

January 11, 2019

The Broadcasting and Telecommunications Legislative Review Panel  
c/o Innovation, Science and Economic Development Canada  
235 Queen Street, 1st Floor  
Ottawa, Ontario K1A 0H5

***The Globe and Mail Comments on The Review of the Canadian Communications Legislative Framework***

The Globe and Mail (The Globe) welcomes the opportunity to comment on The Broadcasting and Telecommunications Legislative Review Panel's (the Panel) review of legislation governing the Canadian broadcasting and telecommunications sectors. Our comments are most relevant to Themes B and C as set out in the Panel's Call for Comments. We take particular note of the Panel's mandate to consider legislative changes that may be necessary to ensure the provision of trusted, accurate, and quality news and information.

The Globe has been a trusted news source for Canadians for 175 years. We publish in print and online, more than 475 news stories weekly and our content reaches 6.4M Canadians through our websites, newsletters and apps. Our reporting has earned 166 National Newspaper Awards and 11 Michener Awards, the most of any publication in Canada.

The Globe has not historically participated in legislative reviews of this nature but as content converges online traditional distinctions between broadcast, print, and digital mediums are increasingly blurred. Content, regardless of whether it is produced by broadcasters, publishers, or digital media entities, competes for the same digital audiences. The importance of digital audiences to the long-term sustainability of all Canadian media organizations necessitates that legislative frameworks take a broad view to ensure policies support Canadian content producers equitably.

Throughout this submission, we will refer to platforms. For the propose of this submission, the platforms we are considering are those having the greatest impact on the news industry, as identified by the Australian Competition and Consumer Commission in its preliminary report on its Digital Platforms Inquiry (ACC Report), namely:

# THE GLOBE AND MAIL

- a. *Search Engines* – software systems designed to search for information on the internet,
- b. *Social Media Platforms* – online services that primarily allow users to participate in social networking, communication with other users, and share and consume content generated by other users (including media companies), and
- c. *Digital Content Aggregation Platforms* – online intermediaries that collect information from disparate sources and present them to consumers as a collated, curated product.<sup>1</sup>

Our comments are specific to large global platforms with significant Canadian audiences whose services account for a significant portion of the Canadian advertising market, in particular our comments are concerned with Google, Facebook, and Apple.

There are fewer public reports and statistics available for the news publishing industry than are available for the regulated broadcast and telecommunications industries. Absent the availability of Canadian specific statistics, we rely on statistics provided in recent reports commissioned by governments in the UK and Australia as illustrative of overall global trends.

As the news publishing industry is distinct from that of broadcast news, we have included a brief background on business models, the challenges the industry faces today and the unique value news publishing provides to Canadians. This structure of this submission is as follows:

1. The Role of “Print” Journalism in the Digital News Ecosystem
2. Overview of Digital Advertising Challenges
3. Importance of Subscription Revenues
4. News Content is Particularly Vulnerable in the Digital Environment
5. Future Challenges of Distribution, Access to Audiences, and Data Ownership
6. Recommendations

## **1. Role of “Print” Journalism to the Digital News Ecosystem**

In a report commissioned last April by the UK government, legacy newspapers were found to be responsible for approximately 50% of all original news journalism in the UK, larger

---

<sup>1</sup>Australian Competition & Consumer Commission, *Digital Platforms Inquiry Preliminary Report*, Dec. 2018, pg. 23.

# THE GLOBE AND MAIL

than broadcasting and online news brands combined.<sup>2</sup> The report was prepared as part of the Cairncross Review, which tasked an expert panel with investigating growing concerns around the sustainability of the UK press. While there are no comparable statistics for the Canadian landscape available, we believe the UK findings are illustrative of the role press publishers play in the Canadian market. News Media Canada reports approximately 80% of the population in all of the markets measured read a newspaper over the course of the week, in either a printed or a digital format.<sup>3</sup>

News publishers are not merely prolific producers of information; we are producers of *quality* news and information. One of the fundamental distinguishing features of professional journalism is acceptance of responsibility for content published. To meet this responsibility, editorial oversight, fact checking, and legal review are required. The Globe employs 260 full time professional journalists. Our journalists are paid fair wages and have considerable expertise. They adhere to editorial codes that value truth, fairness, fact checking and accuracy. Our content is carefully created, edited, and distributed. This type of journalism is costly to produce. Persistent and sustained reporting over a range of topics requires considerable editorial resources. Defending journalism from litigation intended to silence criticism requires significant financial support. Ensuring the public has appropriate access to information through court proceedings is costly. The journalism produced as a result of these activities also tends to be the reporting most critical to a functioning democracy.

