

ROGERS COMMUNICATIONS INC. SUBMISSION TO THE STANDING COMMITTEE ON CANADIAN HERITAGE RE: BILL C-10 AN ACT TO AMEND THE BROADCASTING ACT AND MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

I. Introduction

1. Rogers Communications Inc. (Rogers) strongly supports the proposal to amend the *Broadcasting Act* (the Act) set out in *Bill C-10, An Act to amend the Broadcasting Act and to make consequential amendments to other Acts*. Fundamental changes are taking place in the Canadian broadcasting system that require a modernized statute.
2. The passage of Bill C-10 will ensure that foreign online streaming services (referred to in Bill C-10 as “online undertakings”) and Canadian broadcasting undertakings are subject to a common legislative framework. Bill C-10 makes clear that all broadcasting undertakings will be subject to a regulatory framework that, at a minimum, includes obligations relating to Canadian programming expenditures, promotion and exhibition, and will provide the Canadian Radio-television and Telecommunications Commission (CRTC) with the mandate to enforce compliance with Canada’s broadcasting laws and regulations.
3. Rogers is concerned, however, that the bill, in its current form, could perpetuate certain regulatory inequities between Canadian and foreign broadcasting undertakings. Specifically, Bill C-10 does not expressly address the need to ensure that all broadcasting undertakings drawing revenues from the Canadian broadcasting system should be subject to comparable obligations. Nor does it require the CRTC to reassess the current regulatory frameworks imposed on Canadian broadcasting undertakings with the goal of reducing that burden. In our view, this is absolutely necessary in an environment where Canadian broadcasting undertakings are directly competing with foreign online streaming services for Canadian subscribers and audiences. Canadian services should not be required to continue to abide by regulatory frameworks that are based on outdated business models while foreign services operate under modest regulatory frameworks that would entrench their competitive advantages in the Canadian marketplace.
4. For these reasons, we are proposing that the amended Act encourage the CRTC to review the complex regulatory framework established for Canadian broadcasting undertakings with a view to reducing the restrictions that inhibit their ability to pursue commercially reasonable business strategies. In this way, the Act would ensure all broadcasting undertakings operate in Canada under comparable regulatory schemes that do not prioritize non-Canadians over Canadians.
5. In addition to eliminating asymmetrical regulation, Bill C-10 should also be amended to address program piracy (i.e. online content theft). The CRTC should be given an explicit role in helping to stop the insidious leakage of revenues away from the Canadian broadcasting system that is the result of this illegal activity. There will not be a “Canadian” broadcasting system in the future if the theft of intellectual property is not addressed.
6. Rogers recommends seven changes to Bill C-10 that would remove the inequities that exist today and provide the CRTC with tools to combat online content theft.

II. Seven Recommendations

Recommendation 1:

Amend subsection 5(2) in Bill C-10 to require the CRTC to ensure that broadcasting undertakings that are competing for the same subscribers and audiences in Canada are subject to comparable regulatory obligations. A new paragraph should be added to subsection 5(2) to ensure that the Canadian broadcasting system is regulated and supervised in a flexible manner that:

5(2)(a.2) is fair and equitable taking into account the competition that exists between broadcasting undertakings even in circumstances where the nature of the services provided are not of the same class.

Recommendation 2:

Amend subsection 9.1(2) in Bill C-10 to remove the siloed approach to regulating individual broadcasting undertakings under the Act. The siloed approach should be replaced with a group-based model that would allow the CRTC to establish conditions of service applicable to all undertakings operated by a single ownership group. Subsection 9.1(2) should be amended to provide the CRTC with the authority to impose conditions on an entity's entire group of services (i.e. online, radio, TV and BDUs):

9.1(2) An order made under this section may be made applicable to all persons carrying on broadcasting undertakings, to all persons carrying on broadcasting undertakings of any class established by the Commission in the order, to all persons carrying on broadcasting undertakings within a common ownership group or to a particular person carrying on a broadcasting undertaking.

