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No clear path to reach deal with Google as link-blocking deadline looms, could be ‘catastrophic’ for news media industry, say observers

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“If Google walks away ... that’s very bad news” for Canadian media, and that may explain a recent shift in position from News Media Canada, says media expert Chris Dornan. But Matt Hatfield, director of campaigns for OpenMedia, says it’s possible a deal may be reached, however, given Google’s leverage because of the looming deadline, the deal may not be in the best interests of Canadians or the news industry.

With less than two months until Google may start blocking news links in Canada when the Online News Act comes into effect, there’s no clear indication that a compromise will be reached to avoid this “catastrophic” outcome for the news media industry and Canadians, say observers.

The Online News Act, which became law when bill C-18 received royal assent earlier this year, is set to come into force on Dec. 19. The law requires tech giants like Google and Meta to either reach deals with Canadian news publishers to compensate them for news links that ap-

pear on their platforms, or to stop displaying news links on their sites in Canada if they do not reach financial agreements with these publishers.

Meta began blocking news links shortly after Bill C-18 became law. Google has continued to display links and participate in the government’s ongoing process to draft the regulations for how it will implement the Online News Act. However, Google has indicated that if its concerns are not satisfied by Dec. 19 when the law comes into force, it too will begin blocking news links rather than opting to reach financial agreements with the news publishers.

On Oct. 13, Google filed its submission to the government regarding the draft regulations published in the Canada Gazette on Sept. 2. Google’s submission drew a favourable response from News Media Canada, the national association for Canadian print and digital news publishers. News Media Canada has been a strong proponent of C-18 from the outset, and its support of Google’s submission marks a significant shift in position for the organization.

Canadian Heritage Minister Pascale St-Onge is leading the government’s efforts to craft regulations to implement the Online News Act in advance of the Dec. 19 deadline when the law comes into force. The Hill Times photograph by Andrew Meade

In an email statement to The Hill Times, Paul Deegan, president and CEO of News Media Canada, called Google’s submission “a welcome, clear, constructive, good faith articulation of legitimate concerns,” and said his organization is “in agreement with many of the issues” Google identified.

Deegan pointed to issues Google raised with the funding formula proposed in the government’s draft regulations, saying News Media Canada agrees there should be a “firm ceiling, rather than a floor on financial liability.” He also opened the door to “non-monetary measures such as training and product(s)” to be provided by Google as part of the remuneration.

Chris Dornan, a journalism professor at Carleton University, said the position taken by News Media Canada “amounts

to a form of capitulation,” and is a sign of the bargaining position that the organization finds itself in.

“News Media Canada wants something rather than nothing,” said Dornan. “If Google walks away ... then that’s very bad news for the Canadian news industry. Not only would they not get financial compensation through Google, they’d be further and quite seriously injured by virtue of the fact that their content wouldn’t be available via Google searches.”

Dornan said, given the stakes, it remains equally possible at this point that a deal could be reached, or that negotiations could break down.

Alfred Hermida, a journalism professor at the University of British Columbia, said it would be “disastrous for most news publishers,” if Google were to block links, and that may motivate the parties—including the government—to find a solution to avoid that outcome.

“I think there has to be a solution simply because the pressure on the government will become untenable,” he said. “The news industry has realized it can weather the loss of Meta—yes, it’s taken a hit, but you can survive it—but it’s hard to see how you could survive if Google decides to take [away] news across all its platforms.”

Hermida said the stance taken by News Media Canada offers the government some space to make a move in its position if it chooses.

“I think it helps in terms of allowing the government to say, ‘We’ve listened to industry, we’re responding to their concerns, and we’re coming up with a solution that supports an independent media

in Canada,’” said Hermida.

He said the comments made in the statement by News Media Canada open the door to solutions similar to ones used in Australia where Meta briefly blocked news links in response to similar legislation before reaching deals with publishers outside of the legislation.

“Google always likes to operate on its own terms,” said Hermida. “And what Google is suggesting is very much an Australian solution, which is, ‘Let’s go back to the status quo, where we will be making our own deals with media, providing direct funding ... providing training, providing resources, providing software support.’”

Matt Hatfield, director of campaigns for OpenMedia, an advocacy organization focused on internet regulation and accessibility, said it is possible a deal may be reached. However, given the leverage that Google now holds because of the looming deadline, he is concerned if there is a deal, it may not be in the best interests of Canadians or the news industry.

“I just don’t feel like that deal is necessarily going to be great for Canadians,” said Hatfield. “I don’t think a system that is set up exactly how Google would want it is necessarily a good long-term outcome for news.”

Hatfield said he is concerned that any deal reached now will give Google too much power to decide which aspects of the news industry it will support with funding.

“I worry about us creating a system where Google actually has a lot of discretion to reward certain news outlets and not others, and ... frankly, have

even more influence over how stories are told than they do today,” he said.

Hatfield said he would prefer to see the government call a “doover” on C-18, and work on new legislation to create an organization at arm’s length from government that could transparently distribute public funding.

Michael Geist, a University of Ottawa law professor who holds the Canada Research Chair in Internet and E-Commerce Law, said he does not see a way to avert Google blocking links by Dec. 19, and said this will be “catastrophic for the Canadian media sector.”

Geist noted that despite the shift in position of News Media Canada, a recent submission to the regulatory process from the Canadian Association of Broadcasters actually moves farther away from the position taken by Google, because it calls for a funding formula that would cost the tech giants even more money. This is because the broadcasters are calling for all production staff, such as video and audio personnel, to be included in the formula to calculate how many journalists an organization employs, which would increase the amount of money the tech giants were on the hook for in any deal under the Online News Act.

With the broadcasters moving in the opposite direction as the print media publishers, this further complicates the path for the government to find a way forward, said Geist.

In an interview with The Hill Times, Kevin Desjardins, president of the Canadian Association of Broadcasters, said his organization is “really just trying to ensure that all people who are involved with the editorial process with-

in broadcasters are fairly represented as journalists.”

“There are many people who it takes to get a piece of journalism on the air,” said Desjardins. “We just want to make sure that this properly reflects the efforts and all the people who have an editorial input into broadcast news reflected in these regulations.”

Desjardins said he believes a deal can be reached, but, in his view, the onus is on Google to make that happen.

“I think it’s entirely in Google’s hands,” he said. “They’ve made their concerns known about the regulations and the legislation, but we believe that there is a way forward that can be beneficial to all the players in the system.”

Desjardins said he does not expect that Google will go ahead with blocking links.

“We ultimately don’t believe that they are going to be able to engage in blocking Canadian news, and we don’t believe that they’re going to be able to use their dominant position in the marketplace in that way,” he said. “I think that they will see, ultimately, the mutual benefit of working with Canadian media organizations.”

However, Geist said he sees the government and Google being at odds on an even more fundamental issue that would make any compromise impossible.

Google’s recent submission restates the central argument it made throughout the legislative process, that “Free linking is the foundation of the open web.” While their submission raises several concerns about the funding formula proposed in the government’s regulatory approach,

it also calls for significant legislative changes to address these more fundamental disagreements with the premise of the law.

Having to pay for links is “viewed as inconsistent with the longstanding ethos of the internet,” said Geist. He said Google’s submission was “sending a signal that it would be difficult for regulations alone to solve the problems.”

He said the submission from Google “suggests that they have arrived at the same place that Meta was,” because they appear to believe their concerns cannot be addressed through regulation, and only through new legislation.

“They have identified a whole series of legislative changes,” said Geist. “So I think the message they’re sending is, ‘The regulations don’t work, but the law itself is fundamentally broken.’” icampbell@hilltimes.com The Hill Times