



**BRIEF ON BILL C-18,
THE ONLINE NEWS ACT**

INDEPENDENT ONLINE
NEWS PUBLISHERS OF
CANADA

September 26, 2022

Presented to the House of Commons
Standing Committee on Canadian Heritage

INTRODUCTION

Any government intervention into the free press, however well-intentioned, must be carefully considered, as there is a potential to warp outcomes, stifle innovation, determine winners and losers, and compromise journalistic independence.

In its current form, Bill C-18 (The Online News Act) fails this test.

We are the Independent Online News Publishers of Canada, a coalition of over one hundred news organizations calling for changes to Bill C-18. Our members include the next generation of digital publishers in Canada. Our ranks include newsrooms operating in both official languages, providers of local news coverage and news from diverse voices, and entrepreneurial news outlets pioneering innovative business models for the future of online journalism. The innovative journalism we produce is precisely the sort of news coverage the government claims to be trying to encourage with Bill C-18. Yet, this proposed legislation poses a grave threat to the health and future of our organizations.

To consult the long list of the organizations that have come together to voice our concerns about Bill C-18, please [click here](#).

This brief sets out the threats Bill C-18 poses to our sustainability and independence and suggests specific solutions to alleviate each threat.

Threat: Inequity in funding.

Tech platforms to be impacted by Bill C-18, such as Google and Facebook, have [already begun striking pre-emptive deals](#) with some, though not all, Canadian news organizations, as a direct reaction to the coming legislation. The compensation provided to recipient news organizations varies widely and hews to no consistent or disclosed criteria. Google and Facebook have thus already begun choosing the haves and have-nots of Canadian journalism. This market interference has already created an uneven playing field, where news organizations receiving compensation have begun poaching employees from competitors, undercutting competitors on advertising rates, and otherwise leveraging their support from Big Tech to snuff out rivals. If this inequity is allowed to persist over time, it is reasonable to expect that news companies favoured by Google and Facebook (largely due to their pre-existing market dominance) will use their financial advantage to gradually extinguish upstart companies and the innovation they bring to the news industry.

The choices available to consumers of Canadian news must not be determined by Google and Facebook.

Solution: A fair funding formula

Our coalition would like to ensure that compensation from tech platforms be based not on the bargaining power of each qualifying news organization, but on a set percentage of the organization's editorial expenditures, including funds paid to freelance journalists. Basic fairness demands that the same formula be applied to every qualifying organization.

Proposed Amendment:

That Bill C-18 be amended by adding after subclause 19(3) the following:

Covered Agreements to be Equitable 19.1(1) Any provision for payment to be made by a digital news intermediary to a news business in a covered agreement a) must be based solely on editorial expenditures of the news business; and, b) all covered agreements reached by a digital news intermediary with a news business shall provide the same proportion of editorial expenditures in all covered agreements reached by that digital news intermediary with any other news business.

Threat: Funding secrecy.

Canada is experiencing two concurrent crises in its news ecosystem. The first is financial. The second is a crisis of trust. Canadians have [never placed less trust in journalists](#), and indeed entire newsrooms, than they do today, and never have they [directed more anger and hostility](#) towards journalists.

This alarming trend is exacerbated by the fact that Canadians no longer know who is funding the news they receive, or how much money is involved.

Members of the public are not generally aware that Google is paying millions of dollars to news organizations or who the recipients are.

The distrust and hostility this creates is directed at all Canadian journalists, regardless of whether they receive money from tech platforms or not. Bill C-18, as currently worded, will exacerbate the ongoing crisis of trust. The proposed legislation may save some news organizations, but at the expense of the credibility of all news organizations.

Solution: Transparency.

The universal funding formula described above should be disclosed, and the public must know which news organizations are receiving money from tech companies.

Proposed Amendment:

That Bill C-18 be amended by adding after Clause 44 the following:

Agreements to be made public

44.1 An eligible news business shall file a covered agreement with the Commission within 30 days of the conclusion of the agreement or from the date of an arbitration panel decision made under section 41 and the Commission shall make the agreement public in a database of covered agreements.

Threat: New barriers to entry.

The biggest sign of hope in the Canadian news ecosystem has been [the proliferation of small entrepreneurial news startups in every province and territory](#). While the combination of advertising and subscription revenue may no longer be enough to support large news organizations with high fixed costs, dozens of journalists have achieved sustainability by risking their own capital to launch micro news services, and the trend is growing. These micro services are [often staffed by just one or two individuals](#). Bill C-18, as drafted, requires a news organization to employ a minimum of two journalists, who are at arm's length from the owners or partners of the news business, in order to receive compensation from tech platforms. This requirement is blind to the realities of the online news business and will exclude dozens of important news innovators by demanding employee headcounts that news startups often don't reach until their 3rd or 4th year of operation. Canada needs many more news startups, but Bill C-18 provides nothing for companies at launch and disincentivizes small new ventures by placing goal posts that are beyond their reach.