Recommendation 3:

Amend subsection 11.1(1) in Bill C-10 to include a paragraph that specifically references local news and information programming and encourages the CRTC to develop a regulatory framework that allows Canadian broadcasting undertakings to devote sufficient resources to the creation of news programming. This would ensure that the Canadian broadcasting system is focused on the production of local news and information programming, which is critical to a healthy democracy. The CRTC should be authorized to make regulations respecting expenditures for the purpose of:

11.1(1)(d) developing, financing, producing or promoting local news and information programming, including through contributions or expenditures made by an affiliate to the person carrying on the broadcasting undertaking that broadcasts those programs.

Recommendation 4:

Amend subsection 11(3.1) of Bill C-10 to restrict licence fees payable by all broadcasting undertakings (including online undertakings) to fees that relate solely to the recovery of the costs of the CRTC's activities under the Act. Canadian broadcasting undertakings should not be required to pay a second licence fee that will not be imposed on foreign online streaming services (changes in ~~striketrough~~):

11(3.1) The only fees that may be established with respect to a broadcasting undertaking ~~that may be carried on without a licence~~ shall be fees that relate to the recovery of the costs of the Commission's activities under this Act.

Recommendation 5:

Amend subsection 28(1) of Bill C-10 to ensure that the right to petition the Governor in Council to set aside or refer a decision back to the CRTC applies to decisions relating to all broadcasting undertakings (including online undertakings), and not just to those that hold a licence. Without this change, foreign online undertakings will again have a lighter and more flexible regulatory framework than Canadian broadcasting undertakings.

Recommendation 6:

Program piracy should be addressed in Bill C-10 through changes to the policy objectives in subsections 3(1) and 5(2) of the *Broadcasting Act* and to the CRTC's regulation-making authority in subsection 10(1). These amendments will provide the CRTC with the mandate necessary to address program piracy:

s. 2(1) **program piracy** includes the reproduction, communication, broadcast, transmission, distribution, decryption or decoding of, or access to, copyrighted programs without the authorization of the copyright holder, or any activity that enables, induces or facilitates any such actions;

s. 3(1)(d) the Canadian broadcasting system should

(v) endeavour to discourage, inhibit and prevent program piracy;

s. 10(1) The Commission may, in furtherance of its objectives, make regulations

(j.1) respecting program piracy in order to facilitate the protection of copyrighted programs where those rights are held by broadcasting undertakings.

Recommendation 7:

Amend paragraph 9(1)(d) in Bill C-10 to include the current restriction set out in paragraph 9(1)(c) of the Act that prohibits the CRTC from amending a licence on its own motion until five years have expired since the issuance or renewal of the licence. We also recommend that the five-year window be extended to all broadcasting undertakings, including those that will operate without a licence under subsection 9.1(1). Allowing the CRTC to amend a licence or a set of conditions on its own motion within the initial five-year period would undermine business certainty for all broadcasting undertakings.

III. Eliminating Asymmetrical Regulation from the *Broadcasting Act*

7. A key concern for Rogers is to ensure that the amendments proposed in Bill C-10 address the asymmetrical regulation that has historically existed between Canadian broadcasting undertakings and their competitors; that is, the foreign online streaming services. We have several recommendations to make in this regard.

(i) Recommendation 1 – Regulatory Policy – Equitable regulation both within and across each class of broadcasting undertaking – Paragraph 5(2)(a.1) of the Broadcasting Act

8. Bill C-10 proposes amending subsection 5(2) of the Act to ensure the CRTC regulates broadcasting services of a similar nature in a fair and equitable manner. The new provision reads as follows:

5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a.1) is fair and equitable as between broadcasting undertakings providing services of a similar nature, taking into account any variation in size and any other difference between the undertakings that may be relevant in the circumstances.

9. Rogers believes that this “fair and equitable” treatment principle should not be limited to “services of a similar nature”. While the CRTC would have the authority under the proposed wording in paragraph 5(2)(a.1) and other provisions in the Act to adopt a regulatory framework that ensures all competing broadcasting undertakings are treated in a fair and equitable manner, there is no requirement imposed on the CRTC to ensure that online undertakings are regulated in a manner that would be equitable and comparable to licensed broadcasting undertakings.
10. Since their inception, deep-pocketed foreign online streaming services, like Netflix, Disney+, Amazon Prime Video, Apple TV and Spotify, have been allowed to operate in the Canadian marketplace entirely free of any regulatory requirements. By contrast, the CRTC has continued to impose a complicated maze of financial, content and disclosure obligations on Canada’s radio, television and TV distribution industries. Most of these obligations are based on outdated business models and policy objectives that fail to recognize the operational realities of Canadian media businesses.

