



Centre for MEDIA,
TECHNOLOGY
and DEMOCRACY

Canada's News Bargaining Code

An Unabridged Account of C-18



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About the Centre

The Centre for Media, Technology and Democracy is an interdisciplinary research organization housed at the

Max Bell School of Public Policy at McGill University. Its work is dedicated to understanding and responding to the social, political, and policy challenges posed by the evolving information ecosystem and digital technologies.

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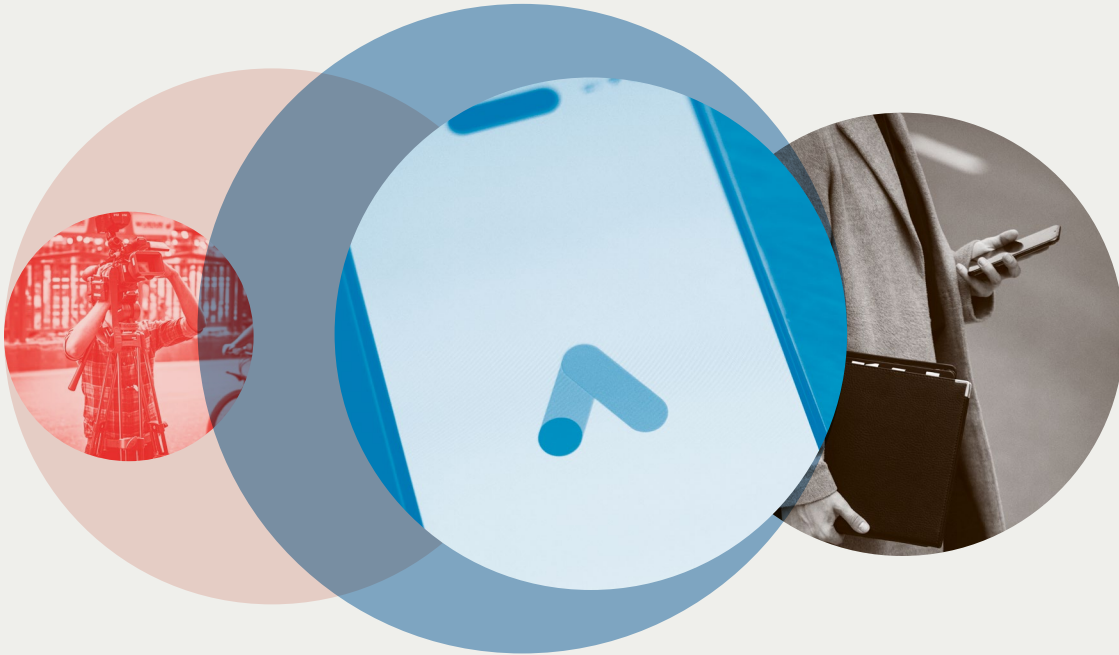
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This report was completed in February 2025, prior to the most recent Canadian election. Some government titles may therefore be outdated.



Executive Summary

Journalism is in a state of crisis in Canada, and around the world. With platform giants taking the lion's share of the advertising dollars and journalism suffering historic layoffs and closures despite the government's \$595 million package for journalism in 2019, Australia's 2021 News Media Bargaining Code offered Canada's beleaguered industry a beacon of hope. The Australian legislation aimed to address the imbalance of power between publishers and platforms and offer a lifeline to journalism—a vital pillar of democracy. Canada followed in Australia's footsteps, tabling its own bill in 2022. In June 2023, following nearly two years of intense debate and lobbying, Bill C-18: An Act respecting online communications platforms that make news content available to persons in Canada—or, the Online News Act—became law.

The following report is the first full and unabridged account of C-18. It hopes to give policymakers, civil society, and journalists in Canada and abroad a full overview of its successes, challenges, and far-reaching implications. Through media accounts, expert testimony, as well as interviews with journalists, government officials, and global policy experts, the report details the context for the bill, its journey through Canada's legislative process including the key debates and points of contention throughout, the lobbying and media discourses, the critical differences and similarities with Australia's bill, the aftermath and implications for Canadian journalism, as well as future directions for news bargaining codes—or their alternatives—in Canada and abroad.

Several key questions guiding the report were: *What were the central motivations behind the bill? Are the outcomes worth the risks countries might face in attempting to implement such legislation? And crucially, what does Canada's experience portend for the future of news bargaining?*

KEY FINDINGS

- **Meta and Google adopted contrasting strategies in their approach to C-18, mirroring strategies taken in other jurisdictions:** Google participated heavily in lobbying and swaying public opinion, whereas Meta made it clear they were unwilling to negotiate from the start. While both companies used intimidation tactics—notably, threatening to ban news on their platform, or testing news bans on a small percentage of users—Google leveraged that threat to push for amendments, whereas Meta walked away entirely. In both Canada and Australia, the major platforms were successful in pushing for several key amendments in the final draft. The platforms have used similar lobbying and pressure tactics in the past, following the ancillary copyright battles in Europe a decade ago, and are continuing to use them now, as Google threatens to stop linking news in New Zealand if the country passes its Fair Digital News Bargaining Bill.
- **Google opposed the undue preference provision, the broadened scope of publishers that would be included following amendments, and the “uncapped liability” in the exemption criteria.** The company also pushed hard for the ability to negotiate with a collective rather than be required to make deals with individual publishers. The company singled out undue preference as a principal concern, arguing that the measure would prevent Google from applying policies that prioritize trusted information over lower-quality content. Ultimately, Canada acquiesced to a cap on liability and allowed Google to negotiate with a collective, but undue preference remained in the final bill, with some amendments.
- **Many of the debates throughout the legislative process centred on the premise of the bill, and specifically on the value of news to platforms.** Discussions primarily centred on who was owed: platforms argued that they were deprioritizing news content and that it was not a substantial part of their revenue—although existing research contravenes this claim. While more research is needed on this front, platforms’ unwillingness to share data on users’ engagement with news content hindered transparent debate. Ultimately, discussions around the monetary value of news content to platforms failed to account for the root of the problem: surveillance advertising, and the dominance and opaqueness of the ad tech system.
- **Transparency, accountability, and diversity were key values promoted by the government throughout legislative discussions.** Key points discussed by stakeholders throughout the legislative process included ensuring that the CRTC would be an appropriate entity to monitor compliance and provision of funds; that the money would go toward job creation and journalism (rather than paying off debts or CEO pay, for example); and that deals would be made with a diversity of publishers including small publishers, as well as language and ethnic minority publishers. Some important amendments included mandating an annual independent audit, setting clear exemption criteria, adding in specific protections for Indigenous and other minority publishers, and amending the eligibility

requirements to allow for one of two journalists to be someone at arm's length from the publication—a major win for smaller news organizations.

- **Canada's bill departed from Australia's in its exemption criteria and its transparency provisions.** Canada attempted to build more transparency into its bargaining code, notably by setting up unambiguous thresholds and criteria for exemption, and mandating the CRTC to contract an independent auditor to publish an annual report on the total value of commercial agreements. According to government officials, a trade risk with the U.S. impacted Canada's choice to pursue undue preference, rather than following Australia's algorithmic transparency provision.
- **Meta's exit dealt a devastating blow to many publishers, and the aftermath of C-18 garnered mixed responses from the news publishing community:** Many small publishers and language minority publishers were deeply affected by Meta's news ban, while many legacy publishers, though applauding the deal, also mourned losing their exclusive content deals with the platforms. The final regulations essentially converted the law from a bargaining model to a fund model, casting doubt on whether it was ever possible for governments to implement a robust bargaining code under pressure from Big Tech.
- **Though not strictly a bargaining code, the final deal inked between Google and the government lays a strong regulatory foundation for the distribution of funds in Canada.** A regulated fund is distinctly different from a fund, and has clear advantages: the money is distributed in an equal, predictable, and transparent way, and there are set rules to guard against platforms picking winners and losers. This regulated fund is stronger than others in the field: the agreements concluded directly between Google and California, or between Google and the Association of Independent Publishers in South Africa, were entered into completely voluntarily by Google—meaning the company could likely exit them just as easily.

FUTURE DIRECTION AND RECOMMENDATIONS FOR CANADA AND GLOBAL NEWS BARGAINING

- **Future news bargaining legislation *must* account for the challenge of generative AI.** The battlefield for compensation will increasingly move from platforms to AI chatbots, as AI companies scramble for high-quality content to train their models. Ascertaining the value of news content to AI companies remains a challenge and will play a significant role in future bargaining calculations. While many publishers have already inked exclusive content licensing deals with AI companies, it may be wise to take a lesson from C-18 and recognize that deals with tech companies may undermine publishers in the long-run: publishers stand a better chance by pursuing collective solutions, rather than individual ones.

- **Taking an offensive stance toward Big Tech from early on may lend more credibility to news bargaining legislation:** Platforms were, to a large degree, quite effective in swaying public opinion in Canada. The companies repeatedly called the bill a “link tax” and warned that the law would “break the internet.” Big Tech continues to play on the idea that their interests are intrinsically tied to the concept of the “free web,” and often positions government regulation as akin to censorship. It is important to preempt Big Tech talking points and set up a new narrative, such as redirecting the focus to the power asymmetry between platforms and publishers, or the “theft” by Big Tech, for example. Policymakers can point to the ways in which Big Tech monopolies are impeding free expression and other rights on the web.
- **There may be ways to avoid a Meta exit:** Policymakers can consider including a “must-carry” provision or similar levers—such provisions would require platforms to continue carrying all covered news publishers. Some experts viewed C-18’s section 51 as a soft must-carry measure, and have suggested that tweaks to that section could have made Meta’s news ban more difficult. Meanwhile, there is an ongoing investigation into whether Meta could be scoped into C-18 as many Canadians have continued sharing and finding news content on the platform.
- **Bargaining codes constitute only one part of a much larger global policy effort needed to stem the crisis in journalism:** Potential pathways forward could include cracking down on monopolistic practices in advertising, addressing surveillance advertising, and supporting journalism through government advertising dollars, funding public media, and encouraging publishers to explore new, innovative news models. International solidarity on news bargaining and other policies will increase the pressure on Big Tech.
- **The difficulties inherent in market solutions point to an important role for public media:** Given that journalism is a public good and a backbone of a healthy democracy, the crisis in journalism (which some have called a systemic market failure) underscores the importance of investing in public media systems—and particularly in local news, where there are an increasing number of news deserts.

With the looming threat of generative AI and Big Tech’s shift to the political right over the past few years, the future of journalism faces a steep uphill battle—and the stakes are high. Whether a country should move forward with its own code will ultimately depend on each country’s individual assessment of the risks it is willing to bear and the unique circumstances faced by its news industry. Public interest news media remains an essential part of a healthy democracy and public life. It should be considered worthy of deeper investment, and shielded from the market failure that is today’s crisis in journalism.

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Introduction

Growing anxieties about the collapse of journalism have become increasingly pronounced since the pandemic—a period that further ravaged an industry already in decline. Layoffs in the industry reached historic levels in 2023, with one U.S. report **finding** over 20,000 people had lost their jobs, including at preeminent American publications like the Washington Post and NPR. Meanwhile, digital publications once hailed as the future of journalism, like BuzzFeed News, were forced to shutter their sites altogether. A similar trend was evident in Canada: in June 2023, Bell Media **slashed** 1,300 jobs and closed six of its local radio stations, while in December 2023, the Canadian Broadcasting Corporation (CBC) **announced** it would be cutting 600 jobs—10 per cent of its workforce.

That year's layoffs at Bell and CBC were not isolated incidents, nor did the events of the past two years appear out of thin air. Figures from the Local News Research Project show that, between 2008¹ and 2024, 518 outlets **closed**, nearly 400 of which were community papers. Between January 2023 and February 2024 alone, there were 36 news outlet closures. *Métro Média's* termination of 17 community newspapers in August 2023 accounted for roughly half of that figure. The organization later claimed bankruptcy, reflecting an increasingly common **trend** across the industry. As 2023 came to a close, Harvard's Neiman Lab **coined** 2023—also one of the **deadliest** for journalists worldwide—"the year journalism and capitalism finally divorce[d]."

Among the oft-cited culprits for journalism's slow death: a lack of investment in local journalism and the weaponization of social media to capture our *attention* and our *data*. Once lauded as a democratic digital public square driving citizen-led movements like the Arab Spring and Occupy Wall Street,

1 2008 is often considered the year mobile internet **moved** into the mainstream.

the golden era of social media has faded. Instead, over the past two decades, a handful of large tech platforms **have** increasingly monopolized our online information systems and weaponized our data to survey and exert control on users, creating wide-ranging threats to our democracies, our privacy, and our mental wellbeing. Meanwhile, all walks of journalism have seen their coffers bleed as the same platforms that have captured our attention have also monopolized the advertising that once fed them. With the **majority** of Canadians now getting their news instead from the internet and social media, platforms have helped **propagate** mis- and disinformation, often at ten times the rate of real reporting, using algorithms engineered to keep us scrolling.

It is within this context that Canada passed Bill C-18, the **Online News Act**, in June 2023. Bearing strong resemblance to Australia's **controversial** 2023 News Media Bargaining Code, both bills aimed to rectify the bargaining imbalance between publishers and platforms that was the result of these changing dynamics. The problem was clear: instead of journalists reaping the rewards of their invaluable work through direct support from advertisers, advertising dollars were now being lost to platforms thanks to the opaque ad tech system these platforms had **monopolized** to their advantage. Rather than acquiesce to those calling for fundamental changes to the system, platforms began inking deals with select—often larger and more mainstream—news outlets around the world, to whom they promised financial support. Unfortunately, this created dependency on platforms and often left out smaller publishers. The premise of C-18 was, therefore, simple: it asked platforms to negotiate transparently with a wide variety of outlets to award “fair” value to publishers, who were providing content that was attracting both eyeballs and advertising dollars.

And yet, the bill stirred up significant controversy among the platforms and a number of experts, academics, and politicians, many of whom faulted publishers for failing to adapt to the new digital environment. Others, however, felt that the bill failed to target the root causes of the problem: the monopoly power of platforms, *as well as* the monopoly power of media sector giants overly bent on their own bottom line, often at the expense of real journalism.

The patterns of 2023 showed no signs of slowing down in 2024. Echoing worldwide trends, Bell Canada announced in February 2024 that it would **cut 4,800 jobs**, the company's biggest layoff in 30 years. The trend continued into the early summer with Global News **firing** dozens of journalists in June 2024.

But 2024 was no ordinary year—it was the **biggest election year** in world history, with over 80 countries spanning more than half the world's population who headed to the polls. Many compounding factors threatened a healthy media ecosystem capable of providing citizens with the information necessary to make informed electoral decisions. In July 2024, Meta's Oversight Board, an independent body responsible for shaping Meta's content policy, was deemed “**unprepared**” to provide election-related content moderation. In the United States, the rapid loss of local newspapers—falling at a rate of more than two per week in 2023—left **200 counties** in “local news deserts” at a time when reliable information was crucial for the November 2024 election. And at a more macro level, the ongoing threat of autocratic rule and far-right extremism globally became all the more alarming without a press properly equipped to play its essential role in holding power to account.

The decline of journalism around the world threatens citizens' access to credible information through in-depth reporting on a wide range of issues—from election coverage, to life-saving emergency

preparedness, to simply holding the powerful to account. It is therefore essential that policymakers have accurate information at their disposal to be able to reliably address the ongoing crisis in journalism.

This report is intended as one such tool for concerned policymakers. While Australia's bargaining code was widely seen by platforms as a one-time deal, Canada's code caught the attention of the major platforms, who **threatened** to block news in the country to circumvent the legislation—with Meta infamously **making good** on its threat. Canada's bill has become a sort of litmus test of the potential of such legislation, with international **media** and **policymakers** waiting in the wings to analyze the results. Proposals for similar codes have since cropped up around the world in places like **California**, **South Africa**, and **Malaysia**.

The following report tells the full, unabridged story of C-18, so that policymakers and civil society both in Canada and in other countries considering a news bargaining code—or alternative legislation—may have a full overview of its multifaceted implications. The following report is based on media accounts, expert testimony, as well as a range of interviews with journalists, government officials, and policy experts based mostly in Canada, with some from South Africa, Australia, and the U.S.

Part 1 of the report recalls the contextual basis for the bill's development, tracing the long-standing, and yet increasingly unequal, relationship between platforms and publishers. The section follows this historical arc back 20 years and addresses the limitations of existing funding policies meant to sustain journalism—whether from the Canadian government or from platforms. Parts 2 to 4 review the practical and procedural implications of importing an Australian-inspired code into the Canadian context—examining everything from Canada's 2022 **consultation** with stakeholders, to the legislative process leading up to the bill's royal assent, to the lobbying and media obstacles faced by policymakers working to pass the bill, and, finally, to the procedural steps that followed, such as the **December 2023 regulations** and the Canadian Radio-television and Telecommunications Commission (CRTC)'s Google **exemption process**. Part 5 attempts to answer many of the questions that were left in the bill's wake, including, what's next for C-18? What's next for news bargaining codes globally? And, what other policy responses should be considered in tandem, or instead of, news bargaining?

Whether or not policymakers come away encouraged or deterred from Canada's experience with news bargaining, it goes without saying that such codes alone will not solve the crisis in journalism. Facing off against Big Tech companies and their lobbying and media might is no easy task for any one country working in isolation. In some cases, going at it alone proved an insurmountable challenge, as evidenced a decade ago when Germany and Spain attempted to create rights for publishers but were unprepared for the resistance mounted by Google in response. Bargaining codes may nonetheless play a role in levelling the playing field for journalism, *if*, however, they are pursued globally and alongside a plurality of policies that address systemic problems within both ad tech and the news media sector itself.



PART 1

The Journalism Ecosystem Pre-Bill

A. Platforms vs. Publishers

Though news journalism's rapid decline may **seem** relatively recent, the peril now facing the industry began (at least) two decades ago. With the growing popularity of the internet, news media organizations began publishing online in the late 1990s. The New York Times **launched its online site** in 1996 (it now **has** nearly 10.5 million digital-only subscribers), the Guardian followed suit in 1999, and The Associated Press in 2000. Between 2005 and 2006, some of the first online-only publications like HuffPost (formerly the Huffington Post), Mashable, and BuzzFeed News were launched. This new generation of publications **leveraged** social media and SEO to gain online traction and drive huge amounts of traffic to their websites. By the end of the decade, more readers **were** visiting the websites of mainstream media outlets than purchasing their printed counterparts.

While this shift was transforming the news industry, platforms were also getting to work. Bought by the allure of the idealized **promise** of Silicon Valley, governments often **went easy** on the industry, giving them a great deal of leeway to raise large amounts of capital to produce new and exciting products. One of these innovations included Google News, first launched to consumers in the United States in 2002, and in **Canada** in 2003. Fast forward to fall 2023, and Google has **172 million** unique visitors in Canada. With the explosion of both search and social media sites as a way to connect and find new information, traffic began to redirect away from individual news sites and toward Google

and Facebook. This led to a phenomenon that has been coined the “platformization” of news media.

By the 2010s, the political and economic logic at the core of digital platforms had been **superimposed** onto news. In *Metrics at Work*, Angèle Christin **alludes** to this platformization of news, speaking to the pressures placed on online publishers in the early 2000s to analyze newly available demographic and behavioural data about existing readers in their quest for more readers. The ease of collecting this information through “cookies” enabled the practice of quantifying value through clicks and further cemented the integration of news onto digital platforms.

A 2023 study of the 105 highest-traffic American news outlets by the Pew Research Center found that around **three-quarters** of these outlets have accompanying mobile apps and that the vast majority also share content through newsletters and aggregators. All major outlets now have a social media presence: each outlet studied had a presence on Facebook, 99 per cent were on X (formerly known as Twitter), 97 per cent were on Instagram, 93 per cent were on YouTube, and 89 per cent were on TikTok. With audiences now firmly established on these platforms, they began accumulating a great deal more power, and were soon able to **control** what people consumed with a simple tweak of their algorithm.

Since then, news organizations have consistently **had to** adapt their content to the whims of platforms. In 2013, Facebook **chose** to boost news posts on its platform, thereby incentivizing Facebook-focused distribution strategies for news media organizations seeking digital traffic. In 2015, Facebook launched Instant Articles—which allowed users to **read** news stories directly on the platform, without clicking on the news site—creating a new format that publishers had to adapt to, and furthering the platformization of news. (Google has similarly **required** publications to adhere to their AMP format.) One year later, however, the tide began to turn: Facebook decided to **prioritize video**. In 2018, following the confluence of the fallout of the 2016 U.S. election, **rising concerns** over mis- and disinformation, and **battles** with publishers in Europe increasingly asserting their right for compensation, Facebook explicitly changed its algorithm to deprioritize news—dealing a further blow to the health of many news organizations.

In fact, platforms across the board have appeared to deprioritize news in recent years. Head of Instagram Adam Mosseri **explicitly stated** in 2023 that hosting news on social media is not worth the “scrutiny” and “negativity” it engenders. Employees who once headed up these efforts slowly left or were let go: in 2023, Facebook’s top news executive, Campbell Brown, **left** the company, and Google **laid off** dozens of Google News employees. Meanwhile, traffic stemming from the search engine has plummeted: in September 2020, top news sites **got** 11.5 per cent of their web traffic in the U.S. from social media, while in 2023 the number dropped to 6.5 per cent. While large outlets like the New York Times are **still able to attract** audiences directly to their sites, small publishers and local sites tend to rely more heavily on social media, particularly to build brand awareness, even as these platforms turn away from them.

By 2019, advertising revenue going to news media **had fallen** to half what it was just a decade earlier. In 2020, **it fell** another 25 per cent, while overall online advertising increased by 20 per cent.

While news was becoming increasingly dependent on platforms at the turn of the century, platforms were also becoming heavily involved in another industry with important repercussions for the news ecosystem: advertising. Google’s ascent to dominance in what is now known as the digital advertising

industry began in 2003, when Google **purchased** advertising platform AdSense from Applied Semantics. The latter was **then** an obscure California-based company making advertising software. In 2008, the search engine famously **purchased** DoubleClick for USD \$3.1 billion, consolidating its power in the digital advertising market as it immediately inherited relationships with thousands of publishers.

With these purchases, Google **became** a buyer, a seller, *and* a market regulator within the ad tech system, allowing the platform to easily **favour** its own commercial interests. It is because of this very system that the U.S. Department of Justice **brought** an antitrust trial against the ad-tech giant in September 2024.

With Facebook likewise **involved** in the digital advertising space since its creation in 2004 (the introduction of Facebook Ads in 2007, followed by Engagement Ads in 2008, **also marked** a significant event in the evolution of digital advertising), most money spent on advertising today flows to Google and Facebook, creating glaring asymmetries in power.

In the past, news publishers **had relied** on direct relationships, with readers who bought subscriptions, and advertisers who sold print—and later digital banners—in their newspapers. The percentage of digital advertising in the global market **has continued** to rise since the early 2010s and is likely to continue: whereas in 2021, USD \$506.43 billion was spent on digital ads, that number is projected to be USD \$870.85 billion in 2027.

Google now **accounts for** more than 90 per cent of global search engine market share. The U.S. Department of Justice has **alleged** that Google's ad publisher, DoubleClick for Publishers, also controls over 90 per cent of that market, while Google AdExchange controls over half of the ad exchange market. Meta's platforms, including WhatsApp and Instagram, are **visited** by over 70 per cent of internet users worldwide. Because of their market dominance, these companies are able to accumulate huge troves of data, from phone location, to demographic information, to search history—which consumers willfully give up in exchange for the “free” use of their many services. Using this data, platforms can build in-depth profiles of millions of people and sell targeted advertising at better prices than publishers ever could. News organizations do not have access to this data—even data about users that interact directly with their news content—due to the complexity of the ad tech system. Although Google **claims** it returns around 69 per cent of joint sales to publishers, a 2017 Canadian study **found** that this was only true for one product, and did not include the main search it dominates. Of course, even if Google *did* return 69 per cent, publishers would still be losing a third of their ad revenue to Google—money that could have otherwise gone directly to publishers.

In 2020, annual online advertising in Canada **reached** CAD \$9.7 billion, with Facebook and Google **taking in** more than 80 per cent of overall digital ad revenue. In 2021, 81 per cent of Google's revenue and 98 per cent of Facebook's revenue **came from** online advertising. Facebook and Google **are the top** two recipients of advertising spending in Canada. Overall, Facebook and Google **have made** USD \$8 billion in Canada as of 2022—more than five times the revenue of every daily and community newspaper in Canada combined.

Nonetheless, platforms **claim** that they generate little revenue from the news content that appears on their feeds. Meta stated that news makes up only 3 per cent of content on Facebook feeds, while Google **claims** that less than 2 per cent of searches are for news-related materials. On the other hand, Facebook **claims** to provide 1 per cent to 1.5 per cent of publishers' revenues by directing traffic to

publisher's content. Google **claimed in 2013** that it had sent more than 10 billion visits to news publishers, with publishers receiving more than \$9 billion through AdSense alone. This number, they claim, rose to 24 billion monthly hits in 2022.

But are these claims by platforms really true? It's **hard** to say because the platforms **have** consistently **refused** to share any relevant data with publishers about the link between news traffic and revenue. In 2019, Google **hired** Deloitte to estimate the dollar value of the platforms' news distribution, and the study found no monetizable benefit to the platforms from news. However, it is widely believed that Google and Meta **have consistently downplayed** the benefit of news for their platforms.

Though Meta **valued** the referral traffic *going to* Canadian publishers at CAD \$230 million a year, it is worth noting that referral traffic **does not always translate** into increased earnings. Studies **show that** it is possible for publishers to make less money even when traffic stays the same. Media organizations also **have to pay** 50 per cent in ad tech taxes, 30 per cent in app store taxes, in addition to what the Electronic Frontier Foundation calls "ransom money" to reach their own subscribers through things like promoted posts. Hal Singer, managing director of economic consulting firm Econ One, **argued** in 2022 that because Google and Facebook reframe some newspaper articles in previews directly on their platforms, it "decreases the likelihood of a user clicking on the article, thereby depriving news publishers of clicks while enriching the dominant tech platforms."

An official at Canadian Heritage we spoke with noted that, though platforms may not find measurable, direct earnings stemming from news, they do profit from users being on the platform—and what drives users online is the content that populates them.

There have been some efforts to determine the true value of news to platforms, but more is **needed**. Competition authorities in the U.K., Canada, and elsewhere, for example, are **investigating** disagreements about the value of news snippets and referral traffic to large tech platforms. In 2023, the Swiss Media Publishers' Association **hired** behavioural economics consulting group Fehr Consulting to assess the value of the country's news to Google. The Swiss study found that, when divided into two groups, the users **shown** news in their Google search reported higher satisfaction rates than those who were not, and 70 per cent of participants opted for a search engine that includes news when given a choice. Based on this analysis, they **estimated** that news creates a value for Google estimated at 40 per cent of the company's advertising revenue, or approximately USD \$175 million per year in Switzerland alone.

Other relevant research that has estimated the value of news to major platforms include:

- A **working paper** from 2023 by a group of academics at Columbia University and elsewhere that estimated fair compensation to U.S. publishers should be between USD \$11.9 billion and \$13.9 billion a year;
- Studies **cited** by the News Media Alliance in the U.S. that found that around 40 per cent of clicks on trending queries are news results while around 16 per cent of clicks on "most-searched" queries are news results.
- Research conducted at Université du Québec à Montréal that **estimated** Facebook made CAD \$198.8 million from Canadian journalism in 2022 (down from CAD \$210 million in 2021);

- A 2022 **study** of the ad tech supply chain sponsored by British publishers that found that publishers keep only 65 per cent of each advertising dollar, up from 51 per cent in 2020;
- The Guardian **found that**, in the worst-case scenarios, 70 per cent of money spent by ad buyers is consumed by ad tech middlemen.

Further proof of the value platforms generate from news **comes from** platforms' payments to content creators, as Howard Law, editor of MediaPolicy.ca, has argued. Google has long **split** ad revenues with content creators on YouTube (55 per cent of revenue from ads displayed on the page of individual content creators goes toward that creator), and platforms have also **made deals** with news organizations and built important journalism funding programs. Rod Sims, the architect of Australia's News Media Bargaining Code and former chair of the Australian Competition and Consumer Commission, **reasoned** that news media organizations have provided more benefit to the platforms than what they received in return. His analysis, which prompted Australia's bill, **highlighted** the harm to news caused by Google and Meta's "market dominance."

In November 2024, Google began "**testing**" removing news articles by European-based publishers in search for 1 per cent of European users across several European countries, in connection to the implementation of the EU Copyright Directive. The company claimed to be doing this for a "time-limited" period in response to EU regulators' request for "additional data about the effect of news content in Search." Though billed as a test, some viewed the move as an intimidation tactic, given Google's **history**. The Verge **noted**, however, that this would allow EU news publishers to gauge how much they would be missing without Google and vice versa. As Courtney Radsch, director of the Center for Journalism and Liberty at the Open Markets Institute, explained to us, the data that Google obtained from this test would be neither shared, nor "independently verifiable." Though the ban went through in other jurisdictions, the action was **blocked** in France by a court challenge from the French Union of Magazine Press Editors, who argued that it went against Google's commitment to France's competition authority.

B. Big Tech's Support for Journalism

Over the past decade, the relationship between Big Tech and news publishers has become increasingly muddled. The intertwining of platforms and publishers—through the complicated ad tech system and resulting platformization of news—took a new turn in the mid-2010s, as Google and Meta began redirecting lost funds back to journalism through grants and exclusive licensing deals. These initiatives arose predominantly in **response** to legislation that would have required platforms to compensate news organizations for their content when appearing on the platform's site.

Google's first foray into compensating news organizations **was** its €60-million **Digital News Innovation Fund** in France in 2013. The fund came into being after then French Prime Minister François Hollande **expressed** interest in imposing a tax on platforms to pay for the use of French media content. (In striking parallel to Canada's fight with platforms over C-18, Google **threatened** to bar French sites from its search should the tax go ahead.) **The Digital News Innovation Fund** was

subsequently **extended** to all European publishers, ultimately resulting in the creation of the Google News Initiative (GNI) in 2018. Per its 2021 **Impact Report**, the GNI has purportedly distributed more than USD \$300 million toward journalism globally.

Meanwhile, the Meta Journalism Project (MJP) (formerly Facebook Journalism Project), was **launched** in January 2017 on the heels of the 2016 U.S. presidential election—a race that was notably marked by concerns over “fake news” and foreign interference. The MJP **established** itself as a provider of training programs and tools for publishers, in a bid to better integrate journalistic content onto its platform. In 2019, former head of Facebook News Campbell Brown **announced** a USD \$300 million commitment over three years toward news “programs, partnerships, and content.”

With half a billion dollars pledged toward journalism via GNI and MJP between 2015 and 2018, Google and Meta had become two of the largest **funders** of journalism in the world. Charis Papaevangelou, postdoctoral researcher at the University of Amsterdam’s Institute for Information Law, and former research fellow at the Centre for Media, Technology and Democracy, **found** that the Canadian news industry received the third highest number of philanthropic grants from Google and Meta in the world (receiving 339 out of 6,773 grants).

The Google News Initiative first **established** its presence in the Canadian news landscape in 2019 through its GNI Innovation Challenge, with the Toronto Star and The Canadian Press being among the first recipients. GNI partnered with Local Independent Online News (LION) Publishers to establish its **Startups Labs** and **Sustainability Audits** across Canada and the U.S. During the COVID-19 pandemic, Google **provided** an additional CAD \$1.5 million to 230 Canadian newsrooms. Emergency funding ranged anywhere between USD \$5,000 and USD \$30,000, however data on the exact amounts awarded and top beneficiaries were not made publicly available.

The Meta Journalism Project’s Local News Accelerator program **expanded** to Canada in 2019, representing a CAD \$2.5 million investment in Canadian local news publishers. The launch of this new program emerged concurrently with the Canadian government’s **Local Journalism Initiative**. Between 2017 and 2022, Meta **provided** approximately CAD \$18 million to 120 local and independent Canadian news organizations, across both partnerships and funding programs. Meta additionally provided seed funding to launch **Indiegraf**, a network of “journalist entrepreneurs” aimed at supporting independent digital news outlets in Canada. Meta’s partnership with Indiegraph **resulted** in the launch of the Independent News Sustainability Program and the Network Revenue Growth Program, which, respectively, have provided training and coaching to independent Canadian news organizations and allowed Indiegraf to hire “four revenue-related roles” to assist their network of publishers consider new revenue models.

In contrast to larger legacy media outlets, a number of smaller news organizations, such as **The Sprawl** and **The Narwhal**, publicly list financial contributions from platforms.

INSIDE BIG TECH'S EXCLUSIVE LICENSING DEALS WITH PUBLISHERS

As promised in their 2021 platform, the Liberal government initiated the process that would lead to C-18 just ahead of their 2021 reelection. In spring of that year, the Department of Canadian Heritage initiated a stakeholder engagement process for what would ultimately inform Bill C-18, soliciting feedback from key figures in the Canadian news and information sector. A few months later, Google would go on to announce the expansion of its news licensing program, Google News Showcase (GNS), to Canada. Separate from GNI, the GNS consisted of confidential licensing agreements spanning 150 Canadian publications, including the Globe and Mail, Postmedia, the Toronto Star, Black Press Media, and the Winnipeg Free Press.

The history of the GNS before its Canada launch was not without controversy: the program was originally launched just as U.S. federal and state governments were preparing an antitrust case against the platform in 2020. The GNI had also been brought under intense scrutiny, with Germany's competition authority launching an inquiry in 2021 alleging the program increased Google's ability to discriminate against publishers. The matter was only resolved a year later, after Google made several modifications to benefit publishers.

In November 2021, Meta announced multi-year deals with 18 Canadian news organizations through its News Innovation Test, whereby Meta agreed to pay publishers for the ability to link to additional news stories not already posted on Facebook. Among the recipients were: the Toronto Star, the Globe and Mail, Narcity, The Narwhal, SaltWire Network, The Sprawl, and The Tyee. Amid the looming threat of C-18, Meta's head of public policy in Canada, Kevin Chan, stated that the News Innovation Test provided an "opportunity to ground initiatives in voluntary commercial arrangements between private-sector partners." In a similar vein, Chan reiterated that Meta's commercial agreements were aimed at incentivizing legacy media to develop "new innovative models," rather than compensating news organizations for hosting news on its platform.

In the Australian context, Emma McDonald, former senior policy adviser to Australia's Minister for Communications, had observed a similar pattern of events: just as the platform did in Canada, once the Australian government had begun engaging in serious discussions on the News Media Bargaining Code, Google quickly established deals with Australia's biggest media players. McDonald pointed to a glaring disparity between the "winners" and "losers" within Google and Meta's exclusive licensing agreements before the bargaining code came into effect.

While the forging of exclusive licensing deals between platforms and select publishers has been relatively public, the actual compensation details within these agreements were carefully protected behind non-disclosure agreements. According to Colin McKay, former head of public policy and government relations at Google Canada, Google's funding formula for deals depended on the needs of each organization, including its revenue exchange, programming, and technical support. Jeanette Ageson, Publisher of independent online news organization The Tyee, claimed, however, that without proper legislation, Google and Meta would continue to strike uneven deals based on confidential formulas that tend to favour legacy news publishers. For instance, the majority of small independent

publishers and ethnic publications in Canada **had no deals** with the platform giant—and those who had deals had no way of knowing how they compared to those of their counterparts.

