

Canadian Government and Google Reach Deal on Implementation of Online News Act

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After months of uncertainty, Canadian Internet users will officially be able to continue accessing news content on Google. On November 29, 2023, the Minister of Canadian Heritage, Pascale St-Onge, announced that the Canadian government had reached a deal with Google regarding Google's obligations under the recently passed *Online News Act*. The deal ensures that Google will continue to provide its news indexing services in Canada while also paying approximately \$100 million per year in compensation to eligible Canadian news businesses that source the news content Google shares on its platform.

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.

After draft regulations to the *Online News Act* clarified that only DNIs with annual revenues over \$1 billion and at least 20 million unique visitors or active users per year would be subject to the mandatory bargaining process, it was widely expected that only Meta (the parent company of Facebook and Instagram) and Google would satisfy those criteria. Almost immediately after the *Online News Act* passed, Meta announced it would stop allowing Canadians to access news content on its platforms. Over the course of the summer of 2023, Meta proceeded to implement that news block, which remains in effect as of today.

Google, meanwhile, publicly expressed its dissatisfaction with the *Online News Act* and indicated that the legislation could result in Google similarly blocking access to news links in its search results for Canadians. However, unlike Meta, Google did not begin to implement that block and continued to have discussions with the federal government about how the *Online News Act* would be implemented.

The Deal

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The ongoing discussions between Google and the Canadian government culminated in a deal that was announced on November 29, 2023. While the exact terms of the deal will be formalized in the final version of the regulations to the *Online News Act*, it has been reported that Google will pay approximately \$100 million per year to eligible Canadian news businesses to fulfil its obligations under the *Online News Act*.¹ This amount is lower than the approximately \$172 million per year that the federal government had previously estimated that Google would be required to pay under the mandatory bargaining framework.

Further, in response to one of Google's most vocal concerns about the structure of the bargaining framework under the *Online News Act*, the deal provides that Google will not be required to negotiate and enter separate commercial agreements with every individual news organization that qualifies as an "eligible Canadian news business" under the legislation. Instead, Google will enter an agreement with a collective fund that represents all eligible Canadian news businesses and will make all payments to that fund, which in turn will distribute the compensation proportionately among its member news businesses.

The government's deal with Google arrives just a few weeks before the *Online News Act* officially comes into force on December 19, 2023. Final regulations to the legislation, which will incorporate the full terms of the government's deal with Google, are expected to be published before the legislation's in-force date.

Key Takeaways

The government's deal with Google demonstrates its commitment to flexibility and its responsiveness to the concerns of DNIs that it has repeatedly suggested it would honour since the *Online News Act* was passed over the summer. While some news advocacy groups in Canada have criticized the deal for providing Google with too significant of a discount on what it otherwise would have had to contribute under the original draft regulations, other industry stakeholders have praised the deal as a strong compromise that ensures Canadians can continue to benefit from Google's news indexing services while also making Google financially support the Canadian news businesses that source the news that Google shares.

Although uncertainty surrounding Google's status in Canada is now over, the uncertainty around Meta remains. On the day that the deal with Google was announced, Meta reiterated that it does not intend to resume discussions with the federal government and will only remove its news block in Canada if it is fully exempt from the *Online News Act*. However, now that the federal government has demonstrated that it is willing to adjust the structural details of the bargaining framework in response to DNIs' bigger concerns, it will be interesting to see whether the federal government will now be able to convince Meta to reach its own deal or if Meta will continue to maintain its firm stance.

The Cassels Entertainment & Sports Law group will continue to monitor developments related to the implementation of the *Online News Act*. If you have any questions about the *Online News Act* and how it may impact your business, please reach out to any member of our team.

¹ CBC News, "Federal government reaches deal with Google on *Online News Act*." November 29, 2023, available at: <<https://www.cbc.ca/news/politics/google-online-news-act-1.7043330>>.

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