

Proposed Amendments to Bill C-10

1. Ensuring an optimal framework for the online content offer

One of the objectives of the proposed Act is to clarify that online broadcasting falls within the scope of the *Act*. However, social media and distribution services provided by online undertakings are excluded.

The exclusion of social media means, for example, that Canada's most popular online service, YouTube, would have no obligation to contribute to the development of Canadian content or to showcase it. However, we agree that individuals who use social media for non-commercial purposes should be excluded from the scope of the Act.

It would seem wiser to let the CRTC determine how to regulate social media under the *Broadcasting Act*, rather than proposing exclusions that could exempt these services from the scope of the *Act* in the first place. Excluding them from the Act would prevent the CRTC from collecting information from social media, eliminating its ability to assess the scope of their broadcasting activities. This would be a serious mistake, particularly in the context where social media are rapidly evolving and are increasingly popular for sharing cultural content, especially music.

If social media have significant broadcasting activities (e.g. YouTube), the CRTC will need to assess how to regulate them. And these platforms already know how to distinguish user-generated content from professional content. They also get licenses to use copyrighted content.

In the case of broadcasting distribution, the exclusion of online distribution undertakings generates, for the same activity, two regimes depending on the technology used. For example, the CRTC can issue mandatory distribution orders to ensure that certain broadcasting services are included in the subscription package. These include, for example, services offering content to minority language communities, Indigenous language content, accessible content for persons with disabilities, etc. These orders ensure access to certain content necessary for the implementation of the Canadian broadcasting policy. They ensure, for example, that Francophone minority communities have access to a minimum level of French-language services.

As proposed, Bill C-10 would deprive the CRTC of this tool with respect to online distribution undertakings. These undertakings will become increasingly important in the coming years, including in the audio sector. As the [CMF's 2020 Trend Report stated](#) "Several digital bundles have been offered for some time, whether it's through web platforms (Hulu+ Live TV, YouTube TV, Amazon Prime Video Channels), media streaming sticks (Roku) or telecom and cable TV providers (Comcast's Xfinity Flex)". Canadian companies such as RiverTV and Ebox now offer these services. If the CRTC is no longer allowed to require the inclusion of certain services, there is a serious risk that the services that have been deemed to contribute significantly to the objectives of the Act will lose penetration and their future viability will be jeopardized, thereby reducing the diversity of cultural expressions.

Furthermore, it is difficult to predict the evolution of future technologies and uses. Access to cultural content through social media could also be much more important in the future, as the [CMF's 2020 Trend Report stated](#): "Facebook is set to experiment with virtual worlds in 2020. The American juggernaut promises to deliver a massive, immersive VR universe with Facebook Horizon, on Oculus Quest and Rift, where visitors will even be able to watch films".

We also note that section 9(4) would allow the CRTC to exempt from the application of the Act persons who carry on broadcasting undertakings "if the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy". Thanks to the amendments we propose to the bill, C-10 will provide an opportunity to request information that will allow the Board to assess the extent of the undertaking's contributions to this policy.

If online undertakings were to be exempted from the application of the Act for reasons other than those mentioned in the previous paragraph, the Governor in Council would still have the ability to issue directions in this regard.

Current section	Bill C-10	CDCE's proposal	Explanations
	<p>Exclusion — carrying on broadcasting undertaking</p> <p>(2.1) A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider's affiliate, or the agent or mandatary of either of them — does not, by the fact of that use, carry on a broadcasting undertaking for the purposes of this Act.</p>	<p>Reject this section.</p>	<p>Give the CRTC responsibility for determining the application of this Act with respect to users of a social media service. If necessary, the Government of Canada could correct the situation by issuing a Direction to the Commission.</p>
	<p>Non-application — certain programs</p> <p>4.1 (1) This Act does not apply in respect of</p> <p>a) programs that are uploaded to an online undertaking that provides a social media service by a user of the service — who is</p>	<p>Reject this section.</p>	<p>Give the CRTC responsibility for determining the application of this Act with respect to users of a social media service. If necessary, the Government of Canada could correct the situation by issuing a Direction to the Commission.</p>

