

To: Standing Committee on Canadian Heritage – Study of Bill C-10, an *Act to Amend the Broadcasting Act*

March 2021

1. The Consumer Technology Association (“CTA”) respectfully submits these comments to the Standing Committee on Canadian Heritage for its study of Bill C-10, an *Act to Amend the Broadcasting Act*.

Introduction and summary

2. As North America’s largest technology trade association, CTA® is the tech sector. Its members are the world’s leading innovators—from startups to global brands. CTA has a Government Affairs Council-Canada committee comprised of a diverse group of large and small member-companies with operations throughout Canada that advises the association on Canadian, federal and provincial public policy. CTA represents both Canadian and foreign tech companies, including several of the market-leading foreign entities currently offering online streaming audio and video subscription services to Canadian consumers.
3. CTA is committed to fostering an environment that promotes innovation for private businesses. CTA urges the federal government to ensure that Bill C-10 does not stifle innovation and remains flexible to emerging trends as it mandates online streaming services to contribute to the creation, production and distribution of Canadian stories.

Canadians’ use of online streaming

4. Both domestic and foreign streaming audio and video services are important to Canadians and have been even more so during the pandemic. According to an online survey of Canadian respondents aged 18+ conducted by CTA in April 2020, 53 per cent of respondents said that their household was watching streaming video content more often than before the pandemic. Conventional live TV viewing was also trending upward, as 46 per cent said they were watching live TV more often than the previous month.
5. This increase in appetite for entertainment was also driving more frequent use and a desire to try new service offerings. At the beginning of the pandemic, 17 per cent of respondents said that they were using a new streaming service for the first time and 11 per cent reported using a new streaming service that offers live TV options, such as Crave or YouTube TV.

Consumer choice

6. If a delicate balance is not achieved, Bill C-10 could lead to a significant decrease in choices for Canadian consumers. If an overly rigid framework is imposed on new streaming entities, or if a new framework imposes overly onerous obligations, many may decide to forgo offering content in the Canadian market

altogether. While some could license content to domestic incumbents, it would further concentrate control of content to fewer companies and damage well-functioning markets for content in Canada.

7. This could also ultimately lead to a resurgence in internet piracy and copyright infringement, something the government has worked hard to avoid in reforms to the *Copyright Act*, and something industry has sought to avoid by offering a wide range of reasonably priced alternatives to consumers supported by a variety of business models.
8. CTA encourages the government to ensure that consumer choice remain fundamental to online broadcasting and that market forces be harnessed in how it applies regulation, not constrained.

Flexibility

9. CTA applauds the government for developing a flexible approach to legislation and asking the CRTC to carefully evaluate how to apply new regulation on a case by case basis. This flexibility, however, could have the effect of introducing a great deal of uncertainty for innovative new businesses looking at entering the Canadian market.
10. CTA recommends that the government provide more clarity about the thresholds of applicability of this legislation. Canadian revenue thresholds might be one model to consider, but CTA urges the government to ensure that this lack of clarity does not provide a disincentive to market entry.
11. Further to this principle of flexibility, CTA applauds the government for excluding video games, user generated content and “social media services” in this bill. Each of these employ very different business models, user experiences and creator relationships than conventional broadcasting, and we agree that it would be wholly inappropriate to include these products and services in a broadcast regulatory regime. However, the government will need to remain vigilant to ensure that new and innovative models of content delivery, including virtual reality and eSport streaming, for example, are not inadvertently captured by the regulation and continue to be excluded.

Current contributions

12. Online streaming services are already making significant contributions to the Canadian media production ecosystem, through direct investments in media productions or co-productions, or substantial licensing fees or other revenue sharing arrangements with Canadian artists, creators and producers. These investments are providing stable funding and well-paying jobs to VFX artists, actors, production crews, producers and the myriad of ancillary Canadian businesses supporting this sector.
13. These investments are supplemented by substantial indirect investments in the Canadian content and cultural ecosystems, including supporting major events, talent and content development, funding initiatives and a range of other projects and programs.
14. These direct and indirect investments must be recognized, considered carefully and encouraged. An overly rigid or punitive application of this legislation could seriously imperil the Canadian media production sector in the future.

Canadian content

15. In line with recognizing the current contributions of online streaming entities to the Canadian production ecosystem, reforming the Canadian content points system will be critical to a successful implementation of this new regulatory framework.
16. The government and the CRTC should strongly consider broadening the scope of expenditure requirements for Canadian content beyond production to expenditures around promotion and talent development, among other considerations, which are also key components of a well-functioning media production ecosystem.
17. Replacing the antiquated points system with one that provides meaningful incentives to Canadian content production would be more in line with how market forces actually work. An incentive-based system could lead to tremendous innovations in Canadian content production and how Canadian stories are told.
18. Furthermore, ensuring the commercial success of Canadian content and its viability in international markets should be a related goal of this regulatory framework.

Competition and recognizing unique offerings

19. CTA welcomes the government's goal of levelling the playing field in the streaming content space. However, care will be needed to achieve this objective by ensuring that all online streaming services are subject to comparable regulation.
20. Incumbent broadcasters already enjoy significant regulatory privileges that should be taken into account when designing a fair system of regulation for online streaming services. Although a light regulatory approach should be favoured, where regulation is to be imposed, incumbent broadcasters should also be subject to comparable conditions of license in online environments, with the goal of improving the quality and level of service for all Canadian consumers.
21. Furthermore, new entities captured under this act should be regulated according to the nature of their services. For services that do not produce news or sports content, for instance, Canadian content obligations should be commensurate with the type of services that are offered to Canadians. Likewise, regulation should be applied differently to audio services, foreign news streaming services and genre-specific streaming services. As such, the notion of asymmetry in regulation should be applied for services that contribute in different ways to the overall Canadian media ecosystem.

Regulation of delivery systems

22. Strictly mandating discoverability of Canadian content on new streaming services in a diverse and abundant media ecosystem is problematic. Among other things, this would require services to include Canadian content even if that is not the services' value proposition. This also presupposes any service can readily identify Canadian content in its library. Further, it could privilege certain types of content, even if it is not what the user is seeking, resulting in a negative user experience. CTA encourages the government to apply flexibility to discoverability requirements to ensure that innovation is not stifled.
23. On a related point, CTA believes that the CRTC is ill-equipped to adequately audit services' algorithms and make informed rulings on how they should work to achieve public policy goals. A well-functioning

and incentive-based system for mandating the production of Canadian content should be sufficient to ensure that Canadian content is discoverable and accessible to Canadian subscribers.

24. CTA also observes the USMCA generally prohibits compelling access to “source code” or “algorithms” unless pursuant to “specific investigation, inspection, examination, enforcement action, or judicial proceeding,” so we would caution against any sort of generalized audit authority that is inconsistent with this.
25. Relatedly, the regulatory framework for online broadcasters should be consistent with Canada’s obligations on foreign trade.

Regulatory burden

26. CTA encourages the government to ensure that new regulation is efficient, light and proportional to its benefits. A heavy regulatory burden on new companies would provide a meaningful disincentive to entering the Canadian market and have significant impacts on consumer choice and piracy, as mentioned above.
27. In a similar fashion, CTA would support the elimination of Part II licence fees for domestic broadcasters as some have requested. Such fees should be reinvested into Canadian content production funds and benefit the broadcasting system more directly.

Conclusion

28. CTA thanks the Standing Committee for the opportunity to offer these comments as it reviews Bill C-10 and remains at your disposal to answer any additional questions about this legislative proposal.

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