11. To provide a sense of the scope of those obligations, we summarize briefly below a few of the key regulatory requirements for broadcasting distribution undertakings (BDUs) and for conventional television stations. A more detailed list is provided in the **Appendix**. These obligations stand in sharp contrast to online undertakings, which are currently not subject to any regulatory obligations.
12. For BDUs, the key regulatory requirements include the following: contribute 5% of gross annual revenues to Canadian program production; offer a small basic service at a maximum rate that is determined by the CRTC; offer all discretionary programming services in small packages and on a standalone basis; perform simultaneous program substitution; abide by packaging rules for specific types of programming services; distribute only services authorized by the CRTC; and comply with various codes of conduct adopted by the CRTC.
13. Canada's broadcasters (radio and television stations, pay and specialty services and VOD undertakings) also make significant contributions to the Canadian broadcasting system. The list of regulatory obligations imposed on conventional television stations is particularly extensive and includes requirements to: contribute 30% of gross annual revenue to Canadian programming expenditures (CPE); devote 5% of gross annual revenue to programs of national interest (PNI); operate over-the-air (OTA) transmitters; devote 50% of the evening broadcast schedule to Canadian programming; broadcast up to 14 hours of local programming and 6 hours of locally reflective news each week; implement closed captioning, described video and audio description requirements; and comply with various broadcasting codes adopted by the CRTC.
14. While Canadian broadcasting undertakings comply with these regulatory obligations, they are doing so in a Canadian market where they are competing for subscribers, listeners, viewers and, in many cases, advertisers against mostly foreign online streaming services that are not subject to any of these obligations. Canadian broadcasting undertakings have been competing with these foreign services for more than a decade with both hands tied behind their backs.
15. This must change. Canadian owned and controlled broadcasting undertakings must be able to operate and compete fairly under a regulatory regime in which the regulatory obligations between themselves and these massive, and mostly foreign, online undertakings are comparable.
16. Given that it would be impossible to apply the existing regulatory frameworks established for licensed Canadian broadcasting undertakings to online undertakings, we do not suggest that Bill C-10 be amended to require the CRTC to implement a regulatory framework for online undertakings that would mirror the frameworks historically imposed on licensed Canadian broadcasting undertakings.
17. Instead, we propose that the Act be amended, in subsection 5(2), to ensure that all broadcasting undertakings (i.e. licensed Canadian services and foreign online streaming services) are subject to an equitable or comparable set of requirements. In practice, this would mean reducing the regulatory burden on licensed Canadian broadcasting undertakings. In our view, this is the only way to ensure Canadian broadcasting undertakings can remain competitive in a modern broadcasting system.
18. To achieve this goal, the Act should provide clear and direct guidance to the CRTC that in making regulations, it must take into account their competitive impact. For these reasons, Rogers proposes that an additional provision be added immediately after paragraph 5(2)(a.1) that would state that the Canadian broadcasting system should be regulated in a manner that:

5(2)(a.2) is fair and equitable taking into account the competition that exists between broadcasting undertakings even in circumstances where the nature of the services provided are not of the same class.

(ii) Recommendation 2 – Licences – Dispensing with the siloed approach to regulating Canadian broadcasting licensees – Section 9

