

Executive Summary

How Canada's Online News Act Will Harm the Internet,
Restricting Innovation, Security, and Growth of the Digital Economy
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Overview

Bill C18, the *Online News Act*, will harm the Internet in Canada. The Act, which aims to help Canadian news media adapt financially to an evolving digital landscape, proposes to force large platforms to compensate news media for making their content available through the sharing of links on their platforms, and make the Canadian Radio-television and Telecommunications Commission (CRTC) a centralized authority to oversee compliance. In doing so, it **centralizes management of Internet functions and content in Canada**, which will significantly prevent people and businesses from contributing to the digital economy and jeopardize their safety and security online.

C18 Leads to Internet Fragmentation

The *Online News Act* fundamentally changes the relationship between people and the Internet. It makes the CRTC a centralized authority to oversee how people and businesses can use the Internet's common language and address system. Using the [Internet Impact Assessment Toolkit](#), the Internet Society found the Act will significantly harm what the Internet needs to exist and thrive, restricting how people and businesses can experience and innovate on the Internet in Canada.

C18 Hurts Business, People, and Canada's Digital Economy

The *Online News Act* will hurt the Internet, and the people and businesses who rely on it, by:

- **Restricting innovation and growth of the digital economy** by forcing users and businesses in Canada into a permission-based model that controls use of the Internet's common language and address system, which runs counter to its fundamental design.
- **Reinforcing the market power of big players by creating barriers to entry and growth for Canadian businesses.** The Act's requirements make it unaffordable for start-ups and small businesses to use Internet technologies to become a challenger in the market, lest they find themselves subject to fines and forced into compensation bargaining with news companies.
- **Preventing people from access to private and secure lines of communication online.** Market-power digital news intermediaries will be prevented from using strong encryption in order to put in place the content monitoring mechanisms needed to comply with the Act.
- **Stifling freedom of expression** by restricting people in Canada from easily accessing and sharing information online.

The *Online News Act* will fundamentally splinter the relationship and experiences of people in Canada from a truly open, globally connected, secure, and trustworthy Internet. In turn, it will stifle innovation, reinforce the market power of incumbents, make people less secure, and hinder the growth and interoperability of Canada's thriving digital economy.



Internet Impact Brief

How Canada's Online News Act Will Harm the Internet,
Restricting Innovation, Security, and Growth of the Digital Economy



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Abstract

In April 2022, Canadian Heritage Minister Pablo Rodriguez introduced Bill C-18, the *Online News Act*. The Bill aims to provide financial support to news media in Canada in light of industry struggles to stay afloat in an increasingly digital arena. It proposes to force operators of large online platforms to compensate news media for making their content available, and to make the Canadian Radio-Television and Telecommunications Commission (CRTC) a centralized authority to oversee compliance. This Internet impact brief demonstrates how the *Online News Act*, if adopted, will significantly harm the Internet by centralizing the management of core Internet functions and content. In doing so, it will reinforce the market power of big platforms by restricting the ability of people and businesses to innovate and grow online in Canada. The Act also threatens security and confidentiality online—and the everyday people and businesses whose security and personal safety relies on these—by requiring businesses to use monitoring technologies that prevent the use of strong encryption. Ultimately, the *Online News Act* will contribute to a form of Internet fragmentation that puts Canada at a disadvantage in a rapidly evolving digital economy. Giving CRTC unprecedented control over how people can use the Internet's addresses and common language will splinter their experiences from an open, globally connected, secure, and trustworthy Internet.

Methodology

The Internet owes its strength and success to a foundation of critical properties it needs to exist. This includes: an accessible infrastructure with a common protocol, a layered architecture of interoperable building blocks, decentralized management and distributed routing, a common global identifier system, and a technology neutral, general-purpose network. To assess whether the *Online News Act* has an impact on the Internet, this report uses the [Internet Impact Assessment Toolkit](#) to examine its impact on what the Internet needs to exist and thrive as an open, globally connected, secure, and trustworthy resource.



Context

The *Online News Act*, if enacted, would fundamentally change the relationship between people and the Internet. One of the overarching reasons for this shift is that the Bill introduces a form of centralized management that runs counter to the nature of the Internet as an open, global resource for everyone.