	<p>not the provider of the service or the provider's affiliate, or the agent or mandatary of either of them — for transmission over the Internet and reception by other users of the service; and</p> <p>b) online undertakings whose broadcasting consists only of such programs.</p>		
	<p>5 (2) (h) takes into account the variety of broadcasting undertakings to which this Act applies and avoids imposing obligations on any class of broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).</p>	<p>5 (2) (h) takes into account the variety of broadcasting undertakings to which this Act applies and avoids imposing obligations on any class of broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).</p>	<p>This is an unnecessary repetition of a principle already advanced in s. 9(4). Its repetition could encourage deregulation.</p>
	<p>9.1(1) b) the presentation of programs for selection by the public, including the discoverability of Canadian programs;</p> <p>e) a requirement for a person carrying on a distribution undertaking to carry, on the terms and conditions that the Commission considers appropriate,</p>	<p>9.1(1) b) the presentation of programs <u>and programming services</u> for selection by the public, including the discoverability of Canadian programs <u>and programming services</u>;</p> <p>e) a requirement for a person carrying on a <u>distribution broadcasting</u> undertaking to carry, on the terms and conditions that the Commission considers</p>	<p>These changes are meant to reflect the distribution activities of online distributors.</p> <p>They would enable the CRTC to ensure that Canadian programming services are discoverable on online broadcasting platforms.</p>

	programming services specified by the Commission;	appropriate, programming services specified by the Commission;	
10 (1) (g) respecting the carriage of any foreign or other programming services by distribution undertakings; (h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;	10 (1) (g) respecting the carriage of any foreign or other programming services by distribution undertakings; (h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;	10 (1) (g) respecting the carriage of any foreign or other programming services by distribution <u>broadcasting</u> undertakings; (h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution <u>broadcasting</u> undertakings concerning the carriage of programming originated by the programming <u>undertakings</u> services ;	These changes will make sure that the CRTC can make regulations and intervene to resolve disputes regarding the carriage of programming services by online undertakings.

2. Canadian Character of Broadcasting Undertakings

It does not seem prudent to us that all broadcasting undertakings should cease to be subject to the Canadian ownership requirements of the Act.

While the ineligibility of non-Canadians to hold a "broadcasting licence" would be maintained under the Direction to the CRTC (ineligibility of non-Canadians), a future government could easily remove this requirement by an Order in Council to the CRTC. In addition, it is not desirable that the few Canadian online businesses can easily be acquired or controlled by foreign interests.

We see no benefit in amending the Act in this way if it is not the government's intention to allow foreign acquisition of Canadian broadcasting undertakings. We also believe that foreign online undertakings would be part of the Canadian broadcasting system. A distinction must be made between the system as a whole and the individual undertakings that are part of it. Having some foreign undertakings that are not Canadian-owned does not affect control of the system as a whole.

Nevertheless, we suggest that this clarification be added to the current paragraph 3(1)(a) for greater certainty.

Current section	Bill C-10	CDCE's proposal	Explanations
3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians, <u>foreign online undertakings can also provide broadcast programming to Canadians;</u>	

3. Decreased requirements to draw on Canadian talent

Amendments to Section 3 significantly reduce the requirements to use Canadian talent. In particular, the proposed wording in section 3 (1) (f) could result in broadcasting undertakings no longer having any obligation to use Canadian talent.

However, the current text already allows for the nature of the service to be taken into account. For example, Sirius XM does not have to offer predominantly Canadian content (only four out of 200 channels do so). However, in return for this weaker presentation, its contribution to Canadian content development is higher than that of commercial radio.

This has also led to the identification of appropriate targets in terms of presentation and funding of Canadian content for video-on-demand services (see Policy [CRTC 2017-138](#)).

