



Reply Comments of 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

26 August 2024

1. The Canadian Association of Broadcasters (CAB) welcomes the opportunity to provide reply 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. The CAB is 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.

Executive Summary

2. The CAB stands by its original submission and the Common Principles document it submitted jointly with a broad range of other participants including CBC/Radio-Canada, News Media Canada, Bell Media, Corus, Quebecor, Rogers Media Inc., the Ontario Association of Broadcasters, and Hébδος Quebec.
3. The urgent need for relief for Canada's journalistic community could not be more pressing. The Commission has a clear mandate to make this happen. It has the jurisdiction to issue an interim exemption order, impose conditions on the CJC, and set a clear path for the granting of a full exemption order as soon as those conditions are met. Google can and must transfer the first payment this calendar year. In its initial submission and via the Common Principles document, the CAB has put forward a proposal that can ensure that this occurs in a manner that results in minimal additional burden for Google. Pursuant to our proposal, the Commission can ensure that the CJC will "narrowly focus on allocating funds fairly, efficiently and consistently with the Regulations, which emphasize numbers of FTEs."¹
4. Parliament clearly recognized that "while the Canadian news sector has seen a significant decline in revenues and an increase in the closures of news businesses over the past decade, these digital platforms have seen their revenues increase significantly. In 2021, online advertising revenues in Canada reached \$12.3 billion, with Google and Meta having a combined share of 79% of these revenues." The main task of the Commission in carrying out its obligations under the *Online News Act* and associated Regulations (the "ONA") is to ensure that if Google is to be exempt from the bargaining process, both Google and the CJC have done all that is required to meet the criteria in the ONA to qualify for the exemption, so that some crucial balance can be restored to the Canadian news sector.

¹ Corus submission at para 12.

The Commission has Proper Authority to Impose Conditions of Exemption on Google and the CJC

5. Google argues that the Commission has no discretion, must issue a full exemption order, and has no authority to impose conditions on Google or the CJC. Google has stated that “to the extent the Commission attempts to impose on Google conditions that exceed, or are inconsistent with, the requirements in the Act and Regulations, such conditions will result in an “operational conflict” between the Commission’s orders and the statutory instruments enacted by Parliament and the Governor-in-Council.” Google cites *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, [2012] 3 S.C.R. 489 as support for this position. This is clearly a misstatement of the authority granted to the Commission in the ONA.
6. It is difficult to envision how conditions imposed by the Commission to ensure compliance with the ONA would create an operational conflict with the ONA. As the majority of the SCC stated in *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*

[44] This view is not inconsistent with the approach to conflict adopted in federalism jurisprudence. For the purposes of the doctrine of paramountcy, this Court has recognized two types of conflict. Operational conflict arises when there is an *impossibility of compliance* with both provisions. The other type of conflict is incompatibility of purpose. In the latter type, there is no impossibility of dual compliance with the letter of both laws; rather, the conflict arises because applying one provision would frustrate the *purpose* intended by Parliament in another. See, e.g., *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86, at paras. 77 and 84.

[45] Cases applying the doctrine of federal paramountcy present some similarities in defining conflict as either operational conflict or conflict of purpose (*Friends of the Oldman River Society*, at p. 38). These definitions of legislative conflict are therefore helpful in interpreting two statutes emanating from the same legislature. The CRTC’s powers to impose licensing conditions and make regulations should be understood as constrained by each type of conflict. Namely, in seeking to achieve its objects, the CRTC may not choose means that either operationally conflict with specific provisions of the *Broadcasting Act*, the *Radiocommunication Act*, the *Telecommunications Act*, or the *Copyright Act*; or which would be incompatible with the purposes of those Acts.

