

Submitted electronically

July 25, 2023

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Re: Canada Gazette, Part I, Volume 157, Number 23: Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)

1. FRIENDS is pleased to provide these comments in respect of the above referenced draft policy direction (the “Draft Direction”).
2. FRIENDS is a non-partisan citizens movement that stands up for Canadian voices in Canadian media – from public broadcasting to news, culture, and online civil discourse – FRIENDS works to protect and defend Canada’s rich cultural sovereignty and the healthy democracy it sustains. FRIENDS is a not-for-profit organization that receives no government funding or donations from political parties or CRTC regulated entities.
3. In FRIENDS’ view, the most important role of a policy direction is one of emphasis. Good legislation should past the test of time. It must be crafted in such a way as to allow it to be interpreted in the cultural, political, social and economic context in which it is applied. While Bill C-11 has only just received passage, the modernized *Broadcasting Act* (the “Act”) will endure for decades to come. Thus, what this policy direction can and must appropriately do is emphasize the priorities for today while recognizing that in future years, in a different context, this or a different Government may have other priorities.
4. To that end, we applaud the Draft Direction’s emphasis on diversity and inclusion, particularly in respect of Indigenous peoples and equity-seeking groups. The Draft Direction appropriately calls for meaningful engagement on how best to provide support, and also specifically requires that expenditure requirements support the creation and availability of

programming by Indigenous peoples and equity-seeking groups, taking into account the challenges and obstacles each face.¹

5. We do, however, submit that the Draft Direction should better reflect the urgent need for contributions from foreign online undertakings to flow as quickly as possible, as well as highlight the importance of Canadian cultural sovereignty. We speak to these issues below.

The policy direction should reflect the urgency in resolving longstanding economic inequalities within the broadcasting system.

6. In considering the future economic impact of the Act, we must remember how we got here in the first place. Over the last decade, foreign online undertakings have been extracting billions of dollars from the Canadian audio-visual sector without any corresponding regulatory obligations. Meanwhile, during that same decade, their Canadian traditional broadcasting competitors were contributing hundreds of millions of dollars to the systems and structures that sustain and grow Canadian storytelling in all its forms. This unlevel playing field has deprived the Canadian news and audio-visual sectors of critical financial contributions.
7. As noted in the Regulatory Impact Analysis Statement,² the January 2020 Broadcasting and Telecommunications Legislative Review (“BTLR”) highlighted “the pressing need to ensure that those who benefit from broadcasting in Canada — including large foreign companies — contribute to ensuring continued support for the creation, production and discovery of Canadian content.” Indeed, the BTLR panel was so concerned about the urgency of the situation that it recommended that the CRTC be directed to act immediately, under the 1991 (pre-Bill C-11) Act.³
8. Enter Bill C-11, and almost four years after this call for urgent action, the Government finally has drafted the tool to address this long overdue need. Yet unlike the 2020 draft policy direction for Bill C-10, which called for a *nine-month timeframe* for contribution requirements, the Draft Direction gives the Commission *two years for full implementation* — this from the date of the final Order, not the passage of the Act.
9. Meanwhile, the consequences of this inequity have been devastating. On an almost weekly basis, we learn of new cuts to newsrooms and lost journalism jobs.⁴ The promise of material relief from the implementation of the *Online News Act* has been undermined by threats to

¹ Subsections 12(f)(i)&(ii) and Sections 14 and 15, respectively.

² Accompanying but not legally part of the Draft Order.

³ Recommendation 84: We recommend that while awaiting the adoption of legislative amendments, the government urgently issue directives to the CRTC, requiring that it hold a hearing and issue a new exemption order to impose obligations on Internet programming undertakings that generate a certain minimum revenue in Canada. <https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>

⁴ For example, *Bell cuts 1,300 jobs, including prominent CTV journalists*, thestar.com, 14 June 2023

block Canadian news by Meta and Google⁵ who, unironically, are two of the largest foreign online undertakings strongly opposed to making any initial contributions pursuant to the implementation of the Act.

