



22 April 2024

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Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: *Call for comments – Framework under the Online News Act (formerly Bill C-18), Online News Notice of Consultation CRTC 2024-55 (Ottawa, 13 March 2024) – reply to other interveners by the Forum for Research and Policy in Communications (FRPC)*

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications. The Forum submitted its intervention in this proceeding on 12 April 2024.
- 2 FRPC's reply to other interveners follows. Our failure to respond to an individual party's points should not be understood as agreement with those parties (but rather as the result of the lack of time that the CRTC's processes allow for informed commentary).

I. Reply to interveners – general issues

A. Eligibility of news businesses

- 3 The Canadian Association of Broadcasters (CAB) noted the absence of information about “the process by which news businesses will be designated” as eligible (paragraphs 4 and 6) and Rogers supported the CAB's position (paragraph 3).
- 4 FRPC shares CAB's concern. In fact, the *Online News Act* and the *Online News Act Application and Exemption Regulations* (SOR/2023-276) published by the Governor in Council (GIC) contemplate that the CRTC must take a number of steps to implement this legislation. These steps include, for instance, determinations of
 - news outlets' journalistic independence currently to be able to determine whether, over time, that independence is lessened, maintained or strengthened (see *e.g. Act*, s. 3(1))
 - the degree to which the Canadian news marketplace is currently sustainable so as to ascertain that, over time, implementation of the *Online News Act* and the

GIC's *Regulations* is meeting the legislation's purpose (see section 4 of the *Act*) in that sustainability is either being maintained or being strengthened, and

- the types of news that will qualify as original (GIC *Regulations*, section 10(2)) as well as "local, regional and national news" (*Act*, section 11(1)(a)(ii)).

5 The Forum agrees with the CAB that the CRTC should create a simple registration process for news businesses and news outlets, rather than, as it appears to be doing for the moment, relying on online platforms to gather this information for the Commission.¹ We note that while section 27(1) of the *Act* stipulates that the CRTC must designate a news business as eligible "[a]t the request of a news business" the *Act* does not explicitly prohibit the CRTC from establishing a process for news businesses to make this request.²

6 While FRPC also agrees with CAB's proposal that such a "process allow for intervention if a party considers a news business does not respond to the criteria to be eligible", it is as yet unclear whether such a process should parallel the CRTC's broadcast applications process in which interested parties may 'intervene' in support or opposition to an applicant's request that the CRTC grant them a broadcasting licence. Rather than an intervention phase, the CRTC may wish to consider a comment phase so as to enable interested parties to submit facts they consider relevant to a news outlet's request to be declared eligible.

B. Bargaining process

7 FRPC agrees with about timeliness in the context of the bargaining process (Google at paragraphs 6, 8; CAB at paragraph 2; Rogers at paragraph 3; CBC at paragraph 4).

8 That said, FRPC strongly disagrees with Rogers' statement that "the bargaining session ... should be flexible and allow the parties to negotiate at their own pace" (paragraph 4).

9 Adopting such 'flexibility' – a term whose absence in the *Online News Act* is quite noticeable³ – will defeat the entire purpose of the *Online News Act* by conferring a significant and undue advantage to large entities engaging in negotiations with smaller entities.

¹ In the context of the exemption process set out at section 11 of the *Online News Act*.

² In the context of broadcasting prospective licensees have been able to use the CRTC's application forms to notify the Commission of their desire to initiate broadcasting.

³ Compared to the 2023 *Broadcasting Act*, which encourages ("should") 'regulation and supervision "in a flexible manner" in section 5(2).

II. Reply to interveners' answers to the questions in 2024-55

- 10 The Forum's reply to other interveners is set out below in section 2. For readers' convenience FRPC's 12 April 2024 answers to individual CRTC questions are also set out, denoted by grey shading.

A. 90-day bargaining period

Q1. Do you agree with the Commission's preliminary view? If not, please propose an alternative, with justification.

