



Submission to the Standing Committee on Canadian Heritage

Study of Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts

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Key Facts about Netflix

- *Netflix is an entertainment company. We produce and invest in film and television shows. Netflix primarily offers scripted drama, comedy and long-form documentary content to our members.*
- *Netflix does not sell advertising.*
- *Netflix competes vigorously with all types of entertainment video from everywhere - and globally, this competition is intensifying.*
- *Netflix collects and remits sales tax where we are required to do so by law (including Quebec, Saskatchewan and, starting in April 2021, British Columbia), and is supportive of an OECD framework for corporate taxation.*
- *Netflix places an emphasis on content protection and partnerships, helping creators access new, global audiences.*
- *Netflix does not have a single model for rights agreements, and negotiates these terms on a case-by-case basis with producers.*

Netflix welcomes this opportunity to inform the Standing Committee on Canadian Heritage's study of Bill C-10. Our key observations and recommendations are summarized below:

- Netflix brings some of the best content made by Canadians to our members here and around the world, investing significantly in jobs and the economy across the country, while offering our service at a competitive price.
- Bill C-10, as tabled, aims to create a flexible framework that will enable the CRTC to tailor conditions of service applied to online undertakings, and to recognize the different ways that online services contribute. Netflix supports such an approach, as it recognizes today's dynamic and competitive global market for entertainment content.
- Simply imposing the regulatory obligations of licensed Canadian broadcasters onto online entertainment services would not be an appropriate approach to ensuring contributions from this otherwise vibrant sector. Services like Netflix do not perform the same roles as traditional broadcasters, nor do we have the same content strategies.
- Netflix notes its concern with an approach that would impose a uniform 30% Canadian programming expenditure requirement to the Canadian revenues of online video entertainment services.
- An overly burdensome regulatory framework could result in reduced choice for Canadians. Along with other members of the Motion Picture Association - Canada, Netflix proposes amendments (outlined below) to Bill C-10 to address this concern.
- Netflix is an active participant in Canada's film and television industry. However, titles produced or financed by Netflix are not recognized as Canadian content - even when the majority of key creative roles are held by Canadians. We look forward to engaging in future conversations about this regulatory restriction with the aim of producing more Canadian content.
- Netflix encourages committee members to evaluate proposals for amendments to Bill C-10, as well as considerations related to the forthcoming policy direction to the CRTC, with a view to achieving the Government of Canada's ambition to create a world-class communications sector for Canada, and ensuring that an appropriate balance is struck between the objectives of enabling and promoting Canadian culture, contributing to economic growth, and safeguarding the interests of Canadian consumers.

Netflix in Canada

“Canada is certainly a very important market for Netflix...Apart from being a key source of subscribers, Netflix films many of its originals in Canada as well — think Altered Carbon, Chilling Adventures of Sabrina and Locke & Key.”

— Geetha Ranganathan, Bloomberg Intelligence analyst¹

Last year marked Netflix’s ten-year anniversary in Canada. We offer our Canadian members a wide variety of award-winning TV shows, movies, documentaries, family programming and more - on a vast array of internet-connected devices.

Our extensive library of titles produced in Canada continues to grow. In 2020 alone, over 40 new original Netflix titles produced in Canada were released on the service to our members in Canada and around the world.

In 2017, we sought approval from the Canadian government to establish Netflix Canada, our first permanent production presence outside of the U.S., and provided commitments to Canada under the *Investment Canada Act*, including to invest a minimum of 500 million dollars over five years in production activity across the country. This gave us the ability to employ Canadians directly.

Netflix has significantly exceeded its commitments in original production in Canada. Between 2017 and 2020, we invested over 2.5 billion dollars into production of films and television shows in Canada. This reflects the high quality, diversity and competitiveness of Canadian creators, talent, crews and facilities.

Netflix has also invested over \$25M in initiatives to help the next generation of Canadian creators bring their stories to life, with a focus on BIPOC, LGBTQ+, women and Francophone creators.

