

Policy Portal

Canadian Cultural Nationalism in the Time of Digital Platforms: Reframing Proposed Amendments to the Broadcasting Act

Mariane Bourcheix-Laporte
Simon Fraser University, Burnaby, British Columbia,
Canada

Abstract

Background: Last amended in 1991, the Broadcasting Act has recently been the object of legislative reform projects with the aim of incorporating online broadcasting into the existing legislative and regulatory framework and expanding the diversity representation mandate of the Canadian broadcasting system.

Analysis: The article analyzes proposed amendments to the Broadcasting Act iterated in the third and final version of [Bill C-10 \(2021\)](#) and in the current version of [Bill C-11 \(2022\)](#) and develops a critical analysis of their implications vis-à-vis discursive constructions of Canadian cultural nationalism and the model of cultural citizenship that it fosters.

Conclusion and implications: Proposed amendments recuperate the cultural nationalist logic that underscores Canadian cultural policy's efforts to secure cultural sovereignty. In the legislative reform project, this logic manifests through the continued economization of cultural production in the digital era and the perpetuation of a settler colonial vision of cultural citizenship that remains skewed by ethnolinguistic hierarchies.

Keywords: broadcasting regulation, online broadcasting, cultural nationalism, legislation, cultural and creative industries

RÉSUMÉ

Contexte : Modifiée pour la dernière fois en 1991, la Loi sur la radiodiffusion a récemment fait l'objet de projets de réforme législative dont l'objectif est d'intégrer la diffusion en ligne dans le cadre législatif et réglementaire existant ainsi que de bonifier le mandat de représentation de la diversité du système de radiodiffusion canadien.

Analyse : L'article analyse les modifications proposées à la Loi sur la radiodiffusion telles que présentées dans la troisième et dernière version du projet de loi C-10 (2021) et dans la version actuelle du projet de loi C-11 (2022), et développe une analyse critique de leurs implications pour des constructions discursives du nationalisme culturel canadien et du modèle de citoyenneté culturelle qu'il favorise.

Conclusion et implications : Les modifications proposées récupèrent la logique de nationalisme culturel qui sous-tend l'objectif de la politique culturelle canadienne d'assurer la souveraineté culturelle. Dans le projet de réforme législative, cette logique se manifeste par la continuation d'une approche économiste envers la production culturelle à l'ère numérique et par la perpétuation d'une vision colonialiste de la citoyenneté culturelle qui maintient les hiérarchies ethnolinguistiques.

Mots clés : réglementation de la radiodiffusion, radiodiffusion en ligne, nationalisme culturel, législation, industries culturelles et créatives

Introduction

This article develops a critical analysis of the cultural nationalist policy rationale that has been embedded in recent legislative projects aiming to amend the [Broadcasting Act \(1991\)](#), [Bill C-10 \(2021\)](#) and [Bill C-11 \(2022\)](#). The Act was last amended in 1991 and its “modernization” has been presented as an opportunity to address the technological and social changes of the last decades, namely the platformization of audiovisual distribution and the diversity of the Canadian population. It is argued that the Broadcasting Act reform has been framed through a nationalistic and economic vision of culture that reinforces the imperative of establishing and maintaining a settler colonial and industrialist vision of Canadian cultural sovereignty. Drawing from [Michel Foucault's \(1991\)](#) theory of governmentality and from scholarship critiquing the settler colonial manifestation of this concept in Canadian cultural policy ([Fatona, 2013](#); [Mackey, 1999](#); [Paquette, Beauregard, & Gunter, 2017](#)), the text challenges the discursive assumptions that have framed proposed changes to the Broadcasting Act. It considers how elements of the legislative reform project reinforce an asymmetrical vision of cultural citizenship based on pre-existing ethnolinguistic hierarchies built into the Canadian legislative framework—with cultural citizenship understood as the form of belonging to the Canadian national project via cultural participation. Moreover, the article develops a critique of the economization of cultural production logic embedded in the digitalization of the Broadcasting Act, understood as the normalization of thinking about culture in economic terms and the

resulting subordination of cultural values to economic values (Lamont & McGuirk, 2017).