7. The ONA was implemented “to address the growing imbalance between digital platforms and news businesses in Canada by establishing a bargaining regime to ensure news businesses are fairly compensated for the news they produce.”² In addition, “the Act provides that digital platforms may negotiate voluntary commercial agreements with news businesses to qualify for an exemption from the mandatory bargaining provisions of the Act. The exemption section is a key component of the Act as it provides digital platforms the opportunity to reach fair commercial agreements with a wide range of news businesses and contribute to the sustainability of the news marketplace.”³
8. In seeking to impose conditions relating to granting an exemption from bargaining under the ONA, the Commission is not inherently creating either operational conflict or incompatibility with purpose. None of the conditions being suggested by the CAB would make it impossible for Google or the CJC to comply with both the exemption order and their obligations under the ONA or any other related statute.
9. Google states that “it is clear that Parliament does not intend the Commission to directly regulate the conduct of news businesses or groups of news businesses, such as the CJC, that are outside the scope of the bargaining process.” This is incorrect. As outlined above, the Act has prescribed clear authority to the Commission relating to the exemption order, which is intentionally outside the scope of the bargaining process. It is clear that the Commission has the authority to impose conditions through the exemption order or by way of regulations made under section 85 as long as the conditions imposed by the Commission and the provisions of the ONA or related statutes:
 - are not so inconsistent or “repugnant” to each other that they are “incapable of standing together” (*Reference re Broadcasting Act, S.C. 1991 (Canada)*, 2012 SCC 68, [2012] 3 S.C.R. 489, at paras. 41-45);
 - are not “directly contradictory or where their concurrent application would lead to unreasonable or absurd results” (*Lévis (Ville) v. Côté*, 2007 SCC 14, [2007] 1 S.C.R. 591, at para. 47 and *Thibodeau v. Air Canada*, 2014 SCC 67 (*CanLII*), [2014] 3 SCR 340, at para. 95), or
 - the application of one does not implicitly or explicitly preclude the application of another (*Lévis*, at paras. 48-49).

² Canada Gazette, Part I, Volume 157, Number 35: Regulations Respecting the Application of the Online News Act, the Duty to Notify and the Request for Exemptions, (2 September 2023), <<https://canadagazette.gc.ca/rp-pr/p1/2023/2023-09-02/html/reg1-eng.html>> (the “RIAS”).

³ *Ibid.*

10. The ONA clearly prescribes the authority of the Commission in relation to the issuance of the exemption order. Specifically, subsection 11(1)(a) states that the Commission must make an exemption order if it is of the opinion that, taken as a whole, the agreements satisfy (1) the criteria enumerated in subparagraphs 11(1)(a)(i) through (viii) and (2) the conditions in the Regulations. This preserves the discretion of the Commission to not issue the exemption order if it is of the opinion that the enumerated criteria or the regulatory conditions have not been satisfied.
11. For the reasons articulated in its 6 August 2024 submission, the CAB submits that the criteria in the ONA have not been sufficiently satisfied. On this basis, it is open to the Commission to choose not to issue the exemption order and therefore require Google to participate in the bargaining process in accordance with section 21 of the ONA.
12. Should the Commission determine it appropriate to issue an exemption order, it is also clearly open to the Commission to prescribe the contents of the order. Subsection 11(2) states that under an exemption order, the operator shall be exempt from the bargaining process in section 21, any provision of the Regulations that is related to the bargaining process in section 21, and any other provision of the Act and regulations made under subsection 81(1) or section 85, that is specified by the Commission, in its discretion, in the order. This gives broad discretion to the Commission to determine the scope of Google's exemption from the ONA.
13. Subsection 11(3) of the ONA also gives the Commission the authority to impose additional conditions in the exemption order. In addition, section 85 gives the Commission the authority to make regulations respecting (a) requests for exemption orders referred to in section 11(1), (c) requests for designations referred to in subsection 27(1), (f) the manner in which groups of eligible news businesses are to be structured and the manner in which they are to exercise their rights or privileges and carry out their obligations under this Act, and (i) the Commission's practices and procedures in relation to this Act. This is a broad grant of authority and discretion to the Commission. Further, under subsection 85(a), the Commission may make regulations respecting requests for exemption orders. This indicates that it is open to the Commission to impose conditions relating to the request for an exemption, such as the definition of FTE employee. Similarly, under subsection 85(f), the Commission has broad authority to impose conditions relating to the manner in which groups of eligible news businesses are structured and the manner in which they carry out their obligations under the Act. These provisions provide clear authority for the Commission to impose conditions on the collective that represents those news businesses, namely the CJC.

