creating or changing classes of members or conditions related to membership, changing the number of directors, the statement of purpose of the corporation, the manner of giving notice, the method of voting by members not in attendance, and any other provisions set out in the Articles.

The members should also vote for the directors and should vote for the representatives on the Sector Committee that represent their respective sector (news publishers and broadcasters).

The directors should be responsible for the operational decisions of the corporation and may delegate some operational decision-making to the respective Sector Committees. With a vast membership, as is expected in this case, it is unworkable and unreasonable to expect the entire membership to be convened to make operational decisions. That is why it is essential that the members have the authority to elect and remove directors and Sector Committee representatives to ensure that these operational decisions are reflective of the interests of the members.

Under the proposal advanced by the CJC, directors would effectively be enshrined for each of the 16 classes. Similarly, it would be unreasonable and unworkable to expect representatives from different sectors to make operational decisions relating to another sector. That is why it is essential that the Collective have Sector Committees for each category of recipient (i.e. News Publishers and News Broadcasters). Since the CBC is a single entity, it should be entitled to receive funding unencumbered by the oversight of a Sector Committee.

In the case of the CJC, the Board of Directors should be comprised of representatives from each of the sectors, and each Sector Committee should be comprised of diverse representatives from within each sector. Operational decisions to be made by the Board of Directors would include determining over-arching policies relating to the Google Agreement, general membership agreement and the FTE distribution policy. The Board of Directors would interface with the Commission as needed, and ensure administrative costs are as low as possible.

Operational decisions relating to the Sector Committees should include dispute resolution policies specific to the sector, membership approval requirements specific to the sector, and distribution administration specific to each sector. With clear definitions and parameters for membership, the opportunity for disputes to arise should be minimal.

This balance of decision making maximizes efficiency, tailors' interest specific to the sectors, and optimizes transparency by ensuring that the people most affected by decisions are the ones that are making those decisions. It is essential that the members of the Collective be representative of funding recipients under the ONA, and it is essential that those qualifying recipients be sufficiently representative of the entire news ecosystem in Canada. To include entities that do not qualify for funding under the ONA risks undermining the objectives of the ONA and the exemption order.

**d) Should Google's written approval be required for the CJC to assign its responsibilities under the agreement to another organization? Should such an assignment require a Commission review of the exemption order?**

The exemption is to be granted on the basis of the agreement between Google and the CJC. In making its commitments to the Commission, Google is relying on the representations and warranties advanced by the CJC in the agreement, such as those articulated in paragraph 28 of CRTC 2024-143. If the CJC were to assign its responsibilities to another entity, especially one not involved in the process to date, that would risk undermining the entire exemption process. To be clear, the CJC would retain the ability to contract with third parties at the discretion of its Board of Directors.

Furthermore, if the Agreement with the CJC is entered into under the scrutiny of the Commission in order to obtain the exemption, Google and the CJC should not then be permitted to circumvent the transparent process and assign the operations to an unknown entity. If the parties to the Agreement were to change, it should trigger an automatic review and potential revocation of the exemption order.

**e) Should the Commission impose a condition requiring an annual report from the CJC providing information on its operations? If so, please explain what elements should be included in the report and why. For example, the report might cover information on membership activities, when and to whom money was dispersed, the operating budget of the CJC, or on any dispute resolution activities.**

Under the CNCA, a corporation is required disclose membership composition, detailed financial statements, by-laws, and other information about the corporation to the membership on an annual basis. Compliance with CNCA reporting requirements ensures transparency for the corporation. In addition, in order for dispute resolution mechanisms to be effective and fair, the mechanisms must be accessible to the membership and should be in this case.

This means that membership composition, payments, administrative fees, governance and dispute resolution should all be fully transparent and fully accessible to the entire membership. An annual report containing this information should be prepared for the membership and disclosed in accordance with the annual meeting requirements for CNCA corporations. The annual report could be disclosed to the Commission as well.

We do not think it is necessary to publicly disclose information that may be considered “commercially confidential” or sensitive, such as specific employee information (including the number of FTE employees) and metrics for each news business. As with much reporting to the Commission, we propose that there be a layer of disclosure that is only made to the Commission in confidence and not publicly disclosed, with a redacted version to be made available to the public.

