

Amendments to the Broadcasting Act — Canada's Broadcasting Landscape Refreshed

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Background

As the world eagerly awaited the result of the US election on November 3, 2020, the Government of Canada decided to shake things up by introducing Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to the other Acts* for first reading in the House of Commons.¹

Bill C-10 includes a variety of proposed amendments to the *Broadcasting Act*, which are intended to expand the authority of Canada's broadcasting regulator, the Canadian-Radio television and Telecommunications Commission (CRTC) and create a framework within which online media broadcasters may enhance their contribution to the Canadian broadcasting landscape. The full text of the Bill can be found [here](#). The Department of Canadian Heritage's news release and background on the proposed amendments are also available online.

Bill C-10 marks a milestone in Canadian broadcasting regulation. Over the last 20 years, the CRTC has convened periodic consultations to review the Canadian broadcasting landscape, to receive input from stakeholders and consumers, and to assess whether the policy objectives of the *Broadcasting Act* continue to be met given rapid technological innovation in the delivery of broadcast services and the ever-expanding borderless nature of content delivery. While recognizing that new media digital and internet content delivery platforms do fall with the definition of "broadcasting" for the purposes of the *Broadcasting Act*, the CRTC has, until now, chosen to exempt new media and internet/online based content delivery platforms from broadcast licensing and regulation through the promulgation of successive *Digital Media Exemption Orders*.

The amendments proposed in Bill C-10 are linked closely to recommendations outlined in the January 2020 *Final Report of the Broadcasting and Telecommunications Legislative Review Panel*, commonly referred to as the Yale Report. The review panel mandate, as reflected in the Yale Report, was to ensure that all content providers offer meaningful levels of Canadian content in their catalogues, contribute to the creation of Canadian content, and promote Canadian content by making it easily accessible on their platforms.

Key Proposals

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Bill C-10 proposes the following key amendments to the *Broadcasting Act*:

- **Regulating Online Service Providers:** At present, online undertakings that deliver audio and audio-visual content over the Internet are exempt from licensing and most other regulatory requirements, by reason of the CRTC's current *Digital Media Exemption Order*. Bill C-10 would make "online undertakings" a defined class of broadcasting undertakings under the *Broadcasting Act*, which would give the CRTC the explicit authority to require online services, including OTT platforms, to promote and contribute further to the creation of Canadian content. The CRTC would also have the authority to enforce these requirements.
- **Canada's Broadcasting Policy:** The broadcasting policy established in the *Broadcasting Act* is to be clarified to reflect the diversified interests and backgrounds of all Canadians, including those from racialized communities, with diverse cultural backgrounds, and of different socioeconomic statuses, abilities and disabilities, and sexual orientation. Emphasis is also to be placed on entertainment and programming that properly reflects Indigenous cultures of Canada.
- **Regulatory Approach:** Bill C-10 proposes a significant expansion of CRTC powers to impose new regulations on all or some classes of broadcasting undertakings, ultimately giving the CRTC the power to require online platforms, including streaming services, to enhance their existing financial support of Canadian content in areas such as television, film, and music. It would also give the CRTC authoritative power to require broadcasting undertakings to provide financial support for public participation in CRTC proceedings.
- **Administrative Penalties:** Bill C-10 also proposes amendments that would authorize the CRTC to impose administrative monetary penalties for violations of certain provisions of the *Broadcasting Act*, including failing to comply with regulations or orders or to submit required information to the CRTC.
- **Oversight of Canadian Broadcasting System:** Bill C-10 also contains proposals to modify broadcast regulatory oversight of the Canadian broadcasting system, including the processes by which the Governor-in-Council can issue policy directions to the CRTC and set aside decisions of the CRTC to issue, amend, or renew licences and send certain decisions back to the CRTC for reconsideration and hearing.

In many respects, the proposed amendments are consistent with the recommendations in the Yale Report. However, not all of those recommendations made their way into Bill C-10. For example, the Yale Report recommended establishing a single public institution tasked with funding the creation, production, and discoverability of Canadian productions on all screens, which would combine the current functions of the Canada Media Fund and Telefilm Canada; that the federal government require providers of foreign media content to collect and remit sales tax on Canadian sales; and that user content on social media be directly regulated. Those measures are all notably absent from the proposed legislation.

Next Steps

If Bill C-10 becomes law, the Government of Canada will expect the CRTC to initiate a number of regulatory

proceedings and measures implementing the modifications to the *Broadcasting Act*. As usual, the devil will be in the details.

According to government estimates, if the CRTC mandates online broadcasters to contribute to Canadian content at comparable rates to those paid by traditional broadcasters, online broadcasters could be required to invest more than \$800 million in Canadian content by 2023. But it is far from clear that the CRTC will do so — or what the effect of doing so might be on the hundreds of millions of dollars that major OTT services already spend on Canadian production. It is also unclear whether Canada will take its direction from trends now emerging in other countries, such as Australia and France, or chart its own course toward a made-in-Canada approach to OTT regulation.

About all that can be said with certainty is that the next several months will be interesting for broadcasters, distributors, OTT platforms, producers, and consumers alike. For these and other stakeholders, the stakes could not be higher.

The Entertainment & Sports Group at Cassels will continue to track major legislative and regulatory developments and provide updates as they evolve.

¹ Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, 2nd Sess, 43rd Parl, 2020.