14. Google posits that the CJC has not sought nor been granted a designation as a group of eligible news businesses, however subsection 10(1) of the Regulations sets out that a condition of exemption is that Google must enter into an agreement with a group of news businesses. If the CJC is sufficiently qualified to be the group of news businesses with which Google may enter into a valid agreement under the ONA such that it would qualify for an exemption order, the CJC must also be sufficiently qualified to be the group of news businesses over which the Commission has the authority to make regulations under subsection 85(f). To the extent there is a discrepancy between the group of news businesses referred to in subsection 10(1) of the Regulations and the group of news businesses referred to in subsection 85(f) of the ONA, the Commission has the authority under subsection 85(c) to make regulations relating to such designations and can rectify the discrepancy.
15. To be clear, the CAB is not asking the Commission to impose improper or overreaching regulations on Google or the CJC. As the operator seeking an exemption from bargaining under the ONA, Google is properly subject to some regulatory oversight from the Commission for the clear purpose of ensuring the exemption order can be issued in a manner consistent with the objectives of the ONA. Similarly, as the group of news businesses entering into an agreement with Google to facilitate the exemption order request, the CJC is also properly subject to some regulatory oversight from the Commission.
16. To summarize, when it comes to the relationship between Google and the CJC, there are a series of obligations and structural considerations, and the Commission has jurisdiction in all aspects. Most importantly, the Commission can impose meaningful obligations on the CJC to ensure compliance with the conditions in subsection 11(1). The vast majority of what the CAB has requested relates to the operation of the CJC. The CAB has requested amendments to the Google-CJC Agreement, but these amendments are overwhelmingly technical and not material to Google itself to the extent it is intending to comply with the ONA and not seek to claim additional rights over the content that it is making available as an operator of an intermediary. The Commission has exercised its power to implement corrective measures in other circumstances, and the CAB requests that it do so again in this context.⁴

⁴ 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>.

Interim Exemption Order

17. The CAB maintains its position that the Commission should not be satisfied that it can appropriately issue an exemption order under subsection 11(1) on the basis of what has been submitted by Google and the CJC to date. It is also clear that the Commission has the authority to issue an interim exemption order under subsection 12(1) if the following criteria are met: (a) the operator has requested an exemption, (b) the operator has entered into an agreement with news businesses, (c) the Commission is unable to make the full exemption order because it is of the opinion that the agreements, as a whole, do not satisfy the criteria set out in subparagraphs 11(1)(a)(i) to (viii), and (d) the Commission is of the opinion that it will be able to change its mind about the exemption order because the operator is, in good faith, taking measures that will permit the criteria to be satisfied in less than a year.
18. Under subsection 12(2), the interim order “must contain measures being taken by the operator” and “may contain any other conditions the Commission considers appropriate.” This is clear authority for the Commission to impose conditions on the operator, which is Google in this case, to ensure that the Agreement with the CJC can meet the criteria in the ONA, and clear authority for the Commission to impose conditions on the CJC that it considers appropriate.
19. In our view, the four conditions of subsection 12(1) are in place. Google argues that the Agreement does not meet the requirement of paragraph 12(1)(b). This is not possible, as Google and the CJC felt the Agreement was sufficient to meet the requirements of paragraph 11(1)(a). We maintain that the Agreement is deficient, but it is an agreement nonetheless and the intent of paragraph 12(1)(c) is to afford an opportunity for the Agreement to be amended such that it satisfies the criteria of subparagraphs 11(1)(a)(i) to (viii).
20. It appears that CJC is hedging the possibility of an interim exemption order being applied and seems to think that the agreement it entered into can still result in a contribution even pursuant to an interim exemption order subject to the Commission “obtain(ing) assurances from Google that it will adhere to the Agreement with the understanding that for the purposes of the Agreement, an “Exemption” shall include an interim exemption order, and that it will thus pay the Contribution within 60 days of such an Exemption.”⁵ This is what the CAB has requested, except instead of 60 days, we have requested that payment be made within 5 days of the issuance of the interim exemption order.

