Online News Decision CRTC 2024-262

PDF version

References: 2024-143, 2024-143-1 and 2024-143-2

Ottawa, 28 October 2024

Exemption Order from the *Online News Act* granted to Google

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 *Online News Act Application and Exemption Regulations* (the Regulations) regarding the application of the Act came into force on 19 December 2023. The Regulations, made by the Government of Canada, provide a path that online platforms can follow to receive an exemption from mandatory bargaining with individual news businesses. To qualify for the exemption, the platform is required to come to an agreement with a single collective that would distribute the funding equitably among news businesses. The Regulations specify that the exemption must be approved by the Commission based on a public consultation.

On 7 June 2024, Google LLC (Google) notified the Commission that the Act applied to its Google Search platform and that it had reached an agreement (Agreement) with the Canadian Journalism Collective (CJC) under which it would contribute $100 million annually to Canadian news businesses. It also filed an application to be exempted from the Act.

On 27 June 2024, the Commission launched a public consultation to determine whether Google demonstrated that it met the criteria for an exemption order under the Act and the Regulations.

In this decision, the Commission determines that Google has met the requirements set out in the Act and the Regulations for an exemption for its Google Search platform. As such, it grants a five-year exemption to Google, with certain conditions, such as a requirement to allow additional news businesses to join the CJC. The Commission will also require annual reports from the CJC to ensure it operates in a transparent manner.

The exemption order comes into effect **28 October 2024**. Per the Agreement, Google will pay the contribution to the CJC within 60 days of this decision.

Background

1. The *Online News Act* (the Act) sets out a framework for mandatory bargaining between eligible news businesses in Canada and the operators of the largest online platforms that make news content available. Under the Act, these platforms are called “digital news intermediaries’ (DNIs).[1] The purpose of the Act is to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability. Once an operator to which the Act applies has signed fair compensation agreements, it may apply to the Commission to be exempted from the Act.

2. The criteria for an exemption order are set out in subsection 11(1) of the Act. These criteria include that the agreements:

   (i) provide for fair compensation to news businesses;

   (ii) ensure an appropriate portion of compensation is used for the production of local, regional, and national news content;

   (iii) do not allow corporate influence to undermine freedom of expression or journalistic independence;

   (iv) contribute to the sustainability of the Canadian news marketplace;

   (v) support a significant portion of independent local news businesses and encourage innovative business models; and

   (vi-viii) support a range of news businesses, including for-profit and not-for-profit, Indigenous new outlets, and official language minority community (OLMC) news outlets, in local and regional markets across Canada, and serving diverse communities, such as anglophone, francophone, Black and other racialized communities.

3. The *Online News Act Application and Exemption Regulations* (the Regulations) add conditions that an operator must meet to receive an exemption order and explain how an operator can meet these criteria through a single agreement with a collective representing news businesses.

4. Under sections 4 to 10 of the Regulations, an operator may qualify for an exemption if:

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[1] “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.

- it conducts a 60-day open call process for news businesses that wish to receive compensation for the operator's DNI making their news content available;

- during the open call process, it accepts attestations from news businesses stating that they could meet the eligibility criteria under section 27 of the Act, that they operate a news outlet that meets the criteria set out in section 31 of that Act, and that their news content is made available on the DNI in question;

- it provides the Commission with the list of attesting news businesses; and

- it signs an agreement with a group or collective representing the news businesses that responded to the open call, which provides for:

    - $100 million in monetary compensation, adjusted for inflation annually, to be distributed equitably to the news businesses based on full-time equivalent (FTE), online news-producing employees.[2]

    - The ability for any attesting news business to join the group or collective at any time.

    - The protection of freedom of expression and journalistic independence.

    - Funds to be used to support the production of local, regional and national news content.

5. If the operator of a DNI satisfies the exemption criteria, the Commission must exempt the operator, in relation to that DNI, from the duty to bargain (section 21 of the Act) and any related regulations (made under section 85). The Commission may also exempt the operator from any other provision of the Act or of Commission-made regulations (under sections 81 or 85).

