

**PROPOSED AMENDMENTS TO BILL C-10**  
**SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA (SARTEC), November 23, 2020**

The Société des auteurs de radio, télévision et cinéma (SARTEC) represents French-language writers working in film and television for all platforms. Over the years, the SARTEC has filed hundreds of interventions pursuant to the *Broadcasting Act*—a key instrument for Canadian writers.

Bill C-10 (an *Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*) proposes to ensure "fair and equitable" treatment between online broadcasters and traditional broadcasting undertakings. The SARTEC welcomed this aspect of the bill tabled on November 3, 2020 by Minister of Canadian Heritage, Steven Guilbeault.<sup>1</sup> However, the SARTEC respectfully submits that the bill contains features that require important adjustments.

Bill C-10 clearly confirms that undertakings which transmit programs over the Internet, including those on demand, fall under the current Act, whether their activities are carried out in whole or in part in Canada. It encourages the Canadian Radio-television and Telecommunications Commission (CRTC) to take the necessary steps to integrate online undertakings into the Canadian broadcasting system and to establish a more "fair and equitable" regime for the entire system, but in doing so, the bill appears to abandon certain fundamental principles in the current Act and to facilitate the deregulation of licensed Canadian undertakings—a serious mistake. This fall, the termination of the francophone component of the Harold Greenberg Fund served as a reminder of the need for action to ensure that broadcasting undertakings providing content are required to contribute to the ecosystem of our francophone culture. Without the regulatory tools at Canada's disposal, they will not do so.

On behalf of the SARTEC, we would like to draw to your attention seven essential amendments that the Canadian government should make to Bill C-10 to better sustain the writing and production of French-language stories and generate greater cultural, social and economic benefits for our country.

**1. The scope of the Act regarding online services**

The bill provides for the creation of a new category of broadcasting undertakings, the "online undertaking", but also provides that users of social networks, as well as the social networks themselves, be excluded from regulation regarding content published by their users. **In principle, we agree that social networks which allow "sharing" should not be regulated. However, we believe that the new *Broadcasting Act* should not limit the definition of "broadcasting"; rather, it should leave this question to the CRTC to determine what should be regulated.** Should the Canadian government not be

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<sup>1</sup> See our press release, *La SARTEC se réjouit de la modernisation proposée à la législation canadienne sur la radiodiffusion*: <http://www.sartec.qc.ca/nouvelles/496/>

satisfied with the results, it could always issue a direction to the CRTC to establish a "fair and equitable" balance.

## 2. Canadian ownership

Canadian ownership of the broadcasting system is a *sine qua non* for the maintenance and enhancement of Canada's national identity and cultural sovereignty. This is why it is necessary to ensure that the Canadian broadcasting system remains effectively owned and controlled by Canadians. In fact, any abandonment of this principle would contradict one of the terms of reference imposed on the Broadcasting and Telecommunications Legislative Review Panel, which stipulated that "the Government is not interested in a proposal that reduces Canadian ownership of broadcasting."<sup>2</sup> Bill C-10 should retain the paragraph that reads: "The Canadian broadcasting system shall be effectively owned and controlled by Canadians." Leaving this principle to the government's Direction to the CRTC (ineligibility of non-Canadians), as does the bill, would make it vulnerable to the decision of any future government to amend it without recourse to Parliament. **In order to ensure the sustainability of our broadcasting policy, it would be much more judicious to incorporate the Direction to the CRTC (ineligibility of non-Canadians) into the *Broadcasting Act*, as is the case with the Canadian ownership requirements in the *Telecommunications Act*.**

## 3. Use of Canadian creative resources

**In order to ensure the implementation of the broadcasting policy for Canada across different digital devices and platforms, the objectives of the current Act's Section 3 on Canadian content and access to Canadian programs should essentially be maintained in the new version of the Act.** However, Bill C-10 would reduce the reliance on Canadian creative resources by eliminating the obligation of all broadcasting undertakings operating in Canada to make "maximum use, and in no case less than predominant use" of Canadian creative and other resources in the creation and presentation of their programming (unless the nature of the service provided renders that use impracticable). We believe that this principle should be restored in the bill—considering that the current wording of this requirement already provides an exception for cases such as foreign online undertakings.

