

ACTRA

**ACTRA Submission to the
Standing Senate Committee on Transport and
Communications
Bill C-11: *Online Streaming Act***

November 1, 2022

INTRODUCTION

ACTRA (Alliance of Canadian Cinema Television and Radio Artists) welcomes the opportunity to provide additional comments arising from the study undertaken by the Standing Senate Committee on Transport and Communications of Bill C-11, the *Online Streaming Act*. We appreciate having had a chance to appear before the Committee to express our views.

For almost 80 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recordings, radio, and digital media. ACTRA brings to this process the perspective of over 28,000 professional performers working in English-language recorded media in Canada.

From its earliest days, ACTRA has actively contributed to public policy development processes and plays a critical policy role in Canada and internationally. Through its own work and that of its nine branches, ACTRA advocates for improving the economic circumstances of Canadian performers – the original gig workers.

OBJECTIVES FOR THE NEW *BROADCASTING ACT*

The process of updating the 1991 *Broadcasting Act* in response to the extraordinary developments in communication technologies and broadcasting over the past 30 years, specifically the emergence of global online streaming services, has been long and drawn out. Throughout this process, ACTRA is motivated by four key objectives that Canada's broadcasting system should ensure:

1. Diverse and high-quality Canadian programming choices are available to Canadian and global audiences in every medium of program transmission;
2. Canadian programs are promoted and highlighted and are easily discoverable by audiences;
3. Creation and implementation of appropriate rules for social media services are included; and
4. Canadian ownership of broadcasting undertakings remains a key tenant of laws and regulations.

ACTRA has been amongst the strongest supporters of government efforts to modernize the *Broadcasting Act* and had proposed various amendments during the Standing Committee on Canadian Heritage review that we believe would make Bill C-11 as strong as it could possibly be in achieving these objectives. Some of these amendments were accepted, but most were not. ACTRA believes the failure to address some of the key points we raised, alongside others in this process who share the core objectives, is a significant missed opportunity to support high-quality Canadian programming choices. However, as the Transport and Communications Committee completes the final clause-by-clause review of amendments in the legislative process, ACTRA will restrict our comments to two remaining significant concerns. We urge the Senate Committee to address them.

STRENGTHEN SECTION 3(1)(f) TO ENSURE DIVERSE AND HIGH-QUALITY CANADIAN CHOICES ARE AVAILABLE FROM ALL BROADCASTING SERVICES PROVIDING PROGRAMMING TO CANADIANS, INCLUDING STREAMERS

The most significant objectives of the Broadcasting Policy for Canada, enunciated in the 1991 *Act* and continued with Bill C-11, are to ensure Canadians have access to: (a) a reasonable supply of high-quality and diverse Canadian programs; (b) stories and music by Canadian artists; (c) local, national and

international news and information that reflect Canadian perspectives; and (d) children's, educational, entertainment and other programs that respond to our needs and interests.

Sec. 3(1)(f) of the 1991 *Broadcasting Act* underpins these objectives by providing that "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...."

To address the emergence of global online streaming services now providing programming to Canadians, Bill C-11 creates two classes of undertakings under this objective – Canadian broadcasting undertakings (including domestic online undertakings) and foreign online undertakings. But **Bill C-11 has weakened the existing language in a way that reduces obligations to use Canadian creators and potentially excludes freelance artists**. This approach is problematic.

Firstly, Bill C-11 narrows the objective by stating: "each **Canadian** broadcasting undertaking shall **employ and** make maximum use, and in no case less than predominant use, of Canadian creative and other **human** resources in the creation, production and presentation of programming...."

Actors, performers and other artists working in film and television occupy a unique space in Canadian labour and employment law. Federally, the *Status of the Artist Act* explicitly recognizes them as freelancers who have bargaining rights and may be represented by professional associations. ACTRA is concerned use of the term "employ" may give rise to interpretations of the *Broadcasting Act* that exclude Canadian performers and other artists from the benefits of Sec. 3(1)(f). Presumably, this is not the intent and has never been the case. **ACTRA urges the Committee to amend the language to avoid limiting the policy objective on the basis of employment status.**

Secondly, as a principle, Bill C-11 establishes that foreign services must only reach the lesser standard of "**greatest practicable use**" of Canadian resources, rather than "maximum/predominant" use. This provides an unreasonable limit on the ability of the Canadian Radio-television and Telecommunications Commission (CRTC) to make appropriate determinations depending on the nature and reach of each service.