6. Under subsection 11(3) of the Act, the Commission may include any condition in the exemption order that it considers appropriate. Under subsection 11(5) of the Act, an exemption order may remain in effect for up to five years and can be renewed. Additionally, under section 12 of the Act, the Commission may issue an interim exemption order where it finds that an operator has not met all of the requirements for an exemption but is acting in good faith and could meet them within one year. The Commission can review an exemption order or an interim order at any time.

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[2] The Regulations limit the requirement for $100 million in annual compensation to the search engine with the greatest share of Canadian Internet advertising revenue. The Regulations further specify that no more than 7% of the compensation may be paid to the Canadian Broadcasting Corporation/Société Radio-Canada, and no more than 30% may be paid to other broadcasters.

7. In addition to the requirements on the applicant, prior to issuing an exemption order, the Commission must hold a public consultation on the application. The Commission launched a consultation on Google LLC (Google)'s application in *Call for comments – Application for exemption from the* Online News Act *by Google*, Online News Notice of Consultation CRTC 2024-143, 27 June 2024.

Google's application

8. On 7 June 2024, the operator Google notified the Commission that the Act applied to its DNI, Google Search. Google also filed an exemption application with the Commission, based on the agreement (Agreement) it signed with the Canadian Journalism Collective (CJC) on 6 June 2024.

9. Google's application outlines how it conducted the open call process and how it selected the CJC to distribute the funds to news businesses. It also explains the ways in which the Agreement aligns with the requirements in the Act and the Regulations that apply to Google. Google therefore requests that the Commission exempt it from the Act. Per the Agreement, Google has 60 days from the date an exemption order is issued to pay the $100 million contribution to the CJC.

10. Google argues that, as it has met the requirements in the Act, the Commission cannot place conditions on Google that would indirectly regulate the CJC. The CJC also argues that the Commission should not interfere with its operations as an independent entity.

11. The Commission received 80 interventions, mainly from news businesses and industry organizations representing news businesses. The interventions are addressed in this decision.

Issues

12. The Commission understands that Google is a regulated entity, and the CJC is a collective of news businesses. While the Commission's role in overseeing the CJC is limited, it must nonetheless ensure that the Agreement is implemented in a way that is consistent with the Act and the Regulations.

13. After examining the record for this proceeding, the Commission considered the following issues:

    - the open call;
    - the contribution amount;
    - use of funds for the production of news;
    - protection for journalistic independence;
    - the CJC's intended distribution of funds based on FTE employees;

- membership in the collective for news businesses that participated in the open call;
- additional members joining the collective;
- administrative expenses;
- governance and operation of the CJC;
- requirements for transparency reporting;
- indemnity clause in the Agreement;
- copyright limitation in the Agreement;
- contribution to public interest funding;
- the scope of the exemption; and
- the length of the exemption.

Open call

14. Paragraph 11(1)(b) of the Act requires the operator, in this case Google, to comply with any additional conditions for exemption set out in regulations made by the Governor-in-Council. Subsection 4(1) of the Regulations sets out the conditions of exemption relating to the open call process.

15. Google's application describes the open call it conducted from 28 February to 30 April 2024. Google received responses from more than 600 news businesses representing 1435 news outlets. Google provided the Commission with a list on 17 May 2024, and submitted that it did not reject any news business that submitted an attestation.

16. The Ontario Association of Broadcasters (OAB) indicated that it was aware of attestations submitted that did not appear on the list, but did not provide any further information.

17. In the circumstances, the Commission considers that Google has met the requirements relating to the open call.

Contribution amount

18. Subparagraph 11(1)(a)(iv) of the Act requires Google to contribute to the sustainability of the Canadian news marketplace. Subsection 9(2) of the Regulations sets out a specific formula for an annual monetary contribution, $100 million to be adjusted for inflation, which is considered to meet that requirement with respect to the largest search engine to which the Act applies. Google is the largest search engine to which the Act applies, and clause 4(a) of the Agreement confirms that Google will pay the CJC this annual sum.