- 11 The Forum generally agrees with Commission's preliminary view. That said, when BNoC 2024-55 refers to "responses (including reasons) to the proposals from each party" at paragraph 13, FRPC recommends that this wording be clarified to require the provision of objective facts: "responses (including empirical evidence and reasons) to proposals from each party". Without this change a risk exists that parties' "reasons" may consist largely of subjective declarations that cannot support evidence-based conclusions – potentially leading to unnecessary delays that will unnecessarily prolong the entire process to the disadvantage of smaller parties.
- 12 FRPC does not agree with the CAB's proposal that the CRTC should dispense with the specific steps proposed by the Commission in paragraph 13 of BNoC 2024-55. Apart from accuracy (ensuring, including through a comment phase, that news businesses are eligible rather than ineligible), the CRTC must ensure that the bargaining process (including its individual steps and their timing) is clearly defined. These details benefit parties that are inexperienced with the negotiations contemplated by the *Online News Act*, and will help to ensure that all parties operate in good faith by providing information whose untimely disclosure or non-disclosure delays bargaining to the advantage of larger and better-financed organizations.
- 13 As noted previously FRPC disagrees strongly with Rogers' proposal that the CRTC permit flexibility in bargaining, allowing "the parties to negotiate at their own pace" (paragraph 4). As CAB concludes, "[p]arties should not be permitted to 'game' the process and cause any unnecessary delays" (paragraph 48): there is no evidence to support the idea that 'flexibility' in deadlines ensures fairness in bargaining – which, after all, is the first purpose set out for the *Online News Act* in section 4:
- The purpose of this Act is to regulate digital news intermediaries with a view to enhancing fairness in the Canadian digital news marketplace and contributing to its sustainability, including the sustainability of news businesses in Canada, in both the non-profit and for-profits sectors, including independent local ones.
- 14 'Gaming the system' can take place in a wide variety of ways, many of which (such as intimidation) are typically invisible to outside observers. Establishing and enforcing

rules as to timing and content is a reasonable way to ensure that all parties are treated fairly.

(b) Are other procedures required to efficiently administer the 90-day bargaining period? If so, please explain.

- 15 The CRTC should adopt a transparent approach to the negotiations addressed by the *Online News Act*. More specifically, the CRTC should report anonymized information about the bargaining process showing its duration, the degree to which parties are observing the CRTC's criteria for the package of information (at paragraph 13 of BNoC 2024-55) and – importantly – whether the parties (identified broadly as platforms or news organizations) believe the process was fair.

B. 120-day mediation period

Q3. Do you agree with the preliminary view that mediation should be facilitated by Commission staff based on the practices and procedures outlined in Broadcasting and Telecom Information Bulletin [2019-184](#)?

- 16 BNoC 2024-55 notes the CRTC's "preliminary view that mediation under the Online News Act should be conducted by Commission staff",⁴ and refers to "the mediation practices and procedures set out in Broadcasting and Telecom Information Bulletin 2019-184 as guidelines".
- 17 Yet neither BNoC 2024-55 nor BTIB 2019-184 describes the mediation qualifications of the CRTC's staff and it is unclear whether its staff are either "impartial"⁵ or are "neutral" persons who help "disputants settle their dispute"⁶ as others suggest. The basis of the CRTC's preliminary view is therefore unknown; similarly, it is unknown why the Commission considers that trained mediators who do not work for the Commission or the parties involved in the *Online News Act* processes are less preferable than its staff.⁷
- 18 One concern may arise if the CRTC staff mediators tend to be the same people. While repeated reliance on the same individuals enables such persons to develop mediation experience, a risk also exists that repeated encounters with the same parties across a range of mediations may reduce rather than maintain their impartiality or neutrality. The CRTC's response to A-2021-00078 shows that at least 36 different CRTC staff

⁴ BNoC 2024-55, paragraph 18.

⁵ In contrast Occupational Health and Safety Tribunal Canada's [Fact Sheet on Mediation](#) emphasizes that the mediator is "an impartial third party".

⁶ Canadian Mediation Association, "[Mediation](#)" (accessed 12 April 2024).