19. The licensing requirement in section 9 of Bill C-10, which applies only to Canadian broadcasting undertakings, is another example of a provision that could perpetuate unbalanced and inequitable regulation by requiring only Canadian BDUs and broadcasters to be regulated in what are effectively “regulatory silos”. It means that each individually licensed undertaking will continue to be subject to a specific set of regulatory obligations. This siloed approach is not the way that commercial businesses operate and prevents value creation in the Canadian media landscape. It restricts and inhibits Canadian broadcasting companies, like Rogers, from competing with multi-billion dollar foreign companies who do not have to treat their distribution, broadcasting and production arms as separate businesses. Canadian companies must be given incentives to invest in Canadian programming. Imposing different obligations on Canadian companies than their foreign competitors only distorts the market and makes Canadian companies less competitive.
20. Canadian companies are disadvantaged in the proposed legislation in two ways. The first is that the Act still mandates the CRTC to issue licences and impose regulatory obligations on individual licensees rather than on the entire group of undertakings being operated by a company like Rogers. Under the existing rules, Rogers’ BDU division is required to contribute money to fund third-party productions that are broadcast on programming services that often compete with those operated by Rogers’ media division for audience share and advertising dollars. This is required of Rogers’ BDU division instead of allowing the company to support the news and information programming offered through its media division (Citytv and OMNI). That is not a normal commercial practice nor is it a commercial practice that Netflix or Spotify engage in today.
21. Second, foreign online streaming services will not be required to adopt the same siloed approach to comply with their regulatory obligations that is imposed on Canadian broadcasting undertakings, which will continue to be individually licensed under the Act. Instead, they will merely be required to register their business and have their regulatory obligations apply across their entire group of services.
22. A framework that requires Canadian companies (licensees) to carry on their broadcasting businesses in a manner that discourages efficiencies and limits competitiveness is inconsistent with normal commercial practices and should not be continued under the amended Act.
23. Rogers notes that the CRTC contemplated this ownership group approach to regulation in the report it issued in 2018 in response to the Governor in Council’s request for a report on future programming distribution models. In *Harnessing Change: The Future of Programming Distribution in Canada*,¹ the CRTC proposed a new approach for regulating broadcasting undertakings. In doing so, it acknowledged the need to modernize the approach to regulating Canadian media companies by focusing on establishing more broadly-based service agreements that allows for greater investment in Canadian owned and controlled content.²
24. Rogers submits that subsection 9.1(1) of the Act should be amended to expressly allow the CRTC to impose such regulations on an entity’s entire group of broadcasting services (i.e. online, radio, television and BDU) in order to avoid creating a structural barrier for Canadian companies. Specifically, we propose that subsection 9.1(2) of the Act include the following change (underlined):

9.1(2) An order made under this section may be made applicable to all persons carrying on broadcasting undertakings, to all persons carrying on broadcasting undertakings of any class established by the Commission in the order, to all persons carrying on broadcasting undertakings within a common ownership group or to a particular person carrying on a broadcasting undertaking.

¹ <https://crtc.gc.ca/eng/publications/s15/>

² <https://crtc.gc.ca/eng/publications/s15/pol1.htm#p1>

(iii) Recommendation 3 – Regulations, expenditures – Support for local news should be explicit – Subsection 11.1(1)

25. Subsection 11.1(1) of Bill C-10 authorizes the CRTC to impose expenditure obligations on broadcasting undertakings for the following three purposes:

(a) developing, financing, producing or promoting Canadian audio or audio-visual programs for broadcasting by broadcasting undertakings;

(b) supporting, promoting or training Canadian creators of audio or audio-visual programs for broadcasting by broadcasting undertakings; or

(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.

26. Local news and information programming is not included in this provision. In our view, it should be explicitly acknowledged in Bill C-10 given its vital importance to Canadians and to a healthy and strong democracy. The health of the broadcast news industry in Canada and the quality of news and information programming the industry produces must be a fundamental aspect of the *Broadcasting Act*. The absence of any obligation on the CRTC to develop a regulatory framework that financially supports the production of local news and information programming is an omission from Bill C-10 that results in asymmetrical regulation.

27. While the expenditure obligations imposed on Canadian broadcasting undertakings are currently regulated in a manner that requires licensees to devote a significant percentage of their revenue to independent producers or production funds for airing on third-party services, foreign online streaming services are not subject to any such obligations. They can use their revenue to fund whatever programming they wish for distribution on their own services. The proposed expenditure provision in subsection 11.1(1) of Bill C-10 will perpetuate that asymmetry.

28. Today, Canadian broadcasting undertakings are subject to expenditure obligations that actually inhibit their ability to support the local news and information programming that is offered on their services precisely because they are required to devote funds to third parties. In proposing that Canadian broadcasting undertakings be allowed to devote expenditures to the production of their own news and information programming, we are not saying that all broadcasting undertakings, including foreign online streaming services, should be required to make similar expenditures. Rather, we are saying that Canadian broadcasting undertakings should be able to contribute money to support the types of programming that makes the most sense for their services, just as foreign online streaming services are allowed to do today.

