

Intelligence MEMOS



From: Leonard Waverman
To: Canadian Internet Watchers
Date: April 10, 2023
Re: **LET'S RESCUE BILL C-11 FROM ITSELF**

On March 8, following one of the longest evolutions of a bill in Canadian history, the House of Commons approved Bill C-11, the *Online Streaming Act*.

The bill imposes obligations on online streaming services and social media platforms such as Netflix, Facebook, TikTok, and Amazon Prime, to stream Canadian content (CanCon) to Canadian households, and indeed how to position this content among their offerings. If they do not comply, they will have to pay a tax that will be used to augment the availability of CanCon.

Bill C-11 essentially puts the cart (regulation) before the horse. The horse, the engine, is content. But the bill rests on an antiquated definition of CanCon, which uses a point system defined by the origin of inputs into an old industrial cultural production process exemplified by studios and teams.

Today, content is also generated by You Tubers, e-gamers, Tik Tokers, video gamers etc. These Canadian content providers, many of them wanting to grow worldwide audiences and generate revenues doing so, are upset at Bill C-11. Their activities are now potentially pulled into the bill – making them subject to content regulation and perhaps taxes.

The legislation attempts to shoehorn the Internet and streaming into a decades old managed regulatory system of rules and obligations that go back to the era when over-the-air broadcasting was the only option for viewers. These broadcasters were protected against entry and from losing advertising revenue to US stations. In return, they were required to provide a certain minimum of Canadian content in prime viewing time, and lower minima at other times.

CanCon was and is effectively a tax, a tax on all viewers to pay for the additional Canadian content they may or may not have wanted to watch.

This policy had a rationale in a world of limited choices born when Canadian broadcasting was basically a closed system. However, C-11 extends this tax to include all the ways that content can reach Canadians online, in an ever-growing world of multiple streaming platforms.

Most of us can agree that we want access to Canadian content – the stories stemming from all the peoples that make up this wonderful multicultural country. Today there are no closed borders to content delivery, and traditional Canadian broadcasters are losing advertising revenue. But the response, to impose new obligations on Internet services and on users who now have access to (and pay for) any Canadian content they wish, so that more content can be produced regardless of appeal to an audience or customers, will be economically costly while privileging only a few who produce approved content.

Indeed, while it is said the bill's goal is that streaming platforms “contribute to our culture,” in reality it is meant to redirect more activities and revenues to industries and activities taking place here (such as US films produced in Canada or generic films featuring a few Canadian actors). The outdated Canadian point system does not allow some films which have Canadian directors, a Canadian set, Canadian voice talent etc to qualify as CanCon, because they do not meet the officially approved definition.

The story about Canadians sharing stories and the fruits of their creative talent with each other is arguably a fig leaf for a redistributive industrial policy.

Several streaming platforms do currently provide Canadian content without compulsion. Netflix has already spent \$2.5 billion already on producing films in Canada including Schitt's Creek, co-funded from season 3 on with the CBC. Disney has physical footprints in Vancouver and has spent \$3 billion on productions in Canada. In addition, as of January 1, 2022, these international platforms pay a 3-percent tax on their Canadian revenue – just like the Canadian cable giants. Bill C-11 goes further and requires them to redirect their current Canadian operations to more CanCon. The federal government estimates that this obligation will add \$900 million to annual production of CanCon. But this will add cost pressures on those currently producing Canadian content – the CBC and private Canadian broadcasters – increasing their losses.

We may need to rethink the current CanCon obligations on private Canadian broadcasters. Bill C-11 may do that in section 3 a.1 and elsewhere by allowing a reexamination of whether current CanCon policies are 'appropriate.'

The Canadian Radio-Telecommunications Commission (CRTC) has also been asked to refresh the CanCon eligibility rules for streamers and social media platforms. Without such reforms, our system risks becoming even more like one that would finance the repair of damages caused to roads by drivers of electric vehicles by taxing all electricity users – counterproductive.

Leonard Waverman is Professor and former Dean at the DeGroot School of Business at McMaster University.

To send a comment or leave feedback, email us at blog@cdhowe.org.

The views expressed here are those of the author. The C.D. Howe Institute does not take corporate positions on policy matters.