⁷ If the Commission's goal is to provide news organizations with an inexpensive mediation mechanism, it should mention this point.

members participated in 210 dispute resolution matters from 2015 to 2021 – and that four staff participated in the majority of these matters (154 or ~73%):

CRTC staffperson*	Number of processes from 2015 to 2021)
'A'	28
'B'	23
'C'	30
'D'	73
Total	Approximately 154
* Initials replaced with letters of the alphabet to protect privacy	
Source: CRTC response to A-2021-00078	

- 19 The regular involvement of one or more CRTC staff raises no concerns, of course, provided the other parties in such proceedings have confidence both in the neutrality of the staff and their qualifications as mediators. This evidence could be obtained through post-mediation surveys conducted by third-party survey research experts. If the CRTC has undertaken such research to evaluate parties' confidence in mediators' neutrality, it should publish the information in the context of this proceeding.
- 20 CBC considers that “the Commission staff have acquired the necessary expertise and experience to implement a fair mediation process to handle cases under the [Online News Act] – provided the Commission has the necessary resources in place” (paragraph 9).
- 21 CBC has not provided any evidence for its opinion, and in any event the experience to which the Corporation refers has to do with matters under the *Broadcasting Act*. FRPC suggests that before adopting its preliminary view in this area, the CRTC commission an independent survey of all parties who have engaged in such processes over the past decade, to determine levels of satisfaction with the CRTC staff mediators, the CRTC-staff-led mediation and outcomes of the mediation. For example, the CBC refers in its response to Q12, the idea that the CRTC “can assist parties in resolving non-monetary issues by running an efficient, helpful, and professional mediation process”: parties in past CRTC-staff-led mediations could also be asked whether they found the process to be “efficient”, “helpful” (and to whom?) and “professional”.

C. 45-day FOA period

Roster of qualified arbitrators

Q6. Please comment on whether the proposed list of qualifications set out in the appendix to this notice is suitable for determining that candidates are qualified to arbitrate disputes related to the Online News Act.

- 22 FRPC may respond to this question in greater detail in reply, but notes that while the CRTC says that arbitrators must “Be able to conduct an efficient and effective arbitration process” it does not provide clear definitions of either ‘efficient’ or ‘effective’.
- 23 More clarity would benefit all participants, especially given the *Online News Act’s* details about the maximum days permitted for each of the bargaining, mediation and final-offer stages. Does the CRTC consider, for instance, that an arbitration that concludes before the *Online News Act’s* deadlines is ‘efficient’? Similarly, what criteria would the CRTC use to determine whether the arbitration process is ‘effective’?
- 24 Moreover, as Parliament states in section 4 of the *Online News Act* that the statute’s purpose is to ‘enhance fairness’ and ‘contribute to the sustainability’ of the Canadian digital news sector, will the CRTC be measuring either the ‘fairness’ or the ‘sustainability’ of Canada’s digital news sector before any bargaining begins? Similarly, how will the Commission evaluate the ‘enhancement’ to ‘fairness’? Is this a concept that is susceptible to measurement through survey research, for example, or will the CRTC invite comments on this issue at a later date?

Q7. Do you agree with the preliminary view that a separate code of conduct for arbitrators under the Online News Act is not necessary?

- 25 The Canadian Association of Community Television Users and Stations (CACTUS) set out its concern that a “purely commercial arbitration process” may be unable “to assess the value of online news created by community broadcasters” and that the *Online News Act* “be reviewed at the end of its first year to see whether the proposed procedures are working for all types of participating news businesses” (response to Q7).
- 26 FRPC agrees with CACTUS that a “purely commercial arbitration process” may be inappropriate for evaluating the worth of news produced by community broadcasters. That said, section 19(3) of the *Online News Act* specifically limits “final offer arbitration under the bargaining process ... to monetary disputes”. Monetary disputes may not lead automatically to ‘purely commercial arbitration’, but will clearly engage monetary value that theoretically should range from zero (no monetary value) to a monetary value ascribed by one or more parties: section 38, for instance, specifically requires arbitration panels to take into account both monetary and other types of value or benefits.⁸

⁸

S. 38(a) and (b):

38 An arbitration panel must take the following factors into account in making its decision:

(a) the value added, monetary and otherwise, to the news content in question by each party, as assessed in terms of their investments, expenditures and other actions in relation to that content;

- 27 The CRTC should monitor and report on the manner in which community broadcasters are able to engage in the negotiation processes envisaged by the *Act* and report on outcomes following the statute’s first full year of implementation. The CRTC should highlight any gaps in the statute – such as the idea that a community broadcaster may produce original news with non-monetary value and may therefore be excluded from an arbitration process that is limited to monetary disputes.

D. Scope of the FOA

Q12: If necessary, what actions could the Commission take to assist parties in resolving any non-monetary issues?

