

Key Differences between Australia’s News Media Bargaining Code & Canada’s Online News Act

Canada’s Online News Act, C-18, is frequently compared to Australia's News Media Bargaining Code, but there are significant differences. While we believe both are unworkable, we share this document to highlight key differences.

Australia

Incentivizes commercial agreements between platforms and defined group of publishers

Canada

Requires commercial agreements between two platforms and an undefined group of publishers

Who does the law apply to?

Australia

No platforms are currently in scope

Canada

Vaguely defined in the law; the Government said that only 2 companies will meet the thresholds of future regulations

Can an in-scope platform earn an exemption?

Australia

Platforms are entirely unaffected by the law (exempted), unless designated

Designation process is clear and requires the regulator to consider the full scope of a platform’s agreements with Australian news businesses, such as Google News Showcase

Canada

Platforms which meet the (TBD) criteria are covered by the law. There is a process for being exempted from some but not all obligations.

Exemption process is unclear and leaves much to be determined, including the group of publishers in scope

- Exemption criteria are incredibly vague and broad but require agreements with outlets even if they are not online, do not produce news content, and content is not available to Canadians
- Leaves clarification of criteria to future regulations and discretion of the regulator
- There is no assurance that commercial agreements between platforms and publishers will be recognized or what will satisfy criteria

What is an “eligible news business”?

Australia

News organizations predominately operating in and serving Australian audiences are eligible

Limited to news sources which report on current events or issues of public importance, and which follow journalistic standards

Eligibility is based on:

- News entities have annual revenue of greater than AU\$150k
- Primary purpose of the entity is creating core, public interest news content
- Entities must operate predominantly in AU for the purpose of serving AU audiences
- Entities must be subject to professional standards obligations

Canada

Any organization that has 2+ full time employees working in a “journalistic capacity” in Canada may be eligible to register

Any generalist news or opinion entity in Canada that produces vaguely defined “news content,” including opinion and commentary. Entities do not need to adhere to journalistic standards

Does it change platforms' rights under copyright law?

Australia

N/A

Canada

Strips long-held copyright limitations that allowed links and short snippets of news content to be freely shared on the Internet

How can news businesses negotiate?

Australia

Permits collective bargaining

Canada

Permits collective bargaining

How are disputes resolved?

Australia

Through mediation and, if needed, final-offer arbitration on the size of payment.

Final-offer arbitration considers:

- Benefits to each party
- Costs to each party
- Whether a payment proposal would place an "undue burden" on the platform

Canada

Through mediation and, if needed, a fast-tracked final-offer arbitration on any aspect of the agreement.

Final-offer arbitration considers:

- Value each party adds "to the news content" as measured by their expenditures
- Benefits each gets from the platform making the content available
- the "bargaining power imbalance" between the parties

However, panel must dismiss offers that:

- Allow "undue influence" over the amount of compensation being considered,
 - Will cause "serious detriment" to the provision of news in Canada, or
 - Do not "enhance fairness" or contribute to the sustainability of news
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What are the penalties?

Australia

Whichever is greater:

- AUD \$10 million per violation
- 3X the benefit of the gain or, if that can't be calculated, 10% of annual turnover

Penalties apply to:

- The company

Canada

Up to CAD \$15 million per day for violations

Penalties apply to:

- The company
- Employees of the company, including directors and officers that accept, approve, or comply with decisions