Canadians have more access to news now than ever before as international publications are easily accessible online. Foreign publications have specifically targeted Canada for expansion. In this environment, ensuring the presence of strong Canadian voices is more important than ever. Canadian news producers provide a necessary Canadian perspective on issues. While global news publishers may provide Canadian coverage, they approach news with a different worldview. One recent example is coverage of NAFTA. Both US and Canadian publications provide coverage of the event but the issues they focus on and the perspective they provide varies significantly. It is essential to ensure Canadians have access to quality information produced by fellow Canadians that reflects Canadian values. Editorial independence is one such value. The Globe has a deeply engrained culture of editorial independence. Ensuring editorial is free from outside interests is the ethos of our company. Unflattering reporting can, and has in the past, resulted in the loss of advertising revenues. We willingly accept this as the cost of preserving the integrity of our journalism. We understand that trust in The Globe's integrity is the basis of our relationship with subscribers. However, not all news producers value editorial independence to the same degree. It is easy to find examples of news producers in other jurisdictions with clear political agendas. The best way to counter biased reporting is to ensure independent Canadian news content is easily accessible and prominently displayed.

---

<sup>2</sup> Mediaticque, *Department for Digital, Culture, Media & Sport Overview of recent dynamics in the UK press market*, Apr. 2018, pg.5, para.8.

<sup>3</sup> News Media Canada, *FAQ*, <https://nmc-mic.ca/about-newspapers/faq/>. (last accessed 10 Jan. 2019)

# THE GLOBE AND MAIL

Text is particularly suited to providing in-depth information and analysis. News publishers' content satisfies different audience needs compared to traditional broadcast news. Both mediums are necessary for a well-informed and engaged citizenry.

Globe content is available online through our website, apps, and newsletters. However, subscription and advertising revenues derived from the printed newspaper continue to fund the majority of content production costs. Currently the printed paper subsidizes digital content. Generating sufficient revenues in the digital landscape is challenging, as explained in detail below.

## **2. Overview of Digital Advertising Challenges**

News content has historically been supported by two sources of revenue: subscriptions and advertising. Advertising provided the vast majority of revenue for news publishers and subsidized subscription prices charged to consumers. Advertising continues to be an important source of revenue for news organizations. However, print advertising is rapidly declining. News Media Canada reported a 27% decline in daily newspapers' print advertising revenues in 2017 alone.<sup>4</sup> Digital advertising does not replace this lost revenue.

### *Unlimited Advertising Competition*

The internet has provided unlimited competition as every webpage, or app that Canadians use has the ability to sell advertising. Automated buying and selling of digital advertising allows everyone with an online presence, from social media users to global media brands, to monetize their audience with little implementation cost. Companies providing advertising technology services that serve digital advertising take a fee from each advertisement served, cutting into an already small digital margin received by content creators.

### *Advertisers depend less on content to reach their audiences*

In addition to providing a limitless supply of advertising inventory, technology advancements have fundamentally changed the way advertising is targeted to Canadians. Historically, advertisers interested in targeting a specific demographic would place ads with media companies whose content attracted subscribers matching the customer profile they wanted to reach. In the digital environment, the adjacent content may not be considered or even known by the advertiser. Technology advancements allow advertisers to personally target advertisements to specific individuals on whatever site or app they are using. Advertisements are targeted based on inferences drawn about individuals from their online activity over time. The more individuals use platforms' services, the more data platforms collect that can be used for advertising purposes. It is not only the time spent on search and social platforms that provides valuable insight about individuals, but also the nature of the activities Canadians perform on platforms that provides an unprecedented amount of personal data. Whether Canadians are researching new cars, sharing photos with family

---

<sup>4</sup> News Media Canada, *Daily Newspaper Revenue Report Q4 2017*, pg.6.