The Internet was intentionally designed with a decentralized architecture, where no single authority has control. This principle—and the design features that enable it—has contributed to the Internet's rapid growth and success over the last several decades. Innovation can occur without anyone's permission. One can devise an application or service on the net and see who uses it. This is the pattern users expect, and an important reason why the Internet is still relevant to our rapidly evolving needs. **This design feature has allowed the Internet to grow and respond to people's needs in ways that other networking technologies could not. For example, the Internet easily weathered a dramatic rise in Internet use in the early days of COVID-19 isolation measures. Because each independent network operator could respond to local conditions, the Internet handled the increase without much trouble. The Internet is now a critical part of the world's—and Canada's—economy and communications infrastructure.**

An example of an opposite form of control over a network is the old telephone system, where the centralized control exercised by telephone companies inhibited technical and service innovation. Network control can also be exercised by governments, usually by limiting who can be in the market, via licensing and regulation.

The *Online News Act* will hinder the Internet by imposing a centralized form of control over how people can use its common language and addressing system.

How URLs Help Us Navigate the Web

The Internet is a global network composed of many other independently-operated networks. These many networks can work together seamlessly thanks to a common language, or protocols, that allow them to interoperate without needing central control.

When people talk about the Internet they often think of the World Wide Web (usually called "the web"). The web is a mostly user-facing set of sites and services that uses and depends upon the Internet. While web users experience a seamless single interaction, the experience is actually delivered by many different services. These many different services can be (and often are) presented so that they look like a single web page. All of that linking depends on Uniform Resource Locators, or URLs.



A URL is simply a way of providing the means to get a resource on the Internet. (A resource might be a document, a video, an audio file, a picture, or anything else. But it may also be a resource that provides indirect access to another resource.)

Indirect means of accessing resources on the web are extremely common in contemporary web service operation. There is nothing about URLs that require they refer to a complete web page. Many web pages are made up by linking together many URLs to curate different pieces of content onto a single page.

Why Is This Important?

The Online News Act: What It Is and How It Would Work

The *Online News Act* is intended to support news businesses in Canada by requiring certain classes of online services to enter into agreements with these news businesses or be forced to negotiate based on certain criteria. The bill proposes that since these online platforms are benefiting from links that make available news content produced by the news businesses, the platforms ought to be compelled to share some of their revenue with the news businesses. The bill is modeled on [a similar law adopted in Australia](#).

How It Would Work:

The legislation seeks to define a class of relevant platforms, members of which would need to self-identify to the CRTC as entities covered under the Act. It also defines news content and the businesses that produce it. It then requires one of two things:

- **Voluntary agreements between news platforms and market power intermediaries:**

The Act requires that a platform self-identify as a market power intermediary and negotiate in good faith with one or a collective of news businesses. There would be a period of bargaining, followed by mediation, and then final offer arbitration. Platform companies face fines of up to \$15 million CAD per occurrence for failure to self-identify to the CRTC or for failure to negotiate in good faith with news businesses. A news platform that has entered into voluntary agreements or been required by arbitration decision to compensate news businesses may apply for an exemption that would relieve it from the obligation to negotiate further compensation agreements with other news businesses. In such a case, the Canadian Radio-television and Telecommunications Commission (CRTC) will evaluate such agreements against certain criteria outlined in the *Online News Act* if a digital news intermediary asks. If the CRTC concludes that the criteria are met, then those agreements stand and determine the compensation for news content made available through the platform. In this case, the CRTC would issue an exemption order suspending the terms of the legislation in respect of the

parties to the agreement. The CRTC cannot order changes to such agreements, but it can make its exemption order conditional on certain changes it might like to see.

- **A news business (or group of them) applies to have the CRTC enforce the terms of the legislation against a particular platform operator**, which would trigger the prior process. Platform companies face fines of up to \$15 million CAD per occurrence for non-compliance with the Act (should it receive Royal Assent).

Assumptions and Interpretations

Three central notions in the *Online News Act* are directly relevant to the operation of the Internet. However, these notions are fatally ambiguous, which makes it difficult to analyze the bill's potential outcomes. The three vague concepts at issue are news content, making news content available, and digital news intermediaries.

1. News content:

This is an attempt to distinguish content that “reports on, investigates or explains current issues or events of public interest” from any other kind of content. There are related definitions of “news outlet” and “news business” in the Act, which are defined in terms of the production of news content. Importantly, the Act does not apply to *every* news business, but only certain ones.

