

Unifor comments on the *Application for exemption from the Online News Act by Google*

**Re: Online News Notice of Consultation
CRTC 2024-143**

SUBMITTED VIA WEB FORM

August 6, 2024



Randy Kitt, Director

Unifor Media Sector

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Marc Morin
Secretary General, Corporate Services and Operations
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
Canada, K1A 0N2

RE: Unifor comments the Application for exemption from the *Online News Act* by Google (Online News Notice of Consultation CRTC 2024-143)

Dear Mr. Morin,

1. Thank you for the opportunity to provide comment on the Application for exemption from the *Online News Act* by Google (Online News Notice of Consultation CRTC 2024-143).
2. Based on submissions filed by Google and the Canadian Journalism Collective (CJC), we do not believe that Google has met the requirements for a full five-year exemption. However, given the urgent need to direct additional funding to eligible news businesses in Canada, Unifor would support an interim one-year exemption, as long as certain conditions are met.
3. Unifor is Canada's largest private sector union, with more than 320,000 members across Canada working in 20 economic sectors. Unifor is one of Canada's largest unions in the media sector, representing more than 10,000 media workers, including 5,000 members in the broadcast and film industries.
4. Our members working in newspapers and digital news publishing work at some of the largest national and provincial dailies, including the Globe and Mail, Toronto Star, National Post, London Free Press, the Toronto Sun, the Vancouver Sun and The Province, the Winnipeg Free Press, Brandon Sun, Thunder Bay Chronicle, Lethbridge Herald, the Winnipeg Sun, and the Hamilton Spectator. Our employers include national media companies like Torstar and Postmedia, as well as regional enterprises like Black Press and Continental.

5. Unifor broadcast members work for radio and television stations serving local communities as well as national discretionary pay and specialty services, and distribution services that include cable, satellite and wireless telephony.
6. Unifor broadcast members are employed by large, private Canadian broadcasters and distributors, including Corus (e.g. Global), as well as Canada's largest Vertically Integrated (VI) firms: Rogers (e.g. City and OMNI stations) and Bell Media (e.g. CTV). In addition, Unifor members work for independently-owned and locally-based television stations (such as CHCH TV in Hamilton, Ontario and CHEK in Victoria, BC) as well as public television stations (e.g. TV Ontario).
7. Unifor supports the goals of the *Online News Act (ONA)* in principle, and we have participated as engaged stakeholders at every stage as the legislation was developed and finalized. Fundamentally speaking, we believe that digital platforms should pay for the Canadian-made news content that is shared across their platforms.

The principles of transparency, accountability, and inclusion

8. In our submission to the Commission regarding *Regulations Respecting the Application of the Online News Act*,¹ Unifor respectfully recommended that the government should approach the regulations attached to the *Online News Act* with a set of three basic principles:

Transparency

9. In order for the regulations to be effective and fair, it is critical that deals made between the digital platforms and domestic newsmakers be transparent and publicly disclosed.
10. The basic terms of all funding agreements and arbitrated settlements must be disclosed to regulators and the public. This transparency will allow for fairer and more effective negotiations between the parties, and will preserve and promote public trust in the overall funding program and the *Act* itself.
11. In addition, the eligibility requirements for Canadian news outlets, the application process for those outlets, and the entire process that oversees the distribution of funds must be transparent and independent.

Accountability

12. Funding distributed to Canadian news outlets must be earmarked specifically for local news creation. Clear reporting will ensure that the legislation meets its objectives of serving the public interest by funding the creation of local news.

13. The regulations must include language that requires Canadian news outlets to use most or all of the new funding directly on local news creation, as opposed to debt payments, executive compensation and bonuses, or stock buybacks.

Inclusivity

14. The new funding stream delivered through the *Online News Act* should be used to fund the creation of local news in a variety of formats, and eligibility should be platform agnostic.
15. News outlets should be eligible (with conditions) based on QCJO criteria, whether they are: print, online or broadcast; mainstream or independent; large-scale or small; and private or public.

