

CanCon Changes to Come? CRTC Report Summarizes Stakeholder Input on a New Definition of Canadian Content

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The modernization of the broadcasting regulatory landscape in Canada continues to move forward. Following a series of public workshops that took place in early 2024, the Canadian Radio-television and Telecommunications Commission (CRTC) released its active listening “What We Heard Report” regarding a potential redefinition of “Canadian content” (CanCon) for use as part of the CRTC’s program certification process. The report summarizes the results of interviews with key stakeholders in the Canadian content production and broadcasting industries and provides some early signals as to how the CRTC might modernize its definition of CanCon. As a matter of consistency, it is likely that a modernized definition of CanCon for CRTC purposes will also find its way into other broadcasting and production sectors, especially in connection with qualification for valuable Canadian Film or Video Production Tax Credits.

Background

For the past year and a half, one of the CRTC’s priority projects has been the modernization of the regulatory framework for Canada’s broadcasting and media production industries. As discussed in our previous [Cassels Comment](#), this modernization process started when the *Online Streaming Act* received royal assent in April 2023. Among other changes, the *Online Streaming Act* amended the *Broadcasting Act* to establish “online undertakings” as a new class of “broadcasting undertakings” that are subject to the CRTC’s regulation.

Shortly after the *Online Streaming Act* received royal assent, the CRTC [published an extensive, multi-phase Regulatory Plan](#) outlining the steps it intended to take to develop and implement a refreshed regulatory framework for the Canadian broadcasting industry. Following the release of that Regulatory Plan, the CRTC has been hosting various public consultations to gather both industry stakeholder and public input on a proposed update to Canada’s broadcasting regulatory framework.

One potential update referenced in the CRTC’s Regulatory Plan is a revised definition of CanCon to align with the modern realities of Canadian domestic and global production of film and television content. Currently, when certifying whether a film or television program is “Canadian” for the purpose of various Canadian content broadcasting requirements, the CRTC uses a points system in which a program earns “CanCon points” based on how many of the key creative positions in the program’s production (such as directors, screenwriters, and editors) are held by Canadians. In most cases, to be certified as a Canadian

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program by the CRTC, a program must receive at least 6 out of 10 possible CanCon points and be produced by a Canadian producer who retains creative and financial control over the entirety of production from development until exploitation.

The current system has been a source of significant debate for several years. Specifically, stakeholders have been divided on the strict requirement that every certified production have a Canadian producer who retains creative and financial control over the entirety of the production. Supporters of the current approach argue that Canadian ownership and control over a production is essential to maintain a program's Canadian identity and that this requirement prevents foreign producers from monopolizing the "Canadian" content sector. However, critics of the current approach argue that in an era of film and television production marked by increased foreign investment and globalization where financing must be sought internationally and also from potential sources of distribution and exploitation, the current Canadian control requirement acts as an obstacle inhibiting (rather than enabling) commercial exploitation of productions which otherwise have a strong Canadian identity, that feature Canadians in key creative and technical roles, and that would otherwise satisfy the CRTC's "6 points" requirement..

In recognition of this ongoing debate, the CRTC earlier this year initiated a process to potentially update its definition of CanCon. Between February and March of 2024, the CRTC held private, cross-Canada workshops with 382 stakeholders to listen to concerns, opinions, and points of view regarding the CRTC's current definition of CanCon.

The "What We Heard" Report

The CRTC [published its "What We Heard" report in September 2024](#), outlining the results of its active listening private workshops. The CRTC notes in the report that the workshops served their purpose by providing knowledge-sharing opportunities between stakeholders and the CRTC and by allowing both sides to gain a deeper understanding of current challenges faced within the industry.

The report is divided into four key areas that were discussed with the workshop participants:

- **Cultural Elements:** A prominent theme that emerged from the workshops was the difficulty in creating a definition of "Canadian" that fully encapsulates Canada's wide range of cultures and experiences. While most participants agreed that a principal goal of a CanCon definition should be to encourage Canadians serving in key creative and technical roles within productions in order to imbue productions with a Canadian point of view, participants were split on whether an updated definition should include explicit Canadian cultural requirements. Several participants cautioned that including explicitly cultural aspects in the definition could raise issues of subjective bias, exclude diverse perspectives, and limit internationally marketable productions. The workshops also explored the connection between Canadian culture and financial control. While some participants took the

position that most of a Canadian production's financial control should be in Canadians' hands in order to ensure Canadian content, others noted the practical difficulties that this can cause when it comes to obtaining funding for projects from international investors who expect industry standard lending and investment contractual and banking terms.

