



# Online News Regulatory Policy CRTC 2025-57

PDF version

Reference: 2024-111

Gatineau, 26 February 2025

## ***Cost Recovery (Online News Act) Regulations***

### **Summary**

The *Online News Act* gives the Commission new responsibilities to set up and supervise the bargaining framework to support fair negotiations between news businesses and the largest online platforms.

The vast majority of the Commission's operations are funded by fees charged to the companies it regulates. The Commission proposed to make regulations to fund its new responsibilities related to the *Online News Act* in a similar way. The proposed regulations were submitted to a public consultation (Online News Notice of Consultation 2024-111) and were approved by the Treasury Board.

The *Cost Recovery (Online News Act) Regulations* will apply to the operators of the largest online platforms that distribute news content, and the Commission will collect charges from them.

The cost recovery charges will be limited to covering the Commission's work under the *Online News Act* and will not be used to fund work in broadcasting or telecommunications.

The Commission announces that it has made the *Cost Recovery (Online News Act) Regulations*, which will be published in the Canada Gazette, Part II, and will come into force on **1 April 2025**. A copy of the *Cost Recovery (Online News Act) Regulations* is set out in the appendix to this regulatory policy.

### **Introduction**

1. The purpose of the *Online News Act*<sup>1</sup> (the Act) is to regulate digital news intermediaries (DNIs) (that is, online platforms that make news content available in Canada),<sup>2</sup> with a view to enhancing fairness in the Canadian digital news

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<sup>1</sup> *An Act respecting online communications platforms that make news content available to persons in Canada*, S.C. 2023, c 23.

<sup>2</sup> DNI is defined in the Act as “an online communications platform, including a search engine or social media service, that is subject to the legislative authority of Parliament and that makes news content produced by news outlets available to persons in Canada.” The term does not include an online communications platform that is a messaging service the primary purpose of which is to allow persons to communicate with each other privately.

marketplace and contributing to its sustainability. To do this, the Act sets out a framework for mandatory bargaining between eligible news businesses in Canada and the operators of the largest DNIs. It also gives the Commission the responsibility to implement and oversee this framework.

### **Legal framework**

2. Under section 81 of the Act, the Commission can make regulations, subject to Treasury Board approval, that would make DNI operators responsible for paying charges to fund the Commission's work under the Act.

### **Notice of consultation**

3. In Online News Notice of Consultation 2024-111 (the Notice), the Commission sought comments on the proposed *Cost Recovery Regulations*. In the Notice, the Commission identified the following as key parts of the proposed *Cost Recovery Regulations*:

- the objectives;
- who is regulated;
- the revenues taken into account;
- if the revenue information is not available;
- how the payment amounts are calculated and charged; and
- when and how the *Cost Recovery Regulations* would come into force.

### **Interventions**

4. The Commission received interventions regarding the proposed *Cost Recovery Regulations* from the Canadian Association of Broadcasters (CAB) and Google LLC (Google), the operator of the DNI Google Search.
5. The CAB supported the proposed *Cost Recovery Regulations*, but sought reassurance that the fees collected via the *Broadcasting Fees Regulations* would not be used to fund the Commission's administration of the Act. The comments from Google, which related to various elements of the proposed *Cost Recovery Regulations*, are addressed below.

### **Issues**

6. After examining the public record for this proceeding, the Commission considered the following issues:
  - the effect of DNI operator arrangements on cost recovery charges;
  - the confidentiality of financial information submitted by DNI operators;

- the effect of the number of DNI operators on cost recovery charges;
- the use of broadcasting fees to fund the implementation of the Act; and
- various clarifying amendments to the proposed *Cost Recovery Regulations*.

### **Effect of DNI operator arrangements on cost recovery charges**

7. Google noted that it had filed an application to be exempted from the Act<sup>3</sup> as it had reached an agreement with the Canadian Journalism Collective to distribute a \$100 million annual contribution to news businesses in Canada.<sup>4</sup> In its view, this arrangement, which would not require the Commission to oversee mandatory bargaining between Google and individual news businesses, would result in lower regulatory costs for the Commission.
8. Google argued that DNI operators should be incentivized to pursue these types of arrangements and that lesser liability for cost recovery charges would be an incentive. Google proposed a weighted formula whereby DNI operators that engage in mandatory bargaining would be responsible for a greater share of cost recovery charges than those that do not.
9. The Commission notes that the Act creates a self-sustaining regulatory regime. It allows the Commission, at subsection 81(2), to charge DNI operators the “costs that the Commission determines to be attributable to exercising its powers and carrying out its duties and functions under this Act.” This is the Act’s mechanism for ensuring that the Commission’s work is funded. At present, Google is the only DNI operator to which the Act applies.
10. The Commission emphasizes that, according to the Act and the proposed *Cost Recovery Regulations*, only the Commission’s actual costs can be charged to operators. In other words, if DNI operators pursue arrangements that result in the Commission having to perform less regulatory work, the Commission would require fewer resources to administer the Act and would incur fewer costs.<sup>5</sup> This would result in lower payments for DNI operators under the proposed regulations.
11. Accordingly, the Commission considers that DNI operators would already have an incentive to pursue arrangements that would lower the Commission’s regulatory costs, and that, as a result, it is not necessary to amend the proposed *Cost Recovery Regulations* to address this further.