Current section	Bill C-10	CDCE's proposal	Explanations
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	3 (1) (f) each broadcasting undertaking shall make use of Canadian creative and other resources in the creation and presentation of programming <u>to the extent that is appropriate for</u> the nature of the undertaking;	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, <u>production</u> 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	Retain the current text. There is a loophole offered to the CRTC by the current text with the phrase "unless such a practice is impractical due to the nature of the service." Thus, the Commission could modulate this requirement in its application to online carriers according to the nature of each.

impracticable, in which case the undertaking shall make the greatest practicable use of those resources;		English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;	
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4. Maintain the call to the GiC for conditions of service

It seems important to us that the government should not deprive itself of the power to intervene if it feels that the CRTC is deviating from the direction it considers appropriate for the implementation of Canadian policy. Moreover, this mechanism has in the past allowed the Commission to put forward civil society arguments that were not accepted by the Commission.

To this end, we propose adding a new definition to section 2(1) and amending section 28(1).

Current section	Bill C-10	CDCE's proposal	Explanations
		Addition to section 2 (1) : decision includes a determination made by the Commission in any form; (<i>décision</i>)	Note 1 refers to the definition contained in the <i>Telecommunications Act</i> .
28 (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of	28 (1) If the Commission makes a decision <u>under section 9</u> to issue, amend or renew a licence, the Governor in Council may, within 180 days after the date of the decision, on petition in writing of any person received within 45 days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of	28 (1) If the Commission makes a decision under section 9 to issue, amend or renew a licence, the Governor in Council may, within 180 days after the date of the decision, on petition in writing of any person received within 45 days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the	CRTC orders should also be subject to the possibility of revocation or referral back to the Commission for reconsideration and rehearing.

the objectives of the broadcasting policy set out in subsection 3(1).	the broadcasting policy set out in subsection 3(1).	broadcasting policy set out in subsection 3(1).	
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5. Reinforce objectives regarding original French-language content

Many stakeholders raised the issue of French-language content when Bill C-10 was released. The Quebec National Assembly even adopted a unanimous motion to request quotas for original Quebec and French-language content. We do not believe that such quotas should be included in the Broadcasting Act, simply because quotas should continue to vary by broadcaster and type of requirement. For example, 75% of French-language broadcasters' spending on Canadian programming must go to fund original French-language content.

However, we propose to amend C-10 to ensure the creation, production and presentation of original French-language programming.

Without strengthening the text of the Act in this regard, we are concerned that future French-language content requirements may allow a company to present essentially translated or subtitled French-language content, but no or very little original French-language content.

For this reason, we propose three references to original French-language programming in the most important sections of the Act: Canadian policy objectives, monitoring provisions and conditions of service.

Current section	Bill C-10	CDCE's proposal	Explanations
		Addition of a new clause to section 3 (1) (i) after (i) : recognize and support Canada's linguistic duality by giving prominence to the production and broadcasting of original French-language programs, including those of francophone minorities;	By an Order in Council issued under the <i>Broadcasting Act</i> , the Governor in Council has referred the decisions concerning the renewal of the licences of the television services of major French-language private ownership groups back to the CRTC for reconsideration and a new hearing to review the aspects of the decisions relating to original French-language programming and music programming. (See Decision CRTC 2018-334.)
5 (2) (e) facilitates the provision of Canadian programs to Canadians;	No changes.	5 (2) (e) facilitates the provision of Canadian programs <u>created and</u>	

		<u>produced in both official languages as well as in Indigenous languages</u> to Canadians;	
		New paragraph in Section 9.1 (1), under new paragraph (b) (see item 8): (c) The proportion of original French-language programming, ensuring that it represents a significant proportion of Canadian programming ;	

6. Duration of licences and changes

We believe that a term setting the duration of prescriptions is necessary to ensure predictability of conditions for all players in the system, and would make it more easy to plan activities. In addition, the order renewal exercise will allow the Canadian public to participate in the decision making regarding the regulation of broadcasting undertakings.