29. Rogers notes that all political parties appear to recognize the importance of local news and information programming to Canadians.³ Members of Parliament (MPs) from all parties have acknowledged that they hear about this directly from constituents and local leaders.⁴ There is a

³ Research and data support the significance of local news programming to Canadians. In the Quantitative Research Report commissioned by the CRTC as part of the *Let's Talk TV* proceeding, Canadians identified local news as the single most important type of programming identified by Canadians, with 81% saying it is important. To put this in perspective, this is nearly twice the number of Canadians that said sports programming was important (43%) and almost four times the number of Canadians that said reality TV was important (23%).

⁴ See, for example: <https://pm.gc.ca/en/news/readouts/2020/03/19/prime-minister-justin-trudeau-speaks-prince-edward-island-premier-dennis>; <https://www.cbc.ca/news/opinion/erin-otoole-conservative-leadership-1.5682213>; https://action.ndp.ca/page/-/2019/Q3/PDF%20Assets/2019-09-28_NDP-Vision-Doc_EN-Accessible.pdf; and Canada, Parliament, *House of Commons Debates*, 43rd Parl, 2nd Sess, December 11, 2020, p. 3327, speech of Mme. Andr  anne Larouche (Shefford).

clear, all-party consensus that local news and information programming is critical to Canadians and to a healthy democracy.

30. One of the lessons we learned in recent years and which became even more evident during the COVID-19 pandemic is that news creation faces significant financial challenges and that social media platforms have become a growing source of false news and misinformation, both in Canada and abroad. Canadian radio and television broadcasters are the most trusted and reliable source of news and information. A Reuters Institute study recently ranked private and public broadcasters ahead of national newspapers as their primary choice of news and information.⁵
31. Rogers notes with concern that the amendments proposed in Bill C-10 only refer to “news” in one provision, and that is in subparagraph 3(1)(d)(ii.1). It states that the Canadian broadcasting system should:

(ii.1) include programs produced by Canadians that cover news and current events – from the local and regional to the international – and that reflect the viewpoints of Canadians, including viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds.
32. In our view, the CRTC’s regulation-making power to require broadcasting undertakings to make financial expenditures to specific types of programming in subsection 11.1(1) of the Act should not only encourage the production of news and information programming, but should also recognize the enormous contribution that local news and information programming produced by Canadian broadcasters make to furthering the policy objectives of the Act.
33. Local news and information programming is something only Canadian owned and controlled broadcasting undertakings offer to the public. Canadian BDUs and broadcasters are the ones with “boots on the ground” in local communities all across Canada. They understand the issues and the concerns of ordinary Canadians and have the ability to meet those standards and expectations.
34. If Canadian broadcasting undertakings are going to survive the onslaught of foreign programming (including foreign news and information programs produced in other jurisdictions that are streamed into this country), we must be given the opportunity to invest in areas that help differentiate us and leverage our value with Canadians.
35. In order to ensure the creation of local news and information is seen as a priority in the system on par with other kinds of programming, we propose that subsection 11.1(1) in Bill C-10 be amended to include an additional paragraph that specifically references local news and information programming, such as the following:

11.1(1)(d) developing, financing, producing or promoting local news and information programming, including through contributions or expenditures made by an affiliate to the person carrying on the broadcasting undertaking that broadcast those programs.
- (iv) *Recommendation 4 – Regulations respecting licence fees – Require broadcasting undertakings to pay only fees that fund the CRTC’s operations – Subsection 11(3.1)*
36. Bill C-10 does not amend, in a material manner, the CRTC’s authority to make regulations establishing the schedule of fees to be paid by persons carrying on broadcasting undertakings of any class. Under the current *Broadcasting Licence Fee Regulations, 1997*, there are two separate fees payable by licensees: (i) Part I licence fees, which are the fees that relate to the recovery of costs of the CRTC’s activities; and (ii) Part II licence fees, which are fees paid to the federal government.

⁵ *Digital News Report 2020*, Reuters Institute for the Study of Journalism at Oxford University: [Canada - Reuters Institute Digital News Report](#).

