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House of Commons Standing Committee on Canadian Heritage  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

Attn: Aimée Belmore, Clerk  
[chpc@parl.gc.ca](mailto:chpc@parl.gc.ca)

Dear Ms. Belmore,

**Submission on Bill C-10, *An Act to amend the Broadcasting Act***

**Introduction**

1. CSARN (Canadian Senior Artists Resource Network) is the voice of Canada's senior artists. Through vibrant programs, we work to ensure their creativity and vibrancy are valued and relevant, and to support their professional development so that they can continue to contribute to our cultures. Our programs include seminars and an annual *Maintaining Creativity* conference. Regular online Salons keep professional artists connected and informed. CSARN's constituency is all professional creative and interpretive artists in every discipline.
2. CSARN requests an opportunity to appear before the Committee to discuss this submission.
3. As the Elders of our communities, senior artists have lived through the explosive growth and development of Canada's arts and cultural industries in the past 75 years. We've advocated for, witnessed the development of, and benefitted from, the Canada Council for the Arts, provincial and local arts councils, programs and measures that support cultural industries, and other cultural policies implemented at every level of government. Canada's extensive cultural policies underpin our successful development of a vibrant arts sector and cultural industries – in visual arts, crafts, theatre, music, publishing, radio, television, film, and digital media.
4. These policies remain essential today. In their role as Elders, many senior artists not only continue to work but also contribute to the next generation. CSARN operates a

mentoring program which supports an intergenerational transfer of knowledge across Canada. We understand that the next generation of Canadian artists being mentored will need supportive cultural policies if they are to thrive.

5. Our constituency includes the writers, showrunners, composers, directors, performers, editors, and associated creative professionals who bring Canadian stories and music to life in the audiovisual media. While welcoming the tabling of Bill C-10 and policies of the government to increase the CBC budget and provide pandemic support for self-employed artists, senior artists are concerned about some of the proposed changes the government has tabled in Bill C-10.

### **CSARN Welcomes Positive Aspects of Bill C-10**

6. There are positive elements to Bill C-10, *An Act to amend the Broadcasting Act*. Most importantly, we welcome measures that will ensure foreign services distributing movies, television programs, and music electronically to Canadians will be required to offer Canadian content (CanCon) and to contribute to its production. We also welcome the government commitment in the Fall 2020 Economic Statement to require these services to register for, collect, and remit GST/HST.
7. These positive steps will help level the playing field for Canadian services, which are at a huge competitive disadvantage compared to foreign services. They will also increase the supply and discoverability of Canadian stories, comedy, and music, and provide much needed resources for Canadian artists and producers. CSARN also hopes this process will bring additional funding for projects involving under-represented artists, including Indigenous, LGBTQ+, physically and culturally diverse professionals and, of particular interest to CSARN, older film and television artists.
8. In considering how to implement the positive aspects of Bill C-10, we urge the House, the Government, and the Canadian Radio-television and Telecommunications Commission (CRTC) to look to what other jurisdictions have done. We particularly highlight the European Union Audiovisual Services Directive 2018, now fully implemented in all EU member states. The Directive requires online content providers to have at least 30 percent European content in their inventory and to highlight and promote this content. It also authorizes member states to impose a levy on revenues earned in that country, directed to support the production of national content. France has already imposed a 2.0 percent levy and Germany a 2.5 percent levy, which is directed to the respective audiovisual production support agency.
9. Other jurisdictions are way ahead of Canada's federal government in many important respects. Fifty-eight countries, three provinces, and 28 U.S. states require online services to charge, collect, and remit appropriate sales/consumption taxes, like Canada's GST/HST. Many European countries now require global conglomerates (with revenues beyond a modest threshold) to pay corporate taxes on what they earn in the country.