# THE GLOBE AND MAIL

and friends, or discussing their hobbies and interests, the nature of activities performed on search and social sites provides a depth of personal data that can be used by advertisers. Canadians' activities on news websites are fundamentally different in nature. Though many larger news publishers offer interactive digital news content, such as The Globe and Mail's award-winning Weigh Anchor visual reporting piece, the central aim of news publishers is to provide Canadians with information rather than extract information about them. The global reach of platforms provides additional advantages. Billions of global users provide tremendous scale, and allow for the creation of sophisticated predictive modelling. While some news content attracts global attention, Canadian news content has fewer market opportunities outside Canada to build audiences at a global scale.

This is not to say that quality doesn't matter to advertisers. Some advertisers recognize the importance of brand association and ensure their messages not only reach the right audience, but do so in an environment that offers quality content. However, these developments, particularly the unprecedented supply of advertising space, create an overall downward pressure on the market rate of digital advertising. News publishers are not monetarily rewarded for quality content to the same degree in the digital environment as they were in a print environment.

## *Increased use of mobile devices reduces advertising space*

The increased use of mobile devices has also significantly impacted the digital advertising revenues of news publishers. As Canadians spend more time on mobile devices, shifting from the larger screens on desktop to smaller screens of mobile devices, the physical space available for advertising is reduced.

Facebook and Google accounted for 73% of all digital advertising revenues in the US and 83% digital advertising growth in 2017.<sup>5</sup> Given the limited opportunities for significant digital advertising growth, publishers are relying more on subscription models.

### **3. Importance of Subscription Revenues**

The ability to drive more subscription revenue is essential to the survival of large news organizations. The Globe has been successful growing its subscriber base. The content we produce attracts a Canadian audience that is willing to pay for quality news. The Globe has invested heavily in data science and analytics, with a focus on developing tools to enable our editorial team to better understand audience habits and preferences. These insights allow us to better meet the informational needs of our subscribers. The majority of Canadians however are used to receiving news and information for free. A publicly funded broadcaster with a digital focus, that is mandated to share its content for free as widely as possible, creates a challenging environment for news publishers that must survive on a commercial basis.

---

<sup>5</sup>Gillian D'Onfro, "Google and Facebook extend their lead in online ads, and that's reason for investors to be cautious", Dec. 20, 2017, <https://www.cnbc.com/2017/12/20/google-facebook-digital-ad-marketshare-growth-pivotal.html>. (last accessed 10 Jan. 2019)

The CBC has worked to distinguish its broadcast services from those of Canadian commercial broadcasters. We believe the CBC should likewise focus its news efforts on filling the news gaps in underserved communities in Canada. The CBC's mandate should include an obligation for CBC news services to be provided in a manner that strengthens and promotes a diversity of voices in the Canadian news ecosystem to ensure appropriate consideration is given to the potential impact of its activities on private Canadian news producers.

Foreign news publishers offering digital subscription services in Canada enjoy the competitive tax advantage of being exempt from Canadian sales tax. The OECD has recommended international guidelines to address the challenges of collecting sales tax on cross-border sales of digital products and services. Quebec is the only province that requires foreign service providers to collect sales tax.<sup>6</sup> The federal government has not taken a position on the issue. We appreciate a review of tax legislation is outside the scope of the Panel's mandate, however it is important to be cognizant of digital services' exemption from these provisions as tax legislation has been the sole means of implementing Canadian cultural policies in the news publishing industry. As the Department of Heritage noted in its evidence to the Standing Committee on Heritage's on Media and Local Communities, unlike other cultural sectors there is no federal policy framework for newspapers.<sup>7</sup> Canada has relied on Section 19 of the Income Tax Act (which applies only to advertising in print publications) and provisions in Investment Canada Act to ensure Canadian ownership in the newspaper industry. The exemption of digital services from these tax provisions has deprived the news publishing industry of any cultural policy support. We respect the scope of the Panel's review and will therefore make no specific recommendations with respect to taxation policy.

