News Media Canada
Médias d'Info Canada

September 15, 2021

News Media Remuneration
Department of Canadian Heritage
25 Eddy St.
Gatineau QC K1A 0S5

VIA EMAIL: pch.mediasdinfo-consultation-newsmedia.pch@canada.ca

Dear Sir/Madam:

On behalf of news media publishers from coast to coast to coast, representing over 1000 communities and employing over two-thirds of Canada's journalists, News Media Canada is pleased to provide its comments in this consultation.

News Media Canada participated in the previous stakeholder engagement which led up to the *What We Heard* report issued by Canadian Heritage on August 3, 2021. Our submission, dated April 1, 2021, responded in detail to the economic and policy questions posed by the government.

News Media Canada has been strongly urging the government to adopt the Australian approach to this problem since last year. In October 2020, we provided the government with a memo entitled, "The Australian Solution to the Google/Facebook Problem: How to Make It Work in Canada". This memo was updated on March 24, 2021, to take account of the fact that the Australian legislation had finally received royal assent.

On May 20, 2021, News Media Canada also provided the government with a draft *Digital Platforms Act*, to show what a Canadian statute based on the Australian model might look like.

Moving Forward

In its discussion paper commencing this consultation, dated August 3, 2021, the government noted that consultation has so far focused on two approaches: (1) the mandatory code and arbitration regime; and (2) having mandatory financial contributions from digital platforms to be distributed by an independent fund. The government has now asked if "elements of the two approaches could be combined in a model that aims to address a broader range of policy concerns while mitigating their respective risks."

News Media Canada has carefully reviewed the options discussed. We have also considered developments since our last communication with the government.

We have concluded that the mandatory code and final offer arbitration regime, modelled on the Australian approach, remains the best solution to the Canadian crisis for news media. While the arbitration regime could be supplemented by government funding to address issues of equity, the Australian approach has proven to be effective and its implementation in Canada is therefore crucial.

What the Australian Arbitration Approach Has Achieved

The Australian experience provides an object lesson in what can be achieved to support local news media through a mandatory code and arbitration regime.

When the Australian arbitration regime was first proposed by the Australian Competition and Consumer Commission (ACCC) in 2019, it was opposed by both Google and Facebook. That opposition continued after the government introduced its bill. In February 2021, in a last-minute effort to stop the legislation from going through, Google announced its "News Showcase" plan in Australia. For its part, Facebook threated to leave Australia altogether. However, neither tactic succeeded. The government went ahead and enacted the bill. It received royal assent on March 2, 2021.

The results have been a stunning success for local news media in Australia. To avoid binding arbitration, both platforms have negotiated contracts with the news media that provide meaningful remuneration. Although the actual terms are confidential, and some of contracts are still being negotiated, News Media Canada understands that Google is paying in the range of 20% of the cost of each full-time journalist and Facebook is paying in the range of 10% of that cost. On September 3rd, Google reached an agreement with Country Press Australia, which represents 180 independently owned regional and local newspapers and online platforms across Australia. Thus, the threat of arbitration is leading to real dollars to news publishers in Australia, both large and small.

Why Negotiations Without Binding Arbitration Are Not Enough

On June 24, 2021, Google announced that it had signed agreements with eight large Canadian publishers. As it did in Australia, Google may argue that this initiative demonstrates its support for local news media in Canada and obviates the need for any legislation.

News Media Canada strongly disagrees. Google's divide and conquer approach lacks transparency and allows the platforms to play titles off against each other with inadequate offers compared to what binding arbitration would provide. While the agreements have been kept confidential, News Media Canada understands that they provide only a fraction of the level of support to news media that is being negotiated in Australia under the arbitration regime. Moreover, there are no such agreements for smaller titles.

It is understandable why some news media in Canada, concerned with the delay in introducing legislation, may feel compelled to take whatever Google or Facebook may offer.

