

A “Newsworthy” Legal Update: The Online News Act Receives Royal Assent

Stephen I. Selznick, Steven Henderson

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On June 22, 2023, Bill C-18, *An Act Respecting Online Communications Platforms that Make News Content Available to Persons in Canada*, also known as the federal *Online News Act*, received royal assent.

The *Online News Act* is the Canadian government’s response to rapid changes in the Canadian news media industry, in which traditional news services such as newspapers and radio stations have experienced declines in revenue due to the rise of digital and social media news “intermediaries” like Google and Facebook who repost their news content. The primary objective of the *Online News Act* is to require digital news intermediaries to pay for the news content they share through mandated bargaining with the eligible Canadian news gathering businesses who first publish that content.

Objectives and Requirements of the Online News Act

In today’s news landscape, a significant portion of the Canadian population consumes news through “digital news intermediaries” (DNIs): online and social media platforms that do not produce news content directly, but instead make the news content produced by other businesses available to users on their platform. The stated purpose of the *Online News Act* is to address the perceived unfairness that this has created in the Canadian news marketplace.

It has been argued that the activities of DNIs are unfair to traditional Canadian news businesses. As the argument goes, these traditional news businesses, their reporters, and other employees expend considerable human resources and financial capital to source news stories and produce news content on matters of topical interest to Canadians, through a diversity of valuable editorial voices. Despite their importance, these traditional news sources are experiencing downward revenue pressures that in turn jeopardize their ability to maintain the critical mass of journalists and other personnel necessary to deliver news content with a Canadian perspective. DNIs, on the other hand, benefit from this journalism without paying for its use.

To that end, the *Online News Act* establishes a mandated bargaining process that will require designated DNIs to enter into commercial agreements with eligible Canadian news businesses. Among other things, these commercial agreements will require DNIs to compensate eligible Canadian news businesses for making those businesses’ news content available on the DNIs’ platforms. The *Online News Act* defines

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“making available” broadly, specifying that news content is considered to be “made available” by a DNI if the content is directly reproduced or if access to the content is facilitated by any means, including an index, aggregation, or ranking system.

The *Online News Act* provides little detail about how the mandatory bargaining process will work. It will be up to the Canadian Radio-television and Telecommunications Commission (CRTC) to set up the mandatory bargaining framework and regulate its application.

The *Online News Act* includes an exemption from the mandatory bargaining process for DNIs who have already entered into voluntary agreements with Canadian news businesses, so long as those agreements provide fair compensation to the news businesses, ensure that an appropriate portion of the compensation will be spent on news production, contribute to the sustainability of the Canadian news marketplace, and satisfy certain other criteria.

While the *Online News Act* does not contain a specific list of Canadian businesses that qualify as “news businesses”, it outlines certain criteria a business must meet to fall under the definition. Among other options, a news business can qualify by being a qualified Canadian journalism organization as defined by the *Income Tax Act*, or by being a business that produces news content of public interest that is primarily focused on matters of general interest and current events and which operates in Canada, employs at least two Canadian journalists, is not focused on one specific industry or topic, and is a member of a recognized journalistic association with a code of ethics.

The *Online News Act* similarly does not list specific platforms that constitute DNIs. The *Online News Act* defines a DNI broadly, as an online communications platform, including a search engine or a social media service, that makes news content produced by news outlets available to persons in Canada. The *Online News Act* also requires the CRTC to maintain a list of DNIs who are subject to the legislation.

Remaining Questions and Next Steps

There are many unanswered questions about how the *Online News Act* will be implemented. These include determining which specific businesses qualify as Canadian news businesses, which online platforms will be designated as DNIs, what steps will be required under the mandatory bargaining process, and which DNIs will be exempted from the bargaining requirement due to having satisfactory grandfathered voluntary agreements in place.

In recognition of how many details still need to be finalized – not to mention the fact that the CRTC has never directly regulated the news industry before – different parts of the *Online News Act* will come into force at different times in order to give the CRTC enough time to set up its regulatory framework.

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The passage of the *Online News Act* has been subject to significant pushback by larger digital and social media platforms that are expected to be designated as DNIs. For example, on June 22, the same day that the *Online News Act* received royal assent, Meta announced that it intends to block access to Facebook and Instagram's news features in Canada in response to the *Online News Act*. Google is reportedly considering implementing a similar move in Canada. In response, representatives from the Canadian government have emphasized that, due to the *Online News Act*'s staged coming into force approach, these platforms do not yet have any obligations under the legislation and that the government intends to continue consulting with larger digital companies as the CRTC develops its regulatory framework.¹

Given how many questions remain about the implementation of the *Online News Act*, all eyes will be on the CRTC, which is expected to release an implementation plan shortly. The Cassels Entertainment & Sports Group will continue to monitor these developments. For more information about the *Online News Act* and how it could affect your business, please contact any member of our group.

¹ Mickey Djurgic, The Canadian Press, "Liberal bill requiring Google and Meta to pay for news content passes in Senate." CTV News, June 22, 2023.

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