

# **Consultation 2024-55**

## **Online Consultation Framework**

By: Drew of Freezenet.ca

### **About Freezenet**

In 2013, I founded Freezenet.ca. It is an online news source about technology and digital rights. I cover things ranging from privacy to copyright and many other areas where the law intersects with technology. The website also expands into exploring the world of video games and music as well, providing readers with an abundant reasons to view the website and enjoy the high quality content it provides.

By the websites very nature, it is natural that I am very interested in the debate surrounding the Online News Act (formerly Bill C-18). In fact, this is something I have covered quite extensively. As a result, I not only have an interest in this debate, but I have a unique perspective on what is going on since it is well within the sites wheelhouse to cover this topic.

### **The Debate of the Online News Act**

With the closure of the previous leg of the Online News Act, we have the benefit of hindsight of how things worked out for the Online News Act. As some might know, I have been a very vocal critic of the Online News Act (the Act) when it was still known as Bill C-18. This wasn't because I was somehow financially influenced by "Big Tech" or told to report things in a certain light. This was because of my own objective research which indicated that this legislation was going to cause significant harm to the news sector – especially for smaller players.

Supporters of the Act have long contended that platforms such as Google and Meta platforms have been "stealing" news articles. This by scraping the contents of the articles from publishers and republishing them without permission on their platforms and earning ad revenue off of it. While I have seen these accusations repeated in various ways, to date, no one has been able to provide any evidence that this is what is actually happening. For a problem that is allegedly so wide-spread, there sure seemed to be a complete lack of evidence supporting these claims. What's more, I have never found any evidence myself that this is going on.

Instead, what I have found is that publishers are posting news links freely to these platforms in the hopes of attracting viewers to their websites. A number of them have gone even further and paid platforms like Meta platforms to "boost" their post to as many people as possible in an effort to further attract interest to their websites – websites where the publishers can earn ad revenue, gain new subscriptions, or receive donations from the public. What's more, publishers on their own websites actively encourage the sharing of their news links on the various platforms through share buttons on the given articles they post on their own website.

At the most fundamental level, we are already seeing a major fundamental flaw in this debate from those who support the legislation. Publishers derive a benefit from their links appearing in the feeds of users on these platforms in the form of clicks. What's more, if the platforms were well and truly "stealing" news content, current laws already on the books would cover this in both Canada and the United States. Canada has the Copyright Act which contains provisions that provide remedies for the act of copying copyrighted works without permission and re-distributing it for profit. What's more, the

United States has the Digital Millennium Copyright Act (DMCA) with which to file a notice of infringement. A notice could very easily have been filed to take down infringing copies of publishers content. Yet, interestingly enough, this already existing avenue for remedies was never pursued by the large publishers. Why is this?

Simply put, the major publishers have used the “theft” of their content as cover for what they have been really hoping to obtain: a constant flow of no strings attached money taken from the platforms.

Some supporters of the Act have moved the goal posts of their grievances when it became apparent that their cries over “theft” was falling flat. Putting a fresh coat of paint on their grievances, some have argued that the platforms “steal” the audiences. This argument is even more absurd in the context of demanding government intervention. Google, for instance, is merely a search engine where they direct people to content they are actively searching for. A platform like Facebook is a communications platform where people can share what they are doing, photographs of their families or events they are partaking in, or even video of their latest vacation, for instance. Publishers, on the other hand, are a completely different industry. They report the news, be it local, nationally, or in a given special area that they cover. As the platforms rightfully point out, they don’t report the news. They don’t have whole news rooms staffed with their own journalists trying to beat out Canadian news sources. The two sides here are in completely different industries.

It is usually at this point in the debate that supporters of the Act move the goal posts, yet again, and proclaim that the platforms are entirely dependent on news content. Without news content, no one would have anything to talk about, some have suggested. This argument is easily debunked by looking at what studies have long said about why people use websites like Facebook. Multiple studies have concluded that people use Facebook to communicate with friends and family. News content either comes in third or a very distant third for reasons why people use Facebook.<sup>1</sup>

I have noticed that the most ambitious supporters sometimes cherry pick data and come up with statistics that suggest that 24% of users use Facebook for news, however, they rarely, if ever, offer a full picture of the reasons why people use Facebook. Generally speaking, such statistics come from a multiple choice answer for those surveyed and usually is tied with a list of other reasons for those users. As a result, such charges were highly questionable from the start.