The analysis is supported by a discussion of selected proposed amendments to the Act put forth in Bills C-10 and C-11. The approach taken has not been to develop an exhaustive analysis of these legislative projects, but rather to draw out key proposed amendments to the Broadcasting Act and to develop an analysis informed by a critical cultural policy studies perspective, which pays particular attention to the ways in which power is enacted via the management of culture (Lewis & Miller, 2003). The analysis focuses on proposed amendments related to the integration of online broadcasting and future technologies in the regulatory framework, the bolstering of the Canadian broadcasting system's diversity mandate, and the reinforcement of official minority language rights. Finally, the analysis is supported by an overview of the political discourse that has accompanied these controversial bill projects (see Michael Geist's [2022] posts on the subject), with examples selected for illustrative purposes.

Theoretical frameworks

An objective of settler colonial Canadian cultural policy, cultural sovereignty has affected the adoption of protectionist approaches to regulating the cultural industries. Accordingly, Canadian settler colonial cultural nationalism (Paquette et al., 2019) has given rise to different technological, cultural, and economic regulatory measures in the service of the Canadian nation-state. This approach to cultural sovereignty has been exercised as a *sine qua non* condition of Western modernist governance (Dorland, 1996; Dowler, 1996; Mackey, 1999) as exemplified by the Royal Commission on the National Development of the Arts, Letters and Sciences' (1949–1951) conception of cultural policy as being the best means to ensure national unity (Edwardson, 2008, pp. 51–77; Litt, 1992). This view has manifested through various iterations of cultural nationalist policy, with aims developing out of an impetus to “fill” Canada's culturally vacant lot through the federal government's intervention in the sphere of culture (Jessup, Robertson, & Morton, 2014). Arguably, the intent of different forms of government intervention in cultural policy has been to foster a Canadian identity designed to perpetuate itself through the citizenry's production and consumption of Canadian culture, with the corollary effect of securing the Canadian nation-state (Dowler, 1996). If we consider that Canadian cultural

nationalism has no “natural” basis or self-evident unifying principle (Berland, 1997), the idea of cultural policy as a force enabling the telling of Canadian stories, to Canadians, by Canadians is tautological inasmuch as cultural policy has engineered Canadian cultural identity. Historically, the Canadian broadcasting system has played an important nation-building role and has occupied a central place in the development of the cultural industries (Dorland, 1996; Dowler, 1996; Edwardson, 2008; Raboy, 1990).

The social engineering of cultural policy in the service of the nation-state can be examined through the prism of Foucault's (1991) theory of governmentality, which proposes that, in Western modernity, the primary concern of government is to manage its population rather than to ensure its territorial sovereignty. In the process, the nation-state manages its population by deploying tactics of government that produce self-regulating and governable subjects who ensure the conditions for the reproduction of the nation-state (see Fatona, 2013 for a critique of this logic in Canadian cultural policy). In this framework, the nation-state aims to ensure the population's well-being through governmental means, with the underlying goal of securing and maintaining its position as a connecting thread in the diffuse exercise of power (Dowler, 1996). Considered through the prism of governmentality, cultural policy can be understood as a “tactic of government” that serves the purpose of managing populations to the benefit of the state. In this context, the purpose of Canadian cultural policy has been to frame and foster Canadian cultural citizenship, which John A. Foote (2005) defines as “the points where cultural expression forms part of one's role as citizen such as identity, belonging, diversity, advocacy, and different arenas of participation” (p. 91). In this sense, Canadian cultural policy has produced the conditions for the allocation or negation of cultural citizenship, and thus for its different populations to be included or excluded from the Canadian nation-building project. Supported by a settler colonial cultural policy approach, this has enshrined the cultural hegemony of citizens principally characterized as white, Anglophone or Francophone, and of European descent (see for example Fatona, 2013; Haque, 2013; Hogarth & Fletcher, 2018; Mackey, 1999; Paquette et al., 2017).