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<sup>3</sup> Google filed its intervention before the Commission published a decision (Online News Decision 2024-262) on its application.

<sup>4</sup> The Commission has since, in Online News Decision 2024-262, granted an order exempting Google, in relation to its DNI Google Search, from the duty to participate in mandatory bargaining under section 21 of the Act, and from any provisions of Code of Conduct regulations related to participation in mandatory bargaining, subject to certain conditions.

<sup>5</sup> Arrangements that decrease the Commission’s work and costs related to the administration of the Act would not necessarily decrease the start-up work or costs related to initial implementation of the Act.

## **Confidentiality of financial information**

12. Google noted that the Commission must make it clear that the financial information submitted by DNI operators is to be kept confidential. It noted that the Notice does not expressly address the treatment of confidential information to be filed under the proposed *Cost Recovery Regulations*.
13. The Commission acknowledges the sensitivity of financial information and is of the view that the proposed *Cost Recovery Regulations* would allow for the safeguarding of confidential financial information. As such, the Commission finds that no amendments are necessary. Consistent with its current practices in other areas, including with broadcasting fee return forms, the annual return form required under the proposed *Cost Recovery Regulations* will be designed so that the information submitted is presumptively considered confidential.
14. Section 55 of the Act provides comprehensive confidentiality rules for information, including financial information, that is submitted under the Act. Releasing such confidential information can only be done in certain circumstances, and only if the Commission determines, after hearing from affected parties, that disclosing the information would serve a public interest that outweighs any harm in the disclosure.

## **Should one DNI operator pay the entirety of the Commission's regulatory costs to administer the Act?**

15. Google argued that it should not be required to pay the entirety of the Commission's regulatory costs to administer the Act. It stated that the Commission should impose a cap on the charges that any one DNI operator can pay, specifically, a limit of 50% of the total regulatory costs. In this regard, Google referred to the Commission's proposal in Broadcasting Notice of Consultation 2023-280 to impose a cap of 35% of the Commission's total regulatory costs on any one ownership group that is required to pay under the *Broadcasting Fees Regulations*.
16. In Google's view, having only one operator bear the total regulatory costs under the Act would represent "an unfair additional regulatory burden on a company that has continued to support the news ecosystem in this country."
17. The proposed *Cost Recovery Regulations*, which are being made under section 81 of the Act, are regulations of general application that aim to recover the Commission's costs by treating all DNI operators equally.
18. As noted above, there is only one DNI operator to which the Act currently applies and to which, as a result, the proposed *Cost Recovery Regulations* would apply. This is not a result of any provision of the proposed regulations themselves. Rather, it is a result of section 6 of the Act and of the Governor in Council's *Online News Act Application and Exemption Regulations*. The Act sets out the factors that determine the DNI operators to which the Act applies, and the Governor in Council's regulations elaborate on these factors. Together, the Act and those regulations effectively limit the application of the Act – and of the proposed *Cost Recovery Regulations* – to Google for the time being. This in turn limits from whom the Commission can recover its costs to administer the Act under section 81.

19. Given the structure of the Act and of the *Online News Act Application and Exemption Regulations*, the proposed *Cost Recovery Regulations* cannot be amended to allow for recovery of the Commission's costs without charging the full amount to a single DNI operator, if there is only a single operator.
20. Further, the Commission finds that Google's reference to the 35% upper limit proposed for the *Broadcasting Fees Regulations* in its submission does not apply in this regulatory policy. That upper limit was proposed under the *Broadcasting Act*, under a scenario in which there was a broad pool of feepayers. Further, in Broadcasting Regulatory Policy 2024-65, the Commission ultimately did not include an upper limit mechanism in the final *Broadcasting Fees Regulations*.
21. In light of the above, the Commission does not consider it appropriate to amend the proposed *Cost Recovery Regulations* to reflect Google's proposal. Accordingly, under the finalized regulations, the costs to administer the Act will be recouped from the DNI operators to which the Act applies, according to the proposed methodology.

#### **Use of broadcasting fees to fund the implementation of the Act**

22. The CAB requested that the Commission clarify that none of the fees that broadcasters pay under the *Broadcasting Fees Regulations* would be used to fund work under the Act.
23. The Commission notes that broadcasting fees and online news cost recovery charges are entirely separate: they are imposed under different pieces of legislation, and each must be used only to fund work under its respective statute.