So, what does the Act do? Simply put, the Act fundamentally reshapes copyright law, flipping it on its head when it comes to referencing material. What exists on these platforms are links, snippets, thumbnails, and general information about the source. Linking is the way the internet references material. Click on it and you can view the source material.

Referencing material, or citing material, has been a long established practice in multiple disciplines to help build up the original material. Whether it is through scientific research, essays, or even news reporting, citing material is not only decades old common practice, but is covered as Fair Dealing in this country.

The Act intervenes in this practice. It dictates that when it comes to referencing material on the internet – especially on platforms – that is compensable activity. If one were to cite reference material, you need a license for such activity. Arguably, this requirement violates Article 10 of the Berne Convention, putting Canada offside with its international obligations.

<sup>1</sup> Freezenet.ca - Facebook Reiterates That They Will Probably Drop News Links in Canada in Response to Bill C-18  
<https://www.freezenet.ca/facebook-reiterates-that-they-will-probably-drop-news-links-in-canada-in-response-to-bill-c-18/>

Supporters of the Act try to reword this demand and claim that they are merely seeking payment for “use” of their material. This terminology is highly misleading and few would consider referencing material “use” of copyrighted works. Ultimately, the Act is an unprecedented alteration in copyright and Fair Dealing.

What’s more, during the hearings at the Canadian Senate, Meta noted, among other things, that they provided \$230 million in free advertising value to the very publishers accusing Meta of this so-called “theft”. Meta noted that people don’t use their platforms primarily for news. This is something that my anecdotal evidence confirms where users simply scan through their feed and, if they see something they are interested, they’ll click on it. Otherwise, they’ll continue to scroll. Meta further pointed out that news links are highly replaceable. It is trivial that other content people are interested can easily fill that void (and before anyone jumps to conclusions, no, that content is not the fabled “misinformation” or “disinformation”). Some, including some of the senators who were present during that hearing, dismissed such points as merely a “bluff” or that they refused to believe them on the thinking that this is just what the platforms wanted them to believe. The response made it clear that facts and reality stood little change at carrying the day at that point.<sup>2</sup>

Also making an appearance at the Senate hearings was none other than Thomas Own Ripley. Ripley testified that should the platforms choose to simply drop news links, then agreements will not be possible because the platforms have exited the market.<sup>3</sup>

Ripley’s comments highlighted an uncomfortable reality for those supporting the Act. The platforms do not depend on news links for their success and dropping news links is, indeed, an option for the platforms. As many of us critics have long argued, publishers need platforms far more than platforms need publishers.

## **The Outcome of the Online News Act**

When the Online News Act was passed, many supporters were popping the champagne. For those supporters, they had finally won the overall battle against “Big Tech” as publishers were about to receive what amounts to free money from another industry. What’s more, they felt that those “Big Tech shills” were taught a lesson in how they are the ones that control everything, not those pesky critics of the holy and perfect Act that they had been pushing this whole time. As I’ve said all along, reality doesn’t care what you believe. It does what it does and you just had to live with the consequences.

That reality hit supporters of the Act hard. The time for researching and talking about what people think will happen is over and we had transitioned to the practical side of the debate. On August 1<sup>st</sup>, 2023, Meta dropped news links in Canada.<sup>4</sup> The outcome for us critics was as predictable as it was obvious.

Yet for supporters, they weren’t done with their talking points in a desperate bid to try and stop the sinking of their talking point ship. Some continued to argue that this was still a “bluff”. There were theories about how Meta wouldn’t last a week without news links. When that talking point failed a

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<sup>2</sup> Freezenet.ca - Senate Hearings on Bill C-18 – A Look At Hearing 4 (Segment 2)  
<https://www.freezenet.ca/senate-hearings-on-bill-c-18-a-look-at-hearing-4-segment-2/>

<sup>3</sup> Freezenet.ca - Senate Hearings on Bill C-18 – A Look At Hearing 1 (Segment 1)  
<https://www.freezenet.ca/senate-hearings-on-bill-c-18-a-look-at-hearing-1-segment-1/>

<sup>4</sup> Freezenet.ca - Facebook Begins Rolling Out Full News Link Blocking in Canada  
<https://www.freezenet.ca/facebook-begins-rolling-out-full-news-link-blocking-in-canada/>

week later, some were arguing that this is just a “strong arm tactic” to try to “bully” the government. In their minds, it’s only a matter of time before Meta would come crawling back to them begging for forgiveness. They cited Australia where Meta dropped news links only to restore them after making agreements with publishers and proclaimed that because it happened in Australia, it would happen here in Canada. As we know now, this only continued the unbroken streak of the Act’s supporters being wrong about everything. To paraphrase Ripley, Meta had exited the market.

