

COMMENTS ON CANADIAN HERITAGE'S PROPOSED POLICY DIRECTION TO THE CANADIAN RADIO-TELEVISION & TELECOMMUNICATIONS COMMISSION CCIA's Comments to Canadian Heritage in the Canada Gazette, Part I, Volume 157, Number 23¹

We write on behalf of the Computer & Communications Industry Association (CCIA) to respectfully respond to this consultation following the recent passage of Bill C-11, the Online Streaming Act, and its receipt of Royal Assent on April 27, 2023. CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks.² CCIA members invest heavily in the thriving Canadian content sector and deliver music, film, TV, and user-generated content online to Canadian consumers.

The production of domestic content that preserves and promotes cultural heritage is a worthwhile pursuit and we recognize that Canada's aim of C-11 is to adapt such policies to changing technological and market realities. With a view to suggesting a constructive path to minimize any unintended consequences of the legislation to the availability of digital content in Canada, we would like to suggest three steps for consideration as you develop policy guidance for the Canadian Radio and Television Commission (CRTC) to implement this law.

First, CCIA respectfully requests that the rules adopted under the Online Streaming Act acknowledge and support the significant investments made by U.S. and other foreign streaming service providers by specifically recognizing those contributions as qualifying under forthcoming regulations.

Production is currently booming in Canada, with the majority of funding coming from non-Canadian sources that are already adding significant value to the sector and helping protect Canadian heritage through film, TV, and music. Ninety percent of all growth in movies, television, and streaming production in Canada can be attributed to global production and investment.³ In the music and podcasting industries, foreign online suppliers offer a key resource to boost Canadian artists and producers and serve as a venue for Canadian digital exports. Foreign streaming services—by definition—facilitate a great deal of Canada's cultural exports by exposing global audiences to Canadian content (music, film, TV).⁴ As the CRTC

¹ Filed June 26, 2023.

² For more, please go to: www.ccianet.org.

³ Motion Picture Association - Canada, Brief to the Standing Committee on Transport and Communications, 2022-09-30, accessible on Senate of Canada - TRCM website:

https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/2022-10-04_TRCM_Brief_MPA_e.pdf.

⁴ Digital Media Association, Brief to the Standing Committee on Transport and Communications, 2022-08-18, accessible on Senate of Canada - TRCM website:

https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM_Brief_DigitalMediaAssociation_e.pdf;

Spotify, Brief to the Standing Committee on Transport and Communications, 2022-09-15, accessible on Senate of Canada - TRCM website:

implements this law, these investments should be considered as part of any required funding for Canadian content to maximize the benefits both for foreign businesses operating in Canada and their local consumers.

The current definitions for Canadian Content for traditional broadcasters—whose obligations, if extended to online services as suggested by the government’s projections of new revenue generated through the law—generally disincentivize any foreign involvement in production, particularly by mandating that IP rights be owned by Canadian entities and individuals.⁵ This framework should not be replicated for internet-enabled services, whose attractiveness depends on expansive libraries whose growth is affected under rigid production requirements. Further, if there are obligations to spend on Canadian content or separately contribute to a fund dedicated to developing Canadian content through this law, ensuring U.S. companies have the ability to have self-produced (and owned) content qualify and the opportunity to access funding for such production would greatly assist in facilitating a cooperative framework for the implementation of this law.

Second, CCIA requests that mechanisms mandated to promote Canadian content not interfere with technologies designed to respond to consumer interests. The law directs the CRTC to “ensure the discoverability of Canadian programming services and original Canadian programs... in an equitable proportion,” which could lead to interference in companies’ curation of content and recommendations. Sophisticated recommendation engines are one of the key benefits of an interactive video and audio experience for both consumers and content producers, and help expose new artists and creators who may have otherwise not been discovered. The government should clarify that implementing regulations from the CRTC under Bill C-11 will not necessitate changes to companies’ algorithms to promote and make prominent Canadian content.

Third, CCIA requests that content of social media platforms and user-generated content be explicitly exempted from the scope of the law. Although the law specifies that its obligations do not generally extend to social media services, it also provides broad discretion for CRTC to act otherwise and to create rules for monetized content on social media platforms—including user-generated content—if it determines it “necessary.” The uncertainty and potential intrusiveness of regulating the provision of user-generated content looms large for foreign companies (and for content creators, both Canadian and foreign). Clarity over the treatment of user-generated content would reduce the potential harms to businesses operating in Canada which the government could achieve by clarifying that content creators and non-commercial users of social media services should not be regulated as broadcasters, nor should they be

https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM_SM-C-11_Brief_Spotify_e.pdf; Statista, “Music Streaming - Canada”

<https://www.statista.com/outlook/dmo/digital-media/digital-music/music-streaming/canada#users>.

⁵ “Bill C-11 Economic Impact,” accessible on SCRIBD website:

<https://www.scribd.com/document/638251923/Bill-C-11-Economic-Impact-PPT>.



considered for any content quotas, spending obligations, or revenue shares imposed on online platforms.

CCIA has also noted concerns with the Online Streaming Act and its consistency with commitments Canada made in the U.S.-Mexico Canada Agreement (USMCA).⁶ While Canada retains the right to invoke a negotiated exception to protect Canadian cultural industries and pursue measures that would otherwise violate USMCA rules, Canada also agreed that the United States could respond with commensurate actions if such measures adversely affected U.S. suppliers operating in Canada. Implementing the recommendations outlined above could mitigate the need for such actions.

⁶ CCIA, “CCIA White Paper on Canada’s Online Streaming Act (Bill C-11),”
<https://ccianet.org/library/ccia-white-paper-on-canadas-online-streaming-act-bill-c-11/>.