19. Accordingly, the Commission considers that Google has met the requirement to contribute to the sustainability of the Canadian news marketplace.

20. Paragraph 4(1)(c) of the Regulations requires Google to specify the dollar value of any non-monetary compensation included in an agreement. Google affirmed, in clause 4(b) of the Agreement, that no non-monetary compensation will be paid to the CJC.

21. Accordingly, the Commission considers that Google has met the requirement related to non-monetary compensation.

Production of news

22. Subparagraph 11(1)(a)(ii) of the Act requires that Google ensure an appropriate portion of compensation is used for the production of local, regional, and national news content. Section 7 of the Regulations defines this requirement as being met if news businesses commit to using a majority of the funds received to support the creation of such content. Clause 7(d)(i)(A) of the Agreement affirms that the CJC will include this commitment in the member agreement that news businesses must sign to join the collective and will enforce it.

23. Accordingly, the Commission considers that Google has met the requirement to ensure an appropriate portion of compensation is used to support the production of local, regional and national news content.

Journalistic independence

24. Subparagraph 11(1)(a)(iii) of the Act requires that Google not allow corporate influence to undermine freedom of expression or journalistic independence. Section 8 of the Regulations indicates that this requirement is met if the Agreement includes a commitment that the operator will not take any action that undermines freedom of expression or journalistic independence. Clauses 5(c)(i) to (iii) in the Agreement include Google’s commitment to avoid such actions. Further, clause 7(d)(i)(B) affirms that the CJC will include in the member agreement a commitment that news businesses not allow corporate influence to impact them in this way.

25. Accordingly, the Commission considers that Google has met the requirement to ensure that journalistic independence is protected.

Equitable distribution

26. Subparagraphs 11(1)(a)(i) and (v) to (viii) of the Act require that Google provide fair compensation to a range of news businesses, including for-profit and not-for-profit, Indigenous new outlets, and OLMC news outlets, in local and regional markets across Canada, and serving diverse communities, such as anglophone, francophone, Black and other racialized communities. Section 10 of the Regulations sets out how funds are to be distributed among news business in order to meet these requirements.

27. In particular:

- compensation is to be distributed having regard to FTE employees employed for the purposes of producing original news content intended to be made available online;
- no more than 7% of the compensation is to be allocated to the Canadian Broadcasting Corporation (CBC)/Société Radio-Canada (SRC) and no more than 30% to other broadcasters;
- the collective may deduct reasonable administrative expenses; and
- the collective must allow any news business that responded to the open call and submitted an attestation to join the collective and receive future payments.

28. Each of these elements are addressed in the Agreement:

- clause 7(b) requires the CJC to distribute the contribution to members having regard to the number of FTE employees and limits the amount of money to be distributed to broadcasters and the CBC/SRC;
- clause 7(d) limits the CJC to deducting, at most, 2% of the contribution for administrative expenses, as long as it is related to managing the contribution and the collective does not charge any fees for news businesses to join or remain as members; and
- clause 7(f) requires the CJC to admit news businesses that have attested to meeting the requirements in the Regulations.

29. The Commission considers that the requirements for equitable distribution are reflected in the Agreement between Google and the CJC. Accordingly, Google has met the requirements set out at subparagraphs 11(1)(a)(i) and (v) to (viii) of the Act. However, as set out below, the Commission provides further clarifications and conditions to ensure that the Agreement is implemented appropriately.

Definition of FTE employees

Positions of parties

30. A joint submission of common principles by News Media Canada (NMC), CBC/SRC, Bell Media Inc., Corus Entertainment Inc., Quebecor Media Inc., Rogers Communications Inc., and OAB (collectively, the Common Principles [CP] group) asked the Commission to require the CJC to include only employees who receive T4 tax slips[3] from the news business when calculating the equitable distribution, excluding freelancers, and to use 35 hours per week to calculate FTE employees. Several smaller news businesses, as well as the Canadian Deaf Grassroots

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[3] Tax slips which identify all of the remuneration paid by an employer to an employee during a calendar year.

