

The Government of Canada Introduces the Online Streaming Act to Modernize the Broadcasting Act

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Background

The last major update to the *Broadcasting Act* occurred in 1991, more than three decades ago. The Government of Canada has now made it a priority to modernize the *Broadcasting Act* in order to address the current broadcasting landscape and the rapidity of technological change. To that end, on February 2, 2022, the government introduced Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* (the *Online Streaming Act*) for first reading in the House of Commons.¹

The *Online Streaming Act* revives and reworks its predecessor, Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to the other Acts*, which was first introduced to the House of Commons in November 2020² but died on the order paper with the end of the previous Parliamentary session (see our article on Bill C-10 here).

The *Online Streaming Act* would usher in a new era of broadcasting regulation in Canada by expanding the authority and powers of Canada's broadcasting regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), and would bring online broadcasters—including online streaming platforms—under the same regulatory framework as traditional broadcasters providing services and content in Canada. Although the CRTC has long recognized that new media digital and internet content delivery platforms do fall within the definition of “broadcasting” for the purposes of the *Broadcasting Act*, it has chosen until now to exempt these platforms from broadcast licensing and regulation through the promulgation of successive *Digital Media Exemption Orders*. That would change with the *Online Streaming Act*.

The proposed amendments to the *Broadcasting Act* also aim to create more opportunities to showcase and support Canadian talent, including by granting the CRTC the power to require online broadcasters and over-the-top (OTT) platforms to make financial contributions in support of Canadian creators and programming (as traditional broadcasters are already obligated to do).

The amendments proposed in the *Online Streaming Act* largely reflect the recommendations outlined in the January 2020 *Final Report of the Broadcasting and Telecommunications Legislative Review Panel*,

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commonly referred to as the Yale Report. The review panel's mandate was to consider how to renew the regulatory framework for the communications sector and to support the creation, production, and discoverability of Canadian content, all with a view to ensuring that Canada's broadcasting regime would be able to adapt to ever-evolving cultural and technological developments.

The full text of the *Online Streaming Act* can be found [here](#). The Department of Canadian Heritage's news release and background on the proposed amendments are also available online.

Key Proposals

The *Online Streaming Act* 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 due to the CRTC's current *Digital Media Exemption Order*. As with Bill C-10, the *Online Streaming Act* 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 *Online Streaming Act* also clarifies that the *Broadcasting Act* does not apply to programs uploaded to an online undertaking that provides a social media service by a user of that service unless the programs are prescribed by regulation, and that an online undertaking that provides a social media service does not, for the purposes of the *Broadcasting Act*, exercise programming control over programs uploaded by a user of that service. In other words, if the *Online Streaming Act* is passed, the *Broadcasting Act* will apply to *platforms*, not to individual users of social media or programs created by those users.
- **Canada's Broadcasting Policy:** The broadcasting policy established in the *Broadcasting Act* is to be updated to be more inclusive of all Canadians, including those from racialized communities and diverse ethnocultural backgrounds, socioeconomic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages. In addition, under the revamped broadcasting policy, the Canadian broadcasting system should provide opportunities to Indigenous people to produce programming in Indigenous languages, support the production and broadcasting of original programs in French, enhance the vitality of English and French linguistic minority communities in Canada by supporting the production and broadcasting of original programs by and for those communities, and support community broadcasting and Canadian independent broadcasting.
- **Regulatory Approach:** The *Online Streaming Act* would grant the CRTC more expansive powers to impose new regulations on various classes of broadcasting undertakings. As with Bill C-10, the *Online Streaming Act* would grant the CRTC the power to require broadcasting undertakings, including online undertakings such as streaming services, to make financial contributions for the

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purposes of developing, financing, producing, or promoting Canadian content or supporting, promoting, or training Canadian creators. In addition, the CRTC would have the power to require broadcasting undertakings to provide financial support for public participation in CRTC proceedings.

- **Administrative Monetary Penalties:** As has become a trend in Canadian federal regulation generally, the *Online Streaming Act*, like Bill C-10 before it, would authorize the CRTC to impose administrative monetary penalties (AMPs) 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:** Like Bill C-10, the *Online Streaming Act* contains proposals to modify the CRTC's 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.
- **Provision of Information:** The *Online Streaming Act* also includes amendments that address the protection of confidential information obtained by the CRTC and the provision of certain information to the Minister of Canadian Heritage, the Chief Statistician of Canada, and the Commissioner of Competition. Under these amendments, the CRTC may disclose information to the Commissioner of Competition upon the Commissioner of Competition's request if the CRTC determines that the information is relevant to competition issues being considered in a proceeding or with respect to another matter.

The *Online Streaming Act* largely reintroduces and expands upon the proposals that were put forth in Bill C-10 previously. As described above, some of the notable changes from Bill C-10 in the *Online Streaming Act* include a more robust and inclusive broadcasting policy statement and clarification that users of online undertakings with social media components will not be regulated by the CRTC when they generate and post content to their own channels. This latter change was likely the result of the criticism levied at Bill C-10 for potentially granting the CRTC the power to regulate individual users' social media channels and thereby limit their freedom of expression.

The proposed amendments are consistent with several of the recommendations in the Yale Report. However, as with Bill C-10, not all of those recommendations have been included in the *Online Streaming Act*. 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. It also proposed that user content on social media be directly regulated. Both of those measures were notably absent from Bill C-10 and remain absent from the *Online Streaming Act*.

Next Steps

If the *Online Streaming Act* becomes law, the Canadian Minister of Heritage will ask the Cabinet to issue a

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policy direction to the CRTC on how it should implement its new regulatory powers under the *Broadcasting Act*. Through consultation with stakeholders, the CRTC will then develop regulations to require that both traditional and online broadcasting services offer meaningful levels of Canadian content in both official languages.

It will be imperative then for broadcasters, distributors, OTT platforms, producers, rights owners, and consumers to keep a close watch on the incoming legislative and regulatory updates as the *Online Streaming Act* is further refined through the legislative process.

Cassels will continue to closely monitor these legislative and regulatory developments and will provide further updates as they evolve.

¹ Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, 1st Sess, 44th Parl, 2022.

² 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.

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