



OUR FEEDS, OUR CHOICE!

**Over 35,000 petition signatures
to FIX BILL C-11,
and keep our Internet free and open.**

November 2022





To: Senate of Canada
House of Commons
Ottawa, ON K1A 0A6

November 15, 2022

Dear Senators,

I am delivering this petition to you on behalf of OpenMedia, a community-driven organization that works to keep the Internet open, affordable, and surveillance-free. We operate as a civic engagement platform to educate, engage, and empower Internet users to advance digital rights around the world.

OpenMedia is deeply concerned about the threat Bill C-11 presents to online expression and choices of Canadian Internet users, and to the success of Canadian creators in a globalized media economy.

While promoting Canadian cultural content is a noble objective, an overwhelming number of Canadians believe that without key amendments, Bill C-11 will impede their ability to freely express themselves and access information online. Since 2021, our community members has sent over 91,000 emails to our representatives raising concerns about 2022's Bill C-11 and its predecessor, 2021's Bill C-10. Added to today's petition, over **126,000 OpenMedia action takers** have now raised concerns about Bill C-10 and Bill C-11.

OpenMedia's most recent petition calling on you to fix Bill C-11 stands at **over 35,000 action takers strong and counting**. We the undersigned urge you to stand by Canadians, and amend Bill C-11 to respect the choices of users online. **Please see Appendix A for the petition text and signatures and Appendix B for recommendations and amendments.**

Thank you for your time and consideration.

Sincerely yours,

[Original signed]

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Appendix A: Briefing Notes regarding Bill C-11 (The Online Streaming Act)

Introduction

OpenMedia is a non-partisan grassroots community of over 220,000 people in Canada that work together for an open, accessible and surveillance-free Internet. We fight to defend the rights and improve the experience of ordinary Internet users.

We believe the version of Bill C-11 passed by the House of Commons is a serious threat to the online expression and choices of Canadian Internet users. OpenMedia community members have emailed their representatives nearly 82,000 times raising their concerns with Bill C-11 and its predecessor, 2021's Bill C-10.

Below we highlight our concerns and recommended amendments.

Regulating User-Generated Content

In its current iteration, Bill C-11 hands the CRTC such open-ended criteria for what it should consider a “program” that almost all audiovisual content on the Internet are included.

In *Section 4.2(2)*, the following criteria are given for determining if content is ‘Broadcasting’:

- Whether the content generates revenue for someone, indirectly or directly;
- Whether any part of the content has been broadcast on a more traditional broadcasting platform;
- Whether the content has been assigned a “unique identifier” under any international standards system.

Importantly, these criteria do not stack - the presence of **any** of them could lead the CRTC to judge something to be a ‘broadcasting’ program. Most audiovisual content on the Internet meets one or more of these criteria. For example: when users upload a video on TikTok, songs accompanying that video have multiple formal codes associated with that song (like an International Standard Recording Code). The video indirectly generates revenue when platforms place ads between videos on feeds. And the original poster or fans of the content may share it on multiple channels, including Instagram, Youtube, or Spotify, which the CRTC believes host broadcasting content.

By these criteria, the content uploaded by digital-first creators and a great deal of content from ordinary Canadians is well within the scope of Bill C-11. This breadth poses unacceptable risks to the future freedom of expression of Canadians and is not a reasonable scope for Bill's C-11 described intention. This risk cannot be effectively corrected by a policy direction from Cabinet;

future Cabinet directions could override a current direction and activate latent CRTC broadcasting authority over the expression of ordinary Canadians. It needs to be fixed now.

Striking the entirety of *Section 4.2* would be the most definitive way to exclude user content. This is our preferred solution from a user content perspective; every alternative we have seen proposed creates cases where some user content may be inappropriately regulated as broadcasting.

If this is not tenable, we suggest amending the section to make clear that the criteria laid out must all apply at once, and are mandatory for CRTC regulation, not just considerations that may inform the CRTC's decision on whether to regulate content. While not perfect, this change would be an effective compromise, greatly reducing the volume of user expression that could be at risk of regulation, while capturing the bulk of commercially produced content the Bill is intended to regulate.

A further tightening of criteria to protect Internet user-generated content would be amending the 'in part' *Section of 4.2(b)*. Popular expression spaces like TikTok or Youtube frequently see users mix brief clips of commercial content alongside their personal thoughts and expression; limiting the CRTC's regulatory authority to instances of full or majority replication of content aired on broadcasting platforms would protect this user expression from the CRTC.

Suggested Amendments:

1. Either striking the entirety of Section 4.2; or
2. Excluding the majority of user content by tightening the criteria for regulation as follows:

4.2 (1) For the purposes of paragraph 4.1(2)(b), the Commission may ~~regulate~~make regulations prescribing programs of which ~~this Act applies~~, meet the following criteria, in a manner that is consistent with freedom of expression.

~~*(2) In making regulations under subsection (1), the Commission shall consider the following matters:*~~

 - (a) the ~~extent to which a~~ program has been uploaded to an online undertaking that provides a social media service, and directly or indirectly generates revenues;*
 - (b) the ~~fact that such a~~ program has been broadcast, in whole or in substantial part, by a broadcasting undertaking that*
 - (i) is required to be carried on under a licence, or*
 - (ii) is required to be registered with the Commission but does not provide a social media service; and*
 - (c) the ~~fact that such a~~ program has been assigned a unique identifier under an international standards system.*



Discoverability and “Canadian” content

Implementing Bill C-11 in its current form will require the mass insertion of content the CRTC recognizes under official “CanCon” criteria into millions of feeds and search results used by Canadian Internet users across all regulated audiovisual platforms. This officially selected content will necessarily replace content we’d otherwise see, more closely tailored to the algorithm’s understanding of our preferences.