#### **4. News Content is Particularly Vulnerable in the Digital Environment**

As noted in the ACC Report, the commercial value of news may be under-valued by market forces as information has characteristics that differentiate it from typical goods.<sup>8</sup> While there is copyright in an article, the facts contained in the article are not copyrightable, and can be freely distributed. The US industry association, News Media Alliance, noted in their submission to the FTC on Competition and Consumer Protection in the 21<sup>st</sup> Century, news publishers' primary business is uncovering facts, making it challenging to adequately protect original work.<sup>9</sup> Facts should not belong to any person but in some instances, uncovering facts may involve multiple years of work. This work is not adequately

---

<sup>6</sup> Bill Curry, "Facebook misses Jan.1 deadline to collect Quebec sales tax, while Amazon, Apple, Google, Netflix, and Spotify comply" Jan. 9, 2019, <https://www.theglobeandmail.com/politics/article-facebook-misses-jan-1-deadline-to-collect-quebec-sales-tax-while/>. (last accessed 10 Jan. 2019)

<sup>7</sup> House of Commons Canada, Standing Committee on Canadian Heritage, *Hearing on The Media and Local Communities*, Feb. 23, 2016 (statement of Jean-Francois Bernier, Director General, Cultural Industries, Department of Canadian Heritage).

<sup>8</sup> *Supra* note 1, section 6.3.1, pg. 246.

<sup>9</sup> News Media Alliance, *Comments of News Media Alliance Before the Federal Trade Commission Regarding the Hearings on Competition and Consumer Protection in the 21st Century*, Aug. 20, 2018, [https://www.newsmediaalliance.org/wp-content/uploads/2018/08/vF\\_NMA-FTC-Hearings-Comments-FINAL.pdf](https://www.newsmediaalliance.org/wp-content/uploads/2018/08/vF_NMA-FTC-Hearings-Comments-FINAL.pdf). (last accessed 4 Jan. 2019)

rewarded in the digital environment where sharing news happens nearly instantaneously. Canadians have less incentive to pay to access information when the facts of the story are readily available from multiple sources within seconds of its initial publication. Canadians value the information original reporting provides, but the value placed on the information is not necessarily reflected in the revenues news publishers receive for their services.

## **5. Future Challenges of Distribution, Access to Audience, and Data Ownership**

### *Improving the rights of all participants in the digital economy*

Legislative change is a slow process while the digital environment evolves at a tremendously fast pace. Revisions to legislation must be forward looking to ensure appropriate legislative tools are available to address issues as they arise over the next decade. With this in mind, we propose Theme C as set out in the Panel's Call for Comments, *Improving the rights of the digital consumer*, should be expanded to consider changes necessary to *improve the rights of all participants in the digital economy*.

As digital audiences consolidate on search and social platforms, ensuring appropriate legislative tools are available to address issues of market access and control is critical. In particular the Panel should consider the tools available to address the following:

1. The control of search and social platforms' algorithms over content distribution
2. Access to Canadian digital audiences and ownership of customer data
3. Platforms as "walled gardens", erosion of subscription revenues, and lack of negotiation in commercial agreements

Other jurisdictions have begun to contemplate these issues through competition reviews and inquiries.<sup>10</sup> There is overlap with the above issues and the domain of Canada's Competition Bureau, however social and cultural considerations do not currently fall within the scope of Canadian competition reviews. As the Competition Bureau submitted in its 2016 presentation to the Standing Committee on Canadian Heritage, the Bureau responds to specific complaints, it does not monitor markets. Its knowledge of the competitive environment in a specific industry is limited to the point in time during a particular investigation. The Bureau stated public interest issues are the purview of communications regulators, distinct from competition authorities.<sup>11</sup> The issues identified above require competitive analysis expertise as well as in-depth understanding of cultural industries and cultural policy objectives. The strictly economic scope of competition reviews provides an incomplete view of cultural markets and the impact platforms have on

---

<sup>10</sup> Germany, Australia, Italy and the EU are a few examples of jurisdictions that have recently launched investigations or inquiries related to these topics.

