



Recognizing the value of news

Bill C-18, the *Online News Act*

Submission of the
Canadian Association of Broadcasters

to the

Senate Committee on Transport and Communications

9 May 2023

Overview

The *Online News Act*, Bill C-18, is important and urgent legislation. It needs to be passed now to start to (a) rebalance the significant market power of foreign platforms and their stranglehold on the Canadian advertising market, and (b) ensure Canadian news providers are able to negotiate fair compensation for the value of their content. It is a critical first step to support the continued availability of professional journalism in Canada, which is the fundamental keystone of a functioning democracy.

As the national voice of Canada's private radio and television broadcasters, the Canadian Association of Broadcasters (CAB) welcomes the introduction of this legislation and urges that it be passed quickly, and with only minor amendments, as set out in this submission.

C-18 needs to be passed now

Web giants have had a drastic impact on the advertising market in Canada, capturing a massive share of advertising revenue from Canadian businesses that rely on that revenue to make news. The Internet now has a 68% share of the advertising market in Canada.¹

C-18 is a critical first step in addressing the competitive impact of big tech in Canada, which is effectively causing a growing trade deficit in the advertising industry and undermining our ability to continue to support local newsrooms across the country. Passage of the bill will require web giants like Google and Facebook to negotiate for reasonable compensation for the value of news content. It will establish a fair and reasonable negotiation framework for Canadian news organizations – without regard to size – and encourage good faith negotiations, with arbitration as a backstop if negotiations fail. It will help level the playing field between web giants and Canadian news providers. While it will not “save” journalism, it will help to address the impact of the increasing drain of advertising revenue out of Canada and is an important first step.

Therefore, we need to move ahead with this legislation now to rebalance the relationship between big foreign tech companies and Canadian news providers.

What Bill C-18 is not

Opponents of the bill have raised unfounded concerns:

- **It is not a “link tax”** – it is a recognition that news content has value and that the tech giants should negotiate reasonable compensation accordingly.
- **It is not a subsidy** – it is an important response to a competitive and commercial inequity.
- **It will not impact free speech or freedom of the press** – the CRTC will have no power to regulate journalism.
- **It will not benefit only the biggest news providers** – in fact, without this legislation, smaller news businesses will have zero chance to negotiate with the big tech companies.

¹ Estimate from Communications Management Inc., based on thinkTV and Statistics Canada data.

Why Bill C-18 is important now

Private broadcasters are trusted by Canadians as their primary source for local news in small, medium and large communities across the country. They provide a diversity of editorial voices with critical news and information programming in English, French, Indigenous, and other languages serving Canada's diverse communities. Last year, private radio and television broadcasters invested \$681 million² in news and community information.

Canada's broadcasters are committed to sustaining professional newsrooms in communities across the country, however, their ability to maintain this level of commitment is under threat as advertising revenue migrates to online platforms. As news broadcasters and publishers struggle to maintain the resources necessary to continue to inform Canadians, it is critical that a public policy framework be developed to help recognize the value of their news content and support its continued availability, particularly in the face of massive disruption from powerful web giants. C-18 is a critical first step to support the ability of Canadian broadcasters to continue to provide professional news and information programming to Canadians in communities large and small.

Proposed amendments

We had two concerns with the original draft of the bill, which have been addressed in the legislation currently before the Senate. Specifically, we argued in favour of clearer language to ensure that digital platforms cannot engage in or provide undue or unreasonable preference to any entity (Section 51), and we supported amendments to ensure that eligible news organizations are fully and legitimately in the business of providing reliable and professional news content in line with the best journalistic practices and ethical guidelines (Section 27).

However, we are concerned about the amendments that were made to Section 93 with respect to the coming into force of this legislation. The previous wording would have seen the legislation come into effect upon an order by the Governor in Council. Section 93 now imposes a series of phases before which certain sections of the Act can come into effect. This complex series of steps adds unnecessary confusion and is likely to cause delays in the implementation of this important legislation, creating considerable uncertainty for news companies at a time when their ability to continue providing professional news content is under considerable stress.

Further, in section 84, the adoption of regulations by the Governor in Council is not a **requirement** but only a **possibility** ("*The Governor in Council **may** make regulations...*"). There is a clear contradiction between this provision and the requirement under Section 93 to make regulations before various sections of the Act may take effect. This additional element of confusion and uncertainty will play into the hands of the big digital platforms and reinforce their refusal to negotiate with news companies until C-18 is fully in force. It will also create additional delays and provide further windows of opportunity for these oligarchic companies to continue to hinder the implementation of this Act.

² Estimate prepared by Communications Management Inc., based on CRTC and Statistics Canada data.

In order fulfil Parliament's intent for the bill and provide certainty to both the platforms and news businesses, the CAB recommends adding a clause requiring that the legislation come into effect, in its entirety, no later than 180 days after Royal Assent.

Our proposed wording for Section 93 is included as Appendix 1.

Appendix 1 – CAB proposed amendment to Bill C-18

Current text	Proposed amendment
<p>Coming into Force Order in council 93 (1) Section 6 comes into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day on which the first regulations made under paragraph 84(a) come into force.</p> <p>(2) Sections 7, 8, 11 to 17, 20, 27 to 31, 53.1 and 59 and subsection 60(2) come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the latest of</p> <ul style="list-style-type: none"> (a) the day fixed in accordance with subsection (1), (b) the day on which the first regulations made under paragraph 84(b) come into force, and (c) the day on which the first regulations made under paragraph 84(c) come into force. <p>(3) Sections 18, 19, 21, 22 and 32 to 44 come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day fixed in accordance with subsection (2).</p> <p>(4) Sections 49 to 52 and 68 come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day fixed in accordance with subsection (3).</p> <p>(5) Sections 79 to 83, 86, 87 and 90 come into force on a day or days to be fixed by order of the Governor in Council.</p>	<p>Add the following provision:</p> <p>“(6) Notwithstanding the provisions of this section, this Act shall come into force on or before the one hundred and eightieth day after the day on which this Act receives royal assent.”</p>