#### **Clarifying amendments to the proposed *Cost Recovery Regulations***

24. The Commission has determined that several minor amendments are needed to the proposed regulations to clarify their intent and effect.
25. In the Notice, the Commission proposed to call the regulations the *Cost Recovery Regulations*. To make it clearer that the costs to be recovered are those relating to the Act, the regulations will be called the *Cost Recovery (Online News Act) Regulations*.
26. Further, to clarify that the Commission may provide its own estimate of operator revenue for the purpose of calculating charges if the operator's annual return is incomplete, the Commission has added the phrase "or incomplete" to paragraph 2(b) of the final regulations.
27. Finally, to harmonize the English- and French-language versions of the final regulations, the Commission has added "the following, where relevant" to the end of the introductory phrase for paragraph 2(b) of the English-language version. This wording clarifies that the Commission has a degree of flexibility in determining the sources of information used if an estimate of annual Canadian news revenues is required (such as if a return is not filed or is incomplete).

## Conclusion

28. In light of all of the above, the Commission announces that it has made the *Cost Recovery (Online News Act) Regulations*, with Treasury Board approval, with the amendments to the proposed regulations as discussed in this regulatory policy.
29. The *Cost Recovery (Online News Act) Regulations* will be published in the Canada Gazette, Part II, and will come into force on **1 April 2025**. A copy of the *Cost Recovery (Online News Act) Regulations* is set out in the appendix to this regulatory policy. Reporting forms and invoices reflecting the determinations made in this regulatory policy will be issued soon after these regulations come into force.

## Related documents

- *Exemption Order from the Online News Act granted to Google*, Online News Decision CRTC 2024-262, 28 October 2024
- *Call for comments – Proposed Cost Recovery Regulations*, Online News Notice of Consultation CRTC 2024-111, 23 May 2024
- *Broadcasting Fees Regulations*, Broadcasting Regulatory Policy CRTC 2024-65, 21 March 2024
- *Call for comments – Proposed new Broadcasting Fees Regulations*, Broadcasting Notice of Consultation CRTC 2023-280, 23 August 2023

Secretary General

# Appendix to Online News Regulatory Policy CRTC 2025-57

## *Cost Recovery (Online News Act) Regulations*

### Interpretation

#### Definition of Act

**1** In these Regulations, *Act* means the *Online News Act*.

#### News revenue

**2** The news revenue of an operator for a calendar year is the gross Canadian revenue that the operator generates, directly or indirectly, from making news content available through any digital news intermediary that it operates in that year, excluding any amount received from another operator to which these Regulations apply, established on the basis of

- (a) the annual return filed by the operator; or
- (b) if the operator has not filed an annual return for the year or the return is inaccurate or incomplete, an estimate by the Commission based on the following, where relevant:
  - (i) information provided by the operator,
  - (ii) the trends of the market in which the digital news intermediary is operated,
  - (iii) the previous financial performance of the operator, and
  - (iv) the business plan of the operator.

#### Annual Return

##### April 30

**3** On or before April 30 of each year, an operator must file with the Commission a return with respect to the preceding calendar year that is in the form provided by the Commission and contains the information required by the Commission, including information respecting the operator's news revenue with respect to each digital news intermediary that it operated.

#### Cost Recovery Charge

##### Calculation of charge

**4 (1)** The cost recovery charge for an operator for a fiscal year is the sum of the base assessment amount determined in accordance with subsection (2) and the annual adjustment amount for the previous fiscal year determined in accordance with subsection (3).

### **Base assessment amount**

(2) The base assessment amount is the result of the following formula

$$(A \div B) \times C$$

where

- A** is the operator's news revenue for the immediately preceding calendar year;
- B** is the aggregate news revenue of all operators for that calendar year; and
- C** is the estimated costs incurred by the Commission in the fiscal year that are attributable to the Commission exercising its powers and carrying out its duties and functions under the Act and that will not be recovered under regulations made under subsection 79(1) of the Act.

### **Annual adjustment**

(3) The annual adjustment amount is the result of the following formula

$$(A \div B) \times (D - E)$$

where

- A** is the operator's news revenue for the immediately preceding calendar year;
- B** is the aggregate news revenue of all operators for that calendar year;
- D** is the actual costs incurred by the Commission in the fiscal year that are attributable to the Commission exercising its powers and carrying out its duties and functions under the Act as set out in Part III of the *Estimates* of the Government of Canada and that are not recovered under regulations made under subsection 79(1) of the Act; and
- E** is the amount determined for C in subsection (2) for the fiscal year.

### **Recovery charge negative**

(4) If the amount of the recovery charge for the fiscal year is negative, that amount is not repaid to the operator but is instead deducted from the amount of the recovery charge that the operator is to pay for the following fiscal year.

### **Publication — estimated costs**

5 The Commission must, in each fiscal year, publish a notice in the *Canada Gazette*, Part I, setting out the estimated costs to be incurred by the Commission in that fiscal year that are attributable to the Commission exercising its powers and carrying out its duties and functions under the Act.

### **Payment within 30 days**

**6** An operator must pay a cost recovery charge to the Commission within 30 days after the day on which the invoice respecting that charge was sent.

### **Transitional Provision**

#### **News revenue for 2024**

**7** An operator must report its news revenue for 2024 to the Commission, in the form required by the Commission, within 60 days after the day on which these Regulations come into force.

### **Coming into Force**

#### **April 1, 2025**

**8** These Regulations come into force on April 1, 2025, but, if they are registered after that day, they come into force on the day on which they are registered.