Unifor comments and recommendations

16. With these basic principles in mind, Unifor would like to respectfully provide the following comments and recommendations:

Q2. Would it be appropriate to require an additional mechanism for allowing additional news businesses to receive compensation through the CJC that did not come forward during the initial call?

17. In order to provide maximum access to the new funding, we believe that a mechanism should be included in the regulations that would allow additional news businesses to receive compensation through the CJC. We would recommend an annual open call process for additional news businesses, which would make access to compensation through the CJC independent from the duration of Google's exemption order or any interim order the Commission imposes.

Q7. Google and the CJC must comment on the effect an interim order would have on the effective date of the Agreement or the schedule of payments to be made from Google to the CJC.

a) If Google would not make payments to the CJC in response to an interim exemption order based on the current language of the agreement, please comment on whether the Commission should require an amendment to the Agreement to ensure that payments would be made as a condition of an interim exemption order.

18. Unifor continues to argue that the new funding must be distributed as soon as possible. Print and broadcasting media businesses in Canada continue to struggle financially, and journalists and media workers continue to bear the brunt of this crisis through endless layoff announcements. Unifor recognizes the distribution process will require a certain amount of time to prepare, and we believe the

timelines proposed by the CJC in Para 5 of its July 15th submission are reasonable. However, Unifor believes the Commission should require that the first round of payments be made no later than by the end of 2024.

19. Based on the need for urgency, we believe the Commission should require an amendment to the Agreement to ensure that payments would be made as a condition of an interim exemption order.

Q8. Please comment on whether the Agreement meets the requirements of Section 10 of the Regulations. If it does not meet the requirements, please explain why not. In particular:

- a) Is the maximum of 2% for administrative expenses provided for in the Agreement reasonable?*
 - b) Is the mechanism in the Agreement for the CJC to admit news businesses that responded to the open call consistent with paragraph 10(1)(b) of the Regulations?*
 - c) Is the Agreement sufficient to ensure the CJC will distribute funds in a manner consistent with the requirement for equitable distribution in subsections 10(2) and 10(3) of the Regulations? Please address whether any of the terms agreed to by the CJC, such as its responsibility to indemnify Google, could put its ability to distribute the compensation at risk.*
20. Unifor does not believe that the maximum of 2% for administrative expenses provided for in the Agreement is reasonable. We believe that 2% for administrative expenses is excessively high, especially when a competing coalition bidding for the distributor role proposed an administrative expense rate of 0.5%. Given the CJC's tightly defined role as a fund administrator with the sole purpose of distributing compensation based on a set of clearly defined criteria pre-established by the Commission, we do not believe the coalition requires \$2 million annually to do its work.
 21. An official with the Canadian Heritage Department said that the \$100 million Google contribution would mean small print and digital outlets could receive about \$17,000 per journalist that they employ.² Using that rough estimate, the difference between the CJC's proposed \$2 million administrative costs and the lower proposed costs of \$500,000 would represent the equivalent of the financial subsidy for 88 journalists (\$1.5 million/\$17,000 ≈ 88). In other words, while the difference in proposed costs may seem relatively small, every dollar that goes towards administration is money that won't go to supporting actual journalists and media workers working in actual newsrooms.

22. In its July 15th submission to the Commission, the CJC wrote:

The CJC-CCJ has submitted work-in-progress documents regarding governance and dispute resolution procedures, where they exist. The remaining Deliverables, including eligibility, FTE verification and membership criteria, are in development. We are developing the Deliverables in alignment with the principles described in the CJC-CCJ's website copy. We will update our website copy regularly as we develop the Deliverables. We welcome feedback from all interested parties via the CRTC public consultation process. (p.20)

