



Online News Act (C-18)

Brief Submissions to the House of Commons Standing Committee on Canadian Heritage by The Logic

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Biography:

Before founding The Logic in 2018, David Skok was the associate editor and head of editorial strategy at the Toronto Star. He has also served as the managing editor and vice-president of digital for the Boston Globe, and as the co-creator and director of digital for Global News.

David is a leading thinker on digital transformation who co-published a seminal paper on disruption in the news industry with the Harvard Business School professor Clayton M. Christensen. David sits on the advisory board for the Nieman Foundation for Journalism at Harvard University and has served as a juror for the Pulitzer Prizes in journalism.

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Proposed Amendment to Bill C-18 - Online News Act

Regarding section 86 - Annual report - independent auditor

We would propose that the items outlined in 86 (2) information related to the impact of these agreements, be shared with the arbitrators in real time as each agreement is entered into by the parties involved, not just on an annual basis.

We suggest this for two reasons:

1. If there is a delay, then the arbitrators will not have all the information needed to adjudicate decisions for the parties still having to negotiate. This could result in deals that are disproportionate in years 1-3 because the arbitrators will not have all the information needed to make a decision.
2. It will allow arbitrators to rule on precedents set from the early decision which is a fair way of determining value.

*Note that we still would like an annual report that is made publicly available, but this real-time information will help the arbitrators make informed decisions.

URL: <https://thelogic.co/opinion/letter-from-the-editor-rebutting-critics-of-the-online-news-act>

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Letter from the editor: Rebutting critics of the Online News Act

By: David Skok

Two weeks ago, the Liberal government [unveiled](#) Bill C-18, the Online News Act. The legislation would essentially make tech giants pay news publishers for their content. In plain terms, it would force news publishers and Facebook and Google, specifically, to negotiate deals to license any of the publishers' content that appears on the tech companies' platforms. If those negotiations fail, the Canadian Radio-television and Telecommunications Commission (CRTC), the country's broadcast and telecoms regulator, would assign an arbitrator to mediate an agreement.

I [spoke out](#) in favour of this legislation last summer because, as I wrote then, "We've gone from the government picking winners to Silicon Valley tech giants doing so—and frankly, I'm not sure what's worse."

In principle, I don't support either the government or Big Tech funding news organizations. For years I tried to [push back against](#) these measures. But I now concede that Bill C-18 is a necessary evil in order to maintain balance in Canada's media ecosystem.

As a lifelong journalist, a startup founder and a student of [innovation](#), I didn't come to my position lightly. Whatever pride I've had to swallow to reverse my position pales in comparison to my duty to *The Logic's* readers, employees and shareholders.

Critics of the bill [have spilled much metaphorical ink](#). Some have called it a "[shakedown](#)." But this difficult issue requires nuance, not blustery rhetoric. We're past the point of debating the premise of the bill, of whether it's right to make Big Tech pay for journalism, because they already are—and that has profound consequences for the media industry.

I want to address several of these criticisms from the perspective of someone running a news startup. Before I do, a disclosure: *The Logic* remains unaffiliated with any industry lobby group, and this column expresses only my own views as a publisher. Since September 2020, when it became apparent that my role as both CEO and editor-in-chief represented a potential journalistic conflict of interest, I have recused myself from all newsroom conversations on these matters, and have no say in how *The Logic's* reporters and editors cover this file.

On to the criticisms, and my responses:

Bill C-18 will stifle innovation and discourage diversity in media

Once Google and Facebook started [signing licensing](#) deals with select publishers in Canada, as they did in Australia, New Zealand and elsewhere, it tilted the playing field—and *that* stifles innovation and discourages diversity.

In this country, they've signed deals with at least 19 publishers, 10 of which are getting money from both platforms. None of the terms are public. This isn't the marketplace doing its thing. It's Big Tech buying off a select few desperate media companies in an effort to head off legislation.

This is perhaps the most important point to emphasize about Bill C-18: it's not the beginning of a process; it's the end. Its passage will correct a distortion of the market. If you want to encourage innovation and diverse viewpoints in Canada, you should support this legislation, because it will level the playing field.

Bill C-18 is a threat to journalistic independence

You know what's a threat to journalistic independence? Publishers signing deals governed by confidentiality agreements with Big Tech firms for undisclosed sums.

Speaking at a publishers' conference earlier this week, Richard Gingras, Google's head of news, [said](#), "The [Google News] Showcase deals we did in Australia are consistent with Showcase deals we've done elsewhere in the world."