Committed to Canada during the COVID-19 pandemic

“Netflix has announced a \$100 million (U.S.) global relief fund to support workers in the creative community, including Canada’s, amid the COVID-19 pandemic.”

— Canadian Press²

Despite challenging conditions associated with the COVID-19 pandemic, Netflix has remained a committed driver of direct and indirect investment in the Canadian economy and Canadian creative community, while continuing to operate safely.

¹ Jon Erlichman. “10 Years On: How Netflix in Canada has evolved a decade later”. BNN Bloomberg. September 22, 2020: <https://www.bnnbloomberg.ca/10-years-on-how-netflix-in-canada-has-evolved-a-decade-later-1.1497551>

² Victoria Ahearn. “Netflix relief fund to benefit Canadian groups providing aid to arts community”. Canadian Press. March 20, 2020. <https://www.thestar.com/entertainment/television/2020/03/20/netflix-relief-fund-to-benefit-canadian-groups-providing-aid-to-arts-community.html>

In March 2020, Netflix announced a COVID-19 emergency fund³ to support the hardest hit workers from the creative community worldwide, including \$1.5 million for Canada. As of January 31 2021, the Actors Fund of Canada (AFC) had distributed \$342K to 235 individuals, and as of December 31 2020, the Fondation des artistes has distributed \$271K to 271 individuals.

Netflix has continued to support our more than 20 partners investing in the next generation of Canadian creators, while announcing new partners - including our investment in the national expansion of the Being Black in Canada⁴ initiative.

Made in Canada, Seen by the World

“Il y a plus de place qu’avant pour les séries non anglophones. Et pour ça, je dis merci à Netflix, parce qu’au cours des dernières années, on a tous regardé des shows sous-titrés. C’est eux qui ont lancé la mode.”

— Nicola Merola, président de Pixcom⁵

Great stories can come from anywhere and be loved everywhere. With members in more than 190 countries around the world, we know that authentically told stories will resonate with viewers no matter where they live.

Canadian collections, genre categories, dedicated URLs and search functions, as well as marketing and social campaigns,⁶ make it easy for all our members to discover Canadian titles. Netflix also offers subbing and dubbing in more than 30 languages - and that number continues to grow - making Netflix’s Canadian films and TV series more accessible on a global scale.

Between January 2016 and May 2020, there were more than 800 Canadian and Canadian-made titles available on Netflix. And 94% of views of these titles were by members who live outside Canada.

Netflix and Canadian Production

Film and Television Production in Canada is thriving

The Canadian Media Producers Association and Association québécoise de la production médiatique’s most recent Industry Profile⁷ reports:

- *Total film and television production in Canada increased by 5.8% since the previous year to an all-time high of \$9.32B;*
- *Canadian television production increased by 6.5% since 2017/18 to \$2.89B - its second highest total ever; and*

³ Ted Sarandos. “Emergency support for workers in the creative community”. Netflix. March 20, 2020. <https://about.netflix.com/en/news/emergency-support-for-workers-in-the-creative-community>

⁴ BeingBlackInCanada.com

⁵ Marc-Andre Lemieux. “La planète plus ouverte aux séries du Québec”. Le Journal de Montréal. October 14, 2019. <https://www.journaldemontreal.com/2019/10/14/la-planete-plus-ouverte-aux-series-du-quebec>

⁶ On a single day in January 2021, the “Canadian Movies & TV” collection made about 2.4M impressions. An impression represents an instance of a customer viewing a particular title’s box art on the Netflix home page.

⁷ Canadian Media Producers Association. “Economic report on the screen-based media production industry in Canada”. 2019. https://cmpa.ca/wp-content/uploads/2020/04/CMPA_2019_E_FINAL.pdf

- *Canadian theatrical feature film production increased by 24.8% since 2017/18 to \$337M - its highest total since 2014/15.*

Netflix is proud of its substantial contributions to the Canadian film and television industry.