- 28 Rogers notes that the CRTC’s “current dispute resolution procedures do not define which disputes are monetary in nature, allowing arbitrators to make such determinations on a case-by-case basis”, and it agrees with this approach under the *Online News Act* (paragraph 19).
- 29 Case-by-case determinations introduce the risks of arbitrariness and uncertainty, and may inure to the benefit of larger parties that, if they participate in more dispute resolutions than smaller parties, have the advantage of experience and, in turn, knowledge.
- 30 Rogers suggests that, if non-monetary issues are not resolved before the end of the mediation phase, “parties agree to have any non-monetary matters resolved separately following the monetary determination made by the arbitration panel” (paragraph 21). FRPC’s concern with this suggestion is that it may prolong the entire negotiation process, ‘potentially creating opportunities for parties to exploit and unnecessarily prolong the process to their advantage’ (Rogers, paragraph 20).
- 31 FRPC suggests that the CRTC could assist parties to understand the nature and approach to non-monetary issues in the negotiation (bargaining) and mediation phases by issuing annotations to its regulations that summarize arbitrators’ determinations, as these are made.

Q13. Please comment on the appropriateness of adapting the procedures outlined in Broadcasting and Telecom Information Bulletin 2019-184 to suit the FOA period under the Online News Act and on any adaptations that would be necessary.

- 32 FRPC supports Rogers’ recommendations (paragraphs 23 and 24), except that – with respect to its proposal that “parties ... file submissions with the arbitrators specifying

(b) the benefits, monetary and otherwise, that each party receives from the content being made available by the digital news intermediary in question; ...

....

[underlining added]

the scope of the FOA process that will apply to the case in question” – there must be an opportunity to amend the scope if the parties subsequently decide it is necessary to do so.

E. FOA procedures

Q17. What should the Commission consider as a reasonable deadline for parties to agree on arbitrators or request Commission assistance in appointing arbitrators, whether initially or to replace an arbitrator with a conflict of interest?

(a) If notice that a party intends to continue into FOA is required prior to the end of the mediation period, would it be reasonable for the Commission to require that parties agree on arbitrators by the end of the mediation period?

- 33 The CAB recommends at paragraph 33 (and elsewhere) that “news businesses should propose a panel of arbitrators as part of their notice of intent to bargain”, arguing that “parties can move forward with the identification of the arbitration panel in parallel with the initial bargaining period and, if necessary, during the mediation.” Rogers also argues that it “[t]he initial bargaining package should include the names of arbitrators and mediators that would be acceptable to the eligible news business or the groups of eligible news businesses” (paragraphs 5 and 31).
- 34 The main concern of both the CAB and Rogers appears to be with the timeliness of the entire bargaining process. FRPC agrees that timeliness is an issue, but notes that the identification of arbitrators – such as in labour negotiations – is typically agreed to by the negotiating parties in an agreement that precedes actual bargaining. FRPC suggests that if its goal is timeliness, the CRTC shorten the mediation process: then, if or immediately before this process ends without success, the parties would proceed to arbitration by arbitrators identified at the beginning of the arbitration phase (albeit earlier, as the mediation process would be shorted).

F. Undue preference, discrimination and disadvantage

Q21. Should the Commission provide guidance on specific types of undue preference, disadvantage or discrimination that would be prohibited? If so, should this guidance focus on remuneration for online news content or participation by an eligible news business in the bargaining, mediation and arbitration processes? What other conduct should be targeted specifically, if any?

- 35 While the Forum may address this question in more detail in reply, FRPC’s preliminary response is that the Commission should provide as much guidance as possible, as soon as possible. First, smaller news organizations and even large platforms may be unfamiliar with the CRTC’s approach to preference, advantage or discrimination. Providing clear and detailed guidance – preferably including examples based on its

own decisions over the past decades– will reduce parties’ uncertainty and the time they will need to make their case before the mediators or arbitrators.

36 Google argues that the requirements in sections 52(2) and 52(3) of the *Online News Act* should be clarified (paragraphs 10 and 11) – FRPC agrees and has concerns as well about the way in which the CRTC will interpret “undue” or “unreasonable” preferences and disadvantages in section 68.