According to president and CEO of News Media Canada (NMC)² Paul Deegan, there were 12 deals in place across NMC's membership before the introduction of C-18. Despite this, the majority of NMC's members were in favour of the legislation because their deals were set to expire, and because they knew the deals were there precisely to undermine the need for legislation altogether. If anything, the existence of Google and Meta's exclusive licensing deals added more fuel to the fire around the Online News Act: a senior government official we spoke with stated that the opacity of these original deals was a key driver for the legislation. From a public interest perspective, they noted a desire to provide sightlines into the nature of the agreements between platforms and publishers and its impact on the news sector.

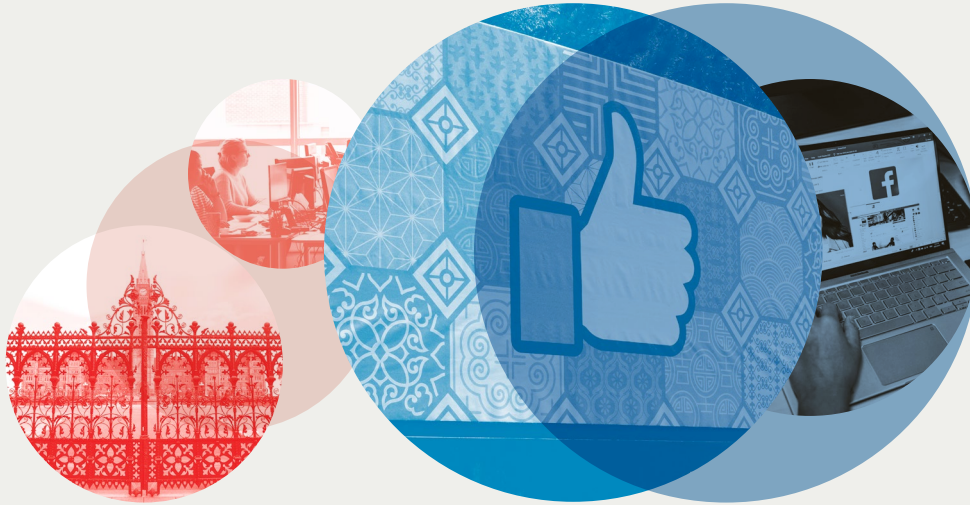
C. State of Journalism Policy Pre-Bill

The Standing Committee on Canadian Heritage's report "**Disruption: Change and Churning in Canada's Media Landscape**," released in June 2017, was meant to be the third in a series of updates on the changing landscape of Canadian media. Instead, as the foreword to the report explains, its authors **discovered** "a Pandora's box of complex and rapidly evolving challenges, issues and events," including the impact of Facebook and Google, and the emergence of "fake news" and citizen journalism. "The ground," they explained, "seemed to be shifting beneath our feet daily." The report's recommendations included a new platform-agnostic funding model for news, changes to the mandate of the CBC that would allow it to better support local journalism, and the introduction of tax credits to support the industry. Just a few months before, the influential Public Policy Forum's (PPF) "**The Shattered Mirror**" report was published, compelling further debate on the relationship between news media and platforms, as well as the role that public policy should play in "ensuring the healthy flow of news and information" to support "a floundering industry that was also an essential public good."

Just shy of a year after the release of these seminal reports, in 2018, then Liberal Finance Minister Bill Morneau **was unveiling** a \$595 million package aimed at boosting Canadian journalism over the upcoming five years. The goal of the bill, he **explained** in a speech on the House floor, was to "protect the vital role that independent news media plays in our democracy and in our communities." By March 2022 the impact of The Shattered Mirror was clear, as its authors **reported** that "at least six or seven" of their 12 recommendations "had or were about to see the light of day."

The tax interventions announced as part of this package **included**: 1) a labour tax credit, 2) a subscriber tax credit, and 3) a quasi-charitable status for nonprofit newsrooms. But, first, to determine who would be eligible for assistance, the government **brought together** an eight-member panel to select **criteria** to designate Qualified Canadian Journalism Organizations (QCJOs).

2 News Media Canada is the national association of the Canadian news media industry and represents over **830** titles across Canada as of November 2023.



Among other things, these criteria **include**: that the news organization be incorporated and based in Canada and led by a Canadian citizen (or have at least 75 per cent of its directors be Canadian citizens), and that they be producing original news content not primarily focused on one topic, while employing two or more journalists. It is **important** to note that these tax credits were focused only on print journalists, and excluded radio and television. The Canada Revenue Agency was charged with administering the QCJOs and set up an advisory board to review applications. Below is a rundown of these three programs:

- **Labour tax credit:** QCJOs **can receive** a tax credit of 35 per cent of employees' salaries or wages, capped at \$85,000 (**previously** these were 25 per cent and \$55,000, respectively). Employees would need to spend at least 75 per cent of their time on "original written news content." (Notably, the increase in the tax credit rate from 25 per cent to 35 per cent **is temporary**, set for four years starting in 2023.)
- **Digital news subscription tax credit:** The maximum credit is **calculated** by multiplying the 15 per cent by the amounts paid by an individual for "qualifying subscriptions" to a maximum of \$500 per year. The credit only applies to subscriptions to outlets that are "**primarily written news**." The tax credit expired in 2024 and was not renewed.
- **Qualified donee status:** Nonprofit-designated QCJOs that **meet a specific set of criteria** can become Registered Journalism Organizations (RJOs) and receive benefits similar to charities, including tax-exempt status, the ability to receive gifts from registered charities, and the ability of donors to get tax write-offs.

Labour Tax Credit

Among these proposals, the labour tax credits are thought to **have provided**, to date, the most significant boost to journalism outlets. According to Ed Greenspon, former president and CEO of PPF, the measure leaves little opportunity for political interference, being both neutral and predictable. However, some limitations include delays in receiving funding, and the exclusion of certain types of journalism,

like broadcasters, as defined in the **Broadcasting Act**. There is also a general lack of transparency on exactly how the money is actually being spent, and **whether** the money is indeed being used to hire journalists or promote accountable local journalism. Zane Schwartz, CEO and editor-in-chief of the Investigative Journalism Foundation, who was involved in discussions over the government's tax credit package, told us he believes that money should be more clearly tied to journalists keeping their jobs.

Critics have made **note** of the fact that the labour tax credit did not prevent major layoffs at large media organizations, including CBC/Radio-Canada and Postmedia. Postmedia was **expected** to receive between CAD \$7 million and \$8 million from the government through this program, while at the same time it laid off 11 per cent of editorial staff in 2023. Others **have complained** that the program is too lenient in who it gives money to, leading to funding being doled out to purveyors of misinformation.

It has been difficult to truly assess the program's overall success. As mentioned, in 2023, the government's fall economic statement **included** an increase in the cap on labour expenditures from salaries of CAD \$55,000 to \$85,000 at a rate of 35 per cent, up from 25 per cent, over the next four years. This means newsrooms would be able to claim up to CAD \$29,750 per eligible employee, instead of CAD \$13,750. April Lindgren, professor at the Toronto Metropolitan University's School of Journalism and principal investigator for the Local News Research Project, felt that this credit should be increased beyond what was proposed in the latest budget, as it speaks directly to journalism jobs.

Qualified Donee Status

Though non-profit newsrooms **have** been around in the U.S. since the 1970s, journalism outlets in Canada have only **been able to** become qualified donees since 2020. There **are now** 12 registered journalism organizations (RJOs) that are considered qualified donees, with independent Quebec news organization Pivot being the latest to join in 2024. To become an RJO, news organizations **must** demonstrate that they are primarily engaging in the production of news content. Additionally, no single source of funding may account for more than 20 per cent of an organization's annual income. Before this new status was introduced, the government **had repeatedly** turned down proposals from non-profit news organizations seeking the ability to issue tax receipts because, as Ed Greenspon explained, it had not fallen under one of the "**four heads of Canadian philanthropy**": poverty relief, educational advancement, religious advancement, and other benefits to the community. It is not clear to Greenspon why there has not been a greater proliferation of non-profits since the government's adoption of qualified donee status. It could be attributable, he says, to a lack of legal wherewithal from news organizations to **follow** necessary procedures. In addition, journalism has not appeared to have attracted as much philanthropic support in Canada as in the U.S., and there is generally a great deal of competition for the little money available.

However, there **have been** some non-profit success stories: The Narwhal, an investigative news outlet focused on climate reporting, was officially recognized as an RJO in 2021 and opened its first Ontario bureau with support from three different philanthropic foundations that same year. After La Presse moved to a non-profit status, it **reported** a revenue of \$13 million for 2023 through three sources of revenue: 1) philanthropic money through their status as an RJO, 2) advertising revenue, 3) government money from the labour tax credit. Meanwhile, **La Presse raised** almost \$8 million in 2023 from 56,000 donors.

Subscription Tax Credit

The final tax credit introduced as part of the CAD \$595 million package, the subscription tax credit, was widely **considered** by the experts we spoke with to be the least successful of the three. This tax credit **provides** a 15 per cent credit for taxpayers with the opportunity to claim up to CAD \$500 per year, for a maximum of CAD \$75 per eligible QCJO-designated publication. Despite there being 189 qualifying digital news subscriptions **listed** on the Government of Canada's website, this tax credit was included in only **one per cent** of tax filings in 2020. But because subscriptions have been **growing** globally—in Canada, digital news subscriptions increased from 13 per cent in 2021 to 15 percent in 2022—this increase cannot be directly connected to the tax credit. Some experts have also noted that the tax credit is likely an afterthought for readers who had already planned on subscribing. Potential explanations for the shortcomings of this tax credit include the gap between the point of sale and the reimbursement, and the fact that the credit is only 15 per cent and applies only to written news. Like with the labour tax credit, **there is a lack** of data available on how the money is used, and how it is impacting journalism.

Overall, Canada's set of tax subsidies have been **somewhat successful** and have provided important relief. Yet many organizations that do not **meet** the requirements for QCJOs remain excluded. Press Forward, an industry association of small publishers, has expressed concern over how larger media organizations have allocated the funds they have received from the government, while **criticizing** the government for failing to tie innovation to the reception of this money. There has also been **criticism** more broadly about the potential for journalism to become overly reliant on the government, for financial and even editorial reasons. Ed Greenspon believes the Canadian government should not be responsible for more than 50 per cent of Canadian news expenditures.

Local Journalism Initiative

It is important to note that these credits were not the Liberal government's first foray into providing direct support for Canadian journalism. The credits came on the heels of the Local Journalism Initiative (LJI), **introduced** a year earlier, in the 2018 budget. The stated purpose of the five-year, \$50-million program was to **pay** for the deployment of journalists to underserved communities, to **support** the production of local civic journalism. The LJI **provides** funding to 400 journalists, across 300 outlets, in 1,500 communities, and is administered through seven non-profits. The program was twice **provided** with an additional CAD \$10 million top-up. On March 1, 2024, Minister of Canadian Heritage Pascale St-Onge **announced** a three-year renewal of the program, lasting until 2027 and worth \$58.8 million. This **totals** \$128.8 million invested in the program over eight years, since 2019.

Critiques of the program were in some ways **similar** to those aimed at the journalism tax credits, and included disagreements over what kind of outlets should be eligible and sustainability concerns. Again, there were also concerns over the fact that what was once considered a stop-gap program has continued to be extended with no deeper changes to the industry in sight. One particular downside of the LJI for news organizations is the lack of predictability: whereas tax credits are certain to recur for organizations with a QCJO designation, news organizations must re-apply to the LJI grant every year.

Christopher Curtis, co-founder of The Rover, described the LJI as antiquated and too fearsome of being perceived as biased. Receiving the money has been based on **producing** a certain number of articles a week, prizing quantity over quality. According to the report “**Missed opportunities for community engagement: An examination of the government-funded Local Journalism Initiative**” by Magna Konieczna and Béatrice Girardin, the LJI “focuses on the needs of news organizations themselves, rather than serving the needs of communities.”

Suggestions for improvements to the program have **ranged** from making it easier for philanthropic donors to support media organizations, to re-evaluating the source of funds for the program, to expanding eligibility requirements. Because the LJI is considered discretionary income, the PPF has suggested a trust or foundation could mix philanthropic money with government money to distance it from the government. However, with each grant directly subsidizing a reporter's salary, one thing is clear: jobs have been created thanks to the LJI.

Although it could be vastly improved, the LJI has been relatively successful in helping smaller news organizations, according to Ed Greenspon. April Lindgren, on the other hand, noted that she would buoy the LJI by adding a training component, because it is sometimes more difficult to recruit journalists with the right skills in smaller markets. She added that she would also greatly improve the program's transparency in terms of the types of positions offered and who is staffing them.

Canada Periodical Fund

Finally, the longest-standing program providing **support** for Canadian journalism is the Canada Periodical Fund (CPF) and, more recently, its **Special Measures for Journalism**. The program has undergone important changes over its long life: first **launched** in the 1800s, the Publications Assistance Program was a postal subsidy program for eligible Canadian magazines and non-daily newspapers that ensured Canadians had access to news, no matter where they lived. In 2010, the Publications Assistance Program **merged** with the Canada Magazine Fund to create the Canada Periodical Fund. The fund includes three components:

- **Aid to publishers:** **Provides** financial support to Canadian print magazines, non-daily print community newspapers, and digital periodicals to produce and distribute Canadian content.
- **Collective initiatives:** **Provides** funding for projects designed to support the long-term sustainability of the Canadian magazine and community newspaper industry.
- **Business innovation:** **Supports** special projects undertaken by eligible small to mid-sized news organizations to adapt to changing business conditions.

With the onset of the COVID-19 pandemic in 2020, the CPF **launched** the Special Measures for Journalism, sending \$45 million to more than 790 free, small digital publications. In 2021-22, 765 recipients received \$23 million. In 2022, the special measures were **renewed** with \$40 million over three years with the goal of enabling 800 community newspapers and magazines to bring their stories

to communities. In its press release, the Government of Canada **stated** that 84 per cent of businesses who received these funds reported that the special measures helped them stay in business through the pandemic.

It is worth noting that the Canadian government also offers **tax deductions** on advertising expenses in Canadian media. However, some have argued that too few advertisers and media outlets **know** of its existence. Additionally, in 1996, it was **decided** that online advertising would not fall under the definition of print or broadcast under Section 19 of the Income Tax Act, and therefore would not be subject to the same restrictions regarding Canadian content. This means that a tax deduction can now be obtained when advertising with foreign-owned *digital* media. According to Randy Kitt, director of media for private sector union Unifor, the use of deductions for advertising became distorted from its original purpose when the government **decided** that online publications would not have to fall under the same considerations as print and broadcast. Unifor is currently fighting to close that loophole. A November 2024 **report** by the House of Commons Standing Committee on Canadian Heritage on “Tech Giants’ Current And Ongoing Use of Intimidation and Subversion Tactics to Evade Regulation in Canada and Across the World” also addressed this missing piece in the Income Tax Act. With witnesses during the study period suggesting the removal of this loophole, one of five recommendations shared by the committee was that this provision **be amended** accordingly.

Overall, although these programs have no doubt saved a number of media jobs in Canada, they did not stop the bleeding, as evidenced by the major layoffs that have occurred amid the funding. In addition, it is widely agreed that journalism should not become overly reliant on government money—especially when there are concerns over transparency. Zane Schwartz, for one, feels that “the government has done a lot of damage to trust in Canadian media by not being transparent” about who is **receiving** money and how much—whether the money is through tax credits or the LJI. Given these criticisms, it is unsurprising that Canada turned to another form of compensation—one which promised stipulations for diversity and transparency, and relied on agreements between private actors—to continue tackling the ongoing crisis in journalism: bargaining codes.



PART 2

News Bargaining Comes to Canada

A. Influence of Australia's Code

In 2021, with the COVID-19 pandemic raging on and existing policies appearing insufficient to protect Canadian journalism from **skyrocketing** layoffs, a piece of Australian legislation presented a possible beacon of hope to Canadian policymakers. Just before the pandemic's onset, in 2019, Australia's Competition and Consumer Commission (ACCC) **completed** the **Australia Digital Platforms Inquiry**, a two-year long inquiry into the impact of search engines and social media giants on the supply of news and journalism. Chief among the impacts identified was the platforms' ad tech monopoly, which made it difficult for news businesses to compete with the two platform giants—Facebook and Google—in the fight for ad dollars. The report suggested the **need for** a net value exchange to make up for the imbalance, in other words a mechanism to rebalance the economic relationship between platforms and publishers.

In February 2020, the Australian government **asked** the ACCC to develop a new law to address the issue. That law would become the News Media Bargaining Code. The first of its kind, the code was **signed into law** in early 2021, and **came into effect** in March of that year. The law **modified** the Australian Competition and Consumer Act and **made it possible** for news outlets to bargain with platforms over the value of their product. If an agreement could not be reached, the bargaining parties could then resort to "**baseball-style**" arbitration where an independent adjudicator would be empowered to choose

between one of two final offers. Digital platforms designated under the code **must also notify** publishers of changes to their algorithms, when they might impact traffic referrals. According to Emma McDonald, former director of frontier technology at Minderoo, an Australian philanthropy organization, the publications have to fit the intended purpose of **supporting** “public interest journalism.” Finally, they must also register with the Australian Communications and Media Authority.

Both platforms made clear their displeasure with the bill and acted to sway public opinion throughout negotiations on the impending bill. In January 2021, Google and Facebook **threatened** to hide major news sources on their platforms. That same month, Google **went through** with a news blocking experiment, cutting off news content on their platform for 1 per cent of Australia's population. Meta **followed suit** in February 2021, blocking all news content, including **blocking access** to certain essential government sites such as health and emergency services, as well as domestic violence pages.

Due to this pressure from platforms, there was a last-minute **revision** in the bill. Thanks to a whistleblower, we now **know** that Facebook blocked non-news sites as a negotiation tactic. The company used that leverage to obtain a significant change in the wording of the bill, successfully **reducing** the power of the bill's mandatory arbitration clause, making it possible for Meta to offer publishers whatever they please without suffering a penalty—as long as they **negotiated** with their choice of news publishers.

The change allowed platforms to avoid “designation” (i.e. be brought under purview of the law) if they are **determined** to have made a “significant contribution to the sustainability of the Australian news industry.” After the revision, Facebook and Google immediately cut private deals and have so far faced neither designation nor arbitration. Additionally, as no platform has been designated, no platform has had to provide algorithmic data to publishers. The Canadian government took note of Google and Facebook's particular displeasure with the requirement to share user data and notices of algorithmic changes.

NEWS BARGAINING'S HISTORICAL PREDECESSORS

Australia's bill came in the wake of similar battles that had been waged between European publishers and platforms during the previous decade. The biggest difference: previous efforts had been based on changes to copyright law rather than competition law, or news bargaining. In an early case in 2013 in Germany, a new law was introduced that **demanded** “ancillary rights” for publishers for exclusive commercial use of their content. Google **circumvented** the law by posting links of articles without article extracts or “snippets,” for which they would have had to pay a licensing fee. German publishers were **forced** to agree to provide free snippets or risk losing all traffic from Google. An attempt at a similar law was also **thwarted** in Spain in 2014, when the Google News aggregation site shut down Spanish news content.

The EU-wide Copyright Directive passed in 2019 **amended** copyright law to create new intellectual property rights for news publishers, allowing them to seek remuneration when their content is available on Google and Facebook. That same year, France became the first country to transpose the directive and transpose parts of the directive and **implement** “neighbouring rights,” which required

news aggregators and search engines, like Google, to compensate French publishers for snippets. Again, Google stalled in bargaining with French publishers and refused to display article extracts and other content unless they could do so free of charge. Yet, this time, unlike in Germany where the competition authority sided with Google's proposals, the French Competition Authority **ordered** the platforms to engage in "good faith" negotiations with news publishers. In July 2021, three months after the passing of the Australian code, the French competition authority **imposed** a €500 million fine on Google for its failure to negotiate "in good faith." Google paid the fine and negotiated a series of news deals **signed** in fall 2021 and spring 2022, a month before C-18 was tabled in the Canadian House of Commons. Canada does not have a comparable right under its Copyright Act to protect "snippets." French news outlets are currently **using this law** to sue X (formerly Twitter) for failing to compensate publishers when displaying their work, in violation of the law.

Despite some success in Europe for copyright-based legislation, the most eye-popping compensation numbers so far, however, had come out of Australia: one year after the code was passed, in March 2022, it was already being **reported** that an estimated AU \$200 million (around CAD \$187 million) **had been injected** directly into the Australian news ecosystem. According to Rod Sims, former chair of the Australian Competition and Consumer Commission and the bill's **chief architect**, nearly all eligible publishers **made deals** with Google, while Facebook made deals with publications that cover roughly 85 per cent of Australian journalists.

It is also possible to find anecdotal evidence of journalists **hired** as a direct result of the code. According to the Guardian Australia, its newsroom significantly **expanded** after the agreement came into effect, growing by over **40 journalists**, and adding ten full-time employees to their commercial and operations team. Other research indicates journalism job listings **shot up** 46 per cent in Australia in the wake of the bill.

Of course, the bill also had its detractors. Critics argued that too much money **had gone** to the largest media companies, in particular to Rupert Murdoch's News Corps, which penned a deal thought to be worth around USD \$50 million. Some experts we spoke with also **pointed** to the power that Rupert Murdoch himself had in generating the overall size of the country's deals. It **remains the case** that many small and independent news organizations received too little support resulting in fewer deals overall. In fact, publishers with less than AU \$150,000 **are actually excluded** from the code. However, a group of 24 small publishers, through the Public Interest Publishers Alliance, and supported by the Minderoo Foundation, **was able to** secure deals by banding together. Additionally, **Country Press Australia**, an affiliation of smaller, regional publications, received the highest payment per journalist. The other two most significant **criticisms** of the bill were a lack of requirements on how to spend funds (to ensure that money is spent on journalists, and not CEO pay, for example) and the fact that all deals were cloaked in non-disclosure agreements—five year terms for Google and three for Meta.

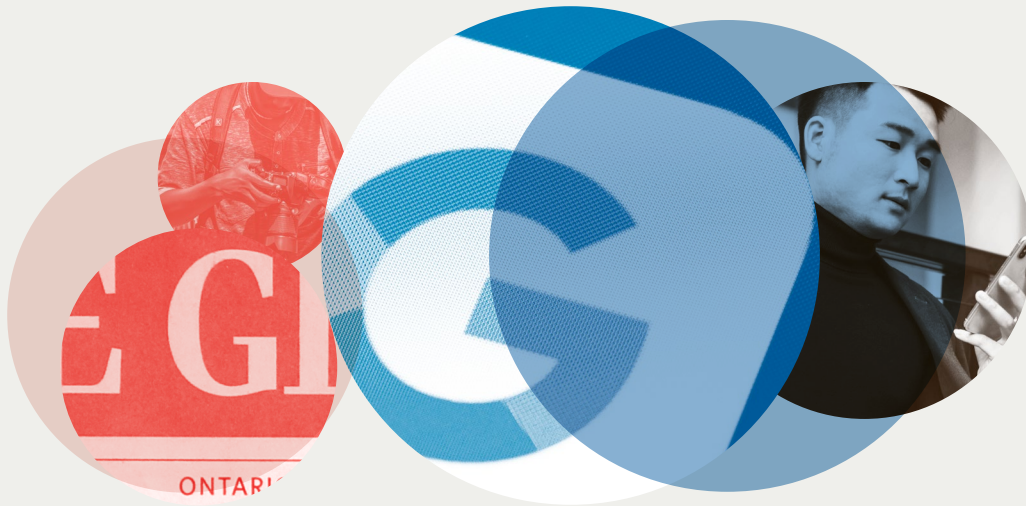
Platforms and news were already on Prime Minister Justin Trudeau's radar in 2019 when his **mandate letter** to the incoming Heritage Minister Steven Guilbeault made vague reference to them. However,

it was the September 2020 report from News Media Canada, the national newspaper publishers' association and lobby, "**Levelling the Digital Playing Field**," that first explicitly recommended Canada adopt a legislation akin to Australia's. In fact, News Media Canada's September 2021 submission to the Canadian Heritage Committee reiterates that they began pushing Canada to follow in Australia's footsteps beginning in 2020, providing the government with a memo entitled "The Australia Solution to the Google/Facebook Problem: How to Make It Work in Canada." Citing a lack of bargaining power and the duopoly power of Facebook and Google, the newspaper lobby argued that Canadian consumers were additionally harmed by the sharing of user data and lack of algorithmic transparency—issues addressed directly in Australia's code. Also in 2020, an advisory panel the government **brought together** two years prior to recommend updates to Canada's communications legislation, released its report "**Canada's communications future: Time to act**," which made note of "disproportionate... bargaining power."

This culminated in the Canadian government's **commitment**, in the 2020 speech from the throne, to ensuring fair distribution from platforms to news organizations through a "made-in Canada approach." News Media Canada followed up in May 2021, providing the government with a draft legislation—titled the Digital Platforms Act—to show what a law made in Canada, but based on the Australian model, might look like. In their 2021 bid for re-election, the Trudeau Liberal government **promised** to present the bill to the House of Commons within 100 days of taking office and **added** the "Leveling the Playing Field with Digital Giants" report to their 2021 platform. Meanwhile, the Conservatives **added** a similar promise to theirs. In February 2021, then Minister of Canadian Heritage Steven Guilbeault **told** The Logic that the government would put forward this legislation and was about to meet with the governments of France, Australia, Germany, and Finland in the hopes of creating a formal coalition of countries ready to adopt news bargaining codes. Indeed, the Canadian government **framed** the upcoming law, in its formal communications, as part of a broader global effort of like-minded countries poised to take on Big Tech.

B. The Canadian Government's Code vs. Fund Consultation

Though the Canadian government may have set their eyes on an Australian-style code early on, different forms of redistribution from platforms to publishers were considered. In particular, one form of platform-to-news redistribution had a much stronger history in the Canadian policy context: the news fund. One prominent example is the **Canada Media Fund**, which **supports** the "development, production, distribution and consumption of Canadian content." The CRTC **sets** out the policies requiring Broadcasting Distribution Undertakings (BDUs), such as Rogers, to contribute toward the fund. The fund **uses** a combination of this money and money received from the federal government to fund the production of Canadian content. Since the passing of the Online Streaming Act in 2023, online streamers like Netflix **must** now contribute as well. In fact, cable and satellite distribution companies in Canada **have had** to contribute 5 per cent of annual revenues since 1995, with money



going to versions of the Canada Media Fund, alongside other smaller funds.³ Since 2016, 0.3 per cent of gross revenue from BDUs has **gone** toward the newly-created Independent Local News Fund, which replaced the previous Small Market Local Production Fund. This fund **provides** about \$18 million a year to broadcasters of original local news.

Although the fund clearly had long historical roots in Canada, policymakers did also briefly consider a remedy more akin to the **European Union Copyright Directive** to **rebalance** the information ecosystem. This option, however, was widely seen as having brought in less money than the Australian model, with the process having dragged on for too many years.

In 2021, the government therefore put out an **open call** for stakeholder engagement, while it decided between a fund or a bargaining code. However, the inclination toward a code was already obvious: media journalist Howard Law has **referred** to the government's efforts in spring 2021 as "going through the motions," since it had become clear to many observers that the government, with a push from large publishers, was leaning toward a bargaining model.

Canadian Heritage **was charged** with conducting a phased stakeholder engagement plan that would be used to determine the final form of legislation. This process began with engagement with existing contacts, Indigenous organizations, and other stakeholders in the news and information sector including platforms, unions, journalists, broadcasters, academics, and representatives of minority news communities.

For the first phase of submissions, the government **prepared** a questionnaire with specific questions about topics like eligibility criteria and policy priorities. The government received a total of 46 submissions and summarized the feedback in a **report**, issued August 2021.

3 More specifically, in 1995, the fund's predecessor, the Cable Production Fund, began receiving money from cable distributors, before eventually **becoming** the Canadian Television and Cable Production Fund by the late 1990s, and then merging with another fund in 2010 to become what is currently known as the Canada Media Fund.

Those who provided feedback during the first phase included: 1) major platforms like Google and Meta, but also Reddit, X (formerly known as Twitter), Microsoft, and others, 2) publishers or their representatives, including News Media Canada, the Globe and Mail, and The Canadian Press, 3) broadcasters like CBC/Radio-Canada, Bell Media, Rogers, and others, 4) stakeholders like the union Unifor, Friends of Canadian Media (formerly Friends of Canadian Broadcasting), and others, and 5) a handful of individual academics.

Upon the release of the first report, the government **requested** a second set of submissions, due September 2021, this time in response to the findings of the first round of feedback. The second set of submissions **included** responses from the Quebec Minister of Culture and Communications, Yahoo, a number of unions and collectives, a few academics, as well as broadcasters, many of whom were worried the bill might leave them out.

The bargaining code approach, the government's report explains, **would mean** introducing "minimum standards to be met, which could include measures such as good faith negotiations and transparency on algorithm changes and data sharing provisions. Overall, the regime would be similar to Australia." As previously noted, a second option was also proposed. This model would **require** platforms to contribute "a percentage of their overall Canadian revenues" into an independent fund, which would function similarly to the Canada Media Fund.

Canadian Heritage **emphasized** how strongly news industry stakeholders felt action was needed. The Logic, which viewed a number of the first round of submissions through access-to-information (ATI) filings, **substantiated** the government's characterization of news stakeholders desperate for *any* legislation. For example, CBC's submission **stated** that "if we take too long to implement a solution, too many news outlets will close, too many journalists will be let go or not developed, and misinformation and disinformation will continue to spread, leading to distrust in our institutions and sowing divisions in our communities." Meanwhile, Jonathan Daniels, Bell vice-president (VP) of regulatory law **stated** in Bell's submission, "we are no longer able to keep full-time journalists at city halls and courts across the country. We are missing stories on a daily basis." Corus, which owns Global News, pointed to the news industry's total dependency on Google. With regard to Facebook, the submission continues, "those who participate do so on Facebook's terms" where "Facebook holds almost all of the tools to monetize [content created by news organizations]."

Nevertheless, Heritage highlighted the fact that responses were "polarized." According to Howard Law, a main sticking point in the debate **centred** around how compensation would be divided. Smaller news organizations feared that a bargaining model would not lead to an equal distribution, as compensation could be based on which content was deemed most profitable to platforms rather than on the number of journalists, for example. A fund, on the other hand, would **distribute** money more proportionally—per journalist—like the existing QCJO program.

The division was confirmed in our conversation with a senior government official, who explained that larger news businesses preferred a bargaining approach, while some smaller ones, who feared being excluded, preferred a fund. Another official at Canadian Heritage we spoke with emphasized, however, that the vast majority of those who participated in the process, including many smaller news organizations, preferred an Australian approach. Notably, some small news organizations

felt that, from the beginning of the process, they had not been given a voice. Christopher Curtis, co-founder of The Rover, told us that smaller news organizations were simply not given a seat at the negotiation table over C-18.

Below is a more detailed breakdown of some of the statements from various stakeholders:

Union (Unifor)

Unifor, Canada's largest private sector union that represents journalists and media professionals, argued in their submission that a fund could address the ad tech system's anti-competitive practices better than a code. They also liked that it would not be as tied to assessments of the market value of individual bits of news content. Unifor shared additional concerns that a code could potentially allow media giants like Bell Media and the Globe and Mail to make "one-off separate deals with Facebook and Google to the detriment of the bargaining power" of the rest. Indeed, Unifor **expressed** an overall preference for a fund, which they thought would better account for the public interest. According to Randy Kitt, director of media at Unifor, a fund could allow for more accountability and transparency in ensuring that money goes to journalists, and would be more inclusive of local and independent media. While the current Canada Media Fund is highly transparent, Kitt noted that in Australia, deals had been concluded under NDAs. Jerry Dias, Unifor's former national president, noted in Unifor's submission, that "platforms might sabotage the government's efforts in this exercise," warning that the government "would be naive to think Facebook would never try [blocking news] again." Unifor felt the government must therefore retain the ability to impose a fund, if needed, as a fail safe. Nevertheless, Dias noted that Unifor remained open to supporting an Australian model.

Smaller News Organizations

Of media representative submissions viewed by The Logic, only Magazines Canada **indicated** a preference for a fund, as many feared a strict definition of "news" that could potentially exclude many of their members. Notably, however, a number of organizations representing smaller news publications whose submissions we viewed, including the National Ethnic Press and Media Council of Canada, and community newspapers associations from Ontario, Manitoba, Saskatchewan, B.C., and Yukon **indicated** a preference for an Australian-style arbitration code.⁴ According to these organizations, a fund risks being "subject to political and other interference," and favouring platforms over news.

Traditional Media Organizations

Mainstream news organizations and lobbyists who preferred a code **included** Bell, News Media Canada, Rogers, and CBC/Radio-Canada. News Media Canada's submission commended the "stunning success for local news media" that was the Australian code, while claiming that a code "remains the best solution to the Canadian crisis for news media." Many large news organizations also felt that a code

4 An arbitration code entails a **final offer arbitration** process whereby if a digital news intermediary and eligible news business are unable to arrive at an agreement through bargaining or mediation sessions, an independent panel of arbitrators selects a final offer made by one of the parties.

would be quicker to implement than its alternatives. Ted Woodhead, then senior VP of regulatory at Rogers, maintained that “the only way to ensure Canada’s news ecosystem is innovative is to ensure that news producers are properly incentivized to migrate their content online.”

Many of the traditional media organizations felt a fund would do less to rebalance the market. Claude Galipeau, CBC/Radio-Canada’s executive VP of corporate development, worried that a fund would mean “finite payments” and therefore “pit” various news outlets against each other.

One worry shared by both smaller and larger news organizations was that a fund could be more easily politicized because of the government’s role in administering it. This concern most likely stemmed from **criticism** of the government’s journalism tax credit program, which some believed had allowed too much government involvement in media. As mentioned in Part 1, Ed Greenspon and other experts had warned of the risks of journalism becoming overly reliant on government aid. Ian Scott, former chairperson of the CRTC, agreed that a bargaining process with adjudication only if negotiations fail is preferable because it creates more distance between government and media outlets.

Given the possibility of a code, some mainstream media organizations also began making specific requests. The CBC’s submission brought up the importance of legislating access to “key analytics and notifications of changes to algorithms,” as was included in the Australian code. Bell and the CBC also noted the potential to include “non-cash considerations” as part of the bargaining process.

In a second-round submission, large broadcasters like Bell, Rogers, CBC/Radio-Canada, and the Canadian Association of Broadcasters (CAB) took issue with fixing eligibility to the QCJO criteria, as the current definition **excludes** broadcasters. Bell’s submission argued that “broadcasters who gather and produce news should be included,” claiming that excluding them would be “illogical and unfair.” Bell’s Jonathan Daniels, VP of regulatory law, extolled the importance of the company’s 35 local television channels and over 100 radio channels, while claiming that broadcasters also operate the country’s top news sites. Yet, according to the submission, the money earned from advertising does not justify the expense to fund its operations. Bell also **shared** that “local television is buckling under extreme financial pressure with the sector being unprofitable since 2012,” while the CAB spoke of “a revenue shortfall totaling \$1 billion in three years between 2020 and 2022.”

Platforms

According to The Logic and the National Post, only some of the major platform’s submissions were accessible via ATI requests: submissions from Google, Apple News Canada, and Rogers were withheld “at the companies’ request.” (The Post **requested** all 46 first phase submissions.) The official at Canadian Heritage we spoke with clarified that Google never issued a formal submission to Heritage, though the company shared that they would have been “okay” with a fund. Meta, on the other hand, “never provided a preference as they weren’t interested in paying for news,” according to the official. According to the National Post, Meta **was said** to have provided feedback to the government orally.