Section 9.1(8) indeed bars the CRTC from requiring platforms to use a *particular* algorithm to curate user feeds and searches. But as confirmed by CRTC Chair Ian Scott in testimony, through *Section 9.1(2)*, the CRTC will mandate particular outcomes from platforms to promote CanCon. There is no feasible way of achieving these outcomes across the board without manipulating algorithms in some fashion.

Promoting Canadian content and storytelling is one valid objective of government policy. But it is not the only or most important government objective, and the public conversation to date about C-11 has not fully assessed the degree of interference with user choice required by the solution being proposed.

The constant manipulation of user options required by the CRTC in this version of C-11 is much more invasive than traditional broadcast CanCon requirements. Where CanCon radio requirements might once have led some listeners to learn about a new Canadian artist to add to their personal collection, algorithmic manipulation is the equivalent of the government constantly rifling through our personal collection of CDs and tapes, re-organizing them to stack approved picks on top, while burying others. This sustained interference with individual user choices and access to information will be almost unavoidable, affecting both the algorithmically assembled playlists platforms continuously assemble for their users, and the outcomes of our unique searches. This is simply not a proportionate policy.

Some Senators have rightly pointed out that Internet users do not have complete freedom in their choices and searches on platforms. It is true that some platforms tailor their algorithms to encourage impulsive purchasing, higher time spent on the platform, and other behaviours by their users that are profitable to their bottom line, but not necessarily in our best interest.

But the solution to this harmful behaviour is limiting it, not doing more of it. OpenMedia firmly supports legislation that examines the ugly data harvesting and commercialization behaviour of platforms and places limits on it, while expanding our ability to make our choices online more freely. We’re fighting for improvements to privacy Bill C-27 to help address this gap. But that’s not a problem that Bill C-11 understands or seeks to address. Instead, it proposes stacking further manipulation of user choice on top of an imperfect system, with substantially less respect for our personal decision-making.



A compromise exists for showcasing Canadian cultural content without undue interference in user choices. We believe any attempt to promote CanCon should come from a static showcasing or opt-in system, where users can freely choose when they are seeking Canadian content, and when they'd prefer to have our regular search results.

A further problem is the application of the CRTC's proportionality rules from traditional broadcast to Internet platforms. One of the best things about the Internet is that it overwhelmingly contains cultural content from the rest of the world; that's true for users in every country, even the largest ones. Attempting to extend proportionality rules to platforms in Canada will not stimulate new Canadian content. Instead, it will motivate platforms to take the cheapest route: delisting global content from their services to meet the requirement. This would be a tragic outcome, leaving Canadians with a pinhole doorway to the rich and diverse cultural content of the rest of the world.

Suggested Amendments:

- Exclude online undertakings from the proportionality requirements in section 9.1(1)(a)-(d);
- Amend Section 3.1(r) as follows:
 - (r) 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;~~ and
- Amend section 9(1)(1)(e) as follows:
 - (e) the presentation of programs and programming services for selection by the public, including the showcasing ~~and the discoverability~~ of Canadian programs and programming services, such as French language original programs;

The Global Jurisdictional Overreach of the CRTC:

Bill C-11 contains no clear guidance to the CRTC on which online audiovisual platforms should be included within its regulatory scope. This gives C-11 a breathtakingly ludicrous global mandate, covering thousands of small or foreign streaming and content services with limited audiences in Canada, but high importance to the audience they possess.

These corner cases matter. Many diasporic Canadians rely on niche foreign services to sustain key cultural connections to the rest of the world. An inflexible or ambiguous legal requirement that suggests these services must meet Canada-specific content obligations could easily lead to them denying service to internet addresses in Canada to avoid the risk of regulatory challenges. This would be a cruel and unintended impact, leaving thousands of Canadians without access to specialty programming that matters a great deal to them.



A second concern with limitless regulatory scope is that meeting complex compliance requirements will be a significant financial and complexity barrier for small startup online services. This could help lock in the existing market dominance of arguably already excessively large established players like Youtube or Netflix.

A reasonable Canadian revenue threshold that clearly excludes services in these two categories would effectively address both concerns, allowing Canadians continued unfettered access to both niche and startup services.

During Senate testimony, witnesses were asked whether a \$150 million Canadian revenue threshold for platforms might fail to keep up with the times, giving the CRTC insufficient flexibility to act. A threshold pegged to inflation might address this concern.

But it is worth pointing out that setting a fixed dollar threshold in C-11 in an increasingly inflationary economy would regulate more platforms over time, not less. If the concern is that a fixed standard would somehow allow more platforms to escape obligations in the future than it would today, that concern is unfounded.

Suggested Amendments:

- Add a fixed or inflation-pegged Canadian revenue threshold to the Bill that sets some global limits on which online platforms are regulated by Canada's Broadcasting Act.

Additional Resources

<https://openmedia.org/article/item/whats-wrong-with-bill-c-11-an-faq>

<https://openmedia.org/article/item/everything-you-didnt-know-about-cancon>

<https://action.openmedia.org/page/114150/petition/1>

**Appendix B: Petition text and signatures calling for the
Senate to amend Bill C-11**

*OpenMedia is a community-based organization that safeguards
the possibilities of the open Internet.*

November 15, 2022





OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.

Appendix B: Petition text and signatures. OpenMedia and 35,089 community members call on the Senate of Canada to amend Bill C-11.

Petition text to the Senate of Canada

Please amend Bill C-11 to respect my choices and expression as an Internet user. Giving the CRTC the power to regulate my posts and manipulate my feeds, playlists and search results is an unjustifiable intrusion into my online life.

Sincerely,

35,089 Undersigned



OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.

[Pages redacted to protect the privacy of OpenMedia community members]