37 Rogers, on the other hand, considers that “it would be premature to establish any such guidance or additional factors before the bargaining process has been implemented and before the Commission has had an opportunity to examine and address complaints related to undue preference, disadvantage, or discrimination in the context of the application of the Act” (paragraph 35). It argues that the Commission lacks “experience in resolving complaints under the [*Online News Act*]” and should first develop “a body of precedent related to undue preference, disadvantage, and discrimination” (paragraph 35).

38 FRPC agrees that the CRTC may be reluctant to provide “specific guidance on precisely what acts are prohibited”, for several reasons. First, it may only learn of prohibited acts when these are presented for its determination.

39 Second, it may be unwilling to identify the specific parties involved with respect to such prohibited acts.

40 Third, the Commission has for many years made decisions that it has not published. Its “[Broadcasting Applications Report](#)” for 2024, for example, lists 16 applications of which it 13 are shown as having been approved. None of the approved decisions includes an HTML link and decisions listed by the CRTC’s search engine that have the same numbers are unrelated to the *Broadcasting Applications Report* decisions. For example, decisions 2024-5 and 2024-14 – described by the *Broadcasting Applications Report* as having been approved – involve different applicants and matters than Broadcasting Decisions 2024-5 and 2024-14 listed by the CRTC’s search engine:

Broadcasting Applications Report (2024):

2024-5, Approved: Amendment to technical parameters of CHFI-FM Toronto, Ontario

2024-14, Approved: Extension of the time limit to 8 April 2025 to implement technical amendments to broadcasting transmitter CBSI-FM-8, La Romaine, Quebec.

CRTC search engine results:

2024-5: APPROVED - CBVE-FM Québec and its transmitter CBMR-FM Fermont - Technical changes

2024-14: APPROVED - CJGY-FM Grande Prairie and its transmitters CJGY-FM-1 Fort St. John and CJGY-FM-2 Dawson Creek - Licence amendment

41 In other words, the CRTC does not publish all decisions that it makes about applications it receives: FRPC's concern is that the Commission may adopt this non-

transparent and misleading practice when it makes determinations with respect to the *Online News Act*.

- 42 FRPC recommends that the CRTC maintain and publish annotations to sections of the *Online News Act* that it (or its staff) interprets in its determinations. In this context the CBC’s “non-exhaustive list” of conduct that should be prohibited is a useful reference point (although, as CBC later writes at paragraph 36, as the CRTC has not previously dealt with the specific issues raised by the *Online News Act*, “it would be premature to limit the possible factors” the CRTC may address “when considering complaints related to undue preference, disadvantage or discrimination”):

A non-exhaustive list of prohibited conduct should include:

- retribution against a news business for choosing to participate in this regime;
 - diminishing the value, attractiveness, or discoverability of news content for platform users in order to improve a digital news intermediary's negotiating position (or reduce payments); and
 - denying access to user data that is provided to other news businesses.
- (CBC, paragraph 33)

- 43 These annotations need not identify the parties (except to indicate whether ‘operators’ and/or ‘digital news intermediaries’ and ‘news businesses’ and/or ‘news outlets’ are involved), but will nevertheless provide interested parties with a quick and easy way to ascertain current thinking regarding undue preference, disadvantage or discrimination under the *Online News Act*. The CRTC should publish these annotations on its website within five working days of their being made through final-offer arbitration decisions, and it should include a link to these annotations in its [A to Z index](#).

Q22. Beyond those factors listed in subsection 52(2) of the Online News Act, what additional factors could the Commission consider when considering complaints related to undue preference, disadvantage or discrimination?

- 44 Google “submits that in addition to those factors, the Commission should consider whether there was any specific direction given by the online platform to take action against the news business in question, or whether the manner in which the news content is made available by the online platform is appropriate and merely a technical method of calculating and ranking responsiveness to user intent” (paragraph 12).
- 45 First, FRPC agrees that in cases involving preference, advantage and discrimination it would be extremely useful to have evidence of an online platform’s “specific direction ... to take action against” a news business. Short of requiring online platforms to retain written records of every communication between their officers and employees, however, this evidence is unlikely to be readily available. (Unfortunately, while law-abiding online platforms will likely retain records of such information to demonstrate

their *bona fides*, online platforms that are engaged in unlawful conduct may not, and may even purposefully conceal or delete such information.)

