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The Senate of Canada
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BRIEF – CRTC POSITION ON SOCIAL MEDIA SERVICES

Introduction

Social media services and their treatment under Bill C-11 have been the subject of significant debate. The CRTC has studied these provisions and provides its preliminary views on what it considers to be the meaning and intent of these provisions, but notes that these views will likely evolve over time should Bill C-11 be enacted, particularly through public participation in the CRTC's proceedings as it implements the revised *Broadcasting Act*.

The distinction between jurisdiction and powers

Enabling Acts, such as the *Broadcasting Act*, do two things. They give the regulator the authority over certain matters and also give the regulator the necessary regulatory tools or “powers” to effectively regulate those various matters. This is the difference between “jurisdiction” and “powers”. Bill C-11 similarly draws this distinction. It gives the CRTC both the jurisdiction and certain powers over social media services. However, that jurisdiction and those powers are also limited in very precise ways in the Bill.

Social Media services

There are three components to social media services that are important to understand as one reads the provisions of Bill C-11.

- (1) the provider of a social media service: the social media service provider is often referred to as the platform provider.
- (2) the users of the social media services: “users” generally fall under two categories.
 - users that are affiliated in some way with the platform provider: this can include the platform itself or the platform's affiliates, agents or mandatories. To simplify the discussion, the CRTC will refer to these users as “affiliated users”.
 - users who have no affiliation with the platform provider. These users have no affiliation with the platform and access the service to upload and share their content with other users. To simplify the discussion, the CRTC will refer to these users as “general users”.
- (3) the programs on social media services: “programs” fall under categories similar to that of the user. There are programs that are uploaded by affiliated users and programs that are uploaded by general users. In addition, other distinctions are made in the bill as it relates to programs on social media services. There are programs in which the platform provider exercises

programming control and programs where the platform provider does not exercise such control. Moreover there are programs that can be prescribed by regulation, and programs that cannot be prescribed by regulation.

The CRTC's jurisdiction over "social media services" – a subset of "online undertakings" – section 2

We generally understand social media platforms to be a form of online undertaking subject to the CRTC's jurisdiction. It goes without saying that the social media platform must first be engaged in some form of "broadcasting" in order to fall under the CRTC's regulatory authority.

The CRTC's jurisdiction over "users" – section 2.1

Section 2.1 of Bill C-11 seems fairly unequivocal on this matter. As we understand it, general users of the social media platform do not fall under the CRTC's jurisdiction. This is because these users are deemed not to be "broadcasting undertakings" for the purposes of this Act. On the other hand, affiliated users continue to fall under the CRTC's jurisdiction.

The CRTC's jurisdiction over "programs" – sections 4.1 & 4.2

As we understand it, the Act does not apply to programs on social media services except where the program is:

- (i) uploaded by an affiliated user, or
- (ii) if that program is included in the Act by regulation by the CRTC

The most important aspect of this provision is that it empowers the CRTC with the discretion to include certain user-uploaded programs within the scope of the Act, by regulation.

In determining that a user-uploaded program will be subject to the Act, the CRTC must consider specific criteria set out in Bill C-11, including whether the program generates revenues, whether it is available on other platforms and whether it has been assigned a "unique identifier under an international standards system". However, the powers the CRTC may exercise over those programs is limited and focused on the undertaking rather than the individual programs, and most certainly not on the general user that uploaded the program since the general user has been deemed not to be a broadcasting undertaking.

How the CRTC can exercise its powers – section 9.1

First, to the extent that the CRTC wishes to exercise certain powers in order to impose rules, they must apply to the platform, not the general users. This is because it is only the platform that can be considered to be a broadcasting undertaking, not the general user.

The CRTC does have certain powers that it can exercise in relation to user-uploaded content. The CRTC's powers in this regard are however actually quite narrow. First, as stated above, any rules can only be made to apply to the platform. Second, rules like the ones that address Canadian content or high standards in programming cannot apply to content uploaded by general users on social media platforms. This is because the Commission can only apply such rules to broadcasting undertakings that exercise "programming control" over the programs that are found on their platforms and Bill C-11 specifies that social media platforms do not have programming control over content uploaded by general users.

Summary

Users of social media create and transmit a significant amount of content on social media platforms. Bill C-11 limits the CRTC's ability to regulate programs found on social media platforms. First, Bill C-11 removes general users of social media services from the *Act*. Second, only certain types of programs can be subject to the CRTC's jurisdiction and only in certain limited circumstances. Third, the CRTC has very limited powers that can be used in relation to user-uploaded programs.