



Forum for Research and Policy in Communications (FRPC):

Recommendations for amending Bill C-11 so that it works

Ottawa, 13 May 2022

Summary of the Forum's recommendations:

1. Drop Bill C-11's section 7(7) to ensure evidence-based decision-making by a single, independent regulator and to retain Canadians' ability to challenge the CRTC's decisions and orders in Canada's courts
2.
 - a Just two of the 45 subsections in Bill C-11's broadcasting policy for Canada are mandatory – the remaining subsections are discretionary (33), declarations (4) or mandatory with self-defeating conditions (6): make at least some of the requirements for Canada's broadcasting policy mandatory
 - b To ensure that the broadcasting policy has an actual impact, drop the conditional text from Bill C-11's subsections 3(1)(a.1), (f), (f.1) and drop subsections 5(2)(a.2) and (h) altogether, and
 - c Amend subsection 5(2)(g) to require evidence that costs of regulation and supervision are unreasonable.
3. Retain clear Canadian ownership and control of Canada's broadcasting system while recognizing that foreign undertakings may, as a minority of the system's undertakings, provide programming to Canadians (amend subsection 3(1)).
4. Mandate procedural fairness by
 - a defining 'decision' to include regulatory policies (in section 2)
 - b requiring the CRTC to consider and render decisions about the matters presented to it, in a timely manner and with reasons (in a new section 21.1)
 - c requiring the CRTC to issue decisions about each notice of violation served under Part II.2 in a timely manner (in a new section 34.92(4))
 - d requiring the CRTC, when it holds public consultations, to provide the public with relevant information about its policies and decisions (in a new section 5.3 replacing Bill C-11's 5.2(2))
5. Mandate transparency by requiring that all CRTC determinations be signed by the CRTC members who voted on them (in FRPC-proposed subsections 20(5) and 21.2)
6. Mandate independent decision-making by replacing the CRTC Chairperson's power to decide who decides matters before the CRTC with the authority to appoint CRTC members to hearing panels that would otherwise have fewer than three members (in revised subsection 20(1) and FRPC-proposed subsection 20(2))
7. Mandate the CRTC's accountability by amending the CRTC Act to require the CRTC to submit annual reports to the Minister (and through the Minister, to Parliament) showing how the broadcasting policy for Canada is being implemented by providing statistics describing hours of and expenditures on Canadian and foreign programming, the numbers of undertakings operating in Canada, and full-time or equivalent employment by each class of broadcasting undertaking (in FRPC-proposed subsection 13(2)(b) of the CRTC Act)
8. Drop the exclusions aimed at companies that want to broadcast to promote their main business(es) and the un-exemptions aimed at social-media users' uploaded programs (drop subsection 2(2.3)(a), amend subsection 4.1(2) to address programs uploaded by broadcasters) and drop subsections 4.1(3) through to and including all of 4.2)

1. Ensure broadcast decision-making is based on law, not politics

1. Although Parliament severed government control over broadcasting when it enacted the 1968 *Broadcasting Act* (the current *Act*'s immediate predecessor), Bill C-11's section 7(7) reintroduces direct government control over CRTC. This creates three problems.
2. First, subsection 7(7) means that Cabinet, not the CRTC, will have final say about conditions to implement the broadcasting policy (s. 9.1(1), regulations about Canadian content exhibition (s. 10(1) and expenditures (s. 11.1(1)) and orders to specific parties and online broadcasters to make expenditures (s. 11.1(2)). Parliament should not give Cabinet control over broadcast policy and decisions: section 7(7) must be dropped.
3. Second, apart from transforming the entire broadcasting system into a government-directed system, proposed subsection 7(7) also defeats Parliament's statement in section 3(2) that the broadcasting policy's objectives by the regulation and supervision of "a single independent public authority". Parliament should not create a second, backroom decision-making authority: subsection 7(7) must be dropped.
4. Third, apart from effectively creating a government-directed broadcasting system and a second, behind-the-scenes decision-making authority, Cabinet's use of subsection 7(7) also creates uncertainty as to the ultimate efficacy of Court challenges of CRTC decisions and orders – as Canadian courts generally respect Cabinet's authority. Parliament should not enable the government to circumvent the rule of law: subsection 7(7) must be dropped.