If that's true, then the deals Google has already struck with some large publishers in Canada could range from the A\$5million per year that *The Guardian Australia* [reportedly](#) receives, to the A\$69million News Corp is rumoured to receive annually—and that doesn't include the additional money from deals struck with Facebook.

So are large Canadian publishers getting \$5 million a year from Google and Facebook? \$10 million? \$50 million? We simply don't know.

Bill C-18 would require that the terms of those deals be made public in some capacity, and give the arbitrator the information necessary to ensure tech companies aren't picking winners.

(There is one potential loophole: if a platform and a publisher strike a separate deal for an advertising contract or in-kind contributions for programmatic advertising credits, it won't be included in the public disclosures under the bill. There is the potential to use some clever accounting to reduce the legislation's impact.)

Bill C-18 will lead to censorship

The University of Ottawa's Michael Geist and Carleton University's Dwayne Winseck, both frequent commentators on the digital-media landscape, have each [alleged](#) that they have had columns written on Bill C-18 "[spiked](#)" by editors at major Canadian daily newspapers. They've offered this as evidence that Bill C-18 is already stifling free speech. I'll confess that this line of argument has me flummoxed.

It's important to distinguish between reported pieces of journalism and opinion. At a well-functioning journalism outlet, a media outlet's news-gathering department is independent, its sanctity protected by its editors, while an entirely separate department responsible for editorials

and op-eds reports up to the publisher, who has the right to use the section as they see fit to express the official voice of the publication.

This is all to say that the rejection of an op-ed is entirely within a publisher's traditional remit, and it's a leap to suggest it's a suppression of free speech.

Where I do agree with Winseck and Geist is that without knowing how much Big Tech deals are contributing to newsroom budgets, and without regulation to make sure all outlets are being treated fairly in negotiations, we have no idea whether newsrooms are incentivized not to pursue coverage those companies could see as critical.

The government shouldn't be in the business of regulating the internet

I am in strong agreement that the government should not be in the business of regulating the open web. But Facebook and Google are not the internet.

They are companies that have built centralized, for-profit platforms on top of the internet, funnelling information to users through their proprietary algorithms. They are the subject of antitrust efforts in the U.S. and Europe. They should not be deified in a way that grants them legislative immunity.

Even Tim Berners-Lee, the godfather of the World Wide Web, thinks unregulated platforms have gone too far, telling [Vanity Fair](#) last year: "We demonstrated that the web had failed instead of served humanity, as it was supposed to have done, and failed in many places." The web's increasing centralization, he said, has "ended up producing—with no deliberate action of the people who designed the platform—a large-scale emergent phenomenon which is anti-human."

Now, even the platforms themselves are pouring resources into building a new internet—a metaverse.

If you're in support of an open web, then you should also be in support of efforts to decentralize it.

Bill C-18 imposes a link tax

At that publishers' conference this week, Gingras—in his first [public remarks](#) since the legislation was unveiled—said Google "is continuing to analyze the legislation in Canada. There are troubling aspects to it. It does include a link tax, which is unfortunate, and again, not healthy for the ecosystem going forward."

Some critics have also [used](#) this argument. To be clear: Bill C-18 does not create a link tax.

This is not the nanny state coming after you for linking to a news article in a social media post or from a blog. According to Section 6 of the act, platforms [must](#) have "a significant bargaining power imbalance" to be forced into negotiations with publishers. The cabinet will determine this

threshold based on market size and revenue. It will likely affect Facebook and Google, but not Twitter.

Nowhere does the legislation assign value to an individual hyperlink outside the scope of the negotiation of a licensing agreement between platform and publisher. Further, the transactions are between the platforms and the publishers. The public purse doesn't benefit.

Even Winseck, one C-18's most vocal critics, conceded this point, [writing](#) in a piece for TVO that "the act does not impose a link tax on Google and Facebook for linking to news."

The CRTC will now wreak havoc on Canadian journalism

I make no judgment on the competence of the CRTC, but I think some of the bill's critics are magnifying its proposed role in the platform-publisher relationship. It's my understanding that the CRTC will only be playing an administrative role, assessing which tech platforms and publishers are affected under the criteria that the cabinet will establish and appointing an arbitrator to settle unsuccessful negotiations. They will not be setting the criteria or making arbitrary judgment calls on who's in or who's out.

