



Canada's Trade-Restrictive Digital Agenda

The Online Streaming Act, the Online News Act, and the Digital Services Tax

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Introduction

In a swift departure from a long-standing positive trade relationship, the Canadian Government has recently pursued an aggressive agenda to target U.S. firms with sector-specific regulation. This agenda includes a legislative proposal to extract revenue from U.S. digital services suppliers to effectively subsidize local incumbents, a legislative proposal to impose carriage obligations of Canadian content on U.S. digital platform services, and a digital service taxation measure targeting U.S. suppliers. These policies are designed in a way that would fundamentally undermine these platforms' business models and, in some cases, the information-sharing ecosystem of the internet.

Policymakers have made clear their intention in all three cases to target foreign companies to benefit local constituencies. If enacted, these rules would hinder U.S. digital services exports to a key trading partner—overall, U.S. digital services exports to Canada generated \$45.8 billion in 2020 representing 86.7% of U.S. services exports to Canada. As such, digital services mark a vital piece of U.S. trade strategy in North America. These proposed laws could also conflict with several provisions of USMCA and the likely adverse impact on U.S. trade interests, if enacted, could justify U.S. retaliation.

According to estimates from Canadian government officials, if Canada were to enact all three measures it would extract more than C\$10 billion (roughly \$7.3 billion USD) from U.S. digital companies over the next five years.¹

As Canada seeks to expand its trading relationships, including through potential inclusion in the U.S.-led Indo-Pacific Economic Framework, CCIA recommends that Canada avoid initiating targeted restrictions of this nature undermining what has been a mutually beneficial partnership, and demonstrate its commitment to supporting bilateral trade flows and deepening a thriving digital marketplace.

Bill C-11 – The Online Streaming Act

Last year, Canadian Heritage introduced Bill C-11, which seeks to extend the highly restrictive and discriminatory regime Canada imposes on broadcasting to online platforms. The bill would, absent specific exemptions to be later developed, require all foreign online content providers to fund arbitrarily-defined “Canadian content” and to “clearly promote” Canadian programming”. Under Bill C-11, the Canadian Radio-Television and Telecommunications

¹ <https://openparliament.ca/committees/canadian-heritage/44-1/31/pablo-rodriguez-78/?page=7> (Showing that for Bill C-11, Heritage Minister Pablo Rodriguez has said that the government estimates it would generate close to a billion dollars a year); <https://distribution-a617274656661637473.pbo-dpb.ca/cc009955611c336af6d46f82af210ac3445e6c551b3841adae30c1088f487b41> (Showing that for Bill C-18: Canada's Parliamentary Budget Officer has estimated that Google and Facebook would pay \$329.2 million yearly); <https://www.budget.canada.ca/2021/report-rapport/anx1-en.html> (Showing that when first introduced in the 2021 budget, the Canadian government estimated that the digital services taxes would bring in C\$3.4 billion within 5 years).

Commission (CRTC) would be empowered to apply new “discoverability” obligations to any site of service hosting audio or audio-visual content (including “social media services”) which— if pursued—would compel the service to give preferential treatment to Canadian content and creators.

The stated goal of the bill is to require foreign online streaming services to offer more Canadian content by paying to fund the development and creation of Canadian content, potentially requiring a quota of available online content to be “Canadian content”, and ensuring that Canadian content remains a prominent category recommended to users. The government has so far failed to adequately explain the legislation’s impact on user-generated videos on such services, leaving it open for the CRTC to potentially expand such requirements under C-11.

This has profound implications on digital trade and the diversity of content Canadians have benefited from thanks to the open internet, as it likely means non-Canadian audio and audio-visual communications will be demoted. Representatives from the content creation,² content provider,³ academic,⁴ and public interest⁵ communities have opposed the bill.

Status:⁶ The House of Commons passed Bill C-11 for what could be the last time on March 30, 2023. The House accepted the Government’s proposal to reject several of the key amendments made by the Senate relating to the definition of Canadian programming (amendment 7bii) and the applicability of user-generated content (amendment 3) under Bill C-11. Bill C-11 now requires approval from the Senate before receiving Royal Assent and becoming law, unless further amendments are added through the Senate process, which would then require approval from the House of Commons for a third time.