23. In our October 2, 2023 submission to the Commission regarding *Regulations Respecting the Application of the Online News Act*, we raised a number of concerns regarding the use of the concept of “full-time equivalents” (FTEs) in the regulations. In that submission, we noted that, “In the union’s experience, FTEs are sometimes used to manipulate labour market data, giving the appearance of more stable jobs among a workforce that actually consists of a large number of part-time, casual, temporary or contract workers.”
24. Given the importance of the FTE issue and the potential of misuse of this critical language, we are concerned that Google and CJC have so far failed to address this concern. We respectfully recommend that the Commission itself must clearly provide an appropriate standard definition of a Full Time Equivalent Employee, since we continue to argue that the entire purpose of the new funding under the *ONA* must be to support newsrooms, and therefore working, full-time journalists.
25. Unifor submits that a Full Time Equivalent Employee should be defined as a person or persons in an employer-employee relationship^a (e.g. receives a T4 for their work; not a contractor) working a total of 35 hours per week or more.
26. In addition, in our October 2, 2023 submission, Unifor recommended that, “news outlets should be eligible (with conditions) based on QCJO criteria.” We believe the QCJO designation represents a sound and reasonable framework upon which to base eligibility requirements related to the distribution of the Google contribution. There is no need to reinvent the wheel in terms of eligibility requirements. For broadcasters specifically, eligibility should be based on the QCJO requirements and eligible recipients should be required to have a valid and current broadcast license.

^a As defined in “Determining the Employer/Employee Relationship - IPG-069.” ESDC. (from <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html>)

Q12. If the Commission grants a final exemption order, should it impose any additional conditions related to the operation of the CJC? Explain the intended effect and the rationale for any conditions you propose to be included. In particular, please comment on the appropriateness of the Commission imposing conditions related to the following and on what those conditions should be:

- a) How funds should be handled prior to disbursement, including use of trust accounts and disbursement of interest.*
 - b) Timelines for procedures, including processing memberships and disbursement of funds.*
 - c) Voting procedures for leadership of the CJC, or on matters of importance such as accepting agreements or changes to the organization's procedures.*
 - d) Should Google's written approval be required for the CJC to assign its responsibilities under the agreement to another organization? Should such an assignment require a Commission review of the exemption order?*
 - e) Should the Commission impose a condition requiring an annual report from the CJC providing information on its operations? If so, please explain what elements should be included in the report and why. For example, the report might cover information on membership activities, when and to whom money was dispersed, the operating budget of the CJC, or on any dispute resolution activities.*
27. Unifor is concerned with the proposed composition of the CJC Board in its submission. The proposed Board is quite large, with 19 voting members. Unifor supports the inclusion of designated Board positions to meet the principles of diversity, equity and inclusion.
28. However, we are very concerned that a huge majority of working journalists and media workers in Canada will be represented by only a small number of Board members. The problem is that the weighting of Board representation by employer type is off. It is critical that the Coalition Board represents working journalists and media workers working in Canadian newsrooms. While we have always argued for the inclusion of small, independent, start-up, and other less mainstream news outlets as eligible for the distributed funds, the composition of the Board must better reflect the general composition of the actual Canadian media workforce in terms of employer type. This must be remedied immediately if there is to be any faith in the process.

29. More generally, we are also concerned that a larger Board will naturally generate higher expenses, and we are mindful of the need to keep administrative overhead low in order to stream as much money as possible directly into newsrooms.
30. In terms of dispute resolution, and specifically the CJC's "Appendix B - Dispute Resolution Framework" (p. 18-19), Unifor is concerned that the proposed framework is beyond the scope of the Collective. We believe that the CRTC should play a more active role in the dispute resolution framework, beyond the final right to issue an eligibility order as outlined in para. 7 of that Appendix. The Commission should play an active role in developing training, educational and communication materials, and should also be responsible for appointing an Ombudsperson, for example.

Q13. Please comment on the appropriateness of the Commission granting a five-year exemption order to Google. If it is not appropriate, why not and what should the term of the exemption order be?