“Une production québécoise a-t-elle déjà pu rejoindre un aussi large public international en si peu de temps? Il est permis d’en douter. Pour Patrice Laliberté, ces données revêtent un caractère vertigineux” — La Presse⁸

Netflix is producing original content (*Virgin River, Firefly Lane, Jusqu'au déclin*); co-producing Canadian content in cooperation with Canadian broadcasters (*Blown Away, M'Entends-Tu?*); and licensing Canadian content being loved by audiences around the world and recognized with the industry's most prestigious awards - in English and in French (*Schitt's Creek, The Body Remembers When The World Broke Upon, Les Affamés*).

However, there are many examples of titles on Netflix that meet six or more CAVCO key creative requirements that cannot be certified as Cancon because the projects are financed exclusively by Netflix.

- *Jusqu'au Déclin*, shot in the Laurentians with its all-Quebec cast and crew, resulted in \$5.8M in direct investment in the Province of Quebec. The film was viewed by over 21 million subscribers in the first four weeks of its release to global audiences.
- *The Willoughbys*, co-written and directed by Canadian Kris Pearn, produced by Vancouver-based Bron Studios and featuring the voices of singer-songwriter Alessia Cara (making her acting debut as the voice of Jane), Martin Short (Father), and comedian Seán Cullen (twins Barnaby A & B), resulted in over \$54 million in direct investment in Canada. The film was viewed by over 37 million members in the first four weeks of its release to global audiences.

Current definitions of Canadian content do not acknowledge all contributions of streaming services to Canadian programming. The Government of Canada's update of the *Broadcasting Act* could include policy direction to the CRTC asking the regulator to revisit how it defines Canadian programming for the purposes of regulatory obligations.⁹

Netflix and Production in Canada: Direct and Indirect Impacts

“...the Kingston Film Office reports early estimates of more than \$150,000 in economic benefit to the community...This includes more than 500 hotel rooms, multiple location rentals, various supplier engagements, and over a dozen short-term contract employments.” — Kingstonist¹⁰

Netflix has established physical production hubs in the Toronto and Vancouver areas - leasing over 30 stages as well as office and support space - bringing our production footprint in Canada to approximately one million square feet.

⁸ Marc-André Lussier. “21 millions de visionnements sur Netflix pour Jusqu'au déclin”. La Presse. May 15, 2020. <https://www.lapresse.ca/cinema/2020-05-15/21-millions-de-visionnements-sur-netflix-pour-jusqu-au-declin>

⁹ Government of Canada.

<https://www.canada.ca/en/canadian-heritage/services/modernization-broadcasting-act/faq.html>

¹⁰ Jessica Foley. “Locke and Key filming brings economic benefit to the Kingston community”. Kingstonist. November 9, 2020. <https://www.kingstonist.com/news/locke-and-key-filming-brings-economic-benefit-to-the-kingston-community/>

We're also investing in films and series produced all over the country including places like Shuswap, Cochrane, Brandon, Hamilton, St. Catharines, Coburg, Sudbury, Ste-Agathe, Lunenburg, Charlottetown and St. John's.

- Over the course of producing Parts 1 and 2 of *The Chilling Adventures of Sabrina*, Netflix provided \$90M in wages for British Columbia residents. The production created 372 full-time jobs for cast and crew, and 3 000 background positions (extras); products and services were purchased from over 1800 British Columbia-based vendors.
- Over the course of producing Season 2 of *Black Summer* in southern Alberta, Netflix provided \$17M in wages and created 207 full-time jobs for cast and crew.
- Over the course of producing Season 1 of *Locke and Key* in Ontario and Nova Scotia, Netflix provided \$38M in wages to Canadian residents, created 277 full-time jobs for cast and crew, and over 5,000 days of work for background positions (extras) and daily hires. Total production investment in Canada amounted to \$80M.

Netflix has also partnered with leading animation studios and visual effects studios across the country.

- Between 2016 and 2020, 14% of Netflix's Canadian catalogue comprised animation titles, and Canadian animation titles accounted for 25% of global viewing of all Canadian titles.
- Netflix has invested in eight projects with Quebec-headquartered Rodeo FX over an 18-month period. Contracts from Netflix represent 100 of 600 jobs at the company.