The CAB supports disclosure of any dispute resolution activities that took place in the year and supports the disclosure of clear and transparent rules and procedures. However, based on our experience with the operation of the CBRA, the scope and extent of the proposal advanced by the CJC is unduly burdensome and unnecessary. The CJC proposal includes a detailed appendix outlining its approach to dispute resolution, as follows:

#### **Appendix B - Dispute Resolution Framework**

An accessible and equitable dispute resolution mechanism between news businesses, the public and the Collective is crucial for maintaining transparency, fairness, and organizational effectiveness. We have developed the following framework:

- 1. Clear Policies and Procedures:** The Collective will have well-defined policies and procedures regarding membership and funding eligibility, funding distribution, board governance, and conflict resolution. A transparent decision-making framework will outline criteria, processes, and responsibilities, and be published and easily accessible to the public. These will help prevent misunderstandings and disputes by ensuring that decisions are made fairly and consistently.
- 2. Training and education:** The CJC-CCJ will develop and provide training and education for administrative staff tasked with reviewing applications and making decisions to ensure consistent implementation of the decision-making framework and policies. We will also develop education materials to support eligible news businesses to interpret how the policies apply to their businesses, support them in accessing membership, if eligible, and understand how to raise concerns. These may be delivered in the form of written resources on the organizational web sites, electronic communications and / or webinars.
- 3. Transparent Communication Channels:** We will ensure there are clear channels of communication through which publishers and broadcasters (both members and non members) and directors can raise concerns and seek clarification on funding decisions or governance issues.
- 4. Ombudsperson:** We will appoint a Collective ombudsperson to serve as an independent and confidential resource for members, directors and non-members to voice concerns, seek guidance, and facilitate resolution of disputes. The ombudsperson will be empowered to identify systemic challenges and recommend improvements to prevent future conflicts to the boards of both the Collective. Similar to a public editor, the ombudsperson may also publish clarifications or concerns publicly, taking into account privacy concerns.
- 5. Dispute Resolution Committee:** Each of the two councils will serve as a Dispute Resolution Committee, handling disputes regarding either broadcasters or publishers, respectively, through its respective Dispute Resolution Committee. These committees will be empowered to investigate grievances, request further information from members and non-members, re-evaluate eligibility decisions or resolve other disputes, and make recommendations to the Executive Committee to ratify. Recommendations to the Executive Committee can be made by a majority of the council.

6. Escalation: In the event that the Publishers council or Broadcaster council fail to resolve a dispute, a party involved may escalate the dispute to the Executive Committee. The Collective's role is to assess the legal and other risks of the dispute and either send back a recommendation to the subsidiary council or recommend the dispute to an independent arbiter empowered to make binding decisions. Decisions of the independent arbiters shall be final and without appeal, except to the extent that the CRTC issues an order regarding a news business's eligibility.

7. CRTC role: A news business determined to be ineligible by the CJC-CCJ and that has exhausted the CJC-CCJ's dispute resolution process maintains any right that it enjoys under s. 27(1) of the Act to request that the CRTC order that it be designated as eligible for the purposes of the Act. The CJC-CCJ will respect the CRTC's eligibility orders as well as any orders designating a news business as ineligible.

This proposal indicates that the CJC expects a large volume of complex disputes, and in fact is creating the conditions for unrelated disputes. The CAB is of the view that with clear definitions relating to membership and funding distribution, disputes should be minimal. The CAB generally supports items 1, 3, 6 and 7. However, items 2, 4 and 5 indicate that the CJC intends to broaden the mandate of the Collective well beyond that required for the efficient and fair distribution of funding in compliance with the ONA.

There should be no need to develop education materials and training for small news businesses as outlined in item 2. General support to ensure members can navigate the process should be significantly less onerous than what is proposed by the CJC. This recommendation indicates that the CJC is looking to create a standalone operation to support small and independent news businesses from the Google funding intended for FTE news employee recipients. Parliament was clear about what this funding is to be used for, and education and training materials are well beyond that scope.

Similarly, there should be no need for an Ombudsperson outlined in item 4. The CAB does not anticipate that this Collective will be rife with disputes and systemic problems. It is an administrative agency whose job is to receive funding from Google and distribute it to qualifying news businesses that employ FTE employees that produce news, in proportion to those FTEs. It seems excessive to consider that there would be enough work to support an ombudsperson, or a dispute resolution committee as proposed in item 5.

The CAB has been participating in the administration of the CBRA for many years. The CBRA is a collective that collects and distributes funds from BDUs to broadcasters in accordance with clear rules pertaining to allocation of funds for distribution. This allocation must be calculated annually and on a *pro rata* basis. The parties are all focused on maximizing the efficient distribution of the funds, and nothing else. Members have an incentive to monitor the operations of the collective to which they belong and from which they receive funding. If one member is perceived to be gaming the system, other members will want to address that as it reduces their share of funding. Thus, there is a common interest to ensure fairness and honesty. Disputes arise, but they are often technical or accounting related, sometimes are questions of interpretation, but are always easily resolved with the cooperation of the parties. It is open to the Collective in this case to structure itself in a simple, clear, and easy to administer fashion. The framework proposed by the CJC is excessive and represents an unnecessary administrative burden and expense.