- **Economic Elements:** The report highlights the collective acknowledgement from stakeholders that while foreign location service (FLS) productions can positively impact income and training opportunities for Canadians, they can also lead to a reduction in CanCon productions. Participants also recognized the ongoing tensions between the role of domestic investment and foreign investment in Canadian productions, as many participants noted the importance of domestic investment to ensure reinvestment in future Canadian productions. However, many stakeholders expressed concern that the current CanCon certification process does not offer sufficient flexibility and thus acts as a deterrent for foreign investment opportunities that otherwise benefit Canadian broadcast and production workers.
- **Intellectual Property (Copyright):** An ongoing industry debate that unsurprisingly emerged during the workshops is whether an updated definition of CanCon should mandate that the copyright in a film or television program be owned by Canadians (a requirement that already appears in the definition of "Canadian content" used by the Canadian Audio-Visual Certification Office for tax credit purposes). Many participants believed that including a copyright ownership requirement in the definition promotes financial stability and reinvestment in the Canadian production industry. Others felt that Canadian copyright ownership should be incentivized, rather than outright mandated, in order to maintain flexibility that encourages foreign investment in Canadian productions. Participants expressed a wide range of concerns and potential solutions on this issue, including ensuring that an updated CanCon definition not unduly limit Canadian producer options to sell or license intellectual property rights to foreign entities, or potentially crafting a definition that mandates that only a *portion* of the copyright in a program be owned by Canadians instead of the entire copyright interest.
- **Diversity & Inclusion:** The CRTC asked participants about barriers to entry in an industry that impacts equity-deserving groups and what role the definition of CanCon should play in supporting those groups. Many participants expressed a desire that the CRTC take a more active role in informing, assisting, and consulting with equity-seeking communities so that they might acquire a better understanding of the certification process. The general consensus was that rather than adjusting the definition of CanCon to explicitly include diversity, equity and inclusion requirements, the CRTC should increase its efforts to directly address the systemic barriers faced by marginalized or equity-seeking groups in the production and broadcasting industries. The workshops included some discussion about updating the CanCon points system to benefit productions with crews that have more diverse representation, but some participants noted that this could lead to negative outcomes as a result of tokenism and self-identification issues.

Key Takeaways

The discussions with key industry stakeholders, as summarized in the CRTC's report, exemplifies the wide range of opinions in the Canadian broadcasting and production industry and underscores the realization that content exploitation and its financing has become an international and borderless enterprise. Participating stakeholders agreed overall that any updated CanCon definition should not introduce significant new complexity in the Canadian content certification system. However, the workshops demonstrate that there is still disagreement on what a "simpler" and more flexible system should look like, and how a CanCon definition can best enable Canada's domestic production industry to increase diverse Canadian perspectives and "Canadian voices" while allowing for beneficial funding, promotion and viewership opportunities that foreign investors and producers often bring to the table. While participants' specific positions varied, most appeared to agree that the rapid changes in the manner by which Canadians consume and contribute to film and television content necessities at least some re-evaluation of the current certification approach.

While the process to update the CanCon definition is still in its very early stages – the CRTC has indicated that it intends to follow up on these private workshops with a larger public consultation – these workshops present an early sign that the CRTC is alert to the need to balance the fostering of Canadian identity with preserving a growing role for foreign investors and producers to participate in creating opportunities for Canadian service production workers and promoting content made in collaboration with Canadian creatives and technical personnel. As a result, a key question going forward is whether the CRTC will do away with the current "all or nothing" approach when it comes to Canadian financial and creative control over a production in favour of a more flexible approach that gives equal or greater weight to Canadian service production work and/or Canadian contributions in key creative and technical roles.

The Cassels [Entertainment & Sports Group](#) has been closely following the updates to Canada's broadcasting system since the *Online Streaming Act* was first introduced. If you have any questions about the content of this article or how the *Online Streaming Act* and the CRTC's regulatory efforts may impact your business, please contact any member of our group.

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