ACTRA

8 December 2020

The Honourable Steven Guilbeault, M.P.
Minister of Canadian Heritage
House of Commons
Ottawa, ON
K1A 0A6

Sent via E-mail: Steven.Guilbeault@parl.gc.ca

Dear Minister Guilbeault:

Re: Proposed Amendments to Bill C-10: An Act to amend the Broadcasting Act

Thank you for the opportunity to provide you with our thoughts on the amendments you have proposed to the Broadcasting Act. As we said in our previous correspondence regarding Bill C-10, we welcome the review of the Broadcasting Act and legislative reform. While we remain optimistic, we have significant concerns with some of the proposed changes; amendments that will significantly and detrimentally impact our industry, our jobs and our culture.

We were pleased to see amendments requiring the broadcasting system to better reflect the needs and interests of the rich diversity of Canadians, including Indigenous peoples and racialized communities, and your commitment to require foreign services to contribute to the production and discoverability of Canadian programs. However, we are deeply concerned about some of the other changes proposed in the Bill and the impact these changes will have on our industry and, by extension, Canadian performers.

After further study of the Bill, we would first like to acknowledge the existing Broadcasting Act has both served us well and has been remarkably technology neutral. As such, we believe any changes to the Act should only be made when absolutely necessary to better support Canada's existing broadcasting policy. We also believe the Act should be strengthened to ensure Canadians have access to a wide range of high-quality Canadian programs in every genre, particularly drama and comedy.

We understand, over time, the task of balancing the interests of stakeholders has created its challenges. This is complicated legislation, which is why we are worried about some of the government's proposed changes and the implications that could result. We have identified four areas of serious concern in the proposed legislative changes and have drafted our proposed solutions to address them. We believe our suggested amendments will strengthen Canada's broadcasting system and create an environment in which Canadian stories and storytellers can thrive, and Canadians can continue to have access to a broad range of Canadian programs in every genre. ACTRA firmly believes our federal government has an obligation to not just take an interest in Canadian culture but to play a critical role in strengthening and promoting Canadian identity.

Alliance of Canadian Cinema, Television and Radio Artists

ACTRA National Office
625 Church Street · Suite 300 · Toronto ON M4Y 2G1
Toll free 1-800-387-3516 · Tel (416) 489-1311
Fax (416) 489-8076 · E-mail national@actra.ca · www.actra.ca

Affiliated with the Canadian Labour Congress (CLC)
and the International Federation of Actors (FIA)
Branch Offices: Vancouver · Calgary · Regina · Winnipeg
Toronto · Ottawa · Montreal · Halifax · St. John's

Before outlining our changes to Bill C-10, ACTRA would like to remind our federal government that Canada is far behind other countries in regulating online services to ensure they meet national needs and contribute their fair share financially.

Under the 2018 European Union Audiovisual Services Directive, each of the 27 member states requires online subscription video-on-demand services (SVOD, i.e., Netflix, Disney+, Apple TV, Amazon Prime Video, etc.) to include at least 30 per cent European content in their catalogues. They must also promote and highlight these productions. The Directive also gives member states authority to impose levies on SVOD revenues to support domestic production: Germany has a 2.5 per cent levy; France has a 2 per cent levy. France is also poised to impose a requirement that SVOD services spend at least 25 per cent of domestic revenues on French drama, movies, documentaries and animation. Fifty-nine countries, three Canadian provinces and 28 U.S. states require these online services to pay consumption taxes (HST, VAT, sales tax or similar). In the face of these rules and regulations, Netflix, Disney+, Apple TV, Amazon Prime Video and the other services continue to operate profitably and to grow in all of these markets. ACTRA was pleased the recently released Fall Economic Statement 2020 includes plans to collect sales taxes on products and services sold to Canadians by foreign digital vendors, starting on July 1, 2021, as well as a new tax on web giants by 2022.

1. Canadian Broadcasting Policy: Canadian Character

ACTRA is alarmed by the deletion of one of the fundamental requirements of the Broadcasting Act – that the broadcasting system be Canadian owned and controlled. As the northern neighbour to one of the largest cultural and entertainment producers in the world, Canada has long struggled to maintain our own unique cultural identity. This is why a Canadian-owned and controlled broadcasting system is crucial. They exist not just to encourage Canadian storytelling and to make it easier for our government to regulate Canadian companies than foreign ones, but also to help us protect our Canadian identity, our industry and our culture.

