

Recommendations for C-10, *An Act to amend the Broadcasting Act*

Prepared by Anthem Sports and Entertainment

March 29, 2021

To the Standing Committee on Canadian Heritage

Bill C-10, *An Act to Amend the Broadcasting Act*



Summary of Recommendations

Anthem understands that some of our media colleagues will propose material changes to C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*. We support some of those recommendations, including recognition of programming *services* and not just *programs* as it relates to online distribution. However, our submission below offers two (2) additional recommendations that could go a long way in supporting the independent *broadcasting* sector. The simple act of adding the phrase ‘*independent broadcasters*’ into the Act would provide a level playing field in industry and regulatory negotiations.

The Standing Committee should note that the recommendations below are structural and long-term in nature. Emergency support for independent Canadian broadcasters – to account for the COVID-19 pandemic – may take on many forms, including the waiver of Part I and II Broadcasting Licence Fees for *all* domestic broadcasters (i.e., not just local television and radio stations) and increased Government advertising on traditional Canadian media. These measures would provide immediate relief and support as advertising categories recover, at least in part.

Please also note that of the two recommendations outlined below, the first is an amendment to Bill C-10 itself, while the second represents a recommendation relevant to the Order in Council to the CRTC following Royal Assent.

1) Include explicit recognition of the independent Canadian broadcasting sector in s. 3(1) of the Broadcasting Act.

and

Provide direction to the CRTC to regulate distribution and online undertakings in such a manner as to ensure meaningful distribution of, and compensation to, independent Canadian discretionary services.

2) Ensure a meaningful percentage of online broadcaster contributions is directed to the independent Canadian broadcasting sector (i.e., an envelope in addition to the independent production sector). We recommend that 25% of funds generated by online distributors be directed to the independent Canadian broadcasting sector. This would leave ample funding for other parties (e.g., independent producers; vertically-integrated broadcasters; print and digital media).

Share of Total Television Revenues

According to the CRTC’s *Communications Monitoring Report 2019*, there are approximately 80 entities in the Canadian television landscape.

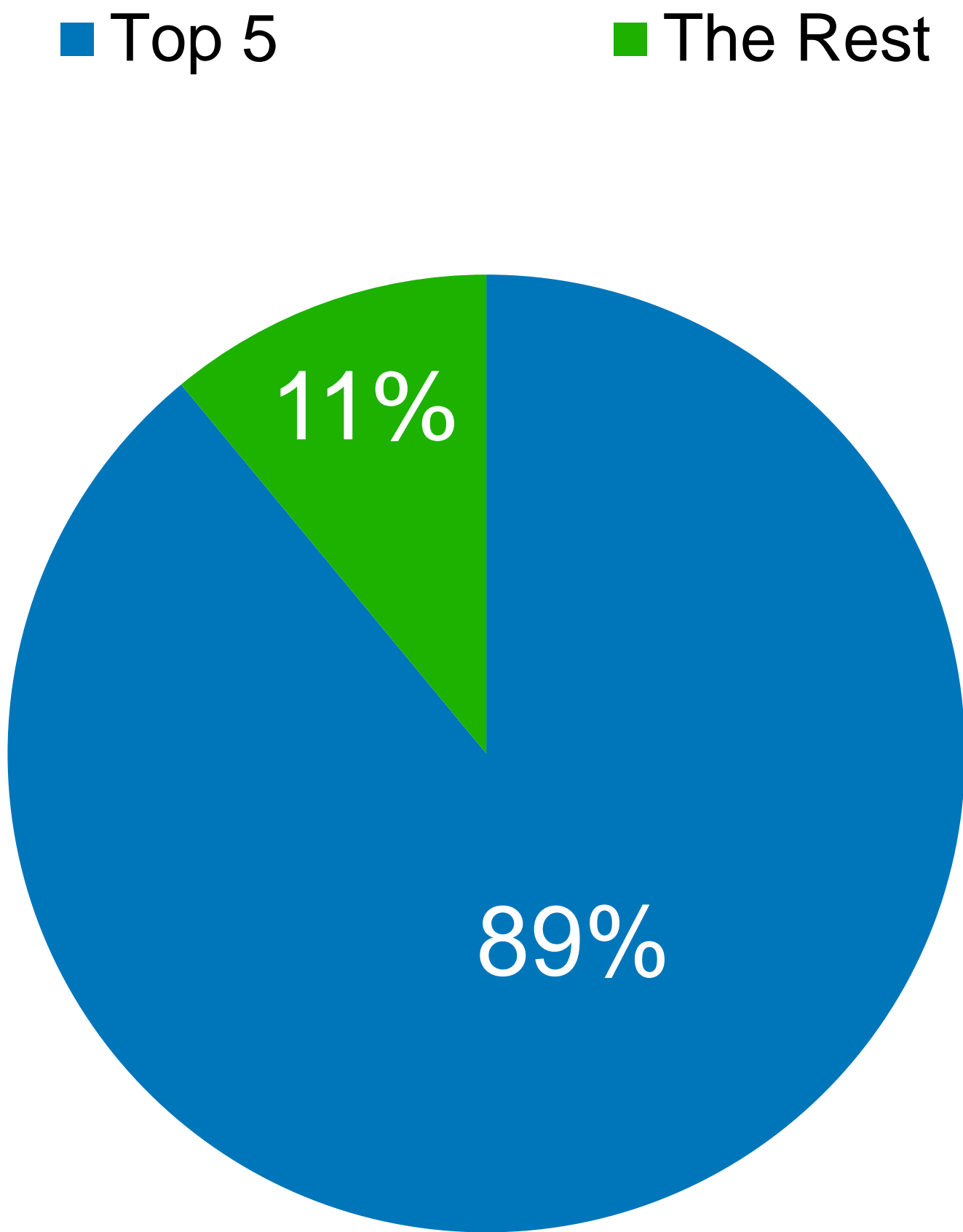
Bell Media, Corus/Shaw, Rogers Media, and Quebecor Media account for 71% of total television revenues (the first two account for 50%).