Official multiculturalism, which came out of the 1971 *Canadian Multiculturalism Policy*—which Eve Haque (2013) has referred to as “Multiculturalism within a Bilingual Framework” policy—has posited Canada firstly as bilingual and secondly as multicultural. This

policy came about partly to promote national unity in response to the dissatisfaction and desire for recognition expressed by cultural and racial minorities as a result of the 1963–1969 Royal Commission on Bilingualism and Biculturalism, which enshrined the superiority of (white) Anglophone and Francophone cultures over that of other ethno-cultural groups. In this sense, the bilingual frame that was imposed upon multiculturalism in the 1971 policy established a hierarchy of rights between the collective linguistic rights of the English and French descendants, and the cultural individual rights of other groups (Haque, 2013, pp. 29–31). This hierarchy persists today and was carried forward in the 1982 Charter of Rights and Freedoms and the 1988 Multiculturalism Act. Both are examples of policies designed to embrace cultural diversity and are formulated to produce a pluralistic vision of cultural citizenship. However, there are significant issues with the current formulation of official multiculturalism, starting with its indebtedness and subordination to official bilingualism. Haque (2013) writes: “Thus the hegemony of linguistic dualism has not only limited the current conception of multiculturalism but also concretized a racially ordered disparity of rights” (p. 32). This has had for effect to normalize whiteness and reinforce the construction of “otherness” in the framework of the Canadian nation-building project (Hogarth & Fletcher, 2018, pp. 72–86). Read through the lens of settler colonial governmentality, Canadian multiculturalism is a technique of government that institutionalizes difference to better manage it, notably by instituting hierarchies within its cultural citizenship model.

Regulation of online broadcasting and the cultural nationalist imperative

In a context in which digital technologies have significantly impacted all stages of the cultural value chain, few would argue against the necessity to “modernize” the Broadcasting Act, whose last modifications predate the launch of the World Wide Web in the public domain. As Canadians’ consumption of legacy media dwindles and their appetite for digital platforms to access cultural products steadily increases (Winseck, 2020), the crux of the issue, from a policy perspective, resides in the fact that cultural products are essentially “regulated entities in unregulated zones” (Wagman & Winton, 2014, p. 122). From a cultural nationalist perspective then, the lack of regulation for online undertakings can be understood as a failure of the Canadian nation-state to secure its cultural and economic sovereignty

online. The Broadcasting Act, initially introduced in Canadian legislation in 1932 as the Canadian Radio Broadcasting Act, has been a pillar of Canadian sovereignty informed by technological and cultural nationalism (Dorland, 1996; Dowler, 1996, Raboy, 1990). With the growth of internet-based audiovisual distribution, the 1991 version of the Act has proven insufficient to safeguard Canadian culture and identity in the globalized infosphere (Davis & Zboralska, 2019). Bill C-10 and Bill C-11's proposed expansion of the definition of broadcasting to include the transmission of audiovisual content online and to account for future technologies has presented itself as a solution to Canada's digital cultural sovereignty problem. If implemented, this manoeuvre would extend Canadian cultural policy's "walled-garden" strategy to the online environment. The political stakes at play in addressing the issue of regulating internet-based broadcast distribution undertakings (BDUs)—currently labelled new media broadcasting undertakings by the Canadian Radio-television and Telecommunications Commission (CRTC) (see below)—to the benefit of the Canadian cultural industries, which for the most part have received the wrong end of the digitalization stick, are high. In this context, it would have been difficult to imagine an approach to the regulation of online BDUs as anything other than one of saving grace. David Taras (2015), who has analyzed the impact of the "media shock" on the Canadian cultural industries, comments on the political urgency that underscores the regulation of online broadcasting as follows:

While Canadian broadcasters have been protected for decades by laws that prevent foreign takeovers, simultaneous substitution, tax laws that "direct" advertisers to Canadian media, and tax incentives and subsidies designed to promote Canadian programming, much of this infrastructure is being over-run. YouTube, Apple, and Facebook now have a lot more influence over the media lives of Canadians than the CRTC. Governments have never seemed so helpless. (p. 295)

The extent to which the digital turn has affected economic and operational change in the Canadian telecommunications sector and cultural industries is well documented, notably via the Canadian Media Concentration Research Project's yearly *Growth and Upheaval in the Network Media Economy in Canada* reports (see Winseck, 2020). The impact is particularly felt at the level of advertising revenues, which have been massively diverted toward online platforms. However, it is

important to note that in its concluding remarks, the 2020 edition of the report is wary of qualifying the situation as a full-blown crisis and invites readers to consider who is to benefit from the application of existing regulatory frameworks to the online sphere:

The crisis narrative that is so widespread in certain circles obscures this reality, intentionally so it seems, because it helps to further policy measures intent on preserving incumbent interests as well as peculiar and anachronistic view of the “Canadian Communication System”: one that is insular and dominated by the industry’s biggest players, a handful of think tanks and consultants, and policy insiders, and where questions about power and dominance are “off-limits.” (Winseck, 2020, pp. 67–68)

The above citation shines light on the power dynamics that structure the cultural industries. Following Sara Bannerman, Christina Baade, Rena Bivens, Leslie Regan Shade, Tamara Shepherd, and Andrea Zeffiro’s (2020) discussion on platforms and power, it is important to stress that regulating digital platforms should not be done at the expense of challenging the status quo of structural and systemic powers.