Efforts were underway to try and build a story about how Meta was inflicting unthinkable amounts of harm on themselves – cutting off the nose to spite their face, if you will. Yet, the data came in that repeatedly showed that the only ones suffering was the Canadian news sector. Traffic for Meta’s platforms remained unchanged<sup>5</sup>, user engagement for publishers pages collapsed<sup>6</sup>, Meta’s stock value soared<sup>7</sup>, and news organizations were going out of business<sup>8</sup> as the loss of Meta proved to be the straw that broke the camel’s back for them. The results were as definitive as you could possibly get. The rent seeking was backfiring on the large media companies in spectacular fashion. The harms that critics have long warned about were no longer theory, but a clear fact at this point.

I can tell you from personal experience that at this time, I was seeing my career flashing before my eyes. Thanks to the unchecked greed of the large media companies, I was seriously thinking that my career was soon going to be over. This wasn’t because I personally depended heavily on Meta platforms for my reach, but rather, Google. In the months following Meta dropping news links, I explored production plans and work flow strategies to become a YouTuber to continue my career with the potential of expanding to other video sharing platforms. Writings news was long a passion of mine, but with writing the news of the day potentially coming to an end despite my warnings that this would happen, I would soon have to leave that kind of writing behind because having any kind of reach in that medium would prove to be all but impossible for a website of my size.

As the day of the Act coming into force approached, it was highly probable that Google would follow in Meta’s footsteps. To be clear, for a vast majority of websites out there, being delisted from Google’s services is a death sentence for any website. My website is no exception to this. The Online News Act was quickly becoming a huge source of stress for me.

While little was said publicly about how the government was negotiating with Google, I had suspected that the government was seeing a very serious problem approaching like a freight train. With Meta proving that dependency on news was a myth for platforms, there was a very real possibility that Google would simply drop news links like Meta. In the process, the Canadian news sector could get effectively wiped out overnight. The Canadian government couldn’t afford to be known as the government that killed the Canadian news sector. In what had to have been a last ditch effort to salvage the situation, the government, in a panic, folded to Google and agreed to the originally asked for \$100 million fund model.<sup>9</sup>

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5 Freezenet.ca - Traffic Remains Unchanged on Facebook After Meta News Link Block  
<https://www.freezenet.ca/traffic-remains-unchanged-on-facebook-after-meta-news-link-block/>

6 Freezenet.ca - User Engagement to Media Companies Facebook Pages Collapses  
<https://www.freezenet.ca/user-engagement-to-media-companies-facebook-pages-collapses/>

7 Freezenet.ca - After Nearly 6 Months Since Dropping News Links in Canada, Meta’s Stock Value Soars  
<https://www.freezenet.ca/after-nearly-6-months-since-dropping-news-links-in-canada-metas-stock-value-soars/>

8 Freezenet.ca - Newspapers in 3 BC Communities Become the Latest Victims of the Online News Act  
<https://www.freezenet.ca/newspapers-in-3-bc-communities-become-the-latest-victims-of-the-online-news-act/>

9 Freezenet.ca - Canadian Government Folds: Hands Google Everything and Calls it a “Deal”  
<https://www.freezenet.ca/canadian-government-folds-hands-google-everything-and-calls-it-a-deal/>

The news that my website was no longer at risk of being delisted from Google came at a huge relief for me. I never want to undergo that kind of stress ever again in my life. My website was going to live to fight another day despite how precariously close it was to complete annihilation.

Supporters of the Act, desperate for a win of any kind, have called the deal with Google a “victory”, yet this “victory” was a hollow one. The \$100 million price tag isn’t even new money as existing deals would simply get folded into the fund in the first place. What’s more, the \$100 million doesn’t even come close to the \$230 that was lost when Meta dropped news links. Simply put, the math tells a very different story than those who have been trying to spin the Google deal as a “win”.

Yet, the deal has fundamentally altered the very nature of the legislation. By making this move, the very concept of payments for links – a concept that this legislation was built on – is now dead. The publishing companies walked away with a massive loss, and those supporting the Act are now forced to seek their fortunes elsewhere.

