

CRTC Publishes Regulatory Plan for the Development of an Online News Act Bargaining Framework

Stephen I. Selznick, Steven Henderson

August 28, 2023

On August 24, 2023, the Canadian Radio-television and Telecommunications Commission (CRTC) published its regulatory plan for its development of a new mandatory bargaining framework between digital news intermediaries and eligible Canadian news businesses. The development of this regulatory plan is a required step under the *Online News Act*, and the responsibility to create and regulate that plan falls within the purview of the CRTC. While details are still limited, the plan confirms that, beginning in the Fall of 2023, the CRTC will initiate a public consultation to help build out this regulatory framework. The CRTC expects to publish the new framework and an accompanying code of conduct in the Summer of 2024, in advance of mandatory bargaining beginning in late 2024 or early 2025.

Background

As discussed in our previous Cassels Comment, the *Online News Act* received royal assent in June 2023. The *Online News Act* establishes a mandatory bargaining process that will require “digital news intermediaries” (DNIs) – online platforms that make news content produced by other businesses available on their platform – to enter into commercial agreements with eligible Canadian news businesses. Pursuant to these contractual agreements, DNIs will be required to compensate Canadian news businesses for sharing their news content on the DNIs’ platforms.

The passage of the *Online News Act* has caused some tension in the Canadian digital news industry. Most notably, Meta Platforms Inc. – the owner of several large social media platforms, including Facebook and Instagram – is in the process of ending all news availability in Canada via Facebook and Instagram. In response, a coalition of Canadian broadcasting and news media associations have requested a formal inquiry into Meta’s decision by Canada’s Commissioner of Competition, as we discuss in greater detail [here](#).

The CRTC’S Regulatory Plan

The regulatory plan announced by the CRTC is divided into three phrases.

- **Phase One (Fall 2023):** The CRTC will commence a public consultation to inform the development

of the bargaining framework. Affected parties, news industry representatives, and members of the Canadian public will be invited to comment on how the bargaining and arbitration process should work; what the code of conduct for negotiations should look like; and how Canadian news organizations can qualify as “eligible news businesses.” In parallel to this public consultation, the CRTC will also recruit an independent auditor to prepare an annual report on the impact of the *Online News Act* on Canada’s digital news marketplace.

- **Phase Two (Summer 2024):** Following the public consultation, the CRTC intends to publish its bargaining framework and accompanying code of conduct. The CRTC will also begin to consider applications by Canadian news organizations who wish to partake in the bargaining process and will begin recruiting arbitrators to oversee bargaining.
- **Phase Three (Late 2024/Early 2025):** After eligible news businesses have been determined and arbitrators have been selected, DNIs and eligible news businesses will be entitled to initiate formal mandatory bargaining processes.

While the CRTC’s plan sheds more light on how the bargaining framework will be developed, many questions still remain. For example, it is still unclear what steps, if any, the CRTC or the federal government plan to take to motivate Meta to reverse its Canadian news block and to prevent other large platforms from implementing similar blocks (such as Google, who has previously suggested it is considering taking the same action). That said, the details of the plan – particularly the commissioning of an independent annual report on the state of Canada’s digital news marketplace – suggest that the CRTC is alert to the complexities involved in implementing the *Online News Act* effectively.

The Cassels Entertainment & Sports Group will continue to monitor developments related to the *Online News Act*. If you will require assistance navigating the public consultation process once it opens or understanding how the *Online News Act* may impact your business, please contact any member of our group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.