2. Ensure that CRTC implements Parliament's broadcast policy

5. Section 3's wording makes it unlikely that Parliament's objectives will be implemented because of its 45 subsections just 8 are mandatory ("shall"). Of the remaining 37 subsections 33 are discretionary ("should") and 4 are declarations offering interpretation but no specific objectives. If Parliament intends the CRTC to implement any of the 33 non-mandatory subsections in proposed subsection 3(1), it should replace the "should" in those subsections with "shall".
6. Within 3(1), proposed subsections (a.1), (f) and (f.1) do not ensure that each broadcast undertaking – online or offline – makes predominant use of Canadian resources because each has conditional text enabling the CRTC to ignore the requirements. Proposed subsections 5(2)(a.2) and (h) in the regulatory policy also enable the CRTC to decide that broadcasters cannot meet the policy objectives and in the case of 5(2)(h) enables the CRTC (or Cabinet, through subsection 7(7)) to weaken individual broadcasters' implementation of the broadcasting policy still further. If Parliament wants to ensure that Canada has a meaningful rather than meaningless broadcasting policy it must drop the conditional language in subsections 3(1)(a.1), (f) and (f.1), and drop subsections 5(2)(a.2) and (h) altogether:

<i>Light yellow shading:</i> proposed change	<i>Italicized text in bold font:</i> proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

Bill C-11

3(1) (a.1) 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 nature of the services provided by the undertaking;**

3(1)(f) 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, **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.1) each foreign online undertaking shall make **the greatest practicable** use of Canadian creative and other human resources, **and shall contribute in an equitable manner to strongly support the** creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve;

5(2)The Canadian broadcasting system should be regulated and supervised in a flexible manner that

...

(a.2) ensures that any broadcasting undertaking that cannot make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming **contributes to those Canadian resources in an equitable manner;**

...

(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).**

FRPC Proposed amendment 1

3(1)(a.1) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection.

3(1)(f) 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 to create, produce and present programming,

[drop remaining text]

3(1)(f.1) each foreign online undertaking shall
 (a) make maximum use of Canadian creative and other human resources to create, produce and present Canadian programming, and
 (b) take into account the linguistic duality of the market they serve;

[drop]

- Subsection 5(2)(g) – which requires the CRTC to consider whether its regulation “may” impose costs on broadcasters – permits the CRTC to substitute concerns about broadcasters’ unproven and hypothetical future costs, for implementation of Parliament’s broadcasting policy. Parliament should amend this section to recognize the possibility that regulatory costs may be excessive – but must require evidence for such claims and must recognize that costs may at times be reasonable:

Bill C-11

Part I

5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

FRPC Proposed amendment 2

Part I

5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

<i>Light yellow shading:</i> proposed change	<i>Italicized text in bold font:</i> proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

Bill C-11

(g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings, and

FRPC Proposed amendment 2

(g) considers evidence that costs of regulation and supervision of persons carrying on broadcasting undertakings are unreasonable, and

3. Retain clear Canadian ownership and control of the broadcasting system

8. Bill C-11's subsection 3(1)(a) regarding Canadian ownership and control of the broadcasting system is unworkable because it confuses ownership and control of the system with the ownership and control of individual undertakings, and appears to be a deeming provision. If enacted as is a majority of individual undertakings in the system could be foreign-owned, while the 'system' is nevertheless deemed by section 3(1)(a) to be "effectively owned and controlled by Canadians". If Parliament wants Canadians to maintain effective ownership and control of their broadcasting system while specifically permitting foreign broadcasters to operate in Canada, it should say so:

Bill C-11

3(1)(a) the Canadian broadcasting system shall, with the exception of foreign broadcasting undertakings providing programming to Canadians, be effectively owned and controlled by Canadians;

FRPC Proposed amendment 3

3(1)(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians, (a.01) foreign undertakings may provide programming to Canadians but shall at no time be permitted to own and/or control a majority of the broadcast undertakings in Canada

4. Regulatory fairness

9. If enacted as written Bill C-11 will promote regulatory unfairness because it
- does not define the concept of 'decision', thereby potentially removing its regulatory policies and guidelines from the appeal process,
 - allows the CRTC to pick and choose which matters it considers and which it ignores,
 - in the case of administrative monetary penalties, does not require the CRTC to render any decision let alone make decisions in a timely manner, and
 - requires the CRTC to provide relevant information about its policies, decisions or initiatives only to English- and French-linguistic minority communities when making decisions that could adversely affect them.

10. To ensure fairness in Canada's regulatory policy Bill C-11 should be amended as follows:

Bill C-11**Part I****Marginal note: Definitions**

2 (1) In this Act,

....

