

Bill C-11, *Online Streaming Act*
Standing Committee on Canadian Heritage
House of Commons of Canada

Notes for an Oral Submission of the Public Interest Advocacy Centre



1 June 2022

Check against delivery

The Consumer and Public Interest in Broadcasting

1. The Public Interest Advocacy Centre (PIAC) defines the consumer interest in broadcasting as: “ensuring that consumers benefit from access to a wide variety of programming in the broadcasting system that offers choice in an affordable manner.”
2. Unlike in 1991, consumers now pay for almost all broadcasting, whether with money or with personal information, including online subscriptions, “cable” TV and video on demand, delivered by a BDU or “over the top” via Internet.
3. Consumers are now a key stakeholder in this debate; we are equal in importance to creators, platforms and producers.

Online Undertakings Should Support CanCon – Within Reason

4. We believe extending CanCon financial support requirements to “online services” (such as Netflix or Amazon Prime) and even ‘social media’ platforms such as YouTube and Facebook – when used as ‘program’ distributors – is generally supported by Canadians.
5. However, the Bill grants the CRTC discretion to set the financial and potential other obligations of “online undertaking” registrants, no matter their size or type, provided they distribute any ‘programs’, which is overbroad. To solve this, we support an amendment to the Bill exempting small online undertakings, below a high Canadian revenues threshold (~\$150 million), from financial or other conditions. This threshold would not affect the registration or financial information requirements.

Discoverability in Two Kinds

6. Consumers’ naturally resist the insertion of CanCon in automated plays or algorithmic suggestions of platforms such as YouTube; and digital first creators are concerned that such discoverability tools will backfire and reduce their audiences.
7. PIAC believes this UGC problem can be addressed by redefining ‘discoverability’ as not one concept, but two: static and dynamic discoverability.

Static Discoverability – A Reasonable CanCon Obligation

8. Bill C-11’s only new mandatory broadcasting policy requirement is new s. 3(1)(r), which states: “online undertakings shall clearly promote and recommend Canadian

programming, in both official languages as well as in Indigenous languages, *and ensure that any means of control of the programming generates results allowing its discovery.*” Clearly discoverability is key to the drafters and must stay in some form.

9. This policy objective mandates both static and dynamic discoverability. The first half could be satisfied by a banner on YouTube that simply links, upon a consumer click, to selected CanCon. It is “static”, unobtrusive and, likely, unobjectionable to consumers but still clearly “promotes and recommends” CanCon.

Dynamic Discoverability – An Unwarranted CanCon Interference

10. The *second half* of the new policy objective is “dynamic”. It requires AI prediction tools to insert a CanCon video or song into a user’s autoplay feature, or to ‘dynamically’ suggest links. It is intrusive and disruptive to the user’s expectations and experience. It is overkill to achieve the goal to “promote and recommend” CanCon. It is even more intrusive than “exhibition” requirements on traditional broadcasters because ‘online’ is a world of abundance of consumer choice – not scarcity where mandated exhibition makes more sense.
11. Digital first creators are rightly concerned that the Bill’s requirement to use dynamic discoverability will backfire and actually demote the importance of, and likely user engagement with, their content, as Canadian users who are involuntarily exposed to these ‘discoverability links’ avoid or react negatively– thereby signaling to the AI, globally and in Canada, to demote their content.
12. The solution is to require only static discoverability tools and to require any creator of Canadian content who wishes to have their content promoted, even by static discoverability, to apply to a new CanCon authorization authority (likely part of the CRTC). This will allow digital first creators the choice to continue to operate untouched by this entire regime, which PIAC believes they want, or to have their content promoted in the limited sense of static discoverability.
13. PIAC recommends amending s. 3(1)(r) to remove the last 15 words – thereby directing CRTC to satisfy the Bill’s discoverability requirement with only static discoverability tools.
14. I welcome your questions.