10. Fortunately, one of the new objectives of the Act is to “include programs produced by Canadians that cover news and current events — from the local and regional to the national and international ...”⁶ The Draft Direction rightfully goes even further by highlighting the “importance of sustainable support by the *entire Canadian broadcasting system* for news and current events programming”⁷ including local news. This provision invites the Commission to consider requiring all online undertakings to contribute to news, regardless of whether or not they broadcast it. In so doing, the Government is appropriately recognizing how essential news is to sustain a healthy democracy.
11. Considering that the foreign online undertakings are, in part, responsible for undermining the Canadian news business model in the first place, their support for the news sector should not have to wait any longer.
12. Section 4 of the Draft Direction appropriately reflects and reinforces core requirements in the Act that contributions, including those of foreign online undertakings, be “equitable”.⁸ But the most appropriate way to reconcile the impact of a decade of inequitable treatment is to implement initial contribution requirements from foreign online undertakings as soon as possible.
13. In its proposed implementation plan, the CRTC has, indeed, raised the potential for introducing a so-called “initial base contribution from on online undertakings as an important early step”.⁹ Such contributions would be directed to third party funds that support the most pressing Canadian programming needs – such as local news as well as programming provided by Indigenous people and those from equity-deserving communities – and therefore do not require a redefinition of Canadian programming to be brought into effect.¹⁰

⁵ *Google joins Meta in blocking Canadian news links in response to Bill C-18*, Cartt.ca, 29 June 2023 at <https://cartt.ca/google-joins-meta-in-blocking-canadian-news-links-in-response-to-bill-c-18/> and the Government’s *The Online News Act: Next Steps*, July 10, 2023, which proposes to limit Google/Meta liability under that Act. <https://www.canada.ca/en/canadian-heritage/news/2023/07/the-online-news-act-next-steps.html>

⁶ Section 3(1)(i)(ii.1).

⁷ Section 12(i).

⁸ See subsections 3(1)(f.1) and 3(1)(q)(i), and 5(2)(a.2).

⁹ Broadcasting Notice of Consultation CRTC 2023-138 at para 26. <https://crtc.gc.ca/eng/archive/2023/2023-138.htm>

¹⁰ The Broadcasting Act gives the Commission the discretion to apply Canadian programming requirements on any genre or type of Canadian programming. While foreign undertakings seek a redefinition of Canadian programming for the purposes of expenditure requirements (on programming they exhibit), consistent with Commission’s base contribution proposal, initial contributions could go to the highest priority Canadian programming genres or a subset of Canadian programming as it is currently defined.

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14. FRIENDS, therefore, submits that rather than merely “considering the option”,¹¹ the Commission should be directed to ensure that significant initial contribution requirements are imposed on online undertakings on a priority basis.
15. Such a policy direction would reflect the pressing need to move forward, while appropriately leaving the Commission with the discretion to determine precise details in rolling out new contribution requirements, including their nature and applicability – such as the extent to which large foreign online undertakings would be the primary focus.
16. To this end, FRIENDS proposes the following amendment to section 19 of the Draft Direction, which sets out the current two-year implementation deadline:

Implementation

19 The Commission is directed to make changes to its regulatory framework that are necessary for the purposes of the implementation within two years after the day on which it comes into force. In doing so, the Commission is directed to prioritize the implementation of significant initial contribution requirements on online undertakings pursuant to section 4 and as well as sections 13 to 16, and to ensure that changes to its regulatory framework are made as soon as feasible and on a continual basis during that two-year period.

The policy direction should highlight the importance of Canadian cultural sovereignty.

17. The adoption of Bill C-11 reflects the Government’s strong commitment to the essential role that the audio-visual sector plays in preserving Canada’s cultural sovereignty. Maximizing the use of Canadian producers, writers, directors and performers is the most effective mechanism for achieving this objective. While section 9 of the Draft Direction appropriately highlights the use of Canadian creative resources, FRIENDS submits that it should be amended to ensure that the primary lens through which the Commission evaluates the economic impact of all broadcasting undertakings is the policy objectives of the Act.

Use of Canadian human resources

~~9 In its regulation of the broadcasting system sector, the Commission is directed to ensure that the sector maximizes the use of Canadian creative and other human resources is maximized in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects economic impact of broadcasting undertakings, including online undertakings, on the achievement of the broadcasting policy objectives set out in subsection 3(1) of the Act, economic opportunities and including support remuneration for Canadian creators.~~
The Commission is directed to ensure that the sector maximizes the use of Canadian creative and other human resources is maximized in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects economic impact of broadcasting undertakings, including online undertakings, on the achievement of the broadcasting policy objectives set out in subsection 3(1) of the Act, economic opportunities and including support remuneration for Canadian creators.

¹¹ Broadcasting Notice of Consultation CRTC 2023-138 at para 26.

Conclusion

18. FRIENDS is generally supportive of the Draft Direction as an appropriate exercise of the Governor in Council's powers and balancing of stakeholder interests, but urges the Government to better reflect the urgency in ensuring that initial contributions from online undertakings flow as quickly as possible and ensure that the broadcasting sector truly maximizes its support for Canadian creators.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Marla Boltman', with a stylized flourish at the end.

Marla Boltman
Executive Director