In 1999, CRTC issued an exemption order for new media broadcasting undertakings, which effectively excluded “undertakings that provide broadcasting services delivered and accessed over the Internet” (CRTC, 1999, Summary) operating in Canada from being subject to existing regulation. At the time, CRTC ruled that “regulation of these undertakings would not contribute in a material manner to the implementation of the broadcasting policy set out in section 3(1) of the Act” (CRTC, 1999, Comments). Given the penetration rate of digital media consumption in recent years, this assessment constitutes, from a cultural sovereignty perspective, a missed opportunity for industrial expansion at best, and an irrecoverable delay of the “CanConization” of the Web at worst. Whereas it is not surprising that CRTC did not foresee the exponential growth of online audiovisual distribution at the turn of the millennium, it is interesting that political will to regulate online undertakings has manifested only relatively recently. The political urgency to regulate platform-based audiovisual distribution can be linked to the “Netflix Tax” scandal that accompanied the launch of Creative Canada in 2017 (Davis & Zboralska, 2019) and the backlash stemming from

the Liberal government's refusal, at the time, to address regulatory asymmetries between internet-based and legacy broadcasting media. Upon the release of Budget 2018, the Minister of Canadian Heritage, Mélanie Joly, defended the government's non-interventionist stance by saying "our approach will not be to bail out industry models that are no longer viable" (cited in [Stursberg, 2019](#), p. 22). This refusal to grant legacy media some form of financial salvation via the regulation of their digital counterparts is incoherent with the market-failure rationale at the core of Canadian cultural policy's approach to governing the cultural industries, which can arguably be qualified as a massive exercise in "bailing out" industry models that have never been viable due to Canada's particular geography and population dispositions. Moreover, this statement unabashedly espoused the "winner takes all" free-market ethos of digital capitalism and provided a justification for the emergence of partnerships between the federal government and digital American giants—namely investments from Google, Facebook, and Netflix—in the wake of the 2016 #DigiCanCon Consultations, which promised a complete review of the Canadian cultural policy tool kit in light of the changes brought about by digitalization ([Department of Canadian Heritage, 2016; 2017](#)). As evidenced by the Ministers of Canadian Heritage Steven Guilbeault's and Pablo Rodriguez's respective sponsorships of Bills C-10 and C-11, the Liberal government has drastically revised its stance on the issue of regulating digital media and has reconciled the question of cultural nationalism with that of growing the economy in its approach. Notably, in its 2021 platform, the Liberal Party promised to, "within the first 100 days, reintroduce legislation to reform the Broadcasting Act to ensure foreign web giants contribute to the creation and promotion of Canadian stories and music" (p. 26) under the section of the document committed to making "a more resilient economy." Herein is an example of the conflation of financial arguments and nationalistic imperatives in the quest to make corporations such as Netflix contribute their due to Canadian culture.

[Ben Schnitzer \(2019\)](#) proposes that, as a result of the market-driven turn in politics and public policy, recent directions in Canadian cultural policymaking point to the interplay between two competing notions of sovereignty. In his analysis, Canada's cultural sovereignty, understood through the prism of cultural nationalism, is in tension with consumer sovereignty, understood as the consumer's right to access cultural goods of their choosing via unobstructed market mechanisms. This vision of consumer sovereignty is an underlying

principle of free trade and opposes the vision of “consumer sovereignty” that Canadian cultural policy has historically aimed to foster. This latter vision has entailed the setting in place of regulatory mechanisms to ensure that Canadian citizens have the “freedom” to consume Canadian cultural content. “CanCon” quota regulations, the production and distribution of audiovisual content via national organizations such as the CBC and the NFB, and the subsidy of Canadian cultural production through agencies such as the Canada Council for the Arts, the Canada Media Fund, and Telefilm Canada are the most salient examples of how the Canadian state has set in place the conditions for homegrown cultural products to be created, distributed, and consumed in the country (Edwardson, 2008). This approach to cultural policy demonstrates how, historically, the Canadian cultural challenge has been to ensure a balance between the availability and accessibility of internally and externally produced cultural goods (Audley, 1994). Resistance to the “Americanization” of Canadian culture has been particularly challenging due to the proximity of most Canadians—in geography, language, and way of life—to the United States, which, from the beginning of the twentieth century onward, has positioned its cultural industries as global leaders and adopted a strategy focused on the export of cultural goods.