Movement, argued that freelancers should be counted for the purpose of determining equitable distribution, as it would reflect the reality of small news businesses. Google did not comment on whether freelancers should be included but did suggest that if the Commission were to provide guidance, it would simplify the CJC's work.

31. The CJC proposed a calculation for equitable distribution that includes both employees and freelancers, with freelancers given a lower weight in the calculation than employees. Employee hours would be equated to FTEs based on 35 hours per week, with contractors equated to FTEs based on dollars paid.

Commission's decision

32. The Commission acknowledges that the CJC's proposed calculation for equitable distribution is intended to be flexible and to reflect the circumstances of many small news businesses. However, because this information came only in the CJC's reply, no other parties had the opportunity to comment on it.

33. The Commission considers that it would be more consistent with the intent of the Regulations to rely only on employees when determining the number of FTE employees for each business. The Regulations indicate that the CJC must distribute the funds "having regard to" FTE employees. The Regulatory Impact Analysis Statement (RIAS), a document published along with the Regulations and explaining their intent, specifically states that the Commission must assess equitable distribution "according to the number of full-time equivalent employees of a news business over the previous calendar year to produce news content that is intended to be made available online." Neither the Act nor the Regulations mention contractors or freelancers and employment is also a benchmark used in section 27 of the Act, which sets out the criteria for news business bargaining eligibility. This is also consistent with the eligibility criteria for the Qualified Canadian Journalism Organization (QCJO) designation through the Canada Revenue Agency.[4] Further, the Commission considers that reliable information relating to employment should be more readily available to the CJC to ensure it is distributing funds responsibly.

34. Accordingly, the Commission clarifies that, consistent with the Agreement, the CJC is to calculate equitable distribution of monetary compensation among the news business based on the number of FTE employees, which does not include freelancers.

35. Neither the Act nor the Regulations specify how many hours of regular employment should be used to calculate the number of FTEs for each business, and the Commission takes no position on that issue.

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[4] A news business can be designated as a QCJO under the *Income Tax Act* in order to qualify for various tax-based programs such as the Canadian journalism labour tax credit.

Membership of news businesses that attested during the open call

36. Under paragraph 10(1)(b) of the Regulations, any news business that responded to the open call is permitted to become a member of the group at any time and receive compensation from that date.

Positions of parties

37. The CJC has indicated in its submissions that it intends to determine whether attesting news businesses can meet the eligibility requirements under the Act in order to grant or rescind membership in the collective.[5] Although it has not described this process in detail, the CJC indicated that the determination could be straightforward, such as verifying whether a news business has been designated as a QCJO or holds an applicable broadcast licence from the Commission, or more complex, such as monitoring whether it is compliant with a journalistic code of ethics on an ongoing basis.

38. The CP group raised concerns with the CJC's intention to validate attestations in this way and believes that the Regulations do not provide the CJC discretion on which news businesses are allowed to join. Smaller news businesses generally did not share these concerns. Some interveners, including CBC/SRC and groups representing diverse communities[6] suggested that the CJC should perform this validation.

Commission's decision

39. Under paragraph 10(1)(b) of the Regulations, any news business that submitted an attestation during the open call is to be permitted to join the collective. The Commission therefore confirms that attesting news businesses must be allowed to become members of the CJC.

40. Nonetheless, both the Agreement and the Regulations provide the CJC with a clear mandate to ensure that it distributes funds equitably based on the number of FTE employees dedicated to producing original online news content. As such, the CJC will need to validate both the number of FTE employees of attesting news businesses and that those employees are dedicated to producing original online news content. If funds are paid on the basis of inaccurate FTE employee information, clause 7(d)(vi) of the Agreement requires that the CJC recover that money and redistribute it among other members.

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[5] These requirements are set out at section 27 of the Act. A news business can be eligible by being designated a Qualified Canadian Journalism Organisation under the *Income Tax Act*, or by meeting a test that includes regularly employing at least two journalists, operating in Canada, producing general interest news content, and following a journalistic code of ethics.