37. Under Bill C-10, Canadian broadcasting undertakings would still be required to pay both Part I and Part II licence fees, but foreign online streaming services (online undertakings) would, pursuant to subsection 11(3.1) of the Act, only have to pay Part I licence fees. This is inequitable and unduly penalizes Canadian companies.⁶
38. There is no reason why the fees paid by Canadian companies operating broadcasting services in Canada should be greater than those incurred by foreign online undertakings. Part II fees should be eliminated for all broadcasting undertakings.

(v) Recommendation 5 – Petitions to Cabinet – subsection 28(1)

39. Another provision in Bill C-10 that would perpetuate inequities between Canadian (licensed) broadcasting undertakings and foreign online streaming services involves the authority given to the Governor in Council to set aside or refer back decisions to the CRTC. Under the proposed amendment to subsection 28(1) of the Act, the authority to set aside or refer a decision back to the CRTC is limited to certain licensing decisions made under section 9. That means that only Canadian owned and controlled broadcasting undertakings could have their decisions challenged through this political appeal process and foreign online streaming services would not be captured. In our view, this provision in the Act should apply to all broadcasting undertakings and not just to those that are licensed.

IV. Program Piracy (Recommendation 6)

40. Rogers is deeply concerned that program piracy, or what has also been called online content theft, is not addressed in Bill C-10. Online content theft robs all Canadian stakeholders – creators, producers, broadcasters and distributors – of their ability and right to be compensated for the programs they create, exhibit and distribute. Moreover, it undermines the main objective of the *Broadcasting Act* – the creation of Canadian content. Without tools to combat piracy, all of the new legislative amendments that have been designed to support and fund Canadian programming will inevitably fail.
41. As a distributor, broadcaster and producer of Canadian content, Rogers is acutely aware of the serious threat online content theft poses to the health of the sector. Canadian broadcasters, distributors and producers pay millions of dollars to produce programs and/or acquire the rights to exhibit and distribute programs. These exclusive program rights are being undermined by illegal online streaming services that are stealing the content from those who have invested in and/or purchased the rights to these programs, and then redistributing it for profit. Currently, online content theft is most prevalent among illegal IPTV services. These services offer customers thousands of live linear channels from across the globe as well as on-demand access to a vast collection of the latest television shows and movies, some of which are still in theaters or have not yet been released. The Internet allows the operators of these services to hide their true identities, making current enforcement tools ineffective.
42. The evidence indicates that online content theft is a growing problem which continues to have a material adverse impact on the Canadian broadcasting system. It is now estimated that 9.3% of Canadian households subscribe to an illegal IPTV service, which is an 8.3% increase since 2018.⁷ These illegal services are having a major impact on Canadian BDUs and broadcasters. A 2019 Scotia Bank report estimated that the financial impact online content theft had on Canadian BDUs

⁶ In 2019, the Part II licence fees amounted to more than \$116 million, whereas in 2020 the Part I licence fees totalled \$32.721 million.

⁷ https://www.sandvine.com/hubfs/Sandvine_Redesign_2019/Downloads/2020/Whitepapers/Revenue%20Assurance/Sandvine_WP_IPTV%20Fraud%2020200224.pdf

was \$1.497 billion, while the impact on Canadian broadcasters was \$175 million.⁸ The content theft threat has escalated during the COVID-19 pandemic. MUSO, a UK data monitoring company, noted that during the pandemic, unlicensed viewing of television shows and movies in Canada increased by 12% and 42%, respectively.⁹ Given these numbers, it is readily apparent that online content theft is a significant threat to the Canadian broadcasting system, and it directly impacts all Canadian English-, French- and third-language broadcasters, distributors and producers of every size.

43. This threat to Canada's broadcasting industry can be addressed, at least in part, through amendments to the Act by adding a definition of "program piracy" to subsection 2(1) of the Act, as well as by including a new broadcasting policy in subsection 3(1) and a regulation-making power relating to program piracy in subsection 10(1) of the Act. The specific amendments we propose to Bill C-10 are underlined below:

s. 2(1) **program piracy** includes the reproduction, communication, broadcast, transmission, distribution, decryption or decoding of, or access to, copyrighted programs without the authorization of the copyright holder, or any activity that enables, induces or facilitates any such actions; (*piratage de programmes*)

s. 3(1)(d) the Canadian broadcasting system should

(v) endeavour to discourage, inhibit and prevent program piracy;

s. 10(1) The Commission may, in furtherance of its objectives, make regulations

(j.1) respecting program piracy in order to facilitate the protection of copyrighted programs where those rights are held by broadcasting undertakings.