Advancement of Canadian Creators and Talent

“Netflix, c’est génial pour nous donner le coup de pouce qu’il nous faut, mais c’est surtout génial pour la relève et la jeunesse et les futurs créateurs.”

— Odile Joannette, Directrice générale, Wapikoni¹¹

Netflix is supporting the development and advancement of the next generation of Canadian creators - with a focus on BIPOC, LGBTQ+, Francophone and women screenwriters, directors and producers.

- To-date, Netflix has committed to more than 20 partnerships with both English and French organizations across the country. These partnerships reflect our commitment to diversity and creative growth for Canadian talent.
- Through initiatives with partner organizations, we have supported over 600 emerging, mid-career, and established Canadian creators from every province and territory.
- Of those, approximately 170 creators are from Quebec.

Netflix is also providing opportunities for Canadian talent to secure their break-out roles.

- Maitreyi Ramakrishnan, a newcomer from Mississauga, Ontario, landed the leading role in the original series *Never Have I Ever* at the age of 17, and was just featured as part of Time Magazine's 100 Next list, highlighting 100 emerging leaders who are shaping the future and defining the next generation.

¹¹ Anne-Marie Yvon. “Netflix s’associe à Wapikoni mobile et à deux autres organisations autochtones.” Radio-Canada. June 11, 2019.

<https://ici.radio-canada.ca/espaces-autochtones/1180991/netflix-wapikoni-mobile-autochtones-createurs-odile-joannette>

Canada - A Top Production Centre for Netflix

“The film community is thrilled that Netflix and CMPP are joining forces in Vancouver as it gives us greater opportunities to work on Netflix’s ground-breaking and diverse productions. CMPP is one of the best facilities I’ve worked at and the gold standard for stages.”

— Rose Lam, Producer, *Altered Carbon*¹²

Canada is one of the countries in which Netflix is most active in terms of production. This is attributable to the wealth of creative talent in the country, its highly-skilled crews, state-of-the-art infrastructure and breathtaking and diverse locations. It is also attributable to the fact that Canada’s entertainment industry is globally competitive.

Bill C-10, as tabled, aims to create a flexible framework that will enable the CRTC to tailor conditions of service applied to online undertakings, and to recognize the different ways that online services contribute. Netflix supports such an approach, as it recognizes today’s dynamic and competitive global market for entertainment content.

As the Government considers the numerous amendments being proposed to Bill C-10, we encourage the Government to continue to approach the legislation and its implementation through a modern lens - one that takes into account the fundamental changes in how Canadians are choosing to access entertainment content, as well as the differences between traditional broadcasters and online streamers.

Canadian broadcasting groups currently meet the vast majority of their Canadian programming expenditure requirements through news and live sports programming - categories that Netflix does not offer. And most of their services are offered in only one of Canada’s official languages.

Netflix notes its concern with an approach that would impose a uniform 30% Canadian programming expenditure requirement to the Canadian revenues of online video entertainment services.

Netflix hopes that the value of the significant and sustained investment of online entertainment services in Canada will continue to be recognized, as well as the positive impacts those investments have had for Canadian creators, workers and consumers. Accordingly, we are proposing amendments to Bill C-10.

Proposed Amendments to Bill C-10

Along with other members of the Motion Picture Association - Canada, Netflix has proposed amendments to S. 5(2) of Bill C-10 to ensure that the CRTC considers competition, innovation and affordability in its broadcasting decisions, and that any regulation should be efficient and proportionate to its purpose, consistent with other provisions in the Bill (see section A of the Appendix).

Netflix also has proposed amendments to the confidentiality provisions of Bill C-10. The amendments would expressly permit an applicant to confirm information designated as confidential even if the CRTC determines that the public interest warrants disclosure. Consistent with the current practice

¹² Etan Vlessing. “Netflix launches latest production hub in Vancouver”. The Hollywood Reporter. September 24, 2020. <https://www.hollywoodreporter.com/news/netflix-launches-latest-production-hub-in-vancouver>

under the CRTC's Rules of Practice and Procedure in broadcasting matters, such information would be inadmissible as evidence (see section B of the Appendix).