## 4. Original French-language programs

**The SARTEC considers that the most effective way to ensure that broadcasting undertakings make a significant contribution to the creation and presentation of original French-language content is to include an objective to this effect in Section 3 of the *Broadcasting Act*.** Among other things, this would allow for higher budgets and better quality French-language productions, so that they could better distinguish themselves both nationally and internationally. In fact, this principle was recognized by the recent Order in Council to the CRTC, issued pursuant to the *Act*, referring back to the Commission its

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<sup>2</sup> Broadcasting and Telecommunications Legislative Review, *Terms of Reference*, June 5, 2018, p. 5.  
<http://www.ic.gc.ca/eic/site/110.nsf/fra/00001.html>

decisions regarding the renewal of licences for the television services of large French-language groups for reconsideration of those decisions with respect to original French-language programs.<sup>3</sup> The SARTEC believes that the Act should give greater recognition to Canada's linguistic diversity by making significant room for the production and broadcasting of original, high quality French-language programs, including those of Francophone minorities.

## 5. Programs of national interest

Programs of national interest deserve the recognition in the *Broadcasting Act* that reflects their importance in enhancing Canada's national identity and cultural sovereignty. Under-represented categories, also known as "programs of national interest (PNI)"—dramas, documentaries, programs for youth, and variety and performing arts programs—are the cornerstone of Canadian television programming. According to the CRTC, "drama programming, full-length documentaries, and music, dance and variety programming are the preferred vehicles for conveying Canadian attitudes, opinions, ideas, values and artistic creativity in the French-language market."<sup>4</sup> **It is important to ensure that programs of national interest, particularly drama, hold a central place in the television programming available to Canadians.**

## 6. Duration of orders

The Canadian broadcasting system uses, among other things, frequencies that are in the public domain. Under the current *Broadcasting Act*, the CRTC may grant licences for periods of up to seven years, subject to conditions related to the situation of the licensee, which it considers appropriate for the implementation of the Broadcasting Policy for Canada. Bill C-10 proposes to provide the Commission with the ability to issue a licence for an indeterminate period and to replace the conditions of licence with "conditions of service," by order, for an unspecified period. The SARTEC does not agree with this approach. **Whether broadcasting undertakings are governed by conditions of licence or conditions of service, they should be subject to periodic mandatory review by the Commission and the Canadian public after a period of no more than seven years.**

## 7. Appeals to the Cabinet

If the Cabinet is convinced that a CRTC decision is not consistent with the objectives of the Broadcasting Policy for Canada, the current *Broadcasting Act* allows the Cabinet to set the decision aside or refer it back to the Commission for reconsideration and hearing. Bill C-10 proposes to replace the current conditions of licence with "conditions of service" and to prohibit the appeal of any condition of service to the Cabinet. The SARTEC believes that **orders by the CRTC should also be subject to the possibility of being set aside or referred back to the Commission for reconsideration and hearing. The public must**

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<sup>3</sup> See the Broadcasting Decision CRTC 2018-334.

<sup>4</sup> Broadcasting Decision CRTC 2017-143, *Renewal of licences for the television services of large French-language ownership groups – Preamble to Decision*, par. 49.

**have the right to appeal a CRTC decision that it considers unfair with respect to an order or the issuance of a licence.**

In the following table, we detail the amendments to Bill C-10 proposed by the SARTEC. Before doing so, we would like to emphasize that the *Broadcasting Act* is a key instrument for screenwriters who, along with their industry partners, have made French-language film and television a tremendous success for decades. Finally, here are a few words about our professional association.