Removing ownership rules would open Canadian media companies, specifically large, profitable, vertically integrated ones, to acquisition by foreign companies. While impediments to such acquisition may exist in the Directive to the CRTC (Ineligibility of non-Canadians) and Investment Canada rules, these mechanisms can be easily changed since they are not in legislation. If our media companies were to become foreign owned, these new owners would be given the unintended and detrimental right to challenge Canadian regulations under international trade and investment agreements; an untenable situation if our goal is to preserve and promote Canadian culture.

ACTRA views this amendment as a fundamental disregard for Canadian companies, Canadian jobs and Canadian creators. We see no benefit in amending the Act in this way unless it is your government's intention to allow foreign acquisition of Canadian broadcasting undertakings. We sincerely hope this proposed change is simply an oversight of the potential harm that could result, and that you will make the necessary changes to protect Canadian-owned broadcasters and the Canadian jobs they generate. We welcome bringing foreign online undertakings into the Canadian broadcasting system, but a distinction must be made between the system as a whole and the individual undertakings that are a part of it.

Foreign online undertakings can become part of the Canadian broadcasting system even with retention of a Canadian ownership principle since one or more individual undertakings (which may be foreign-

owned) do not overturn the Canadian-owned/controlled nature of the overall system. We urge the core Canadian ownership-control principle be retained and a clarification to the existing 3(1)(a) be added to cover foreign-owned online services.

Current section of the Broadcasting Act	**Bill C-10**	**ACTRA's proposed amendment**
3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	3 (1) (a) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the services provided by the undertaking;	3 (1) (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians; foreign online broadcasting undertakings may also provide programming to Canadians;

2. Canadian Broadcasting Policy: Canadian Creative Talent

ACTRA represents the interests of over 27,000 professional performers working to bring Canadian stories to life in film, television, video games, sound recording, radio and digital media. The fundamental purpose of the Canadian broadcasting system is to ensure Canadians have access to Canadian stories and music as well as entertainment, information and news programs. Market forces will provide us with access to a huge inventory of foreign programming from the United States and elsewhere. However, market forces alone are insufficient to provide us with an adequate supply of high-quality Canadian programming choices. The Broadcasting Act needs to be strengthened to help ensure this outcome.

The proposed amendments to Section 3 of the Act significantly reduce the requirements to use Canadian creativity and 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. This would devastate our screen-based media production sector, an industry that contributes $12.8 billion to our country's GDP, and threaten the 180,000-plus jobs it creates for hard-working Canadians.

We see no valid reason to change the current language in section 3 (1) (f), which has proven to be balanced and fair in promoting our Canadian industry and talent. Rather, we believe it is critical to retain the existing language in the Act to protect the use of Canadian talent and amend other elements of the section to reflect the welcome addition of foreign online undertakings into Canada's broadcasting system. We would also like to note the use of strong regulations elsewhere, particularly in Europe. In recommending retention of the existing language, we wish to emphasize that the current and well-balanced language already provides flexibility for dealing with foreign online broadcasting undertakings by providing that rules requiring the use of Canadian creative and others resources shall apply "…unless the nature of the service … renders such use impracticable…."

We commend the government for including Section 3 (1) (i) (ii.1), a specific recognition that programming provided by the broadcasting system should include "programs produced by Canadians that cover news and current events…". We propose building on this provision by adding a new Section 3

(1) (i) (ii.2) that states the programming provided to Canadians should also include Programs of National Interest and other related genres.

Current section of the Broadcasting Act	**Bill C-10**	**ACTRA's proposed amendment**
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 impracticable, in which case the undertaking shall make the greatest practicable use of those resources;	3 (1) (f) each broadcasting undertaking shall make use of Canadian creative and other resources in the creation and presentation of programming to the extent that is appropriate for the nature of the undertaking;	Reject the proposed amendment and keep the existing language: 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 impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
	"3 (1) (i) the programming provided by the Canadian broadcasting system should": (ii.1) include programs produced by Canadians that cover news and current events – from the local and regional to the international – and that reflect the viewpoints of Canadians, including the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds;	ACTRA agrees with this amendment and proposes a complementary additional clause below (ii.2).
		(ii.2) include drama and fiction, scripted and unscripted comedy, music, and other

		entertainment, arts and information programs created by Canadians;

3. CRTC responsibility over social media services

ACTRA understands one of the objectives of the Bill is to clarify that online broadcasting falls within the scope of the Broadcasting Act. We agree individuals who use social media to transmit programs for non-commercial purposes should be excluded from the scope of the Act, however, a blanket exclusion of social media is harmful, short-sighted, and fundamentally flawed.