Each of these private media companies is ultimately controlled by shareholders that also own distribution systems. The advantages of such vertical integration are well known in the industry and include:

- Negotiating leverage that includes ultimate control over the carriage, packaging, and pricing of traditional and digital programming services;
- The ability to automatically launch their own services into millions of households;
- Scale to invest in platform expansion; and
- The ability to share regulatory and licence obligations over entire groups of television assets.

CBC/Radio-Canada accounts for 18% of total television revenues –including over \$1.2 billion in Parliamentary appropriations and hundreds of millions of dollars more in earned revenue, chiefly advertising and subscription revenues.

This leaves the remaining 11%.**



* See page 163 and Infographic 6.2.

**This actually overstates the size of the independent television sector. Bell and Quebecor/TVA have subsequently purchased V Media Group and Serdy Media, respectively.

Context

As an independent broadcaster, Anthem's services are part of shrinking group that also includes, among others, APTN (Indigenous), OUTtv (LGBTQ2+), Accessible Media Inc. (media for persons with sight and hearing impairments), Blue Ant (lifestyle and nature), and dozens of multicultural, multilingual, and ethnic services.

This level of concentration, and the disappearing *independent* broadcaster part of the value chain, should concern public policy makers. Independent broadcasters fill critical programming niches and contribute to:

- 1) A diversity of voices and ownership across any number of programming genres and broadcast media (including television and radio) in official and third-languages; and
- 2) The Canadian broadcasting system via employment and development opportunities; investment in, and promotion of, Canadian content; and adherence to dozens of regulatory and accessibility obligations.

Anthem submits that a meaningful proportion of monies generated from online undertakings should be directed to independent Canadian broadcasters. Our proposed approach would help mitigate structural inequities in the system: near total lack of negotiating leverage with distributors; no Parliamentary appropriations; no control over carriage, packaging, or pricing decisions; no or limited ability to share regulatory obligations across and among larger broadcasting portfolios; high capital requirements to expand onto other platforms and devices; no access to customer data; intermediated relationships with our own viewership base (required for discretionary services); and the all-too-common inability to materially access existing funds due to granular and Byzantine category restrictions and allocation formulas that favour larger, more established players. We understand that the Canadian production sector is likely to benefit most from this influx of new revenues. While each sector obviously has its own challenges, independent producers benefit from new and material investment in Foreign Location and Service (FLS) production by online and over-the-top giants. FLS now accounts for 52% of total film and television production volume in Canada (in terms of \$); while in-house broadcaster production accounts for 13%*.

Recommendation No. 1

Include explicit recognition of the independent Canadian *broadcasting* sector in s. 3(1) of the *Broadcasting Act*.

and

Provide direction to the CRTC to regulate distribution and online undertakings in such a manner as to ensure meaningful distribution of, and compensation to, independent Canadian discretionary services.

The Government has explicitly and successfully recognized the role of the Canadian independent *production* sector in the Broadcasting Policy for Canada and has proposed to maintain this language in Bill C-10. For reasons outlined above, and in order to preserve diversity of voices and ownership, we propose the following minimal changes to s. 3(1)(i) of the *Broadcasting Act* (italics included in C-10; recommend changes in red):

It is hereby declared as the broadcasting policy for Canada that: (i) the programming provided by the Canadian broadcasting system should

- (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,**
- (ii) be drawn from local, regional, national and international sources,**
- (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 the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds,**
- (iii) include educational and community programs,**
- (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and**
- (v) include a significant contribution from the Canadian independent broadcasting and production sectors (emphasis added)**

Additionally, the Government must provide direction to the CRTC to regulate distribution and online undertakings in such a manner as to ensure meaningful distribution of, and compensation to, independent Canadian discretionary services. Existing regulatory protections for most of the independent stations and services, such as they are, have led to only 11% collective market share (and declining), with minimal carriage and/or compensation, limited discovery opportunities, potential irrelevance, and probable closure. This recommendation would help ensure greater negotiating leverage for independent Canadian broadcasters and an opportunity to be carried, packaged, and found.

