



Proposed Amendments to Bill C-10

(An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts)

**Directors Guild of Canada submission to the
Standing Committee on Canadian Heritage**

March 26, 2021

The Directors Guild of Canada (DGC) appreciate the opportunity to present a written submission to the Standing Committee on Canadian Heritage on Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* (Bill C-10).

The Directors Guild of Canada is a national labour organization that represents key creative and logistical personnel in the film, television and digital media industries. Today, it has approximately 5,000 members drawn from 47 different craft and occupational categories covering all areas of direction, production, editing and design of screen-based programming in Canada.

A strong and modern legislation for the future of Canadian stories and creators

Bill C-10 is an historic opportunity to modernize the Canadian broadcasting system and set new legal and policy tools for the 21st century. The Bill successfully clarifies that online broadcasting is within the scope of the Act, while strengthening certain functions of the CRTC, adding explicit information sharing and confidentiality provisions.

In essence, Bill C-10 opens the door for regulation of all present and future media undertakings. The question on how to proceed raises some concerns as multiple sections of the Broadcasting Act have been repealed or amended to remove protections for Canadian culture in order to include foreign platforms, precisely:

- Section 3(1)(a) about Canadian ownership,
- Section 3(1)(f) with regards to requirements to use Canadian talent; and
- Section 5(2) (a.1), which may lead to a similar regulatory treatment for domestic and foreign undertakings.

The DGC understands that Bill C-10 responds to the necessity to move from a closed broadcasting regulatory system to an open one which will include foreign entities. In order to achieve this, it is understandable that the government seeks to strike the right regulatory balance between domestic broadcasters and foreign online platforms. However, this new approach should not be carried out to the detriment of Canadian creators, endangering their capacity to tell their own stories.

Canada's broadcasting system is multidimensional, with at its base the creators, who serve as a key component. In fact, creators find themselves at the origin of the creation of the intellectual property and are responsible for the distinctiveness of audiovisual programs. While content producers have contracted the rights, directors and screenwriters are the authors, a starting point to a vibrant industry.

The much-needed changes that Bill C-10 is bringing are to ensure continuous and long-term support for the creation of original Canadian programming. Bill C-10 presents a

window of opportunity to guarantee long-term fairness in the system and recognize that creators should be remunerated for the rightful use of their work. But such a provision is currently absent from the Broadcasting Act and Bill C-10: The Broadcasting policy set in the Act encourages the development of Canadian expression and talent, without specifically mentioning creators' rights. Therefore, the Bill should protect all creators who are an integral part of the audiovisual value chain by ensuring a fair compensation and upholding authors' rights.

Film and television production is a growing and profitable industry that represents today more than 180,900 full time equivalent jobs¹ across the country. But despite its apparent health and the positive effect on surrounding sectors, such as hospitality and travel, the domestic production sector remains fragile. Without the proper regulatory safeguards, Canadian audiences might not be able to have access to Canadian stories the way they used to.

It is therefore crucial to protect a Canadian narrative allowing all creative voices to express a Canadian point of view², with a special emphasis on supporting diversity and inclusivity: Indigenous peoples, official language minority communities, the LGBTQ2+ community, racialized and ethno-cultural communities, women, accessibility groups, and French-language creators. The tabling of Bill C-10 has the capacity to address these important issues in Broadcasting whose effect will be felt for decades fostering the development of a Canadian point of view, the enhancement of a national identity and preserving our cultural sovereignty.

Accordingly, the DGC presents the following amendments to modify Bill C-10:

- 1. A policy objective that the Canadian broadcasting system include, to the greatest extent possible, effective ownership and control by Canadians; and**
- 2. A policy objective that maximizes the use of Canadian creative resources in Canadian programming.**
- 3. A policy objective that considers the nature of the services rendered by broadcasting undertakings as well as their size and impact on the Canadian creative and production ecosystem when issuing a regulation.**

¹ *Profile 2019: An Economic Report on the Canadian Film and Television Production Industry*, published by the CMPA in collaboration with the Department of Canadian Heritage, Telefilm Canada, the Association québécoise de la production médiatique (AQPM) and Nordicity, p. 4 (*Profile 2019*).

