



Online News Notice of Consultation CRTC 2024-236

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Ottawa, 8 October 2024

Public record: 1011-NOC2024-0236

Call for comments – Proposed regulations – *Code of Conduct Respecting Bargaining in Relation to Online News Content*

Deadline to submit an intervention: 7 November 2024

[\[Submit an intervention or view related documents\]](#)

Summary

The *Online News Act* (the Act) received royal assent on 22 June 2023. The purpose of the Act is to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability. The Act sets out a framework requiring the largest online platforms to negotiate fair commercial deals with eligible news businesses in Canada for the news content made available by the online platforms.

The Act requires the Commission to set up and supervise this bargaining framework and to make regulations that set out a code of conduct to ensure fair bargaining activities between online platforms and eligible news businesses. As a result, the Commission is issuing the *Code of Conduct Respecting Bargaining in Relation to Online News Content* (the proposed Code of Conduct) for comments.

This is the fourth public consultation launched by the Commission to implement the Act. The previous public consultations dealt with the mandatory bargaining process, undue preference and information gathering, the Cost Recovery Regulations, and Google's exemption application.

While platforms can request an exemption from mandatory bargaining under the Act and while exempt platforms may not be subject to the proposed Code of Conduct, it is important to have the Code in place. It will allow the Commission and the parties to be prepared for any bargaining under the proposed Code of Conduct.

The proposed Code of Conduct is set out in the appendix to this notice. Anyone can comment by filing an intervention on or before **7 November 2024**.

Background

1. The *Online News Act*¹ (the Act) sets out a framework for mandatory bargaining between eligible news businesses in Canada and online platforms that make news content available. Under the Act, these platforms are called “digital news intermediaries”² (DNIs).
2. Under the Act, parties negotiate between themselves and may proceed to mediation and final offer arbitration. The Commission is responsible for supervising this framework. As part of this responsibility, the Commission must make regulations that establish a code of conduct for operators of DNIs and eligible news businesses.
3. The proposed regulations, the *Code of Conduct Respecting Bargaining in Relation to Online News Content* (the proposed Code of Conduct) would apply when these parties bargain over compensation for making news content available. The Commission would be able to enforce the proposed Code of Conduct using tools that include compliance orders and, in some cases, administrative monetary penalties.

The proposed Code of Conduct

4. The Commission is seeking comments on the proposed Code of Conduct set out in the appendix to this notice.
5. The proposed Code of Conduct is meant to support transparency and fairness in bargaining activities.
6. Under the Act, the proposed Code of Conduct can only apply to the following parties:
 - operators of DNIs subject to the Act; and
 - news businesses that have been designated as eligible under the Act or groups of those news businesses.
7. The proposed Code of Conduct defines bargaining activities as any activity between parties related to negotiation, mediation or arbitration about compensation for making Canadian news content available. This definition would apply whether or not those activities take place within the mandatory bargaining process set out in the Act.

¹ An Act respecting online communications platforms that make news content available in Canada, SC 2023, c. 23.

² “Digital news intermediaries” are defined in the Act as online communications platforms, including search engines and social media services, that are subject to the legislative authority of Parliament and that make news content produced by news outlets available to persons in Canada. They do not include online communications platforms that are messaging services, the primary purpose of which is to allow persons to communicate with each other privately. When a term used in the proposed Code of Conduct also appears in the Act, it has the same meaning as in the Act.

8. Platforms can request an exemption from mandatory bargaining under the Act and while exempt platforms may not be subject to the proposed Code of Conduct, it is important to have the Code in place. The Commission and the parties will be prepared for any bargaining that takes place where the proposed Code of Conduct would apply.
9. Under the proposed Code of Conduct, parties must bargain in good faith. In this context, the concept of good faith is aimed at creating a transparent and fair bargaining process. In particular, parties would have to demonstrate reasonable efforts to reach a fair agreement, including by committing time to the process, engaging in meaningful dialogue, and readily sharing and explaining their positions.
10. The proposed Code of Conduct gives examples of unfair behaviours that could arise during bargaining and prohibits them. These include causing unreasonable delay, acting deceptively, and acting abusively.
11. Further, specific kinds of provisions in agreements that parties enter as a result of bargaining are prohibited under the proposed Code of Conduct. These include clauses that would prevent parties from entering into agreements with other entities, that would make it harder to make news content available online, and that would take away legal rights that the Act gives to parties.
12. In regard to transparency, parties would need to share information in a way that respects confidentiality and helps them make informed business decisions.
13. Most provisions would apply to all bargaining activities between operators of DNIs and eligible news businesses. As a result, even if these parties agreed to bargain outside the mandatory bargaining process set out at sections 18 to 44 of the Act, they would need to follow the proposed Code of Conduct's rules about good faith, unfair behaviour, and prohibited clauses. This should help avoid conduct that is counterproductive to bargaining or contrary to the objectives of the Act.
14. Some provisions of the proposed Code of Conduct would only apply when parties use the mandatory bargaining process in the Act. For example, in some cases, parties would have to share specific information with each other and follow any procedural regulations for bargaining that the Commission might make in the future. Parties who are bargaining outside of the mandatory process would not have to follow these additional rules but could choose to do so.
15. The proposed Code of Conduct would come into force on the day that the regulations are registered with the Clerk of the Privy Council for publication in the Canada Gazette, Part II.