<sup>11</sup> House of Commons Canada, Standing Committee on Canadian Heritage, *Hearing on The Media and Local Communities*, Nov. 1<sup>st</sup>, 2016, (evidence of Mr. Julien Brazeau, Associate Deputy Commissioner, Competition Promotion Branch, Competition Bureau).

Canadian cultural sectors. The narrow scope of competition laws combined with the Canadian Radio-television and Telecommunications Commission's (CRTC) exemption of digital media broadcasting from the Broadcasting Act, has resulted in limited oversight of platforms. Currently there is a gap in the legislative tools available to adequately address Canadian cultural policy issues.

## *The control of search and social platforms' algorithms over content distribution*

As many studies have found, including the Public Policy Forum's Shattered Mirror report,<sup>12</sup> platforms exercise an inordinate amount of control over what information is shared and who it is shared with, using algorithms that reward content based on priorities they impose. These algorithms typically favour likeability and shareability over quality. The ACC Report found that although digital platforms may not produce original news, their role in the news ecosystem is beyond that of an intermediary as they curate, rank, arrange content for display, and evaluate news content against specific criteria.<sup>13</sup> The role platforms play is a cross between that of a publisher, an editor, and a distributor. Consumers, publishers, and even regulators, have no insight into how platforms' algorithms decide what content will be distributed to the Canadian public. When platforms change their algorithms, publishers can unexpectedly disappear from news feeds without explanation and without recourse. Removal from a single platform can decrease a news publishers' website traffic by 25-30%.

The overall cultural policy objectives of safeguarding, enriching and strengthening the cultural, political social and economic fabric of Canada as set out in Sections 3 (1)(d)(i) of the Broadcasting Act, will be increasingly challenging to achieve if platforms' content distribution practices continue to be excluded from any regulatory oversight.

Globally governments have grappled with the challenges posed by algorithms. In Australia, competition authorities have recommended platforms' ranking of news content be monitored, investigated, and reported on by regulatory authorities.<sup>14</sup> Likewise in the UK, the House of Commons' Digital, Culture, Media and Sports Committee recommended the auditing of algorithms by regulatory authorities.<sup>15</sup>

## *Access to Canadian Digital Audiences and Ownership of Customer Data*

The consolidation of digital audiences on platforms and the resulting control of platforms' access to that audience is concerning. Canadians using mobile devices are more likely to

---

<sup>12</sup> The Public Policy Forum, *The Shattered Mirror, News Democracy and Trust in the Digital Age*, Jan. 2017.

<sup>13</sup> *Supra* note 1, section 4.4.2, pg. 129.

<sup>14</sup> *Supra* note 1, Preliminary Recommendation 4, pg11.

<sup>15</sup> UK, House of Commons Digital, Culture, Media and Sport Committee, *Disinformation and 'Fake News' Interim Report*, July 29, 2018, pg.67, Recommendation 23.

<https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>.

# THE GLOBE AND MAIL

access news through a platform, particularly mobile users in younger demographics. Preloaded news aggregation services on mobile devices solidify the gatekeeping role of platforms. The rise of mobile usage has resulted in fewer visits to individual news websites. Currently over 50% of Canadian news publishers' website traffic is referred by platforms, a trend that is consistent with experiences of news publishers in other jurisdictions. Platforms increasingly play the role of gatekeeper to Canadian audiences. Platforms unilaterally set the terms of engagement for dissemination of content through their platforms. Publishers must invest resources to produce content that meets the requirements of each platform, and accept the commercial terms set by platforms or risk losing access to its audience. These terms can be unilaterally changed with minimum notice to publishers.