Current section	Bill C-10	CDCE's proposal	Explanations
	9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting	9.1 (1) The Commission may, in furtherance of its objects, make orders <u>such terms not exceeding seven years</u> imposing conditions on the carrying on of broadcasting undertakings <u>and</u> that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting	Whether broadcasting undertakings are governed by conditions of licence or conditions of service, they should be subject to mandatory periodic review by the Commission and the Canadian public.
		Add a new subsection after subsection 9.1 (1) : The Commission may, in the performance of its duties, amend an order made under this section as	

		to its term or as to its conditions. The Commission may renew an order for a term not exceeding seven years on the conditions referred to in subsection (1) and may suspend or revoke the order.	
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7. Avoid a race to the bottom

A few changes could have the effect of reducing the current requirements for broadcasting undertakings to integrate online undertakings. This risk arises primarily because of the intention to group broadcasting undertakings of a "similar nature" and impose the same conditions of service on them. For example, the CRTC could conclude that a commercial radio station and a music streaming service offer a service of a "similar nature". Thus, if a music streaming service cannot give predominance to French-language content, for example, it would not be "fair" for a radio station to be required to do so.

The fact that expenditures are not included in the conditions of service defined in the prescriptions also poses the same kind of problem, whereas it might be more logical and advantageous to adapt them to specific companies.

Current section	Bill C-10	CDCE's proposal	Explanations
	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) <u>take into account the nature and diversity of the services rendered by</u> is fair and equitable as between broadcasting undertakings <u>as well as their size and impact on the Canadian creative and production ecosystem</u> 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;	We propose to identify more characteristics in this article. We fear that the notion of similar nature is too vague. The law and its various principles also guarantee the principles of justice and equity. Impact also seems to be an important element since a smaller company can still have a significant impact on the ecosystem.
		Addition of a paragraph to section 9.1. (1), under clause (d) :	

		(e) the expenditures set out in section 11.1 (1)	
18 (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with (a) the issue of a licence, other than a licence to carry on a temporary network operation; (b) the suspension or revocation of a licence; (c) the establishing of any performance objectives for the purposes of paragraph 11(2)(b); and (d) the making of an order under subsection 12(2).	18 (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with (a) the issue of a licence, other than a licence to carry on a temporary network operation; (b) the suspension or revocation of a licence; (c) the establishing of any performance objectives for the purposes of paragraphs 11(2)(b) and 11.1(5)(b); and (d) the making of an order under subsection 12(2).	18 (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with (a) the issue of a licence, other than a licence to carry on a temporary network operation; (b) the suspension or revocation of a licence; (c) the establishing of any performance objectives for the purposes of paragraphs 11(2)(b) and 11.1(5)(b); and (d) the making of an order under subsections <u>9.1 (1) and</u> 12(2).	We would like to see a public hearing process for the issuance of orders. Note that 9.1 (4) states that: “ (4) A copy of each order that the Commission proposes to make under this section shall be published on the Commission’s website and a reasonable opportunity shall be given to persons carrying on broadcasting undertakings and other interested persons to make representations to the Commission with respect to the proposed order.”

8. Other amendments

We also consider the addition of two other paragraphs to be important.

		New paragraph, after paragraph 9.1 (1) (a) : (b) The proportion of programming to be devoted to particular genres in order to ensure diversity of programming;	This is an objective of the policy, the application of which must be reminded to the CRTC. Some genres within the concept of national interest programming may be overlooked if conditions are not specified.
		New clause under clauses 9.1 and 10 (1) : establishing a framework for contractual practices between independent producers and	This is a proposal from the Yale report that should be incorporated considering the size of the players that will be subject to CRTC orders and regulations. We recommend

		programming undertakings as well as online undertakings;	incorporating in sections 9.1 and 10 to allow the CRTC the flexibility of imposing as either a condition or service or regulation.
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