Platforms generally **rejected** the premise of the bill while **claiming** that an Australian model would protect legacy players and hurt small news organizations. Reddit **argued** that a fund would be more “proportional and flexible,” and thought a code would privilege the bigger players. As **they put it**, two large, powerful industries will “duke it out amongst each other but the smaller players on either side

won't come out on top." Microsoft, however, **preferred** a code, though it seemingly did not view itself as a "gatekeeper" of news content. Finally, Elon Musk's X was vehemently opposed to "any legislation in Canada that forces Twitter to make payments to news organizations." Yet, when pressed, the company shared a slight preference for an Australian approach.

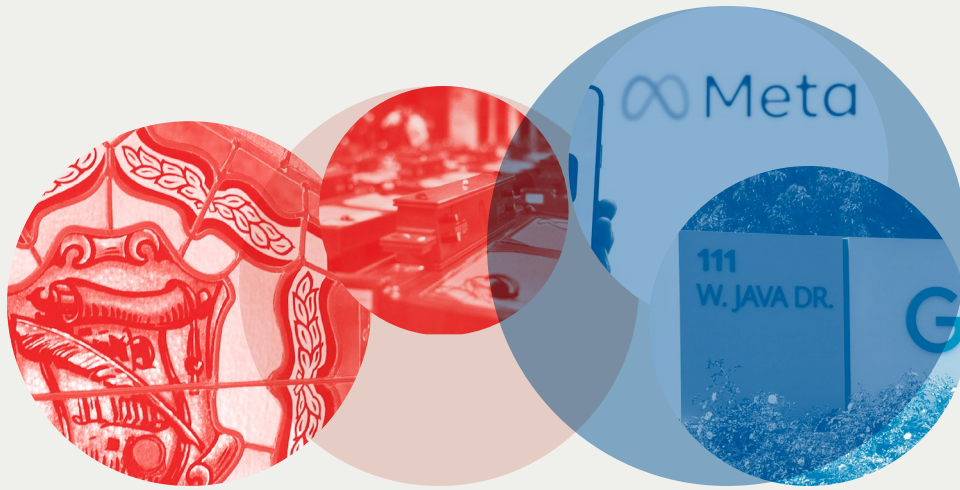
Trade Considerations

Interestingly, a key area of contention in this debate was not featured in submissions we viewed: the question of whether an independent fund would pose a trade challenge for Canada. According to the official at Canadian Heritage we spoke with, "everything [they] did was viewed through the lens of trade." As another senior government official noted, it was important that nothing in the bill be considered "discriminatory" to a particular digital service of origin (country or jurisdiction where a digital service originates, like the U.S.), and that criteria set out in the bill must be seen as neutral across jurisdictions and companies. **Chapter 15** of the Canada-United States-Mexico Trade Agreement (CUSMA), which deals with cross-border trade in services, is particularly relevant in considering non-discriminatory treatment.

The overall possibility of a trade risk arising from this legislation—including over things like algorithmic transparency and the transparency of eventual contracts—led the government to enlist Canada's chief negotiator of CUSMA, Steve Verheul, to advise. Concerns around trade risk were further exemplified by the fact that C-18 was later **brought up** in conversation between United States Trade Representative (USTR) Katherine Tai and Canada's Minister of International Trade, Export Promotion, Small Business, and Economic Development, Mary Ng, in November 2022. After their meeting, it was **reported** that Tai warned Ng that upcoming Liberal Big Tech legislation, including C-18 and the Online Streaming Act (C-11), could be seen as "discriminating" against U.S. companies. Global Affairs Canada's **summary** of the conversation between the two trade representatives did not specifically mention C-18, but Ng later **admitted** that it had come up.

As U.S. Senator Elizabeth Warren **has pointed out**, there has been an overall concerted effort from the tech sector to push the USTR to preempt global regulatory efforts, including through trade deals. Some experts like Howard Law, however, found the idea that CUSMA would prohibit a hypothetical fund unconvincing, as he did not himself see anything in the agreement that would prohibit it.

Finally, Heritage **highlighted** the need to uphold four core principles: 1) freedom of the press, 2) fairness (i.e. in regulating the imbalance of power between publishers and platforms), 3) diversity, including addressing barriers to entry, and 4) sustainability.



PART 3

The Process

A. Hearings & Key Legislative Decisions

Though the government **finalized** its public consultation on C-18 in early September 2021, Prime Minister Justin Trudeau's decision to call a snap federal election delayed the tabling of the legislation. Both the Liberal and Conservative parties, however, **committed** to ensuring compensation for Canadian news should they form the next government.

After winning another term, the Liberal government made good on their election promise, officially **tabling** Bill C-18, the Online News Act, on April 5, 2022. What followed was over a year of contentious debate in both the House of Commons and the Senate about the media's role in society, the root causes of the journalism crisis, and most importantly, the future of Canadian journalism and best ways to save it.

After **receiving** a first and second reading in the House, the bill was moved to the Standing Committee on Canadian Heritage on Sept. 23, 2022. On Feb. 2, 2023, the bill made its way into the Senate and was reviewed by the Standing Senate Committee on Transport and Communications beginning on April 25, 2023. Final amendments were considered in June 2023.

HOUSE & SENATE READINGS— FIRST READINGS: INTRODUCING THE BILL

In both chambers, the first and second readings served as an opportunity for the Liberal government to introduce the main elements and goals of the bill. Liberal MP, and former Parliamentary Secretary to the Minister of Canadian Heritage, Chris Bittle spoke first during the bill's second reading. He noted its focus on transparency—a theme that would be an important selling point for the government.

According to Bittle, “every single deal **would be** disclosed,” allowing Canadians to know “which news organizations have deals with each and every platform.” Such transparency, Bittle **argued**, was necessary in order to “preserve public confidence in Canadian journalism and in our democracy.”

In his overview, he highlighted key components of the bill, including:

1) Designation and eligibility:

Digital platforms are **designated** when they are determined to present a “significant bargaining power imbalance compared with news businesses.” He also underscored that it would not be the government determining which outlet is eligible—there would be criteria “written in black and white in the bill.”

2) The deals:

Deals between publishers and platforms must **meet** the following six criteria: 1) provide fair compensation, 2) ensure that an appropriate portion of compensation goes toward local, regional, and national news, 3) ensure that independent local news businesses benefit from the deals, 4) involve a range of diverse news outlets, 5) contribute to the sustainability and innovation of the news industry, and 6) do not undermine freedom of expression and journalistic integrity.

If these criteria are fulfilled, platforms would be exempt from arbitration.

In the Senate, the bill was **introduced** for a second reading by Senator Peter Harder on Feb. 7, 2023. Following previously introduced **amendments** from the House, Harder painted a more detailed picture of the legislation than his House of Commons counterpart. Once again, the bill was **described** as having transparency “built into the regulatory process at every step.” These transparency measures, according to Harder, would extend to decisions on eligibility and exemption.

Senator Harder also detailed improvements made by the House of Commons around eligibility and exemption:

1) Eligibility of news businesses:

News businesses are responsible for applying for eligibility with the CRTC, who will designate whether they meet the criteria laid out in the bill. Eligible news businesses will include 1) Qualified Canadian Journalism Organizations (QCJO), as specified under the Income Tax Act, 2) licensed campus, community, or Indigenous broadcasters—categories added to the definition of QCJO in the House of Commons for the purpose of this act, 3) Indigenous news outlets, and 4) news businesses not qualified as QCJOs that report on current events “of general interest” and adhere to journalistic standards. These outlets must have at least two journalists regularly employed. However, the House of Commons determined that both journalists do not need to be “at arm’s length” of the outlet, meaning the outlet’s owner can be counted as one of two journalists.

According to Harder, print, digital, and broadcast news organizations are all eligible, and the new criteria introduced in the House would ensure that platforms enter into deals with smaller players, including non-profits and those serving diverse populations.

2) *Exemption of platforms:*

Dominant digital platforms, known in the bill as “digital news intermediaries,” must make deals with a range of diverse outlets. This means that they must conclude deals with outlets in both official languages, as well as Indigenous outlets, those representing Black or other racialized communities, and those in every region in Canada, in a balanced way.

Finally, Harder described the role of the CRTC in C-18, noting that the regulator would develop a code of conduct and monitor the marketplace to ensure fair agreements. It would also be responsible for final arbitration as a last resort if parties could not agree. Harder also pointed to the CRTC’s public processes, which would make it possible to obtain input and better gauge the impact of legislation. Among other things, the CRTC **shares** public notices and provides opportunities for public interventions and attendance at public hearings. The information the CRTC collects during the negotiation process will feed into the annual report on the impact of C-18, which will be **written** by an independent auditor, at the request of the CRTC. This can be used to determine if the bill is indeed fulfilling its intended goals.

HOUSE & SENATE READINGS— A BATTLE OF OPINION IN BOTH CHAMBERS

In addition to laying out the details of the bill, the second reading provided the Liberal government a chance to explain their motivation for tabling the bill. The second readings previewed the main arguments both the Liberals and the Opposition Conservatives would later take up in more detail during upcoming committee hearings.

House Reading

On May 13, 2022, then Parliamentary Secretary Chris Bittle **began his speech** during the House committee hearings, which took place in the Standing Committee on Canadian Heritage, lamenting that “a bankrupt press is not a free press.” Though the Canadian government had already adopted certain measures to help journalism, he continued, the news sector remained in need and the continued lack of fair compensation from platforms was glaring. In a bid to the Conservatives, Bittle argued that the bill’s “market-based solution”—the kind of solution Conservatives tend to prefer—would involve “minimal government intervention.”

Bittle backed his support for the bill with a number of startling figures that many Liberal colleagues would point to over the course of hearings: between 2008 and 2021, 450 news outlets in Canada closed, with 64 closing since the start of the pandemic in 2020. Meanwhile, Meta and Google had captured 80 per cent of the approximately CAD \$10 billion in Canadian advertising revenues generated in 2020.

On May 30, 2022, then Minister of Canadian Heritage Pablo Rodriguez, who was responsible for bringing forward C-18, **joined** the House committee meeting. He claimed that, at the time of his speech, 71 per cent of Canadians who self-identified as Conservative agreed that platform giants should

have to share revenue with Canadian news outlets, while 74 per cent thought the government should pass a law that would let smaller outlets collectively negotiate with Big Tech platforms.

Besides the Opposition Conservatives, most members of other Canadian political parties, including the Bloc Québécois, the NDP, and the Green Party, expressed support for the bill. For example, Bloc MP Sébastien Lemire **shared** his approval of the law, noting that it was high time to put an end to the “cannibalization and dismantling of our traditional media.” Lemire, who represents Abitibi-Témiscamingue, also spoke of the difficulty of maintaining regional and local news in smaller and more remote regions like the ones he represents. Finally, Lemire pointed to existing deals between Meta and news outlets said to be worth CAD \$8 million over the upcoming three years. However, he noted, this money has all gone to the major Canadian news organizations and the deals have all but overlooked smaller media organizations. The Bloc MP therefore viewed C-18 as a potential way to recalibrate the imbalance. He **added**, however, that he anticipated Big Tech would try to influence or even pressure parliamentarians and the media into opposing the bill.

Senate Reading

Liberals in the Senate Standing Committee on Transport and Communications **presented** a similar logic for the bill as their House counterparts. Senator Peter Harder noted that while platforms act as a “digital public square,” their dominant position in the ad tech industry undermines the revenue of news businesses. Harder noted that bargaining codes were gaining traction internationally: not only was Canada following in the footsteps of Australia by passing this bill, Harder continued, but New Zealand was following Canada’s lead with a bill of its own. Indeed, in December 2022, the New Zealand government announced that it would be **drawing on** Canada’s “objective, futureproof and transparent” approach as they began articulating their own legislation. (In October 2024, Google **threatened** to stop linking to New Zealand news articles should the bill pass.)

At the time of the Senate committee hearing, in February of 2023, a number of optimistic figures were circulating about the potential economic windfall C-18 could create for news outlets: Harder **estimated** that CAD \$215 million could potentially flow toward the news industry should the bill pass. Meanwhile, the Parliamentary Budget Office had **put that figure** even higher, at CAD \$329 million. According to Harder, 30 to 35 per cent of news expenditures could end up being covered by the bill.

In the Senate, a handful of notable independent senators expressed uncertainty over the bill’s underlying logic and impact. Senators **Julie Miville-Dechéne** and **Donna Dasko** described the bill in the context of technological change that has upended the industry and to which the news media, at least to some extent, had failed to adapt. Nevertheless, they noted the importance of protecting journalism. Miville-Dechéne offered some requests for clarifications on the bill, including: ensuring that broadening eligibility criteria does not lead to funds going to publications that do not practice “real journalism”—i.e., outlets that focus on “lobbying, fictional or intimate narratives, personal growth or entertainment”; considering the potential for Facebook to block news and the bill applying to just one platform; and the need to determine how funds would be used by news organizations, to ensure they do go directly to journalism, not shareholders or interest payments.

Senator Donna Dasko rose first to speak on C-18 during the March 9, 2023 parliamentary session and shared a number of relevant statistics pointing to the connection between declining news media funds and a corresponding increase in ad dollars for platforms. For example, in 2005, the internet held only 8 per cent of the market share of advertising in Canada. By 2015, this had risen to 37 per cent, while all other categories had declined, including daily newspapers, whose numbers dropped from 26 per cent to 12 per cent during that same time period. According to a 2022 *Maru survey*, 86 per cent of Canadians access news every day, while a 2022 *Abacus survey* found that 64 per cent of Canadians use Google to find and access news a few times a week—and 41 per cent say they use it every day.

Yet, in regard to appropriate government response, Dasko, like her fellow independent Senator Miville-Dechéne, wanted to know why the government had not chosen a more familiar policy tool like a fund. She also raised questions about the broadened eligibility criteria for news outlets and the lack of a cap on funds, homing in on the possibility that platforms could cover 30 to 35 per cent of news costs.

Two other independent senators with mixed views on the bill, Senator Marty Klyne and Senator Colin Deacon, *criticized* Google for blocking news for some Canadians. Deacon felt that, as of Feb. 22, the debate around C-18 had “pivoted,” as Google confirmed that they were testing “limit[ing] the visibility of Canadian and international news” to less than 4 per cent of Canadians. The senator felt this move “fired a shot across the bow of Canada’s legislative process,” rather than contributing constructively to the debate.

In Deacon’s estimation, Australia had done one thing better than Canada: it had directed its competition bureau to thoroughly investigate the market impact of platforms, while asking it to report back every six months for three years. Canadian Heritage, on the other hand, consulted the Canadian Competition Bureau, but focused only on a previous inquiry the bureau had conducted into Google’s anti-competitive behaviour between 2013 and 2016. (In February 2024, the Competition Bureau *expanded* its investigation into Google’s ad practices in Canada. In November 2024, it was *announced* that the bureau would be taking legal action against Google, seeking a motion to require Google to sell its ad tech tools, among other things. The case *will test* recent updates to the Competition Act’s abuse of dominance provisions.) Senator Deacon also expressed concern that C-18 did not include provisions for generative AI, fearing it might not be “future-proof.” Finally, some independent senators questioned why the Liberal government had not invested any of its own advertising dollars into news media organizations.

Meanwhile, the second reading also provided an opportunity for the Conservatives, along with some independent senators, to *lay out* their opposition to the bill. The first Conservative to address C-18 in the House of Commons was Ontario MP John Nater, who, in May 2022, *levied* criticism against the CRTC’s potential role under the bill. He questioned the CRTC’s experience and capacity and also criticized its March 2022 *decision* to approve a merger between telecommunication giants Rogers and Shaw, citing the merger’s potential negative impacts on local news. Finally, he expressed worry about the potential costs—in his estimation, CAD \$8.5 million—of administering the bill.

Independent Senator Paula Simons **rose** in February 2023 to reject the bill's premise outright. In her view, the idea that Facebook and Google owed news organizations money was "a logical and ethical fallacy," because the major platforms were not actually making much money from news content. To support this claim, she noted a Nieman Lab study from 2021 that found that only 4 per cent of posts viewed on Facebook link to news. Finally, she also questioned how much the legislation should be supporting "failing legacy players" like Rogers and Postmedia, how much the CRTC should be involved in print journalism, and whether an entity like the CBC, already funded by the government, should receive the largest share of the pie from C-18, among other concerns.

Senator Pamela Wallin, a former Conservative Senator who now sits as an independent, **was even stronger** in her opposition to the bill. Forcing platforms into contracts could trigger platforms to pull news altogether—a move Wallin felt would harm the smaller players. She also rejected the idea that the government was keeping itself at arm's length from media through this bill for benevolent reasons—she felt that this decision came from a desire to avoid political blowback for funding media, something they were already doing through their journalism tax credits. Large American companies should not be asked to "prop up" our national broadcaster, she added further. She worried that no cap had been given for compensation while the number of outlets covered by the legislation had grown since it first appeared in the House. If Canada is seen as setting a precedent with this kind of taxation, it is no wonder, she noted, that the platforms would threaten to block news.

On March 30, 2023, Conservative Senator Leo Housakos **rejected** the premise that journalism as a whole was suffering: instead, he argued, the problem lay with the business model of Canadian legacy media which made them ill equipped to compete. In a metaphor that would be widely debated by other MPs over the course of the hearing, Housakos compared platforms owing news platforms money to a restaurant owing a cab driver money for dropping customers off at their door. Housakos also took the opportunity to accuse MP Chris Bittle of "**intimidating**" Google's witness over their decision to block news for 4 per cent of Canadians. Independent Senator Fabian Manning joined Housakos in condemning the bill, in particular rejecting the injection of the CRTC into another part of internet regulation, and one with the power to impact how Canadians get their news.

In response, the bill's proponents began dismantling a number of Conservative (and independent) talking points, including the idea that the bill mandated payments for links. Senator Peter Harder countered that the only thing the law would mandate is arbitration between news media and platforms to land a deal. He **rejected** as well the **idea** that the bill would "break the internet," a criticism repeated by critics of the bills in both Australia and Canada, who argued that "link taxes" created by the law would change the structure of the internet. Supporters, on the other hand, noted that, so far in Australia, the internet had remained the same. Senators **Julie Miville-Dechéne** and Marty Klyne **rejected** the notion that no media had been trying to innovate, arguing that an attempt at innovation had led some to pursue platform-friendly formats, only to be burned when platforms evolved away from them. Senator Klyne also rejected the idea that the bill was being used to subsidize legacy media. Instead, he argued that it was simply about ensuring fair compensation, which should theoretically be better business.

SENATE & HOUSE— COMMITTEE HEARING DEBATES

Bill C-18 was **considered** in the House of Commons' **Standing Committee on Canadian Heritage** for several months at the end of 2022, from Sept. 23, 2022 to Dec. 9, 2022. In the Senate, the bill was debated in the **Standing Senate Committee on Transport and Communications** for a little under two months in the spring of 2023, from April 25, 2023 to June 14, 2023. Sixty-nine witnesses **appeared** before the House Committee, while 59 witnesses **appeared** before the Senate Committee. Witnesses included representatives from Canadian Heritage, academic experts, representatives of various media associations and digital rights organizations, as well as platform representatives. Throughout committee hearings in both chambers, a number of key debates played out.

The following are some of the most significant themes debated over the course of both hearings.

The Premise of the Bill

During committee hearings, witnesses continued to debate the need for C-18. Much of the discussion centred around rectifying the unfair balance of power underscoring existing platform-publisher relationships and to what extent witnesses believed that news outlets provided value to platforms.

Across both hearings, many witnesses emphasized the intrinsic need for the bill. During a June 2023 Senate committee hearing in the Senate, Minister Pablo Rodriguez **reiterated** the concept of news having value for platforms: “the time [journalists] took to prepare the interview, the work done by researchers, the work done by the technical team and the cameraman. Collectively it’s worth something. They just have to be paid fairly, not more, no less; fairly, because it has value, and that gives the platforms value.” According to Jean-Hugues Roy, journalist and professor at the Université du Québec à Montréal’s School of Media, **who spoke** before the Senate committee earlier in the spring, Meta earned an estimated 5 per cent per year from news content traffic, which would mean they would owe CAD \$200 million per year for its news content.

Dwayne Winseck, a professor at the School of Journalism and Communication at Carleton University, added that revenue per Facebook user in Canada **is among the highest** in the world: “double what it is in Europe, quadruple what it is in Asia, and 10 times what it is in the rest of the world.” Meanwhile, during an early meeting of the House committee in November 2022, Hal Singer, managing director of **Econ One**, **argued** that the news previews created by Google and Meta decreased the likelihood of users clicking on the actual article, another reason money gets transferred from news outlets to platforms.

Yet Winseck felt that the bill remained fundamentally flawed, because it failed to address what he saw as the root of the problem: surveillance advertising.⁵ The necessity of the bill was also debated in the context of existing content-licensing deals between platforms and news outlets. For instance, Paul Deegan **noted**, during the first meeting of the House of Commons committee in 2022, that Google

5 The **practice** of extensively tracking and profiling individuals and groups and then microtargeting ads at them based on inferences related to demographics, behavioural data, interests, and other collected data.

and Meta had already started picking “winners and losers” by negotiating individual agreements with publications like *Le Devoir*, the *Globe and Mail*, and the *Toronto Star*. The bill, he said, was important because it would allow the news industry to engage in collective negotiations (which the Competition Act normally prevents), and would include an enforcement mechanism.

However, Thomas Owen Ripley of Canadian Heritage and Isabelle Ranger of Global Affairs Canada **later** pointed out to the senators, in spring 2023, that without the bill, there would be no guarantee that existing funding deals would continue and no “public interest framework” ensuring a diversity of deals. Finally, Paul Deegan, CEO and president of News Media Canada, **encouraged** the government to consider an amendment of the Canadian Competition Act that could provide the Competition Bureau of Canada with the teeth it needs to go after Big Tech, like the U.S. Department of Justice, which has recently **taken on** titans like Google and Apple. (As previously noted, the Canadian Competition Bureau has since followed in the DOJ’s footsteps by taking legal action against Google.)

Arguments in favour of the bill were buoyed by witnesses from Australia, who felt Australia’s News Bargaining Code was a success. Rod Sims, former chair of the Australian Competition and Consumer Commission, who spoke to both the House and Senate, **claimed that** the code generated AUS \$200 million (around CAD \$180 million) per year for the news sector and that Google had concluded deals with all media companies.

A number of important critics of the bill came from small publishers, who added to skepticism about its premise. During a May 2023 Senate hearing, Jesse Brown, publisher of *Canadaland*, noted that his own organization had found ways to thrive online without relying on platforms. Instead, there was another crisis he was worried about: a crisis of *trust*. Brown **shared** results from a range of institutes showing that over 70 per cent of Canadians avoid reading news, and 73 per cent believe that news is “not free from corporate influence.” In his estimation, government funding has already contributed to the ongoing erosion of trust in news.

Jen Gerson, co-founder of startup *The Line*, spoke even more strongly against the bill. During a House committee meeting in 2022, she **argued** that the bill was “based on a lie” since publishers benefit from platforms sharing their links. Nevertheless, David Skok, editor-in-chief of *The Logic*, **believed** the bill was important to keep smaller organizations like his own afloat and level the playing field.

Among those in opposition to the bill was Sue Gardner, a McConnell visiting professor at McGill University’s Max Bell School of Public Policy, who **argued** that platforms had simply managed to create more effective new advertising tools, allowing them to out-innovate the business side of news. She therefore rejected the concept of “fairness” as being inherent to the bill. Matthew Hatfield, executive director of digital rights organization **Open Media**, was also strongly opposed to assigning fair value to links, as were other digital rights organizations like the **Canadian Internet Society**. Hatfield **claimed** the bill’s poor construction would make it logical for platforms to block news in response. The bill was set, he argued, to reward the big industry players for their growth in shares and clicks, as opposed to supporting the rebirth of local, public interest journalism.

Michael Geist, Canada research chair in Internet and E-Commerce Law at University of Ottawa’s Faculty of Law, also prominently opposed the bill. During a Senate committee meeting in May 2023, he **added** that the Supreme Court of Canada had warned against “liability for links,” as the “same link

payment principle be applied to other policy objectives”—which could put the “entire foundation for sharing information online [at] risk.” During this same meeting, Peter Menzies, senior fellow at the **Macdonald-Laurier Institute**, added that although over 470 newspapers had closed shop in Canada, up to 700 other websites owned by commercial broadcasters had launched, as well as over 200 web-based sites. Echoing Hatfield, he argued that the bill would ultimately help neither those struggling nor innovative new market entrants, while pushing platforms to stop sharing news. These arguments were supported by representatives from Google who appeared in both the House and the Senate.

Existing Deals

During the C-18 hearings, publishers also debated and discussed in further detail their existing relationships and deals with platforms. While some larger publishers had already benefited from deals, many smaller publishers hoped that the law would enable them to make deals they had not yet been able to secure. During a May 2023 Senate meeting, Thomas Saras, president and CEO of the **National Ethnic Press and Media Council of Canada**, **shared** that he had engaged in negotiations with platforms for about a year before the platforms cut them off. Pierre-Elliott Levasseur, president of La Presse, **concurred** that many outlets had tried to get a deal with the platforms only to have doors “slammed” in their face—and those that did ink deals did so on the platform’s terms and conditions. David Skok, CEO and editor-in-chief of The Logic, claimed that the platforms, globally, **had been** attempting to “avert legislation” through secret deals.

On the other hand, a number of witnesses testified to having greatly benefited from existing deals. Former Globe and Mail publisher and CEO Phillip Crawley **shared** that the newspaper had secured multi-year agreements with Apple and Google. When asked about the prospect of Facebook potentially pulling news content from their platform, Crawley said the Globe and Mail stood to lose millions, as their existing deal was “worth a significant amount of money” and had allowed them to continue growing their revenue. During the same hearing in May 2023, however, Brian Myles, director of Le Devoir, **explained** that despite having made deals since 2014—with MSN in 2014, Apple News+ in 2020, and Meta and Google in 2021—he fully **supported** the bill. He emphasized, however, that outlets should be able to choose whether they negotiate individually or collectively with the platforms, citing Le Devoir’s cultivated “relationship of trust” with certain platforms.

However, not all small publishers⁶ were confident that the bill would bring about new deals. For example, Jesse Brown **posited** that criticism of Big Tech had become muted since certain outlets entered into deals. Jen Gerson of The Line, who testified as an independent journalist, **foresaw** secret deals with legacy media that would make them increasingly dependent on the success of Big Tech. Jeff Elgie, CEO of **Village Media**, **shared** that Google and Facebook generate 50 per cent of their traffic, with Google representing 30 to 35 per cent. Elgie, who had signed deals with both Google and Facebook, believed the bill could cause significant harm, as the threat of platforms leaving news would be devastating.

6 Local or small-market newspapers can be **defined as a publisher** with a monthly circulation below 50,000.

Opposition from Platforms

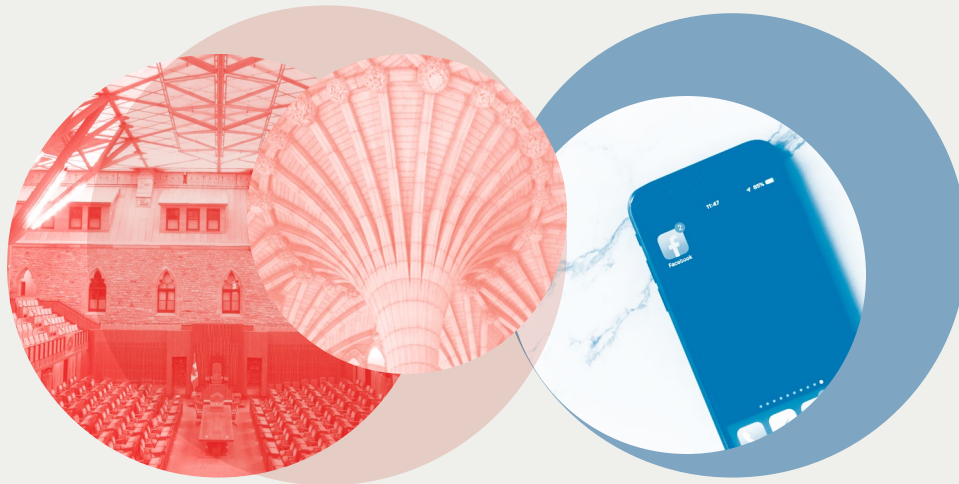
A number of platform representatives were present during both the House of Commons and Senate hearings and shared similar disagreements about the premise for the bill. Kevin Chan, global policy campaign strategies director for Meta Platforms, **appeared** before the House committee in October 2022. Unsurprisingly, he rejected the premise of the bill, arguing that Meta does not unfairly benefit from news, but instead provides outlets with “free marketing.” Marc Dinsdale, head of media partnerships at Meta Canada, **claimed**, during a May Senate committee meeting, that 20 per cent of users wanted less news and that users spend 50 per cent of their time on Facebook watching video content. When pressed, he could not provide figures on the value of news, but according to Rachel Curran, head of public policy at Meta Canada, Facebook **had sent** publishers more than 1.9 billion clicks in 2022, resulting in an estimated CAD \$230 million in value. Finally, Jason Kee, government affairs and public policy counsel for Google Canada, **claimed** that more than 90 per cent of “organic views on article links” for Google are posted by publishers themselves, not by users—reiterating the view that platforms were a tool, not an impediment, for publishers.

Platform representatives also frequently pointed to their existing support for journalism as reason to oppose the bill. In a May 2023 Senate hearing, Richard Gingras, VP of News at Google, **refuted** claims that Google does not want to be regulated or support Canadian news, as evidenced by their support for 150 publications through the **Google News Showcase** and other initiatives. Marc Dinsdale agreed, highlighting that Meta has **done a great deal** for news organizations, including supporting 18 publishers through its **News Innovation Test**, and funding other programs to the tune of CAD \$18 million. The outlets selected ranged in size and, he said, have included Indigenous and BIPOC-led outlets, while programs have included the Indigenous News Fellowship Program and the Canadian Press News Fellowship Program.

In addition to vaunting platforms’ existing role in the news ecosystem, their representatives came prepared with specific criticisms of the bill at hand. To Richard Gingras, the bill **places** “unreasonable” uncapped liability on platforms—another issue platforms would return to frequently in their criticism of C-18. In particular, Gingras indicated his concern about the suggestion that platforms would have to cover upwards of 30 per cent of newsroom costs. Though he was critical of Australia’s bill, he noted that, unlike in Canada, the government there had **made it clear** to Google how they could become exempt from the bill, and that the number of news organizations covered was much smaller. Rachel Curran, head of public policy at Meta, added that, in the Australian case, companies had also been able to cap their liability at a specific dollar amount.

Colin McKay, then head of public policy and government relations at Google Canada, spoke to the House of Commons committee in October 2022 and **shared more specific concerns** about the bill itself including: 1) its undue preference provisions⁷, 2) the “extremely” broad definition of “news businesses” that they felt did not enforce journalistic standards, 3) the requirement to “pay for links,”

7 This provision, contained in section 51, says that platforms cannot disadvantage or show preference, in the course of making news available, to specific news organizations.



which would “violate global copyright norms” and “incentivize low-quality or click-bait content,” and 4) the lack of transparency, that could result in benefits accruing only to Canada’s largest news publishers.

Chris Pedigo, senior VP of government affairs at **Digital Content Next**, **noted** in an April 2023 committee hearing in the Senate that Google and Meta’s pattern of behaviour in response to C-18 mirrored reactions to other legislation, like the EU’s **General Data Protection Regulation** and the copyright directive, as well as Australia’s news bargaining code. In Canada, their reactions were as much directed toward the Liberal government as toward countries with similar legislation impending, such as the U.S. David Skok of The Logic **condemned** how platforms went to small publishers to warn them they would not be included in the bill, and encouraged them to “rally”—only to testify later that many of them should not be covered.

Government representatives also commented on the platforms’ resistance to regulation. During an October 2022 committee meeting in the House, Liberal MP Chris Bittle **had strong words** for Meta, accusing the company of throwing a “public temper tantrum” to appear before the committee and then refusing to answer questions while “threaten[ing] Canadians.”

Revisiting the Fund

Though the question of a fund was not seriously debated, some witnesses did make sure to restate their preference for it before a committee. Google’s Richard Gingras **lamented** that Google would have preferred a fund governed by an entity other than the company itself, and that the money be tied to specific activities rather than specific companies. Jason Kee, government affairs and public policy counsel for Google Canada, added that a fund could be **targeted** toward a diverse range of voices and could support innovation from small publishers.

Some small publishers agreed with the platforms’ preference for a fund. For example, Jen Gerson of The Line **said**, before the Senate in May 2023, that if the development of C-18 had been “collaborative,” it would have excluded the CRTC and instead been a “straightforward taxation of digital media that would then be reapportioned out to both independent and legacy media according to

a very transparent, easily published formula.” In a June 2023 hearing, Jeanette Ageson of The Tyee **pointed to** funds like the **Law Foundation of BC** and the **Real Estate Foundation of BC** as examples. According to Ageson, in these cases, interest gained through transactions linked to legal cases and real estate transactions is diverted toward public interest legal work.

Prominent C-18 critic Michael Geist **agreed**, adding that a funding model was the basis for the Public Policy Forum's report “**The Shattered Mirror**.” This fund, he argued, could be based on the Canada Media Fund and include contributions based on ad revenues. Geist suggested using the bill's clause 11 exemption⁸ order, which could be expanded to allow exemptions based on platforms' contributions to the fund. Geist believed that a fund could assuage issues like payments for links and address concerns related to transparency and secret deals. On the other hand, Taylor Owen, director of the Centre for Media, Technology and Democracy, noted that a centralized fund for publishers **would have required** the government to levy a dedicated tax on platforms—sometimes called a “link tax”—or put general revenue into a fund. The former could be a breach of CUSMA, Owen warned, and both are more intrusive interventions than a bargaining code.

Small and Diverse News Organizations

A major point of contention during committee debates was how smaller and/or diverse publishers would fare under the bill, and whether amendments could be made to better address their needs. Notably, support for the bill among smaller publishers was varied.

Some viewed it as a vital lifeline: Thomas Saras, for example, **highlighted**, during a spring 2023 Senate committee meeting, how much additional harm the COVID pandemic had caused to ethnic press outlets. And, despite assistance from the government, many had already gone into debt. Evan Jamison, president of the Alberta Weekly Newspapers Association, **noted** that small outlets had struggled to make deals. Google stated that Showcase was not made for medium and small publishers and, additionally, that they make little revenue from news. Jamison argued, however, that there was a clear case to be made to the contrary. Like many small publishers, Jamison **was encouraged** by the amendment made in the House of Commons to allow one of the two required journalists—an eligibility requirement—to be an owner-operator.

Jamison also **advocated** for more to be done beyond C-18, worrying about how the industry would fare if the Local Journalism Initiative expired. He recommended additional support for the program, as well as for the Periodical Fund and subscription tax credit. Ben Wood, publisher of All Business Online News Group, additionally **proposed** an amendment for targeted financial support for small and medium-sized news organizations.

Other small publishers, however, opposed or found strong points of contention in the bill. In spring

8 The clause 11 **exemption criteria** of C-18 enables platforms to be exempt from parts of the law, including arbitration, if it meets the criteria set in Governor-in-Council regulations. The criteria is discussed in more detail in Part 4A.