2. Making news content available:

The idea of “making available” news content is poorly defined. Resources (such as news articles or news sources) on the Internet are generally located by URLs, but not every URL locates the particular resource a user might be seeking. There are at least three ways of arriving at a resource: in-line rendering, linking, and copy and pasting. It appears from the text that *any* of these means of providing a URL to news content might amount to “making available,” even though the user experience is vastly different. For something that is made available inline, the user is not really in a position to decide whether to consume that piece of news content. For something available through a link, the user makes a conscious decision to visit the linked resource. For URLs that are simply presented transcribed, without being a link, a user would need to do even more work: copy the relevant URL, then paste it into a browser in order to fetch the relevant resource. The lack of clarity in what constitutes “making available news content” also makes it difficult to discern what is a digital news intermediary.

3. Digital news intermediary:

This is defined as something that makes available news content that the intermediary did not produce itself. A digital news intermediary need not be in control of all the news content that is made available in its platform. For instance, a social media site that permits users to post URLs qualifies as a digital news

intermediary, even though it is the social media site users that find and post the URLs. The Act asserts that it is the site that makes the news content available.

The text of the Act makes it clear that it is only supposed to apply in the case of very large intermediaries. These are entities that have substantial market power, and the Act does not apply to digital news intermediaries that do not have such power. However, "digital news intermediary" itself is defined in such a way that any operator of any website probably qualifies as one. The intermediaries covered by the Act are of some size, have some sort of strategic advantage over news businesses, and have a prominent market position. Unfortunately, the bill does not specify what size, advantage, or market position is necessary for its application, nor even the market within which the intermediary is to have power (see §6 of the Act).

The broad scope of potential digital news intermediaries renders difficult both self-identification and compliance. It is further complicated by their interplay with link shortening services, which will present a difficulty. Link shortening services allow users to create a shorter version of a URL to make it easier to remember or share on character-restricted platforms. Link shortening services may not locate a specific piece of news content, but instead point to another URL that then locates the specific news content. Since some digital news intermediaries accept postings from their users, and some of those URLs might not link directly to news content, it is not clear which platform would be a digital news intermediary in many cases. Is any operator of a social media site responsible for determining the ultimate resource behind every URL (and therefore whether it is covered news content)? Alternatively, is it only the final intermediary (the one that provides the URL that ultimately points to the resource containing the news content) that is relevant for any given news content? And, if the shortening services are in fact digital news intermediaries, are they covered under the Act, or are they one of the digital news intermediaries that are not covered? It is impossible to tell from the text of the *Online News Act*. We might call the ones that are covered "market power intermediaries," in order to distinguish them from all other digital news intermediaries in the world (this document does so henceforth).

Given the above analysis, the *Online News Act* will have the following effects:

1. The CRTC may identify at least some online services as market power intermediaries and keep a list of what those services are. It is unknown how many such market power intermediaries there are, but in principle they could be any website anywhere in the world. Market power intermediaries that are covered by the Act are required by §7 to notify the CRTC that they are covered, and the intermediaries face fines if they do not comply. What is not clear is whether any digital news intermediary will concede that they are a market power intermediary subject to Canadian jurisdiction this way.

2. The CRTC must determine which news businesses are eligible to bargain for compensation under the Act, either by request or (under §27(2)) on its own initiative.
3. Market power intermediaries may owe payment for making available news content from the news businesses approved by the CRTC in any of the following forms (and will definitely owe it in some cases):
 - a. Inline rendering of news content.
 - b. Hyperlinked, and possibly transcribed, URLs pointing directly to the news content.
 - c. Possibly hyperlinked or transcribed URLs (or possibly both) pointing to a resource via which the news content can be accessed.
4. Market power intermediaries may eliminate links to Canadian sources of news content from within the service or restrict what links the users of the service are allowed to share through the service.

How Does the *Online News Act* Impact the Realization of the Full Potential of the Internet?

What the Internet Needs to Exist

The Internet owes its success to the technology that makes it work, and to the unique way it operates and evolves. This section examines how the *Online News Act* would impact four of the five critical properties the Internet requires to exist and function.

Critical Property 1: An Accessible Infrastructure with a Common Protocol

You don't need permission from a central authority to connect to the Internet. You find a point nearby, make arrangements to connect, and you're on the Internet. The network is extended by the many different kinds of organizations that connect to it. There is no international policy on who can connect or what they should pay; these factors are largely driven by the market, not a centralized authority.