The problems that would likely emerge from a blanket exemption include:

- Social media is rapidly evolving and is becoming increasingly popular as a platform for sharing cultural content, especially music. It is difficult to predict the evolution of future technologies and uses, but if current changes to the Act are intended to be long-lasting, access to cultural content through social media could be even more important in the future.
- Popular online services, like YouTube and Facebook, would have no obligation to contribute to the development of Canadian content or to showcase it, even if their services were to evolve in future years to become more like existing online broadcasters such as Netflix and Disney+. Both YouTube and Facebook have already entered the scripted content market and, while both have now stepped back from creating original programming, there is no reason to assume they may not resume creating scripted content in the future.
- Since the difference between commercial and non-commercial can be a continuum rather than an absolute dividing line, mediation may be necessary and that is best done by a regulatory authority rather than a court.

Thus, we propose the following amendments to Bill C-10, which would give the CRTC broad scope to determine how to regulate social media under the Broadcasting Act. Further, the CRTC should collect information and assess the scope of broadcasting activities as they develop over the coming years.

Current section of the Broadcasting Act	**Bill C-10**	**ACTRA's proposed amendment**
	Exclusion — carrying on broadcasting undertaking (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	**CRTC responsibility to determine whether a social media user is carrying on a broadcasting undertaking** (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 is not providing a broadcasting undertaking, unless the CRTC determines they are the provider of the service or the provider's affiliate, or the agent

	undertaking for the purposes of this Act.	or mandatary of either of them, or they are providing programs for commercial purposes.
	Non-application — certain programs 4.1 (1) This Act does not apply in respect of a) programs that are uploaded to an online undertaking that provides a social media service by a user of the service — who is 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 b) online undertakings whose broadcasting consists only of such programs.	Reject this section. The CRTC's responsibility is covered in the previous amendment.
	Regulatory policy 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).	**Regulatory policy** 5 (2) (h) takes into account the variety of broadcasting undertakings to which this Act applies.

4. General Powers of the Governor in Council: Setting aside or referring decisions back to Commission

The CRTC should operate at arms-length from the government, but there must be some degree of government oversight. The existing provisions in the Act – allowing the Governor in Council to set aside or return certain decisions to the CRTC for reconsideration as well as provide Policy Direction to the Commission as needed – have served us well over the past 30 years. Certain ill-conceived decisions have been returned for review and the industry has been able to convince the government to provide needed policy direction to the Commission.

ACTRA recommends the government not deprive itself of the power to intervene if it feels the CRTC is deviating from the direction the government considers appropriate for the implementation of Canadian policy. As such, we believe the existing balance should be retained and should apply regardless of whether a CRTC decision relates to a licence or to any other decision the CRTC could make in exercising its expanded regulatory powers, particularly in relation to an online broadcaster's conditions of service.

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

Current section of the Broadcasting Act	**Bill C-10**	**ACTRA's proposed amendments**
		Add 2 (1): **decision** includes any determination made by the Commission;
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 the objectives of the broadcasting policy set out in subsection 3(1).	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 broadcasting policy set out in subsection 3(1).	28 (1) If the Commission makes a decision, 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 broadcasting policy set out in subsection 3(1).

Additionally, while not included in the proposed legislative changes to the Broadcasting Act, ACTRA is alarmed the government is considering making a recommendation to the Governor in Council to issue a direction to the CRTC to change the definition of "Canadian program." We are dismayed that yet another foundational underpinning of our broadcasting system is at risk of being destroyed by your proposed legislative changes. Before any such recommendation is made, ACTRA would like broader and further consultation with your government who has said little at this point. To be clear, we seek an opportunity to convince you that doing so will have devastating impacts; impacts from which we will never recover.

ACTRA is and remains steadfast in our support of the recommendation made in the Broadcasting and Telecommunication Legislative Review Panel's final report: that the review of the Act focus on how to better support Canadian content, "not the definition of Canadian content."

ACTRA appreciates the opportunity to share our concerns about some of the proposed changes in the Bill and the impact they will have on our industry and on Canadian performers. We sincerely hope the government will take our amendments under serious consideration. We would be pleased to answer any questions or provide additional information about our position.

Sincerely,

Marie Kelly
National Executive Director
ACTRA

cc: Julie Dabrusin, Parliamentary Secretary to the Minister of Canadian Heritage
Alain Rayes, CPC, Canadian Heritage Critic
Caroline Desbiens, BQ, Canadian Heritage Critic
Alexandre Boulerice, NDP, Canadian Heritage Critic
Annamie Paul, GPC, Leader