Recommendation No. 2

Ensure a meaningful percentage of online broadcaster contributions is directed to the independent Canadian *broadcasting* sector (i.e., an envelope in addition to the independent *production* sector).

- We recommend that 25% of funds generated by online distributors be directed to the independent Canadian *broadcasting* sector. This would leave ample funding for other parties (e.g., independent producers; vertically-integrated broadcasters; print and digital media).

Note that if these new monies are distributed through the Canada Media Fund (CMF) and/or Telefilm, funding distribution and allocation to independent Canadian broadcasters would have to be subject to a new set of eligibility rules given the wide range of programming genres, languages, and scale associated with these stations and services.

- For greater clarity, funding should be available to independent Canadian stations and services operating in any programming genre(s). A diverse approach to content funding would include sports, variety, game shows, music, dance, education, and so on, in addition to dramas, comedies, and documentaries – and this would require removal of current programming category restrictions from the various funds (for eligible independent broadcasters).

On 3 November 2020, Canadian Heritage released *Summary: Amendments to the Broadcasting Act*. In that presentation, the Government estimated the potential size of the contribution:

- If the CRTC requires online broadcasters to contribute to Canadian content at a similar rate to traditional broadcasters, online broadcasters' contributions to Canadian music and stories could amount to as much as \$830 million by 2023.

About Anthem Sports & Entertainment

Anthem owns and operates three (3) small, Canadian, English-language, high-definition, entertainment- and sports-themed discretionary television services: GameTV; Game+; and Fight Network. In 2019, Anthem expanded its scale and presence in the United States and Canada through the purchase of AXS TV and HDNet Movies.*

Like many other media companies, Anthem has recognized and embraced an increasingly digital landscape. We have specifically built digital products to participate in that growing segment – all the while recognizing that vast swaths of those platforms are controlled by foreign mega-corporations, such as Netflix, Google, Disney, and Amazon, as well as large vertically-integrated Canadian companies.

Ours is an independent company that wants to grow and innovate, to carve out programming niches not served or under-served by larger, vertically-integrated players, and to further expand into related areas that employ Canadians (e.g., live amateur and professional sports production). Note:

- Anthem’s head office is in Toronto;
- We provide over 60 high-quality Canadian jobs in Programming and Production, Sales, Creative, and more, including executive positions;
- We buy and produce strong Canadian shows featuring Canadian talent; and
- We tackle important issues like concussions in amateur sport by supporting such agencies as the Concussion Legacy Foundation and victims of domestic abuse.

At Anthem, diversity in the workplace is all about creating an inclusive environment, accepting of every individual's differences and enabling all employees to achieve their full potential. In addition, our corporate social responsibility is reflected in [Anthem Cares](#).

We also ensure that diversity is reflected throughout our programming, particularly through storytelling. Some examples:

- **Fight Network** –In 2018, Boxing Manager Adrian launched the first-ever *Protect Yourself at All Times* symposium, an educational tool for fighters and their families.
- **Adaptation, Diary and Retrospective** – all Fight Network original series featuring behind the scenes interviews, stories and life stories of these athletes
- **Game+ and GameTV** – Funded and Broadcast an Original Movie – *Stream Me* – A feature film that is an inspirational, heartwarming story of Adira, a 16 year old high school student who discovers her love for gaming. With some help from a top Twitch streamer as her mentor, Adira quickly rises to a professional streaming status. The film looks to explore the world of online gaming through the eyes of a young indigenous girl living in rural Nova Scotia.

Anthem is an important, surviving member of a dwindling breed: An unaffiliated, independent, Canadian broadcaster in a heavily concentrated media landscape.

* AXS TV is eligible for carriage domestically via the CRTC’s *Revised List of Non-Canadian Programming Services*. It is currently available on certain Bell, SaskTel, and Eastlink distribution systems.

Conclusion

The challenges faced by independent Canadian *broadcasters* are existential. We commission, produce, and promote Canadian programming content in any number of genres (sometimes niche and unduplicated in the system), employ thousands of Canadians, invest in new distribution platforms, and are subject to detailed contribution regulations and licence conditions. Most of these services, including those owned and operated by Anthem, have no safety net and operate under limited regulatory protections. By including *independent broadcasters* within C-10, it secures a seat at the table for us in regulatory environments and industry negotiations.

Access to online distribution contributions, via a dedicated percentage or envelope of online undertaking contributions, would provide support for a critical and obviously challenged part of the value chain – and also support a policy of diversity of voices and ownership. It would help compensate for historically sub-standard carriage and packaging of, and payment to, independent Canadian services by distributors and online undertakings with scale – many of which are vertically-integrated, with media and distribution arms.

- As above, please note that a new and different allocation formula would have to be attached to a dedicated percentage or envelope for independent Canadian *broadcasters*. As a sub-sector, we operate across all programming genres, with varied revenue bases, in multiple languages, and different historical use of those funds. Current eligibility and disbursement formulas in place at CMF and/or Telefilm would simply not account for the diversity of independent Canadian programming services.

Thank you.

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