**Q13. Please comment on the appropriateness of the Commission granting a five-year exemption order to Google. If it is not appropriate, why not and what should the term of the exemption order be?**

It would be appropriate for the Commission to grant a five-year exemption to Google, once it is satisfied that the CJC is appropriately situated and capable of administering the funds in accordance with the ONA. With a properly functioning collective in place, having five years to operate under the exemption order will enable the parties involved to develop and refine systems to maximize efficiency. It also recognizes the pace of approvals and the work involved by all parties to ensure the funding can be administered to the eligible news businesses in support of Canadian journalism. If, at any point during the five-year term, the Commission learns that either Google or the CJC is acting against the interests of the ONA, it is open to the Commission to rescind the order at that time.

**Q14. Explain which provisions Google should be exempted from and which it should not be exempted from and why. Given the Commission's regulatory responsibilities under the Act, please comment on the appropriateness of:**

- (a) exempting Google from any requirements to provide information to the Commission or to the external auditor;**
- (b) the Commission seeking Treasury Board approval to exempt Google from cost recovery measures; and**
- (c) exempting Google from undue preference complaints.**

Google should not be exempted from any of the provisions as listed.

The underlying rationale for the ONA is that there is considerable imbalance in bargaining power between Google and the intended funding recipients. The ONA provides a path for exemption from the obligation to participate in the full bargaining process but not from the other provisions in the ONA.

The exemption criteria in the ONA primarily relate to fair compensation. By contrast, the undue preference provision is focussed on how news content is made available by the intermediaries. There is a distinction between a determination from the Commission that Google has compensated news organizations fairly, through the issuance of an exemption order under the ONA, and a determination that Google is making news content available in a fair manner. It is imperative that the Commission retain the ability to ensure Google is acting in compliance with its other obligations under the ONA for the protection and maintenance of the Canadian news landscape.

It is essential that cost recovery measures include Google, particularly given that the Commission has already ruled that news organizations would be exempt from these measures. Similarly, the Commission will require the information to come from Google to support the audit process annually, so it would not be reasonable to exempt Google from this requirement.

**Q15. Should the Commission require Google to provide funding for public interest participants in this proceeding as a condition of exemption?**

**Q16. Should the Commission require Google to provide funding to a third party such as the Broadcasting Participation Fund that could be used for public interest participants in future proceedings related to the Act as a condition of exemption?**

**Q17. If public interest participation funding should be required, what procedures should be used to collect and distribute funding?**

**Q18. What amount of public interest funding would be reasonable?**

The underlying purpose of the ONA is to regulate the relationship between digital news intermediaries and Canadian news businesses. Among its key provisions, it requires the Commission to oversee these relationships through the development of a bargaining framework and code of conduct, to evaluate any application for exemption from a digital news intermediary, and to handle claims of undue preference. These are primarily bilateral business issues, rather than questions with direct and immediate impact on the Canadian public. As a result, the CAB questions the need for public interest funding.

That said, the CAB has no objection, as long as any such funding comes from digital news intermediaries (i.e. Google) and not news businesses and is over-and-above any compensation provided in accordance with the ONA (i.e. is not deducted from the \$100 million Google is required to pay in compensation under those regulations).

Further, the CAB has no reason to oppose the funds being directed to the Broadcasting Participation Fund, which has been providing funding to public interest groups to participate in CRTC proceedings since 2012.

**Q19. Google and the CJC must comment on whether subsection 7(h) of the Agreement limits members of the CJC from beginning proceedings other than those related to initiating the bargaining process described in section 19 of the Act, such as:**

- **complaints under section 52 related to undue preference;**
- **requests for a compliance order under section 50 related to the code of conduct;**
- **applications under section 14 for the Commission to review an exemption order; or**
- **any other proceeding allowed under the Act.**

We reserve the right to comment in the reply phase.

**Q20. If the Agreement does restrict members of the CJC from initiating other proceedings under the Act, should the Commission impose a condition that the agreement be amended to allow such proceedings?**

Yes, the Commission should ensure that the Agreement does not restrict members of the CJC from initiating other proceedings under the ONA.



**Q21. Are there any additional amendments to the Agreement that are necessary to bring it into compliance with the Act or the Regulations, or conditions that the Commission should consider adding to an interim or final exemption order?**

N/A

See Attachment:

**Common Principles for Google Exemption from the *Online News Act***

\*\*\* End of document \*\*\*