This said, in line with the free trade ethos, over the last decades, Canada has also pursued global markets for homegrown culture, with the effect that “Canadian essence” has been watered down. Marc Raboy (1996) notes that, with increased globalization, Canadian “policy is aimed outward rather than inward, and Canada is seen only as the domestic market” (p. 155). This commodified version of Canadian cultural production is characterized by quantitative rather than qualitative measurements of what counts as Canadian content (Edwardson, 2008) as well as by a vision of Canadian culture increasingly geared toward foreign market exports, and thus increasingly stripped away of “distinctive” Canadian references (Davis & Zboralska, 2019; Stursberg, 2019). The quantification of “Canadianness” of cultural products under the broadcasting regulatory framework exemplifies how the nationalist imperative has gone hand in hand with the industrialization of the Canadian cultural sector. Ryan Edwardson (2008) has coined the term “cultural industrialism” to describe this cultural policy approach that, stemming from the 1968 Arts and Culture Policy, led to the development of a large-scale federal cultural bureaucracy. Positioning cultural industrial growth as a means to nationhood, cultural industrialism has ostensibly paved the way for

the commodification of Canadian cultural production that has been ramped up with the coming to prominence of neoliberal governance in the 1980s (Druick, 2012).

Canadian cultural sovereignty via digital cultural industrialism

In recent years, the federal government has adopted a digital cultural industrialist approach to the management of its cultural and creative industries, with cultural policy increasingly turned toward capitalizing on culture's economic potential in the digital world (Bourcheix-Laporte, 2021). This vision is exemplified by the Creative Canada Policy Framework (Department of Canadian Heritage, 2017), which was launched by Canadian Heritage as an overarching policy approach to support Canadian culture's plunge into the digital era. As argued elsewhere, "we can conceive of Creative Canada as a 'roadmap' for the pursuit of digital cultural industrialism; it extends the logic of commodification already embedded in Canadian cultural policy by applying it to the digital sphere via the adoption of a creative industries paradigm" (Bourcheix-Laporte, 2021, pp. 187–188). The version of nationalism promoted by digital cultural industrialism provides a veneer of technological innovation to Canadian culture and identity while retaining a commodified logic. While it has attuned the Canadian cultural policy tool kit to the realities of the "digital world" and the economic potential of the creative industries, Creative Canada remains in line with the economization and instrumentalization trajectory of the last decades of cultural nationalist policies (Bourcheix-Laporte, 2019; Kim, 2021). It should come as no surprise then that the cultural sovereignty promises of legislative projects to reform the Broadcasting Act are interlinked with a vision of expanded economic impacts for the cultural industries. In this context, the economic incentives of regulating digital broadcasting platforms fall under the existing cultural policymaking paradigm, which already conceives of Canadian cultural sovereignty online as a means and ends to a commodified version of cultural nationalism.

The following quotes are taken from a joint interview given in May 2021 by Minister of Canadian Heritage Steven Guilbeault and opposition party leaders Jagmeet Singh of the New Democratic Party and Yves-François Blanchet of the Bloc Québécois in the lead-up to the House of Commons' vote on Bill C-10 in June 2021. They were selected for the singular character of the tripartite media appearance, which had the stated objective to sensitize viewers to the urgency of accounting for new models in the Broadcasting Act:

Il faut souligner premièrement l'importance de défendre la culture québécoise, la culture canadienne [. . .] donc le but de ce projet de loi c'est important. On doit s'attaquer aux géants du web. Ils ont eu une exemption depuis longtemps qui nuit [à] la société, qui nuit [aux] artistes. (Jagmeet Singh, Leader of the New Democratic Party, *Tout le monde en parle*, May 16, 2021)