Netflix encourages committee members to evaluate proposals for amendments to Bill C-10, as well as considerations related to the forthcoming policy direction to the CRTC, with a view to achieving the Government of Canada's ambition¹³ to create a world-class communications sector for Canada, and ensuring that an appropriate balance is struck between the objectives of enabling and promoting Canadian culture, contributing to economic growth, and safeguarding the interests of Canadian consumers.

Netflix's proposed amendments to Bill C-10 are attached as an Appendix to this submission.

¹³ Broadcasting and Telecommunications Legislative Review - Terms of Reference.

Appendix:
Proposed amendments to Bill C-10

A) Proposed Amendments to S. 5(2) of the Act (*in bold, underlined italics*)

Proposed Amendment #1

(g) is sensitive to the administrative **and financial burden** that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings, **and takes into account the impact of that burden on encouraging competition, innovation, and a wide range of programming made available for the benefit of Canadian consumers;**

Proposed Amendment #2

(i) **recognizes that market forces, competition and the growing choice of programming made available to Canadians over the Internet are contributing to achieving the broadcasting policy objectives in subsection 3(1);**

Proposed Amendment #3

(j) **encourages all forms of competition to ensure that high-quality and innovative programming is made available to Canadians using the most effective technologies available at reasonable cost;**

Proposed Amendment #4

(k) **ensures that regulation, where required, is efficient and proportionate to its purpose;**

B) Proposed Revisions to Section 25.3 Amendments

The following amendments are proposed for sections 25.3(4) (*in bold, underlined italics*)

Disclosure of information submitted in proceedings

(4) If designated information is submitted in the course of proceedings before the Commission,

(a) **subject to subsection (a.1), the Commission may** disclose the information or require its disclosure if the Commission determines, after considering any representations from interested persons, that the disclosure is in the public interest;

(a.1) **any information submitted to the Commission by a broadcasting undertaking pursuant to subsection 9.1(1)(j), other than information provided by a licensee or a person exempt from the requirement to hold a licence under an order made under subsection 9(4), shall be confidential and must not knowingly be disclosed or made available by the Commission unless such**

information is in an aggregated form that prevents information obtained from an identifiable person from being related to that person;

- (b) **the Commission may** disclose the information or require its disclosure to the Commissioner of Competition on the Commissioner's request if the Commission determines that the information is relevant to competition issues being considered in the proceedings; **and**
- (c) **Notwithstanding subsection (a) and (b), if the person designating the information as confidential confirms the designation, the Commission must not disclose or require the disclosure of the information and the information is not admissible in evidence in a proceeding.**

The following amendments are proposed for sections 25.3(5):

Disclosure of other information

(5) If designated information is submitted to the Commission otherwise than in the course of proceedings before it,

(a) **subject to subsection (a.1), the Commission may** disclose the information or require its disclosure if, after considering any representations from interested persons, the Commission considers that the information is relevant to a matter arising in the exercise of its powers or the performance of its duties and functions and determines that the disclosure is in the public interest;

(a.1) any information submitted to the Commission by a broadcasting undertaking pursuant to subsection 9.1(1)(j), other than information provided by a licensee or a person exempt from the requirement to hold a licence under an order made under subsection 9(4), shall be confidential and must not knowingly be disclosed or made available by the Commission unless such information is in an aggregated form that prevents information obtained from an identifiable person from being related to that person;

(b) the Commission may disclose the information or require its disclosure to the Commissioner of Competition, on the Commissioner's request, if the Commission considers that the information is relevant to competition issues that are related to such a matter; **and**

(c) **Notwithstanding subsection (a) and (b), if the person designating the information as confidential confirms the designation, the Commission must not disclose or require the disclosure of the information.**¹⁴

¹⁴ The reference to "the information is not admissible in evidence in a proceeding" is inapplicable in the context of subsection 25.3(5) and has been deleted from the proposed amendment to 25.3(5)(c).