It not only poses a threat of commercial imbalance, but also raises a concern of brand control. As the News Media Alliance noted in their submissions to the Cairncross Review, platforms often require publishers to display their content in a uniform, homogenized format that eliminates distinctions between brands, and between high-quality news and clickbait, making it unsurprising that the rise of fake news coincides with the rise of online platforms as intermediaries of news content.<sup>16</sup>

The best defense to fake news is the availability and visibility of quality news content. The Globe has been at the forefront of championing the importance of trusted news online, taking a leadership role in the Trust Project, an international consortium of news organizations focused on building transparency and working with platforms to amplify quality news available to the public. It has been several years in the making but is beginning to gain acceptance as a global standard. While it is a step in the right direction, more is needed to ensure trusted news brands remain readily accessible and quality news is prioritized.

## *Platforms as “walled gardens”, erosion of subscription revenues and lack of negotiation in commercial agreements*

Platforms not only determine the criteria for prioritizing content, but increasingly are determining whether Canadians clicking on news links are directed to publishers' websites, or accessed only within the platform itself. The separation of publishers from their audience deprives publishers of valuable customer data. Platforms share little information with news publishers, depriving publishers of valuable insight from user data. As news organizations increasingly rely on subscription models, our ability to understand our audience is essential. The scale of audience that platforms control leave publishers with a risk of losing relevancy if they choose to not engage with platform services.

Platforms are beginning to offer one-click subscription options for publishers, which facilitates seamless payment options for customers, but will take a revenue share of publishers' future subscription revenues. The revenue share imposed for use of these

---

<sup>16</sup> News Media Alliance, *Evidence of the News Media Alliance for the Cairncross Review on Sustainability of High-quality Journalism in the United Kingdom*, Sept. 7, 2018, <https://www.newsmediaalliance.org/wp-content/uploads/2018/09/NMA-UK-Review-FINAL.pdf>. (last accessed 4 Jan. 2019)

services is expected to cost publishers between 15%-30% of subscriptions purchased through platforms. In its submission to ACC, NewsCorp Australia suggested at least one platform had imposed most favoured nations provisions in their arrangements with news publishers.<sup>17</sup> There is also considerable doubt over the ownership and use of customer data for news publishers in these arrangements.

The overriding concern is the grossly unequal bargaining power of platforms and news publishers. There is no ability for Canadian publishers to negotiate with platforms. As the News Media Alliance stated in their submissions to the Cairncross Review, “platforms’ dominance gives them incredible viewpoint control and economic power over news publishers, many of which do not have the capability or leverage to negotiate or push back against practices imposed by those platforms, whether it comes to directing traffic handling data or digital advertising technologies.”<sup>18</sup> Platforms provide their services on a take it or leave it basis, often using click through agreements. There is no real ability to discuss concerns about their services, much less negotiate for compensation for the use of content.

## **6. Recommendations**

Cultural policies were not designed for the digital age but the core principles they were intended to protect remain essential: diversity of voice, ensuring the priority and discoverability of content with high cultural value, and protecting against abuse of dominance. The exclusion of digital platforms from regulatory oversight is a gap that needs to be addressed for cultural policies to remain effective.

A direct replication of all obligations imposed through broadcasting legislation does not make sense in a digital context, but imposing some obligations on digital participants is appropriate. Broadcasting policies of 1) ensuring an appropriate contribution is made to the creation and presentation of Canadian content by participants and, 2) ensuring priority carriage and placement of Canadian content, are particularly relevant in the digital environment. As these policies are adapted for the digital environment, the protection provided by such policies needs to extend beyond broadcast to include news produced in text form as well.

Broadcasting Act policies that should be adapted for the digital environment should prioritize:

### **1) funding the production of Canadian news content produced by Canadian publishers and broadcasters**

The role of platforms in the Canadian communication landscape necessitates that platforms contribute to the production costs of Canadian content, particularly Canadian news content. This may be achievable by increasing the digital rights of content producers and imposing

---

<sup>17</sup> News Corp Australia, *Submission to the Australian Competition and Consumer Commission*, Apr. 20, 2018, <https://www.accc.gov.au/system/files/News%20Corp%20Australia%20%28April%202018%29.pdf>. (last accessed 2 Jan. 2019)

<sup>18</sup> *Supra* note 16.