With nothing else to work with in this debate, the large media companies dropped the facade about how this was all about “saving journalism” and “saving jobs”. They would follow through with repeating the history of Australia which saw News Corp Australia slash 1,250 jobs, or 1 in 20 jobs, after the Australian News Bargaining Code became law.<sup>10</sup> Up first was the CBC which slashed 10% of its workforce right as news surfaced they were going to get millions from the Google deal.<sup>11</sup> Bell Media would follow suit and slashed 9% of its workforce as well.<sup>12</sup> To add insult to injury, these actions were done even as the Canadian government issued massive bailouts to the media sector, shoring up some of the losses they experienced as a result of the failure of the Act.<sup>13</sup> You might say that the Act was many things, but the large media companies proved that it was definitely not, and never was, about saving Canadian news jobs.

In every way that I can think of, the Act was, objectively, a complete and total failure. It failed to get payments for links entirely, it failed to get Meta on board at all, it failed to get Google to pay for links (substituting that for a fund model that is far below the media companies expectations), it failed to preserve the existence of smaller news operations, and it failed to “save” Canadian journalism jobs.

## **The CRTC Consultation**

This leads us to this consultation. I admit that this consultation feels like debating closing the barn doors long after the horse has bolted. Both players scoped into the Act have already been accounted for. Meta dropped news links and Google has a fund model in place. I can understand the concept of implementing a framework in the highly unlikely event that the platforms would choose to negotiate with news organizations, but at the same token, it feels more like a formality to close out this sorry chapter in Canadian lawmaking.

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10 Freezenet.ca - The Promised Land That Wasn't: After Getting Link Tax, News Corp Australia Slashes 1,250 Jobs  
<https://www.freezenet.ca/the-promised-land-that-wasnt-after-getting-link-tax-news-corp-australia-slashes-1250-jobs/>

11 Freezenet.ca - After Getting \$33 Million Windfall from Google, CBC Slashes 10% of its Workforce  
<https://www.freezenet.ca/after-getting-33-million-windfall-from-google-cbc-slashes-10-of-its-workforce/>

12 Freezenet.ca - After Getting Bill C-11 and Bill C-18, Bell Slashes 9% of its Workforce  
<https://www.freezenet.ca/after-getting-bill-c-11-and-bill-c-18-bell-slashes-9-of-its-workforce/>

13 Freezenet.ca - With the Failure of the Online News Act, Government Issues Massive Media Bailout  
<https://www.freezenet.ca/with-the-failure-of-the-online-news-act-government-issues-massive-media-bailout/>

I say that it is an unlikely development because Meta has already said that they would not be renewing their commercial agreements with Australian publishers.<sup>14</sup> I think I state the obvious when I say that this is not a sign of a company that is in the process of changing its mind on the topic at hand.

Still, supporters of the Act have gone from arguing that Meta would look at the \$100 million deal with Google with jealousy and come back to the negotiating table to arguing that government (be it federal, CRTC, or whatever else they can seemingly think they can come up with) should throw the book at Meta and make them pay somehow.

One of the arguments I've seen floated was that it should be illegal for Meta to drop news links in response to the Act. This is a dead on arrival theory. For one, I'm not aware of any mechanism the CRTC can use to compel Meta to carry news links. What's more, even if a new law was created to force this activity, it would not only run the risk of running into a Constitutional challenge in the courts (based on the protections the Charter grants to freedom of expression), but even if such supporters were successful at their aims, nothing is stopping Meta from leaving Canada altogether as well. As far as I'm aware of, this is a dead end idea.

Another argument I've seen floated is that the Competition Act could be used to compel Meta to restore news links. The theory seems to revolve around a theory that Meta is being anti-competitive by removing itself from the market. The idea that a company pulling out of a market is anti-competitive behaviour is extremely laughable because withdrawing from the market is the exact opposite of being anti-competitive in a market. On what planet is leaving a market considered anti-competitive market abuse?

Meta dropping news links is purely their business decision. They have a right to run their private property (a series of web services) how they want. If they want to remove a specific kind of content from their services, that is well within their own right to do so. It's no different from a store removing someone from their private property for being a nuisance to other customers. Claims that this amounts to "censorship" is laughable because this is not the government making this decision in the first place.