The Act does not touch on the issue of connecting to the Internet, so this property is unaffected by it.

Critical Property 2: An Open Architecture of Interoperable and Reusable Building Blocks

The Internet provides well-defined and well-understood services to applications using a simple open architecture. Anyone can add innovation at any point—and Internet users can adopt (or reject) those building blocks that bring value without re-engineering the entire network.

The *Online News Act* proposes to replace the open, interoperable architecture of reusable elements with a closed architecture where innovation is restricted by a central authority, the CRTC, exerting control over the use of normal Internet building blocks.

Under the legislation, the same features, HTML or URL, will work in one way in one context but work in a different way in another. For instance, Alice might copy a URL identifying a news story into an email she is sending to Bogdan. That use of the URL does not represent “making available” the news content and is therefore not compensable under the act, because the email is used to communicate privately between the parties. However, if Bogdan then copies the very same URL into a social media post, the URL might be “making available” the news. In such a case, the platform might block the URL from appearing, or it might be subject to pay compensation to the news business that produced the content. The same URL in these different contexts causes different things to happen. That makes the URL less interoperable, because it does not work the same way under all conditions. It also creates an incentive for intermediaries to block the functionality of the URL. Moreover, users are not always able to tell what happens if they re-use the building block (in this example, the URL) in different contexts. Since the list of market power intermediaries is not permanent, if an Internet service is found to be a market power intermediary after a user has already shared some news content within that platform, news content will be accessible prior to the service becoming a market power intermediary and may become inaccessible after. This makes re-usability difficult because identifiers and anchors are supposed to be stable.

Given the scenario above, innovation and the growth of the digital economy in Canada will be reduced. The players will tend to become frozen into position. Some digital news intermediaries will be sources of revenue and protected by the regulator. Others will be too small to be of concern or will not bother to innovate in Canada to avoid becoming subject to the compliance requirements under the Act.

The *Online News Act* will also have extra-territorial impact on intermediaries outside of Canada's jurisdiction. At least some operators of services on the Internet will choose to alter the way their services work for users or news content from Canada. Country-specific compliance requirements impose costs on service operators, and inevitably some service operators will choose to avoid those costs rather than pay them. This means that 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. Furthermore, businesses and startups may choose to avoid costs of compliance with the Act by pulling operations and services out of Canada—to focus business growth in jurisdictions with more favorable conditions for innovation online. Such consequences were evident following implementation of the General Data Protection Regulation (GDPR) in the European Union (EU). Many businesses, including news companies, chose to geo-block EU users instead of having to comply with the GDPR, as it was comparably less of a burden than complying with the legislation.

Critical Property 3: Decentralized Management and a Single Distributed Routing System

The Internet's infrastructure is based on nearly 70,000 independent networks choosing to collaborate and connect together. Each of these networks runs a common, open, protocol (Border Gateway Protocol, BGP) that allows it to exchange routing information with its neighbours. And each of these networks makes independent decisions on how to route traffic to its neighbours, based on its own needs and local requirements. There is no central direction, or a controller, dictating how and where connections are made, so the network grows organically, driven by local interests.

Far from relying on various Internet services to determine their interactions themselves or supporting the decentralized management that is part of the nature of the Internet, the *Online News Act* requires a finding that certain network services are market power intermediaries. The potential class of such intermediaries is large and constantly shifting. The market power intermediaries are compelled to enter into some kind of compensation regime with the eligible news businesses that apply for compensation. This obligation can only be circumvented by preventing any of the covered news content from appearing in the service. This amounts to centralized management of Internet content within Canada. **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.**

Critical Property 4: Common Global Identifiers

The Internet is an infrastructure that supports complex applications, some of them so large that they spread across continents and have millions of cooperating servers behind them. Internet users see elegant interfaces hiding behind a single name: Google, Facebook, Microsoft, and others. But there's an essential glue that allows every user to connect to the applications they use: a common identifier set delivers consistent addressability and a coherent view of the entire network, without fragmentation or fractures.

URLs are, by their very nature, global identifiers. The *Online News Act* does not affect whether the identifiers may exist: the URLs that point to news content will continue to work and can be passed around as ever. However, the Act significantly impacts the utility of global identifiers to help people get to destinations online. In some contexts, the act of passing around URLs creates a financial liability for digital news intermediaries (especially if they have not identified themselves as market power intermediaries). Some of those intermediaries will undoubtedly choose to suppress some identifiers rather than accept the liability.