² 3(1)(d)(ii), Broadcasting Act

1. Canadian Ownership 3(1)(a)

The primary goal of Bill C-10 is to clarify that online foreign broadcasters are subject to the Broadcasting Act, and to formalize their inclusion in the broadcasting regulatory framework. Due to the inclusion of online broadcasters, the current version of 3(1)(a) which states: ‘the Canadian broadcasting system shall be effectively owned and controlled by Canadians’ is no longer present in the bill.

We understand that the Bill does not change existing requirements for Canadian ownership and control of traditional broadcasters, as only Canadian individuals, companies and organizations will be eligible to hold a licence, as defined in the 1997 *Direction to the CRTC on the Ineligibility of Non-Canadians to hold licences*. The CRTC will continue to license traditional broadcasters.

As today foreign companies capture a significant market share in Canada, it is unrealistic to build a legislative framework based on the concept of a single system that is effectively owned and controlled by Canadians. Nevertheless, the existence of Canadian-owned and -controlled companies remains important to ensure the creation and distribution of content that reflects Canadian values and perspectives.

It is only a matter of time before traditional Canadian broadcasters will complete their transition online. In that situation, they would not be required to be Canadian owned and controlled anymore. Unlike traditional broadcasters, online programming services would not be licensed but would be subject to the conditions of service proposed in Bill C-10. The current bill should be adaptable to technological change and new business models.

The DGC supports the approach taken in recommendation 53 of the “BTLR” report, suggesting that the media communications sector should: “consist of Canadian-owned and -controlled companies alongside foreign companies.”

Current section in the Act	Bill C-10	DGC’s proposed amendment
3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	3(1)	3 (1) (a) the Canadian broadcasting system shall maximize Canadian ownership and control;

³ <https://laws-lois.justice.gc.ca/eng/regulations/sor-97-192/page-1.html>

⁴ Broadcasting and Telecommunications Legislative Review Panel, Canada’s Communications Future: time to act, [https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/\\$file/BTLR_Eng-V3.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/$file/BTLR_Eng-V3.pdf), Page 128, Recommendation 61.

2. Reduced requirements to use Canadian talent - 3(1)(f)

Many stakeholders expressed concerns with the new proposed language for 3(1)(f), which may significantly reduce the requirements to draw on Canadian talent and further lead to the deregulation of established Canadian players. We understand the amendment in Bill C-10 was done to obtain more flexibility in the system, in order to include a wide range of platforms and business models. However, this will possibly undermine the Canadian character of our Broadcasting system.

The DGC is proposing the following amendment for 3(1)(f):

Current section in the Act	Bill C-10	DGC's proposed amendment
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;	3 (1) (f) each broadcasting undertaking shall make use of Canadian creative and other resources in the creation and presentation of <u>programming to the extent that is appropriate for the nature of the undertaking</u> ;	3(1) (f) each broadcasting undertaking shall make maximum use of Canadian creative and other resources in the creation and presentation of Canadian programming, and shall contribute significantly to the creation and presentation of Canadian programming to the extent that is appropriate for the nature of the undertaking;

3. Risk of lowered or equal regulations between Canadian and foreign services of similar nature - 5(2) (a.1)

Bill C-10 new paragraph 5(2)(a.1) indicates that broadcasting undertakings of similar nature (for example Netflix and a Canadian online streaming platform) would be subject to the same or similar conditions of service. In other words, this may translate into less requirements for Canadian broadcasters offering programming online, or may lead the Commission to give the same treatment to domestic and foreign platforms (of similar nature), regardless of their market share or place in the system.