⁵ CJC submission at para 36.

21. We disagree with Google's position that it will not have an obligation to pay pursuant to an interim exemption order.⁶ This is an unreasonable position to take knowing that it entered into an Agreement with a nascent operator representing a small minority of compensation recipients. It defies logic to think that the contribution from Google could be delayed because the structure set up by Google has deficiencies. It is also hard to see how issuing payment pursuant to an interim exemption order has any negative impact on Google. It is not our intent for our proposed approach to create additional burden or expense on either Google or the funding recipients. Google is correct when it states that it does not operate the CJC. However, it did choose the CJC and it did develop the Agreement to which CJC signed on, and which is clearly deficient and does not meet the criteria set out in subparagraphs 11(1)(a)(i) to (viii).

Key Remaining Issues

A. The Commission Should Validate the Eligibility of Open Call List Participants

22. A number of parties, including Télé Inter-Rives, observe that the Open Call List contains participants that are not obviously qualified to receive compensation. In its submission, the CAB highlighted that the Commission has the jurisdiction and legislative backing to undertake an eligibility analysis of the participants in the Open Call.
23. Google acknowledged that if the Commission were to "take on responsibility for any elements of the necessary activities, for example, verifying eligibility" that would likely reduce the work for the CJC and therefore also reduce the expenses required.
24. CAB reiterates its call for the Commission to take on this task as expediently as possible so that funding can flow to those who are truly qualified to receive it. If the Commission were to do this, it would expedite the distribution of funds in accordance with the proposed two stage exemption process, as recommended by the CAB in its initial submission:
1. In the first stage, the Commission should issue an immediate interim exemption order under subsection 12(1) of the ONA to enable the funds to be distributed from Google to the Collective within five (5) days of issuance. The interim exemption should contain specific direction that the Collective direct the funds to be distributed to the intended recipients (as defined by the Commission) through an independent third-party accounting firm to be retained by the Canadian Journalism Collective ("CJC"). Each participant will have to provide a sworn attestation in order to receive funding. The Commission should provide specific criteria to CJC for the selection of the accounting firm. The interim exemption should remain in place until such time as the CJC has an appropriate structure in place to administer the funds and in any event, no more than the 12 months permitted under the ONA.

⁶ See para 14 of the Google submission: "Google's obligation to pay the Contribution will commence with the grant of an Exemption under Section 11(1) of the Act, not on issuance of an interim exemption under Section 12.

2. 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 under subsection 11(1) of the ONA with effect for the duration of a term totalling five years. The full exemption should provide specific direction to Google and CJC as outlined in detail in the CAB's August 6th submission.

B. The Commission must set the definition of an FTE Employee

25. The CAB maintains its position on the need to ensure the CJC is compelled to adopt the definition of FTE employee as proposed in the Common Principles statement and elaborated in the CAB submission.
26. The CJC submission is critically missing any real detail on the subject of the FTE definition. The CJC does acknowledge that "[t]he CJC-CCJ has developed a detailed funding timeline and procedure to provide funds to eligible news businesses based on FTEs reported in 2023."⁷
27. It is particularly critical for the Commission to intervene and impose the FTE employee definition as set out by the CAB in order to forestall manipulation of the concept by certain stakeholders. For example, we note that in its submission, CACTUS offers up a definition of FTE as "full-time employee equivalent" and states that it should include freelancers and contractors.⁸ This wordplay contradicts the language of the ONA Regulations at subsection 10(2) where it states:

(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.
28. The concept of "FTE" should strictly reference full-time equivalent employee, not full-time *employee equivalent*, and the reversal of terms undertaken by CACTUS distorts the concept that was carefully considered and intended to address issues of relative fairness when it comes to equitable compensation. The RIAS accompanying the Online News Act Application and Exemption Regulations is instructive:

⁷ CJC submission at para 22.