[6] These groups include, Fondation Béati, National Council of Canadian Muslims and Social Innovation Canada.

Additional members of the collective

Position of parties

41. There was broad consensus among interveners that additional news businesses that did not submit an attestation during the open call should be permitted to join the collective throughout the time that an exemption order is in effect and that the opportunity should come up at least once per year to allow news businesses to join in time for each annual payment cycle. Many interveners noted that the Canadian news landscape will undoubtedly change in a five-year period, with new businesses entering the market.

42. Some news businesses, particularly those that missed the original open call, advocated for an immediate opportunity to join the collective and share in the first annual payment. A few interveners suggested that the opportunity to join in the future should be limited to news businesses who were not eligible to submit an attestation for the original call but now meet the criteria. Pink Triangle Press expressed concerns about potential delays in funding distribution if news businesses were allowed another opportunity to join before the first payment is issued.

43. Most interveners, including the CJC, agreed that the CJC is best positioned to manage an ongoing process for admitting new members. The CJC believes it can and should admit new members periodically but would welcome clarification on that point from the Commission or through an amendment to the Regulations. Google argued that it cannot be obligated to conduct additional open calls as only a single call is required by the Regulations. It indicated that news businesses that did not respond to the open call could apply to the Commission to be designated as eligible and that it believes the Agreement allows the CJC to admit new members without Google's involvement in the process.

Commission's decision

44. Clause 7(f) of the Agreement requires the CJC to admit any news businesses that attest to Google "from time to time", and the CJC has indicated that it is willing to do so, pending a Commission decision confirming that they may admit such members. The Commission notes that the Regulations do not require news businesses to be designated as eligible by the Commission to join the collective.

45. Although adding other news businesses to the collective could dilute the funding available to the original members, the record supports allowing news businesses to join the collective in the future, as it would be responsive to changes in the news landscape. Having the CJC report on the number of news businesses admitted and its effect on the distribution of funds would allow the Commission to monitor that impact and take further action if required.

46. In light of the above, the Commission imposes a condition on Google to work with the CJC to ensure that a mechanism is put in place that would require the CJC to annually admit any news businesses that did not respond to the open call but that can

attest that they meet the criteria in section 5 of the Regulations.[7] The Commission further encourages Google and the CJC to work together to allow news businesses that missed the open call to submit attestations and participate in the distribution of funds for the first year of the exemption, if that process can be managed in a manner that does not delay the initial distribution of funds.

Administrative expenses

47. The Regulations allow the collective to retain reasonable administrative expenses from the funding amount. Clause 4(d) of the Agreement limits that amount to a maximum of 2% of the funding each year, which can only be spent on expenses related to administering the funds.

Position of parties

48. The CP group, along with Hebdos Quebec and the Coopérative nationale de l’information indépendante (CNII) proposed that administrative expenses be limited to 0.5% each year, as the role of the CJC is meant to be very limited. The CNII proposed a rate of 1% for the first year to reflect increased costs to start up the organization. In order to meet the 0.5% limit, the Canadian Association of Broadcasters (CAB) and NMC further proposed that the CJC be restricted from compensating its directors. Many small news businesses submitted that 2% was reasonable, especially as it is an upper limit.

Commission’s decision

49. The RIAS cites 5-6% as a reasonable limit for administrative expenses. As a comparison, administrative expenses for Certified Independent Production Funds overseen by the Commission are capped at 5%.

50. Given that 2% is a maximum amount and could be lower if the CJC’s actual expenses are lower, the Commission considers the 2% limit to be reasonable, provided the funds are used only for activities related to the distribution of funding to member news businesses and outlets.

51. While prohibiting compensation for the CJC board members would preserve a greater portion of funding for distribution to members, it may make it more difficult for representatives from smaller news businesses to participate, as those businesses have fewer resources to pay for time spent away from their core functions. Accordingly, the Commission takes no position on whether the CJC should or should not compensate its directors.

