Consumer Technology Association™

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To: **Standing Senate Committee on Transport and Communications – Study of Bill C-11, an *Act to Amend the Broadcasting Act and to make related and consequential amendments to other Acts***

Honourable Senators,

The Consumer Technology Association ("CTA") respectfully submits the following comments to the Standing Senate Committee on Transport and Communications for your study of ***Bill C-11***, an *Act to Amend the Broadcasting Act and to make related and consequential amendments to other Acts.*

As North America's largest technology trade association, CTA® is the tech sector. Our members are the world's leading innovators—from startups to global brands. We represent both Canadian and foreign tech companies, including several of the market-leading foreign entities currently offering online streaming audio and video subscription services to Canadian consumers. Our Government Affairs Council-Canada committee, which has informed these comments, is comprised of a diverse group of large and small member-companies with operations throughout Canada.

CTA is committed to fostering an environment that promotes innovation for businesses. It is with that in mind that we are urging your Committee to ensure Bill C-11 does not stifle innovation and remains flexible to emerging trends as it mandates online streaming services to contribute to the creation, production and distribution of Canadian stories.[1]

Our Concerns:

When the first video cassette recorders (VCRs) became available to consumers, CTA strongly opposed official efforts to regulate their design and use so as to limit the new choices they offered to users, in when and how to select and enjoy broadcast content. ***We are now concerned that despite best intentions, Bill C-11 may bring us full circle by placing a regulatory hand on user discovery and choice of opinion and content.***

Regulation of user search and selection is ***even more concerning today*** because the Internet offers users the ability to ***post*** as well as to choose, receive, and store ***spoken, musical, and video expression and content***. This ***ability to share*** should not be assumed to turn users into broadcasters, nor should it subject users even to remotely comparable obligations and regulations.

[1] *See* CTA Comments on Bill C-10, March 2021.

Allowing companies to *sell VCRs to consumers*, controversial as it was, did not at first seem a step toward today's multilateral communications and content environment. Experience teaches that governments should be modest about imposing obligations on the technological future. Specifically, Canada should be ***cautious and precise*** about attempting to influence or define:

(1) The ***information that is available to users*** via search; and

(2) The extent to which ***user communication suddenly is declared a "broadcast" whose status may be officially categorized, promoted, repressed, or suppressed***.

Hence, CTA joins those who have expressed concern over the breadth and lack of precision in the text of Bill C-11 as presently drafted, and over its potential prescriptive and corrosive effects.

CTA is specifically concerned with the following components of Bill C-11:

- **Breadth**. As deeply experienced and vitally interested parties and societies[2] have observed, Bill C-11 fails to provide demarcation, guidance, or limitation on when user generated content is subject to regulation. ***If the intention is to exclude User Generated Content***, ***subclause 4.1 should be specifically narrowed so as to do so plainly***.

If this proves impossible due to the dynamism of the online environment, ***subclauses (2) – (4) of section 4.2 should be removed***. Similarly, **9.1(1)(e)** would give CRTC the power to regulate the content that is "presented" to Canadians, interfering not ***only with "broadcasts," but also with which user expression and content may be discovered by other users***, and so should be removed.

- **Precision**. As concerned parties have also observed, ***subclause (8) of Section 9.1*** is an insufficient limitation on an official and potentially arbitrary power to restrict, redefine, or impose computer algorithms. **This puts at risk the very viability of the Internet and its services**.[3]

- **Innovation and the Future**. If Parliament is unable to draw lines today that more precisely reflect drafters' intent, ***there is no reason to assume that regulators will be able to do so in the future.*** Indeed, the experience of CTA members has been that official lines and definitions drawn with the best intention have proven ***beyond the ability of regulators or courts***[4] ***to limit or clarify***, or to enforce sensibly.

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[2] *See* briefs of TikTok (June 2, 2022), Youtube (May 31, 2022), Internet Society, Canada Chapter (May 31, 2022.

[3] This danger was addressed in Bill C-10 by 9.1(3.1) and 10(1)(4), but these provisions do not appear in C-11 as presently drafted.

[4] *E.g.,* as discussed by (then) Judge Ketanji Brown Jackson in *Alliance of Artists & Recording Companies v. General Motors*, 162 F. Supp. 3d 8 (2016), at 13: "The various restrictions contained in the definitions section of the AHRA were most certainly intended to clarify which recording devices should be excluded from the DARD definition pursuant to the compromise that Congress struck to protect the interests of music industry and high tech industry professionals. However, in practice, the definitions and their limitations raise a host of questions when applied to modern recording technology that did not exist at the time [the] statute was enacted."

Conclusion

We thank the Standing Senate Committee for the opportunity to offer these comments as it reviews Bill C-11, and CTA remains at your disposal to answer any additional questions about this legislative proposal.

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