2022, Jesse Brown of Canadaland, Jeanette Ageson of The Tyee, and 100 other small news publishers including rabble.ca, The Rover, Narcity, and Indiegraf announced that they had **formed** a coalition to push for relevant amendments. One of these amendments included **standardizing** the funding formula for all news organizations based on the amount of their editorial expenditures. This would allow organizations to share with the public how much money they were receiving—an important transparency feature, they argued. Speaking to the Senate, in May 2023, Canadaland's Jesse Brown continued to **worry** that the bill's insufficient transparency would lead to a further erosion of trust in news. The Tyee's Jeanette Ageson **agreed**, noting that having access to previous deals reached through C-18 could mitigate the risk of unfair deals being made with smaller or newer outlets.

A few witnesses appeared before committees to provide an account of how small publishers had fared under the Australia code. Emma McDonald, senior policy adviser for the Minderoo Foundation, **shared that** six months after the code was introduced in Australia, it was clear that Google and Facebook were not negotiating with smaller organizations (as platforms were not required to negotiate with specific outlets). All the while, however, major players—including Rupert Murdoch's news organizations—had secured lucrative deals. So, in November 2021, Minderoo (with approval from the Australian Competition and Consumer Commission (ACCC)) **supported** a group of 24 independent publishers by negotiating on their behalf, and all eventually secured a deal. The negotiations with Google lasted six months and McDonald said that Australia's ACCC made the process easy for them. Lawrence Gibbons, co-chair of the Public Interest Publishers Alliance and publisher of the Star Observer and City Hub, commented **that** the money they had received as a result of the bill had allowed his news organizations to add resources and ultimately survive the pandemic. When asked what percentage of their operating costs the money represented, Gibbons declined to comment as those contracts were signed under NDAs.

Representatives of linguistic minority publications also brought up their concerns with regard to C-18 during committee hearings. Brian Myles, director of Le Devoir, **felt that** with respect to C-18, the CRTC should hold detailed knowledge of Francophone markets. An accountability mechanism, he noted, should be included at the CRTC to ensure that linguistic duality is respected. Meanwhile Linda Lauzon, executive director of **Réseau.Presse**—a consortium of Official Language Minority Community Media, formerly known as l'Association de la presse francophone—**argued that** the bill had failed to recognize Francophone (or official minority language) outlets the same way they had recognized Indigenous outlets. Lauzon further explained that freelancers make up roughly 65 per cent of reporters in minority language publications. The consortium therefore wanted freelance journalists to be recognized in clause 27—the clause that defines eligibility for news businesses. In addition, Lauzon expressed concern that some smaller organizations may not have the bandwidth to go through a bargaining process. Finally, she **wanted** C-18 to more formally recognize the rights of official language minority community media, like under the Official Languages Act.

Finally, Indigenous publishers also commented on the potential impact of C-18. Jean La Rose, president and CEO of Indigenous production house Dadan Sivunivut and former CEO of Aboriginal People's Television Network (APTN), **said** in a fall 2022 House committee meeting that C-18 needed to better reflect the “unique place of Indigenous news organizations, based on Canada's commitment”

to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Both he and Monika Ille, CEO of APTN, **expressed concern** about subclause 11(1)—which defines the criteria platforms have to fulfill to obtain exemption—as they worried it was not strongly worded enough when it came to including Indigenous outlets. They worried that it could appear to place “diverse” news sources last in order of priority.

A few months and amendments later, in June 2023, La Rose thanked the government for “taking a significant step in supporting...the principles” of the UNDRIP. La Rose expressed appreciation that the bill had been amended to include Indigenous storytelling as a legitimate form of conveying news. However, both he and Ille **continued** to worry that the definition of “Indigenous news outlets” could unintentionally restrict their focus to “Indigenous” issues, noting that they have long engaged beyond their own communities.

Transparency and Accountability

When presenting the new law, members of the Canadian government were quick to point out an important difference between Canada's Online News Act and Australia's News Bargaining Code: transparency. In November 2022, Taylor Owen of the Centre for Media, Democracy and Technology **noted that** other countries across the globe would be looking at Canada's example, as it combined Australia's news bargaining model with a stronger regulatory framework. Rod Sims, appearing before the Senate at the end of May 2023, **noted that**, indeed, in Australia the ACCC is the only organization that knows the value of deals, and agreed that “it should be more transparent than that.” Sims felt that Canada had used its second-mover advantage to improve on the “key defect” of its Australian counterpart. A week later, then Heritage Minister Pablo Rodriguez **emphasized** the importance of transparency to the Prime Minister, which he argued had been a key consideration in discussions around the bill.

Still, many stakeholders felt that the law—while improving on transparency *compared* to the Australian model—did not go far enough. During a May 2023 Senate meeting, Marla Boltman, executive director of **Friends of Canadian Media**, claimed that the bill **prioritized** privacy over disclosure with regard to deals between platforms and publishers. Boltman agreed that the auditor's annual report (as mandated by the bill) would be helpful, but would still have drawbacks, including the fact that it would only be performed once a year and that the act would delineate the scope of disclosure possible. If the act does not favour disclosure, the degree of disclosure in the report may be insufficient. During a June 2023 Senate committee, Jeanette Ageson of The Tyee **added** that though *someone* in the government would be able to view deals and assess their fairness, it would be better if the public could judge the details of these deals for themselves.

Philip Palmer, president of the Canadian Internet Society, **believed** that Canada's bargaining model was inherently at odds with public transparency: “if you want deals,” he argued, “you de-emphasize transparency. If you want transparency, you make it a public process and you create a tariff.” In other words, it is unlikely that major platforms *or* large publishers would want their deals made public.

A few other witnesses proposed changes they felt might increase transparency. Professor Dwayne

Winseck, of Carleton University's School of Journalism and Communication, **referred** to the bill's information-disclosure obligations—i.e. details of the deals between platforms and publishers—as “pitifully weak” and called for stronger obligations in **clauses 53-56**. He added that the public should be able to participate in CRTC proceedings. Randy Kitt, director of media for Unifor, argued **that**, at the very least, arbitrators should receive special access to the value of deals.

Phillip Crawley, former CEO and publisher of the Globe and Mail, **worried** that, in certain cases, there could be *too* much transparency. He proposed several amendments to the bill to that end, including: 1) removing the CRTC's ability to unilaterally designate news organizations under **clause 27**, as he felt “participation by news organizations should be voluntary,” 2) amending **clause 53**—which allows the CRTC to compel any information it requires from news businesses—to only allow the CRTC to gather information on eligibility and complaints, 3) amending clause 86 that sets out mandatory reporting requirements, expressing concern about the nature of information that would be potentially requested from news outlets for the writing of the report.

Some stakeholders, including Kitt, **also stressed** that the money should go directly toward news creation, because in his view, “hiring journalists to tell our stories and to hold power to account is the most important metric for measuring the success of this initiative.” Ben Scott, director of digital rights non-profit Reset Tech, **echoed** similar comments to Kitt, agreeing that all revenue generated by the bill should go to journalism production.

Undue Preference

Australia's News Bargaining Code included section 52S, which **mandates** that platforms give notice of any change to their algorithm that could impact or change referral traffic. Google strongly opposed this section of the law from the get-go. With C-18, clauses 51 and 52 **allow** news businesses to file a complaint to the CRTC if a platform “gives undue or unreasonable preference to any individual or entity, including itself; or subjects an eligible news business to undue or unreasonable disadvantage.”

According to our conversation with a senior government official, Canada had studied Australia's algorithmic transparency provision but “made an intentional decision to steer clear of something that could be seen as regulating algorithms for news” since C-18 was designed “for bargaining, not promoting the discoverability of content on news platforms.” However, it was decided that clauses 51 and 52 were nonetheless necessary to “make sure that news organizations could not be unjustly targeted during bargaining.” Another official at Canadian Heritage added that trade concerns around CUSMA were also an important factor in this decision.

Although this provision was not widely discussed during committee hearings, it was brought up as a concern by a number of the bill's opponents, including three Google representatives. In October 2022, Google's Colin McKay singled out undue preference as one of the company's four **principal concerns**, as the measure would prevent Google from applying policies that prioritize trusted information over lower-quality content. In a May 2023 Senate committee hearing, Google representatives Richard Gingras and Jason Kee made similar **arguments**, noting that the clause could potentially hold the

company liable for elevating *any* kind of content—including “purveyors of non-authoritative content who are unhappy about the fact that they’re not high up in the ranking.” Kee also complained about the onus being on platforms to prove that preference was not undue.

Former CRTC chair Konrad von Finckenstein sided with the platform representatives on the issue of undue preference. He felt that the legislation misunderstood how digital news intermediaries (DNI) work, **noting** that these algorithmic decisions are computer decisions. He argued that instead of assuming a platform was guilty until proven otherwise and having the CRTC investigate, platforms should have the chance to explain how their algorithm works—innocent until proven guilty. Hypothetically, the CRTC **could** issue penalties of up to \$10 million.

However, some experts disagreed. Taylor Owen, director of the **Centre for Media, Technology and Democracy** explained that, to **combat potential concerns** with clause 51, a sentence could be added to ensure that ranking variable news through search engine optimization would not be considered an unreasonable advantage. Dwayne Winseck, professor at Carleton University, **argued that** clause 51 was in fact “one of the best features of the act” and even saw this “soft ‘must-carry’ measure” as being a safeguard against Google and Meta pulling the plug on Canadian news media.

The Role of the CRTC

Though not one of the main areas of contention, some opponents criticized the CRTC’s role in the bill. Representatives from the agency itself, however, spoke about the preparations they were undertaking to ready themselves for implementation of the bill. In fall 2022, then chairperson and CEO of the CRTC, Ian Scott, **testified** on the role of the CRTC in C-18. Among the tasks he enumerated were: 1) considering requests from news businesses for eligibility, 2) overseeing negotiations and mediation, 3) handling news organizations’ complaints of undue preference or discrimination toward platforms, 4) contracting an independent auditor to publish an annual report on the total value of commercial agreements, and 5) establishing a code of conduct for bargaining and regulatory charges. In his view, the CRTC’s primary role in regulating the communications sector gives the body relevant experience in mediation, arbitration, handling undue preference complaints and conducting public proceedings, among other things. Indeed, Scott asked the committee to recall the CRTC’s creation of the Independent Local News Fund in 2016. In response to Conservative MPs criticizing the “exceptional new powers” for the CRTC, Ian Scott **disagreed**, describing the CRTC as serving “a supervisory role, not an active regulatory role.”

In spring 2023, Scott Shortliffe, then executive director of broadcasting for the CRTC, **appeared** before the Senate committee to assuage fears that the commission was not up to the task, explaining that they were already setting up the necessary structures and directing resources from other areas of the commission. He echoed Scott’s comments that the CRTC was only being asked to help “parties reach commercial agreements,” not to regulate the news industry. He also advised that they would be undertaking public consultations regarding next steps and regulatory implementation. Emma McDonald of Minderoo **compared** the CRTC to Australia’s Communications and Media Authority (ACMA), which she felt had done a good job with regard to their code. The ACMA held a good deal

of knowledge of the media sector and of “digital disruption.” In Australia, it had been successfully charged with registering media organizations for their bargaining code.

Former CRTC chair Konrad von Finckenstein was much more **critical** about the CRTC’s potential role, and brought forth a number of recommendations to the House committee. He **believed** that the legislation should be amended to allow the Minister to designate DNIs, rather than having DNIs identify themselves as falling under the bill. Speaking months later before the Senate, von Finckenstein **added** that the “digital challenge” was not an area the Commission was used to dealing with and would probably involve setting up a new division.

Philip Palmer, of the **Canadian Internet Society**, argued that news businesses with no real relationship to platforms would benefit from the bill. He also **criticized** the fact that the bill gave the CRTC the power to impose conditions for exemptions, therefore setting forth “regulation by exemption.” Further complicating matters, he noted, was that the Governor-in-Council can make regulations determining how the CRTC would interpret exemption requirements. In his view, the agreements could allow platforms to supervise the use of funds by news businesses, meaning platforms would thus directly regulate news businesses, making the CRTC “the indirect regulator of Canadian newsrooms.”

Then Heritage Minister Pablo Rodriguez replied to a number of criticisms over the course of various committee meetings. During a June 2023 appearance, Rodriguez **argued** that the CRTC had the most relevant experience, despite some limitations: “Do they have all the expertise? No. We said it clearly from the start. Even if they told me that they know how to do everything, I would have never believed them...we provided them with \$8.5 million over two years to put into place everything they needed to do a good job.” In addition, he emphasized their independence and political neutrality. He also noted that it was the CRTC, and not platforms, that would ensure that money would go to newsrooms—platforms would not be privy to this information. In a fall 2022 House committee appearance, Ian Scott **explained** several steps the CRTC was taking to prepare for the incoming legislation, including a code of conduct to support fairness in the bargaining process.

Inclusion of the CBC

The question of whether to include the CBC as a potential beneficiary of bill C-18 was an important point of contention in debates around the law, and touched upon a broader discussion about the mandate of Canada’s public broadcaster. Many stakeholders from within the news industry called for the CBC to not be included in C-18. Several witnesses were critical of the CBC receiving additional money from advertising in the first place, and felt their advantage over other news organizations should not be further bolstered by their inclusion in the bill.

In May 2023, Canadaland’s Jesse Brown **spoke even more forcefully** on the subject, arguing that the CBC should be taken out of the competition for funds where they are “actively trying to destroy other news organizations.” Meanwhile, Jeff Elgie, CEO of Village Media, shared his long-held belief that the CBC’s content **should be made available** to other publishers under Creative Commons licensing. The Line’s Jen Gerson proposed that the CBC should undergo an immediate mandate review. Michael

Geist, professor at the University of Ottawa's Faculty of Law, **added** that the CBC needs a proper rationale for its existence that includes specific "public interest goals."

Representatives from **Friends of Canadian Media**, speaking in May 2023, **expressed support** for the CBC's inclusion. Marla Boltman, the non-profit's executive director, explained that, in an ideal world, the CBC would have sufficient public funding. Indeed, her organization has long advocated for "long-term sustainable public funding," which it does not currently have. But the bill is not, she noted, about the CBC's public funding—it is about compensating news outlets for the value platforms derive from them. Despite its support for the national broadcaster, Friends of Canadian Media long ago began requesting a review of CBC/Radio-Canada's mandate, as they felt it had become overly commercialized. Sarah Andrews, the organization's director for government and media relations, agreed, adding that taxpayers subsidizing the CBC have an interest in ensuring that its content is both recognized and compensated. She added that the need to rescue the news industry should come above a political battle over the CBC.

Alternative Suggestions for Funding Media

Several witnesses brought up alternative forms of media funding, and the discussion centred on two main topics: the government's advertising spending and alternative news models. In the first instance, many witnesses were critical of the Liberal government for not advertising directly with news media, instead spending more of that money on placing ads on digital platforms. During a May 2023 hearing, Paul Deegan **noted that** the federal government had spent CAD \$140 million on advertising the year before, but that, out of that amount, just CAD \$6 million had gone to print news, while double that had gone to Facebook and Instagram alone.⁹ Thomas Saras, of the National Ethnic Press and Media Council, **added that** only CAD \$1.6 million of that total spent on print had gone to ethnic publishers. According to Linda Lauzon, executive director of Réseau.Presse, in 2022-2023, the media organizations she represented **received** an average of CAD \$7,500 in federal advertising dollars compared to CAD \$55,000 on average ten years ago.

On the other hand, several publishers spoke about the success of their organizations' business models, which, they argued, made it possible not to be reliant on income from platforms or the whims of algorithms. Jesse Brown, during a May 2023 Senate committee hearing, **said that** Canadaland was "not in a state of financial crisis" and was able to employ 20 full-time employees without deals from Meta or Google. In his view, there was no "credible path" for a traditional news organization like Postmedia to do the same. The Line's Co-Founder Jen Gerson **agreed with** Jesse Brown, adding that her outlet had also not concluded deals with either Facebook or Meta and was subscriber-funded. Brown believed, however, that a business patronage model, like the Globe and Mail's, presented

9 Deegan's numbers came from the government's 2021-2022 report. Numbers for 2022-2023 **were** even more stark, with less than CAD \$1 million spent on print publications and over CAD \$6 million spent on Facebook and Instagram. Of note, overall spending was much lower than in the previous year—by around 40 per cent.

one other possible option. In general, however, Brown emphasized a “return to first principles,” in other words, to subscription-based models and tools like newsletters and podcasts—where audiences provide direct support and where media organizations are not relying on Big Tech to get the message out. The “micro” newsroom, often consisting of just one journalist, was in his view another model that has proven successful.

Another small independent news organization that was “experimenting” with new funding models was B.C.-based outlet The Tyee. According to Jeanette Ageson’s Senate testimony, the news organization **was receiving** money from 10,000 individual donors, which amounted to about half of their operating budget. They also receive additional core funding from a “major donor.” Ben Wood, publisher of All Business Online News Group, which runs allNovaScotia, noted that the publication keeps all their journalism behind a hard paywall because “giving away information for free...halts subscription growth.” Eighty-four per cent of revenues came from circulation, Wood said, allowing them to grow without ever posting on either Facebook or X.

Phillip Crawley of the Globe and Mail **added that** his paper was receiving two thirds of its revenue from readers, with the remaining third coming from advertising—in other words, he had flipped the business model “on its head.” At the time of the hearing—May 2023—Crawley said the paper had 330,000 subscribers, most of them digital.

AMENDMENTS

Debates in both chambers resulted in corresponding amendments of the law as the bill moved through parliament.

House

During the House Committee hearings, there were 69 witnesses and 19 briefs **presented** to the Standing Committee on Canadian Heritage. The amended bill was adopted by the Committee on Dec. 9, 2022. The most notable amendments were:

Amendments to support Indigenous news (and other diverse news organizations):

NDP MP Peter Julian brought forward a series of successful amendments to support Indigenous news. These **included**:

- a) An amendment sought to incorporate a definition of an “Indigenous news outlet” under C-18. The definition of “news content” was amended to include “Indigenous news outlets” that make available “Indigenous storytelling,” acknowledging it as a valid form of news content. A definition of “Indigenous peoples” was also added, which referenced subsection 35(2) of the Constitution Act of 1982. The aim of these changes was to boost the inclusivity and representation of Indigenous news in the bill.
- b) An amendment to clause 11, the exemption order. Amendments included adding a subsection ensuring a “significant portion of Indigenous news outlets benefit” from the law, and a

section ensuring that deals had to be made with a diverse set of outlets in order for platforms to qualify for exemption. Outlets covered included: non-profits and for-profits, “local and regional markets in every province and territory, anglophone and francophone communities, including official language minority communities, and Black and other racialized communities.”

- c) An amendment to clause 27, defining the eligibility of news outlets, which added a provision to include Indigenous news outlets that produce news content, including matters of general interest and “the right to self-government and treaty rights.”
- d) An amendment to clause 31, which allows a platform to dispute the eligibility of a given news business. A special exception was added to this clause for Indigenous news outlets that both operate in Canada and cover matters of general interest, including those that relate to the rights of Indigenous people.
- e) An amendment to clause 33, which provides guidelines on the selection and inclusion of arbitrators. The amendment ensures that arbitrators on the roster must include Indigenous persons.

Protection of small news organizations

One of the most widely discussed and important amendments was another **change to** clause 27: the two journalist minimum standard initially set by the bill could now include one journalist who was a proprietor. This was seen as essential for the inclusion of many smaller community and online news publishers. Additional changes to clause 27(1) make eligible campus stations, community stations, or native stations, as defined under the act.

Another change to clause 11 specified an exemption period for platforms of five years, in order to provide stability to news organizations. Some pundits argued, however, that this would mean **freezing out** new entrants for longer and was seen as potentially hurting startups.

Additional requirements for news organizations

Amendments **were made**, once again, to clause 27, eligibility criteria, adding that news businesses must be “of public interest” to qualify.

Safeguards in the bargaining process

Changes **were made** to clause 39 to ensure that if arbitrators dismiss the first offer made by one party, it must subsequently accept that of the other party rather than immediately returning to the bargaining table. If neither offer is chosen, it must explain why.

Transparency

Although some stronger transparency provisions **failed**—as the government defended the use of confidentiality to entice large platforms—some weaker ones passed. These **amendments included**:

- a) An addition to clause 11 to ensure that the CRTC holds “public consultations” before an exemption is given;

- b) Adding specific timeframes for the bargaining process to clause 19, to ensure more transparency and predictability in the process;
- c) A change to clause 36, suggested by union Unifor, to ensure that CRTC can disclose necessary confidential information to arbitrators in the case of arbitration, in addition to providing technical assistance, as mandated in the draft's first bill;
- d) The addition of a new clause, 53.1, which added specific transparency measures targeting CBC/Radio-Canada. This clause requires an annual report detailing the compensation received and how those funds are being used, among other things.

A rethink of section 51 on undue preference

Following concerns expressed in committee, an amendment was made to clause 51 to **limit** the CRTC's ability to intervene in the case of undue preference. Additional changes to clause 52 further limited the scope under which the CRTC could intervene and set out guidelines for when complaints were to be dismissed.

Senate

The Standing Senate Committee on Transport and Communications **heard from** 59 witnesses, including department officials. There were 27 written briefs submitted in response. The **sixth report** on the bill, detailing the Senate's amendments, was adopted on June 14, 2023. Of the 10 amendments sent to the House of Commons, the House concurred with eight. The most relevant amendments were:

Including diversity in the definition of news content

A number of amendments made at the Senate committee stage **were meant** to better protect diversity in the bill:

- 1) An amendment **to clause 2** to add "Indigenous news outlets" and "official language minority community news outlets" to the bill's definition of "news outlet."
- 2) Another proposed change to clause 2 lowered the requirements for Indigenous news outlets to be considered "news outlets" by no longer specifying that the news must be directed to an Indigenous community.
- 3) Another amendment added "official language minority community" and "official language minority community news outlet" under the definitions in clause 2.
- 4) Clause 11(1)(a) now includes a new criterion to recognize official minority community news outlets, requiring platforms to reach agreements with them, rather than referring to a broader "diversity of languages" as necessary for exemption.
- 5) An amendment to clause 86 created a specific category within the annual auditor's report that would focus on the impact of the legislation on Indigenous news outlets, those that serve local and regional markets, "Black and other racialized communities," and those serving "official language minority communities."

Further limiting the power of the CRTC

An amendment was **accepted** to clause 27 removing the ability of the CRTC to designate news organizations, meaning news businesses themselves would need to apply.

Transparency and 'confidential information'

Another amendment **that passed** through the Senate restricted changes made in the House of Commons to share information with arbitrators that remains “confidential.” The amendment provides for remedies in case information is “improperly disclosed.”

Notably, some widely discussed amendments from the Senate **did not make it** into the final bill. Some controversial ones included:

- 1) An amendment that would have defined the “purpose of the bargaining process” as determining the “value that each party derives from the news content of an eligible news business” and to “determine the portion of that value that will be transferred to the eligible news business.” The goal was to clarify what exactly was being negotiated. The stated goal of independent Senator Miville-Dechéne, who proposed the amendment, was to make the bill more clearly about an exchange of value, rather than a “media wage” or “wage subsidy.” However, the amendment was strongly opposed by the government, who worried that it could limit the scope of negotiations and risk creating less favourable terms for news outlets.
- 2) Another notable amendment that was proposed, but immediately rejected, would have barred the CRTC from designating the CBC or any provincial public broadcaster as an eligible news business. The Conservative Senator who proposed the motion, Claude Carignan, cited various witnesses like Matthew Hatfield, executive director of digital rights organization OpenMedia, and Michael Geist, University of Ottawa professor, who all supported excluding the public broadcaster.

The bill **received** royal assent on June 22, 2023.

B. Lobbying and Media Discourse

As detailed in Part 1 of this report, Google and Meta began expanding licensing programs into Canada in 2021 and 2022 with the hope of staving off regulation. According to a senior Canadian government official, when questionnaires were sent out to stakeholders for initial feedback during the stakeholder **consultation process**, platforms underscored the fact that they were “already supporting journalism.” For this reason, the official explained, the platforms often did not fully participate in earlier consultations on the bill. By the time they did, C-18 was already in the public domain.

As it became clear the legislation would be tabled, Google and Meta began turning their attention instead to fomenting opposition amongst academics and experts, as well as the public. Meanwhile, platforms—and Google in particular—engaged repeatedly with the government with the goal of reducing the financial burden they would bear from the bill, among other changes.

When platforms first began their lobbying efforts, public opinion was not on their side: a **Pollara poll** released in May 2022 found that 79 per cent of Canadians agreed that “web giants should have to share revenue with Canadian media outlets.” A Nanos survey from November 2022 **revealed** that there was still strong overall support for having the government encourage Google and Facebook to negotiate with publishers, with 77 per cent supporting or somewhat supporting the idea.

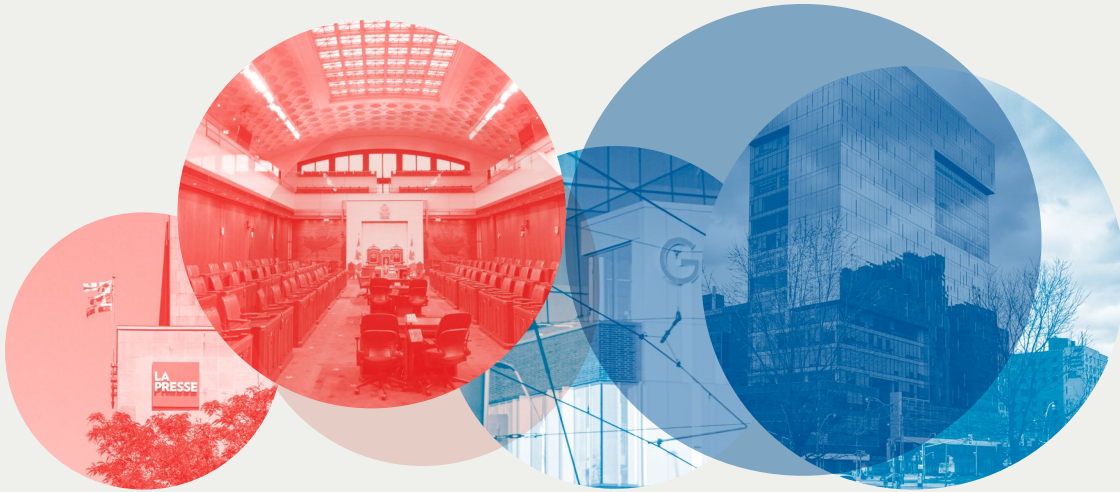
Yet it was right around the time of the Pollara poll that the platforms **were beginning** to make their feelings known. On May 16, 2022, Google released a statement titled “**Our Concerns with Bill C-18, the Online News Act**.” In it, they claimed that the bill would “break” Google Search through its imposition of a “link tax”—a concept that would come to be repeated by the bill’s opponents throughout the process. The platform also warned that the bill could benefit “spammers” and “peddlers of misinformation,” in part due to its undue preference provisions. Finally, the company argued that the law would hand over too much power to the CRTC, writing that it would give the Commission “virtually unlimited authority to demand information from both platforms and news business.”

Overall, between April 5, 2022, when the bill was introduced, and June 22, 2023, when it received royal assent, Google **met with** public officials 137 times, Facebook (Canada) 20 times, and News Media Canada 118 times. (Between June 23 and December 19, 2023, when the act came into force, Google met with officials another 48 times, News Media Canada 44 times, and Facebook just 3 times.) According to Paul Deegan of News Media Canada, considering Meta’s “seasoned lobbying team” in Ottawa, Meta seemingly made a clear choice not to engage.

GOOGLE’S BEHIND THE SCENES LOBBYING EFFORTS

As *The Logic* **reported** in June 2022, Google had begun working behind the scenes to sway politicians, academics, and small publishers. On May 12, Google hosted a dinner at the McGill Faculty Club, which, according to the outlet’s reporting, “**played host** to Google’s unofficial campaign to derail the government’s plan to compel it to pay for news.” According to one of the attendees, the “off-the-record” dinner to discuss the merits and pitfalls of C-18 quickly devolved into an “attack” on Ron Ahluwalia, director of policy for the Minister of Canadian Heritage. Attendees who spoke to the outlet described the evening as an attempt to cast C-18 as “a government power grab,” which *The Logic* journalist Martin Patriquin **noted** has “long been a reliable Google talking point.” Also familiar, he noted, was Google’s desire to keep the evening’s conversation under Chatham House rules.

The next day, Google **hosted** its invite-only annual news **conference**, Newsgeist, in Montreal for the first time. To Jason Kint, CEO of **Digital Content Next**, when Google announced the location of the 2022 conference, it was immediately clear that it was because of C-18. The conference included an event entitled “WTF is going on with the Digital News Act?” featuring both Canadaland publisher Jesse Brown and Google’s VP of news Richard Gingras, who reportedly heavily criticized C-18. One Canadian journalist we spoke with criticized, however, “attacks” from the bill’s proponents aimed at academics who brought up “legitimate flaws” in the bill.



By June, Google had begun **targeting** politicians: Google Canada's then head of public policy and government relations Colin McKay **sent** a form letter to every MP and senator warning that the bill could subsidize "foreign state-owned news outlets," while the undue preference provisions could negatively impact the search engine's ability to elevate "trusted sources." In May, members of Google's public policy team also **began reaching out** directly to the Senate's Standing Committee on Transport and Communications, anticipating that the bill would eventually make its way there. Leo Housakos, senator and chair of the committee, confirmed via a spokesperson that he had been contacted, as did independent Senator Julie Miville-Dechéne. On June 8, 2022, Google CEO Sundar Pichai reportedly **met directly** with Prime Minister Justin Trudeau in California, though it was not known whether they spoke about C-18. Ryan Adam, VP of government and public relations for the Toronto Star, told us he felt Google's frequent meetings with the Heritage Minister's office, coupled with their threat to tear down news, very likely had an impact on the bill.

Around the same time that Trudeau had met with Pichai, the National Post **reported** that Google had offered to fund a lobbyist for the group of 100 small publishers that had banded together to **raise concerns** about C-18. The publishers declined Google's offer. However, it helped cement the feeling that small and innovative publishers would be harmed at the expense of large publishers. Indeed, despite having **pledged** to create a similar mechanism to compensate media in their 2021 party platform, the Conservative Party of Canada quickly **pivoted to** a "Big Media" narrative as the bill was being discussed in the Heritage Committee in the fall of 2022.

THE NEWS BAN THREATS

According to The Logic's **reporting**, once C-18 was tabled, Google began threatening the platforms' soon-to-be infamous news throttles, sending notes to politicians and ministers stating that they did not want to "operate under a regime that compels [Google] to pay for linking."

Meta followed suit a few months later, releasing a statement titled "**Sharing Our Concerns With**

Canada's Online News Act" in October 2022. The post made four main claims: 1) that Meta helps publishers, generating 1.9 billion clicks per year onto news publishers' sites, 2) that in a system where publishers can charge "for as much content as they want to supply at a price with no clear limits," they would be forced to reconsider sharing news content, 3) that the bill unfairly benefits legacy media and stifles innovation, and 4) that a "broader" list of witnesses is needed before the committee, including other platforms.

The news that Meta was considering blocking content was widely shared by media outlets, and **compelled** Canada's then Heritage Minister Pablo Rodriguez to issue a formal statement in response. At the same time, Google commissioned a survey from Abacus—which MediaPolicy.ca editor Howard Law **argued** was "contentiously framed"—which "suggested a drop in public support" for the bill. Yet, as Law also pointed out, a Nanos survey released the next month **pointed to** continued support.

In February 2023, Google, which had been more closely lobbying and engaging in negotiations with the government, **began** "experimenting" with blocking news, **cutting off** access for five weeks for 4 per cent of Canadians. Some months later, at the beginning of June 2023, as the bill made its way through the final stages of the Senate committee, Meta **announced** it was going through with its threats to end the availability of news in Canada. This was further **confirmed** with an update on June 22, the day the bill received royal assent. It also **cancelled** content-sharing deals that same month with Le Devoir, the Toronto Star, the Globe and Mail, and six Quebec dailies, according to reporting from The Logic. In August 2023, Meta **announced** it had formally begun the process of ending news on its platforms in Canada. Heritage Minister Pascale St-Onge condemned Meta, **stating** that the platform would "rather block their users from accessing good quality and local news instead of paying their fair share to news organizations."

While preliminary findings of Meta's ban on news have been detailed in a recent Media Ecosystem Observatory report "**When journalism is turned off**," the instant ramifications of the ban were perhaps most clearly felt during the wildfires that plagued the Northwest Territories in mid-August of 2023. Evacuees **claimed** Meta's decision to pull out of news impeded the spread of "life-saving information" in Yellowknife. In response, Meta spokesperson David Troya-Alvarez, **stated** that Canadian residents were still able to use the platform to "connect to their communities and access reputable information," in spite of the ban. In a news conference, Prime Minister Trudeau **argued** that the platform was putting profits ahead of safety.

On June 29, Google **threatened** to pull news upon the bill coming into effect, referencing their fears of "uncapped financial liability." However, the company later changed course and said they were willing to negotiate.

Polls released in July 2023 from the Angus Reid Institute revealed, as Howard Law has **pointed out**, that the news bans had indeed impacted public opinion: a plurality agreed that the government should "back down" on C-18. According to our conversation with Howard Law, though the ban was framed by Google as a "business response," the purpose was to try to push down the price they would have to pay, something Google would eventually be successful in doing.

DELVING INTO BIG TECH'S DEMANDS

Beyond the bill's premise and the issue of undefined financial liability, briefs submitted by both platforms during the bill's committee stages shed further light onto the changes the platforms were hoping to obtain—as well as which aspects of the bill they most strongly opposed.

In **Google's brief** to the House Standing Committee on Canadian Heritage in fall 2022, Google shared the following list of “priority amendments”: 1) clarifying language around “undue preference,” 2) limiting the definition of “making news content available” to simply “displaying news content,” 3) limiting the bill to cover only Qualified Canadian Journalism Organization (QCJO) outlets, 4) excluding audio-visual platforms and ad platforms, as well as adding thresholds for what would be considered a “significant bargaining power imbalance,” 5) setting clearer parameters for exemptions, 6) creating a mediation process pre-arbitration, as well as changing the baseball style arbitration process to more closely resemble standard commercial arbitration, and finally, 7) getting the CRTC to create a code of conduct for collective bargaining that news businesses would have to adhere to.

Meta shared a much **shorter brief** with four requests overall, but which called for significant alterations. They included: 1) excluding from the definition of “news content” audio or audiovisual content, content that publishers themselves post, hyperlinks/URLs, and “very short extracts of news content,” and 2) having the test for “significant market imbalance” be determined individually between each news business and platform.

The platforms shared briefs again during the spring 2023 meetings of the Senate Standing Committee on Transportation and Communications. Google's **brief** to the Senate echoed its House briefing. Among the concerns were: 1) that the legislation mandates “payments for links” and therefore stands in opposition to the open web, 2) that the exemption criteria are too vague and broad, 3) that the scope of eligible news business—that had been expanded in committee—was too broad, and 4) that the arbitration provisions are weighted against platforms. Similar to Meta, they suggested that links be excluded for payments, and that payments be based instead on displaying content.

Meta's proposed amendments to the Senate likewise **reflected** their proposals to the House. Like Google, they argued that the law was inconsistent with Canadian copyright law, and should better reflect existing exclusions from copyright. They also took issue with the undue preference provision, and asked that it be removed or substantially altered.