However, just as happened in Australia, the government should see through this initiative and give the news media in Canada the power to bargain collectively with binding arbitration if no satisfactory agreement can be reached. The Google and Facebook platforms have combined annual revenue in Canada of over $9 billion. Only through the threat of arbitration will meaningful remuneration be provided by those platforms to all Canadian news media.

Why Collective Negotiation Must Be Allowed

A key component of the Australian approach is to allow news media in Australia to negotiate on a collective basis if they wish. Further to this approach, some 150 smaller Australian publications have elected to negotiate as a group with both Google and Facebook. We understand those negotiations are going well, but this is only because the publications can bargain collectively, and binding arbitration is available if no agreement is reached.

In Canada, section 45 of the *Competition Act* precludes collective bargaining. Thus, it is essential that any legislation to implement the Australian approach in Canada include an exemption from section 45.

If legislation implementing the Australian approach is enacted, News Media Canada would make itself available to assist in collective negotiation for smaller titles that want such help. Single titles have no market power compared to the digital platforms.

Supplemental Funding Models

The second approach suggested by the government is to have mandatory financial contributions from digital platforms to be distributed by an independent fund.

News Media Canada does not believe that this approach is an appropriate substitute for the mandatory code and arbitration regime, which is a market-based approach that does not require political judgments.

However, there is certainly room for a supplementary fund that supports smaller and alternative publications that may not be benefited by the arbitral approach. We recognize that if the mandatory code and arbitration regime were to apply only to "qualified Canadian journalism organizations" designated by the CRA under the *Income Tax Act,* this would exclude Canadian print media with fewer than two regularly employed journalists.

The government has already addressed the needs of smaller publications in its Aid to Publishers program. That program also includes support for alternative media. As noted on the government website describing the program,

> "We recognize that official language minority, Indigenous, ethnocultural and lesbian, gay, bisexual, transgender, queer and two-spirited (LGBTQ2+) periodicals have a key role in the communities they serve. These periodicals benefit from special measures that improve their access to the Aid to Publishers component. These measures deal with matters such as the number of paid copies and the prices of magazines and newspapers and the financial verification requirements for all types of publication."

The government also funds the Local Journalism Initiative, which supports journalists in areas of news poverty, i.e., small centres or communities where there are no full-time journalists.

Reference can also be made to the Independent Local News Fund, which was created by the CRTC in 2016. That fund is financed by a levy of 0.3% on Broadcasting Distribution Undertaking (BDU) revenues. It is administered by the Canadian Association of Broadcasters according to an allocation method set by the Commission in Broadcasting Regulatory Policy CRTC 2016-224, Appendix 1. The fund supports local news provided by TV stations that are not vertically integrated. The report of the Broadcasting and Telecommunications Legislative Review (BTLR) Panel recommended that the BDU support for the Independent Local News Fund be increased.

We also note that in Recommendation 71 of the BTLR Panel Report, the Panel recommended that the CRTC have the power to require the digital platforms to contribute to an "independent, arms-length CRTC-approved fund for the production of news, including local news on all platforms." However, this was based on redefining the word "program" in the *Broadcasting Act* to include "alphanumeric news content" (Rec.51). In Bill C-10, the Government did not follow this recommendation. The word "program" continues to exclude all alphanumeric content from the ambit of the *Act*.

In our view, there may be merit in requiring digital platforms to contribute to existing or newly created funds that support journalists working in smaller and alternative media. However, News Media Canada strongly believes that these funds cannot substitute for commercial arrangements negotiated between the platforms and the news media.

The Australian model is a simple, fair, and proven solution that is working in that country. It does not require taxpayer funds, new taxes, or user fees. Its use of collective negotiation, backed up

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by baseball-style arbitration, is the best way to redress the current power imbalance between the web giants and Canada's local news media. It will ensure that we can continue to invest in excellence in Canadian journalism—both today and over the long term.

Canada's news publishers remain united and ready to negotiate collectively. We await legislation with urgency.

Yours truly,

Paul Deegan
President and Chief Executive Officer