Bill C-18—The Online News Act

In April 2022, Canadian Heritage introduced Bill C-18, the Online News Act, which would empower the Canadian Radio-television and Telecommunications Commission (CRTC) to compel large “digital news intermediaries” to pay groups of news publishers for any piece of, or access to, news content on their services, including links, headlines, and quotes, even if the availability of content and/or links on the platforms were affirmatively generated or otherwise facilitated promoted by the news organization itself.⁷ The legislation, heavily inspired by Australia’s News Media Bargaining Code law, tasks the CRTC with devising a list of online platforms that would be designated as digital news intermediaries under the law based on their “strategic advantage” in the Canadian market.

² <https://twitter.com/DigitalFirstCan/status/1578108990822973440?s=20&t=4gNiqZvUrYP5Humpe2SRlA>;
<https://sencanada.ca/en/committees/TRCM/noticeofmeeting/587687/44-1>; <https://digitalfirstcanada.ca/bills/fix-c11/>

³ https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM_SM-C-11_Brief_Spotify_e.pdf;
https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/2022-10-04_TRCM_Brief_MPA_e.pdf;
<https://kstatic.googleusercontent.com/files/fe33a9d774dbc0645559dd247dd3049218ac5a2a2d9c124f2ed3319191675d579590fe79f159f8c7ad1b4b074d0b8502499b793521bcbaa0ccdeafd8cecccc7d>

⁴ <https://www.michaelgeist.ca/tag/c-11/>

⁵ <https://openmedia.org/article/item/whats-wrong-with-bill-c-11-an-faq#What%20is%20Bill%20C-11>

⁶ As of April 4, 2023.

⁷ <https://www.cciainet.org/wp-content/uploads/2022/09/CCIA-White-Paper-on-Canadas-Bill-C-18-the-Online-News-Act.pdf>



Bill C-18 targets U.S. companies, namely Google and Meta—in the initial House of Commons debate on C-18, U.S. companies were referenced 73 times. Further, Canada’s Parliamentary Budget Office estimated that \$329.2 million would be paid to news publishers annually under the assumption that only Google and Meta would be implicated under the legislation.⁸

Status:⁹ The Senate is considering the legislation, with the next action likely to be referral to the Canadian Senate and the Transport and Communications Committee following the Dec. 14, 2022, vote in the House of Commons passing the legislation.

Digital Services Tax

In the November 3, 2022, Fall Economic Statement, Canada reiterated its commitment to passing proposed legislation that would impose a 3 percent digital services tax and included future collections from this tax among its expected revenue in forthcoming years. In the March 2023 budget, the Canadian Government reiterated its commitment to passing DSTs if the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting is not implemented in 2024.¹⁰ The tax would be imposed on “digital services reliant on the engagement, data and content contributions of Canadian users” and include revenue derived from online marketplaces, social media, and online advertising.¹¹ The thresholds would be set at firms who collect global revenue of 750 million Euros or more per year, and in-scope revenue associated with Canadian users of more than \$20 million per year. This is in opposition to Canada’s endorsement of the OECD/G20 agreement in 2021 that contains a commitment not to pursue digital taxation measures, and implicates the same discriminatory effect that resulted in USTR’s numerous findings, beginning in 2019, of actionable trade restrictions under Section 301 of U.S. trade law.

Status:¹² Currently, there is no timeline for consideration of the legislation in Canadian Parliament, and it remains a draft legislative proposal not yet formally referred to a committee for study. Canada’s government plans to enact DSTs if the OECD framework fails to materialize.

⁸ <https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne>

⁹ As of April 4, 2023.

¹⁰ <https://www.budget.canada.ca/2023/report-rapport/toc-tdm-en.html/>.

¹¹ <https://www.cciagnet.org/wp-content/uploads/2021/06/Comments-of-CCIA-Canada-Digital-Services-Tax-2021.pdf>

¹² As of April 4, 2023.