## **CSARN Urges that Strong CanCon Rules and Canadian Ownership Restrictions be Retained**

10. Senior artists know that, among the pantheon of cultural policies Canada has implemented over many decades, perhaps the two most significant (beyond direct funding) are rules requiring the production and exhibition of Canadian content on radio and television, and those requiring firms to be Canadian-owned and controlled. Proposals in Bill C-10 threaten these policies and could bring huge negative consequences.
11. Early minimal television content quotas were expanded and strengthened by the newly-launched CRTC after the enactment of the 1968 *Broadcasting Act*. For many years, these regulations required broadcasters to devote a certain percentage of their schedule to Canadian programs and music, often including specific genres. These rules have been largely responsible for the development of our tremendously successful music and audiovisual sectors.
12. The Canadian music industry demonstrates the power of content quotas. In the formative years of Canadian rock, pop, and folk music, from the 1960s through the early 1970s, emerging musicians such as Leonard Cohen, Joni Mitchell, Gordon Lightfoot, Anne Murray, Edith Butler, Daniel Lavoie, Buffy Sainte-Marie, and Neil Young were developing creatively. But their music was ignored by Canadian radio and they were little known beyond their bohemian community. That changed in 1971 when the CRTC implemented a Canadian content rule for radio broadcasters, despite their vociferous protests. Creative success rapidly became market success in every music genre and from every corner of Canada. The Canadian music industry has never looked back. Our musicians now enjoy unprecedented success globally, a direct consequence of the Canadian content rules.
13. The success of content rules is also highlighted by our continuing failure in English-language movies. Financial subsidies, in one form or another, have been available to film and television producers for more than a half-century. These producers largely use the same infrastructure and the same talent pool. While Canadian English-language television has thrived, attracting viewers in Canada and abroad, the market share in Canada for our own English-language movies is anemic, struggling to reach two percent. Our cinemas have always been fully integrated into the Hollywood distribution system and thus our screens are filled with, and give priority to, Hollywood movies. The difference in marketplace success between English-language television and English language movies relates directly to the fact that, while Canadian content quotas for television have existed for more than 50 years, there are none for our cinemas.
14. Since the early days of television, Canada's *Broadcasting Act* has required broadcasters, who benefit financially from a range of rules and regulations (previously including the use of limited radio frequencies), to provide a wide variety of high-quality Canadian content programs to their Canadian viewers. In the current (1991) *Act*, the CanCon obligation is this: 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 ... renders that use impracticable...;”

15. Over the past decade, CanCon rules have evolved significantly. In television, the quota system for the private sector has been replaced by obligations to spend money on Canadian programs and/or to make a financial contribution to such productions. Today, Canada’s major private broadcasting groups have a Canadian Production Expenditure (CPE) requirement under which they must spend at least 30 percent of their gross revenues on CanCon. They must also spend an appropriate percentage (which varies according to their mix of channels) on Programs of National Interest (PNI), as a subset of CPE. PNI includes drama and scripted comedy. While these are the most watched genre of television, Canadian drama and scripted comedy are the most underrepresented on our screens. Cable companies (Broadcasting Distribution Undertakings) must also contribute roughly five percent of their revenues to CanCon production.
16. As content becomes platform-agnostic and Canadians increasingly view all screen-based content, including feature films, on their home screens, the importance of retaining and extending CanCon regulations only increases.
17. But Bill C-10 proposes to eliminate the strong obligation in the existing *Broadcasting Act* and replace it with a weaker one: “each broadcasting undertaking shall make use of Canadian creative and other resources in the creation and presentation of programming to the extent that it is appropriate for the nature of the undertaking;”
18. CSARN can see no reason to weaken this important provision. The rationale for the change appears to be that foreign firms providing programming to Canadians will have a lower obligation to the Canadian system, and the proposed language provides flexibility to ensure everyone contributes in an equitable manner. We reject this rationale, noting particularly that the existing clause already provides flexibility to the CRTC to develop rules appropriate to the nature of the broadcasting service.
19. CSARN also notes that Canada’s large vertically-integrated media companies are highly likely to use such a change to seek a significant reduction in their CanCon obligations, as they have done in the past. There is no question Canadians are increasingly viewing audiovisual content online and this is beginning to erode audiences and advertising revenues for Canada’s legacy broadcasters. However, they all remain profitable, and linear television continues to be the leading source of audiovisual content for Canadians. This will continue only gradually to change in the current decade. Mark Twain once said, “the reports of my death are greatly exaggerated.” So too are reports of the death of linear television.
20. CSARN is acutely aware of the importance of continuing to develop Canada’s capacity to make Canadian music and tell Canadian stories. CanCon rules remain critical today both for those artists still working, and for the younger colleagues being mentored.