31. Considering the complexity of the legislation and regulations, the significant amount of money involved, the urgent need to distribute that money appropriately, and the fact that the CJC will be in its "rookie year," Unifor believes that it makes sense start with a one year interim order, and then analyze and evaluate the success of the program before subsequently moving to a five-year exemption order.
32. The advantage of a one-year interim order would be in giving stakeholders and the Commission the ability to undertake a review process to assess the first year, and make necessary changes to the Regulations that guide and direct the work of the Coalition.

Q15. Should the Commission require Google to provide funding for public interest participants in this proceeding as a condition of exemption?

Q16. Should the Commission require Google to provide funding to a third party such as the Broadcasting Participation Fund that could be used for public interest participants in future proceedings related to the Act as a condition of exemption?

Q17. If public interest participation funding should be required, what procedures should be used to collect and distribute funding?

Q18. What amount of public interest funding would be reasonable?

33. Unifor supports the proposal for Google to provide funding for public interest participants in this proceeding as a condition of exemption. Public engagement and participation in these matters is critical, and we know that extra measures must be implemented to support public interest participants.

34. Unifor believes that the Broadcasting Participation Fund already does critical work on this front, and the organization is already perfectly positioned to take on this role regarding future proceedings related to the Act.

Q19. Google and the CJC must comment on whether subsection 7(h) of the Agreement limits members of the CJC from beginning proceedings other than those related to initiating the bargaining process described in section 19 of the Act, such as:

- *complaints under section 52 related to undue preference;*
- *requests for a compliance order under section 50 related to the code of conduct;*
- *applications under section 14 for the Commission to review an exemption order;*
or
- *any other proceeding allowed under the Act.*

Q20. If the Agreement does restrict members of the CJC from initiating other proceedings under the Act, should the Commission impose a condition that the agreement be amended to allow such proceedings?

Q21. Are there any additional amendments to the Agreement that are necessary to bring it into compliance with the Act or the Regulations, or conditions that the Commission should consider adding to an interim or final exemption order?

35. Unifor is concerned by Section 7(h) of the Contribution agreement between Google and the CJC, which states:

The Collective will not initiate or participate in, and will include a similar requirement of the Members in the Members Agreement, from initiating or participating in, (i) any bargaining process or (ii) proceeding before the Commission, a mediator, an arbitration panel, or a court of competent jurisdiction, in each case related to (A) any bargaining process in connection with Google, any of its Affiliates, or any Intermediaries pursuant to the Act or the Regulations, or (B) infringement of copyright in relation to making available news content of Members by Intermediaries in the manner permitted by the Act. The Collective will enforce such provision in the Members Agreements to the fullest extent and in a timely manner.

36. The purpose of clause (B) in Section 7(h) is unclear, and we believe this prohibition is both unnecessary and also totally unrelated to the ONA and its related regulations. That portion of 7(h) should be removed.

Conclusion

37. Unifor would like to reiterate that time is of the essence in terms of establishing a transparent, accountable and inclusive distribution process for new the funds that will flow from Google and through the CJC. Canadian media businesses continue to face a crisis, and journalists and media workers on the frontlines of the sector have felt the worst impacts.
38. The Commission must establish fair and effective regulations that leave minimal discretion to the CJC itself, leaving that organization to play a tightly defined role as a fund administrator with the sole purpose of distributing compensation based on set of clearly defined criteria pre-established by the Commission.

Unifor is available if you have further questions or seek additional comments.

Thank you again for the opportunity to comment on this important matter.

Sincerely,

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¹ “Unifor comments on Regulations Respecting the Application of the Online News Act.” Unifor. (October 2, 2023). (<https://www.uniformedia.ca/single-post/unifor-comments-on-regulationsrespecting-the-application-of-theonline-news-act>).

² Mickey Djuric. “Google signs deal with organization to distribute \$100M to Canadian news companies.” The Canadian Press. (June 7, 2024). (from <https://www.cbc.ca/news/politics/google-canadian-news-companies-1.7228190>).