44. In our view, Parliament must make laws that will protect the integrity of the Canadian broadcasting system by establishing effective measures to prevent program piracy and online content theft. The amendments outlined above would give the CRTC the mandate it needs to help combat program piracy.

V. Licences – Amending licences on the CRTC's own motion – Paragraph 9(1)(d) (Recommendation 7)

45. Finally, Rogers wishes to raise another issue related to the licensing provision in subsection 9(1) of the Act. Bill C-10 proposes to change the current provision that prohibits the CRTC from amending a broadcasting undertaking's licence on its own motion during the first five years of a licence term. If passed in its current form, the CRTC would be permitted to amend a licence at any time, on its own motion, with no obligation to wait five years.
46. This raises two concerns 1) Canadian companies will no longer have the business certainty this protection currently provides against any sudden changes to their regulatory obligations; and 2) it is not clear whether the CRTC would have the same ability to amend, on its own motion, conditions imposed on foreign online streaming services under section 9.1 of the Act. This would create yet another regulatory inequity between Canadian and foreign companies.
47. In light of these concerns, Rogers recommends that paragraph 9(1)(d) be amended to include a limitation on the CRTC's authority to change regulatory commitments, on its own motion, until five years have expired since the issuance or renewal of the licence and that the same limit on the

⁸ Scotiabank, *Converging Networks*, "See You in Court: Piracy, Wholesale, Maybe Even MVNO in 2020?", November 25, 2019.

⁹ <https://www.muso.com/magazine/film-tv-piracy-surge-during-covid-19-lockdown>

CRTC's authority be established for any conditions of service imposed under subsection 9.1 of the Act.

VI. Conclusion

48. In closing, Rogers believes that implementing these seven recommendations through amendments to Bill C-10 is necessary to ensure the continued growth and development of the Canadian broadcasting system and the Canadian broadcasting undertakings, producers and creators of content that operate within it. Implementing the changes we have proposed will ensure that Canada continues to have a vibrant domestic broadcasting system capable of supporting the creation, production and distribution of Canadian programming, in both official languages, as well as in Indigenous and third languages.

APPENDIX

(i) Summary of key BDU regulatory obligations:

- Contribute 5% of annual gross revenues derived from broadcasting (approximately \$70 million annually for Rogers) to Canadian program production – the vast majority of which is directed to our competitors via the Canada Media Fund;
- Offer a basic service for a maximum of \$25 per month that must include: all local and regional television stations appropriate to the market, the provincial educational channel, the provincial legislative channel, the community channel, as well as several mandatory carriage services that have been deemed by the CRTC to be in the public interest;
- Offer customers the choice of ordering discretionary channels on both a standalone and small package (no more than 10 channels) basis;
- Perform simultaneous program substitution over U.S. TV station signals at the request of Canadian over-the-air (OTA) TV stations (local and regional) when they are airing the same program at the same time;
- Comply with packaging and distribution rules applicable to the carriage of discretionary services devoted to official language minority communities (OLMCs), ethnic and third-language services, and services operated by entities that are not vertically-integrated;
- Distribute only those foreign television services that are specifically authorized by the CRTC for distribution in Canada by BDUs; and
- Comply with various broadcast codes, including the Television Service Provider Code of Conduct.

(ii) Summary of key broadcaster obligations, none of which are imposed on foreign online streaming services:

Canadian ownership and control; concentration of ownership and diversity of voices; corporate tax; broadcast licence fees; Canadian Programming Expenditures (CPE) of 30% of prior year gross revenues; Programs of National Interest (PNI) of minimum 5% of prior year gross revenue including commitments to independent production; OTA transmitters; Canadian exhibition requirements (minimum of 50%); Local programming requirements of 7-14 hours/week, including 3-6 hours of locally reflective news; broadcast standards; describe video; closed captioning; audio description; public alerting; broadcast reporting on the items listed previously; group-based licensing obligations for vertically-integrated companies; wholesale code.

For more information on Rogers Communications Inc. visit <https://about.rogers.com/>