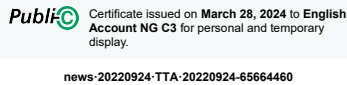


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## Fix online streaming bill

When you think of a dystopian society in which unelected government officials control what you can say, you probably think of George Orwell's grim cautionary tale "Nineteen Eighty-Four."

But there is another way for the government to shut down freedom of expression: Let people say whatever they want, but control whether anyone hears them. And when you think of that, you should think of Bill C-11, since, if passed by the Senate, it could grant that power to the Canadian Radio-television and Telecommunications Commission.

Otherwise known as the Online Streaming Act, Bill C-11 updates the Broadcasting Act by bringing audiovisual internet "platforms" like Netflix, YouTube and TikTok under the regulations that currently govern radio and television.

These platforms will therefore be subject to rules concerning Canadian content - "CanCon" - and will be required to contribute to the Canadian Media Fund, which finances the production of CanCon. According to Heritage Minister Pablo Rodriguez, who introduced the bill, this could provide a windfall of more than \$1 billion for the fund.

Platforms will also be required to make CanCon "discoverable" by including it in the results of searches users conduct to find something to watch or read. That might sound good in principle. But in practice, what constitutes CanCon is governed by arcane rules that frequently exclude what is arguably bona fide Canadian content, while including material that has little to do with Canada.

This means the government will require platforms to prioritize some content while demoting other content.

That is not, however, the only concern with Bill C-11. The feds insist that the bill is intended to bring large platforms like YouTube under the regulations and will not affect the users who upload to these services: "The Online Streaming Act does not apply to individual Canadians, whether they are users, creators, digital influencers or workers."

Yet the act does apply to what individual Canadians post. While one section of the bill excludes content uploaded to social media, the very next section grants the CRTC the authority to regulate much of that very content.

CRTC chair Ian Scott, who supports the bill told a House of Commons committee "Proposed section 4.2 allows the

Minister of Canadian Heritage Pablo Rodriguez introduced B-11, the Online Streaming Act that critics say could mean regulation of what individual Canadians post online. SEAN KILPATRICK THE CANADIAN PRESS FILE PHOTO

CRTC to prescribe by regulation user-uploaded content subject to very explicit criteria."

Consequently, University of Ottawa law professor Michael Geist notes that "the CRTC will not be positioned to stop Canadians from posting content, but will have the power to establish regulations that could prioritize or de-prioritize certain content, mandate warning labels, or establish other conditions with the presentation of the content." That power, if used, could prove influential in the competitive, Darwinian landscape of the internet.

In his testimony before the committee, Scott was quick to add "We don't dictate content, neither what is broadcast nor what is watched, obviously, by Canadians."

Geist notes that "no other country in the world seeks to regulate user content in this way," and therefore recommends it be removed from the bill.

Of course, social-media platforms already engage in the practices that are the focus of the criticism around this bill -- they create algorithms that favour some content and determine what is seen and what is not. They do this absent transparency or any legal requirement for transparency. And of course, they do this in a way that is not consistent with the purpose of Canadian culture policy: to privilege Canadian stories.

Still, there are legitimate concerns around transparency, accountability and the question of recourse on C-11.

At first, the feds seemed amenable to making changes. While Bill C-11 originally excluded from regulation user-generated content, the feds removed that protection, then restored it, but with the addition of section 4.2 - which, as Scott said, means the CRTC would have the authority to regulate that content.

Since then, Ottawa has seemed a lot less interested in making any changes to the legislation. In an attempt to ram the bill through, debate on numerous proposed amendments was severely limited, and the bill was passed by the House of Commons in June.

The legislation is now with the Senate. The standing Senate committee on transport and communications held hearings on the matter this week. They have a chance to rectify the bill's shortcomings and clarify its reach.