



The Hill Times (Ottawa, ON)

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Online streaming bill risks pushing out Indigenous voices, says APTN

Smaller broadcasters could be at risk under Bill C-11 because they do not have the 'market power' to negotiate with online distributors without CRTC help, says the CEO of the Aboriginal Peoples Television Network.

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Indigenous peoples in Canada are at risk of losing their voice on the airwaves if proposed legislation to update the Broadcasting Act forces the smaller, independent broadcasters to do their own negotiating as services increasingly move online, says the CEO of the Aboriginal Peoples Television Network (APTN).

"Right now we see online distributors are growing rapidly, and that cable satellite is slowly shrinking. We're afraid that soon we won't have the support that APTN needs to continue," said Monika Ille. "APTN is an important player. We represent a population that's underrepresented in media. We give voice to Indigenous people, giving us the possibility to tell the stories like we want to tell them to share the stories we want to share."

The House Heritage Committee conducted four day-long meetings between May 24 and June 2 to hear from 69 witnesses about Bill C-11, the Online Streaming Act. The bill, introduced on Feb. 2 by Heritage Minister Pablo Ro-

driguez (Honoré-Mercier, Que.), proposes to modernize the Broadcasting Act by giving the Canadian Radio-television Commission (CRTC) regulatory oversight for online streaming services, as well as certain types of content on social media platforms. The bill completed second reading in the House on May 12 and is the successor to the former Bill C-10 in the previous Parliament, which died on the Order Paper in August 2021 when Parliament was dissolved for the federal election.

APTN sent a request for representatives to speak before the House Heritage Committee as it discusses Bill C-11, but so far has not been invited, according to Ille. Representatives of APTN did appear before the committee to speak during the previous Parliament to discuss the former Bill C-10.

Ille told The Hill Times that she is generally supportive of the bill, but has serious concerns regarding what she calls gaps in the CRTC's authority to provide oversight of the distribution of online services.

Dr. Michael Geist, a law professor at the University of Ottawa, says it is 'incontrovertible' that Bill C-11 allows regulation of user generated content. The Hill Times photograph by Andrew Meade

A proposed section in the bill would allow the CRTC to require an online distributor to distribute certain services, but it does not allow the CRTC to set the terms and conditions relating to this delivery. Instead, online distributors and broadcasters are to conduct "good faith" negotiations, which only the CRTC may facilitate.

Ille said that APTN is able to exist as a service currently because of regulatory intervention by the CRTC, which requires distributors to make the network available to Canadians at a fair price. She argues that without the CRTC's regulatory powers, APTN won't be able to secure similar deals with powerful online distributors, such as Amazon Prime, Roku, Rogers and Bell.

"We do, in a way, lack what we call 'market power,' because we're not driven by the ratings," said Ille. "Because

we have this lack of market power to conduct a meaningful negotiation with those big, powerful online distributors, how are they going to listen to us? And what will we get from them?" Ille said that APTN is fundamental in bridging gaps between Indigenous and non-Indigenous peoples. APTN reaches more than 10 million households, with 44 per cent of Indigenous peoples tuning in to the network on a typical day or week-end, according to its website.

"We have programming on APTN that, yes, maybe are more meant for Indigenous people, but we have lots of our stories that are for everyone to appreciate," she said. "I think they want to know the stories told by Indigenous peoples themselves, and I think that's what makes a difference. I truly believe that once people get to understand one another, often that brings appreciation, and once you appreciate, that's when you see stereotypes and myths start to fall away."

The bill addresses Indigenous broadcasters with a requirement that streaming services, such as Crave and Spotify, would need to reflect diversity in their programming, including Indigenous content. One goal of the bill is to "make it easier for Canadian audiences to access Canadian and Indigenous stories," according to the Heritage Department.

"Canada's strong culture is no accident. We chose to be different. We care about our cultural sovereignty, and we believe diversity makes us stronger. Our culture is who we are. It is our past, our present, and our future, it is how we tell our stories. The Online Streaming Act will help make sure that our cultural sector works for Canadians and supports the next generation of artists and creators in this country," said Rodriguez in a press

release on Feb. 2. The first wave of witnesses that appeared before the House Heritage Committee on May 24 included Morghan Fortier, the CEO of Skyship Entertainment, a YouTube content provider with more than 43.5 million subscribers and which gathers more than 800 million views each month, according to the company website. Other witnesses that appeared during that week included Eleanor Noble, the national president of the Alliance of Canadian Cinema, Television and Radio Artists on May 30; and Andrew Cash, the president and CEO of the Canadian Independent Music Association on June 2.

A total of 40 organizations are active on the federal lobbyists' registry interested in discussing Bill C-11, including Google Canada, Rogers Communications and the Walt Disney Company.

Michael Geist, a law professor at the University of Ottawa and Canada Research Chair of Internet and E-commerce Law, spoke to the committee on May 24 and criticized the bill by arguing it allows regulation of user content, which has been a major source of controversy regarding the bill. User-generated content is any form of content, such as images, videos and audio, that is posted by users on online platforms, such as social media sites.

"The user-generated content platforms, that kind of digital first creativity, falls outside the curated services, and yet, the inclusion of that content within the bill ... I think represents a significant overreach and has clearly been a major source of concern amongst many of the witnesses who have appeared before the committee," Geist told The Hill Times.

The text of the bill contains a clause

excluding from regulation videos uploaded by a user for other users to watch, but also states the CRTC can make regulations relating to "programs."

Geist argues that user content is treated as a "program" under the current bill, and the CRTC is empowered to create regulations applicable to programs that are uploaded to social media services.

On May 18, CRTC chair and CEO Ian Scott was asked by Conservative MP and Heritage committee member Rachael Thomas (Lethbridge, Alta.) if the bill could "capture" user generated content. Scott replied by saying that the bill, as constructed, includes "a provision that would allow [the CRTC] to do it as required."

"It seems to me that it is incontrovertible, but that user content is currently included in the bill, and this is a source of concern for individual creators, and for ... Canada's most successful streaming companies," said Geist. "User content should be out. The [Heritage] minister has said that that's the intent. The government has now been told by numerous creators, industry associations and the CRTC chair that it's in, and so I don't think it's unreasonable to expect the government to live up to what it says is its intent by clarifying and excluding, explicitly, this content from the ambit of the bill."

jcnockaert@hilltimes.com The Hill Times Lobbying organizations interested in Bill C-11 This table shows the most active lobbying organizations from the last six months, whose registry files indicate they are interested in speaking to the federal government about Bill C-11, the Online Streaming Act.

Source: the federal lobbyists' registry
Organization Communication reports
Unifor 69 Business Council of Canada
46 Rogers Communications Inc. 42
Google Canada Corporation 35 Canadian
Media Producers Association 30 Motion
Picture Association-Canada 21
Corus Entertainment Inc. 19 Shaw
Communications 19 Aboriginal Peoples
Television Network 15 Canadian Marketing
Association 15

Figure:

Monika Ille, CEO of the Aboriginal Peoples Television Network (APTN), said that, under the current Bill C-11, she's afraid that the APTN won't have the support it needs to continue. Photograph courtesy of Monika Ille

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Heritage Minister Pablo Rodriguez introduced Bill C-11 on Feb. 2, which is intended to modernize the Broadcasting Act by giving the Canadian Radio-television Commission (CRTC) regulatory oversight for online streaming services. The Hill Times photograph by Andrew Meade

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