⁸ Cactus submission at para 14.

Fair compensation

The draft Regulations stipulated that the CRTC must interpret agreements as providing fair compensation if the relative compensation in each agreement submitted by the operator as part of its request for exemption was within 20% of the average relative compensation for all agreements, where relative compensation was defined as the ratio of compensation relative to the number of full-time equivalent journalists paid by a news business. Stakeholders raised concerns that a 20% variation would provide too wide a range among agreements. There were also concerns raised about how to operationalize the 20% range prior to the end of the bargaining process, and whether early agreements would need to be renegotiated if later agreements significantly skewed the average relative compensation figure. News sector stakeholders also raised questions about the definition of “journalist” in the relative compensation definition. Several independent news businesses requested that freelancers be included in the assessment of full-time equivalent journalists.

In response, the 20% range requirement has been replaced by a more flexible standard that the CRTC can use to assess whether compensation in an agreement is fair for the purposes of the exemption process. Under the final Regulations, an agreement is deemed fair if compensation is comparable to the compensation received by other news businesses of comparable size, market, and technical capabilities. A news business’s technical capabilities are the resources it employs to facilitate the production and distribution of news content for online consumption.

For an agreement with a single collective, the CRTC must consider equitable distribution within that collective. Equitable distribution will be assessed according to the number of full-time equivalent employees of a news business over the previous calendar year to produce news content that is intended to be made available online.⁹

29. It is critical to note that both in the Regulations and accompanying RIAS, the concept of “employee”, as a term of art, is repeatedly referenced. This issue was debated extensively leading to the adoption of the language in the Regulations. Governor in Council considered other options and settled on “FTE employee” as an approach for determining compensation under the ONA. For the purposes of the current process, there is no debate as to whether volunteers, freelancers and others who are not employees should qualify for compensation. The simple and clear answer is “no” and it is up to the Commission to oblige the CJC to adopt a distribution mechanism based strictly on FTE employees with no opportunity given for creative approaches to “make up” employees.

⁹ *Supra* note 2.

30. An employee must have a T4. Any alternative that allows for contractors would frustrate the intent of the ONA and lead to unintended consequences. The ONA prescribes that the funds be distributed to eligible news businesses on the basis of FTEs. Thus, it would upset the integrity of the framework if non-employees were included in the FTE employee calculation.
31. Google acknowledged that if the Commission were to provide “clear guidance about what they view to be “full-time equivalent employees” that would likely reduce the work for the CJC and therefore also reduce the expenses required. We agree with this assessment and request that the Commission provide this guidance as per the Common Principles proposal.
32. News Media Canada (NMC) supports a virtually identical definition of FTE employee as the CAB. We note that the only difference in the definition proposed by NMC is the addition of a proviso that the employees in question have “worked over 40 consecutive weeks”. We understand that this proviso is meant to ensure that only employees are deemed FTE employees, and it is derived from the *Income Tax Act*.¹⁰ We agree with NMC’s concern that the FTE definition only capture actual employees, as it was intended by the ONA. We feel that the T4 requirement is sufficient to address this concern.
33. However, if the Commission determines that the T4 requirement is not sufficient to address this concern, and thus that a minimum number of weeks per year must be prescribed in the FTE definition, it is essential that it be accompanied by the same additional considerations that apply to it in the *Income Tax Act*; specifically, the provision reads that the qualifying individual “at any time in the taxation year, has been, or is reasonably expected to be, employed by the organization for a minimum period of [X] weeks that includes that time”. Further, given the lack of stability in the industries that employ journalists in Canada, it is also reasonable to ensure that the definition takes into account hirings or restructurings that could take place effective at any time in a calendar year, as well as seasonal employees who may work 40+ weeks, but not consecutively.
34. Thus, an additional consideration along the lines of “An employee who is hired near the end of a taxation year, or who ceased to be employed before the [X]-week period expires, could qualify as an eligible newsroom employee in respect of the taxation year provided that there was a reasonable expectation that they would work for more than [X] consecutive weeks and provided all other conditions of the definition of eligible newsroom employee, listed in section 3.20, are met”¹¹ would add additional clarity to ensure that the FTE employee definition is as reasonable as possible.

