

A New Era of Broadcasting Regulation Begins: The Online Streaming Act Receives Royal Assent

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On April 27, 2023, Bill C-11, also known as the *Online Streaming Act*, received royal assent, becoming law more than two years after the precursor Bill C-10 was tabled by the former Liberal government and died on the order paper, and after nearly 15 months of extensive parliamentary debate and public controversy. The *Online Streaming Act* serves as the most expansive refresh of the Canadian *Broadcasting Act* in over 30 years, responding to rapid technological change by providing, among other things, a framework for the regulation of online broadcasters, including online streaming platforms.

Importantly, among other amendments, the *Online Streaming Act* expands the classes of “broadcasting undertakings” in the *Broadcasting Act* by establishing and codifying a new class of “online undertaking,” defined as “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.”¹ The new “online undertaking” category is intended to encompass online broadcasters and over-the-top (OTT) platforms. This means that the Canadian Radio-television and Telecommunications Commission (CRTC) will now have the legislative authority to commence a public consultation process, either on its own initiative or in response to a policy direction from the federal cabinet or the Minister of Canadian Heritage, and eventually promulgate and enforce CRTC public policy applicable to online undertakings. That could include requirements related to licensing or notice registration, Canadian content presence on online undertakings broadcasting into Canada, financial contribution benefits to the Canada content production sector, and adherence to other CRTC policies of general application.

While the CRTC already had the inherent authority to regulate online broadcasters, including OTT platforms, it has lacked the specific governmental direction and policy statements in the *Broadcasting Act* to do so. It has also lacked the authoritative tools and remedies to enforce compliance over foreign online broadcasters and OTT platforms. Instead, it has monitored this sector over the years, without regulating it, by issuing successive *Digital Media Exemption Orders*.

The introduction of “online undertakings” to the *Broadcasting Act* has been the most widely discussed aspect of the *Online Streaming Act*. However, the legislation also introduces other amendments related to Canada’s larger broadcasting policy and regulatory approach. For a more comprehensive primer on all of the key amendments introduced by the *Online Streaming Act*, see our previous Cassels Comment [here](#).

Application to Social Media Platforms and User-Generated Content

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The passage of the *Online Streaming Act* marks the culmination of years of debate and controversy about the bill and its predecessor, particularly regarding how social media and user-generated content will be affected by the new amendments to the *Broadcasting Act*.

One of the main concerns with Bill C-11 has been the definition of “online undertaking,” which some have argued does not differentiate clearly enough between regulated online undertakings and unregulated social media content producers. It has been argued that the broad definition of “online undertakings” could expand the CRTC’s powers to regulate user-generated content (UGC) by individual content creators on platforms like YouTube and TikTok, which may not be covered by the general social media exemption. Some have depicted this potential regulation as a form of government censorship. While the government has stated publicly that the *Online Streaming Act* is not intended to capture UGC, it also rejected a late amendment from the Senate that would have explicitly clarified that the *Online Streaming Act* does not apply to UGC.

Section 4 of the *Online Streaming Act* specifically carves out an exception for “a program that is uploaded to an online undertaking that provides a social media service by a user of the service for transmission over the Internet and reception by other users of the service,” unless the program is “uploaded to the social media service by the provider of the service or the provider’s affiliate, or by the agent or mandatary of either of them.”² However, it is unclear to what extent UGC is actually excluded from the *Online Streaming Act*, especially given the rapid pace of technological innovation and anticipated developments in UGC and its delivery.

Next Steps on Implementation

As with all things legislative, the devil is in the details. In the case of the *Online Streaming Act*, much will depend upon CRTC regulatory policy and, if necessary, judicial interpretation of the legislation.

Within the next month, the Minister of Canadian Heritage is expected to release a draft policy direction, setting out the government’s priorities for the new regulatory process applicable to online undertakings.³ Of interest, it is anticipated that the policy direction will also direct the CRTC to modernize the official definition of “Canadian film or television program.” That could affect the film and television industry on a greater scale, from tax credit eligibility to how broadcasters satisfy their Canadian content requirements.

After a public consultation period, the policy direction will be finalized to inform the work of the CRTC. At that point, the CRTC will examine the issues and issue a notice of consultation inviting foreign and domestic stakeholders and the public to make submissions. It will then convene a public hearing process and eventually issue a new Broadcasting Policy that addresses online undertakings and other issues raised by the policy direction. While it is too early to offer any definitive timeline for this process, the CRTC has traditionally taken anywhere from six months to a year or more to conduct similar public consultations and issue decisions in matters of similar importance.

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For more information about how the *Online Streaming Act* could affect your business, contact any member of our Entertainment & Sports or Intellectual Property Groups.

¹ Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, s 2(2) (*Online Streaming Act*).

² *Online Streaming Act*, ss 4.1(1)-(2).

³ Canadian Heritage, "Online Streaming Act receives Royal Assent" (27 April 2023).

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