I do agree with critics that this part of C-18 needs to be more clearly explained, including the criteria that the CRTC will use to select arbitrators. There is a risk that an arbitrator may define value based on outdated incentives like web traffic and page views, which would be antithetical to any effort to improve the Canadian journalism ecosystem.

Almost everyone commenting on this legislation is self-interested—including me. Big Tech doesn't want to have to pay out more to publishers than it already has. Publishers who've already struck deals have an advantage over competitors who haven't. Many of the publishers opposing the legislation on principle have specific audiences they know will be receptive to a fundraising appeal to make up for their rejection of subsidies from government or Big Tech. And some like me—the CEO of a private, for-profit company—have a fiduciary duty to level the playing field with their competitors.

I take no pleasure from the argument. This isn't a fight I sought out. But I can't stress this enough: Big Tech companies have already struck deals with Canadian publishers. These deals are already distorting the ecosystem. Bill C-18 seeks to rectify that imbalance.

URL: <https://thelogic.co/opinion/letter-from-the-editor-on-big-tech-and-publishers-canada-must-follow-australias-lead/>

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Letter from the editor: On Big Tech and publishers, Canada must follow Australia's lead

By: David Skok

Last month, Google [announced](#) deals that will see it pay eight Canadian publishers—including *The Globe and Mail*, the *Winnipeg Free Press* and Village Media—to license their content on a product called Google News Showcase, launching this fall. The companies didn't disclose the terms. It came on the heels of Facebook [signing](#) agreements with 14 of Canada's upstart digital publishers for what it called its News Innovation Test, to include selected links on their pages that bring users to news sites. Again, the companies didn't disclose the terms.

What explains the recent flurry of activity? In February, Australia [passed](#) a law requiring Facebook and Google to negotiate content deals with media outlets; if negotiations failed, the government would impose fees. Canada then [signalled](#) it would adopt a similar approach. Hence the deals.

At its face, it's a smart strategy for the tech platforms. Why involve the government when they can strike deals on their own? However, they now face an unintended consequence: these secretive, one-off deals have united Canadian publishers new and old in demanding the federal government follow Australia's lead.

I spoke with a half-dozen prominent news publishers, who run everything from specialty digital outlets to national newspaper chains and who were left out of the Google Showcase money. These are people who normally don't agree on anything. Yet all said they were furious at Google for cutting side deals with some of their peers, and want the federal government to move ahead with its proposed legislation ensuring tech giants like Google and Facebook pay for the news content they disseminate on their platforms.

While there is some disagreement among them over how such a payment scheme should work, almost all agreed that the Big Tech platforms were applying restrictive and opaque criteria to privilege select publishers and employing a divide-and-conquer approach in a race to get ahead of the threat of legislation. I have agreed not to name these publishers because of their concerns that speaking out could jeopardize their future negotiations—which perfectly encapsulates the problem: publishers large and small are afraid of the power the tech giants wield, and worry that publicly opposing them could endanger their companies.

The debate over whether tech platforms should pay for journalism has usually been framed as a question of who bears responsibility for the newspaper industry's economic collapse. That debate—which always struck me as a red herring, promoted by a news industry unwilling to be accountable for the role it played in its own demise—is now irrelevant. No matter who was responsible, the precedent has been set: Facebook and Google will pay for journalism. If you don't believe me, just look at the social media [ad campaign](#) Google has unleashed to tell you so.

I get why publishers would take the best deal they can get from a tech company instead of waiting for possible government action. The Liberals failed to introduce any legislation on the file

before Parliament wrapped up for the summer, and most observers expect an election call. As *The Globe and Mail's* CEO Phillip Crawley told me this week, "I can see the results of the deal already with Google, whereas there's considerable uncertainty as to what the government would be able to deliver, if they ever do." And while the deals seem like a win-win-win for readers, publishers and platforms, they risk excluding journalism outlets with diverse founders and diverse approaches—intentionally or unintentionally privileging the status quo.

Maggie Shiels, head of news public relations for Google, told me that News Showcase is focused on "comprehensive, general interest news." However, at least three publications I spoke with that seemingly fit this description said the company told them they were ineligible.

"They picked publishers they think are influential, plus a couple of their buddies," one publisher told me.

"I'm absolutely convinced they're motivated by neutralizing government regulation," another said, "so you would think they'd go all out to show the government that they understand the market in Canada, that they value innovation and entrepreneurship and that it isn't about building monopolies and consolidating power for a few."

