Bill C-18 (Online News Act): Canada looking to create a level playing field for news media

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Earlier this month, Canadian Heritage Minister Pablo Rodriguez introduced Bill C-18 (*Online News Act*) in Parliament. This bill, which was largely inspired by similar legislation in Australia, aims to reduce bargaining imbalances between online platforms and Canadian news outlets in terms of how these "digital news intermediaries" allow news content to be accessed and shared on their platforms. If passed, the *Online News Act* would, among other things, require these digital platforms such as Google and Facebook to enter into fair commercial agreements with news organizations for the use and dissemination of news related content on their platforms.

Bill C-18, which was introduced on April 5, 2022, has a very broad scope, and covers all Canadian journalistic organizations, regardless of the type of media (online, print, etc.), if they meet certain eligibility criteria. With respect to the "digital news intermediaries" on which the journalistic content is shared, Bill C-18 specifically targets online communication platforms such as search engines or social media networks through which news content is made available to Canadian users and which, due to their size, have a significant bargaining imbalance with news media organizations.

The bill proposes certain criteria by which this situation of bargaining imbalance can be determined, including the size of the digital platform, whether the platform operates in a market that provides a strategic advantage over news organizations and whether the platform occupies a prominent position within its market. These are clearly very subjective criteria which make it difficult to precisely identify these "digital news intermediaries." Bill C-18 also currently provides that the intermediaries themselves will be required to notify the Canadian Radio-television and Telecommunications Commission ("**CRTC**") of the fact that the Act applies to them.

The mandatory negotiation process is really the heart of Bill C-18. If passed in its current form, digital platform operators will be required to negotiate in good faith with Canadian media organizations to reach fair revenue sharing agreements. If the parties fail to reach an agreement at the end of the negotiation and mediation process provided for in the legislation, a panel of three arbitrators may be called upon to select the final offer made by one of the parties. For the purposes of enforceability, the arbitration panel's decision is then deemed, to constitute an agreement entered

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into by the parties.

Finally, Bill C-18 provides digital platforms the possibility of applying to the CRTC for an exemption from mandatory arbitration provided that their revenue sharing agreements meet the following criteria:

1. Provide fair compensation to the news businesses for news content that is made available on their platforms;
2. Ensure that an appropriate portion of the compensation would be used by the news businesses to support the production of local, regional and national news content;
3. Do not allow corporate influence to undermine the freedom of expression and journalistic independence enjoyed by news outlets;
4. Contribute to the sustainability of Canada's digital news marketplace;
5. Ensure support for independent local news businesses, and ensure that a significant portion of independent local news businesses benefit from the deals; and
6. Reflect the diversity of the Canadian news marketplace, including diversity with respect to language, racialized groups, Indigenous communities, local news and business models.

A bill of this scope will certainly be studied very closely by the members of Parliament, and it would not be surprising if significant amendments were made during this process. We believe that some clarifications would be welcome, particularly as to the precise identity of businesses that will be considered "digital information intermediaries" for the purposes of the *Online News Act*.

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