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[7] In other words, news businesses that are able to attest: they could be designated as eligible under section 27 of the Act, and they operate a news outlet that is operated exclusively for the purpose of producing news content referred to in subsection 31(2) of the Act or that is a news outlet referred to in subsection 31(2.1) of the Act, whose news content is made available by Google.

Governance and operations of the CJC

Positions of parties

52. Many interveners, particularly the CP group, submitted detailed proposals on various aspects of the CJC’s proposed operations. These proposals addressed, among other factors, the proposed structure for the board of directors and the member classes for electing the board, and the schedule and procedures for making payments and for handling funds between when they are paid to the CJC by Google and when they are distributed to members.

53. Google argued that the Commission should not attempt to manage the governance or operations of the CJC, particularly by imposing conditions on the exemption. It argued that doing so would both exceed the Commission’s authority and damage the CJC’s independence.

54. The CJC also argued that the Commission should not interfere with its governance or operations as an independent entity. Despite this, the CJC submitted its current and proposed governance documents and continues to provide updated policy and governance documents on its website as they become available.

Commission’s decision

55. The Commission has an oversight role to play in ensuring that funding is distributed according to the requirements of the Act and the Regulations, but the CJC is an independent body. The Commission notes the CJC’s work to date to create necessary policies and procedures. As a not-for-profit corporation, the CJC will be under the control of its members, many of whom will be the same news businesses that intervened in this consultation. If the member news businesses find that board members are not diligent in exercising their fiduciary duties, they may replace those board members during future elections. They may also have other remedies under not-for-profit corporations law.

56. Some parties have suggested that the CJC’s proposed structure is overly complex. Simple board structures might allow for more efficient decision making but may not allow for a broad diversity of voices to be heard when making those decisions and would not necessarily reflect the Act’s emphasis on diversity. If the Commission were to impose specific requirements in this regard, it would likely cause delays as the CJC worked to adapt their plans.

57. While the Commission wishes to avoid delays in payment, it must also ensure that payments are made responsibly. Imposing specific deadlines for making payments may not allow the CJC time to establish a robust and transparent payment process.

58. In light of the above, the Commission considers it is not necessary to provide specific guidance on the governance structure of the CJC, or its plans for the administration of funds. The Commission will require annual reporting from the CJC to ensure that

funds are distributed as required under the Act and the Regulations as outlined below.

Transparency reporting

59. The CJC is required, by clause 7(e) of the Agreement, to respond to any request for information from the Commission and to require the same from its member news businesses. News businesses also have an obligation to respond to Commission requests for information under section 53 of the Act.

60. The Commission will use these provisions in support of its oversight role, to ensure the CJC operates transparently and distributes funds responsibly, in accordance with the Regulations. Accordingly, the Commission intends to request, on at least an annual basis, reports from the CJC on the following:

    (a) Up-to-date bylaws and governance documents, including requirements for membership in specific voting classes and procedures for electing the board of directors; a list of members and the voting class they have elected to join, as well as any changes in the board of directors.

    (b) Processes, procedures, and definitions related to determining FTE employee counts, information on FTEs and corresponding payments to members, including payment schedules.

    (c) Processes and procedures related to adding new members to the collective; a list of members that applied, newly added members and the reasons for rejecting any other applicants.

    (d) Processes and procedures related to financial management, including financial statements and any audits for the year, as well as an accounting for administrative expenses retained from the funding.

    (e) Processes and procedures for dispute resolution; coverage of the number and types of disputes resolved and the resolutions arrived at.

Indemnity

Position of parties

61. A few interveners, including CAB, CBC/SRC, and the Fédération nationale des communications et de la culture, raised issues with clause 8 of the Agreement, which requires the CJC to indemnify Google, its affiliates, board members, officers, and employees in certain circumstances, generally where the CJC breaches the Agreement and Google suffers loss. Relatedly, clause 10 allows Google to hold back funds from payments in future years to satisfy the indemnity clause. Interveners raised concerns about the breadth of the indemnity, arguing that, if triggered, it could potentially jeopardize the entirety of the funding.