In order to circumvent such restrictions, many users will resort to various external systems that obscure the target of some URLs, such as link shorteners or obscurers. Such acts on the part of users will not relieve digital news intermediaries from liability under the Act and may cause additional platforms to become market power intermediaries. However, most operators of Internet services do not scan all URLs they encounter in their systems to discover the ultimate resolution in content.

Furthermore, creating financial liability for the use of URLs is especially illogical because the content at a URL can change over time (e.g., webpage updates). As such, it's absurd to have the newsworthiness of a set of URLs be part of a bargaining process on compensation because the set of URLs, when the bargaining commences, may point to fundamentally different content in the future.

Critical Property 5: A Technology Neutral, General-Purpose Network

The Internet is designed as a general-purpose network. It is agnostic about the type of content that flows through it, guaranteeing neither quality nor connectivity, yet delivering enough of both to be a base layer for information services, commerce, communications, recreation, and more.

The *Online News Act* does not affect the network itself. However, requiring certain operators of the Internet to be aware of the content flowing through the network undermines the benefits of a general purpose network. Because online services that qualify as market power intermediaries will need to potentially compensate news organizations if they share URLs to news stories, they will now have to differentiate and treat news URLs differently from other URLs. The Act appears to recognize that not everything that is published by a news business is in fact news (consider games or even advertisements). Yet, either the parties to the negotiation will have to agree on whether a given piece of content is really news, or the CRTC will need to decide whether a given piece of content is truly news.

While it is clear that only certain platforms are really the target of the legislation, the foreseeable effects of the legislation are much wider. Given the way "digital news intermediary" is defined, it appears to extend to any service that might accept user-provided URLs that could point to news content on the Internet. There are countless possible ways in which tools available on the Internet might accept such URLs and make them available to others. Each case presents a possible liability to the operator of such a service, since they face fines if they fail to identify themselves as a market power intermediary. In effect, any service that accepts input from users and that is in any way subject to Canadian jurisdiction has to treat every submission as though it might be news content. The net is extremely large, and the only protection for operators of services on the Internet is that the CRTC will make the right determination as to whether they are a market power intermediary.

What the Internet Needs to Thrive

In addition to the critical properties the Internet needs to exist, there are additional characteristics, or enablers, that it needs to thrive. The following section analyzes how the *Online News Act* would impact these enablers, preventing the Internet and everyone that uses it from benefiting from its full potential.

Easy and Unrestricted Access

The ability to freely make available, reference (i.e., “link”), and access resources on the web has been critical to its success. Linking is at the core of the Internet’s innovative capacity and has allowed users and services to network resources at an unprecedented scale.

Digital news intermediaries (including those that do not identify as market power intermediaries) that choose to filter links with CRTC-approved eligible news businesses with whom they have not concluded an agreement would make some news less accessible to the intermediary’s users. To avoid liability, digital news intermediaries are likely to adopt a policy of over-filtering links. This would involve the blocking of links to resources beyond news content, on the grounds that precisely what counts as news content is not well-defined and is subject to negotiation. As a result, the *Online News Act* would likely undermine the ease of which Canadian users can access and share information. This represents a significant threat to freedom of expression.

The Act would also undermine the Internet’s openness to new online services. Any such service would risk being classified a market power intermediary and consequently be liable for fines. That business risk creates new barriers to online innovation in Canada. To prevent triggering payments, new online service could limit the ability of users to generate content (since it could include a link), or design advanced content filters to block links to certain resources.

Furthermore, since market power intermediaries would have to be aware of content to comply with the act, the platforms would not be able to use strong encryption. Encryption is a ubiquitous Internet security tool that scrambles data and communications to keep it secure and confidential from unintended parties. Only the largest providers would have the resources to create encryption backdoors needed to be able to filter content. Smaller players may not be able to afford these methods, nor the security risk it would carry for their business and users.

It is ironic that legislation so plainly designed to take financial resources from some of the largest tech corporations in the world—in order to support news media in Canada—is reinforcing the structural economic advantage of those same corporations. The *Online News Act* erects significant barriers to entry

by making it unaffordable for any new challengers to enter the market lest they suddenly find themselves violating the legislation.

