

CRTC Launches Public Consultation Regarding Possible Exemption from Bargaining Framework Under the Online News Act

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July 9, 2024

The Canadian Radio-television and Telecommunications Commission (CRTC) has taken another big step in implementing the recently passed *Online News Act* and its regulations. On June 27, 2024, the CRTC launched a public consultation seeking comments from interested parties regarding the potential grant of an exemption order to Google from the requirement under the *Online News Act* for digital news intermediaries to participate in a mandatory bargaining process intended to compensate Canadian news businesses for sharing their news content. This public consultation, and the exemption order that may follow, will likely have significant implications for how the *Online News Act's* requirements and exemption criteria will be interpreted by the CRTC on a go-forward basis.

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.

A few months after the *Online News Act* became law, [the Canadian government announced](#) that it had reached a deal with Google — the only DNI currently expected to be subject to the bargaining process after Meta blocked news access on its platforms in Canada — pursuant to which Google is eligible to be exempt from the *Online News Act's* bargaining process in exchange for Google agreeing to contribute approximately \$100 million per year (indexed for inflation) to eligible Canadian news businesses that serve as the source of the news content Google shares on its platform.

Shortly after the deal was announced, regulations under the *Online News Act*, titled the *Online News Act Application and Exemption Regulations* (Regulations), [came into force](#), which codified the Canadian government’s deal with Google and provided further detail on how DNIs who are subject to the *Online News Act's* requirements can be eligible for an exemption order. Among other clarifications, section 10 of the

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Regulations provide that a DNI can enter into a single agreement with one collective fund that represents all eligible Canadian news businesses, so long as that agreement provides for “equitable distribution” among the members of the group. In line with that option, Google reached an agreement with the Canadian Journalism Collective (CJC) on June 6, 2024, pursuant to which the CJC is to act as the collective fund for the distribution of Google’s payments to eligible Canadian news businesses.

The Public Consultation

On June 27, 2024, the CRTC published [Online News Notice of Consultation CRTC 2024-143](#), announcing a call for comments on Google’s application for an exemption order under the *Online News Act* following its agreement with the CJC. Any interested party has until **July 29, 2024** to submit comments on Google’s application. Google and the CJC are also parties to the consultation and will be required to answer questions posed by the CRTC.

Specifically, the CRTC is seeking comments from the public regarding whether Google’s agreement with the CJC satisfies the criteria for an exemption under section 11(1) of the *Online News Act*. That provision outlines various requirements that a DNI’s agreement with eligible Canadian news businesses (or a collective fund representing them) must satisfy, including that the agreement must ensure that an appropriate portion of compensation is used for the production of news content; that the agreement does not allow the DNI to undermine journalistic independence; and that the agreement contemplates significant support for local news businesses, Indigenous news businesses, official language minority community news businesses, and other news businesses that serve equity-seeking communities.

If the CRTC finds that Google’s agreement with the CJC satisfies these criteria, it may grant Google a final exemption order that lasts up to five years. If the CRTC finds that the agreement does not satisfy all the section 11(1) criteria, it can issue an interim exemption order to allow Google additional time to satisfy the criteria.

As part of the public consultation, the CRTC is encouraging interested parties to provide comments on the following topics, among others:

- Whether Google satisfied the requirement under the Regulations to conduct an open call for Canadian news businesses who believe they are eligible to receive compensation under the agreement when Google ran an open call process from February 28 to April 30, 2024;
- Whether additional eligible Canadian news businesses who did not come forward during the initial open call process should be added to the group of recipients entitled to receive CJC-distributed funds, and if so, the process that should govern those subsequent calls to participate;
- Whether the CJC’s process for distributing Google’s funds under the agreement meets the requirement of “equitable” distribution of compensation or whether the CRTC should impose any

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further conditions on the operation of the CJC. The CJC is also required to provide the CRTC with details of the steps it took when it negotiated and signed the agreement with Google to ensure that it acted independently of Google and protected the eligible Canadian news businesses' interests;

- The length of Google's exemption order, if granted; and
- The overall scope of the exemption order, i.e., whether it should only apply to the requirement under the *Online News Act* to participate in a mandatory bargaining process or if it should also exempt Google from other obligations that the *Online News Act* imposes on DNIs, such as the obligation to provide certain information to the CRTC upon request and the prohibition against giving individual news businesses undue preferences or disadvantages when sharing their news content.

Key Takeaways

While the CRTC's current public consultation focuses specifically on the agreement between Google and the CJC, it will likely have implications that extend well beyond Google and its DNI service. The CRTC's decision on any exemption order following this public consultation will provide other domestic and foreign DNIs, Canadian news businesses and the general public with valuable insight into the CRTC's interpretation of the exemption criteria, some of which are vague as presently drafted. The CRTC's interpretations of the exemption criteria, as reflected in any order, will also likely serve as precedent for assessing future applications for exemption orders by other DNIs, such as by Meta if it chooses to restore news access on its platforms in Canada. Lastly, the CRTC's decision will also inform Canadian news businesses as to the procedure to access the CJC or other DNI fund contributions given that this detail is absent from the Regulations.

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.

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