62. In its intervention, Google noted that indemnity clauses are standard in commercial contracts and that they are important in this case since Google has limited tools at its disposal to ensure that the CJC complies with its obligations.

Commission's decision

63. The Commission acknowledges that indemnity clauses are standard contractual obligations and agrees that measures are required to ensure that the parties to the Agreement respect their obligations.

64. However, the Commission is concerned about the potential impact of these indemnity clauses on news businesses in the collective. One of the key purposes of the Act is to contribute to the sustainability of news businesses in Canada. The exemption criteria also speak to sustainability, with the Regulations requiring specific annual monetary compensation in this regard. An uncapped indemnity under which Google could claim, and set off, monetary contributions destined for news businesses would not be consistent with this statutory scheme. It could have severe negative impacts on news businesses and the news outlets they operate and, as a result, on the entire Canadian news marketplace.

65. Further, the Commission notes the other compliance incentives that exist for the CJC, including the guidance set out in the current decision, which clarifies how to interpret key parts of the Agreement, and sets out the reporting requirements the CJC will need to satisfy to ensure transparency.

66. As a result, the Commission imposes a condition on Google limiting the amount of indemnity it may claim, and set-off, to no more than the amount of the contribution that may be deducted for administrative expenses (2%).

Copyright limitation

67. Some interveners, including the CP group, Village Media, The Logic, and Unifor, raised issues with clause 7(h) in the Agreement, which forbids news businesses from pursuing Google for "infringement of copyright in relation to making available news content of Members by Intermediaries in the manner permitted by the Act." The interventions raised concerns that this would limit their ability to enforce their copyright against Google for uses beyond making news content available on Google Search. In particular, interveners were concerned about potential use on DNIs other than Google Search, or used to train artificial intelligence (AI) models. Google argues that the provision is drafted specifically to reflect the use considered under the Act, namely the making available of news content on the DNI covered by the Agreement.

68. Section 26 of the Act protects an operator from copyright liability in certain circumstances where its DNI makes news content available. Clause 7(h) of the Agreement extends a similar protection to Google in respect of the making available

by Google Search of the news content of news businesses in the collective.[8] To the extent that this clause reflects protections from liability set out in the Act, the Commission notes that there is no need for any further action at this time. As a result, the Commission makes no order with respect to clause 7(h) of the Agreement.

Funding for public interest participation

69. Although there was some support for requiring public interest funding as a condition of the exemption, Google and Rogers both argued that the Commission has no authority to impose such conditions under the Act. Google also argued that the costs of participating in this written proceeding would be limited. Google and CAB questioned the need for public interest funding given the limited role the Commission plays in overseeing the Act.

70. With an exemption order in place, there are likely to be limited future proceedings under the Act. If public interest funding were taken from the $100 million, it would reduce the amounts available to news businesses and could run counter to the objectives of the Act. If it were added to the $100 million, it would require Google to pay more than the contribution amount specified in the Regulations.

71. In light of the above, the Commission is not directing funding to public interest participation at this time. However, the Commission notes that the Broadcasting Participation Fund has submitted an application to have its mandate expanded to include proceedings related to the Act.

Scope of exemption

72. Since Google has met the exemption criteria, the Commission must issue an exemption order. Under subsection 11(2) of the Act, exemption orders exempt the operator from the effects of section 21, related to the duty to bargain, as well as any regulations made under section 85 that relate to section 21. The Commission may exempt the operator from other provisions of the Act or from certain regulations.

Position of parties

73. Google’s application requested a blanket exemption from the Act, not limited to specific provisions. In its intervention, Google specifically asked the Commission to seek Treasury Board approval to exempt Google from the section 81 cost recovery provisions, as by reaching an agreement with a collective, it has spared the Commission time and resources that would otherwise be needed to oversee the mandatory bargaining process.

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[8] Clause 7(h) refers to news content made available by “Intermediaries” of Google. Under the Agreement “Intermediaries” is defined as DNIs operated by Google to which the Act applies, which is only Google Search.