- 46 Second, an approach to discriminatory action based on proof of intent to discriminate would mean adopting “an approach to discrimination long rejected” by Canadian courts (see [Quebec \(Attorney General\) v. Alliance du personnel professionnel et technique de la santé et des services sociaux](#), [2018] 1 SCR 464 at paragraph 35). The annotations that FRPC is proposing that the CRTC adopt would provide all parties with information necessary to understand the Commission’s approach to evaluating matters involving undue preference or disadvantage.

G. Data collection requirements

Q23. Should all agreements between online platforms and news businesses regarding compensation for making news content available, entered into a process set out in the Online News Act or the Regulations, be automatically filed with the Commission?

- 47 The Forum’s preliminary position is that such agreements should be automatically filed – in confidence – with the CRTC.

- 48 FRPC agrees with Google that “aggregate information gathered from such agreements would be useful for the independent auditor in completing its report” (paragraph 13). In fact, this aggregate information would be useful for all interested parties. Its publication – necessary to permit meaningful public-policy evaluation by others – should not be limited to the independent auditor.

Q24. What data should online platforms be required to provide to the Commission on an annual basis in order to facilitate the auditor’s report and fulfill the Commission’s other duties? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

- 49 Google argues that “the Commission should seek aggregate information from the online platform with respect to total expenditures under the Act” (paragraph 14, underlining added). FRPC does not agree, for several reasons.
- 50 First, while Google argues that the CRTC must avoid the hypothetical problem of “overburdening any online platform” it has not provided evidence to show that online platforms do not already collect disaggregated information: it is only if platforms were required to collect data that they do not already collect that the platforms could conceivably be considered to be ‘overburdened’. Even then, the concept of administrative ‘burden’ has rarely been quantified and has not been quantified by Google. Supposing that a digital news intermediary operator earns “total revenue

from all sources in the previous calendar year greater than \$1 billion”,⁹ expending just half of percent of (0.5%) of this figure – arguably not a burdensome amount – would still amount to \$5 million, surely sufficient to modify a platform’s accounting software to meet legislative requirements (assuming the software does not already enable the collection and reporting of such details for management purposes).

- 51 Second, it is unclear whether limiting information to total expenditures will enable Parliament and Canadians to determine whether one of the purposes of the *Online News Act* is being achieved – namely, “the sustainability of news businesses in Canada, in both the non-profit and for-profits [*sic*] sector, including independent local ones”. The only way to evaluate this is to, at least, disaggregate the expenditures online operators and/or digital news intermediaries make each year on non-profit, for-profit and independent news businesses.
- 52 Finally, FRPC submits that the CRTC must first decide all factors it needs to measure before limiting itself to information about total expenditures. To give an example from broadcasting, aggregating television-programming broadcasters’ total expenditures would not enable the Commission to ensure that each ‘employs and makes maximum use, and in no case less than predominant use, of Canadian creative and other human resources’ when it creates, produces and presents programming (section 3(1)(f)). The *Online News Act* effectively requires information about disaggregated expenditures to measure the concept of predominance with respect to an undertaking’s use of Canadian and non-Canadian resources.
- 53 The CAB recommends that data collected from online platforms include (but not be limited to) the number of “deals they have signed, with how many news businesses/news outlets”, “average remuneration information (on an FTE basis), and “total value of deals (direct payment and indirect value reported separately) (paragraph 40).
- 54 FRPC agrees generally with the CAB’s recommendation, but suggests the following specifications:
- List of agreements concluded, showing the news businesses/outlets with which the agreements were concluded
 - Total news-production remuneration on an FTE basis
 - Number of FTE employees engaged in news production
 - Total news-production that is non-remunerated (volunteer time in hours or day-equivalents)

⁹ *Online News Act Application and Exemption Regulations, SOR/2023-276, s. 2(a).*

- Number of FTE volunteers engaged in news production
- Total specified value of each agreement, and
- Total specified non-financial value of each agreement, to the extent this is set out in the agreement (say, with not-for-profit organizations).

Q25. What data should eligible news businesses be required to provide to the Commission on an annual basis in order to facilitate the auditor's report and fulfill the Commission's other duties? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

55 Google mentioned the concept set out in the *GIC Regulations* at section 10(2) regarding "original news content" (paragraph 15). The CRTC should define this term to ensure that the *Regulation*, collect data showing the levels of original and non-original news being generated by news businesses and/or news outlets, and publish this information annually.