Ce qu'on veut, c'est que les YouTube de ce monde, les Netflix de ce monde, les Spotify paient leur juste part en matière de culture québécoise et canadienne comme le font les entreprises de radiodiffusion que sont Radio-Canada, que sont COGECO, que sont CTV, et ces entreprises-là le font depuis des années. [. . .] En fait chaque mois qu'on perd là-dessus c'est plus de 70 \$ millions qui ne va pas à nos artistes, au Québec et au Canada. (Steven Guilbeault, Minister of Canadian Heritage, *Tout le monde en parle*, May 16, 2021)

La culture canadienne, la protection et la mise en avant du français sur les plateformes numériques, chez les Netflix ou les Spotify de ce monde justifient largement, largement, qu'avant la fin de la session parlementaire ça soit adopté. (Yves-François Blanchet, Leader of the Bloc Québécois, *Tout le monde en parle*, May 16, 2021)

In this interview, the political trio used the highly influential tribune of *Tout le monde en parle*—a weekly sociopolitical and cultural talk show airing on Radio-Canada Télé since 2004—to present a united front in support of Bill C-10 and nip in the bud its rumoured potential to infringe on Canadians' freedom of expression ([Radio-Canada, 2021](#)). As illustrated by the quotes above, politically, Bill C-10 was largely presented as a protective measure for Canadian culture, aiming to not only promote Canadian content online, but to secure funding for Canadian audiovisual production through the regulation of digital platforms. The logic behind these arguments extends the historical nation-building project of Canadian cultural policy in a manner that instrumentalizes Canadian culture at the profit of digital cultural industrialism. The proposed extension of CanCon regulations into the sphere of online broadcasting initiatives—particularly measures that would impose on international online BDUs financial contributions to the domestic cultural industries—is a manifestation of digital cultural nationalism as policy approach for the creative

industries. Framed as a much-needed policy intervention aiming to level the playing field between domestic legacy and international digital broadcasters, the protectionist elements of the broadcasting legislative reform are aligned with the nation-building narrative historically espoused by Canadian broadcasting policy and the engineered growth of the cultural industries. Specific references to québécois culture and French-language audiovisual content in the quotes above are also important to note as they demonstrate political will to bolster the rights of official language minority communities—Anglophone communities in Québec and Francophone communities outside of Québec—and Francophone content production.

Bill C-10 and Bill C-11: Acts to amend the Broadcasting Act and to make consequential amendments to other Acts

Bills C-10 and C-11 propose a set of similar, if not identical, amendments to the Broadcasting Act. One of their stated objectives is to expand the definition of broadcasting to incorporate into the regulatory framework current and future forms of audiovisual transmission that fall outside the jurisdiction of the Act in its present configuration. In the current technological landscape, this objective principally applies to online forms of broadcasting, which is supported by Bill C-11's short title, the Online Streaming Act. At the time of writing, Bill C-11 is under review by the House of Commons and came about as a revised version of Bill C-10. Bill C-10 was adopted by the House of Commons on June 21, 2021. The legislative project was studied by the Senate, which referred its review to the Senate Standing Committee on Transport and Communication ([Bill C-10, 2021](#)). Soon after, there was a precipitated call for a federal election in the fall of 2021, which put an end to Bill C-10's proposed reform of the Broadcasting Act. According to [Tamara Shepherd, Dana Cramer, and Sara Bannerman \(2022\)](#), Bill C-10 "sought to bring digital streaming platforms in line with Canadian broadcasting rules for Canadian content and contributions to Canadian cultural production" (p. 7). Effectively, by bringing online undertakings into the regulatory purview of the Broadcasting Act, the Bill proposed setting in place legal mechanisms within the existing policy tool kit to regulate audiovisual distribution platforms. Bill C-10 notably proposed to modify the definition of "broadcasting" in section 2(1) of the Broadcasting Act as:

Broadcasting means any transmission of programs—*regardless of whether the transmission is scheduled or on demand or*

whether the programs are encrypted or not — by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programs that is made solely for performance or display in a public place. (Bill C-10, 2021, 1[1], emphasis added to identify the proposed modification)

Arguably, this proposed expansion of the definition of broadcasting, with its specific inclusion of on-demand transmission, would have enabled the extension of protectionist regulation strategies to the digital streaming environment. Moreover, the addition of a technology-agnostic definition for “online undertaking”—as “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus” (Bill C-10, 2021, 2[1])—would have guaranteed that this type of transmission would continue to be understood as a broadcasting initiative, regardless of future technological advances. The proposed amendments cited above are reiterated verbatim in Bill C-11. Should this legislative project go through, a blanket definition of broadcasting would apply to most types of public-facing audiovisual distribution initiatives, with the notable exception of user-generated posts on social media platforms as stated in the specification that “the Act does not apply in respect of programs uploaded to an online undertaking that provides a social media service by a user of the service, unless the programs are prescribed by regulation” (Bill C-11, 2022, Summary [b]). This measure is in alignment with existing legal provisions related to freedom of expression and copyright exemptions tied to user-generated content.

