

CRTC Launches Public Consultation Process for the Online News Act Regulatory Framework

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On March 13, 2024, the Canadian Radio-television and Telecommunications Commission (CRTC) announced a call for comments related to the framework under which the CRTC will implement the *Online News Act* and its regulations. Pursuant to the call for comments, any interested party may file a written intervention online by **April 12, 2024**, commenting on various proposals raised by the CRTC relating to the bargaining process under the *Online News Act*, the resolution of discrimination or undue preference complaints, and data gathering requirements.

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.

Following successful negotiations between the Canadian federal government and Google – the only DNI expected to be subject to the bargaining process after Meta blocked news access on its platforms in Canada – the *Online News Act Application and Exemption Regulations* (the Regulations) came into force in December 2023. As we previously discussed, the Regulations codify the details of the federal government’s deal with Google and include further details as to which DNIs will be subject to the *Online News Act*’s bargaining process and how other DNIs beyond Google can satisfy the criteria to be exempt from the process.

The Consultation Process

The CRTC’s call for comments is in furtherance of its role under the *Online News Act* to oversee the functioning of the mandatory bargaining framework. While the CRTC acknowledges in the call for comments that there may not be any remaining non-exempt DNIs who are required to engage in the bargaining process, it nonetheless seeks comments from the public in case it later becomes necessary for the CRTC to

administer that process.

Specifically, the CRTC seeks comments on the following aspects of its proposed implementation of the *Online News Act* and the Regulations:

- **The bargaining process:** The CRTC seeks comments on the timing and stages of the bargaining process itself, including how the initial 90-day bargaining period is commenced, how that bargaining period will transition to the subsequent 120-day mediation period, and how the final stage (a 45-day final offer arbitration) will be conducted.
- **Undue preference, discrimination, and disadvantage:** The *Online News Act* broadly prohibits online platforms from unduly discriminating against eligible news businesses or subjecting them to undue preference or disadvantage when making news content available on their platforms. The CRTC seeks comments on whether it should provide further guidance on the specific types of undue preference, disadvantage or discrimination that are prohibited, as well as whether the CRTC should consider additional factors beyond those listed in the *Online News Act* when assessing complaints in this area.
- **Data collection:** The *Online News Act* allows the CRTC to collect information from time to time from online platforms and news businesses when it requires that information to perform its duties. The CRTC seeks comments regarding the types of data that online platforms and news businesses should be required to provide to the CRTC in its exercise of that authority.

Any member of the public who wishes to comment on some or all of the CRTC's questions can do so by submitting a written intervention through the CRTC's online comment form. All interventions must be submitted on or before **April 12, 2024**, to be considered by the CRTC.

The Cassels Entertainment & Sports Law Group has been closely monitoring developments related to the *Online News Act* and has significant experience assisting parties with submitting interventions in CRTC consultation processes. If you are interested in submitting comments in response to the CRTC's *Online News Act* consultation, or if you have any questions about how the *Online News Act* may impact your business, please reach out to any member of our team.

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