FRPC Proposed amendment 4**Part I****Marginal note: Definitions**

2 (1) In this Act,

...

decision means a determination made by the Commission in any form, including but not limited to a decision,

Light yellow shading: proposed change

Yellow highlighting: text that would change in Bill C-11

Italicized text in bold font: proposed change to text

Grey shading: deleted text

Bill C-11

Part II

Marginal note: Rules

21 The Commission may make rules
 (a) respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and
 (b) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

Part II.2

Administrative Monetary Penalties

Violations

34.92(1) If a person who is served with a notice of violation pays the penalty set out in the notice, they are deemed to have committed the violation and the proceedings in respect of it are ended.

Representations to Commission and decision

(2) If a person who is served with a notice of violation makes representations in accordance with the notice, the Commission shall decide, on a balance of probabilities, after considering any other representations that it considers appropriate, whether the person committed the violation. If the Commission decides that the person committed the violation, it may

- (a) impose the administrative monetary penalty set out in the notice, a lesser penalty or no penalty; and
- (b) suspend payment of the administrative monetary penalty subject to any conditions that the Commission considers necessary to ensure compliance with this Act.

Penalty

(3) If a person who is served with a notice of violation neither pays the penalty nor makes representations in accordance with the notice, the person is deemed to have committed the violation and the Commission may impose the penalty.

Copy of decision and notice of rights

(4) The Commission shall cause a copy of any decision made under subsection (2) or (3) to be issued and served on the person together with a notice of the person's right to apply for leave to appeal under section 31.

FRPC Proposed amendment 4

guideline, interpretation bulletin, letter decision, order, regulation and regulatory policy; (décision)

Part II

Marginal note: Rules

21 The Commission may make rules
 (a) respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and
 (b) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

Marginal note: Matters

21.1 The Commission shall issue determinations with respect to each application it receives in a timely manner and with reasons..

Part II.2

Administrative Monetary Penalties

Violations

34.92(1) If a person who is served with a notice of violation pays the penalty set out in the notice, they are deemed to have committed the violation and the proceedings in respect of it are ended.

Representations to Commission and decision

(2) If a person who is served with a notice of violation makes representations in accordance with the notice, the Commission shall decide, on a balance of probabilities, after considering any other representations that it considers appropriate, whether the person committed the violation. If the Commission decides that the person committed the violation, it may

- (a) impose the administrative monetary penalty set out in the notice, a lesser penalty or no penalty; and
- (b) suspend payment of the administrative monetary penalty subject to any conditions that the Commission considers necessary to ensure compliance with this Act.

Penalty

(3) If a person who is served with a notice of violation neither pays the penalty nor makes representations in accordance with the notice, the person is deemed to have committed the violation and the Commission may impose the penalty.

(4) The Commission shall

- (a) issue a decision concerning each notice of violation served under subsection (1),*
- (b) issue such a decision in a timely manner, and*
- (c) cause a copy of any decision made under subsections (1), (2) or (3) to be served on the person together with a*

Light yellow shading: proposed change

Yellow highlighting: text that would change in Bill C-11

Italicized text in bold font: proposed change to text

Grey shading: deleted text

Bill C-11

Part II

Consultation

5.2 (1) The Commission shall consult with English and French linguistic minority communities in Canada when making decisions that could adversely affect them.

Objectives of consultations

(2) When engaging in consultations required by subsection (1), the Commission shall

- (a) gather information to test its policies, decisions and initiatives;
- (b) propose policies, decisions and initiatives that have not been finalized;
- (c) seek the communities' opinions with regard to the policies, decisions or initiatives that are the subject of the consultations;
- (d) provide them with all relevant information on which these policies, decisions or initiatives are based;
- (e) openly and meaningfully consider those opinions;
- (f) be prepared to alter those policies, decisions or initiatives; and
- (g) provide the communities with feedback, both during the consultation process and after a decision has been made.

FRPC Proposed amendment 4

notice of the person's right to apply for leave to appeal under section 31.

Part II

Consultation

5.2 The Commission shall consult with English and French linguistic minority communities in Canada when making decisions that could adversely affect them.

Objectives of consultations

5.3 When engaging in public consultations the Commission shall

- (a) gather information to test its policies, decisions and initiatives;
- (b) propose policies, decisions and initiatives that have not been finalized;
- (c) seek the public's opinions with regard to the policies, decisions or initiatives that are the subject of the consultations;
- (d) provide the public with all relevant information on which these policies, decisions or initiatives are based;
- (e) openly and meaningfully consider those opinions;
- (f) be prepared to alter those policies, decisions or initiatives; and
- (g) provide the public with feedback, both during the consultation process and after a decision has been made.

