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NEWS

Media experts split on merits, drawbacks of Online News Act designed to address ‘market imbalance’

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Although some media experts say they welcome the Online News Act as a short-term solution in an increasingly urgent situation facing Canada’s news media industry, others are wary. Although the legislation is ‘not a silver bullet’ in solving the challenges publishers are currently facing, CEO of News Media Canada Paul Deegan says the situation across the board is ‘really difficult’ and ‘the urgency grows by the day.’

of legislative overreach, and concerned the proposed legislation will do little to address the larger crisis facing journalism in Canada today.

Digital giants Facebook and Google have come to dominate online advertising revenue, meanwhile, Canada’s news media landscape continues to be battered by layoffs and newsroom closures. In response to this imbalance, Heritage Minister Pablo Rodriguez (Honoré-Mercier, Que.) tabled Bill C-18, or the Online News Act, on April 5 to “to ensure that news organizations are fairly compensated.”

“This bill will strengthen Canada’s news ecosystem and will keep the government as far away as possible from the process,” said the minister, in remarks made during the May 3 awards luncheon at the National Arts Centre organized by the advocacy group World Press Freedom Canada (WPFC).

Nearly a month earlier, during a press conference on April 5 on the day the bill was tabled, Rodriguez noted that the news sector in Canada is in crisis, which contributes to the “heightened public mistrust and the rise of harmful disinformation in our society.”

As more and more Canadians turn to digital platforms as gateways to finding their news content, the minister said the shift online has an “incredible impact on the news business,” adding that in 2020, online advertising revenues in Canada were close to \$10-billion with two dominant digital platforms taking over 80 per cent of those revenues.

Although Rodriguez said he encouraged tech giants like Meta (Facebook) and Google to continue making investments

Heritage Minister Pablo Rodriguez pictured May 3, 2022, with Catherine Cano, CEO of CanoVision, at the World Press Freedom Awards luncheon in Ottawa. Rodriguez tabled Bill C-18, the controversial Online News Act which proposes that digital giants like Facebook and Google should compensate media outlets for the news that gets shared on their platforms, in the House of Commons on April 5. The Hill Times photograph by Andrew Meade

in Canada, he said they “continue to profit from the sharing and distribution of Canadian news content without really having to pay for it.”

So with this bill we’re seeking to address this market imbalance,” said the minister.

‘The urgency grows by the day’ Paul Deegan, CEO of News Media Canada, which represents hundreds of print and digital outlets across the country, told The Hill Times that “the urgency grows by the day.”

“There may be publishers that, if this isn’t passed until let’s say December, don’t survive between now and then,” he said. “I know across the board, the

situation is really difficult,” adding that the legislation is “not a silver bullet” and won’t solve all of the challenges that publishers are facing.

“But I think the view is that it will stop the bleeding, and begin to allow publishers to reinvest in content, and ultimately that’s how publishers are going to survive—by producing quality content that Canadians want to read,” said Deegan.

Deegan also pointed out that there’s already a precedent set, with a “good number of publishers in Canada who have already inked content licensing agreements with Google and Facebook.”

“So there’s certainly acknowledgement from both Google and Facebook that Canadian content provides value to their platforms, and they’re paying for them,” he said. “There could be aspects in the legislation that some of our publishers don’t prefer, but I think on balance, we see it as good and fair legislation that brings parties to the table who aren’t getting phone calls from big tech.”

Before the summer break, Parliament only has a few weeks left to pass legislation including bills that have to make their way through committee. And as Deegan points out, “it’s really a matter of getting [C-18] into the Heritage Committee.”

“Right now, we’ve got C-11 which is essentially ahead of C-18 in the queue, but still hasn’t been introduced,” said Deegan, referring to the more “complicated piece of legislation” pertaining to other legislation before Parliament that would require streaming services to feature a certain amount of Canadian content.

Marla Boltman, executive director of FRIENDS, an advocacy group promoting public broadcasting, said her organization supports the legislation.

“In addressing the market imbalance and what that disruption has done to the news ecosystem, we feel the legislation is extremely important and badly needed to address a battered news sector,” said Boltman.