56 While the CAB proposes at paragraph 42 that the Commission 'not increase the administrative burden of Canadian broadcasters', no evidence has been provided to establish that administrative requirements are, in fact, burdensome. Moreover, it may well be easier for individual broadcasters to advert the Commission to the location of previously filed information than to require limited CRTC staff to comb through the information it receives from those it regulates to determine whether it already has the data it seeks.

Q26. What data should news businesses which have not been designated as eligible be required to provide to the Commission on an annual basis in order to facilitate the auditor's report and fulfill the Commission's other duties? Should collection of such data be limited to news businesses that have responded to at least one platform's open call? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

57 The CAB notes its uncertainty regarding the CRTC's purpose in collecting information from ineligible news businesses (paragraph 44).

58 Section 4 of the *Online News Act* establishes that Parliament's purpose for this statute and its associated regulations is

... to regulate digital news intermediaries with a view to enhancing fairness in the Canadian digital news marketplace and contributing to its sustainability, including the sustainability of news businesses in Canada, in both the non-profit and for-profits sectors, including independent local ones.

- 59 As Parliament did not limit its purpose to *eligible* news businesses, data should be gathered from *all* news businesses to determine whether fairness and sustainability in the Canadian digital news marketplace overall is weakening, being maintained or strengthened. Determining the specific data that would need to be gathered first requires the CRTC to set out its definition of the concepts of ‘fairness’ and ‘sustainability’ as well as the measures it would use to operationalize these concepts. Rather than attempting to require ineligible news businesses to report to the CRTC, the Commission could invite these entities to provide voluntary responses to an annual survey. Should Parliament later determine that more information is required from ineligible news businesses, it could amend the *Online News Act* to mandate the submission of more information from ineligible news businesses.

Q26(a) Should that annual data include updates with respect to how a news business that responded to an open call could meet the eligibility criteria set out in subsection 27(1) of the Online News Act? For example, is it a qualified Canadian journalism organization? Does it operate an Indigenous news outlet?

- 60 CAB notes that such information would, presumably, “be collected as part of the process of seeking designation [*sic*] and being added to the Commission’s public list” (paragraph 45).
- 61 FRPC agrees, and notes that the examples provided of information the CRTC may collect are in fact necessary to any evaluation of how the *Online News Act* and its associated regulations are being met. FRPC urges the Commission, once it has determined the data it would like to collect, to invite public comment on these points, particularly if the Commission decides to collect information about the level of ‘original’ news offered by news businesses or news outlets.

Q27. What types of expenditures should be included in the calculation of newsroom expenditures (e.g., journalist salaries, IT equipment/content production, etc.)?

- 62 The CAB argues that “the calculation of newsroom expenditures should include investments in equipment needed to produce newscasts and expenditures on IT servers required for digital distribution of information” (paragraph 46).
- 63 Capital expenditures may be a useful empirical indicator of “innovative business models in the communication news marketplace” (*Online News Act*, section 11(1)(a)(v)).
- 64 That said, such expenditures should be clearly distinguished from expenditures to employ people to produce news content, to which Parliament specifically referred in section 27(1)(b)(i) of the *Act*.¹⁰ Similarly, news businesses should be required to

¹⁰ *Online News Act*, section 27(1)(b)(i):

distinguish between expenditures on living people and those made with respect to artificially-intelligent or software aspects of programming, such as (but not limited to) production, editing and design (section 27(1)(b)(ii)).