BIG TECH'S CANADA STRATEGY MIRRORED PRIOR EFFORTS

According to The Logic, the efforts Big Tech platforms undertook to either kill the legislation or obtain significant changes **mirrored** efforts Google undertook to counter similar legislative efforts abroad. For instance, the company produced an 18-page strategy to counter Europe's Digital Services Act (DSA) in 2020 to “remove from the...proposal unreasonable constraints to our business model.” Among their strategies to reach their objectives, was outreach to officials within the competition arm

of the European Commission, as well as “academic allies.” The DSA **was passed** in July 2022.

However, in other instances, platforms’ efforts to stymie legislation have indeed proved successful. As previously discussed, in 2014, Spain **adopted** a new copyright law that required Google and other news aggregators to pay publishers for snippets and headlines. This law tried to compel publishers not to let platforms use their content for free. Publishers were prohibited from refusing compensation. In response, Google News **shut down** in Spain, though they stopped short of banning news on Google altogether.

In Australia, though the News Bargaining Code ultimately passed, Meta **successfully** pushed Australia to water down its bill, in particular the sections on mandatory arbitration. As former Nieman Lab director Joshua Benton **explained**, platforms did not intrinsically take issue with paying publishers—they had done so for many years and were more than willing to do so to stave off legislation—they have an issue with giving up power.

Jason Kint saw many similarities between Google’s strategy in Canada and Australia: in both cases, Google used the term “link tax,” fomented fear over the bill threatening freedom of the press and “breaking the internet,” and, of course, threatened to ban news.

One major difference, however, was that in the Australia case, platforms likely viewed the bill as a “one-off,” according to an official at Canadian Heritage. Canada’s bill, however, came at a time when other countries were considering similar legislation, including the U.S., and platforms were always “transparent about the fact that any response to Canada would be viewed globally.” According to another senior government official, it was always clear that “it was never just about Canada.” This fact, the official explained, underscored the importance of pursuing such legislation collaboratively, with “other like-minded democracies.” The Toronto Star’s Ryan Adam agreed, adding that the platforms’ behaviour was likely meant to “spook the U.S. from implementing similar legislation.”

Emma McDonald, Minderoo’s former director of frontier technology as well as former senior policy adviser for Australia’s Minister for Communications, saw differences in Google’s playbook in Canada. She felt Google had been more conciliatory in Australia, where they appeared to work with the government, and more aggressive in Canada—again, perhaps due to Canada’s proximity to the U.S. These differences may also have been magnified by the fact that, according to McDonald, Australia’s opposition party also supported the bill, meaning that the platforms received scrutiny from all parties.

According to an official at Canadian Heritage, Meta told the government that if Canada’s bill had more closely resembled Australia’s, they may have not pulled news in Canada. However, Meta’s **announcement** on March 1, 2024, that they would no longer enter into deals with news organizations in Australia, while noting that the number of people who visited Facebook News over the last year has dropped by 80 per cent, may have proven that claim false.

NEWS MEDIA CANADA’S LOBBYING EFFORTS

It was not just platforms who lobbied the government for changes to C-18—publishers and news media organizations like News Media Canada did **as well**, as noted above. Paul Deegan, CEO and president of News Media Canada, described the association’s “non-negotiables” throughout the discussions as: collective negotiation, mandatory bargaining, and establishing an enforcement mechanism.

Meanwhile, some journalists reporting on the issue may have had “split loyalties” and concerns about their career if they opposed it—particularly if they worked for an outlet that supported it. Gabby Miller, former senior fellow at the Columbia’s Tow Center for Digital Journalism as well as former staff writer at **Tech Policy Press**, criticized comparisons between Big News and Big Tech: in her view, the power asymmetry is much too disparate to draw a fair comparison between the two.

META’S LONG-TERM PLANS FOR NEWS

In addition to the code’s stronger regulatory framework in Canada and Canada’s proximity to the U.S., another issue at hand may have been the apparent shift in Meta’s long-term plans for news. As mentioned in Part 1, Meta has taken several steps to move away from news, with Instagram head Adam Mosseri going so far as to **publicly acknowledge** this step in 2023.

Gabby Miller argued, however, that Meta has been downplaying the relevance of politics and news in recent years. This, she felt, has come in response to political scandals related to accusations that the platform had **monetized political** violence, and had allowed dangerous **misinformation** to spread—especially since the 2016 U.S. election and the Cambridge Analytica scandal. Miller does not buy into the company’s valuation of news content—i.e. Facebook’s oft-repeated argument that only 3 per cent of content on the platform is news—because to her, it is impossible to “quantify the value of reliable information.”

According to Miller, Meta leaving Canadian news has “given fuel to the fire” for critics who believe the government should have been “nicer” to the platform. In other words, Meta’s news ban gave a convenient scapegoat to critics—allowing them to blame the legislation instead of the company—despite the fact that the company had already been moving away from news.

Jason Kint, CEO of Digital Content Next, likewise suggested that Meta would have an interest in sharing news over the long run as news brings “credibility” to platforms as well as “quality” long term. This is equally important for advertisers, who care about their content being displayed in “credible” online environments.

In 2022, Meta’s move away from politics and news became seemingly official. Ian Scott, former chairperson and CEO of the CRTC, noted that news had become a continuously diminishing part of their business since Meta had begun pivoting to compete with video platforms like TikTok. Finally, the official at Canadian Heritage we spoke with felt that Meta was likely concerned with the broader idea of paying for content—something the company would consider untenable since that is, after all, how they make their money.

A new twist came in January 2025, however. With the Donald Trump inauguration looming, Meta CEO Mark Zuckerberg **announced** a series of changes to the platform, clearly intended to appeal to the incoming administration and its supporters. This included getting rid of fact checkers and reducing restrictions on content related to protected groups. Notably, as part of this announcement, Zuckerberg also **acknowledged** people’s desire to view “political content” (which often involves news) and share it on Facebook. In a reversal of its previous stance, Meta platforms, he said, would be recommending political content to more of its users.

HOUSE OF COMMONS REPORTS ON TECH GIANTS' INTIMIDATION TACTICS

In November 2024, the House of Commons committee on Canadian Heritage **presented** their report titled “Tech Giants’ Intimidation and Subversion Tactics to Evade Regulation in Canada and Globally.” As the report’s press release **notes**, the study was prompted by the platforms’ response to C-18. The study was conducted between April 20, 2023 and Dec. 14, 2023 and heard from 20 expert witnesses from across academia, civil society, and the media sector, as well as from the platforms. Hedy Fry, chair of the committee, while introducing the report, **argued** that, “much like Big Tobacco in the 1990s, Big Tech is using its influence to resist accountability and obstruct regulation, putting profits over people and evading the scrutiny we need to protect our citizens and our democratic institutions.”

Based on witness testimony, the committee made five recommendations in the report: 1) online platforms should implement mechanisms to detect “undesirable or questionable content that may be the product of disinformation or foreign interference,” 2) the government should develop an awareness campaign on the dangers of disinformation, 3) platforms should be required to collaborate with independent researchers by providing needed data, 4) online providers should ensure their moderation systems do not result in discrimination, and 5) the government should amend the Income Tax Act on deductibility of advertisements purchased on foreign websites.

The report **explains** that the committee adopted a motion to study the activities of the tech platforms in March 2023 in response to their activities in Canada, which appeared to be attempts to intimidate Parliament. From Meta, the motion summoned Mark Zuckerberg as well as Nick Clegg, president of global affairs, and Chris Saniga, head of Canada for Meta. The motion also ordered Meta to share all internal and external communications with respect to their activities around Canadian regulation starting in April 2022, by March 2, 2024. Based on a previous motion adopted in February 2023 to study Google following their news blocking tests, the report notes that Kent Walker, president of global affairs and chief legal officer at Alphabet, and Richard Gingras, VP of News at Google, had agreed to appear before the committee. Meetings were held on May 8, Nov. 28, and Dec. 5, 7, and 14. A meeting was held with the two Google executives on April 20.

When asked whether the company had engaged in “astroturfing”—i.e. enlisting third parties to promote their interests through “grassroots efforts”—Kent Walker noted that the company had made “efforts to allow a variety of stakeholders...to have a seat at the table.” He also added that Google “does not make payments for parties to astroturf,” and does not pay YouTube creators. Meta’s global policy campaign strategies director Kevin Chan also denied paying third-party organizations to engage in astroturfing during his May 8 committee testimony. Finally, Walker **testified** that Google’s news block tests had found that less than 2 per cent of queries were related to news.

The report also showed overall concern among civil society and academics about tactics the platforms use in response to regulation both in Canada and abroad. These tactics include astroturfing and lobbying, as well as funding friendly research (and suppressing less friendly research by intimidating relevant lawmakers, among other things). As Georg Riekes, associate director of the European Policy Centre, explained, “it’s about lobbying...it’s about creating alliances and setting up front groups. It’s



about influencing or buying think tanks and academics...it's about political support and funding. It's using philanthropy. It's about litigation and intimidation, and about the use of international pressure." He described the platforms' lobbying as being "of a brazenness and scale...totally out of line with applicable codes of conduct...in society."

The March 2023 motion also set out that a minimum of two meetings be devoted to hearing from experts, government officials, and civil society from other jurisdictions, including the EU, that have witnessed similar tactics from platforms. Among these witnesses, Bram Vranken, a researcher and campaigner at the Corporate Europe Observatory, argued that tech giants use their massive lobbying funds to "build very extensive networks of lobby groups and lobby consultancies, and provide funding to think tanks and universities" to create a "gigantic lobbying echo chamber that constantly plays a variation of the same tune: regulation will damage the economy, damage innovation, and be bad for small and medium enterprises." He referenced Google's Digital Services Act (DSA) "60-day plan" document from 2020. This document indicated that Google's approach had indeed been to lobby third parties like think tanks and academics to "echo Google's messages" and "reframe the political narrative around costs to the economy and consumers."

Riekeles provided two prescient examples from the European fights over the DSA and Digital Markets Act. In one case, the European Independent Media Publishers, which claimed to represent 1,000 media outlets across Europe, was actually set up entirely by Google. Riekeles discovered this when he was approached to engage in "hidden" lobbying for them. Their website has now been updated to say that they partner with, and are sponsored by, Google. Courtney Radsch, director of the Center for Journalism and Liberty at the Open Markets Institute, who also appeared before the committee for the purposes of the study, added that "big tech companies spend more money in Washington, Brussels and other world capitals than virtually any other sector" through direct lobbying and funding of industry groups.

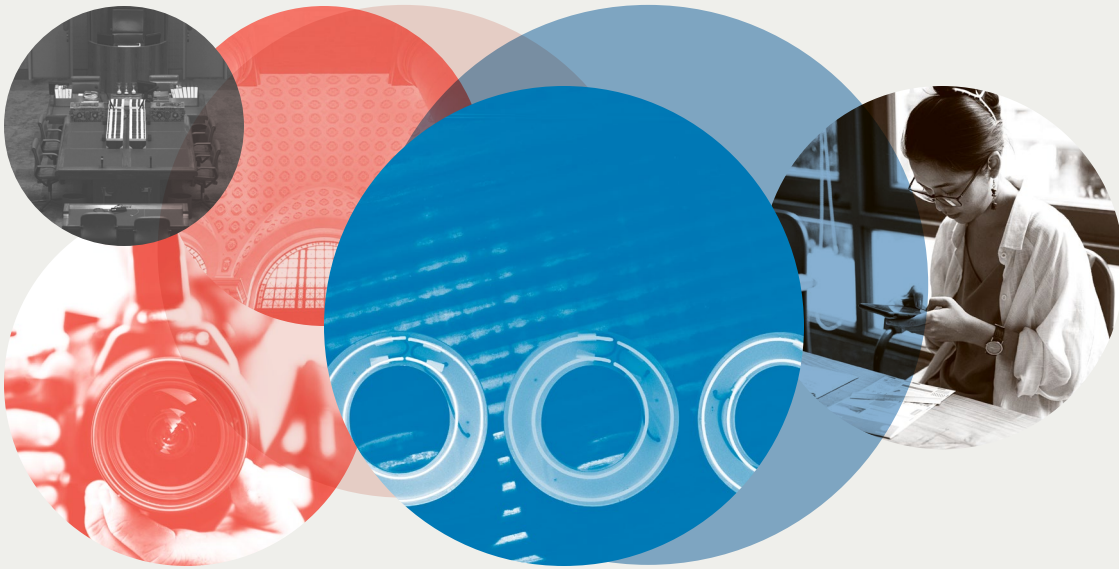
On the subject of academic researchers, some witnesses spoke of their research being directly shut down by platforms. Notably, Joan Donovan, an assistant professor of journalism and emerging media studies at Boston University who is known for her work on online disinformation and misinformation, appeared as a witness before the committee. She spoke about her high-profile case in which she claimed

that her Technology and Social Change Project had been “killed” by the Harvard Kennedy School following Meta’s USD \$500 million donation to the Kennedy School.

Meanwhile, witnesses also claimed that platforms frequently funded friendly research. For example, in December 2023, the non-profit Tech Transparency Project shared that both Meta and Mark Zuckerberg himself had **donated** hundreds of millions of dollars to more than 100 universities and colleges in the U.S. According to Joan Donovan, Facebook’s contracts with researchers often **include** “kill clauses or veto clauses” that allow Facebook to read research prior to publication. She also added that Facebook executives have “taken up positions on boards at universities across the U.S. and Canada.” Michael Geist, also a witness, **pointed out** that the Tech Transparency Project had not uncovered any Canadian examples of Google-supported research.

Other witnesses pointed to the tech giants’ use of their own platforms to spread their agendas, or to instill fear in particular groups. For example, Courtney Radsch **pointed out** that Google has **used** its search page to advocate against laws, including against Brazil’s Bill 2630/2020, or “Fake News Bill.” Radsch further noted that the Brazilian judiciary has **accused** Google of undue interference. In 2023, for example, Google tried to convince a group of evangelical preachers they would no longer be able to quote the Bible online if the government’s proposed “Fake News Bill”—which aimed to stem the flow of disinformation and require more transparency from large platforms—**was passed** in Brazil. Georg Riekes of the European Policy Centre recalled how Google **warned** YouTube creators that if the EU passed ancillary copyright laws, they may no longer have access to their livelihoods, because they would no longer be able to upload content.

The rest of the government’s report goes on to **highlight** other issues with regard to Bill C-18, and with platform governance more broadly, including online harms, conspiracy theories, and algorithms.



PART 4

The Aftermath

A. Canada vs. Australia

RATIONALE FOR REGULATORS

From the outset, the Department of Canadian Heritage aimed to ensure that C-18 embodied the values of transparency, accountability, and diversity. Yet, the operationalization of these values in the language of the legislation did not come without heavy debate across government agencies and party lines. According to Ian Scott, then chairperson of the CRTC, it was unclear in the beginning whether the CRTC or Canada's Competition Bureau should oversee the implementation of C-18.

As noted previously, many witnesses during the House of Commons committee meetings voiced concern over the CRTC's potential role in the bill's implementation. Some critics raised concerns that the CRTC did not have the legs or experience to facilitate arbitration processes. When the bill was brought forward in committee, Conservative MP Rachael Thomas **took** issue with the potential of C-18 giving "exceptional new powers" to the CRTC like determining who qualifies as a digital news intermediary. Bloc MP Martin Champoux **asked** the CRTC's Ian Scott whether there was any scenario in which the CRTC could become "an omniscient dictator" within the arbitration process. Scott replied, "I really hope the answer is no," and **shared** his belief that the CRTC would "facilitate a framework for negotiations" rather than directly conduct arbitration processes. Despite the general unease over the potential powers granted to the CRTC, even critics appeared hard-pressed to suggest an appropriate alternative government body to oversee the implementation of the bill.

As opposed to the Australian Competition Authority (ACCC), which initially rang the alarm bells over platforms' negative effect on the country's news media ecosystem, movement to legislate revenue sharing between platforms and news in Canada was led by the Department of Canadian Heritage. In 2019, then Australian Competition Commissioner Rod Sims released the **Digital Platforms Inquiry** revealing that Google and Meta's market power over the supply of advertising services was restricting the ability of news creators to monetize their own content. The ACCC was subsequently **tasked** with architecting what would ultimately become its News Media Bargaining Code (NMBC). While the code, which passed in 2021, is a **modification** of the Australian Competition and Consumer Act, it **designated** the Australian Communications and Media Authority (ACMA) with the responsibility of overseeing the registration of eligible news businesses and facilitating arbitration processes. As Australia's communications and media regulator, ACMA's core responsibilities mirror that of the CRTC's.

The ACMA is **required** to assess the eligibility of news businesses, appoint mediators to assist bargaining parties, publish details of each registration on its website, and submit a report to the Minister for Finance and the Minister for Communications.

A senior official in the Canadian government described the Australian regime as “split” at the regulatory level: the ACCC applies the code and the ACMA determines if news media businesses are eligible. In the Canadian context, both responsibilities reside within the CRTC. Yet the role of the ACMA, with respect to applying the NMBC, still mirrors the assigned responsibilities of the CRTC in many ways.

In the spring of 2024, the CRTC **announced** its plans to publish decisions, hold a public consultation to establish a bargaining code of conduct, and hire independent arbitrators by the fall. Further, the CRTC also announced its plans to hire an independent auditor to aggregate the total value of commercial agreements into an annual report.

‘EXEMPTION’ VERSUS ‘NON-DESIGNATION’

In committee, former chairperson of the CRTC Konrad von Finckenstein **said** he did not believe that the CRTC had the capacity to fill the regulatory role outlined in the bill, and recommended instead that the Minister of Canadian Heritage define which platforms are considered “digital news intermediaries” (DNI)—instead of the CRTC. This statement underscored a substantial and consequential difference between the accountability measures enshrined in Australia versus Canada's legislation: its exemption criteria.

In Australia's NMBC, the Minister for Finance acts as the **gatekeeper** when designating a platform under the law. Platforms that contribute “significantly” toward the sustainability of the Australian news landscape can avoid “designation” and thus be exempt from the code altogether. Emma McDonald, former senior policy adviser for Australia's Minister for Communications and Minderoo's former director of frontier technology, explained in our interview with her that it was possible that the threat of designation helped drive funding from Google and Meta toward deals with news publishers.

In the **Canadian context**, the CRTC can “exempt” a DNI from parts of the law if a platform applies for an exemption and meets the **criteria** set out in the act and by Governor-in-Council regulations.

The public would also be consulted on exemption requests. According to an official at Canadian Heritage, the Canadian government intentionally chose to “invert” Australia’s non-designation model: section 11 of C-18 defaults DNIs into the legislation unless they meet the criteria for exemption, whereas in Australia, DNIs must be designated by the Minister for Finance, or are exempt from the code. Another senior government official we spoke with noted that the Canadian government made an effort to place accountability safeguards in the exemption criteria, including stipulating how news organizations use the funds, and empowering the CRTC with a line of sight over agreements. Even if exempted, platforms are still subject to information-sharing provisions, which allows the CRTC to monitor ongoing compliance with the exemption criteria and to reassess exemption decisions if needed.

According to Howard Law, editor of MediaPolicy.ca, even if Canada had implemented a non-designation model like Australia, it might not have prevented Meta from walking away from C-18. Indeed, vulnerabilities within the Australian approach were **revealed** when Meta avoided designation despite **refusing** to negotiate with two prominent news outlets—The Conversation and SBS Australia.

In Ian Scott’s words, the Australian model mostly bought time: if Meta stopped complying, Australia would have to bring it under its regulatory arbitration regime, which would be an inherently political decision. At the time of the interview, Scott anticipated that Meta would not renew its deals with publishers in Australia, a prediction that rang true in March 2024, when Meta **announced** it would not enter into new deals with publishers, and subsequently shut down its news tab in Australia.

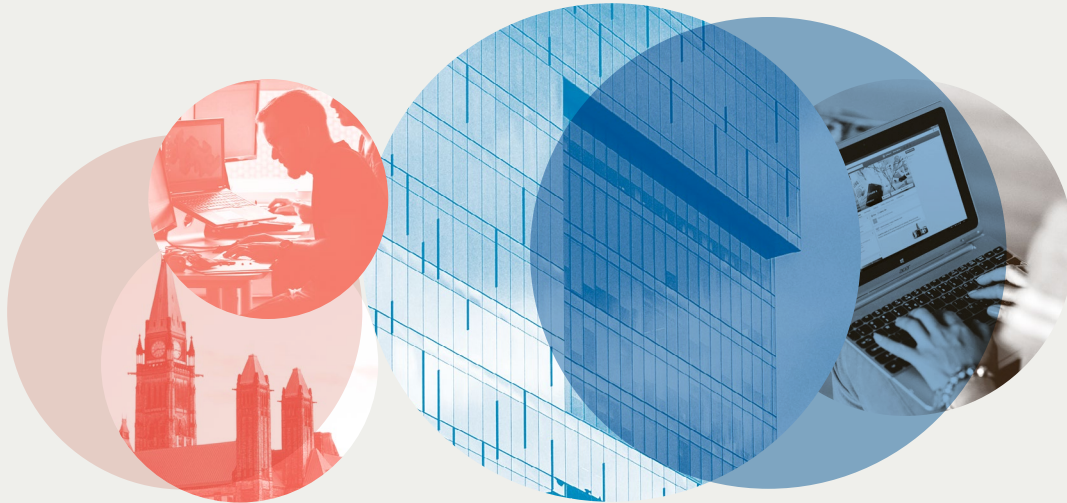
‘ALGORITHMIC TRANSPARENCY’ VERSUS ‘UNDUE PREFERENCE’

As previously noted, another key point of contention in the development of C-18 was its “undue preference” provision. **Section 51** of the bill allows eligible news businesses to file a complaint to the CRTC if a DNI acts in a way that gives “undue or unreasonable preference” to an individual or entity (including itself) or if it subjects a news business to an “undue disadvantage.”

In his appearance **before** the House, former chairperson of the CRTC Konrad von Finckenstein argued that the undue preference provision did not consider the algorithmic nature of DNIs’ decision-making, and thus how challenging it could be for DNIs to govern potential instances of undue preference. As mentioned in Part 3, both Meta and Google expressed concerns over the undue preference provision in **committee**, arguing that it would undermine each platform’s efforts to prioritize trusted content over lower-quality content. While there was much debate over undue preference—with some MPs and witnesses calling for the removal of the clause altogether—it remained in the final bill, with **some** amendments.

Section 52S of Australia’s NMBC can be seen as a sort of equivalent to Canada’s “undue preference” provision. The NMBC requires designated platforms to notify registered news businesses if there is an algorithmic change that significantly impacts referral traffic. Emma McDonald recalled that when algorithmic transparency was debated in the Australian case, Google and Meta argued that it would be asking platforms to share trade secrets.

According to a senior government official, Canada’s undue preference clause was designed to



ensure that news businesses would not be “unjustly targeted” during the bargaining process, especially considering the power imbalance between platforms and news outlets. Notably, DNIs are subject to the undue preference clause **even after** deals have been reached. In the **Australian context**, platforms that are not designated under the code are exempt from the scope of the entire code—including the algorithmic transparency provisions. As Meta and Google **met** the initial non-designation criteria at the time that the NMBC came into effect, the algorithmic transparency provision has not yet been applied.

Was algorithmic transparency, akin to Australia’s provision, ever on Canada’s radar? The answer is complicated. In 2021, Canadian Heritage’s initial round of **stakeholder** consultations made explicit reference to the Australian NMBC (including its reporting requirements on algorithmic changes), asking respondents how they thought the Australian approach would impact the availability of news content online. While highlights from the **stakeholder submissions** emphasized the desire to have legislative tools to enforce a more equitable negotiating environment, algorithmic transparency was largely missing from the discussion.

According to a senior government official, Canada studied Australia’s algorithmic transparency provision closely and made an intentional decision to avoid language that could appear to regulate a DNI’s algorithm for news content. They emphasized that the intention of C-18 was to establish a bargaining regime, not to promote the discoverability of content on platforms.

Furthermore, based on our discussions with an official at Canadian Heritage, every decision that went into the initial drafting of the bill considered trade irritation with the U.S., considerations that may have featured less prominently in Australia. Internal analysis by the Canadian government revealed that an algorithmic transparency clause could run a trade risk. This was affirmed, as previously discussed, in November of 2022, when United States Trade Representative Katherine Tai raised **concerns** to Canadian Trade Minister Mary Ng that C-18 and C-11 “**discriminated**” against U.S. companies. While C-18 was designed to capture any platform that met the criteria for a DNI regardless of its geographic location, only U.S.-based companies Google and Meta had met those criteria. The complaint-based approach of undue preference thus appeared to sidestep concerns over challenging the core business model of the platforms.

FULFILLING TRANSPARENCY, DIVERSITY, ACCOUNTABILITY

C-18's exemption criteria and the use of the CRTC to oversee its implementation reveals a distinct regulatory component when compared to Australia's much simpler bargaining code. But how well did Canada's bill deliver on its initial ambitions of improving on Australia's code to ensure transparency, accountability, and diversity?

Transparency

Based on our interview with a senior government official, C-18 was principally designed to be more transparent than its Australian counterpart. In particular, because Australia's finance minister has final control over designation decisions, the decisions introduced a risk of politicization.

In Canada, the section 11 **exemption criteria** serve as the bill's primary transparency mechanism, outlining where funds must go and empowering the CRTC to conduct compliance monitoring. However, the senior government official we spoke with noted that the transparency provisions extend beyond section 11 and are woven throughout the bill. For instance, section 6, the application section of the bill, aims to mitigate the politicization of designation decisions in Canada by establishing a clearly specified threshold. This was designed with the goal of keeping designation decisions as transparent and open as possible. Transparency additionally surfaces in the CRTC's reporting requirements in clause 86 with its obligation to hire an independent auditor to conduct annual impact assessments of the bill.

Charis Papaevangelou, a postdoctoral researcher at the Institute for Information Law at the University of Amsterdam and former research fellow at the Centre for Media, Technology and Democracy, echoed that C-18 was more successful in delivering on its initial objective of transparency than its Australian counterpart. However, when measured against its own objectives, Papaevangelou thought it fell short. The annual reports provided by an independent auditor, according to Papaevangelou, would allow the federal government to publicize "a number that ostensibly celebrates the success of the bill," but will not provide enough information to allow for detailed research into relationships between platforms and the news industry. To Papaevangelou, transparency issues extend beyond what can be addressed by annual reports, as the private nature of the contracts between platforms and publishers will allow for many of the information asymmetries between platforms, news outlets, and researchers to persist. April Lindgren, principal investigator for the Local News Research Project at Toronto Metropolitan University's School of Journalism, echoed similar concerns over the fact that the **terms of agreements** between DNIs and news businesses would not be publicly available.

There were reasons, however, for Australia's acceptance of backroom negotiations, an official at Canadian Heritage we spoke with said: the lack of transparency might have helped garner a higher dollar amount in terms of compensation. However, in consideration of the eroding trust in the media in Canada and abroad, the official underscored that the intention was to make the arbitration process as transparent as possible while still securing deals.

This means that, unlike the Australian model, final allocations are not hidden from public regulators behind NDAs. Given the final CAD \$100 million **agreement** between the Canadian government and Google—which was reached in November 2023—there is an extra layer of transparency that was not originally part of the substance of the bill. Based on our interview with Randy Kitt, director of media at Unifor, the deal was not nearly the amount he had hoped for, but he was not entirely surprised considering Google's threat to walk away from news in Canada. Former CEO of the Public Policy Forum Ed Greenspon, in our conversation with him, noted that C-18 compensated in areas where the Australian model was lacking; there is much more transparency built into the Google agreement in Canada than there ever was in Australia under its agreements.

Accountability

Throughout the committee hearings, some witnesses **expressed** concerns over funds being used for purposes other than news production, such as buying back stocks or paying off debt. For instance, in his committee **appearance**, Randy Kitt **urged** that funds received through agreements should be explicitly earmarked for news creation. Ed Greenspon, in our interview with him, pointed out that a key flaw in the exemption criteria was its failure to insist that all funds be used for journalism. While he thought it may be advantageous to leverage a portion of the funds for news innovation, Greenspon suggested that, in general, the guidelines were relatively lax.

Our discussions with an official at Canadian Heritage identified several key obstacles during the design phase of the bill, including the federal government's lack of jurisdictional authority over contracts, shared jurisdictional authority over news, and trade considerations. For this reason, the exemption criteria in clause 11 became the primary lever through which the federal government could embed accountability into the legislation. For DNIs to be exempt from the arbitration process, agreements must include the following criteria related to how outlets employ funds: (a) be made with news outlets that produce content primarily for the Canadian news marketplace; and (b) ensure that an appropriate portion of the compensation is used to produce local, regional, and national news content.

An additional safeguard was introduced in the December 2023 **exemption regulations**, which determined that a collective agreement exempting a DNI from the regulation would require equitable distribution of funds based on the number of full-time equivalent employees of a news business.

Diversity

According to an official at Canadian Heritage we spoke with, the law does not place any obligations on platforms to reach agreements with larger news organizations, but does so for smaller news organizations (in the exemption criteria). As discussed in Part 3, a number of notable **amendments** in **support** of Indigenous, BIPOC-owned, and official language minority community news outlets, as well as protections for small, local news organizations were added to further boost news diversity. Further, an amendment brought forth in the House required the roster of arbitrators to include Indigenous peoples. Also relevant are C-18's collective bargaining **provisions**, which mitigated many

concerns over platforms excluding smaller, more diverse news outlets from the bargaining process.

Finally, one of the most consequential **amendments** for small news publishers was a change to clause 27, the eligibility clause: whereas before news outlets had to employ a minimum of two full-time journalists to be eligible, the amendment allowed one of those two to be a journalist who was at arm's length. In our interview with Maria Saras-Voutsinas, executive director of National Ethnic Press and Media Council of Canada, she stated that the clause 27 amendment would make a substantial difference for “mom and pop” news organizations as well as innovative start-ups, who often rely heavily on freelancers rather than full-time journalists.

Despite these attempts, many stakeholders from smaller media organizations felt that the deal failed to do enough to help smaller and independent news organizations. To April Lindgren, an unexpected outcome of C-18 was the “chilling effect” it might have had on the launch of new news start-ups in Canada. Based on data from her December 2024 **Local News Map**, while 38 news outlets launched in 2020, the number was down to 15 in 2022, and 10 in 2024. Further, 37 local outlets left the market in 2023, either due to closure or acquisition. The Rover's Christopher Curtis, in our interview, felt that the government showed a lack of concern for the potential impacts of C-18 on small media organizations. When he reached out to an aid of the Heritage Minister to express his concern, he was told to look into applying for grants. In his view, it was clear from the beginning that large news organizations like Postmedia, which he argued would likely be bailed out anyways by the government if ever they failed, were calling the shots.

The final regulations of the bill, discussed in greater detail in the next section, provide a glimpse into the government's proposed funding formula and whether it helped fulfill the original ambitions of the bill.

B. The December 2023 Regulations

SEPTEMBER DRAFT REGULATIONS

C-18's final December 2023 regulations were not the first the government proposed. In September 2023, a few months after the bill was **passed**, Minister of Canadian Heritage Pascale St-Onge published a set of **regulations** that was swiftly denounced by the platforms and other critics. These draft regulations proposed that platforms provide compensation based on a formula that took a platform's global search revenue, multiplied it by Canada's share of global GDP (roughly 2 per cent), and then multiplied that by a contribution rate of 4 per cent. This value **amounted** to the equivalent of a CAD \$172 million annual payment from Google and a \$62 million payment from Meta. These estimations were notably lower than the Parliamentary Budget Office's compensation **estimate** of \$329 million per year (announced a year prior).

Also contained in the draft regulations was a “fair compensation” stipulation that required each deal to fall within 20 per cent of each other. The objective, as stated in the **regulations**, was to “promote equity across news agreements while preserving a degree of flexibility” and ensure that compensation

could not vary drastically across news businesses. At the time, Minister St-Onge expressed **optimism** that the draft regulations would bring Meta back to the negotiating table. However, both platforms rejected the Minister's offer.

As mentioned in Part 3B, Meta's response to the passing of C-18 was to remove links to news sites for all Canadian users. This process began well before the release of the September draft regulations and continued well after, signaling Meta's refusal to engage in the regulatory process altogether.

Google, on the other hand, issued a public **response** in which it listed its primary concerns as follows:

1. **Uncapped Liability:** In response to the proposed formula in section 9 of the regulations—which required the company to contribute a minimum of 4 per cent of its total estimated Canadian revenue to be exempt from bargaining—Google argued that there was a need for a “cap” on its financial liability to Canadian news businesses.
2. **Hold-Outs:** Section 10 and 12 of the regulations required platforms to reach an agreement with every news collective representing ten or more independent news businesses operating local news outlets, five or more Indigenous outlets, and ten or more official language minority community outlets. Google expressed concerns over the risk of potential “hold-outs,” whereby collectives and major publishers obstruct the platform from exemption by holding out on reaching agreements.
3. **Scope of News Businesses:** Google argued that the scope of news businesses eligible for compensation in the draft regulations were not limited to online outlets, creating potential cleavages for print publications to receive compensation from the online giant.

With these key concerns in mind, the Dec. 19 deadline for implementation, 180 days following the bill's royal assent, was fast approaching.

CANADA'S 'GAME OF CHICKEN' WITH GOOGLE

As Google continued to express its **concerns** following the release of the September draft regulations, Paul Deegan, CEO of News Media Canada, grew worried that Google could “permanently” block news in Canada, as it had done previously in **Spain**.¹⁰ Uncapped liability appeared to be Google's primary point of contention. Michael Geist, Canada research chair in Internet and E-commerce Law at the University of Ottawa, **agreed** that the proposed funding formula was problematic because it only set a minimum standard, which, if replicated globally, could potentially result in billions in liability for Google.

By contrast, in a Policy Options opinion **piece**, Howard Law argued that Google's critique of the funding formula mischaracterized the objective of the exemption: that the “five-year exemption

10 This 2014 decision was **reversed** in 2021 when the law was overturned as Spain adopted the EU Copyright Directive.

from regulation is available only if Google acknowledges that the net outcome of the value exchange between Google and Canadian outlets...favours the news outlets overall.” To Law, a fixed compensation amount undermines the logic of the legislation and the recognition of a proportional relationship between domestic news and Google’s domestic revenue. In October 2023, Paul Deegan of News Media Canada expressed his support for Google’s call for capped liability in a *Globe and Mail* **op-ed**, asserting that there should be a “firm ceiling, rather than a floor” on compensation. In our interview with Deegan, he stated that including limited liability in the regulations was a reasonable compromise to keep Canadian news on Google. Once Deegan’s article came out, it became clear that a capped liability was likely.

The looming fear of Google leaving news in Canada was not a novel threat. Back in February 2023, Google had **begun** temporarily blocking access to news content for less than 4 per cent of its Canadian users to “test-run” a potential response to the bill, if it was enacted. At the time, a spokesperson for then Heritage Minister Pablo Rodriguez **accused** Google of copying Meta’s tactics with respect to its threats to block news.

According to Maria Saras-Voutsinas, executive director of the National Ethnic Press, Meta’s decision to pull out of news was “devastating” for minority language publishers. Prior to the ban, many smaller ethnic media news outlets had upwards of 100,000 page followers on Facebook and used the platform to engage high levels of circulation and publicity online despite limited funding. When we spoke to Saras-Voutsinas in the spring of 2024, she mentioned that the outlets’ following had dissipated after the ban took effect. Considering the impact of Meta’s news ban, Google pulling news may have posed an existential threat to many minority language community publishers.