# THE GLOBE AND MAIL

Canadian content display obligations on platforms if combined with ongoing monitoring by regulatory authorities. Legislative change should ensure regulatory authorities have the appropriate powers to take stronger action if necessary, such as requiring platforms negotiate terms of trade agreements with news publishers or requiring platforms to contribute to funding bodies, like a CMF.

Different genres of content require different financial investments. All content does not need to be funded in the same manner however care needs to be taken to ensure funding is equitable. Legislation should provide regulatory authorities with a mandate to consider the impact on the overall Canadian news industry of any initiatives contemplated to support regulated news producers.

## **2) ensuring the prominence of Canadian news in the digital environment**

Algorithms should prioritize news stories that are flagged as important by Canadian news producers. Though the Broadcasting Act's Canadian ownership and control requirements have no application in the digital content ecosystem, Canadians should determine what Canadian news and information is essential to ensure it is broadly disseminated to Canadians. Democracy requires a free press. Regulation of news publishers is inappropriate in a democratic country however, oversight over platform services that are determining which of the free press' content Canadians access is appropriate.

Public broadcasters in the UK have called for regulators to modernize legislation to ensure their content is guaranteed prominence in a digital environment.<sup>19</sup> Considering the function of news in a democracy, news from a variety of sources requires similar legislative protection. Policy discussions of prominence and cultural priorities in an environment of limitless content are likely to continue in many jurisdictions for considerable time. Changes to the Broadcasting Act should ensure regulatory authorities have the flexibility necessary to ensure the prominence of specific Canadian content genres in the digital environment as technology evolves.

## **3) preventing abuse of dominance in the digital economy and ensuring access to Canadian audiences on fair terms**

Developing legislative tools to address issues of platform dominance in commercial context has varied in other jurisdictions. Countries are only beginning to grapple with how to address the uneven bargaining power of global platforms vis a vis both individual users and businesses. Competition authorities in Australia are considering creating a digital platforms ombudsman to deal with complaints about platforms from consumers, media companies and other businesses.<sup>20</sup> Last year the EU proposed regulations to promote "fairness and transparency for business users of online intermediation services."<sup>21</sup> We

---

<sup>19</sup>Letters, *Don't let tech giants bury public service tv*, The Guardian, Oct. 15, 2018, <https://www.theguardian.com/media/2018/oct/15/dont-let-tech-giants-bury-public-service-tv>. (last accessed 10 Jan. 2019)

<sup>20</sup> *Supra* note 1, section 4, pg. 16.

<sup>21</sup> European Commission, *Proposal for a Regulation of The European Parliament and of The Council on promoting fairness and transparency for business users of online intermediation services*, 2018,

# THE GLOBE AND MAIL

believe the issue of dominance in the digital economy requires consideration of both competition and cultural implications. A new regulatory authority is not needed in Canada. We feel the CRTC is best positioned to provide oversight and consider platforms' impact on the digital economy. This should be done in collaboration with the Competition Bureau to ensure reviews include assessments of both economic and cultural impacts. Legislative change should ensure regulators have broad powers to create an equitable digital economy for Canadian content. In particular, regulators should have authority to 1) require platforms to negotiate commercial terms and, 2) mandate sharing of audience and content performance data to ensure all digital participants have the information necessary to innovate their products.

To encourage innovation and avoid unnecessary administrative burden, legislation should apply to platforms that exceed user or advertising revenue thresholds. This approach would be similar to the criteria set by Germany when creating hate speech legislation (user based threshold) and the recommendations set out in the ACC Report (advertising revenue threshold).<sup>22</sup>

We would like to thank the Panel for considering these comments. The Globe would be happy to engage further with the Panel on recommendations to support Canadian news.

---

<https://ec.europa.eu/digital-single-market/en/news/regulation-promoting-fairness-and-transparency-business-users-online-intermediation-services>.

<sup>22</sup> Cathleen Berger, *Content and platform regulation: the German case and what's to come in 2018*, Medium, Dec. 30, 2017, <https://medium.com/@cberger/will-germanys-approach-to-content-and-platform-regulation-prevail-in-2018-d7e6e2db5cb> (last accessed 9 Jan. 2019) and *Supra* note 1, pg.11, Preliminary Recommendation 4.