The Act could also make the Internet less accessible to persons with visual and other disabilities. It is not clear from the text of the Act whether publishing a URL without making it into a clickable link constitutes making news content available. If it does not, platforms may permit the posting of URLs that are not hyperlinked, but it may disadvantage people who use the web with assistive technologies such as screen readers. For instance, a screen reader will have to resort to reading out the URL, which then must be selected, copied, and pasted for a user to get to that URL. This could pose challenges for people with certain disabilities.

Unrestricted Use and Deployment of Internet Technologies

The Internet's technologies and standards are available for adoption without restriction. The Internet's infrastructure is available as a resource to anyone who wishes to use it in a responsible and equitable way. Existing technologies can be mixed in and used to create new products and services that extend the Internet's capabilities.

The *Online News Act* creates the conditions in which at least some innovator services would need to get permission to operate, by assuring that they do not meet the threshold of market power, or else face significant fines or other costs. The Internet's common language and addressing system (standards) help us get around online, but they do not have a way of knowing what content is associated with our destinations. For the purposes of deployment of Internet technologies, then, the legislation requires information about the context in which a URL or HTML element is used, which in computing is called "state." The architecture of the underlying technologies in question cannot carry that sort of state (self-knowledge). Not having such state is an intentional part of the architecture because the web is designed as a stateless protocol. In a networked system, protocols that need to maintain state are much more expensive, because they require constant communication between end points. Stateless protocols, by contrast, are inexpensive to build and operate. This feature is a significant part of the success of the web, and consequently the Internet.

The effect of the Act is to require market power intermediaries to construct a web of bilateral contractual relationships, even though in many cases the parties have no direct interaction with one another. The Internet's lack of restrictions on use and deployment relies on the foundational idea that merely implementing the technologies according to a standard is adequate to interoperate with the whole Internet. The Act replaces this assumption with the notion that digital news intermediaries and eligible news businesses all need to have contracts with one another. It inverts the permission-less conditions



that have made the Internet successful in favor of a restrictive vision in which permission to deploy and interoperate is necessary.

Furthermore, the Act also limits the use of security technologies like encryption, which is crucial to Internet innovation in Canada. Market power intermediaries that cannot deploy the latest security technologies in their own businesses and for their users will have a significant disadvantage in a competitive global digital economy, undermining the aims of the Act.

The Internet has enriched people's lives precisely because people can use it without permission from third parties. Yet, the legislation explicitly provides for ranking and other algorithmic curation of content. This means that Canadian consumers of services on the Internet, and Canadian news businesses, may be excluded from new inventions. This harm will not only extend to ordinary, mainstream consumption of news content. Students, teachers, librarians, researchers, and everyone else who relies on news content from Canada will be negatively impacted. The rest of the Internet will continue to be able to link to content without permission, but linking to news content in Canada will require permission and contractual relationships. This means that the development of the Internet will not be permitted by the Act to thrive in Canada the way it may in other places.

Collaborative Development, Management, and Governance

The Internet's technologies and standards are developed, managed, and governed in an open and collaborative way. This open collaboration extends to the building and operation of the Internet and services built on top of the Internet. The development and maintenance process is based on transparency and consensus, and has as its goal the optimization of infrastructure and services to the benefit of the users of these technologies.

The *Online News Act* would impose rules governing the operation of all services on the Internet that could be used by Canadians who are exposed to Canadian news content through any service. This mandatory contract relationship has not been developed in an open and collaborative way, and is in tension with the basic design of the Internet and web. Moreover, as global Internet standards evolve, Canadian users may be left behind because the implementation of the Act may constrain the use of enhancements to these standards.

Unrestricted Reachability

Internet users have access to all resources and technologies made available on the Internet and are able to make resources available themselves, contributing to the Internet's role as a resource of global knowledge production. Once a resource has been made available in some way by its owner, there is no blocking of use and access to that resource by third parties.

The *Online News Act* does not directly require blocking of use or access to any resource that has been made available on the Internet. However, it creates strong incentives for platforms to restrict access for Canadian users to content and resources that are otherwise available elsewhere. This hinders the Internet's role as a resource of global knowledge diffusion. Under the Act, users of platforms that could be market power intermediaries are unlikely to know whether they are able to make resources available themselves, because the availability of the resource would be conditioned upon the contractual relationships between the operator of the news intermediary and the provider of the news business. Moreover, there is no reason to suppose that every possibly eligible news business will be part of any given market power intermediary's set of contractual relationships. This means users will not know whether they can make resources available.