### RECOMMENDATION 1

Bill C-10 be amended by deleting clause 2(1)(a) and retaining the core provisions of the existing clause 3(1)(f), amended as follows and renumbered as appropriate:

“(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 renders that use impracticable, such as a foreign online undertaking, in which case the undertaking shall contribute in an appropriate manner to the production, distribution and discoverability of Canadian content;”

17. Since the 1960s, Canada has maintained requirements for Canadian ownership of cultural industry firms, most notably in broadcasting, book publishing, and film distribution. Rules prohibiting foreign acquisition of Canadian firms are contained both in legislation and in federal policies. The first policy priority of the current *Broadcasting Act* is this: “the Canadian broadcasting system shall be effectively owned and controlled by Canadians.” Bill C-10 proposes to delete this requirement.
18. Restrictions on foreign ownership of cultural industry firms have been implemented for two principal reasons:
  - Canadian owners are far more likely to develop and produce Canadian stories and music. The classic illustration is the Canadian book publishing industry, where it continues to be the case that Canadian-owned firms are responsible for roughly 80 percent of all books published by Canadian authors each year. This figure has stayed the same for more than thirty years, despite the enormous changes in the industry, the erosion of Canadian publishers’ market share, and the disappearance of the three largest Canadian firms.
  - It is easier for Canadian governments to regulate Canadian firms than foreign ones, as highlighted by the current challenges related to online providers of audiovisual content.
19. Removing the ownership rules would open up Canadian media companies, particularly the large, profitable, vertically-integrated ones, to acquisition by foreign companies. While impediments to such acquisitions may exist in the Directive to the CRTC (Ineligibility of non-Canadians) and Investment Canada rules, these mechanisms can be changed easily since they are not statutory. If our media companies do become foreign-owned, the new owners would enjoy certain rights, including the possibility of challenging Canadian regulations under international trade and investment agreements.
20. While it is beyond the scope of this submission to delve into the nitty-gritty of Canada’s trade and investment agreements, Canada’s bi- and multi-lateral agreements covering services and foreign investments establish rights for non-

Canadian firm and investors. While most of Canada's agreements have a "cultural exemption," some of these are not robust.

21. Particularly were Canada to change the regulatory environment after an investment has been established, the foreign firm may have a right to challenge such a new policy. While the Canada-United States-Mexico Agreement is eliminating the investor-state dispute settlement system, most other agreements retain the provision. It is very easy for large multinational companies, with a presence in many different countries, to shop for the most favourable agreement and to use their subsidiary in that country to challenge a measure they feel threatens their profitability in Canada.
22. CSARN believes that removing Canadian ownership provisions will significantly limit how the CRTC can regulate the Canadian system. More fundamentally overall, it would constrain government cultural policy options and erode access to Canadian stories, music, news and information programs.
23. Foreign online undertakings can become part of the Canadian broadcasting system even with retention of a Canadian ownership principle. Allowing one or several individual foreign-owned undertakings to provide programming content to Canadians does not overturn the Canadian owned | controlled nature of the overall system.
24. CSARN urges that the core Canadian ownership | control principle be retained, and a clarification added to the existing 3(1)(a) to exempt foreign online services.

#### **RECOMMENDATION 2**

Bill C-10 be amended to retain the objective for the system to be Canadian owned and controlled in clause 3(1)(a) and to exempt foreign online services:

"(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians, except for foreign online services approved by the CRTC to provide programming to Canadians;"

25. CSARN thanks you for this opportunity to contribute to the consideration of Bill C-10. We look forward to sharing our views further with members of the Standing Committee.

Respectfully Submitted,



Hon Marie-P. Charette-Poulin, B.A., LL.B., M.A.  
Chair

## **N.B. – Artists never stop learning and creating**

In 2018, two distinguished Canadian actors were cast to play the role of J. Paul Getty in major Hollywood productions. In response to a question, Christopher Plummer (whose recent death is being mourned globally), then 88, said he did very little research for the role. "At my age, all I have to do is learn my lines." Donald Sutherland, then 82, had a different answer for the reporter. "Yes of course I researched. Christopher is wonderful, but he's a couple of years older than I am, so he has more experience."

<http://www.foreveryoungnews.com/entertainment/donald-sutherland/>