Canada's Online News Act: Bad For U.S. Trade, Quality Journalism, and Internet Policy

Introduced in 2022 and on track to be passed this year, Canada's Online News Act [1] (Bill C-18), would empower the Canadian Radio-television and Telecommunications Commission (CRTC) to compel large "digital news intermediaries" to pay groups of news publishers for any piece of, or access to, news content on their services, including links, headlines, and quotes, even if the availability of content and/or links on the platforms were affirmatively generated or otherwise facilitated by the news organization itself .[2]

Bill C-18 Adversely Affect U.S Trade Interests

- Bill C-18 targets specific U.S. companies, namely Google and Meta—referenced in the initial House of Commons proceedings 73 times. Canada's Parliamentary Budget Office estimated that $329.2 million would be paid to news publishers annually under the assumption that only Google and Meta would be implicated under the legislation.[3]

- Explicitly discriminating against a select number of U.S. firms by imposing requirements not placed on Canadian or third-country firms is inconsistent with Canada's trade obligations under the United States-Mexico-Canada Agreement (USMCA). So too is forcing U.S. companies to carry (and pay for) Canadian news, as a condition of market access–a consequence of a so-called "no undue preference" rule.[4]

- By allowing Canadian news organizations to claim monetary compensation for the merest fragment of news, and even a link to a news site, Canada undermines its WTO, Berne Convention, and USMCA commitment to allow for the fair use of content.

Bill C-18 Hurts, Does Not Help Quality Journalism

- By instituting a mandatory revenue transfer mechanism available to almost any Canadian news organization, C-18 incentivizes quantity over quality in news production—promoting the equivalent of "click-bait" farms set up to extract revenues from specific U.S. firms.

- Monetizing content based on quantity will promote the proliferation of poorly-researched, sensational, harmful, or false information in an effort to qualify for government-mandated revenue streams.

- While platforms often institute policies to promote the dissemination of reliable information and enforce terms of service to curb harmful content, a provision banning "undue preferences" puts such policies at risk by exposing such actions to legal

[1] https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/third-reading.
[2] https://www.ccianet.org/wp-content/uploads/2022/09/CCIA-White-Paper-on-Canadas-Bill-C-18-the-Online-News-Act.pdf.
[3] https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne
[4] C-18, Article 51.

challenge and liability.

- In addition to incentivizing low-quality journalism, C-18 will also bolster the fortunes of Canada's highly concentrated media sector, with the largest media conglomerates estimated by the PBO as likely to obtain the vast majority of the payouts.[5] With the motivation of the bill ostensibly to address an undocumented "bargaining power imbalance", further empowering these conglomerates makes little sense.

Bill C-18 Unravels Core Internet Policy Principles

- C-18 undermines the very core of the information-sharing function of the internet by requiring payment for the presence of hyperlinks, headlines, and other brief snippets, including those posted by users on a social media website.

- As noted above, attacking this core character of the internet circumvents the principles of permitting quotation online, long supported through the Berne Convention and related trade rules.

- The incentive structure instituted by C-18 could lead to a "Splinternet" effect dividing services offered in Canada compared to those offered abroad–by forcing platforms unwilling to subject themselves to arbitrary and unjustified payments to exit the submarket for Canadian news. As the Internet Society details in a report[6]:
    - "[A] service on the Internet will work one way when outside the Canadian context and a different way within it—with a likely outcome that Canadians will have less access to relevant content than people in other countries... A likely result is that content providers that are available in Canada, but not primarily aimed at Canadian audiences, will have incentives to simply block access to the sites in Canada. This, in turn, would lead to limiting the material available to students, journalists, lawyers, and all other users seeking to conduct research over the Internet in Canada."

[5] Broadcasters—highly concentrated and dominated by a few large companies—stand to receive 75% of the revenue earned from Bill C-18, *See* https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne .

[6] https://www.internetsociety.org/resources/doc/2023/internet-impact-brief-how-canadas-online-news-act-will-harm-the-internet-restricting-innovation-security-and-growth-of-the-digital-economy/.