The proposed amendments listed above respond to the [Broadcasting and Telecommunications Legislative Review Panel’s \(2020\) Report, *Canada’s Communications Future: Time to Act*](#), which emphasizes the challenges that the Canadian cultural industries face in the digital era. Recommendations issued under section 3.8, “Recognizing the Urgency to Act,” seek to alleviate the asymmetries of the existing regulatory framework, namely, the lack of imposition of sales tax on foreign digital media and the mandated financial contribution of over-the-top services to Canadian cultural production. These are: “Recommendation 84: We recommend that while awaiting the adoption of legislative amendments, the government urgently issue directives to the CRTC, requiring that it hold a hearing

and issue a new exemption order to impose obligations on Internet programming undertakings that generate a certain minimum revenue in Canada” (p. 173), and “Recommendation 85: We recommend that the federal government require foreign media content undertakings to collect and remit the GST/HST” (p. 174). Implicit in Recommendation 84 is the mandatory reporting of Canadian earnings to the CRTC by foreign undertakings, which is supported by proposed amendments to the Act that would expand the conditions that may be set by the CRTC, including “the provision to the Commission, by persons carrying on broadcasting undertakings, of any other information that the Commission considers necessary for the administration of this Act, *including financial or commercial information*” (Bill C-11, 2022, Section 9.1.(o) (i), emphasis added). This proposed measure is aligned with the coming into effect of obligations for “digital economy businesses” to charge GST/HST as of July 1, 2021 (Canada Revenue Agency, 2021), which responds to Recommendation 85 cited above. It will be important to monitor the enforceability of these measures and their actual impacts on local production in the future.

Bill C-11 also proposes measures to secure the economic interests of the Canadian audiovisual industries by mandating international digital broadcasters to financially contribute to Canadian cultural production and make use of the country’s creative workforce: “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” (Bill C-11, 2022, 3 [4] [f.1]).¹ This measure seeks to bring international digital players into the fold of the “CanCon” regulatory system in a way that joins the economic and cultural interests of the nation. Proposed Bill C-10 amendments reiterated verbatim in Bill C-11 seek to ensure the discoverability of Canadian content on digital platforms, including that produced in Indigenous languages: “Online undertakings shall clearly promote and recommend Canadian programming, in both official languages as well as in Indigenous languages, and ensure that any means of control of the programming generates results allowing its discovery” (Bill C-11, 2022, 3[7][r]). In this case, the question of Canadian citizens’ access to Canadian cultural products as a policy pillar has been transferred to digital contexts via discoverability. As Fenwick McKelvey and Robert Hunt (2019) demonstrate, discoverability

is a complex and multifaceted concept, and it is foreseeable that the task of regulating proprietary algorithmic content recommendation systems will be arduous. Together, these measures are designed to have positive financial effects on the Canadian cultural sector and its workforce. The goal of the present analysis is not to critique them on this basis, but rather to examine how they may contribute to the economization of Canadian culture.

Moreover, proposed amendments, identical in both Bills C-10 and C-11, broaden the representativity mandate of the Canadian broadcasting system by acknowledging the diversity of Canadian society and iterating the importance of supporting Indigenous programming and content:

(3) Subparagraph 3(1)(d)(iii) of the Act is replaced by the following:

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests of *all Canadians — including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages— . . .*

(iii.1) provide opportunities to Indigenous persons to produce programming in Indigenous languages, English or French, or in any combination of them, and to carry on broadcasting undertakings. ([Bill C-11, 2022](#), 3 [3] [iii] and [iii.1], original emphasis)

These are welcome expansions of the legislation's conception of the Canadian broadcasting system's audience, as they recognize the intersectional character of the population served by the Broadcasting Act. This increased recognition of diversity develops a more inclusive cultural citizenship model fostered through the Broadcasting Act. Mandating the broadcasting system's support of Indigenous programming, including in Indigenous languages, is also coherent with the objectives of the [Indigenous Languages Act \(2019, S.C., c.23\)](#) and indirectly supports the work of the Indigenous Screen Office, which "champions Indigenous screen-based storytellers and narrative sovereignty in Canada through our funding and advocacy work" ([Indigenous Screen Office, n.d.](#)).