Regulatory policy

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

Current section in the Act	Bill C-10 (New paragraph)	DGC's proposed amendment
	5 (2) (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;	5 (2) (a.1) takes into account the nature and diversity of the services rendered by broadcasting undertakings as well as their size and impact on the Canadian creative and production ecosystem and any other difference between the undertakings that may be relevant in the circumstances;

4. Ensuring an equitable remuneration for creators

The audiovisual value chain

The creation of intellectual property (IP) always starts with the author (screenwriter or director) and is then assigned to the producer who in turn makes profits by exploiting the rights of an IP property, such as selling them to a broadcasting undertaking. Without the author at the inception, there would be no creation of value.

Creators are one of the links of the audiovisual value chain, which is a continuum. They are situated upstream from the producers, distributors and broadcasters who exploit the value of their rights. If today producers present the urgency to establish terms of trades to retain some stakes to raise financing and reach sustainability, similar safeguards should be awarded to content creators, whether it is a filmmaker, screenwriter or screen composer.

Through collective agreements, like those negotiated by the DGC and other guilds and unions, Canadian screenwriters and directors assign their exploitation rights. These agreements provide for fair compensation both for their expertise and the future use of their works. But failing to recognize the creators' right to be fairly remunerated and have access to fair negotiations would be a missed opportunity in this Broadcast Act review.

Canadian producers today worry of being forced to accept a one-time fee payment from foreign broadcasters, surrendering de facto global IP rights, and forgoing potential future revenues for the show. Similarly, creators worry that their authorial rights (moral and exploitation rights) might be denied in the negotiation with powerful media undertakings. Together, creators and producers are looking forward to a reliable stream of revenue that is the only way to maintain a stable and resilient industry.

The establishment of terms of trade

The expert panel in charge of reviewing Canada's Broadcasting Act made a recommendation on terms of trade in its final report in 2020, to govern relations between broadcasting undertakings and content producers⁵:

We recommend that the *Broadcasting Act* be amended to ensure that the CRTC may by regulation, condition of licence, or condition of registration: [...] regulate economic relationships between media content undertakings and content producers, including terms of trade.

This recommendation was to strengthen the producers' ability to negotiate terms of trade with the purchasers of their content so that they may retain the commercial rights. Unfortunately, the principle for creators and authors rights to fully enjoy and exploit the value of their rights has not been mentioned in this report.

For years, the Canadian Media Producers Association (CMPA) has been the official standard-bearer of the importance to establish terms of trades to govern the economic relationships between programming undertakings (and now online undertakings) and independent content producers. As debates and the examination of Bill C-10 are underway, this issue came back under the spotlight. The DGC fully supports the CMPA initiative as this is a matter of fairness and protection of our cultural sovereignty.

In the United Kingdom, the media regulator Ofcom has addressed the imbalance of negotiating power by prescribing terms of trade between independent producers and broadcasters in 2003. In France, a Bill relative to the audiovisual communication and cultural sovereignty in the digital age was tabled in 2019. One of the bill's objectives is protect and reinforce creators and authors' protection with the advent of new platforms and the redefinition of the power balance between stakeholders in order to maintain a fair remuneration.

⁵ Broadcasting and Telecommunications Legislative Review Panel, Canada's Communications Future: time to act, [https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/\\$file/BTLR_Eng-V3.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/$file/BTLR_Eng-V3.pdf), Page 145, Recommendation 61.

⁶ Projet de loi relatif à la communication audiovisuelle et à la souveraineté culturelle à l'ère numérique, https://www.assemblee-nationale.fr/dyn/15/textes/l15b2488_projet-loi.

Bill C-10 policy gap with regards to creators

The DGC has identified an important policy gap in Bill C-10 with regards to creators. If the 1991 Broadcasting Act and Bill C-10 core missions are meant to support the creation of Canadian programming, it has no specific provision to uphold creators' rights. In the new legislative ecosystem, Bill C-10 does not provide clear language to instruct the CRTC to govern the relationship between creators and foreign broadcasting undertakings, nor it can protect against the potential future erosion of creators' rights.