5. Transparency

11. The 1991 *Broadcasting Act* incorporated the “they who hear, shall decide” requirement established by the *Charter of Rights and Freedoms* but did not also require the identification of those who actually make CRTC decisions. To meet the requirements of 21st century standards of transparency Bill C-11 must require that the CRTC’s determinations be signed by those who make them:

Bill C-11

20(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2), the orders made under section 9.1, the regulations made under sections 10 and 11 and the regulations and orders made under section 11.1.

FRPC proposed amendment 5

Consultations

20(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2), the orders made under section 9.1, the regulations made under sections 10 and 11 and the regulations and orders made under section 11.1.

20(5) Decisions of panels established under subsection (1) shall include the names of the CRTC members assigned to

Light yellow shading: proposed change	Italicized text in bold font: proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

the panel and these names shall be published with the decisions.
Marginal note: Matters
21.2 Any determination made by the Commission or by members of the Commission on behalf of the Commission shall be published with the names of those who rendered the determination.

6. Independence of decision-making

12. Decision-making at the CRTC is not independent as required by subsection 3(2) because the CRTC Chairperson decides which Commissioners will sit on panels considering matters before the Commission. To ensure independent decision-making, the CRTC’s Chairperson should be required to select CRTC Commissioners to make decisions only when a required quorum of decision-makers cannot otherwise be met:

Bill C-11

Section 20 – Commission panels

Marginal note: Panels of Commission

20 (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.

FRPC proposed amendment 6

Section 20 – Commission panels

Marginal note: Panels of Commission

20 (1) Members of the Commission may participate in any panel established to deal with, hear and determine any matter on behalf of the Commission, unless this participation would create a conflict of interest.
(2) The Chairperson of the Commission may appoint a member or members of the Commission to a panel under subsection (1) if it is determined that the panel would otherwise have fewer than three members of the Commission.

7. CRTC Accountability

13. The CRTC does not publish the facts required for Parliament and Canadians to know whether it is implementing Canada’s broadcasting policy, and the possibility of licences issued for “indefinite” terms under Bill C-11’s 9(b) could effectively prevent Canadians from ever appearing before the CRTC to challenge the manner in which it is regulating broadcasting services established to serve their interests. Lack of information also obscures the CRTC’s choices about its own responsibilities: the absence of information about Canadians’ complaints about broadcasters in its annual reports, for instance, hides the fact that the CRTC has for all intents and purposes delegated its responsibility for complaints from the public to organizations established by advertisers and broadcasters (Advertising Standards Canada, the Canadian Broadcast Standards Council and the Commissioner of Complaints for Telecommunications and television Services). Bill C-11 must strengthen the accountability of the CRTC to Parliament and Canadians:

<i>Light yellow shading:</i> proposed change	<i>Italicized text in bold font:</i> proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

Bill C-11

13 (1) The Commission **shall**, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister **shall** cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Marginal note: [Broadcasting Act](#)

(2) The report must include information about the following in respect of the fiscal year, including their number:

- (a) inquiries conducted under subsection 12(1) of the [Broadcasting Act](#) in relation to the identification, prevention and removal of barriers;
- (b) inquiries conducted under that subsection in relation to sections 42 to 44 of the [Accessible Canada Act](#);
- (c) orders made under subsection 12(2) of the [Broadcasting Act](#) in relation to the identification, prevention and removal of barriers; ~~and~~
- (d) orders made under that subsection in relation to sections 42 to 44 of the [Accessible Canada Act](#);
- (e) notices of violation issued under section 34.8 of the [Broadcasting Act](#) in relation to contraventions of a regulation or order made under Part II of that Act in relation to the identification, prevention and removal of barriers; and
- (f) notices of violation issued under section 34.8 of the [Broadcasting Act](#) in relation to contraventions of any of subsections 42(1) to (4) and (7), 43(1) to (3) and 44(1) to (3) and (6) of the [Accessible Canada Act](#).