Call for comments

16. The Commission calls for comments on the proposed Code of Conduct, which is set out in the appendix to this notice of consultation. The Commission will accept interventions that it receives on or before **7 November 2024**.

Procedure

17. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
18. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
19. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
20. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
21. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the

[\[Intervention/comment/answer form\]](#)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at

819-994-0218

22. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a

particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

23. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
24. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

25. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and fax numbers, etc.
26. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
27. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
28. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

29. Links to interventions, replies and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.

30. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010

Appendix to Online News Notice of Consultation 2024-236

Code of Conduct Respecting Bargaining in Relation to Online News Content

Definitions

Definitions

1 The following definitions apply in this Code.

Act means *Online News Act*. (*Loi*)

bargaining activity includes any activities by a party related to negotiation, mediation or arbitration in respect of compensation for making available Canadian news content on a digital news intermediary, whether or not that activity takes place within the bargaining process set out in sections 18 to 44 of the Act. (*activité de négociation*)

Bargaining

Good faith

2 Parties must engage in bargaining activities in good faith by demonstrating reasonable efforts to arrive at a fair agreement, including by committing time, engaging in meaningful dialogue and readily sharing and explaining positions.

Unfair Behaviour

3 (1) During bargaining activities, parties must not engage in unfair behaviour, including

(a) behaviour that is intended to unreasonably delay or prolong bargaining, such as a party making frivolous applications to the Commission with respect to violations of this Code;

(b) behaviour that is deceptive, such as a party providing false or misleading information when it exchanges information with another party;

(c) behaviour that is abusive, threatening or violent; and

(d) behaviour that is not in accordance with the procedural obligations agreed to with another party.

Bargaining procedure

(2) If a bargaining activity takes place within the bargaining process set out in sections 18 to 44 of the Act, parties must comply with any applicable regulations made under paragraph 85(b) of the Act.

Prohibited Provisions – agreements

4 An agreement between an operator and an eligible news business or group of eligible news businesses reached through bargaining activities must not include provisions that

(a) limit the ability of

(i) the operator to enter into an agreement with another news business or groups of news businesses, or

(ii) the eligible news business or group of eligible news businesses to enter into an agreement with another operator;

(b) prohibit the operator or the eligible news business or group of eligible news businesses from making available news content on any online communications platform that is not subject to the agreement;

(c) limit or prevent the recourse to civil remedies provided for in section 45 or section 46 of the Act;

(d) require disputes to be adjudicated outside Canada;

(e) require the eligible news business or group of eligible news businesses to raise a dispute in a Canadian jurisdiction in which it does not operate;

(f) require the agreement to be interpreted according to the laws of a jurisdiction outside Canada;

(g) limit or prevent

(i) the making, by any party, of any complaint or application to the Commission that is allowed by the Act; or

(ii) the disclosure, by any party, of relevant information that has been requested by the Commission;

(h) limit the ability of the eligible news business to join a group of eligible news businesses in order to bargain for future agreements; or

(i) limit the ability of the eligible news business or group of eligible news businesses to initiate the bargaining process set out in sections 18 to 44 of the Act in a timely manner in order to reach another agreement that will take effect after the current agreement ends.

Information Sharing

Confidence

5 (1) Any information that parties exchange during bargaining activities must be maintained in confidence and used only for the purposes of bargaining activities.

Conditions and limitations

(2) Parties may agree to conditions or limitations with respect to the use or safeguarding of information exchanged during bargaining activities.

Relevant information

6 (1) If a bargaining activity takes place within the bargaining process set out in sections 18 to 44 of the Act, a party must exchange with the other party any information that could influence its decision to enter into an agreement or its determination of the terms of the agreement, including information on direct interactions between users and news content and information on indirect value, such as improved user profiling or user retention, created because news content is made available by a digital news intermediary.

Format

(2) The information must be made available in a format that the other party can easily understand.

Period

(3) The information must contain details of the direct interactions that took place and the indirect value that was created during the period of one year prior to the commencement of the bargaining activities.

Coming into force

Registration

7 This Code comes into force on the day on which it is registered.