Moreover, what legal mechanism is there that can be used to compel Meta to restore news links? I'm personally not aware of any law or international agreement that could be used to require the carriage of news links. What's more, I'm also unaware of any legal mechanism that would compel Meta to reverse their decision. If there was one, I'm fairly certain I would've heard about a method to do so by now.

Further, even if a legal mechanism was found to compel Meta to drop news links altogether, there is, again, nothing stopping Meta from simply removing their services from Canada altogether afterwards anyway. In this highly unlikely scenario that a viable legal mechanism is found, the lesson that would be learned the hard way would be "just because you can, doesn't mean you should."

With that, it is safe to conclude that there is little the CRTC can do at this stage that would fundamentally alter where things stand today in this debate.

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14 Freezenet.ca - Predictable: Meta Announces It Would Not Be Renewing Australian News Deals  
<https://www.freezenet.ca/predictable-meta-announces-it-would-not-be-renewing-australian-news-deals/>

## What the CRTC Can Do At This Point

Unlike what supporters of the Act would have others believe, news organizations are far from unanimous on what is going on in this debate. This was seen during the senate hearings of Bill C-18 when independent digital news organizations condemned this law.<sup>15</sup> The general messaging I've heard from these voices is this: This is a law that they were never consulted on, nor asked for. The Act is a law that was done in their name even though they strongly object to it.

This is a position I highly relate to as well. I have long held the view that this was always a backwards law where the only promise it carries is to unleash considerable harm to the news sector. That, so far, has been a promise made, promise kept.

A proposition I proposed to the Canadian senate was an amendment that would allow a news publisher to decide whether or not they want to even partake in any negotiations or carry on with business as usual. To me, this is not an unreasonable ask. If I, as a news website, want to allow platforms like Google or Meta platforms to carry my news links for free, I should be given the opportunity to do so.

As other independent news organizations have pointed out, I didn't want to be a part of this fight with the platforms. It would have been ideal to scope in the largest media players to let them fight it out with the platforms while leaving the smaller players out of the picture, but an opt out clause would be, in my view, the next best thing.

As things stand today, the Act assumes that I am demanding payments for links and is setting up a mechanism to allow for negotiations to take place to determine that cost to be handed over to me. It doesn't even contemplate a scenario where a single news organization would say that they don't want payments. In fact, I would even be OK with the concept of giving the platforms a free license to host my news links.

Sadly, this mechanism simply doesn't exist. When I proposed it to the Canadian senate, it seemed to be a proposition that fell on deaf ears. So, on the off chance that the CRTC is open to ideas, I will renew my request to have a special opt-out procedure that can be voluntarily made by publishers such as myself. I never wanted to be part of this fight and I was perfectly content with how things worked before. I'm simply asking to be allowed to carry on with business as usual before this nightmare of the Act came to be.

I feel that an opt out clause would be satisfactory to all parties. If a news publisher wants to partake in negotiations, they are free to do so. If someone like myself wants to just go back to the arrangement we had before, I should have the option to do so. I'm personally fine with platforms carrying my news links for free and I'd be happy to give them permission if I am required to do so. Being denied this ability feels like an infringement of my rights to conduct business how I want to.

Such a mechanism will allow the different media players to decide for themselves how they want their news links distributed. This as opposed to the strong hand of the government deciding for them what they want or not.

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15 Freezenet.ca - Senate Hearings on Bill C-18 – A Look At Hearing 7 (Segment 2)  
<https://www.freezenet.ca/senate-hearings-on-bill-c-18-a-look-at-hearing-7-segment-2/>

I remain skeptical that this reasonable idea would be considered in the first place. Given the history of critics of the Act, I would not be surprised if this gets flatly ignored just like all the warnings and evidence people like us presented to the government about the Act during the legislative process.

I also suspect a question would be asked of what would happen if the Commission doesn't take up this idea. In that scenario, nothing will change in this debate. News players of all shapes and sizes will continue to be left off of one of the largest platforms on the planet while their counterparts in other countries will continue to enjoy the benefits of being found on Meta platforms.

At least with this proposal, a mechanism could be established where Meta could, in theory, tell media companies that if they want to be a part of the Meta ecosystem, they would ask that the news players would either opt out of requiring payments for links or giving Meta a free license. In that scenario, it is possible that the damage caused by the Act could be reversed. Yes, it is a long shot, but a long shot is far better than no shot at all.