The Creative Canada Policy Framework, launched in 2017, presented the investment in creators as a key priority for the government, recognizing already at the time that "it is critical that Canada's creators are equipped to take full advantage of the opportunities presented by the digital environment", adding that:

[...]

A well-functioning copyright regime should empower creators to leverage the value of their creative work, while users continue to enjoy access to a wide range of diverse cultural content.⁷

This objective was expressed again in 2017 by the Ministers Bains and Joly in their letter to the President of the Committee responsible for the review of the Copyright Act to "empower creators to leverage the value of their works and investments⁸". In 2019, in the context of the Copyright Act review, the Standing Committee on Canadian Heritage examined the remuneration models for artists and creative industries⁹. The Committee presented a set of recommendations but the remuneration issue was left open.

The DGC believes that the Broadcasting Act and the Copyright Act are two legislative tools that should reinforce each other when it comes to the fair remuneration of creators. Bill C-10 should offer a vision and principles on how Canada should approach the digital broadcasting economy with regards to creators.

⁷ Creative Canada Policy Framework, <https://www.canada.ca/content/dam/pch/documents/campaigns/creative-canada/CCCadreFramework-EN.pdf>, Page 17.

⁸ Letter by Navdeep Bains, Minister of Innovation, Science and Economic Development, and Mélanie Joly, Minister of Canadian Heritage, addressed to Dan Ruimy, MP and Chair of the Standing Committee on Industry, Science and Technology, on December 13, 2017.

⁹ Shifting Paradigms, Report of the Standing Committee on Canadian Heritage, May 2019, <https://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-19/>

Copyright protection on all future platforms

Adding a provision to Bill C-10 to enshrine authorial rights as set in the Canadian Copyright Act would enhance protections for all screenwriters and all directors with regard to the exploitation of their works on all platforms. This will also provide transparent framework for the protection of creators in the context of the rapid growth of new usages and changes in the distribution of audiovisual works, especially in relation to remuneration models. And last, Bill C-10 should recognize Canadian creators' legitimate bargaining power in order to ensure fair remuneration.

DGC's proposed amendment

The DGC proposes to add a paragraph to the section 3 of the Broadcasting Act:

Broadcasting Policy

3 (1) It is hereby declared as the broadcasting policy for Canada that

(d) the Canadian broadcasting system should

[...]

(v) empower creators to leverage the value of their works and have access to a fair remuneration;

5. DGC comments on the Canadian Heritage draft policy direction

In response to a request made by the Standing Committee on Canadian Heritage, the Department of Heritage recently released the draft policy direction they intend to publish following the passage of Bill C-10.

While we recognize that the document in question is still a draft that will be amended and that the legislation itself is not prescriptive in principle, the DGC believes that the direction could provide additional details on the regulatory objectives to achieve.

For this reason, The DGC sees an opportunity for the government to be more explicit in the policy direction to publish, in order to obtain the following specific outcome: ensure that Canadian creators can continue to thrive in a healthy domestic market in the decades to come.

In addition, the DGC appreciates the fact that section 7 of the policy direction mentions the Canadian ownership of intellectual property and favours Canadian creator in key creative positions.

The certification of Canadian programs and the points system is the touchstone of the film and television industry. This certification system administered by CAVCO in place since 1995 is more relevant than ever to support Canadian talent in the digital era. A ten-points system representing the key creative positions allows creators to continue to prosper in Canada as well as internationally. This system does not contravene to the objectives enunciated in Bill C-10 and can perfectly fit in the new legislative framework.

We thank the members of the Standing Committee for the opportunity to provide a written submission to Bill C-10. We remain available should you have any question about the proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dave Forget', with a long horizontal stroke extending to the right.

Dave Forget
National Executive Director
Directors Guild of Canada