FRPC proposed amendment 7

13 (1) The Commission **shall**, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister **shall** cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Marginal note: [Broadcasting Act](#)

(2) The report must include information about the following in respect of:

- (a)** the fiscal year, including their number
- (i)** inquiries conducted under subsection 12(1) of the [Broadcasting Act](#) in relation to the identification, prevention and removal of barriers;
- (ii)** inquiries conducted under that subsection in relation to sections 42 to 44 of the [Accessible Canada Act](#);
- (iii)** orders made under subsection 12(2) of the [Broadcasting Act](#) in relation to the identification, prevention and removal of barriers; ~~and~~
- (iv)** orders made under that subsection in relation to sections 42 to 44 of the [Accessible Canada Act](#);
- (v)** notices of violation issued under section 34.8 of the [Broadcasting Act](#) in relation to contraventions of a regulation or order made under Part II of that Act in relation to the identification, prevention and removal of barriers; and
- (vi)** notices of violation issued under section 34.8 of the [Broadcasting Act](#) in relation to contraventions of any of subsections 42(1) to (4) and (7), 43(1) to (3) and 44(1) to (3) and (6) of the [Accessible Canada Act](#).

(b) the broadcast year, including

(i) statistics describing the implementation of section 3 including but not limited to

1(a) total and first-run hours and numbers of Canadian and non-Canadian programs broadcast by each element of the system during the year

1(b) total and first-run hours and numbers of first run of Canadian programming broadcast in English, in French or in Indigenous languages by each element of the system during the year

1(c) expenditures on Canadian programming broadcast in English, in French or in Indigenous languages by each element of the system during the year

2. total and first-run hours of news, including hours allocated to local news, by each element of the system during the year

3. numbers of Canadian and foreign broadcast undertakings operating in Canada and whether they are licensed, exempted from licensing, registered or other

Light yellow shading: proposed change

Yellow highlighting: text that would change in Bill C-11

Italicized text in bold font: proposed change to text

Grey shading: deleted text

Bill C-11

FRPC proposed amendment 7

4. full-time or equivalent employment numbers by each class of broadcasting undertaking including online undertakings and by type of employment (production, technical, sales and promotion and administration)

8. Exclusions and exemptions to exemptions

14. Bill C-11 excludes certain broadcasters from some aspects of the *Broadcasting Act*: companies that advertise their business through online broadcast content, and online distributors. These exclusions could easily jeopardize implementation of Parliament’s broadcasting policy for Canada.

15. Proposed subsection 2(2.3)(a) excludes companies that advertise their business through online broadcast content intended to promote their main, non-broadcast business(es), and has three problems. First, it is unclear why the CRTC itself would not exempt such broadcasters from regulation under subsection 9(4). Second, companies may decide to arrange their businesses in such a way as to meet section 2(2.2): a company that sells communication devices, for instance, might then also offer programming content designed for such devices while claiming that that the programming is merely to promote its device business. Third, if Bill C-11 is passed with subsection 2(2.2) as currently proposed, court challenges may delay the legislation’s implementation. Parliament could amend subsection 2(2.2) to include a revenue threshold to ensure that small companies are excluded – leaving open the possibility that it might in the future raise, lower or eliminate the threshold; or it could drop the section and rely on the CRTC to exempt businesses that on their own or through their related companies are not providing programming that ‘informs, enlightens and entertains’. The Forum recommends that subsection 2(2.2) be dropped from Bill C-11:

Bill C-11

2(2.3) A person does not carry on an online undertaking for the purposes of this Act in respect of a transmission of programs over the Internet
 (a) that is ancillary to a business not primarily engaged in the transmission of programs to the public and that is intended to provide clients with information or services directly related to that business;

FRPC proposed amendment 8.1

2(2.3) A person does not carry on an online undertaking for the purposes of this Act in respect of a transmission of programs over the Internet

[drop]

16. Bill C-11 also proposes to exclude social media users’ programs from the *Broadcasting Act*’s application. Unfortunately, subsections 4.1(2) and 4.1(3) then re-include such programs under specified conditions, perhaps in an effort to maximize Canadian programming exhibition and expenditures. It is unclear how these proposals will work. The Forum notes that while subsection 1(d) of Canada’s 1960 *Bill of Rights* and subsection 2(b) of the 1982

Light yellow shading: proposed change	<i>Italicized text in bold font: proposed change to text</i>
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

Charter of Rights and Freedoms both establish that freedom of speech or expression is a fundamental right, the CRTC has indirectly regulated Canadians’ broadcast speech since 1988 through a policy on open-line programming (<https://crtc.gc.ca/eng/archive/1988/pb88-213.htm>) that applies to broadcasters, not to individual Canadians’ speech: the CRTC would not have to regulate social-media users if it is able to regulate social media companies that are broadcasters. The Forum supports the elimination of subsections 4.1(3) and (4), and subsection 4.2, supports the retention of the straightforward subsection 4.1 exclusion of social-media users’ programs from the application of the *Broadcasting Act* and recommends that, if the purpose of 4.1 is to ensure that broadcasters do not attempt to evade regulatory scrutiny by ‘broadcasting’ their programs on social media, proposed subsection 4.1(2) be amended to state that the *Broadcasting Act* would apply to programs uploaded by broadcasters to social media.