Christopher Curtis, co-founder of investigative journalism outlet The Rover, noted in an August 2024 interview that the aftermath of C-18 had “been hell.” Although he recognized it was hard to distinguish the effects of social media downgrading and deprioritizing news and the full impact of the bill, he felt certain that C-18 hurt outlets like his. Curtis said that the ban turned The Rover’s financial crisis into a “full-blown death spiral,” which he eventually quelled while racking up debt. In our interview with Ryan Adam, VP of government and public relations at the Toronto Star, he stated that “Meta leaving news in Canada is a paper cut [for the Toronto Star], Google leaving news would be a death blow.” He added that, for the Star, the loss of Google would have resulted in a roughly 40 per cent loss in audience.

According to Ryan Adam, Google’s head of global partnerships Don Harrison, who served as the primary negotiator for the deal, spoke with the Prime Minister’s Office over the need for Google to have financial certainty, ultimately proposing the CAD \$100 million cap. Adam additionally noted that, over the course of negotiations, the government attempted to raise the cap, after which Google shared a plan to take down news, which was convincing enough that the government chose to accept the proposed CAD \$100 million. On the last day of November, Minister St-Onge publicly **announced** the \$100 million deal with Google, indexed for inflation, \$72 million **less than projected**. Minister St-Onge additionally **noted** that the federal government would be able to reopen the final regulations if better deals were struck with Google in other countries.

FINAL REGULATIONS

The revised **regulations**, based on the negotiations with Google, were published on Dec. 19, 2023, affirming the core changes required to keep Google at the table. In addition to the cap on financial liability, the government added an **amendment** to section 4 **allowing** platforms to make a series of deals with different publisher groups, or to negotiate with a single collective of eligible news businesses. The latter option required “equitable distribution” among news businesses that were part of a group. The equitable distribution of funds took into consideration the number of full-time equivalent employees who were employed by each news business in the collective and that produced online news content. The opportunity to negotiate with a single collective quelled Google’s original fears of “hold-outs.”

As the government would thus be working with a much smaller compensation amount than originally anticipated, it scrapped the “20 per cent rule” from the September regulations, which Google had strongly rejected. Additionally, in response to much of the political pushback over the inclusion of the CBC and private broadcasters in the regulation, compensation amounts for these parties were limited to CAD \$7 million and \$30 million respectively. This left \$63 million to be divided among online and print publishers.

In June 2024, Google **named** the Canadian Journalism Collective (CJC) as the organization that would distribute the \$100 million. The CJC is a federally incorporated non-profit formed by independent publishers and broadcasters, created for the express purpose of distributing the funds to outlets. According to an **official** with the Department of Canadian Heritage, small print and digital publishers could expect to receive around \$17,000 per journalist.

NEWS INDUSTRY’S RESPONSE TO THE GOOGLE DEAL

The Google deal garnered mixed responses across the Canadian news industry. In a *Globe and Mail* **op-ed**, the deal was described by one journalist as a “win-win,” because it signalled to jurisdictions considering similar legislation—including the U.S. and the EU—that Google was willing to support journalists, but on its own terms. A *National Post* **editorial** referred to the Google deal as a “welcome development” for owners of news outlets that would ultimately be good for readers and the public. However, in our interviews, Jason Klint, CEO of Digital Context Next, and Howard Law, editor of MediaPolicy.ca, each expressed doubt that Google would have ever walked away from hosting news in Canada.

According to Paul Deegan of News Media Canada, smaller local outlets got a relatively “better deal” than legacy media publishers, considering that funds would be distributed on a per-journalist basis. When asked her opinion of the final Google deal, Maria Saras-Voutsinas said she had hoped to get more money, but ultimately felt the deal was fair. She shared her disappointment that Meta chose not to participate, especially considering that she had taken part in weekly conversations with Meta representatives—many of whom had even attended National Ethnic Press board meetings.



While for Michael Geist the deal was a better outcome than a Google news ban, it was “hardly an example of good government policy,” considering that Meta had walked away from the legislation entirely. Similarly, for Ryan Adam, the Google deal was not a “game changer” on its own for the Toronto Star; according to Adam, the revenue generated by Google through C-18 came to about the same amount as the revenue foregone because of the Star’s lost Meta deal.

According to Courtney Radsch, director of the Center for Journalism and Liberty at the Open Markets Institute, allocating a specific percentage of funding to the CBC also led to an overall reduction in funding for the independent press. Additionally, she noted that Meta’s early withdrawal paired with the last minute changes to the regulations to appease Google, gave way, in her view, to a general sense of ambivalence toward the legislation by major players in the journalism sector.

Perhaps most notable among expert and news media industry responses to the Google deal was the observation that the final regulations had essentially converted the law from a bargaining model to a fund model. The final regulations, according to Michael Geist, “effectively [gutted] the law” to prevent Google from walking away from news. In a July 2024 [article](#) in the Los Angeles Times, Ryan Adam purported that C-18 was “largely a disappointment” for the Toronto Star and stated that the Canadian government “materially changed the legislation at the last minute and folded to Google.” Unifor’s submission to the public consultation foresaw potential roadblocks in the bargaining code model, and encouraged the federal government to reserve the discretion to impose a news fund should platforms “sabotage” the government’s efforts to regulate them. The submission cited Meta’s week-long strike in Australia prior to the passing of its legislation as evidence of a potential retaliation against a bargaining code.

Anna Marchese, senior project officer at Columbia University’s [Columbia World Projects](#), agreed that the Google deal essentially turned C-18 into a fund, and revealed the difficulties of enforcing a bargaining code against Big Tech. According to Marchese, if Canada has shown the world anything, it is that “you can’t actually tear down the master’s house with the master’s tools.” In other words, tackling market power imbalances using the same negotiation tactics as the major platforms resulted in one of the players threatening to quit the game and the other refusing to play altogether.

C. The CRTC Consultations and the Google Exemption Process

Despite some witnesses' doubts over the CRTC's role with regard to C-18, the Commission officially took up a stewardship role, ensuring that all structures would be in place to guarantee compliance with the regulations. In summer and fall 2024, the CRTC was engaged in a number of public consultations to **determine** whether there was any need to update the CRTC's regulatory plan used in bargaining, or to grant an exemption to Google.

On May 27, the CRTC **released** an information bulletin detailing how to participate in public proceedings under the Online News Act. In the bulletin, the CRTC **explained** that it "does not have procedural rules in place for proceedings under the Act" and that this would be addressed through the upcoming public process.

Two first regulatory public consultations were **initiated** in March and May, 2024, with the latter consultation running from May 23 to June 25, 2024. The latter consultation concerned the administrative issue of covering the costs of the act's implementation. Normally, charges paid through the Broadcasting Fees Regulations **are used** to fund the CRTC on the broadcasting side. A similar mechanism **would apply** to the platforms (i.e. Google) covered by the act, for the cost of its implementation. Google, as well as Kevin Desjardins of the Canadian Association of Broadcasters, made **interventions** on this stipulation in June 2024, the latter seeking assurances that broadcaster fees would not be used to cover the Online News Act. The regulation currently **applies** only to the largest online platforms that distribute news.

More notably, however, a "consultation about the regulatory framework for the Online News Act" was **initiated** on March 13, 2024, and closed on April 12, 2024. The key topics of discussion included: regulations around the details of the bargaining process and final arbitration, defining behaviours that would constitute undue preference, as well as data collection by the CRTC. The purpose of this consultation was to determine how the CRTC would go about crafting the regulatory framework for the bill. The open consultation elicited a number of responses, including from News Media Canada, the Quebec Ministry of Culture and Communications, CBC/Radio-Canada, Rogers, Bell, Magazines Canada, as well as academics like Dwayne Winseck who testified previously before government committees.

In its testimony, Google, represented by Arun Krishnamurti, the company's senior counsel, **reiterated** its belief that the bargaining process is "unworkable" and should resemble "standard commercial arbitration rules." In his view, the final arbitration process would not "effectively function" and is "weighted in favour of news businesses." He also reiterated his view that the bill creates a link tax, stating that "putting a price on free linking to news content is not in the interest of Canadians."

On the controversial topic of undue preference, Paul Deegan and News Media Canada **argued** that undue preference should include anything that would "diminish the value, attractiveness, or discoverability of news content." Meanwhile, Google **criticized** the undue preference provision once again, claiming that it was a "concept built for traditional broadcast models, not today's open web," and that it created a "risk of liability for the basic function of ranking content." Google asked for "specific guidance" on what acts would be "prohibited." Meanwhile, news publishers and large media

organizations like CBC/Radio-Canada, Rogers, and the Canadian Association of Broadcasting all **noted** that it would be “premature” to establish precise guidance around subsection 52(2), which lists the factors that may indicate undue preference, and instead asked for complaints to be addressed on an ad-hoc basis.

Dwayne Winseck, professor at the School of Journalism and Communication at Carleton University and director of the Global Media and Internet Concentration Project, **submitted** an intervention on behalf of the Project with a number of in-depth regulatory suggestions. With respect to subsection 52(2), Winseck noted that “successive Canadian lawmakers and regulators have renewed and fortified the common carriage principle”—the idea, used in Canadian telecommunications, that companies considered common carriers must not favour certain content over others. In his view, the act is only the latest incarnation of this principle.

Section 51 of the bill, which introduces the prohibition on undue preference, includes wording about “making news available,” which according to Winseck, platforms have used to argue that the bill does not apply to them if they “choose to not make news available to the public.” Meta in particular, he explained, has used this language to justify their ban and has stated that this wording “trumps” section 2 of the regulations as well as the designation criteria in section 6 of the act. Google has used section 51 to threaten the same. Winseck suggested that this wording in section 51 should only apply to instances when section 51 of the act actually applies. Despite these limitations, he called section 51, the “crown jewel” of the act.

Additionally, Winseck suggested that specific types of non-monetary compensation could potentially make up for the difficulty in determining the value “pegged to news.” To this end, he suggested that agreements between platforms and publishers could include “equal access to audience and other data generated by and in relation to the news service,” to ensure that “no data generated by a news service can be used by a DNI,” among others. According to Winseck, the idea would be to ensure that news media services could “retain as much control as possible over key resources” upon which their business depends.

From Oct. 8 to Nov. 7, 2024, the CRTC **held** an open consultation on a proposed code of conduct for bargaining under the act, which posits that parties must “bargain in good faith” and provides “examples of unfair behaviours.”

GOOGLE’S PROCEDURES UNDER THE ACT

Per the December 2023 deal and subsequent regulations, Google announced an open call for news organizations to register to be compensated between February and April 2024. Nearly **1,500** news organizations **answered** the call, filing an attestation confirming that they fulfill the obligations **laid out** in the act under section 27 (Eligibility) and subsections 31(2) and 31(2.1) (Determination), and that they share content through Google. Platforms **had until** June 16 to self-identify as falling under the act; only Google **did so**, on June 7.

As part of the June 7 declaration, Google **also announced** that it had reached an agreement with a single news collective that would be responsible for distributing the CAD \$100 million in annual funds,

pursuant, once again, to the **final regulations**. The **selection** of the single collective—the Canadian Journalism Collective-Collectif Canadien de Journalism (CJC-CCJ)—proved controversial.

To make this selection, Google carried out its own open consultation. As mentioned in Part 4B, in order to meet the exemption requirements of C-18, Google **requested** to negotiate with a single collective that would represent all eligible news businesses. In early 2024, Google **put out** a call for those interested in proposing a structure for it. Among other things, the collective would **have to** “provide basic reporting and accounting of funds distributed to news businesses to both Google and the membership of the collective” as well as develop “a plan and principles for managing publisher eligibility and funds distribution.”

As **detailed** by professor Michael Geist in May 2024, two main competitors emerged following Google's call for proposals in the battle to administer the five-year CAD \$500 million deal. One was the Canadian Journalism Collective-Collectif Canadien de Journalism (CJC-CCJ). The other was the Online News Media Collective, a consortium **led by** legacy media organizations News Media Canada, the Canadian Association of Broadcasters, the CBC/Radio-Canada, associations of community papers, as well as the National Ethnic Press and Media Council.

According to Michael Geist, this collective **suggested** a “two-tier structure” with three “distribution partners.” The three partners would be the CBC (which would receive its 7 per cent), the News Publishers Collective (that would receive the 63 per cent to distribute to publishers), and the News Broadcasters Collective (that would receive the 30 per cent to be distributed to broadcasters). According to Geist, the News Publishers Collective would have had 11 board seats, with only one “allocated to digital or new innovative media” while that of the News Broadcasters Collective, he claimed, would be mostly made up of “commercial television and radio broadcasters.” The overarching Online News Media Collective **would have** been governed by three board members, one for each distribution partner. Geist also **expressed fears** about the transparency of the collective, given the general lack of transparency inherent, in Geist's view, to the bill.

According to Martin Patriquin at The Logic, the second fund, officially **formed** in May 2024 to challenge News Media Canada's collective, was **led by** “a diverse group of news publishers and broadcasters to promote sustainability, equity, and innovation” in the “implementation of the law.” The CJC, per Geist, **was to be** made up of a committee led by a range of independent outlets including Village Media, Press Forward, Indiginews, The Resolve, Pivot, and Indiegraf. Indiegraf—the network of 61 independent local news outlets across North America that **was founded** by CEO Erin Millar and her sister Caitlin Havlak in 2020—was one of the organizations that had led the CJC's efforts to mount a bid. Michael Geist was a vocal proponent of CJC, arguing that it **would be** “far more representative,” transparent, and equitable and that its board would include “small, independent, Indigenous, and BIPOC board members.” However, as **noted** by Martin Patriquin in The Logic, the CJC represented far fewer journalists, with the competing collective **claiming** to represent 95 per cent of journalists.

The CJC was also working with fewer resources. In July, the collective **asked** the CRTC for more time to provide needed documents, including policies and procedures for determining eligibility and [full-time employee] verification as well as governance documents, among others. Patriquin **posited** that this request suggested a “lack of administrative muscle.”

When Google announced its selection of the CJC, Jaffer Zaidi, Google's VP of global news partnerships, **noted that** the CJC was “best aligned” with the principles of “diversity of representation, a robust governance structure, a high level of transparency, and assurance that as much funding as possible would go to news organizations.” The agreement between Google and the collective, **submitted** as part of Google's application for exemption, **comes into effect** once Google has received an exemption. The agreement lays out a number of obligations, both for Google and the collective.

Under the agreement, the CJC is tasked with ensuring the accuracy of “attestations” provided by news businesses, distributing funds “in a timely way,” sharing details of the distribution of Google's funds “at regular intervals,” and recovering funds from any news organization that provided an inaccurate attestation. The agreement confirms that the “equitable distribution” of funds will be based on the number of full-time equivalent employees employed by a member news organization in the previous calendar year with no more than 30 per cent going to broadcasters and no more than 7 per cent going to the CBC. The CJC, it is noted, may also admit new news businesses from “time to time” after having provided an attestation to Google that they meet the requirements **set out** in the exemption regulations. However, it does not provide a further definition of the meaning of full-time employees in terms of working hours—something else that later proved to be a point of contention.

Notably, the agreement also states that the CJC **may deduct** up to 2 per cent of total funding for “reasonable administrative expenses.” (The regulations themselves do not establish an amount for administrative costs.) The CJC is also charged with setting up its own governance structure and publishing these details. The money to publishers should **be delivered** within 60 days of when Google receives an exemption. Finally, the agreement determines that the collective and its members will not engage in a bargaining process or a proceeding “in connection with Google” or pursue any “infringement of copyright in relation to making available news content.”

According to details published on the CRTC's **website**, the agreement **echoes** the act and the regulations by including the formula for yearly payment (CAD \$100 million indexed to inflation), Google's commitment “not to undermine freedom of expression,” the “rules for distribution of funds” (for example, distribution by number of full-time employees), and the “obligation to use the funding to support” a diversity of journalism outlets.

GOOGLE'S CONTROVERSIAL SELECTION

The choice of collective spurred a great deal of controversy, both over the choice of the collective itself as well as how much room for interpretation remained over its governance. Some believed that the selection came from a desire to reward the organizations like Indigra that opposed the bill or punish the large media organizations that supported it.

Ryan Adam, VP of government and public relations for the Toronto Star, was one of these critics: in our July 2024 interview with him, he was pessimistic about the collective's ability to administer CAD \$100 million, citing the fact that the group was set up in May. He suggested Google may have made the selection in order to exert a semblance of control over the situation or to “frustrate [news

publishers] with delays”—perhaps wanting to send a signal to other countries, and states like California, who were watching what was happening in Canada.

According to Chris Dornan, a former professor at Carleton's School of Journalism and Communication and co-author of “The Shattered Mirror” report, the selection was likely made based on the greater value of the funds to smaller news organizations. In other words, Google may **have chosen** the collective instead for the optics of being seen as supporting “the little guys over traditional legacy media.”

In late June, Unifor national president Lana Payne, **noted** that Unifor was “deeply concerned about the governance of the organization.” In July 2024, it was **reported** that those associated with Indiegaf were **holding** six of 12 positions on the CJC's steering committee, as well as four of seven on its interim board.

As noted in The Logic, the selection **had sparked** a notable “rift” between the two collectives. According to reporting from the Toronto Star in mid-June, the CJC **said** it “hoped to join forces with some of the country's largest media outlets.” However, Erin Millar **claimed** that she and her team had reached out to publications including Le Devoir, the Globe and Mail, and the CBC/Radio-Canada to join the collective and none had accepted. The latter two organizations **denied** being asked.

A few days after Google announced its selection, the losing collective **released** a statement. In it, the organizations, which **also included** Hebdo Québec, the National Ethnic Press and Media Council, as well as some local news organizations, called on the CRTC to “make regulations with respect to the Online News Act that will ensure consistency and fairness, maximize newsroom investment, enhance transparency and minimize misrepresentation.” Among their requests were:

- 1) **Adding** specificity to the meaning of “full-time equivalent” journalists by defining it as those who work a standard work week for a minimum of 40 consecutive weeks in “eligible news production role[s].” They also asked that employees be defined as those receiving a T4 or Relevé 1 from the organization in question the previous calendar year;
- 2) **Capping** the maximum administrative costs incurred by the collective at 0.5 per cent. In addition, they asked that any interest earned on the CAD \$100 million goes to news businesses, and not administrative costs;
- 3) **Asking** that the CRTC “validate the eligibility of the news business” and “verify the number of full-time equivalent employees” prior to payments being made, along with other requests for transparency related to administrative fees, disbursement of fees, and ensuring no conflict of interest with relation to the collective's directors;
- 4) Finally, they **asked that** news businesses reconfirm their eligibility, with these businesses facing strict consequences in cases of misrepresentation or false attestations of eligibility.

On June 27, News Media Canada, and other media organizations that made up the competing Online News Media Collective, **released** another statement outlining “recommendations to ensure the governance” of the CJC is “robust and in keeping with modern governance practices.” Among

its more specific requests **were** instituting a board of directors that “represent[s] the diversity of the Canadian news media business models” and will ensure the collective will “properly exercise their fiduciary duty and...avoid self-dealing.”

According to a senior government official we spoke with, the CRTC does have the power (under section 85 of the act) to set out how collectives will be structured and how they carry out their obligations under the act. According to the official, the CRTC may therefore “make out regulations if they think it is warranted.” However, according to a senior government official we spoke with, the “role of the collective is clearly defined,” and the remaining discretion is “limited.”

Michael Geist **felt** that there was “considerable room for interpretation” in the law that could give the collective “enormous power.” This could include addressing which news businesses are eligible, how much money they are entitled to receive, whether news outlets would be audited or regularly reviewed, and how to address any disputes that arise. Questions around eligibility **related** to both the definition of what kind of journalism organization should be covered, as well as how “full-time equivalent” employees (FTE) would be defined. This element is particularly important as the number of FTEs determines the amount of funds distributed to a given news organization.

According to Geist, eligibility **requirements would** “ultimately be determined by the board of the selected collective.” This eligibility, as well as the number of FTEs attributed to each news organization, **he explained**, could be “locked in” for the full five years of the agreement, meaning that new entrants may not be eligible for any money for years. This, according to Geist, **could mean** that large outlets would keep receiving money for journalists they may end up laying off, given current trends. Ed Greenspon, former journalist and Public Policy Forum president and CEO, told us in a July 2024 interview that he felt many of these questions remained unanswered in the regulations.

In June, professor Dwayne Winseck **noted** to the Star that, overall, the composition of the collective might not have a major impact, *except* over the definition of FTE. This could impact how much money outlets with “non-traditional staffing structures” receive. He noted that an outsized representation of large media organizations could have likewise been problematic, considering the legitimacy crisis they currently face.

Christopher Curtis, co-founder of independent investigative journalism outlet The Rover, agreed that outsized representation from large media organizations would have been problematic. To him, the fight was centred around who controls the fund and how the money is distributed—whether through payroll, the number of contractual employees, or otherwise. According to Curtis, large outlets like Postmedia, Bell, and CBC managed to fix funding to full-time employees, rigging the system against small players. In a given year, he estimated that The Rover may pay out CAD \$60,000 to \$70,000 in freelancing, but would not, according to the rules, receive any money from C-18 based on this spending. Small media finally won, he said, and, in response, large media outlets came after them.

In a December 2024 article for J-Source, Curtis’ The Rover colleague Isaac Peltz **criticized** the CRTC’s decision to exclude freelancers from the calculus made to distribute funds, arguing that it would mean excluding publications with just one employee that rely mostly on freelancers. This, Peltz noted, is the case for Jeremy Appel, editor-in-chief of **The Orchard**, who would have liked to have been able to use the money to pay for freelance submissions and hire a copy editor. Additionally, Peltz

quoted what he said was a leaked letter from the CJC, which argued that including freelancers would “contribute to sustainability in local news markets” while emphasizing the importance of freelancers in today’s news market.

Paul Deegan, president and CEO of News Media Canada, who was part of the opposing collective, was also focused on the issue of defining FTEs, with his organization, as previously noted, pushing for FTEs to be defined as those who receive a T4. Deegan believed that other areas of the act were clearly defined, including the definition of a news organization. Section 31(2) of the act lists the kinds of news organizations that cannot be included, which Deegan believes should exclude a good number of the almost 1,500 that had applied, including “sports,” “lifestyle,” and “entertainment” publications. Ryan Adam of the Toronto Star also emphasized the importance of not including publishers of entertainment magazines, stating that the “collective will have discrepancy to decide if [a given news entity is] in or out.”

Both Deegan and Adam expressed additional concern about the cost of the administrative fee and how much those costs could take away from the overall pot. The CJC suggested a maximum cap of 2 per cent. However, Paul Deegan felt that that number could be brought down to 0.5 per cent—a suggestion Michael Geist **called** “not a credible proposal.” Deegan’s primary concern was ensuring existing regulations would be respected, as opposed to creating new ones. Ryan Adam seconded Deegan’s fear about the collective taking an overly large share of the pie for administrative fees, concerned that the hoped-for approximately \$20,000 per journalist could become less.

In an August 2024 interview, The Rover co-founder Christopher Curtis argued that the large corporate news companies which made up the opposing collective already had big infrastructures in place, so they may have been able to be more cost-effective than the smaller CJC. However, he noted, the danger of ceding control to “these people who have overseen some of the biggest layoffs in Canadian labour history” to him far outweighed the concerns over administrative fees.

NEXT STEPS NEXT STEPS FOR GOOGLE’S EXEMPTION

Google’s request for exemption was **followed by** a public consultation on the request, running from June 27 to August 6, 2024. To obtain an exemption, Google had to demonstrate that it meets the criteria under section 11 of the act and regulations. According to a senior government official we spoke to, there would be three options after such a consultation: the CRTC could deny the exemption, it can provide an interim exemption and request modifications on, among other things, elements of the company’s agreement with the CJC, or it can approve the exemption request. The public consultation **included** questions on whether the 2 per cent administrative fee included in the agreement is reasonable and whether the CJC’s mechanism for admitting news businesses that respond to the open call is reasonable.

The CJC **submitted documents** outlining its structure to the CRTC on July 15, as part of the request for exemption. The proposed structure was to be taken into consideration by the CRTC in determining whether Google could be exempted from the bill. The CJC revealed that its final board would include 19 directors: eight would represent publishers, eight broadcasters, and three independent members. The requirements for the board members additionally includes ensuring representation

from outlets large and small, startups, non-profit outlets, as well as Indigenous, Black, racialized, francophone, and official language minority groups. According to Global News, the governance structure **would also include** two councils, one for publishers and the other for broadcasters, that would make recommendations on their behalf. An executive committee would appoint non-voting advisers to join the board. The CBC would have a seat on the board and executive committee, but without voting powers. The collective would also appoint an ombudsperson to handle concerns from the public and the board, as well as a dispute resolution committee. The collective also promised to support innovative and smaller media organizations. According to the July 15 submission from the CJC, deliverables like eligibility, FTE verification, and membership criteria were still “in development.” The CJC **also confirmed** that it would “publish a disclosure that includes policies pertaining to FTE verification, a list of news businesses funded and the amounts paid to each, FTE count per industry segment, and administrative fees drawn by the Collective” within 30 days after distributing funding for the first time. In December 2024, the CJC **put out** a call for nominations to their board of directors.

SUBMISSIONS TO THE EXEMPTION ORDER CONSULTATION

A number of relevant stakeholders submitted comments in line with the early August deadline set by the CRTC regarding their views on whether Google had satisfied the necessary criteria for an exemption. These **included**, among others, large papers, publishers, and broadcasters like Le Devoir, La Presse, the Globe and Mail, the Toronto Star, Postmedia, Rogers Media, CBC/Radio-Canada, News Media Canada, Bell Media, the Canadian Association of Broadcasters, small digital outlets like The Rover, Indiegraf, The Breach, academics, members from the private sector union Unifor, and many others.

A joint submission **was made** by the Canadian Association of Broadcasters, the Canadian Broadcasting Corporation, and News Media Canada. The submission supported an interim exemption rather than a full one, noting that the full exemption should be contingent on the distribution of the \$100 million in 2024. Among changes requested of the agreement, the group asked that the \$100 million yearly price include the Consumer Price Index (CPI) adjustment from the previous year and that the administrative fee be capped at 0.5 per cent. The document also lays out a number of suggested changes to the CJC's bylaws, many of which pertain to definitions: 1) Defining an “eligible employee” as someone “that spends at least 75 per cent of their time engaged in the production of original news content,” 2) defining an “eligible news business” according to section 27(1) of the act, 3) defining an “employee” as someone who receives a T-4 slip from their employer, and 4) defining “FTE” as 35 hours per week. Similar requests were made in other individual submissions including by News Media Canada and by CBC/Radio-Canada.

Unifor, the union which represents journalists at some of the biggest papers including the Globe and Mail, National Post, and Toronto Star, likewise **did not** support Google's five-year exemption, but made clear the sense of urgency the sector feels about receiving the act's funds. To that end, the union asked for an interim one-year exemption, “given the urgent need to direct additional funding to eligible news businesses in Canada” with funds going out in 2024.

Le Devoir's submission, written by the paper's director Brian Myles, **condemned** the heated debate

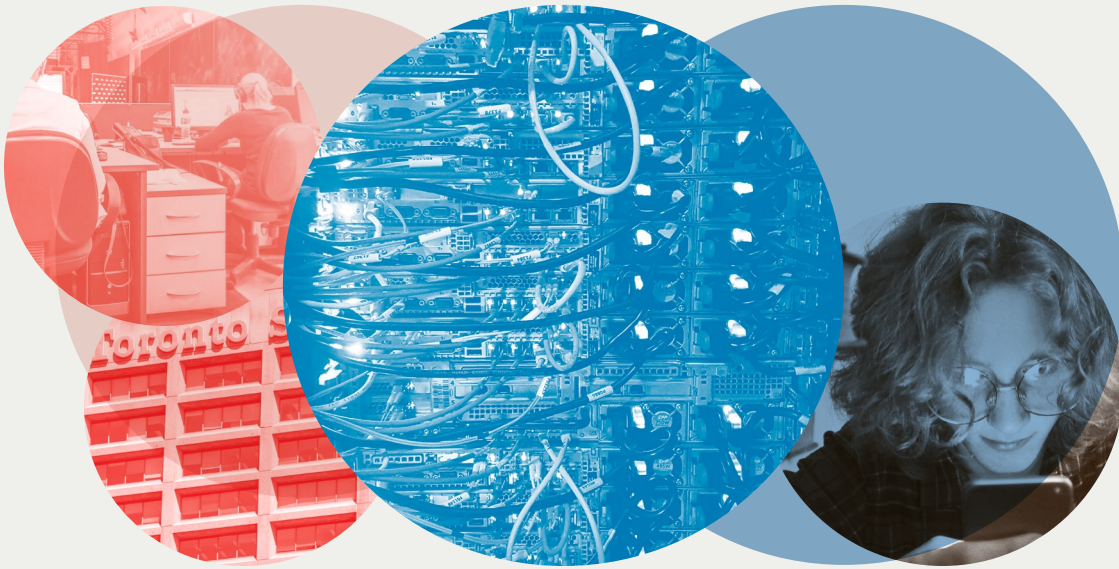
that had arisen in the Canadian media world following The Logic's **article** on the battle between the CJC and the competing collective, sharing that the CJC has thus far proved itself open and transparent. Le Devoir offered to collaborate with the collective and asked that others do the same so as not to create more division. Myles also noted that the present agreement was, however, not sufficient to ensure a distribution of funds in accordance with the act, as it did not provide enough direction to the CJC.

The Rover's Savannah Stewart **praised** the CJC's promise to have Indigenous publishers represented in its structure and the overall potential for minority representation. She called attention to their continued worry about the "overrepresentation of large, foreign-owned media outlets" in the distribution of funds, but felt that the CJC's proposed structure was best aligned with the Online News Act's promise of encouraging growth, innovation, and equity. The Rover also supported the 2 per cent administrative fee.

According to Indiegaf co-founder and CEO Erin Millar, the loss of local news capacity **meant that** "a healthy future for local news necessarily includes news startups" and that existing news organizations were not incentivized to support them. She also supported a five-year exemption and asked the CRTC to avoid an interim order that would lead to more "uncertainty and delays for news publishers."

This potential for delays if the CRTC failed to offer an exemption was reiterated by the CJC's **testimony**. The submission also noted that the agreement did not "materially restrict" members from pursuing legal recourses. The CJC's submission stated that it had developed a "detailed funding timeline and procedure to provide funds to eligible news businesses based on FTEs reported in 2023." They also noted that they would be providing funding first to "low-risk news businesses" as quickly as possible, rather than waiting to verify all news businesses before beginning to distribute funds. The funding procedure would be available on their website. An FTE calculation and payment distribution policy **was published** on the CJC's website on Nov. 4, 2024.

In its submission, Google **warned** that "any attempt by the Commission to indirectly regulate and supervise the operation and conduct of the CJC by imposing additional conditions on Google through the exemption order will exceed the jurisdiction granted to the Commission in the Act and Regulations."



PART 5

What's Next?

A. The Future of News Bargaining— New Elements in Scope of C-18?

With the reality of the bill yielding less money than many of its proponents had anticipated, discussions have arisen around how C-18 might be expanded to better include all the ways Big Tech (and newly emerging AI companies) benefit from the availability of news and the hard work of journalists. There are two main avenues for potentially expanding its scope: Meta becoming subject to C-18 and the addition of generative AI companies to a list of entities considered to be “making news available” under the law. Both of these possibilities, as well as the possibility of using “must-carry” provisions to stop platforms from blocking news, are further explored below.

META

In December 2023, a few days after announcing that the government had reached a deal with Google, Minister of Canadian Heritage Pascale St-Onge “signalled” that she would like to see Meta regulated under the Online News Act,” noting that social media users were finding “loopholes” to continue sharing news. Users were reported to have found work-arounds including direct-messaging news links (Meta claimed the law does not apply to messaging), sharing screenshots, including links in “stories,” or copying texts into their posts. Dwayne Winseck, professor at Carleton University’s School of Journalism and Communication, commented to the Toronto Star at the time that the CRTC should

look into whether C-18 might indeed apply Meta: “I think [Meta has] tried to be too clever by half, and it’s going to come back to bite them,” he told the paper. Michael Geist **noted** that the determination around screenshots will depend on whether screenshots are considered “a reproduction of the news content.” This would also rely on a consideration of “how Canadian copyright law treats screenshots.”

That following spring, in April 2024, the Media Ecosystem Observatory (MEO) released their report “**When journalism is turned off: Preliminary findings on the effects of Meta’s news ban in Canada.**” It **determined that** “the Facebook pages of national news outlets lost approximately 64 per cent of their Facebook engagement” while “local news outlets lost approximately 85 per cent.” The report noted that, overall, “the end of news availability in Canada has resulted in a significant decrease in engagement for Canadian news outlets, but has not substantially changed the behaviour of Canadian Facebook users.” Another notable finding included that members of “politically-oriented Facebook groups” had circumvented the ban by sharing screenshots of news instead. Users had therefore been able to continue discussing Canadian politics and sharing posts in relevant Facebook Groups in part through the above-mentioned “workarounds.”

According to a July 2024 conversation with a senior government official, the Canadian government had been following MEO’s study into the impact of Meta’s news ban. It had noted, in particular, the finding that around 33 per cent of Canadians still used Meta to access “Canadian political and current affairs information.” According to the official, the decision of how to approach this compliance issue would be handled by the CRTC as it is they who would determine whether this activity meets the bill’s criteria for “making news content available.”

On August 1, 2024, MEO **shared an update** of its Meta news ban study titled “Old News, New Reality: A Year of Meta’s News Ban in Canada.” The updated report found that Canadian news outlets overall had lost 85 per cent of their engagement on Meta’s platforms, which had not been compensated for by engagement on other social media platforms, despite increases on some, including TikTok. It found, furthermore, that 30 per cent of Canadian local news outlets had become inactive on social media. Despite this, Canadians were still accessing news: 36 per cent of Canadians claimed to be finding news or links to it on Facebook or Instagram. This, the report noted, could potentially make Meta subject to C-18.

On August 2, 2024, the day after the report’s release, the government **continued** to insist that “Meta may still be regulated under its Online News Act, as users continue to find ways around the ban.” Even though the CRTC has primary control over the implementation of the act, Minister St-Onge had “**signalled** for months that Meta could still be regulated under the law.” The CRTC, in its own **statement**, noted that “the CRTC does not control the types of content that platforms make available to their users under the Act.” However, they also stated they did not yet have sufficient “evidence to take further action.” The statement **cited** MEO’s **latest report**, in particular the estimated reduction of 11 million news-related views per day across Facebook and Instagram, which had nonetheless left the company itself “unaffected.”

C-18 and the subsequent Meta news ban may not have been the only factor driving these stats, however. Writing in mid-August, Howard Law, editor of MediaPolicy.ca, noted that, **according to** a recent Reuters Institute Digital News Report, Facebook had already experienced a notable decline

in news engagement, with the number of Canadians looking for news on Facebook at least weekly falling from 46 per cent in 2016 to 25 per cent in 2024—a 21 per cent decrease. Law made further **note of** YouTube's diminishing news engagement, which has taken place in the absence of a news block.