“We’re talking about a new and original piece of legislation that I think is in everybody’s best interest to get as right as possible, so our feeling from the beginning has been ‘this is important, this is necessary,’ and everyone should come to the table to work to make sure this bill can be the best it can be,” she said.

But Boltman also said the public needs to know who is funding their news.

“In the old days, you opened up a newspaper, you saw all of the ads, it didn’t look like funded content,” she said. “But if there is no light shed on these deals in any way, then that’s not part of the public discourse,” she said.

The proposed legislation, currently at second reading in the House of Commons, would regulate digital news intermediaries “to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability.”

Also included in the enactment is the requirement that the CRTC must maintain a list of digital news intermediaries, establish a bargaining process in respect of news content availability, and authorize the Commission to “impose monetary penalties on certain individuals and entities and conditions on the participation of news businesses in the bargaining process,” among other provisions.

Legislation ‘heavyhanded,’ says former CRTC vice-chairman Peter Menzies, former vice-chairman of the CRTC from June 2013 to July 2017, said he was disappointed with the proposed legislation, saying “something this heavy-handed I don’t think was necessary.”

“I think they’re actually putting the people they’re trying to help at some risk by making it overly-complicated and more contentious than it needs to be,” said Menzies, adding that he believes there is a pattern of behaviour coming out of Heritage in terms of internet and media legislation.

“It seems like they want to have the most expansive, most intrusive, most state-involved legislation in the world in everything they do,” said Menzies, who is now a senior fellow at the Macdonald-Laurier Institute.

Deciding that a URL link has an economic value is “really problematic,” said Menzies.

“My concern is that by adding a value to the link, you’re actually trying to create a bit of a hill that companies might want to die on,” he said. “The bigger the fight, the longer it’s going to take for any of those news organizations to see a nickel.”

Carleton University professor Dwayne Winseck was critical of the way the government is going about constructing this legislation. He called the process a “reversal of course” from what governments have done with telecom and broadcasting legislation, which for close to 50 years now have been open to public participation, and have actually put into place financial measures to facilitate public participation. The lack of public participation and input into C-18

is concerning for Winseck.

“I think this is a problem that we’ve got with this bill, and a problem that we have with the Australian bill,” said Winseck, referring to similar draft legislation in Australia, when Google initially threatened to shut down its search engine and Facebook blocked news on its platform before the bill was amended.

Winseck said he did not believe the legislation would help address some of the root causes surrounding the challenges afflicting the Canadian media sector, as it takes “an easy villain and makes it the centrepiece of a story that is false.”

“The villains are Facebook and Google, and the false story is that they are the ones who have precipitated the crisis of journalism, and I think that is just utter BS.”

University of Ottawa law professor Michael Geist said media companies have struggled, and that it’s also true that the digital ad models of some of the large platforms have been very successful.

“And it’s also true that there have been deals struck between some of the platforms and some of the news organizations,” said Geist. “But I would note first that the deals that they’ve struck are premised on providing some form of value, so that the positions of those platforms is, they will pay for value where there’s value to be paid for.”

“What they have not been willing to pay for, and in my own view, what they should not be paying for is mere linking to content— if it benefits anyone, frankly it benefits the media organizations themselves,” he said. “These are free referrals back to the media organi-

zations that may either generate more ad revenue or potential new subscribers.”

Geist also said that although it’s true that advertising has largely shifted to digital platforms, that shift has not come about because news articles are being linked to.

“It’s shifted because platforms offer a more compelling ad model that is typically more efficient and more successful than what news people have been able to develop over time,” said Geist.

“It’s a very weak argument to say that they’re taking your news, because they don’t publish it, all they do is link to it,” he said.

Google and the Heritage Department did not respond to media requests from The Hill Times before press deadline, but according to Rachel Curran, public policy manager at Meta, “Meta stands for evidence-based policy developed in response to how the internet actually works. We look forward to engaging with the government, Parliament and Canadians once we have completed a detailed review of the proposed legislation to more fully understand what the bill entails.”

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