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FRIENDS  
Standing Up  
For Canadian  
Voices

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**STANDING UP  
FOR CANADIAN VOICES**

**We are a citizens group that stands up for Canadian voices on air and online.**

## Our Key Issues



### A truly public CBC

We can make sure CBC/Radio-Canada is truly public, with fewer ads, more news, and more independence.



### Telling our own stories

We can level the playing field so more money flows back into Canada to invest in our great Canadian stories.



### Strong and credible journalism

We need credible Canadian journalism. Democracy depends on it. We can protect it.



### Canadian values in Canadian media

Hate, death threats, and violence have no place in traditional or social media.

## Proposed amendments to and comments on Bill C-18

FRIENDS strongly supports Bill C-18, the government’s proposed *Online News Act*, and its stated purpose, at section 4:

“to regulate digital news intermediaries with a view to enhancing fairness in the Canadian digital news marketplace and contributing to its sustainability, including the sustainability of independent local news businesses.”

Bill C-18 takes as its precedent Australia’s highly successful 2021 Media Code of Conduct,<sup>1</sup> which forced Google and Facebook to back down on myriad threats of retaliation, and reportedly resulted in an influx of over A\$200 million annually in revenue to Australian news media.<sup>2</sup>

Bill C-18 faces exactly the same kind of opposition from exactly the same entities (and their supporters) in Canada. This outright opposition should similarly be ignored by Parliament.

We are eager to see this Bill implemented.

Nevertheless, as with any proposed new legislation, especially one as novel as Bill C-18, Parliamentarians play a key role in providing considered input as to improvements. It is in that spirit of constructive criticism, that FRIENDS proposes the following priority amendments.

FRIENDS notes that it may have additional comments as discussions about the Bill continue.

### Conditional Eligibility of CBC

FRIENDS strongly supports the inclusion of Canada’s national public broadcaster in the bargaining regime that will be established under Bill C-18. This was the case in Australia where ABC was included. There is, in our view, no considered rationale for excluding CBC. CBC is a strong online news provider in Canada, with leading news sites in both official languages. Google, Facebook and other online platforms should not have a “free ride” in being required to compensate for private news but not public. This is also in the interests of Canada’s private news organizations. If CBC news was “free” to online platforms, such platforms would have an incentive to preference it over private news outlets they have to pay for.

Opposition to CBC’s eligibility under Bill C-18 from private news media players apparently stems from a belief that because CBC is publicly funded (and also earns advertising revenue) it should not be entitled to receive additional revenue from bargaining with online platforms. This argument appears to confuse eligibility under Bill C-18 with issues of CBC’s mandate, including the extent to which it expends resources online or on traditional broadcast platforms and its access to advertising. FRIENDS fully agrees that these are issues of public concern, however, they have nothing to do with CBC’s eligibility under Bill C-18.

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<sup>1</sup> *News Media and Digital Platforms Mandatory Bargaining Code*, enacted by way of amendment to the *Australian Competition and Consumer Act 2010*, passed February 25, 2021 and Assented to 2 March 2021. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/parliament-passes-news-media-and-digital-platforms>

<sup>2</sup> *Instruments and objectives; explaining the News Media Bargaining Code*. A report by Rod Sims AO — Former Chair of the Australian Competition and Consumer Commission, May, 2022, available [here](#).

Unfortunately, as currently drafted, sections 28 and 84(e) of Bill C-18 add unspecified conditions to CBC's eligibility:

*Section 28 The designation of a public broadcaster as an eligible news business is subject to any other conditions specified in regulations made by the Governor in Council.*

*Section 84 (e) setting out conditions in respect of the Canadian Broadcasting Corporation for the purposes of section 28 ...*

While the federal Cabinet's exercise of such powers would be subject to the journalistic and editorial independence of the Corporation granted under section 3 of the *Online News Act* and sections 46(5) and 52(1) of the *Broadcasting Act*, FRIENDS is concerned that they set an alarming precedent. For the first time, Cabinet would have a direct ability to apply specific conditions related to revenues earned by CBC, something it does not currently have with respect to CBC's parliamentary appropriation or other revenue sources. To the best of FRIENDS' knowledge and understanding, no explanations have been forthcoming from government on why such a power is necessary, particularly when it is the arms-length CRTC that is currently, and appropriately, so empowered.

In the circumstances, and barring a compelling rationale to the contrary, FRIENDS urges the Committee to amend Bill C-18 by deleting sections 28 and 84(e).

## **Transparency**

Section 20 of the Bill requires an eligible news business to be publicly listed if it avails itself of the mandatory bargaining process, but the names of news outlets that have private exempt deals need not be made public (only the platform need be, pursuant to s. 8(1)).

Subsection 29(1) of the Bill requires the Commission to maintain and publish a list of eligible news businesses, qualified by "An eligible news business is only included on the list if it gives its consent."

FRIENDS understands that the rationale for this lack of transparency on exempt agreements may relate to the fact that a news business must be a *qualified Canadian journalism organization* under the Income Tax Act, and therefore has rights to tax payer confidentiality.<sup>3</sup> With respect, such a rationale doesn't make sense – disclosure could simply be made a CRTC requirement for the whole bargaining regime or the CRTC process could be delinked from CRA entirely.