Nonetheless, the results of MEO's findings **reignited** criticism of the bill. Around the time of the report's release, Chuck Lapointe, a publisher of Narcity.com, revealed that they had been **unblocked** on Meta platforms. Lapointe spoke to Law, describing the news block as having been "disastrous." For Lapointe, the one year anniversary of the bill coincided with the rejection of an appeal for QCJO eligibility by the government. Based on that decision, Lapointe argued that his publication **is not a** "news outlet" under the bill. Lapointe therefore chose to "opt out" of C-18, sending the government's declaration about Narcity to Meta, which agreed to unblock them. Lapointe encouraged others to follow suit. Law noted, however, that ineligibility for QCJO payments does not necessarily mean a site is not a "news outlet" according to C-18. As a consequence, Law wondered whether "undue preference" rules in section 51 of C-18 could "come into play" if Meta is seen as favouring some news outlets and discriminating against others—for example by allowing some to circumvent C-18. Lapointe has **claimed** that, while under C-18 they might have received CAD \$250,000, they had received millions by sharing content prior to the ban on Meta and had seen 30 per cent year-on-year growth since 2020. Law coined Meta's ban a "leaky news ban" to describe the ways that news has nonetheless found its way onto the platform.

In early October 2024, the CRTC gave Meta seven days to **provide** information on how they were planning to comply with the act, given that news was still being made available on the site through loopholes. In November 2024, the CRTC shared a **response** to Meta, in which they acknowledged having received a reply on Oct. 17, followed by another letter on Oct. 28 arguing that the Oct. 17 letter should remain confidential because it contains sensitive commercial information. Additionally, they argued that it would not be in the public interest to share because it contained information on how Meta is restricting news, and therefore could inform users on how to circumvent those measures. The CRTC response requested that Meta disclose a copy of the Oct. 17 letter without a privacy designation. The CRTC also requested a subsequent response to this reply by Nov. 12, 2024. In a final letter from the end of November, the CRTC shared that Meta had, in its response, **reiterated** its confidentiality argument concerning the Oct. 17 letter. The CRTC reiterated its disagreement, adding that the information was not detailed enough to allow for bypassing of the news block. The CRTC therefore denied Meta's request for confidentiality and requested a new version of the letter by Dec. 11, 2024. At time of writing, the government had not shared whether there was a reply from Meta.

It is worth also noting that, meanwhile, in August 2023, the CBC, News Media Canada, along with other publishers and broadcasters, had **requested** that Canada's Competition Bureau investigate Meta's news block for "anti-competitive" practices. A joint statement between the CBC, the Canadian Association of Broadcasters, and News Media Canada **argued** that "Meta's practices are clearly designed to discipline Canadian news companies, prevent them from participating in and accessing the advertising market, and significantly reduce their visibility to Canadians on social media channels."

News Media Canada president Paul Deegan **claimed** that Meta was abusing its "dominant position in the social media market" and was therefore **in violation of** the Competition Act—in particular

section 79, which deals with abuse of dominance. At the time, a spokesperson for the Competition Bureau confirmed receiving the complaint and noted they had begun a “preliminary review” of the issue. The spokesperson **added that**, if found guilty, Meta could be fined CAD \$10 million or “three times the value of the benefit obtained from the anti-competitive conduct, whichever figure is greater.” Many experts we spoke to, however, predicted that the case would take many years to resolve. Zane Schwartz, CEO and editor-in-chief of the Investigative Journalism Foundation, estimated the “best-case scenario” for concluding the case was three years. Howard Law noted the inherent difficulty of crafting a winning argument for an abuse of market power case.

Finally, Courtney Radsch, director of the Center for Journalism and Liberty at the Open Markets Institute, highlighted the “widespread disbelief” she had encountered in many corners about the fact that Meta has been allowed to simply discriminate against a category of user (allowing every type of user to participate on its platforms *except* publishers) in a democratic country like Canada.

‘MUST-CARRY’ PROVISIONS

To counter this kind of platform behaviour, Radsch has advocated for the use of “must-carry” provisions in news bargaining codes globally. She argues that such provisions would “require covered platforms to carry news,” make C-18 more powerful, and “dissuade some of the heavy-handed tactics used to evade regulations.” Radsch noted that there is already precedent in Canada: there is must-carry legislation for linguistic and local content on other communication platforms, like broadcasters under the Broadcasting Act.

The idea of must-carry provisions as an important part of a news bargaining code did not seem to feature as a prominent part of the discussion over C-18, though professor Dwayne Winseck did **mention** it during the Senate committee hearings for C-18. In an August 2024 interview, Winseck acknowledged that must-carry had not been proposed or included in the act *if this means something akin to that which applies to broadcast distribution like cable TV*. However, C-18 does have something he refers to as “fair carriage” in clause 51, a combination of elements of must-carry with what’s known as “common carriage” in the telecommunications sector, which ensures non-discrimination against access to any given content.

Winseck supported the idea of using an amalgamation of common carriage and must-carry. Common carriage, he explained, has historically been used in telecommunications, like mobile operators, to ensure similar expression is treated under just and reasonable terms—in other words, “fair distribution.” For example, an internet provider cannot make one streaming service take longer to load than the other. Gregory Taylor, professor in the Department of Communication, Media and Film at the University of Calgary, on the other hand, believes that “common carriage” does not quite fit with platforms like Meta, that already limit what we can and cannot see through their algorithms.

Meanwhile, using must-carry, according to Winseck, would mean treating digital platforms as broadcasters. Under the Broadcasting Act, “must-carry” is used to designate television channels that *must be carried*. If a must-carry was brought into effect, the CRTC would have to designate which individual news organizations would have to be carried. Winseck cautioned that doing so could be problematic for the government’s political optics, especially as the CRTC has been moving away from

content regulation. Gregory Taylor additionally noted that the CRTC has recently limited the number of recipients of must-carry status to organizations like Indigenous television network APTN, and is very hesitant to use this power overall.

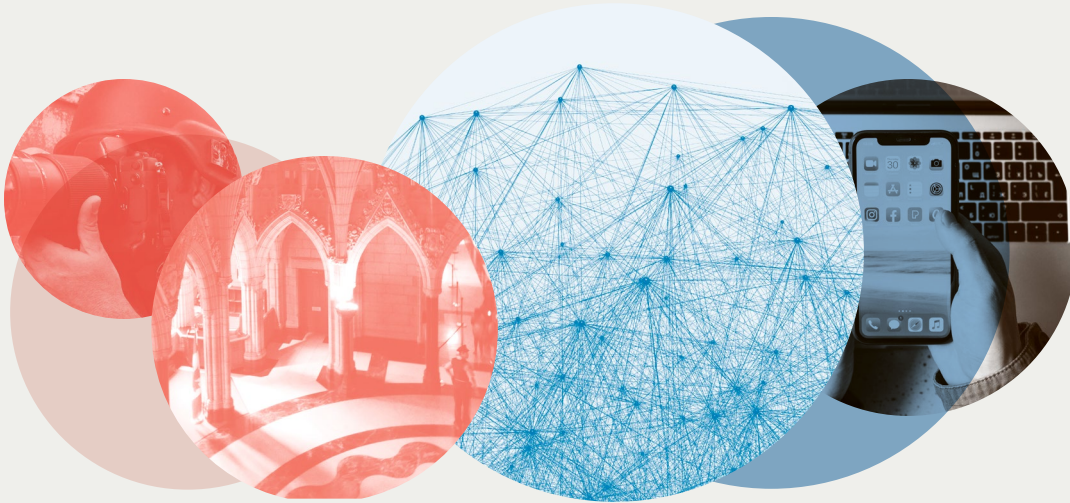
In a March 2024 post-conference publication entitled “**Novel Directions in Media Innovation and Funding**,” Winseck described C-18’s existing section 51 as “one of the best features of the Act” and felt it included a “soft ‘must-carry’ measure.” He believed that the existing provisions in C-18 could be rectified and made stronger. First of all, he noted that it could be improved by including a “statutory limitation on the exercise of editorial control over news distribution, similar to the onus found in section 36 of the Telecommunications Act.” In other words, introducing a clear barrier to Meta’s ability to impact news content. Further, he added that the section could be improved by removing language that **makes the fair carriage contingent** on companies “making available news content.” It is this wording, he said, that has made it possible for Meta to evade the law by barring news on its platforms.

Winseck also provided a comment in response to the CRTC’s open consultation on the Online News Act’s regulatory framework. In it, **he argued** that the CRTC should “take an expansive and muscular view of s.51” and “breathe life into the elements of the ‘fair carriage’ regime” while also “taking a broad view” of who can file unfair discrimination complaints in accordance with the undue preference section.

Strengthening section 51 or implementing a must-carry provision, however, could come with the risk of trade retaliation from the U.S., some have argued. Gregory Taylor suspected that trade most likely played a strong role in decisions over section 51, referencing a **September 2022 white paper** from the U.S.-based Computer & Communications Industry Association which warned that the section was already a “de-facto must carry,” and could run afoul of Canada’s trade agreements, specifically CUSMA. The white paper signalled that the U.S., and its relevant industries, was watching, and that a more clear must-carry provision in section 51 could have provided additional ammunition to those looking to kill the bill. Despite his concerns, however, Taylor noted that he would have liked to have seen the government challenge these presumptions and attempt a must-carry alongside stronger penalties. He pointed out, as well, that decisions regarding Canadian cultural sovereignty already violate free trade, but Canada has received many exemptions for the cultural industries.

Courtney Radsch further noted that the American tech sector has historically weaponized trade to protect its own interests. Radsch said she would like to see must-carry added to news bargaining legislation in places like South Africa and Australia. Ryan Adam, VP of government and public relations for the Toronto Star, agreed that must-carry “would have solved a lot of problems.” He believes there was some naivety on the part of the government in believing that platforms would simply comply. Former U.S. Trade Representative Katherine Tai recently **pushed back** on the idea that the interests of the U.S. as a whole are always fully aligned with Big Tech. There have also been ongoing discussions in U.S. policy circles about the fact that trade policy should not impede other countries’ ability to regulate, though this turn may now be in question under the incoming Trump administration.

According to an official at Canadian Heritage we spoke with, the focus of the legislation had been on ensuring “the legislation was centred on the bargaining aspect, not on the broad way that news appeared on the platforms in question.”



ARTIFICIAL INTELLIGENCE (AI)

Despite the meteoric rise of generative AI since ChatGPT's release in 2022, C-18 also does not account for the new technology now posing a threat to journalism. Many AI companies **rely** on news organizations' content to train their large language models (LLM) and to **help** distill information to create custom answers to queries. The use of news content by AI chatbots **has led** to a further fall in referral traffic and a growing monopolization of digital advertising by Big Tech. In fact, over the past two years, referral traffic **has fallen** 67 per cent from Facebook and 50 per cent on X (Twitter).

Journalistic content **is likely** to be an essential building block for a variety of upcoming AI systems, as AI models **rely on** high-quality information to be accurate and reduce "**hallucinations**." As Anya Schiffrin, director of the Technology, Media, and Communications specialization at Columbia University's School of International and Public Affairs, has noted, generative AI **requires** "not just data, but *quality* data" in order to have value. Courtney Radsch's research showed that news sites **make up half** of the top ten sites from Google's dataset used to train the most popular large language models. Notably, even news materials behind paywalls **have been** found recently in LLMs.

The breadth of information contained in news data makes it additionally valuable to LLM training. In a Poynter article, Anya Schiffrin **specified** different types of valuable news content for LLMs: content that is considered "accurate" and "reliable," unique content (which could include local news, though this could also disadvantage smaller outlets who rely on wire services), "contextualized information," images and video, historical archives, quality writing, and content in non-English languages.

Ascertaining the Cost of Journalism, Once Again

As Radsch noted in a June 2024 **article** in the Seattle Times, journalistic content used for AI is often collected "at great expense to journalists." And yet the current lag in the global regulatory environment around AI **has allowed** an emerging technology to, once again, undermine journalism. Policymakers, as Radsch **has argued**, should learn from the mistakes of the social media era before it is too late.

Though it is clear that news content is of value to AI companies, estimating the true value of news to AI remains difficult—not unlike estimating the value of news to search and social media platforms. Experts have **advanced** ideas about how to do so. Some have suggested pegging the value to **the cost** of producing news, while others have suggested **employing** a methodology akin to **that used** by FehrAdvice & Partners to value news for Facebook and Google—in other words, comparing how much LLMs could be valued both with and without news.

Radsch **has suggested** that publishers could also set rates depending on the use of their content, having higher rates, for example, for foundation model training versus “on-demand access.” Among her suggestions **is the possibility** of publishers implementing licensing or royalty “schemes that allow AI companies to bid for access to specific aspects of a publisher’s content for various purposes.” This system could be based on existing licensing and royalty systems publishers already employ for various uses.

As Anya Schiffrin explained to us in a spring 2024 interview, there are, overall, four main ways to ascertain value of given news content for AI: 1) the cost of inputs, 2) the value of news to AI firms, 3) the share price effects, and 4) the cost of harm, which applies to publishers litigating against AI companies. Each method has its limitations and there is no perfect formula for the time being, at least not without access to the data guarded closely by Big Tech and AI companies.

Licensing Déjà Vu: OpenAI’s Preemptive Deals With Publishers

Just as Google and Meta **began** striking voluntary licenses as news bargaining codes came onto the horizon in the late 2010s, AI companies have begun striking their own deals with large publishers. OpenAI has **struck deals** with **some** of the largest global media organizations, including The Associated Press (AP), Axel Springer, Le Monde, Vox Media, the Atlantic, and the Financial Times, among others. The first, with Axel Springer, **was announced** in mid-December, 2023. Deals with most other publications were **announced** in spring and summer of 2024.

According to Schiffrin, the agreement with Springer **not only sells** the rights to the Axel Springer archive, but also requires the publisher to “provide summaries, based on content in its publications, in response to ChatGPT prompts.” Meanwhile, the AP deal with OpenAI **provides** “partial access to its archive going back to 1985” and “is likely to set a benchmark for other deals going forward.” According to Radsch, industry insiders currently believe that the AP undervalued itself and **should have worked** to get deals for other news organizations within its cooperative.

Though the details of many of these deals are not public, a February 2024 deal between Reddit and Google **was valued** at USD \$60 million, and Reddit **finalized** a similar deal with OpenAI in May 2024. Reddit **will provide training data** and will give Google access to its data API. The U.K.’s Press Gazette **maintains** a page detailing which publications have brokered deals, and which publishers are suing AI companies instead.

On May 22, 2024 a deal **was announced** between News Corp (representing major brands in the U.S., U.K., and Australia) and OpenAI, which the Wall Street Journal **valued** at USD \$250 million. Yet a deal this large is likely an outlier: Anya Schiffrin **expects** that AI outlets will likely offer “low millions” to most large outlets, hundreds of thousands to “medium outlets,” and about \$20,000 a

year to small outlets and outlets in lower or middle-income countries. According to David Clinch, co-founder of Media Growth Partners, a media revenue consultancy, “the agreements **being made** now are setting the table for the mechanisms and metrics for later deals to be made with local outlets.” As Schiffrin notes, some experts have warned that these deals **could serve** the interests of oligopolies, creating further issues for both open-source language models and smaller outlets.

As Jessica Lessin, journalist and founder of The Information, wrote in the *Atlantic* in spring 2024, AI companies **are currently pursuing deals** under the threat of lawsuits from publishers and are undervaluing publishers as they build the products meant to replace them. Lessin did not buy OpenAI’s pitch to news executives that their new models would help distribute and credit news—instead, she felt that companies were “using AI to disrupt internet search—to help users find a single answer faster than browsing a few links.” She strongly cautioned that publishers refrain from signing deals “with the companies that trained their models on professional content without permission and have no compelling case for how they will help build the news business.” Indeed, Schiffrin noted that many economists at the World Association of Newspapers and News Publishers meeting in spring of 2024 agreed that there was “no first-mover advantage” to signing deals, as the usefulness and longevity of the technology is **not yet clear**. Then again, if publishers do ink deals now, they **should** “reserve the right to revise the agreements later,” argued Emily Bell, director of the Tow Center for Digital Journalism at Columbia University.

Alastair Lewis, head of magazine association International Federation of Periodical Publishers, was **concerned** that AI companies would make deals with select major publishers but that “the vast majority of us are going to be left behind again, as we felt we were 15 years ago.”

Currently, publishers **are seemingly** in negotiations with both Google and Apple. According to a **report** from The Information in January of 2024, while OpenAI has offered between \$1 million to \$5 million, Apple has been offering more, but for a “wider array of uses.” In October 2024, Meta **struck** a multi-year AI deal with Reuters to provide “real-time answers” to user queries from Meta’s AI chatbot. It was “unclear” whether the deal includes a “licensing component” that would allow Meta to train on the data. Though not the same as licensing deals, Microsoft and Google have “partnerships” to assist newsrooms in better adapting to AI. This, Courtney Radsch **noted**, is reminiscent of how Meta and Google’s news initiatives were pitched to help newsrooms, but, in reality, only entrenched newsrooms’ dependence on platforms. As Jessica Lessin reflected on in her *Atlantic* piece, “for as long as I have reported on internet companies, I have watched news leaders try to bend their businesses to the will of Apple, Google, Meta and more...and it never, ever works as planned.”

Forget Voluntary Agreements: Publishers Sue AI

A number of ongoing negotiations between AI companies and publishers **came to light** in December 2023, when it was **reported** that the New York Times was suing OpenAI and Microsoft, the latter of which **has a** major ownership stake in the former. According to the complaint, “defendants seek to free-ride on the Times’s massive investment in its journalism by using it to build substitutive products

without permission or payment.” The complaint additionally made note of “flagrant and harmful infringements of plaintiffs’ registered copyrights” and called ChatGPT a “massive commercial enterprise” that is relying on “systematic theft on a mass scale” to train chatbots. Before suing OpenAI, the Times had been in negotiations with the company. But, according to the newspaper, the talks did not produce a resolution. Courtney Radsch’s research shows that the New York Times is the “fifth most used source to train ChatGPT.”

In February 2024, a group of large progressive American digital publications, including Raw Story and The Intercept, followed suit, also suing OpenAI and Microsoft, and in the spring, eight publications owned by Alden Global Capital announced they were doing the same. In an interview, Radsch expressed her surprise that more publishers in other jurisdictions had not followed the U.S.’s lead—she believes that more publishers should. “We can’t wait for lawmakers to say it’s not protected use,” she explained.

From Radsch’s point of view, the failure of OpenAI and the Times to come to an agreement points to the fact that the companies were “too far apart on their value estimates.” To her, this is where the relevance of news bargaining becomes clear. When it comes to AI, they can, once again, play a role in ensuring that “negotiations take place in good faith.”

In November 2024, a coalition of large Canadian media organizations, including the Toronto Star, Globe and Mail, Postmedia, and CBC/Radio-Canada, banded together to file a lawsuit against OpenAI. Their statement accused the AI company of regularly violating copyright by scraping content from Canadian media. The suit could add up to billions of dollars in damages, as the publishers are requesting CAD \$20,000 per article scrapped. They are also asking for a share of the profit obtained from the use of their content. Unlike the Times’ suit, the Canadian suit does not name Microsoft and only looks at the use of their content for training, rather than including the production of search results.

In February 2025, a collection of prominent magazines part of the News/Media Alliance in the U.S., including Vox Media, The Guardian, the Atlantic, and Business Insider, among many others, announced that they were suing AI company Cohere alleging “massive, systematic copyright infringement.” The complaint is said to highlight thousands of articles they claim were infringed upon to train the company’s AI.

News Bargaining Enters the AI Picture

In the context of the “existential angst” publishers currently face over the continuity of their business models, they often fail to adopt a position “in solidarity with the entire industry,” or an “ecosystem approach,” Radsch told us. This “every man for himself approach” becomes even more risky with the advent of AI, because any one outlet’s content alone does not have a great value for the AI ecosystem—and even large publishers are more powerful when they join forces with small ones. As Radsch has argued, “secretive deals with the largest or most influential news outlets are not a replacement for public policy and will not rescue local news from the precarity created by corporations who skirt the law and enjoy dominant market power.”

Indeed, according to a Reuters Institute survey of media leaders published in January 2025, a majority (72 per cent) **would like to see** collective deals that benefit the industry as a whole, rather than see each publication negotiating for its own interests.

As with Google and Meta's previous voluntary pre-bill funding agreements with publishers, these deals so far **do not include** smaller, minority, and local media, in part, according to Radsch, because these publishers "don't understand the value proposition of their journalism throughout the AI value chain." It is also worth noting that major content licensing deals **have not been made** in the Global South. In a piece for the Brookings Institution think tank, Radsch **claimed** that bargaining codes could be used to "demand compensation for the scraping and crawling of content for AI systems as well." Rod Sims, former head of Australia's Competition Commission, has similarly **called for** news bargaining codes to be leveraged to deal with AI.

News bargaining codes could help ensure smaller news organizations already covered by them can negotiate for the use of their content. For most publishers, Radsch points out, deals **will need to be made** as a collective, given the "inefficiency, difficulty, and improbability of each outlet trying to get a deal on their own." One way to do this, as discussed at the 2024 World Association of Newspapers and News Publishers, could be to **expand** existing bargaining codes to require that "AI companies of a certain size come to the table while empowering smaller publishers to pool their resources and collectively negotiate." In many countries currently considering news bargaining codes, like South Africa, the question of whether to include generative AI has **been discussed**.

According to Radsch, bargaining codes are a starting point, in part because "it may be easier to expand an existing approach." Meanwhile, there are many similarities in the dynamics between publishers and social media companies and publishers and AI. However, the varying definitions of "platforms" in existing codes may fail to cover companies like AI unicorns—who, despite not attaining "market dominance" or fulfilling the thresholds to be included under these laws, are nevertheless billion-dollar companies.

As Radsch mentioned in our interview, news bargaining alone cannot solve the market imbalance at the heart of the issue, though they "create an important right for collective negotiation." In her view, it is necessary to also consider structural remedies to address the crisis in journalism since many large platforms are dominant across both the tech and AI ecosystems.

A Multi-Pronged Approach to AI and Journalism

In September 2023, global publishers, through the World Association of News Publishers, **published** a set of "Global Principles" for AI. These principles state that new tools must be developed under "established principles and laws that protect publishers' intellectual property, brands, consumer relationships, and investments." The principles **call on developers and deployers** of AI systems to, among other things, "respect intellectual property rights protecting the organizations' investment to original content," "provide granular transparency to allow publishers to enforce their rights where their content is included in training datasets," "clearly attribute content to the original publishers," and "comply with competition laws." Though news bargaining could play a role when it comes to

rectifying market imbalances between AI and news publishers, the issue of journalism and AI also clearly intersects with policy issues such as intellectual property and copyright.

Currently, many publishers **do not know** how much of their content has already been used by AI models. In September 2023, the National Newspaper Association in Brazil **wrote that** “most likely, all journalistic content available digitally around the world has already been ‘digested’ for training” AI. France’s Conseil national du numérique **has proposed** a third-party platform to store data about large language models to “understand and evaluate the relative importance of information, its quality and variety, develop tools, establish metrics.”

In an article for Tech Policy Press from March 2024, Courtney Radsch **noted** the potential of laws like the EU AI Act, which forces companies covered by the law to publish information about what content they use to train AI models, and requires their compliance with European copyright law. According to Radsch, governments could use the act **to push** companies to require technology to track the use of “rights-protected content, obtain a license, or provide compensation.” Potential exceptions do exist in the act, which could limit its reach, like the clause permitting “temporary acts of reproduction which are an essential part of a technological process.” How this might impact the training of AI models **remains**, however, “highly contested.” Radsch has also suggested that a fund **could be explored** that would be based on “statutory licensing and taxing generative AI firms.”

According to Anya Schiffrin, copyright licensing and collective bargaining **could be combined** to tackle the problem of AI and journalism, alongside antitrust (or anti-monopoly) and transparency laws. Though news bargaining codes are a good start, Schiffrin explained to us, dealing with AI will also require legislating around credit, citation, and copyright, as well as ensuring stronger enforcement. Still being discussed is whether the AI issue will require new laws, or simply better enforcement of those already on the books.

Courtney Radsch, in her October 2024 article, also **noted** that certain provisions in deals currently being inked between AI companies and publishers, like those tying the use of one product to the exclusive use of another, could be found to be illegal under antitrust statutes. One example might be Axel Springer’s deal with Microsoft, which gives the latter access to the publisher’s content, but also requires Axel Springer to use Microsoft’s cloud services.

Finally, another important obstacle publishers are coming up against is the legal concept known in U.S. law as “fair use,” and in other jurisdictions as “fair dealing.” The American fair use doctrine **allows** for the “use of limited portions of work including quotes, for purposes such as criticism, news reporting, and scholarly reports.” However, as Anya Schiffrin, director of the Technology, Media, and Communications specialization at Columbia University’s School of International and Public Affairs, **has pointed out**, the fair use doctrine was never intended to deal with something like AI gobbling up such large masses of data—it was **intended** to balance the interest of the copyright holder with the larger public interest for purposes like education.

It is worth noting, however, that the concept of “fair use” is an American one. Europe **has a more** “fragmented and narrowly defined” approach to this issue. Some experts have noted that, because **there is no** “binding definition of literary and artistic works at a global level,” holding Big Tech companies accountable for copyright infringement has been more challenging. Radsch has been urging



policymakers to clarify that stealing content from publishers is not, in fact, “fair use”: in her view, journalism is not just a collection of fair-use protected facts in the public domain—journalistic facts are available to us only through the hard work of journalists intent on uncovering the truth.

Courtney Radsch and her colleagues at the Center for Journalism and Liberty at the Open Markets Institute are currently researching copyright laws in countries that have adopted or are considering news bargaining codes. So far, they have found that fair dealing (or fair use in the U.S.) is unlikely to apply if it has a market replacement impact or is replacing original content—which is currently clearly the case with AI. By making deals with news publishers (though only the richest ones and the ones most likely to sue), AI companies are making it clear there is indeed a market they are looking to replace. This is also evidenced by the startups popping up to facilitate the market transaction, like [TollBit](#).

Notably, in February 2025, Thomson Reuters [won a first case](#) in the U.S. involving an argument of “fair use” by an AI startup. The U.S. district court judge rejected the company Ross Intelligence’s fair use defense for using materials from Thomson Reuters’ Westlaw search engine. Courtney Radsch told us that the case set an “important precedent.” In a [LinkedIn post](#), she argued further that it was, “good news for those who oppose the theft of copyright protected content to fuel AI under the guise of fair use.” She added that it was also important proof that judges are able and willing to evolve “as new facts and technologies emerge.” The News/Media Alliance announced its lawsuit against Cohere the next day.

C-18 And AI?

With respect to Canada’s C-18, Radsch expressed uncertainty around whether AI provisions will be added: based on her conversations with experts in Canada, “there’s a feeling that it could be” as it is possible to tweak the law. It could even be applied to AI as it stands. Radsch noted, however, that the definition of companies would not cover the entire AI ecosystem, including the AI unicorns: it applies only to the biggest “tech monopolists” and not those companies currently being created, using business models “based on theft.” Another issue, in her view, is the bill’s cap on compensation.

According to an official at Canadian Heritage, the current regime is intended to make platforms pay for content if “it makes it available.” So, if chatbots increasingly get asked about politics and current events, they could eventually fall under “making news available” and, therefore, the law could be amended to account for this. However, the official argued that AI companies were not currently creating the imbalance that social media and search platforms are, though he noted that there are clear copyright issues at play.

A June 2024 article in the *Globe and Mail* **noted that** “the federal government is dodging questions about whether artificial intelligence companies should be paying Canadian news publishers for content their chatbots are openly using.” Minister St-Onge’s office was quoted as saying that it **will be up to** the CRTC to decide if AI companies “are reproducing news as defined in the law.” Prime Minister Justin Trudeau **was asked** the same question on the New York Times’ technology podcast *Hard Fork* in June 2024, and he evaded the question, adding that the government should not “legislate what platforms should or should not do.”

B. Global News Bargaining and Canada's Influence

The story of C-18 extends beyond Canadian borders. Across the world, Canada’s global counterparts are assessing strategies to address the sustainability and vitality of their domestic news sector. The triumphs and setbacks of C-18 further entrenched divides between the code or fund model as the regulatory tool of choice.

Bargaining code proponents, including relevant governments and a number of experts, argued that Australian and Canadian legislation ultimately created deals that were more transparent and sustainable than prior confidential licensing deals with large legacy media outlets. Opponents pointed to the limited overall monetary impact of Canada’s legislation due to the cap on financial liability and the loss of pre-existing licensing deals between Big Tech and newsrooms. As noted by Anna Marchese, senior project officer at Columbia World Projects, some lawmakers have shifted their attention from news bargaining legislation toward a fund model in part because of Meta’s decision to pull news in Canada.

The loss of news on the platform, while bearing a substantial impact on Canadian news publishers, has not made a similar dent to Meta’s **bottom line**. Despite this, governments, including those of the **U.S., Brazil, South Africa, New Zealand, Malaysia, U.K.**, and others have either proposed news media bargaining legislation or have initiated critical inquiries into the impact of Big Tech on news.

As a second mover after Australia, many countries took notice of how C-18 played out in Canada. Despite the fear and skepticism that Canada’s battle with Big Tech may have instilled, discussions over news media bargaining legislation are still ongoing globally. For example, as recently as August 2024, Indonesia’s law on the Responsibilities of Digital Platform Companies to Support Quality Journalism (in other words, the **Publishers’ Rights regulation**) came into effect, creating a legal framework for Indonesian news organizations to negotiate agreements with platforms. Below is a snapshot of a few countries in the midst of implementing or considering regulations taking on Big Tech in a concerted effort to protect the sustainability of the domestic news sector.

GLOBAL SNAPSHOT OF NEWS BARGAINING LEGISLATION

California

In late August 2024, Google reached its first deal with an **American state**, providing California with a five-year commitment to support local newsrooms through a News Transformation Fund. The fund ostensibly quashed two separate pieces of proposed legislation in California: one, a news bargaining code (**California Journalism Preservation Act**), and the other a tax levy on digital advertisements (**Journalism Tax Credit**).

The California Journalism Preservation Act (CJPA), AB-886, was introduced by Assemblymember Buffy Wicks in March of 2023 with the goal of creating a bargaining framework between eligible broadcast or digital news providers and social media platforms. This bill follows the proposed federal bipartisan bill **Journalism Competition and Preservation Act** (JCPA) of 2022, which was **designed** to create a framework for collective negotiation between social media companies and news providers. The JCPA ultimately died in the Senate, one day after Meta **threatened** to remove news if the bill were to pass.

In February 2024, California Democratic Senator Steve Glazer **introduced** Senate Bill 1327, informally dubbed the Journalism Tax Credit, offering an alternative to the CJPA's news bargaining approach. The bill **sought** to allocate 7.25 per cent of revenue generated by digital ad platforms above a certain threshold to Californian newsrooms. Meetali Jain, director of the Tech Justice Law Project, whose team worked to support the tax credit bill, performed a legal analysis of both bills and found that, based on judicial precedent, the Journalism Tax Credit would have been in a stronger legal position if it were to be challenged in court. Jain noted that the Journalism Tax Credit was projected to bring in USD \$900 million in revenue, of which \$500 million would go toward local journalism in the form of employment credits, with the remaining \$400 million going toward education.

According to Jain, the Canadian experience had led her to believe that the California Journalism Preservation Act may not have passed. At the time, California Senator Gavin Newsom signalled he would have been likely to veto the bill altogether over the threat of Meta or Google pulling out of news in the state.

Movement on both bills came to a halt in August 2024, when Assemblymember Buffy Wicks **announced** the agreement of a behind-the-scenes **deal** with Google under a News Transformation Fund. The fund would provide \$110 million to journalism initiatives, with the state of California providing an additional \$70 million, and would also provide an additional \$70 million toward the development of artificial intelligence tools. Assemblymember Wicks **claimed** that the objective of her bill, the CJPA, had always been simply to force a conversation with the tech giant. When explaining why she chose to pursue the voluntary agreement with Google instead, Wicks **replied**: “if you look at Canada, they passed that over a year ago, and publishers haven’t received a penny from that yet.”

Media Guild of the West, a union for journalists, **critiqued** the deal as a “giveaway to Google” that would not redress the power imbalance between Google and Californian newsrooms. Democratic Senator Steve Glazer, author of the proposed Journalism Tax Credit, **called** the deal “completely

inadequate” and argued that it compromised the possibility of a long-term solution. In a [press release](#), the Open Markets Institute called the deal “a shameful and dangerous betrayal of America’s free press by the state of California.” Courtney Radsch, director of the Institute’s Center for Journalism and Liberty, argued that the deal failed to address the power imbalances between digital platforms and news publishers. Meanwhile, [others](#) have pointed out that the deal with Google would do exactly what the platforms have accused bargaining codes of doing: leave out the smallest publishers. Reporting from fall 2024 also [made clear](#) that Google had insisted on taxpayer money making up part of the bill’s funding.

Brazil

Brazil’s [Copyright Law Reform \(PL 2370/2019\)](#) was originally proposed in 2019, with the aim of [addressing](#) market imbalances between digital platforms and news outlets. Similar to C-18, the Copyright Law Reform allows for negotiations to occur between the platforms and either individual publishers or a collective. The legislation originally took the form of a “Fake News Bill,” placing the onus on platforms and search engines to find and report fake or illegal material. Backlash from Google, Meta, and Telegram was swift, and resulted in [sanctions](#) from the Brazilian judiciary, who claimed that Google had interfered in Brazil’s legislative process. Platform response to the current legislation has since been less [retaliatory](#).

The bill has since been stalled, after reports of [disagreements](#) between digital content producers and broadcasters over streaming compensation emerged in November 2023.

South Africa

In 2023, South Africa’s Competition Commission released its report on [Online Intermediation Platforms Market Inquiry](#), identifying Google as a “de facto monopoly” which “distorts platform competition and raises business user dependency on platforms.” While Google responded to the inquiry, first launched in 2021, by [engaging](#) with legacy media trade association Publisher Support Services (PSS) to ink licensing deals with publishers within its association, it purportedly caused frustration across the local news industry. Concerns over a lack of transparency with regard to such deals echoed similar concerns raised by smaller outlets in Canada.

Following the report’s release, the Commission launched another inquiry, narrower in scope: the [Media and Digital Platforms Market Inquiry](#). Its purpose was to identify whether the relationship between platforms and news publishers negatively impacted the sustainability of the country’s media sector. There have been multiple rounds of public consultations to date. South Africa’s Competition Commission has [signalled](#) that it may also now be favouring a fund model over a bargaining code. While Meta has not threatened to block news in South Africa, the platform has reportedly [minimized](#) the value it claims to have received from news distribution.

In November 2024, it was announced that the Association of Independent Publishers and Google had [partnered](#) to create the Digital News Transformation Fund. According to the Association’s press

release, the fund would pay out ZAR 114 million (roughly CAD \$8.8 million) over three years, with the fund being administered by social investment fund Tshikululu Social Investments and money going to “small, local, and independent publishers.”

In our interview with Nick Farrell, former associate at Webber Wentzel—a leading South African law firm whose clients include PSS—he noted that the robust protections around freedom of the press in the country have meant that publishers have been less apprehensive in going toe-to-toe with Big Tech. Publishers have observed that, despite the scare tactics of Meta and Google in Australia and Canada, both states were able to arrive at deals with monetary compensation for their news industries.

According to Farrell, lawyers at his firm watched C-18 closely. Drawing lessons from Canada, the South Africa National Editors Forum raised concerns in its [submission](#) to the Competition Commission over how its bargaining code would help journalism and whether it will mostly benefit larger and dominant news outlets at the expense of smaller outlets.