### **About the SARTEC**

The Société des auteurs de radio, télévision et cinéma (SARTEC) works to defend and promote the interests of the writers of French-language audiovisual works in Canada. Working on their behalf since 1949, it represents about 1,500 writers working in French in film and television (both traditional and digital), as well as those who adapt works for their dubbing into French. The SARTEC negotiates collective agreements, advises writers on their contracts, promotes respect for their work, and represents them in dealing with institutions, public bodies and other forums.

The SARTEC is a member of a number of Canadian and international organizations, such as the International Affiliation of Writers Guilds (IAWG), the Coalition for Culture and Media (CCM), the Coalition for the Diversity of Cultural Expressions (CDCE) and the International Confederation of Societies of Authors and Composers (CISAC).

## RECOMMENDATIONS TO MODIFY BILL C-10

BROADCASTING ACT	BILL C-10	OUR RECOMMENDATION	EXPLANATION
<b>1. The treatment of online services in the Act</b>			
	<p><i>Section 2 of the Act is amended by adding the following after subsection (2):</i></p> <p><b>Exclusion — carrying on broadcasting undertaking</b></p> <p>(2.1) A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider's affiliate, or the agent or mandatary of either of them — does not, by the fact of that use, carry on a broadcasting undertaking for the purposes of this Act.</p>	Reject.	<p>In principle, we agree that users of social media who "share" content should not be regulated. But it would be much better to give the CRTC the responsibility of determining how to apply the <i>Broadcasting Act</i> with regard to such users. To fulfil its objectives, the Canadian government could, if necessary, issue a directive to the CRTC.</p> <p>See also <b>Non-application — certain programs</b> 4.1 (1).</p>
	<p><i>The Act is amended by adding the following after section 4:</i></p> <p>4.1 (1) This Act does not apply in respect of</p> <p>(a) programs that are uploaded to an online undertaking that provides a social media service by a user of the service — who is not the provider of the service or the provider's affiliate, or the agent</p>	Reject.	See above.

	<p>or mandatory of either of them — for transmission over the Internet and reception by other users of the service; and</p> <p>(b) online undertakings whose broadcasting consists only of such programs.</p> <p><b>For greater certainty</b></p> <p>(2) For greater certainty, subsection (1) does not exclude the application of this Act in respect of a program that is the same as one referred to in paragraph (1)(a) but that is not uploaded as described in that paragraph.</p>		
<b>2. Canadian ownership</b>			
3(1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	(a) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;	<i>Retain the current paragraph:</i> (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	Non-Canadian online undertakings would continue to be a part of the Canadian broadcasting system (as they are now). There is a distinction between the system as a whole and the individual undertakings that comprise that system. The presence of certain companies who are non-Canadian does not affect the control of the system as a whole. See <i>Rogers Communications v. Canada (Attorney General)</i> , (1998) Federal Court of Appeal 145 F.T.R. 79.
<b>3. Use of Canadian creative resources</b>			

3(1)(f) each broadcasting undertaking shall make <u>maximum use, and in no case less than predominant use</u> , of Canadian creative and other resources in the creation and presentation of programming, <u>unless the nature of the service provided by the undertaking</u> , such as specialized content or format or the use of languages other than French and English, <u>renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources</u> ;	(f) each broadcasting undertaking shall make use of Canadian creative and other resources in the creation and presentation of programming <u>to the extent that is appropriate for the nature of the undertaking</u> ;	<i>Retain the current paragraph:</i> (f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;	There is an escape mechanism available to the CRTC in the existing version of this paragraph owing to the use of the expression, "unless the nature of the service provided by the undertaking ... renders that use impracticable". Thus, the Commission can vary a requirement for an online undertaking in accordance with the nature of the undertaking.
<b>4. Original programs in the French language</b>			
3(1)(i) <i>the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,</i>		<i>Paragraph 3(1)(i) of the Act should be amended by adding the following after subparagraph (i):</i> 3 (1)(i.2) recognize and favour Canadian linguistic duality by giving prominence to the <u>production and presentation of original French-language programs, including those of Francophone minorities,</u>	In a 2018 Order pursuant to the <i>Broadcasting Act</i> , the Governor in Council referred the licence renewal decisions for the television services of the large private sector ownership groups back to the CRTC for reconsideration and hearing – so the Commission might review the decisions with regard to original French-language programs. (See Decision CRTC 2018-334)
	<b>Conditions</b> 9.1 (1) <i>The Commission may, in furtherance of its objects, make orders imposing conditions on the</i>	<i>Amend the Act by adding the following after sub-section 9.1(1)(b):</i> (b.1) The proportion of <u>original</u>	See above.