¹⁰ *Income Tax Act* s. 125.6(1)(c)

¹¹ Canada Revenue Agency, Guidance on the income tax measures to support journalism, at section 3.21 *Eligible newsroom employee*: <<https://www.canada.ca/en/revenue->

C. Timing of Payments

35. Google has stated that it will not issue funding pursuant to an interim exemption order. As we have already stated, this position is not reasonable and will result in inappropriate delays in payments to funding recipients.
36. The CJC submission frames itself as meeting the underlying objectives of the ONA "but also their explicit provisions." The CAB observes that meeting the "explicit provisions" should be the top priority of the CJC. An issue where this is most pressing is the question of timing of payments. The ONA was implemented with a critical purpose to contribute to the sustainability of news businesses in Canada. Timeliness is a key element in contributing to sustainability. Delays in compensation will result in further job losses and further degradation of Canada's journalism sector. The CJC outlines steps required prior to distribution, claiming it would take 60 days to distribute the money after it is paid by Google. Considering all the prerequisites to payment, as contemplated by CJC, this timeline is far too long.
37. The CJC submission reinforces the need for the Commission to adopt the approach proposed by the vast majority of funding recipients as articulated in the Common Principles submission.
38. The CJC does acknowledge the need for speed: "Our objective is to provide funding to low-risk news businesses as quickly as possible in year one, rather than delay payments until verification for all businesses is complete. Low-risk news businesses will be identified using a transparent rubric and analysis from financial and risk management advisors and approved by the Board of Directors."
39. We agree with the general sentiment but disagree with the details.
40. We observe that this proposal seems to incorporate extra steps which will slow the process down significantly, particularly since the Board, as per the CJC's own model, will take a while to elect. As well, it is not clear what a "low-risk news business" is and how it is a relevant factor in determining distribution timing. Advisors are costly and likely superfluous. The approach we have promoted, to adopt sworn officer attestations, is far more efficient and of virtually equal effect. It also does not discriminate in favour of so-called "low risk" news businesses and allows all eligible businesses willing to attest to receive funding.

D. Proper Corporate Governance Required for Equitable Distribution

41. The CAB reiterates its position that the corporate governance structure proposed by the CJC is unnecessarily complex, not representative of the vast majority of funding recipients, and unduly cumbersome. In short, the proposed model will stall funding to anyone. Notably, neither the CJC nor any of its constituents offered any additional insight or justification for the proposed model in the submissions filed on August 6, 2024.
42. CACTUS offered commentary on the governance structure, and expressed gratitude for having been given two seats on the proposed CJC Board of Directors, but also indicated that it felt it should be guaranteed a seat on the Board of Directors because it would be “onerous for an individual member station either to develop the expertise either to represent the sector on the CJC board, or to attempt to compete in a yearly election.”¹² This demonstrates that CACTUS views the CJC as an opportunity to advance its advocacy objectives, rather than as a simple distribution entity. This also demonstrates a focus on extending influence as opposed to allowing the CJC fulfill its one and only mandate, which is to collect and distribute funds pursuant to the ONA.
43. The CAB reiterates its position that CJC directors should represent funding recipients, not advocacy organizations, and should be freely elected by the members. The mandate of the CJC should be narrowly focussed on the collection and distribution of Google funds in strict compliance with the ONA and any related directions from the Commission. There should be no need for advocacy, and therefore no need for the complex governance structure, such as the multiple membership classes and unwieldy board size proposed by the CJC.
44. The CAB notes that Google offered no comment on the proposed governance structure of the CJC, other than to state that it does not believe the Commission has the authority to regulate the CJC or to impose conditions on Google through the exemption order. Google further stated that “CJC’s internal arrangements are not properly the subject of the Agreement or for Google to be further involved in and are likewise outside of the scope of Google’s application for Exemption.”¹³
45. No entity made submissions to the Commission in response to CRTC 2024-143 that justified the need for the CJC to have (a) 16 classes of members, (b) a large and complex Board of Directors, or (c) multiple staff, experts and advisors. No additional documents were filed to support the CJC’s proposal.