74. Google also asked the Commission to exempt it from any undue preference complaints related to the bargaining process or the Agreement. Other parties who commented on this issue generally thought that undue preference provisions should continue to apply to ensure that Google could not use its imbalance of power to adversely affect some news businesses over others.

Commission’s decision

75. If Google is exempted, it will be regulated to a much more limited extent, and it is likely that the Commission will use fewer resources and have lower costs than if Google took part in mandatory bargaining. Nonetheless, the Commission will still have costs to recover, and the cost recovery provisions at section 81 are the principal mechanism that the Act sets out for that purpose. Any savings on the Commission’s part will already be reflected in its cost recovery, since the Commission can only charge the actual costs it incurs in administering the Act.

76. As the undue preference provisions relate primarily to making news available online – which Google will still be doing – rather than to mandatory bargaining – which it will not – the Commission considers that Google should not be exempt from undue preference complaints brought by eligible news businesses under section 52 of the Act.

77. The Commission also considers that Google should be required to provide information as required by section 53 of the Act, and as outlined in the conditions below or from time-to-time when requested by the Commission. The Commission requires information to perform its duties under the Act, including ensuring that the independent auditor has sufficient data to prepare its annual report.

78. Accordingly, the Commission is exempting Google specifically from its obligation to participate in mandatory bargaining as required by section 21 of the Act. This also includes any provisions of Code of Conduct regulations specifically related to participation in mandatory bargaining.

Length of exemption

79. The Agreement requires Google to begin payments to the CJC once the Commission issues an exemption order under section 11 of the Act. The Agreement then remains in effect for five years following the date of that exemption order. Under the Act, an exemption can last up to five years and can be renewed.

80. Most interveners supported a five-year exemption, either as a five-year exemption under section 11 or as an interim exemption under section 12 covering the first year followed by an exemption under section 11 covering the remaining years of the Agreement.

81. The Commission considers that a five-year exemption would provide greater funding stability to news businesses and would require less administration. Section 14 of the Act allows the Commission to review an exemption order at any time, for instance, if there are concerns that the operator is acting in a manner inconsistent with the Act or a condition of exemption.

82. Accordingly, the Commission considers that a five-year exemption under section 11 is appropriate, provided the Agreement remains in effect.

Notifications from Google

83. The exemption order is based on the successful operation of the Agreement as presented. However, the Agreement includes provisions allowing Google to assign or terminate the Agreement and to provide notices of breach to the CJC. The Agreement may also be amended if both parties agree. The Commission imposes a condition on Google to notify the Commission of any amendment to, assignment under, or termination of the Agreement without delay. Google must also provide notice to the Commission at the same time it provides notice to the CJC of any breach under clause 1(c) of the Agreement.

Conclusion

84. In light of all of the above, the Commission, by majority decision, finds that Google has met the exemption requirements. Pursuant to subsection 11(1) of the Act, the Commission grants an **order** exempting Google, in relation to its Google Search digital news intermediary, from the duty to participate in mandatory bargaining under section 21 of the Act, and from any provisions of Code of Conduct regulations related to participation in mandatory bargaining, subject to the following conditions:

    (a) Google must work with the CJC to ensure that a mechanism is put in place requiring the CJC to annually admit any news businesses that did not respond to the open call but that can attest that they could be designated as eligible under section 27 of the Act, and that they operate a news outlet that is operated exclusively for the purpose of producing news content referred to in subsection 31(2) of the Act or that is a news outlet referred to in subsection 31(2.1) of the Act, whose news content is made available by Google Search.

    (b) Google must not claim or set-off as an indemnity more than the amount of its monetary contribution under the Agreement that may be deducted for administrative expenses (2%).

    (c) Google must notify the Commission of any amendment to, assignment under, or termination of the Agreement without delay and must provide notice to the Commission at the same time it provides notice to the CJC of any breach under clause 1(c) of the Agreement.

85. This exemption order comes into effect on **28 October 2024** and will remain in effect for five years from this date provided that the Agreement between Google and the CJC remains in effect. Per the Agreement, Google will pay the contribution to the CJC within 60 days of this decision.

Secretary General