In any event, the public interest in adequate transparency here clearly outweighs corporate confidentiality concerns. If news organizations benefit directly or indirectly from Bill C-18, it is entirely reasonable for a condition of that benefit to be disclosure of basic details of agreements. Moreover, transparency is the appropriate response to concerns that Bill C-18 may otherwise give online platforms influence over the journalistic and editorial independence of Canada's news outlets. Public knowledge of what platforms compensate news platforms, to what extent and in what way, is the best guard for such inappropriate influence.

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<sup>3</sup> Pursuant to s. 27(1)(a) of C-18.

Accordingly, FRIENDS proposes the Bill be amended by:

(1) *Deleting “An eligible news business is only included on the list if it gives its consent.” From Subsection 29(1); and*

(2) *Adding the following immediately after section 32 of the Act:*

**Public disclosure**

*32.1 An eligible news business shall file with the Commission any agreement with operators respecting news content that is primarily made available for the Canadian news marketplace within 30 days of the conclusion of the agreement or from the date of an arbitration panel’s decision and the Commission shall make financial details of the agreement public in a database summary of agreements.*

We note that our proposed amendment differs from that proposed on point by the Independent Online News Publishers, in two important respects:

First, our proposed amendment would mandate the disclosure of all relevant agreements not just the disclosure of “covered” agreements.<sup>4</sup> Pursuant to the regime set out in section 11 of Bill C-18, exempt agreements are subject to the oversight of the Commission. They form a key part of the news compensation regime under the Act. When it comes to the public interest, the disclosure of exempt agreements is equally as important as that of covered agreements.

Second, our amendment would give the Commission the discretion to determine, in the public interest, the level of confidentiality to be afforded to agreements, subject to the need for disclosure of financial details. We note that this is consistent with the Commission’s current practices and powers pursuant to its regulations on Rules of Practice and Procedure, and the regulatory power to be granted pursuant 85(i) of Bill C-18.<sup>5</sup>

## **Administrative Efficiency**

FRIENDS shares concerns expressed by other parties about the level of administrative burden that the *Online News Act* would place on the CRTC.

The lack of specificity in Bill C-18 on the timelines and criteria for bargaining is notable in this respect:

- Under section 49, a code of conduct respecting bargaining is to be established by the Commission; and
- Under section 19, the bargaining process has three potential phases: bargaining sessions, mediation sessions and final offer arbitration. The time period between phases is “a period that the Commission considers reasonable”.

<sup>4</sup> We note that the *Online News Act* currently only requires groups of news outlets to file agreements pursuant to section 32(1); requiring individual news outlets to file agreements would be a reasonable condition of requesting and obtaining “eligible” designation under section 27(1). Presumably, however, any platforms seeking exemption under section 11 will also have to file agreements as evidence.

<sup>5</sup> Section 85(i) of the *Online News Act* specifically provides the Commission with a regulation making power “respecting the Commission’s practices and procedures in relation to this Act”. Pursuant to both the *Telecommunications Act* and *Broadcasting Act*, “the Commission shall make available for public inspection any information submitted to the Commission in the course of proceedings before it.” This power is explicit under Section 38 of the *Telecommunications Act*, and assumed as part of the Commission’s general powers under the *Broadcasting Act* – but laid out in Regulation. In FRIENDS view, the *Online News Act* merits a similar if not a heightened bias towards public disclosure.

This contrasts with the Australian model where the legislation *is* the Code of Conduct and timelines are specified:

If an agreement is not reached between the parties within three months of the registered news business corporation indicating an intention to bargain, the matter will be subject to compulsory arbitration if the news business elects to begin arbitration.<sup>6</sup>

Interestingly, Australia's three-month deadline for news bargaining is consistent with a requirement recently imposed on Rogers that if an affiliation agreement is not concluded within 90 days of the initiation of a negotiation with an independent programming service or services, the matter will be automatically referred to the Commission for dispute resolution.<sup>7</sup>

We, therefore, urge the Committee to eliminate the CRTC 's discretion to determine a "reasonable time period" before final offer arbitration is initiated. Instead, we recommend that the Bill include a standard timeline of three months from initiation of bargaining by a news outlet to final offer arbitration. This would be a proven, simple, common sense means of providing certainty that bargaining will be concluded on a timely basis and avoid any unnecessary opportunities for stalling on the part of online platforms.

Further, as in the Australian model, only a news outlet should be able to initiate arbitration, and only after three months have elapsed since bargaining began.<sup>8</sup> FRIENDS, therefore, proposes that section 19(1)(c) of the Act be amended as follows to affect this proposal:

*Section 19(1)(c) If the parties are unable, within 90 days of the news outlet indicating its intention to initiate bargaining, to reach an agreement in the bargaining or mediation sessions and the news outlet wishes to initiate arbitration, final offer arbitration.*

**For further discussion, please contact:**

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<sup>6</sup> Source: The Parliament of the Commonwealth of Australia, Senate, *Revised Explanatory Memorandum*, clause 1.19, available [here](#).

<sup>7</sup> <https://crtc.gc.ca/eng/archive/2022/2022-76.htm> at para 139.

<sup>8</sup> *Revised Explanatory Memorandum*, clause 1.172.