C-11

4.1 (1) This Act does not apply in respect of a program that is uploaded to an online undertaking that provides a social media service by a user of the service for transmission over the Internet and reception by other users of the service.

Application – certain programs

(2) Despite subsection (1), this Act applies in respect of a program that is uploaded as described in that subsection if the program

- (a) is uploaded to the social media service by the provider of the service or the provider’s affiliate, or by the agent or mandatary of either of them; or
- (b) is prescribed by regulations made under section 4.2.

Non-application – social media service

(3) This Act does not apply in respect of online undertakings whose broadcasting consists only of programs in respect of which this Act does not apply under this section.

For greater certainty

(4) For greater certainty, this section does not exclude the application of this Act in respect of a program that, except for the fact that it is not uploaded as described in subsection (1), is the same as a program in respect of which this Act does not apply under this section.

Regulations – programs to which this Act applies

4.2 (1) For the purposes of paragraph 4.1(2)(b), the Commission may make regulations prescribing programs in respect of which this Act applies.

Matters

FRPC proposed amendment 8.2

4.1(1) This Act does not apply in respect of a program that is uploaded to an online undertaking that provides a social media service by a user of the service for transmission over the Internet and reception by other users of the service.

Application – certain programs

(2) Despite subsection (1), this Act applies in respect of a program that is uploaded as described in that subsection if the program is uploaded to the social media service by a broadcaster.

[drop]

[drop]

[drop]

[drop]

Light yellow shading: proposed change	Italicized text in bold font: proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text

C-11

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

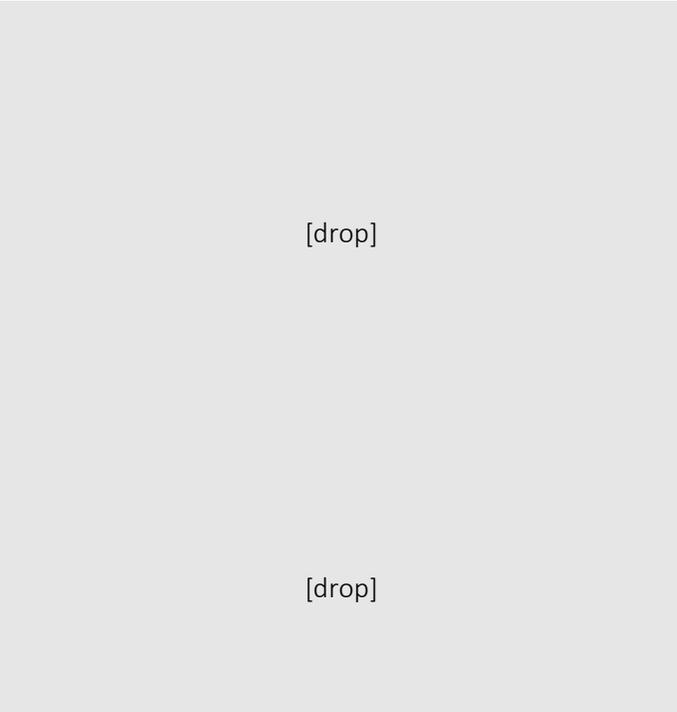
- (a) the extent to which a program, uploaded to an online undertaking that provides a social media service, directly or indirectly generates revenues;
- (b) the fact that such a program has been broadcast, in whole or in part, by a broadcasting undertaking that
 - (i) is required to be carried on under 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.

Exclusion

(3) The regulations shall not prescribe a program

- (a) in respect of which neither the user of a social media service who uploads the program nor the owner or licensee of copyright in the program receives revenues; or
- (b) that consists only of visual images.

FRPC proposed amendment 8.2



<i>Light yellow shading:</i> proposed change	<i>Italicized text in bold font:</i> proposed change to text
Yellow highlighting: text that would change in Bill C-11	Grey shading: deleted text