The Act also hinders reachability by limiting the ability of market power intermediaries to use strong encryption. Many users rely on the security of encryption, particularly end-to-end encryption, to share, communicate, and access resources online for their personal safety. This includes journalists, survivors of domestic violence, LGBTQ+ communities, etc. Many users would not be able to use these services without the confidentiality guaranteed by strong encryption.

Data Confidentiality of Information, Devices, and Applications

Data confidentiality, usually accomplished with tools such as encryption, allows end users to send sensitive information across the Internet so that eavesdroppers and attackers cannot see the content or know who is communicating. Allowing the transfer of sensitive information helps create a secure Internet.

Although not overtly directed at data confidentiality, the *Online News Act* would likely have harmful impacts on the availability of secure communications in Canada. Because it makes any platform that could be a market power intermediary liable for payments, and need to have the ability to identify when to make those payments, those intermediaries will have incentives to undermine confidentiality. For end-to-end encrypted communications, it would be impossible for a service provider to view the contents of a user's communication to determine these payments without undermining security and privacy for every user. The text of the Act does not make clear how many participants in a group discussion would constitute the act of making news content available, which is important as some end-to-end encrypted communications services can reach over a thousand users in a single conversation. Moreover, because of the ability of people to automate distribution of information on the Internet, simply making news content available between two individuals could easily result in an effective copying of the same news content (or URLs that connect to that news content) to a very large audience quickly.

Due to the danger of economic liability, platforms on the Internet that provide services to Canadians, and that could therefore become market power intermediaries, will have an incentive to prevent truly

confidential channels. As a result, platforms may choose to avoid using end-to-end encryption technologies, which are critical to data security and confidentiality online, to be able to monitor communications and lower their potential liability to fines or their need to negotiate with eligible news businesses. The resulting lack of data confidentiality would pose a significant risk to the security and safety of people and businesses in Canada.

Integrity of Information, Applications, and Services

It is unclear in the *Online News Act* whether a platform acts as a digital news intermediary when it returns links that do not link to actual news content, but instead to a redirection service like a URL shortener. Some digital news intermediaries operate their own URL shorteners, so in such a case it would be clear that they retain liability under the Act. But in other cases, the intermediaries do not operate the URL shortener. In such a case it is not clear whether the platform operator or the URL shortener operator (or both) is the digital news intermediary. (It is still less clear whether they are also a market power intermediary). If the platform is not acting as a digital news intermediary in such cases, then the platform will have an incentive to encourage its users to post shortener-processed URLs.

One challenge with link shorteners is that they are obscure. It is hard to tell by looking at such a link whether it links to a particular desired resource. (There is no guarantee that any URL goes to the resource that a user might expect, but link shorteners make this problem worse.) If link shorteners become ubiquitous in online platforms as part of a mechanism to avoid the costs of this act, it is probable that people with malign intent will exploit the obscurity of these URLs to commit fraud, identity theft, and other malicious acts.

Reliability, Resilience, and Availability

The Internet is reliable when technology and processes are in place that permit the delivery of services as promised. If, for example, an Internet service's availability is unpredictable, then users will observe this as unreliable. This can reduce trust not just in one single service, but in the Internet itself. Resilience is related to reliability: a resilient Internet maintains an acceptable level of service even in the face of errors, malicious behavior, and other challenges to its normal operations.

The *Online News Act* makes the status of a given platform changeable over time according to market success and the decisions of the CRTC. Under the Act, market power intermediaries need to reach agreements with news businesses if they wish to make (or permit others to make) news content from a given news business available. This means that, for users of various online services, sharing certain kinds of content (e.g., URLs for news content) online will become unpredictable. Platform P might have an agreement with news business NB on one day, and then determine that it is not worth the value the

platform gets from the agreement. So, P might choose to end the agreement later. A user of P would be in a position to share news from NB through the platform on Day One, and would be blocked from such sharing on Day Two. To users, this is an unreliable and unpredictable service, which ultimately undermines trustworthiness on the Internet.

Accountability

Accountability on the Internet gives users the assurance that organizations and institutions they interact with are directly or indirectly acting in a transparent and fair way. In an accountable Internet, entities, services, and information can be identified and the organizations involved will be held responsible for their actions.