The purpose of the *Online Streaming Act* is to equalize obligations between licensed and online undertakings – to ensure equitable treatment. There is no rationale for establishing by statute a lesser commitment from foreign online undertakings operating in Canada, given their financial strength and market clout. Foreign online undertakings are perfectly capable of meeting whatever standard the CRTC decides to apply to them to ensure fair competition among all regulated undertakings. The CRTC should be permitted to use the same starting point in making its determinations.

For these two reasons, ACTRA believes it is essential to redraft this provision and remove section 3(1)(f.1):

ACTRA Proposed Amendment 1

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, production and presentation of Canadian programming, and shall contribute significantly to the creation, production and presentation of Canadian programming to the greatest extent that is appropriate for the nature of the services provided by the undertaking;

(Note: CRTC continues to have authority under the Act to establish appropriate rules and obligations on each class of undertaking.)

REMOVE FROM “RELATED AMENDMENTS” SECTION THE CLAUSE THAT *STATUS OF THE ARTIST ACT* “DOES NOT APPLY IN RESPECT OF AN *ONLINE UNDERTAKING*, AS DEFINED IN SUBSECTION 2(1) OF THE *BROADCASTING ACT*.”

In the final hours of its review of Bill C-11, the House of Commons Standing Committee on Canadian Heritage supported an amendment to the *Status of the Artist Act* (SAA) that excludes an “*online undertaking*” from that Act. This amendment was not discussed at any earlier stage of the House proceedings and, if implemented, could have dire consequences for the tens of thousands of professional artists who would be directly affected by this change. The associations certified under the SAA to represent artists in broadcasting unanimously oppose this amendment.

If enacted, this provision would undermine the stable labour relations climate that exists in Canada’s audiovisual production sector, a \$9.1 billion industry that generated close to 217,000 jobs in 2020-21.¹ Since this labour relations system already includes virtually all producers, including Netflix, Disney+, Amazon Prime Video and other online broadcasters when they produce works, **we cannot understand what problem the amendment is seeking to address.**

Broadcasting falls under federal jurisdiction because its services are provided across provincial borders. Therefore, **labour relations in broadcasting is under federal jurisdiction.** Like traditional broadcasters, online streaming platforms make, acquire and distribute programming as defined in the *Broadcasting Act* across provincial borders. **Where any online streaming platform engages artists in Canada, the *Status of the Artist Act* must continue to apply.**

The audiovisual production industry is diverse. It includes domestic and foreign producers making films, television, radio and other audio and audiovisual works in all media and in every part of Canada and Québec for distribution in Canada and globally. Our collective agreements with producers are based on a combination of voluntary recognition and/or certifications under SAA and some provincial labour boards. All producers may participate in the bargaining process and must then abide by collectively bargained minimum rates and production standards that are fair and equitable. **Introducing this specific exemption in the SAA will complicate, and potentially undermine, our future bargaining with this diverse industry.**

¹ [Profile 2021](#), Canadian Media Producers Association in collaboration with the Association Québécoise de la production médiatique, the Department of Canadian Heritage and Telefilm Canada.

Further, online undertakings include not only foreign services, but online undertakings of domestic broadcasters. Removing them from the SAA adds more uncertainty as all traditional broadcasters could potentially choose to produce and acquire all of their programming through their affiliated online undertakings, thereby bypassing any established obligations as “broadcasters” under the SAA. Ultimately, as linear television completes its transition to online, the SAA exclusion could affect all workers in the Canadian recorded media industry.

The introduction of this amendment is a threat to our ability to carry on our principal work, which is to ensure fair compensation for artists, the original gig workers. ACTRA continues to work with the government and is hopeful an amendment will come forward from the Committee to address this issue. If it does not, **ACTRA urges the Committee to rescind this amendment so the *status quo* can be maintained, and our bargaining rights protected.**

ACTRA Proposed Amendment 2

Delete from Bill C-11 *Related Amendments* the change to Section 31.1 Section 6 of the *Status of the Artist Act* that exempts online undertakings from the scope of the SAA.

~~Non-application~~

~~(3) This Part does not apply in respect of an *online undertaking*, as defined in subsection 2(1) of the *Broadcasting Act*.~~

CONCLUSION

ACTRA appreciates the opportunity to share our concerns about the remaining issues in Bill C-11 that will negatively impact our members and our industry. We hope the Standing Senate Committee on Transport and Communications will make these two amendments to ensure the Bill C-11 achieves its promises to Canadian performers and Canadian audiences. We look forward to the speedy implementation of the final amended Bill C-11.

Sincerely,



Marie Kelly
National Executive Director
ACTRA