	<i>carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting</i>	French-language programs ensuring that this proportion represents a <u>significant proportion of Canadian programs</u> .	
<b>5. Programs of national interest</b>			
<i>3 (1)(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;</i>		<i>Amend the Act by adding the following after sub-section 3(1)(f):</i> (f.1) : Dramas, long-form documentaries and music and variety programs represent important vehicles to convey Canadian attitudes, opinions, ideas, values and artistic creativity.	The wording of this sub-section is taken from Broadcasting Decision CRTC 2017-143, <i>Renewal of licences for the television services of large French-language ownership groups – Introductory decision</i> . Paragraph 49.
<b>6. Duration of licences and orders</b>			
<b>Licences, etc.</b> 9 (1) Subject to this Part, the Commission may, in furtherance of its objects, (a) establish classes of licences; (b) issue licences for such terms <u>not exceeding seven years</u> and	<i>Paragraphs 9(1)(a) to (h) of the Act are replaced by the following:</i> (a) establish classes of licences other than for online undertakings; (b) issue a licence, the term of which may be <u>indefinite or fixed</u>	<i>Amend Bill C-10 by replacing sub-sections (b), (c), (d) and (e) with the following:</i> (b) issue licences for terms <u>not exceeding seven years</u> ; (c) amend a licence on the application of the licensee or on	The Canadian broadcasting system uses frequencies that are in the public domain. Whether a broadcasting undertaking is regulated by conditions of licence or by conditions of service, its licence should be subject to a



<p>subject to such conditions related to the circumstances of the licensee</p> <p>(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and</p> <p>(ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) and (m);</p> <p>(c) amend any condition of a licence on application of the licensee or, <u>where five years have expired since the issuance or renewal of the licence, on the Commission's own motion</u>;</p> <p>(d) issue renewals of licences for such terms <u>not exceeding seven years</u> and subject to such conditions as comply with paragraph (b);</p> <p>(e) suspend or revoke any licence;</p> <p>(f) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the</p>	<p>by the Commission;</p> <p>(c) amend a licence as to its term, on the application of the licensee;</p> <p>(d) amend a licence <u>other than as to its term</u>, on the application of the licensee or on the Commission's own motion;</p> <p>(e) renew a licence, the term of which may be <u>indefinite or fixed</u> by the Commission; and</p> <p>(f) suspend or revoke a licence.</p>	<p>the Commission's own motion;</p> <p>d) issue renewals of licences for terms <u>not exceeding seven years</u>.</p>	<p>periodic review by the Commission and by the Canadian public.</p>
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facilities of that common carrier; (g) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and (h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.			
	<i>The Act is amended by adding the following after section 9:</i> <b>Conditions</b> 9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting...	9.1 (1) The Commission may, in furtherance of its objects, <u>for terms not exceeding seven years</u> , make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting...	See the explanation above.
<b>7. Appeals to the Cabinet</b>			
<b>Setting aside or referring decisions back to Commission</b> 28 (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor	28 (1) If the Commission makes a decision <u>under section 9</u> to issue, amend or renew a licence, the Governor in Council may, within <u>180 days</u> after the date of the	28 (1) If the Commission makes a decision to issue, amend or renew a licence <u>or an order</u> , the Governor in Council may, within 180 days after the date of the	Orders issued by the CRTC should be subject to the possibility of being set aside or referred back to the Commission for reconsideration and a new

in Council may, within <u>ninety days</u> after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).	decision, on petition in writing of any person received within 45 days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).	decision, on petition in writing of any person received within 45 days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).	hearing.
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