The *Online News Act* undermines accountability by giving the CRTC the arbitrary power to restrict the ability of individuals and businesses to use global identifiers (URLs) in a way that is largely arbitrary. It does this in two important ways.

The first is the role of the CRTC to enforce rules about digital news and market power intermediaries. With the exception of private messaging services, the digital news intermediary definition would appear to encompass all online services, including e-commerce, public messaging forums, and education services. And while the law seeks to limit the digital news intermediaries that are within scope of the obligations to market power intermediaries, these criteria are not clear. For instance, the law describes applicable digital news intermediaries as those where there is a “significant bargaining power imbalance,” which is to be assessed based on the size of the intermediary, whether the market they operate in offers a “strategic advantage over news businesses,” and whether the intermediary “occupies a prominent market position.” Each of these is without any clear meaning, which provides the CRTC extensive powers of interpretation. In this light, the law also imposes a “duty to notify,” whereby a digital news intermediary that meets the criteria must notify the Commission. Unfortunately, every website in the world that accepts any posting from users that is subsequently displayed to other users appears to qualify as a digital news intermediary under the Act. The resulting identification of market power intermediaries is likely to be incomplete and potentially confusing to providers and users alike.

Second, the Act authorizes the CRTC to designate eligible news businesses. As stated by the Act, news businesses are eligible if they produce “news content of public interest that is primarily focused on matters of general interest,” employ two or more journalists in Canada, and produce “news content that is not primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment.” Again, these criteria are vague and would give unprecedented authority to the CRTC to define concepts such as news of “general interest,” “lifestyle and entertainment,” etc. Furthermore, the criteria would exclude a lot of news businesses (e.g., industry news, or independent journalists) in favor of

large news corporations. Ultimately, the Act appears very likely to heavily favor large corporate news organizations over smaller and more niche news providers, which is likely to reduce the diversity and competitiveness of Canadian news sources.

The impact of delegating unprecedented power to the CRTC to control how people and businesses can use the Internet will hinder the aspirational goals of an open, globally connected, secure, and trustworthy resource for all. It will also lead to fragmented experiences of the Internet for people and businesses in Canada. As such, the Act will prevent the CRTC from acting in a fair and transparent way with respect to the Internet and users in Canada.

Privacy

Privacy on the Internet is the ability of individuals and groups to be able to understand and control what information about them is being collected and how, and to control how this is used and shared. Privacy often includes aspects of anonymity, removing linkages between data, devices, and communications sessions and the identities of the people to which they pertain.

The *Online News Act* requires digital news intermediaries to account for the news content in their platforms. This could mean that the operators of such platforms would scan any user posting that might constitute making news content available. For end-to-end encrypted communications, this is impossible without undermining security and privacy for every user.

Whether private discussions among a group of people would constitute making news content available is unclear in the Act. However, presumably, there is a certain number of participants in such a discussion that would turn the private group into a public one. No threshold is defined. Platforms would almost certainly be unwilling to bear the risk that such group chats could create financial liabilities. Therefore, the protections of privacy-enhancing technologies, like strong encryption for group chats, may be disincentivized or unusable in Canada.

Summary and Conclusions

The *Online News Act* sets out an ambitious goal of providing financial support to news businesses that have not succeeded in competing with large online platforms for revenue. It is clearly the goal of the legislation to change the balance of market power. Unfortunately, to do so, the Act imposes features on the operation of the Internet that are foreign to its fundamental design. The Internet is designed to be open, globally connected, secure, and trustworthy. Because of the mechanisms in the Act, it is not compatible with the Internet's basic design. Instead, the Act envisions an Internet that is not open, but closed to innovation. It envisions an Internet that is not globally connected, but where some connections

are hampered or prevented. It offers not security, but a future with incentives to reduce security for content to permit inspection of that content. And it offers not a trustworthy Internet, but one that people cannot rely on to act the same way from day-to-day.

The *Online News Act* will be harmful for the Internet.

Furthermore, the *Online News Act's* harm to the Internet will contribute to fragmentation, giving people and businesses in Canada a different use and experience of the Internet from those in the rest of the world. In turn, it will make people in Canada less secure, it will stifle innovation online, and it will hinder the growth and interoperability of Canada's thriving digital economy.

