



News Media Canada
Médias d'Info Canada

Pre-Budget Consultation in advance of the 2022 Federal Budget

Submission to the House of Commons Standing Committee on Finance by News Media Canada

January 4, 2022

On behalf of News Media Canada, our member publishers, and the 3000 journalists we employ, who inform Canadians across the country every day, we are pleased to participate in the Pre-Budget Consultations in advance of the 2022 Budget.

Canada's news publishers are facing an existential threat. Google and Facebook's take online ad revenues keeps on growing, and now stands at roughly 90 per cent. And the pandemic has only worsened the situation as advertisers cut costs or have simply disappeared.

During the 2021 federal election campaign, the Prime Minister made a commitment to "introduce legislation, within 100 days, that would require digital platforms that generate revenues from the publication of news content to share a portion of their revenues with Canadian news outlets. This legislation would be based on the Australian model and level the playing field between global platforms and Canadian news outlets." That commitment, along with similar commitments from other federal parties, was welcome news to an industry that is facing economic hardship caused, in part, by a market failure.

Under the legislation, Canadian news publishers would be permitted to negotiate collectively with web giants, particularly Google and Meta (i.e., Facebook), to be compensated fairly for the use of our copyrighted content. If negotiations do not lead to an agreement, baseball-style final offer arbitration would determine a settlement.

Both Google and Meta came out swinging against the Australian legislation. In 2021, the head of Google in Australia and New Zealand said, "It would give us no real choice but to stop making Google Search available in Australia." Facebook added, "People and news organisations in Australia are now restricted from posting news links and sharing or viewing Australian and international news content on Facebook. Globally, posting and sharing news links from Australian publishers is also restricted."

These tactics were not appreciated by Australians. Prime Minister Scott Morrison stated, "We will not be intimidated by Big Tech seeking to pressure our Parliament as it votes on our important News Media Bargaining Code. Facebook's actions to unfriend Australia today, cutting off essential information services on health and emergency services, were as arrogant as they were disappointing."

Australian parliamentarians stuck to their principles. Since the passage of legislation in that country, many publishers, including smaller publishers, have concluded meaningful agreements with Google and Facebook. Although the actual terms are confidential, and some of the contracts are still being negotiated, News Media Canada understands that

Google is paying in the range of 20 percent of the cost of each full-time journalist and Facebook is paying in the range of 10 percent of that cost. Thus, the threat of arbitration is leading to real dollars to news publishers in Australia, both large and small.

We wish to highlight a few issues for Canadian legislators to consider:

1. A key component of the Australian approach is to allow news media in Australia to negotiate on a collective basis if they wish. In Canada, section 45 of the Competition Act precludes collective bargaining. Thus, it is essential that any legislation to implement the Australian approach in Canada include an exemption from section 45.
2. The mandatory code and arbitration regime should apply to “qualified Canadian journalism organizations (QCJO)” designated by the CRA under the Income Tax Act. To qualify, the applicant must be a Canadian controlled organization engaged in the production of “original news content” as carefully defined, with at least two journalists regularly employed that deal at arms-length with the organization in the production of original news content. The Government created the Independent Advisory Board on Eligibility for Journalism Tax Measures to make recommendations on whether the organization meets certain criteria for the QCJO designation, including whether it adhered to “journalistic processes and principles.”
3. The appropriate body in Canada to develop a register of experienced arbitrators, and to appoint an arbitrator, if necessary, would be the Competition Bureau.

With the prospect of Canada following Australia’s example, Google and Meta, which have combined annual revenue in Canada of over \$9 billion, reached out to a number of Canada’s larger news publishers. According to the U.K.-based Press Gazette, “There is some evidence to suggest that the threat of this legislation is already paying off for Canadian publishers...Google, perhaps in anticipation of Ottawa’s crackdown, has already started offering more generous payments for signing up to [Google] News Showcase.”

While those agreements are a needed shot in the arm for the industry’s biggest players, they are short-term in nature and renewal will surely not be on the same terms if Parliament does not pass legislation soon. As for smaller publishers that serve local communities across the country, their phones are not ringing. Moreover, this divide and conquer approach lacks transparency and allows the platforms to play titles off against each other with inadequate offers compared to what binding arbitration would provide.

Google and Meta are key parts of the news ecosystem, and they have important roles to play, going forward. It is in their self-interest to have rich, trusted content that our journalists produce. However, they cannot just take it because of their dominant position in the marketplace; they must pay for it.

Canada's news publishers are calling on all parties to pass this urgently needed legislation by June 2022. Publishers large and small need the right to come together so we can reach fair agreements to level the playing field with web giants.

Publishers throughout the Americas and around the globe are paying careful attention to Canada. They see Canada as a forward-looking democracy, and they are counting on us to show the world how a high-quality, fiercely independent, and commercially viable news publishing sector can thrive along with a vibrant open web.

There is broad support across party lines for levelling the digital playing field. Accordingly, we propose a course of action in keeping with the urgency of the situation. We believe the most expeditious way to implement the government's commitment is via legislation accompanying the Budget Implementation Bill. There are ample precedents for this approach in other matters of similar economic urgency.

The financial pressures facing Canadian news outlets due to the current market failure are only becoming more dire. The timely approach we suggest would seize on the all-party consensus, accelerate the bill's adoption, and, most importantly, empower our industry to move beyond the existential threat posed by the dominance of the web giants before more permanent, irreversible damage is done.

The Australian model is a simple, fair, and proven solution that is working in that country. It does not require taxpayer funds, new taxes, or user fees. Its use of collective negotiation, backed up by baseball-style arbitration, is the best way to redress the current power imbalance between the web giants and Canada's local news media. It will ensure that we can continue to invest in excellence in Canadian journalism—both today and over the long term.

Canada's news publishers await legislation with urgency. You have our pledge to work tirelessly and constructively with parliamentarians from all parties on the expeditious passage of these measures. Let's get this done via the Budget Implementation Bill.

Sincerely,

Jamie Irving
Chair

Paul Deegan
President and CEO