This requirement penalizes start-ups, new and innovative business models, and news organizations that reflect the diversity of the Canadian news marketplace and impairs their sustainability.

Solution: Recognize owners as qualifying journalists.

Removing the “arm’s length” exclusion from Bill C-18 would allow journalists who build their own news companies to be counted towards employee-number eligibility criteria.

Proposed Amendment:

That subparagraph (1)(b)(11) of Clause 27 be amended by adding after the word “Canada” the following: “, which journalists may be owners of or partners in the news business.”

Threat: Loopholes exclude news organizations from fair compensation and compromise the editorial independence of recipients.

Bill C-18 is intended to compel digital news intermediaries to provide fair compensation to **all** qualifying news organizations. However, Bill C-18 as currently drafted, provides a wide loophole for tech companies that wish to sidestep their obligations and exclude many qualifying news companies, by allowing them to invoke vague and poorly defined criteria for “Exemption Orders.” C-18 states that such orders **must** be granted to digital news intermediaries that demonstrate they have agreements with “news companies”, writ large. Whether this means three news companies or three hundred is not specified. Bill C-18 further demands that to qualify for an Exemption Order, technology companies must ensure the money they provide to news companies is being spent on news content, on local news, on innovation, and on news from diverse voices. While these goals are certainly worthy, it is entirely unacceptable for a Google or a Facebook to have oversight over news organizations or to offer assurances as to how they spend their revenue or what news content qualifies as “local,” “diverse” or “innovative.” Beneficiaries of funding agreements with Google or Facebook will have a strong motivation to help their digital news intermediary patrons qualify for Exemption Orders, as such orders would effectively prevent competitors from benefiting from similar financing deals. In contrast, news organizations are incentivized by the proposed legislation to grant technology companies unprecedented access to details of their newsroom spending, in a manner that fundamentally compromises their independence.

Solution: All mentions of Exemption Orders should be removed from Bill C-18. In the event they are not removed, the criteria for gaining an Exemption Order must be both expanded (so that tech platforms are required to demonstrate they have reached agreements with all qualifying news organizations) and contracted (so that digital news intermediaries are removed from any involvement with newsroom spending).

Proposed Amendment:

Option 1 (preferred option): That Bill C-18 be amended to remove items (e) and (f) from the Summary and to remove section 11 entirely

Option 2:

That Clause 11 (1) (a) be amended to read as follows:

the operator has entered into agreements with all qualifying news businesses that operate news outlets that produce news content primarily for the Canadian news marketplace and the Commission is of the opinion that, taken as a whole, the agreements satisfy the following criteria:

And that subclauses 11.1(a)(ii), 11.1(a)(iii), 11.1(a)(iv), 11.1(a)(v), and 11.1(a)(vi) be removed.

Conclusion

Our coalition is made up of journalism innovators and entrepreneurs who are well-versed in the challenges of sustaining and growing organizations doing the vital public service of fact-based reporting. We can all agree that public interest journalism is vital for the functioning of Canadian society, and it is not something we can afford to do without. While it has been challenging, our outlets have filled in some of the gaps in the media ecosystem and it is imperative that these promising new entrants not be inadvertently disadvantaged by Bill C-18. In addition, this legislation must not exacerbate existing transparency and trust issues with news consumers in Canada. By introducing a fair funding formula, ensuring transparency, lowering the barrier to entry and eliminating loopholes, this legislation can avoid introducing new problems into an already challenging business environment.

Summary of Amendments

Solution: A fair funding formula

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Solution: Transparency.

Proposed Amendment:

That Bill C-18 is be amended by adding after Clause 44 the following:

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44.1 An eligible news business shall file a covered agreement with the Commission within 30 days of the conclusion of the agreement or from the date of an arbitration panel decision made under section 41 and the Commission shall make the agreement public in a database of covered agreements.

Solution: Recognize owners as qualifying journalists.

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That subparagraph (1)(b)(11) of Clause 27 is be amended by adding after the word “Canada” the following: “, which journalists may be owners of or partners in the news business.”

Solution: Loopholes exclude news organizations from fair compensation and compromise the editorial independence of recipients.

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