¹² Cactus submission at para 6.

¹³ Google submission at para 21.

46. The CAB submits that the CJC governance framework should be rejected outright, and that the Commission should direct the CJC to constitute a three-person Board of Directors with a single representative from each of the news publishers, the news broadcasters and the CBC, as set out in detail in the CAB's August 6, 2024, submission.
47. The CAB acknowledges that NMC proposed an alternative board structure¹⁴ that is not nearly as onerous as the structure proposed by the CJC. The CAB acknowledges that the NMC proposal is reasonable insofar as it is not based on a multi-layered class structure. The CAB's view is that the 8 to 10-member board as proposed by NMC would be larger than that required for the very limited activities of the Collective. However, the CAB does agree that the board of the collective should be voluntary (with no remuneration) and subject to strict conflict of interest rules.

E. Administrative Expenses/Fees

48. CAB emphasizes that there should be no payments for CJC board members or committee members. We strongly support the Unifor position that money is to go to supporting actual journalists and newsrooms and not to administration.¹⁵ It is for this reason that we proposed an administrative fee of only 0.5% *in addition* to the annual contribution made by Google.

F. Application of ONA (other than exemption from bargaining)

49. The CAB reiterates its submission that the exemption order should only exempt Google from the application of the section 21 requirement to engage in the bargaining process and from any regulations enacted by the Commission that relate to the bargaining process and should not exempt Google from other obligations under the ONA.
50. Google submitted that it should be exempt from any provisions of the Act or Regulations from which Google would be exempt if the Agreement was a "covered agreement" that was the result of the bargaining process. The agreement between Google and the CJC is specifically to support exemption from the bargaining process and is therefore not an agreement contemplated in section 32 in support of the bargaining process.

¹⁴ NMC submission at para 44.

¹⁵ Unifor submission at para 21.

51. To suggest that the Google/CJC agreement should provide Google with the benefits it would receive if it did participate in the bargaining process as well as the benefits it receives from being exempt from the bargaining process is overreaching. If an exemption order is granted, the Commission is under no obligation to exempt Google from any provisions of the ONA other than those pertaining to the bargaining process.
52. Google states that it has expedited the process for the payment of funds to Canadian news businesses and has greatly reduced the amount of time, effort and resources that would have been spent by the Commission and news businesses to engage in the bargaining process, and that it is therefore appropriate to exempt Google from cost recovery measures. The CAB would like this to be true and has provided a road map to assist in the rapid dissemination of funding. Google has to accept that the first payment should be made via an interim exemption order in order to clean up the issues relating to the CJC without delaying the sharing of the contribution between members.
53. To be clear, the CAB will support an exemption order if the appropriate framework is in place to support it. However, the CAB is willing to participate in the Commission's bargaining process if Google and the CJC cannot deliver an appropriate framework to support the exemption order. As the holder of the significant imbalance in power in the news marketplace that gave rise to the need for the ONA, it is appropriate that Google be subject to all reasonable regulatory measures in the Act, including cost recovery measures, undue preference complaints, and the obligation to provide information to support the Commission's work.

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