Indonesia

The Presidential [Regulation](#) on the Responsibilities of Digital Platforms to Support Quality Journalism took effect in August 2024, creating a legal framework for Indonesian news organizations to negotiate agreements with platforms which span content licensing, profit-sharing, and journalist training. To mitigate the spread of misinformation, the legislation requires platforms covered under it to prioritize news from verified outlets. In 2023, a representative for Google claimed that the draft legislation could “restrict public access to diverse sources of news” and, if passed, the platform would have to [consider](#) the sustainability of its programs in Indonesia. In response to the enactment of the legislation in February 2024, Meta purportedly [argued](#) that it is not required to compensate Indonesian news publishers for news content they post voluntarily.

The code shares [similarities](#) with C-18 and Australia’s legislation, enabling news publishers to receive compensation from Google, Meta, and other local news aggregators. Notably, following the passing of the law, then Indonesian President Joko Widodo had instructed government agencies to redirect ad spending from platforms to news outlets.

Australia—An Update

As previously mentioned in Part 4A, in March 2024, Meta announced it would not be renewing its agreements with Australian publishers, [reiterating](#) that only 3 per cent of content on its feeds is news related. Google, in contrast, [recommitted](#) to its deals as existing agreements with news outlets expired.

That same month, the Australian government [responded](#) by sharing that it was “working through” plans to designate Meta under its legislation—which would require the platform to negotiate deals or risk fines of 10 per cent of Meta’s revenue in Australia. Australian Prime Minister Anthony Albanese stated that platforms should not be able to “harvest the work of news organizations that pay their journalists to do work.”

In our August 2024 interview with Minderoo's former director of frontier technology Emma McDonald, she stated that it would be a risky strategy for the government to designate Meta. If designated, the Assistant Treasurer would have to sufficiently prove, per section 52E(3)(b) of the Code, that Meta has not made a "significant contribution to the sustainability of the Australian news industry."

In October 2024, it had **appeared** that the Australian government was indeed looking to "reshape the code" by moving instead toward a "digital platform levy" or "tech tax." This was the recommendation of a parliamentary joint select committee on social media and Australian society, which produced an interim report focused on Meta. The report also **recommended** the creation of a "transition fund" as news organizations, particularly small and independent ones, await the creation of a levy. The country's largest publishers continued to call on the government to designate platforms under the code.

In December 2024, the Australian government **announced** that it would be looking to address the weakness in the existing bargaining code that could allow platforms to opt out of providing news, by requiring platforms that earn more than AUD \$250 million a year to enter into new deals or be **subject to** a levy based on Australian revenue. The News Bargaining Incentive, as it will be known, will require platforms to pay even if they do not enter into deals. The government claimed that it would be consulting stakeholders on the final design and would release a paper with their findings in early 2025. The new threshold means that other social media platforms like TikTok will now also fall under the framework.

Less than a week later, the government of Australian Prime Minister Anthony Albanese **unveiled** its plans for a News Media Assistance Program (News MAP), along with additional funding for local media and media diversity, totalling AUD \$180.5 million. Among the measures under News MAP, are grants to Australian news media, mandated media advertising spending in regional newspapers, and the implementation of a Media Diversity Measurement Framework by the Australian Communications and Media Authority to monitor the country's media diversity.

CANADA'S GLOBAL IMPACT ON NEWS MEDIA BARGAINING LEGISLATION

C-18 has had an indelible impact on the current dialogue shaping news bargaining legislation and the larger question of how governments can go about regulating Big Tech to protect their domestic news sector. Based on our discussion with Anna Marchese, the fallout from Canada's C-18 mobilized increased support toward a collective tax—which would be appropriated into a fund—rather than a bargaining model. Anya Schriffin echoed that thought, **writing** in *The Conversation*: "with the platforms having appropriated for themselves so much of the advertising revenues on which the media used to depend, it is natural to turn to digital taxation." Schriffin **noted** that such a levy should exist in addition to news bargaining codes. Meanwhile, as mentioned, Google has since co-led the development of funds in South Africa and California. Schriffin also noted that bargaining code legislation may be halted for now in Brazil and South Africa.

Whether the solution is a fund, a code, or both in tandem, one question at the heart of the issue remains unanswered: what is the value of news?

Nick Farrell told us in our interview with him that South Africa's leading media companies, Caxton and Media 24, have sought to answer this question. Both outlets launched a non-competition remedy under South Africa's Protection of Personal Information Act, submitting questions to Google about the monetary value of news. After receiving insufficient answers from the tech giant, Farrell told us that Caxton subsequently filed a complaint to South Africa's Competition Commissioner in hopes it may compel Google to provide this vital information. The Commissioner, while in possession of key data from Google related to the monetary value of news in South Africa, is beholden to confidentiality agreements. While the results of the ATI request remain uncertain, it underpins what may be one of the news industry's largest roadblocks to receiving appropriate compensation from Big Tech.

C. Policies That Could Coexist with News Bargaining and Areas for Future Research

Although this report has focused primarily on bargaining codes, while briefly considering funds as an alternative, many stakeholders we spoke with noted that either option, if pursued, constitutes only one part of a much larger policy effort needed to stem the crisis in journalism. The suggestions we received for complementary efforts were myriad and deserve further discussion—thankfully, many of the experts we spoke with are already delving further into some of these alternatives. Below, we briefly outline some of the policy and business model ideas shared by stakeholders over the past year:

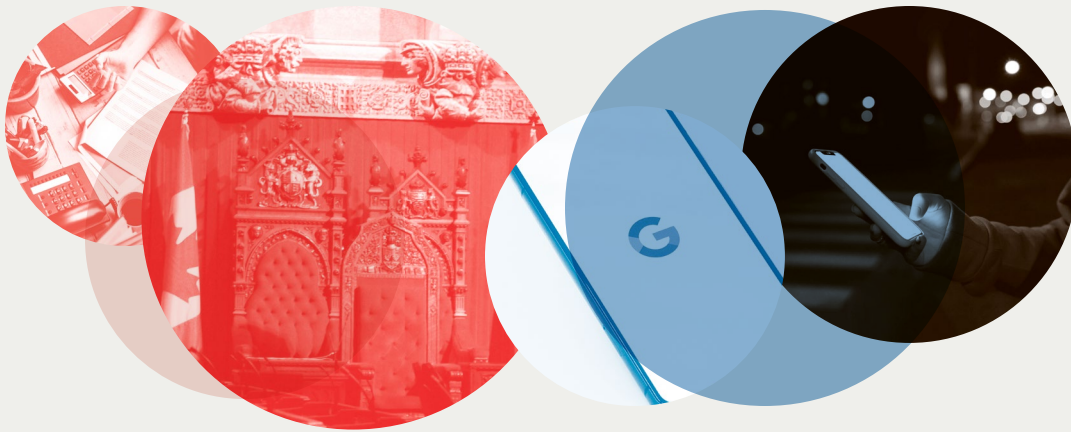
FEES AND TAX POLICIES

Though many stakeholders recognized the value of Canada's existing media policy, like its journalism-related tax credits, some experts proposed making small but relevant changes to existing tax credit policies and fees, in addition to the changes mentioned in Part 1C.

Anna Marchese, senior project officer at Columbia World Projects, noted that, though Canada's digital news subscription tax credit has had a low participation rate, Canada could look south of the border for ideas on how to improve it. In fall 2023, a program **was proposed** in Washington, D.C. that would provide USD \$11 million for news vouchers that the city's residents could use to support news organizations of their choice. According to Marchese, the number of people using these vouchers would determine the price of each one, which she believes could work as an extra incentive. The idea was **brought forth** by Democracy Policy Network, which has **proposed** other voucher systems in the U.S. previously, including Seattle's "democracy vouchers." Indeed, a similar "news voucher" system has also **been proposed** in Seattle.

Anya Schiffrin's August 2024 article in *The Conversation* **proposed** that a digital services tax—which would function much like existing levies on streaming services created in Canada through C-11—could also be considered to support journalism. Such a tax, she warned, would likely lead to strong resistance from Big Tech firms who are opposed to taxation and often offshore their revenues to avoid it.

Finally, News Media Canada president Paul Deegan brought up environmental "penalties" that impact newspapers in Canada that he would like to see addressed: 1) extended producer responsibility:



fees **levied** on packaged good companies, which he believes newspapers should be exempt from, 2) decisions in places like **Montreal** to ban the flyer-stuffed plastic bags that contain circulars and that circulate local newspapers, known as “Publicsac,” and 3) a similar decision **made by** Canada Post in January 2024 to no longer exempt “community newspapers with commercial inserts” from their Consumer Choice program, which allows Canadians to opt out of “junk mail.”

GOVERNMENT ADVERTISING

A number of stakeholders we spoke to within the news industry criticized the government for devoting so much of its advertising revenue to digital media as opposed to print news. Paul Deegan **pointed to** the government’s 2022–2023 report on advertising activities, which noted that, out of a CAD \$86 million budget, less than CAD \$800,000 was spent on print; indeed more was spent advertising solely on TikTok than on all print media combined.

The Toronto Star’s VP of government and public relations, Ryan Adam, agreed that the government was not “walking the walk” in terms of supporting local journalism with its own ad revenues. According to Adam, if the Heritage Minister decided to spend even 20 per cent of its advertising budget on journalism, many of the current challenges facing Canadian journalism would be gone. He added as well that, though such money could indeed be vulnerable to a change in government, the Toronto Star had thus far made more progress on this issue with the Ontario government under Conservative Doug Ford than under the federal Liberal Party. In fact, in 2024, Ontario **directed** 25 per cent of ad budgets to be reserved for Ontario publishers. Finally, Maria Saras-Voutsinas, executive director at the National Ethnic Press Council of Canada, noted that she would like to see more advertising money going to smaller community papers and third language outlets.

Randy Kitt, director of media for Unifor, agreed with these concerns and noted that Unifor has ceased advertising on Google and Facebook. Kitt also pointed to another issue, discussed in Part 1C, that has arisen around advertising tax credits: currently, businesses that **advertise** in Canadian publications receive a tax credit that they will not receive if they publish in, say, an American publication. However, as previously noted, this does not apply to digital advertising. Kitt has suggested that this loophole be closed.

April Lindgren, professor at Toronto Metropolitan University's School of Journalism and principal investigator for the Local News Research Project, disagreed with these criticisms. In her view, the government needs to advertise in the places where people are reading content and where they will get the most value for their money, as the purpose of government ads is to inform the public. In February 2025, the government **announced** that it would end its ban on advertising with Meta, which it had initiated after the news block, launching a campaign to promote the GST tax break worth up to CAD \$100,000.

PHILANTHROPY FOR JOURNALISM

One potential source of funding that April Lindgren advocates for, and which she believes should play a greater role in supporting journalism in Canada, is philanthropy. In November 2023, Lindgren and co-authors **released** the report "Funding Journalism: A Guide for Canadian Philanthropy," **followed by** their March 2024 report, "Funding Journalism: A Guide to Philanthropic Support for Canadian Media." The first is intended for funders and the second for media professionals. Both are intended to act as resources to facilitate news organizations making use of philanthropic dollars in Canada by becoming qualified donees, also known as registered journalism organizations (RJOs). Despite recognizing that philanthropic dollars are relatively scarce in Canada, especially for news, she believes this can still be a high-impact measure.

However, not everyone we spoke with was convinced. Ed Greenspon noted that journalism may not be as attractive a cause for funders as other issues. In addition, there is a high barrier to entry and steep competition for limited funds. Greenspon has proposed the creation of a repository of available money to make it easier for philanthropies to decide where to place their money within the industry. He believes that a philanthropic and public money oversight entity may also be a worthwhile proposition. Randy Kitt, meanwhile, noted the possibility of expanding the Local Journalism Initiative to include philanthropic donations.

Gabby Miller, former senior fellow at the Tow Center for Digital Journalism, argued that many in the U.S. have felt they were oversold on the idea of non-profit newsrooms, as many chased the success of a few who found luck with this model. Facebook and Google had previously provided funding to non-profit newsrooms, but have now left many of them high and dry, no longer providing the funding they need to survive. She worries about this model being adopted too rapidly in Canada, as it was in the U.S.

CHANGES TO EXISTING MEDIA STRUCTURES

Acknowledging that neither bargaining codes nor funds nor government funding policies had properly addressed the structural issues at the heart of the crisis in journalism, many of those we spoke with felt that a successful policy response would have to address industry consolidation of Big Tech, but also of media.

Anna Marchese, senior project officer at Columbia World Projects, noted that "antitrust is very important," adding that "the biggest issue behind why journalism is losing out is that ads are

monopolized.” To her, news bargaining codes do not actually claw back at this, but instead replicate market dynamics with more closed-door bargaining. She thinks it is time to break up ad funds. Emma McDonald, formerly the director of the Frontier Technology initiative at Minderoo, agreed that it was time to start looking into control over ad tech. According to Ed Greenspon, however, focusing on competition policy might not be particularly effective in Canada since Facebook’s behaviour is not actually a problem of *Canadian* competition policy, but rather is dependent on our southern neighbour.

Charis Papaevangelou, postdoctoral researcher at the Institute for Information Law at the University of Amsterdam, and former research fellow at the Centre for Media, Technology and Democracy, also believes there are limits to current “antitrust” (or “anti-monopoly”) measures. “In the EU,” Papaevangelou explained, “some of the most successful cases the Commission has brought against companies like Apple or Google ended with substantial fines” but did “little to remedy the overarching situation.” However, laws like the Digital Markets Act and the Digital Services Act in Europe may provide more options to “elicit systemic and behavioural changes.” Once again, he noted that anti-monopoly should be one part of a “more systemic, or holistic approach.”

In August 2024, a ruling in the U.S. declared that Google **had illegally monopolized** the online search market. In November 2024, the judge ordered Google to sell its browser, Chrome, in accordance with the finding.¹¹ This **was followed** by a second antitrust trial in September, one extremely consequential for online publishers: examining whether Google had illegally monopolized the *online advertising market*. The Department of Justice (DOJ) argued that Google’s monopoly over all aspects of the ad tech system (i.e. Google’s role as buyer, seller, and market regulator, as discussed in section 1A) “results in higher prices for advertisers and publishers.” Indeed, representatives from many large publishers **provided** testimony for the case. In November 2024, the DOJ **called** for a breakup of Google’s ad tech business, which would include the company divesting of DoubleClick and other parts of its ad tech system.¹² Federal regulators in the U.S. have notably also filed antitrust suits against Meta and other tech companies, **accusing them** of abuse of power.

Criticism, however, was not reserved for Big Tech alone; many pointed to monopolistic behaviours from the media side as well. Howard Law, editor of MediaPolicy.ca, explained that, in his experience, the issue of market power in news distribution does not typically elicit the same political momentum as the issue of the market power of digital advertising.

Some also criticized large media organizations that claimed they were out of money. The Toronto Star’s Ryan Adam, for example, pointed to the fact that some of the companies that operate media

11 The Center for Journalism and Liberty (CJL) at the Open Markets Institute **submitted** a letter pertaining to this decision, asking for specific additional remedies relevant to publishers, including a “shift to opt-in data collection for AI training, the “destruction of algorithms or AI models trained on data obtained through Google’s monopolistic practices,” among other suggestions.

12 CJL **has set up** a dedicated website to “breakdown the case and its impact on journalism.”

divisions also run other profitable ventures worth billions (for instance, Bell owns Crave, in addition to its own cell phone business), that they argue are destroying the media business model. Meanwhile, he pointed out that they would be receiving CAD \$40 million in waived licensing fees. Zane Schwartz, CEO and editor-in-chief of the Investigative Journalism Foundation, argued that the ongoing crisis in journalism is multi-determinant, and that the unipolar focus on Big Tech has served to unwittingly take some of the heat off of media executives who have also had nefarious impacts on journalism in recent years.

Randy Kitt, director of media for Unifor, explained that the wave of integration in the news industry that started in Canada in the early 2000s ultimately culminated in a much more consolidated news market. As he recalled, Bell **acquired** broadcaster CTV in 2000, Rogers **acquired** CityTV in 2007, while Shaw **integrated** Global TV in 2010. The companies argued at the time they had to vertically integrate in order to create the economies of scale necessary to compete with American companies. They also promised that doing so would allow them to pay into funds supporting local news, and fulfill minimum expenditure and exhibition requirements. And yet, according to Kitt, companies like Quebecor, Shaw, Rogers, Bell, and Global were soon crying that regulations were too onerous and that they could not fulfill these requirements. Schwartz pointed to a similar pattern in print, with Postmedia **buying** the Sun chain in 2015, **followed** by SaltWire newspaper chains in 2024, which itself was **created** through the purchase of several other newspapers. Meanwhile, Canada's competition laws, including the Competition Act, are simply not strong enough, according to Kitt, to tackle the issue of media consolidation, while subsequent governments have done little to remedy it.

This was reiterated by Christopher Curtis, who felt that legacy news had forfeited its right to lead on the future of media, pointing to their exemptions on basic CRTC Canada content as well as foreign ownership rules. These companies, he explained, have become “too big to fail” and no government wants to be at the helm when old media goes under.

To Ed Greenspon, one of the most relevant consequences of media concentration is the centralization of news decision-making within large chains, which pulls news away from local community ownership, and therefore away from truly reflecting those communities. A theme repeated by many experts we spoke with, Greenspon emphasized the importance of ensuring news organizations have local owners and local buy-in. Greenspon has suggested financing organizations that could repatriate journalistic enterprises over to local control.

NEW MODELS FROM WITHIN THE MEDIA SECTOR

With these criticisms of the news industry in mind, many of the experts we consulted argued that some of the changes needed to keep the industry afloat would indeed need to come from the industry itself. The senior government official we spoke with agreed that the sector should explore new models, including greater use of subscriptions. It is worth noting that, as of 2025, subscription and membership remained the “biggest revenue focus for publishers,” **according to** a Reuters Institute survey.

Zane Schwartz, meanwhile, pointed to the fact that many publications have already found innovative ways to sustain funding. For example, French digital magazine Mediapart has found great success with

subscriptions, digital magazine Air Mail makes money from selling merchandise and subscriptions, and Politico sells its insights to experts and policymakers through Politico Pro.

Several experts noted the funding success of newsrooms with niche focuses. Gabby Miller pointed to the benefits of such “intentional newsroom building” that is “tailored to the right audience.” Indeed, focusing on scale, she argued, should no longer be the goal, pointing to the **failure of** The Messenger, which hired over 300 journalists in less than a year before shuttering entirely.

From Christopher Curtis’ perspective, a major problem facing large media organizations is their failure to maintain meaningful connections to communities and to readers. He pointed to Postmedia’s recent redesign efforts, for example, which, to him, resulted in local newspapers across the country looking and sounding much the same, with reduced local newsroom staff.

According to April Lindgren, because media companies can no longer simply rely on advertising, they will need to start building deeper relationships and roots within communities. The return to community, however, is tied to the nature of ownership: is it a hedge fund in charge of the outlet, or instead an individual Canadian proprietor committed to quality journalism?

Relatedly, Lindgren has **proposed the creation of a directory** showing which local news outlets are available everywhere in Canada. Though there are existing policies aimed at supporting access to news in places with “news poverty” or “news deserts,” Lindgren argued that many Canadians still lack knowledge of where exactly this is happening. Initiatives like this become doubly important, she pointed out, if people can no longer rely on Meta or social media platforms to locate local news. According to this idea, people would be able to click on their own town in this directory and, from there, discover where to find local news. Government money for this project could potentially be made to match philanthropic funding.

In a November 2023 **article** in J-Source, Lindgren suggested enlisting local librarians to run an annual census on all local broadcast, online, and print media organizations providing high-quality news to residents, to bridge the data gap in determining the whereabouts of news deserts. The information provided could additionally be used to create a “news poverty index” that would rank places according to how well or badly they are currently being served by their local media.

PUBLIC MEDIA AS THE ALTERNATIVE TO JOURNALISM’S MARKET FAILURE?

Beyond new models and subscriptions, many experts take issue with the premise that journalism, as a public good, should be reliant on market factors. In their view, there is a need for stronger public media. Brandi Collins-Dexter, a fellow at Harvard’s Shorenstein Center on Media, Politics and Public Policy, during a meeting of the **Freelance Solidarity Project** (the digital media division of the National Writers Union), pointed to the many private investment funds that acquire journalistic entities and make them take on debt, forcing them into a debt trap. This was the case, for example, for the now-defunct VICE News. For Collins-Dexter, cases like these further illustrate the importance of public funding.

Victor Pickard, professor of Media Policy and Political Economy at the University of Pennsylvania, spoke alongside Collins-Dexter during the same meeting on the **need for** a “new business model for

journalism that includes increased support for public service media and nonprofits.” Pickard also **described** this vision in an Axios interview in February 2024, noting that robust funding in public media was needed as “there’s simply no commercial future for many kinds of journalism,” as it stands.

For Pickard, the industry is in need of both decommercialization and democratization. Journalism, he noted, is a “classic public good” and therefore should not rely on advertising revenues—a model that has been in place since the late 1800s. “Public goods have never been well supported by the market,” Pickard continued, and that is one of the reasons he calls the journalism crisis a “systemic market failure.”

According to Pickard, subscription success for select large news organizations like the New York Times gave the industry hope that journalism could rely only on subscriptions to survive. But it became clear that, while this has worked well for some very large newspapers and niche news organizations, it would not work for all. Furthermore, most individuals either cannot or will not pay for journalism, and the result is wealthier and whiter households enjoying greater access to it.

Pickard argued that philanthropy models, including those owned by billionaires, were no silver bullet, noting that many such papers have still gone under. For him, billionaire support is not a “systemic fix.” Pickard therefore sees the public media model as the “last best hope.” In his vision, public media extends far beyond PBS and NPR to give communities of all kinds access to these newsrooms. Though his system is not based on any specific country model, Pickard does note that Americans spend USD \$1.50 per person every year on public media, compared to many places in Europe and the U.K. which spend over USD \$100 per person per year. His plan would therefore require much larger public funding.

More specifically, his vision would involve resources that would be “federally guaranteed but locally owned and controlled.” Money could come straight from the Treasury, or it could come from taxing the big platforms—regardless, it would be devolved to states and then to the local news level. Local news bureaus would subsequently help allocate the money. To further democratize the system, those in the bureaus could be determined by elections, or individual members of the public could be selected, like for a jury.

According to Pickard, Americans, despite their overall distrust of media, tend to have higher levels of trust in local media. So, to him, if local communities were more “directly involved in creating their own media” and there was a “constant dialogue between the newsrooms and the communities,” there may be “higher and higher levels of trust.”

April Lindgren, meanwhile, has suggested something similar in Canada: the possibility of the CBC collaborating more closely with local news to make content more widely available via partnerships. Many experts in Canada, including the Toronto Star’s Ryan Adam, have noted that the CBC should be 100 per cent publicly funded, rather than continuing to also rely on ads.

According to research by Jessica Johnson, the former editor-in-chief of the Walrus and senior fellow at the Centre for Media, Technology and Democracy, there are currently about 100 countries worldwide, including most liberal democracies, that have some sort of public media. CBC is the largest media employer in Canada, and likely the biggest news producer in terms of sheer volume, with many independent media outlets still relying on its reporting for issues they do not have the

capacity to cover. Its mandate of covering news for all Canadians is a big one, and with private media in trouble, it currently serves as the one and only local media outlet in many regions. Today, however, many argue that it has outlived its mandate.

Like Vickard, Johnson believes that there does not currently appear to be a viable business model for private media, including independent media, that can be scaled. This does not mean small outlets are not doing well, but those that are notably do not tend to be breaking news outlets. Though Canada does fund more public media than the U.S., Johnson estimates that public media spending comes out to **roughly** CAD \$32 per capita, the second lowest in the G7. The “magic number” of how much Canada needs to spend to support a viable public media system is still under discussion. She noted, however, that in the U.K., where money spent on public media per person is higher, support for the BBC is also higher than it is for the CBC. **The Shattered Mirror** report previously pointed to the relationship between the disappearance of local news and this drop in trust, highlighting, once again, the importance of local news in any realistic plan to save the journalism industry. It is worth noting that, in January 2025, CBC News **announced** that it would be hiring up to 30 new permanent journalists in 22 underserved communities across the country, thus expanding from 48 to 66 local stations.

Meanwhile, the Liberal government **announced** a mandate review of the CBC in late December 2023. Other countries, including Denmark and Sweden, are undergoing similar debates and discussions around their public broadcaster. Johnson hopes that the project’s **national survey** and final upcoming report “What should the CBC be?” will help facilitate a well-informed and essential conversation over the future of Canada’s public broadcaster. With an election looming in Canada, and a promise by Conservative Party leader Pierre Poilievre to defund the English-language version of the CBC, the fate of Canada’s public broadcaster hangs in the balance.



Conclusion

GOOGLE'S EXEMPTION

On Oct. 28, 2024 the CRTC **announced** that it was **granting** Google a five-year exemption from the Online News Act, ordering it to release the CAD \$100 million owed to Canadian publishers within 60 days through the Canadian Journalism Collective (CJC). Funds would be **distributed** to Canadian news publishers, **based** on the number of full-time employees, excluding freelancers. Stipulations were added to the exemption, including that more news businesses must be allowed to join the collective. The CRTC also approved the 2 per cent cap on administrative fees, and noted that the Commission would not give specific guidance on the structure of the CJC. While Google is **exempted** from arbitration, it is still subject to other provisions, including prohibitions against unjust discrimination and undue preference. While News Media Canada **said** they were “very pleased” with the decision, CEO Paul Deegan **added**, “we now call on Meta...to follow Google’s socially responsible lead.” With this announcement, the saga of C-18 finally came to a close—at least for now.

WHAT LESSONS FROM CANADA'S TUMULTUOUS EXPERIENCE WITH C-18?

While some countries continue to pursue news bargaining, others—many scared off by Canada’s epic struggle with Google and Meta—have turned instead to funds of various kinds to stem the news industry’s bleeding.

Either way, just as Canada once learned from Australia, policymakers considering similar legislation, or alternatives, abroad may want to glean lessons from the Canadian experience to ensure continued improvements.

These include:

- **Adopting an offensive, rather than defensive role on Big Tech messaging:** Much of the messaging Big Tech used in Canada had previously appeared in response to Australia’s News

Bargaining Code, as well as to previous ancillary copyright laws in Europe. This included repeated claims of a “link tax” and accusations that the law would “break the internet.” Notably, the concept put forward by proponents of the bill, the “unfair exchange of value” at the root of the problem, is not necessarily intuitive to those who are not experts on the issue. This is particularly true when considering the complexity of the ad tech system. It is important to preempt Big Tech talking points and set up a narrative before platforms can begin employing these tactics with the public, redirecting the focus to the “theft” being carried out by Big Tech, for example.¹³ Policymakers can also emphasize that there is no tax involved: negotiations are taking place between two businesses. Pointing to recent decisions from the U.S. Department of Justice may also help support the concept of Google’s unfair business practices. Another tactic Google has repeated is that of pitting smaller publishers against large ones. Canada’s bill does much more to secure deals for smaller publishers than its Australian predecessor, but the government could have done more to reassure small publishers it had their interests—rather than solely those of Postmedia or the CBC—in mind. Finally, Big Tech continues to play on the idea that their needs and requests are intrinsically tied to the continued flourishing of a “free web,” and that efforts to regulate them amount to government censorship. Because this dynamic has at times existed in other countries, governments looking to implement this kind of legislation may need to turn this outdated argument on its head. They can, instead, point to the ways in which Big Tech monopolies are actually impeding free expression, privacy, and even democracy.

- **Transparency on the value derived from news is paramount:** Much of the debate around news bargaining derives from the dispute around the “real value” platforms obtain from showcasing news, or the value platforms provide to news publishers. Among other options, publishers may consider employing legal remedies in their given jurisdictions to try to obtain this information. It remains to be seen whether South African publishers Caxton and Media 24 will be successful in obtaining key data from their competition authority—if they do, it may shine light on one possible path forward.
- **The benefits of a regulatory framework:** Though the final agreement between Google and the government has led many critics to compare Canada’s eventual bargaining code to a fund, what is less often noted is the importance of the regulatory framework that now underpins the distribution of funds in Canada. This is particularly true when compared to funds currently being negotiated directly with Google in other jurisdictions. For instance, the agreements concluded directly between Google and California, or between Google and the Association of Independent Publishers in South Africa, were entered into completely voluntarily by Google—which could exit them just as easily. A lack of rules also means the ability of platforms to pick winners and losers. A regulated fund is distinct: such a fund is,

13 Credit to Courtney Radsch.

among other things, inherently predictable, accountable, and more transparent. In Canada, the money received from Google should be reliable, as well as clearly and equally distributed thanks to the framework created by C-18.

- **Future codes must take into account the AI challenge:** Any new bargaining codes being proposed should now also take into account the challenges posed by generative AI—something C-18 failed to do. As Courtney Radsch has suggested, existing news bargaining codes could be expanded to create a framework for future collective negotiations between AI companies and publishers, especially for small publishers. It is clear, overall, that dealing with the new threat from AI will require a “multi-pronged” approach. Given the lack of legal protection, many publishers are taking matters into their own hands by concluding individual deals with Big Tech and AI companies like OpenAI. But there is concern among experts that publishers may eventually regret adapting too much to AI companies, just as so many did previously with regard to platforms.
- **There may be ways to avoid another Meta exit:** Criticism of C-18 would have resonated far less had Meta not blocked news in Canada. Not surprisingly, it reaffirmed the feeling held by small publishers—who are often much more dependent on social media to distribute their work—that their needs had not been considered. For this reason, Courtney Radsch and other experts have advocated for the use of “must-carry” or similar provisions as part of future news bargaining codes. Such provisions would require platforms to continue carrying all covered news publishers. Although there is not a clear consensus on exactly how this provision should look (for example, whether it should be based solely on “must-carry,” or on “common carriage,” as used in telecommunications) there is clear precedent in Canada: must-carry is already in place under the Broadcasting Act for the distribution of cable TV. Meanwhile, professor Dwayne Winseck has called section 51 of C-18 a “soft” must-carry” provision. This provision, in his view, could have been much stronger, including by amending the language that makes the fair carriage of content contingent on companies “making available news content,” which Meta has used as a loophole to justify blocking news. Meanwhile, it **has been** over a year since the CRTC announced it would investigate the circumvention of Meta’s news block and determine whether the platform could be found to fall under the act. The Commission has requested that Meta share a non-confidential version of its response to the Canadian government’s request, but this letter has seemingly not yet been released.
- **Getting to the root of the problem means addressing surveillance advertising:** Despite the money that was injected into the industry by the government’s pre-bill CAD \$595 million funding package and Google’s CAD \$100 million deal, layoffs have **continued** across Canada and the globe throughout 2024. The U.S. Department of Justice’s recent lawsuit against Google, which **accused** the company of dominating the ad tech system, has lent renewed credence to the idea that an eventual solution to the problems facing publishers

will require deeper changes to the status quo. Indeed, there may even be an intrinsic contradiction in having news outlets receive money from a system that is inherently detrimental to their survival.

- **Public interest journalism should be considered a public good:** Some experts expressed a deeper belief that there simply is not a viable business model on the horizon for a news sector so deeply dependent on ads. To them, public interest journalism is a public good and should be treated as such. American media studies scholar Victor Pickard is a strong proponent of this idea. In his view, though certain models like subscription models or billionaire support for news have worked for some select outlets, they are likely not generalizable to a majority of outlets—especially those focused on breaking news. He has noted that money for public news could be locally allocated, thus also helping to reinvigorate local news and trust in media.
- **We need to work together to take on Big Tech:** Turning off news in Canada alone may have proved a worthwhile risk for Meta. However, it is unlikely that both Google and Meta would have chosen to turn off news globally. Doing so would likely have led to a decisive reputational decline and would have impacted the overall value of the service and product they provide. Canadian government officials we spoke with had engaged in discussions and attempted to band together with other countries considering news bargaining, highlighting the importance of international solidarity in their fight. The same could likely be said of numerous fights currently ongoing against the power of Big Tech globally, from fighting monopolies to taking on global privacy rights.

The story of C-18, controversial as it was, could likely be told very differently by the various stakeholders who witnessed firsthand the struggle over this piece of legislation. For critics, C-18 was a cautionary tale of wrong-headed legislation; for proponents, it was proof that it is possible to regulate a Big Tech giant and impose a fair remedy. For some, the final Google deal of CAD \$100 million, though not close to what the news industry ultimately needed, was worth the valiant efforts it took; for others, it was a drop in the bucket and not worth the losses the industry has experienced under the Meta block. Whether a country should move forward with its own code will ultimately depend on each country's individual assessment of the risks it is willing to bear and the unique circumstances faced by its news industry.

Funding programs, including bargaining codes, tax credits, and other forms of government funding have sometimes played an important role in stemming the bleeding in the news media industry. Considering the level of crisis in the industry, every little bit counts. However, to secure a stable future long-term, it may be necessary to also start building a new conception of the role of journalism in our society. Unlike Big Tech, which often acts to its detriment, public interest news media is an essential pillar of any vital democracy. With the right policies in place, it should be considered worthy of deeper investment, and shielded from the market failure that is today's crisis in journalism.

Annex A: Interviewees

NAME	TITLE	ORGANIZATION	DATE(S)
Ryan Adam	VP of Government and Public Relations	Toronto Star	February 13, 2024 & by email
Christopher Curtis	Co-Founder	The Rover	September 10, 2024
Canadian Journalist	—	—	March 25, 2024
Paul Deegan	President and CEO	News Media Canada	February 8, 2024
Nick Farrell	Former Associate	Webber Wentzel	August 28, 2024
Ed Greenspon	Former President and CEO	Public Policy Forum	February 12 & July 22, 2024
Official at Canadian Heritage	—	—	March 20, 2024
Meetali Jain	Director	Tech Justice Law Project	November 9, 2023
Jessica Johnson	Senior Fellow	Centre for Media, Technology and Democracy	July 25 & August 12, 2024
Jason Kint	CEO	Digital Content Next	February 20, 2024
Randy Kitt	Director of Media	Unifor	April 5, 2024
Howard Law	Founder and Editor	MediaPolicy.ca	February 2, 2024
April Lindgren	Principal Investigator	Local News Research Project at Toronto Metropolitan University's School of Journalism	April 18, 2024
Anna Marchese	Senior Project Officer	Columbia World Projects	August 2, 2024
Emma McDonald	Former Director of Frontier Technology, Former Senior Policy Advisor	Minderoo, Australia's Minister for Communications	March 27, February 27 & August 29, 2024
Gabby Miller	Former Senior Fellow, Former Staff Writer	Tow Center for Digital Journalism, Tech Policy Press	March 13, 2024
Charis Papaevangelou	Postdoctoral Researcher	University of Amsterdam's Institute for Information Law	By email

Courtney C. Radsch	Director	Center for Journalism and Liberty at the Open Markets Institute	July 18 & 24, 2024
Maria Saras-Voutsinas	Executive Director	National Ethnic Press and Media Council of Canada	March 6, 2024
Anya Schiffrin	Director	Technology, Media, and Communications specialization at Columbia University's School of International and Public Affairs	February 8, July 10, & August 26, 2024
Zane Schwartz	CEO and Editor-in-Chief	Investigative Journalism Foundation	April 17, 2024
Ian Scott	Former Chairperson	CRTC	February 9, 2024
Senior Government Official	—	—	March 4 & June 12, 2024
Gregory Taylor	Professor	Department of Communication, Media and Film at the University of Calgary	August 28, 2024
Dwayne Winseck	Professor	School of Journalism and Communication at Carleton University	August 23, 2024

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