"The program is being built with a focus on print and digital newspapers, emphasizing local news sources," said Shiels, adding that Google remains in "active conversations" with publishers of all sizes across the country.

"We try to offer a range of programs and partnership opportunities for publishers of all sizes, including digital first and traditional newspapers, from all areas of the country, in both Official Languages. Participation is always voluntary, and we listen to publishers to try and build service offerings that serve their needs," said Facebook Canada's Meg Sinclair.

If this all sounds familiar, it's because there were similar debates when the federal government defined what constitutes a "credible" journalism organization eligible for its \$595-million government-aid package—a policy that had many detractors speaking out at the time, including [me](#). The independent advisory panel on journalism-tax measures, which was born out of the government package, defines general-interest news quite broadly. You can see all 135 outlets that meet the definition [here](#). Google, instead of following the government classification, has decided to narrow the scope.

These definitions are neither transparent nor clearly defined. That they come down to semantics makes it easy for platforms to bend negotiations to their own will, pitting some news outlets against others in exchange for favourable terms. This behaviour will stifle innovation in the media space at a time when it's needed more than ever. We've gone from the government picking winners to Silicon Valley tech giants doing so—and frankly, I'm not sure what's worse.

The stakes are high. In Australia, it's estimated that after the government moved to act, Facebook and Google [injected](#) more than A\$200 million into the journalism sector, with Rupert Murdoch's News Corp [reportedly](#) getting tens of millions of dollars from Google alone. Canadian publishers cashing in on the Facebook and Google deals, like *The Globe and Mail*, will be able to consolidate industry talent and reach more people through the global audiences the platforms provide, while those on the outside looking in will be competing with one hand tied behind their back.

Big Tech's sheer wealth, scale and influence mean these decisions will profoundly shape what you read, distorting the marketplace of ideas. This is not simply private-market players paying fair-market value in exchange for products—it's private companies using their trillion-dollar

market caps and immense bargaining power to steamroll an entire sector in pursuit of their own self-interest.

To state the obvious: I, too, am a self-interested party. While *The Logic* has held preliminary talks with Google and Facebook, the conversations have so far been unproductive. I suspect this column won't improve that. I haven't been part of the efforts publishers [old](#) and [new](#) have made to lobby Ottawa because I believe *The Logic's* success ultimately depends on its relationship with readers, not its relationship with tech platforms. This isn't a fight I wanted. But now that our competitors are striking deals with these platforms, the playing field has been tilted, and I have no choice but to speak out—not just for the company that I founded, but for a healthy journalism ecosystem made up of new and old voices that, in turn, supports a vibrant democracy.

Those ideals are also why I want to be clear that *The Logic* remains unaffiliated with any industry-lobby group, and that this column expresses my own views as a publisher. Since last September, when it became apparent that my role as both CEO and editor-in-chief represented a potential journalistic conflict of interest, I have recused myself from all editorial conversations on these matters, and have no say in how our reporters and editors cover this subject. Our newsroom will learn for the first time about *The Logic's* discussions with tech platforms in reading this column.

The federal government should follow Australia's [lead](#) in forcing arbitration between platforms and publishers when needed. Even then, there are no guarantees the tech platforms will negotiate in good faith, so any legislation should outline clear and transparent eligibility criteria. Publishers should also be given permission to bargain collectively with the tech platforms, like they are trying to do in [Denmark](#), to ensure negotiations are conducted in good faith, with fair and equitable agreements and clearly outlined criteria that maintain a level playing field for all publishers.

U.S. Congressman David Cicilline, a Rhode Island Democrat who, as chair of the House judiciary committee's antitrust subcommittee, led an exhaustive investigation into Big Tech last year, [called](#) Amazon, Apple, Facebook and Google "gatekeepers to the online economy," adding that "they bury or buy rivals and abuse their monopoly powers—conduct that is harmful to consumers, competition, innovation and our democracy." They should not be allowed to use that gatekeeper dominance to further erode the journalistic ecosystem and the market for fact-based reporting.

This is an exceptional circumstance that requires government intervention. Platforms acting unilaterally have imperiled elections and democracy itself. Do we really want them deciding what journalism is worth sustaining and amplifying, without any accountability or obligation to the public good?

With an election call seemingly getting closer by the day and with Ottawa essentially shut down for the summer, this isn't an issue that will be resolved anytime soon. But when things resume next fall, I hope whichever government is in power takes note that it is near impossible to get this country's media startups and legacy players to agree on anything. That they are for once united is something to which Ottawa should pay attention.