

# Goodmans<sup>LLP</sup> Update

## Changes to *Broadcasting Act* will Require Online Streamers to Support the Canadian Broadcasting System

This week, Canadian Heritage Minister Steven Guilbeault introduced Bill C-10 (the “**Bill**”) to amend the *Broadcasting Act*. The proposed changes would bring online streaming services, such as Netflix, Amazon and Spotify, under domestic broadcasting regulation and may require them to, among other things, make expenditures to support Canadian audio or audio-visual programs. This could potentially include funding for programs created and produced by Canadian minority groups and serving minority populations such as Indigenous and Francophone consumers.

If passed, the Bill would give the Canadian Radio-television and Telecommunications Commission (CRTC) the power to: (i) decide which streaming services to regulate; (ii) require and determine any financial contributions to be made by these services, and (iii) regulate the discoverability of Canadian programs on streaming platforms. Failure to comply with the CRTC’s orders could lead to monetary penalties. While not contained in the Bill, the government indicated that a future policy direction to the CRTC may instruct the CRTC to ‘revisit how it defines Canadian programs for the purposes of broadcasting regulatory obligations’.

Some of the proposed changes are based on recommendations by the Broadcasting and Telecommunications Legislative Review Panel (the “**Panel**”), which reviewed Canada’s broadcasting laws and published 97 recommendations in its final report released in January 2020.<sup>1</sup> The Panel rejected a so-called “Netflix tax” (i.e., charging consumers an extra levy on subscriptions to such streaming services as Netflix) and instead recommended that streaming services with access to the Canadian market contribute a percentage of their Canadian-derived revenues to fund Canadian programs.<sup>2</sup> Aligned with the Panel’s recommendations, the Bill proposes to classify internet streaming services as “online undertakings” under the *Broadcasting Act*. This classification would bring them into the regulatory system that currently only imposes “Canadian content” financial contribution requirements on traditional Canadian “broadcasting undertakings”.

Canada’s Liberal government has a minority in the House of Commons. For the Bill to pass into law, the government will need the support of other Canadian political parties in Parliament. The New Democratic Party is expected to support the proposed legislation.

The Liberal government indicated it projects streaming services could contribute \$830 million in additional funding to Canadian television and music production by 2023, if the Bill is passed.<sup>3</sup> This projection assumes the CRTC will require online broadcasters to contribute to Canadian content at a similar rate as traditional broadcasters. However, the government also acknowledged that the CRTC, as the independent regulator, will determine whether and how online undertakings are required to contribute, and the form of those contributions.

## Authors



David Zitzerman  
dzitzerman@goodmans.ca  
416.597.4172



Tara Parker  
tparker@goodmans.ca  
416.597.4181



Daniela Cerrone  
dcerrone@goodmans.ca  
416.597.4138

<sup>1</sup> Broadcasting and Telecommunications Legislative Review, *Canada’s Communications Future: Time to Act*, Final Report (January 2020).

<sup>2</sup> *Ibid* at 13.

<sup>3</sup> Bill Curry and Janice Dickson, “Broadcasting bill targets online streaming services”, *The Globe and Mail* (4 November 2020).

Minister Guilbeault indicated he hopes the Bill is passed quickly so the CRTC can begin to determine how to implement the new regulatory framework. Minister Guilbeault intends to recommend that the Governor in Council (i.e., the Canadian cabinet) issue a directive to the CRTC requesting the CRTC implement the new framework within nine months.<sup>4</sup> This is an aggressive timeline given the various legislative and procedural processes required for implementation.

## Mixed Reaction to the Bill

Not surprisingly, reaction to the Bill by leading industry players has been mixed. Some critics are concerned the proposed legislation is too onerous and may alienate international streaming services. Others noted the Bill gives broad powers to the CRTC, but fails to provide details regarding the range of monetary penalties and the mechanism of collecting and distributing financial contributions from online streaming services.

The Canadian Media Producers Association (CMPA), the Coalition for the Diversity of Cultural Expressions (CDCE) (comprised of more than 40 organizations including ACTRA, DGC and SOCAN), and the Writers Guild of Canada, are among several key players in the Canadian film and television industry that fully support the Bill. On the other hand, The Friends of Canadian Broadcasting, a lobby group that promotes Canadian content, says the proposed Bill does not go far enough to protect “Canadian content” and domestic production.<sup>5</sup> Bell Media, CBC, Corus Entertainment, and Rogers Sports & Media, are withholding comment until they have completed reviewing the Bill.

A Netflix representative said it “remained committed to being a good partner to Canada’s creative community while also investing in local economies”.<sup>6</sup> Google noted it approves the choice to exclude video games and user-generated content, such as videos on YouTube, from the proposed framework.<sup>7</sup>

## Looking Forward

If the Bill passes, the next steps will involve the issuance of a policy direction by the government to the CRTC to ‘guide its use of the new tools afforded by the Bill’, as well as a series of proceedings conducted by the CRTC with relevant stakeholders. Once those proceedings are concluded, the CRTC will then determine precisely how the new regulatory regime for “online undertakings” will work, who will be part of the new system, and who will be exempt. Most importantly, the CRTC will define the nature of the financial or other contributions by the online streamers to the Canadian broadcasting system and the new definition of a “Canadian program”. Stay tuned!

For further information concerning changes to the *Broadcasting Act*, please contact any member of our [Entertainment Law Group](#).

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<sup>4</sup> *Ibid.*

<sup>5</sup> Jordan Pinto, “Industry reacts to proposed Broadcasting Act update”, *Playback* (4 November 2020).

<sup>6</sup> The Canadian Press, “Feds propose changes to Broadcasting Act that may raise \$800 million from streamers”, *Tri-City News* (3 November 2020).

<sup>7</sup> *The Globe and Mail*, *supra* note 3.