- 65 In its response to question 25 CACTUS cautions the CRTC against “comparing news room expenditures and measures of commercial revenues for community broadcasters with those of other broadcasters”, as “[v]oluntary labour is embodied in the production of community broadcasting content that may be difficult to quantify in commercial terms, despite the high cultural and democratic value of the content produced”. In responding to question 27 CACTUS recommends that any measures adopted by the Commission “include the value of free labour provided by community groups and individuals that volunteer their time, as well as the value of training of these groups and individuals by station staff”. CACTUS adds in response to question 27 that “[a]n accurate price tag for news content created by community broadcasters is difficult to calculate, since community broadcasting both creates a news end-product, but also provides media literacy training and democratic discourse to all community groups and members that participate in its production.”
- 66 In FRPC's view, the main purpose of the *Online News Act* is not to set a ‘price tag’ on news content, but to enable the sustainability of Canada’s news ‘ecosystem’, so to speak. The *Act* therefore concerns itself with the reporting of news and the employment of journalists (section 27(1)(a)(i) and (iv), respectively). As a result, the CRTC could invite community news businesses or outlets to provide information on the number of journalists employed (for or without remuneration) to provide news, as well as the amount of original news the businesses or outlets provide.
- 67 What is less clear is whether the CRTC should, in the context of the *Online News Act*, require news businesses and/or news outlets to submit data on journalistic training, media literacy training and democratic discourse, as CACTUS appears to suggest. The CBC (in response to question 12) similarly suggests that section 38 of the *Act*

... is sufficiently flexible to encapsulate all types of values and benefits (“monetary and otherwise”. It explicitly [include] investments and expenditures on news content, which among other things could include: investments and expenditures on journalists, news gatherers, and other news production activities; investments in nurturing and growing a diverse news talent base; investments in producing and distributing local, regional, national, and international news; investments that serve official language minority communities; investments that serve Indigenous Peoples and communities;

At the request of a news business, the Commission must, by order, designate the business as eligible if it ... (i) regularly employs two or more journalists in Canada, which journalists may include journalists who own or are a partner in the news business and journalists who do not deal at arm’s length with the business,

and investments in tools and processes to ensure the accuracy of news content to promote and enhance consumer trust. Further, it also allows parties to consider “other actions in relation to that content” and the imbalance of bargaining power.

(paragraph 15)

68 The Forum is normally concerned with the absence of data with respect to the CRTC’s activities, making its objection to the collection of too much information something of a departure from the norm. That said, we have two main concerns regarding the collection of data as proposed by CACTUS and the CBC.

69 First, the information collected under the authority of the *Online News Act* is necessarily different than the information needed to be collected under the *Broadcasting Act*, as the two statutes state and have different purposes.

70 Second, FRPC is concerned that collecting a wide range of data about concepts that range from “nurturing” a diverse news talent base and also growing this base, to “investments that serve Indigenous Peoples and communities” may result in a scorecard that confers an undue advantage to large news businesses such as the CBC. The Corporation, after all, is constrained by other federal and provincial statutes that require it to operate in specific ways relevant to the scorecard it proposes – and in part because of its special legislative status its operations (and some of its capital investments) are also funded in large part by grants from Parliament. The extensive scorecard suggested by CBC may mean that smaller news businesses and/or outlets would find it at least initially find it difficult to argue they deserve higher levels of compensation even if, hypothetically, they ultimately produce more original local news than the Corporation (whether measured by programming hours or by number of words used in text). Moreover, and while Parliament specifically chose to include the Corporation within the purview of the *Online News Act*, the fact that CBC is legislatively required and also publicly funded to meet at least some of the objectives it suggests the CRTC measure as ‘values and benefits’ gives it a measurement advantage compared to other smaller, not-publicly funded and not legislatively mandated news businesses and outlets.

71 Section 31(2) of the *Online News Act* moreover sets clear parameters for news outlets that must be part of its bargaining process, noting that the Commission must find that such outlets are ‘operated exclusively to produce news’ and not ‘to promote the interests of an organization, an association or their members’:

A news outlet is to be a subject of the bargaining process if the Commission is of the opinion that the outlet is operated exclusively for the purpose of producing news content — including local, regional and national news content — consisting primarily of original news content that is
(a) produced primarily for the Canadian news marketplace;



- (b) focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes;
- (c) not focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment; and
- (d) not intended to promote the interests, or report on the activities, of an organization, an association or its members.

72 It is at best unclear whether the training, media literacy and democratic discourse identified by CACTUS, or the nurturing and growing of a diverse news talent base identified by CBC ought to be considered as non-monetary matters relevant to bargaining over the fair compensation¹¹ to be provided for news content provided by community broadcasters for the purposes of the *Online News Act*. The risk for the CRTC is that if it determines these matters to be appropriate for compensation, for-profit news businesses such as the CBC's television news outlets are also likely to seek compensation for matters not directly relevant to their provision of news.

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¹¹ *Online News Act*, section 11(1)(a)(i).