However, other proposed additions reinforce the dominance of Canada's "two founding nations" in the broadcasting system's representation mandate. The Broadcasting Act already declares that "the Canadian broadcasting system, operat[es] primarily in the English and French languages," and is "a public service essential to the maintenance and enhancement of national identity and cultural sovereignty" (1991, S.C., c.11, 3[1][b]). Nevertheless, in Bill C-11 the following clauses are proposed in addition to, and directly after, those cited above:

(iii.2) support the production and broadcasting of original programs in French,

(iii.3) enhance the vitality of English and French linguistic minority communities in Canada and support and assist their development by taking into account their specific needs and interests, including through supporting the production and broadcasting of original programs by and for those communities. (Bill C-11, 2022, 3 [3][iii.2] & [iii.3])

The reiteration of the Canadian broadcasting system's mandate to support official language minority communities mirrors the objectives set out in the [Official Languages Act \(1985, R.S.C., c.31 \[4th Supp.\]](#)), which already guarantees the cultural rights of the Francophone and Anglophone official language minority populations. The emphasis added to the promotion of French original content, despite the broadcasting system's existing bilingual mandate, aligns with a desire to recognize the minority status of French in the North American geopolitical context as stated in this proposed amendment: "While sharing common aspects, English and French language broadcasting operate under different conditions—in particular, the minority context of French in North America—and may have different requirements" (Bill C-11, 2022, 3[2][c], original emphasis). The "French-Canadian" problem of Canadian cultural policy as a whole—dating back to the Royal Proclamation of 1763 and the Québec Act of 1774 (Mackey, 1999, pp. 23–28)—has played a role in the shaping of the current broadcasting system (Raboy, 1990, 1996). The recognition of French's special status, as proposed above, transposes the nationalistic necessity of ensuring Francophone culture's predominance over other Canadian cultural diversities and ethnolinguistic minority populations onto

the globalized realities of the digital age. This is a manifestation of a settler colonial logic, which already creates asymmetries in the Canadian cultural citizenship model. As [Geneva Alexandria Nam \(2021\)](#) explains, in broadcasting policy “the imaginary Canadian public includes explicitly the interests of English, French and Indigenous/Métis audiences; all third language audiences are described as a diverse set of others” (p. 168). Together, the proposed modifications of the broadcasting system’s mandate create a paradox that simultaneously expands and contracts the cultural citizenship model promoted by the Broadcasting Act. In these proposed amendments, the broadcasting system is mandated to better represent and account for the diversity of the Canadian population while nevertheless reinforcing the settler colonial status of French and English cultural products. Globally, these measures are meant to benefit cultural producers and audiences in a cultural minority context and are coherent with Canada’s ratification of the United Nations Educational, Scientific and Cultural Organization ([UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions](#) (2005)). Nevertheless, there are contradictions built into the Broadcasting Act’s legislative reform project, which perpetuate existing ethnolinguistic biases in Canadian cultural policy.

Conclusion

Last amended in 1991, the Broadcasting Act has recently been the object of legislative reform projects aiming to update this piece of legislation in consideration of the social, cultural, and technological realities of contemporary Canadian society. This article has analyzed key proposed amendments to the Act, iterated in the third and final version of [Bill C-10 \(2021\)](#) and in the current (first) version of [Bill C-11 \(2022\)](#). In particular, the article has considered the proposed incorporation of online undertakings into the existing regulatory framework and the proposed changes to the mandate of the Canadian broadcasting system. Considering implications of these modifications vis-à-vis discursive constructions of Canadian cultural nationalism and the model of cultural citizenship it fosters, it has been argued that the legislative reform project recuperates the settler-colonial logic and economistic approach that has historically underscored efforts to secure Canada’s cultural sovereignty. The analysis has examined how elements of Bills C-10 and C-11 extend into the digital era, the Canadian cultural industrialist agenda, and

perpetuate a vision of cultural citizenship that remains skewed by ethnolinguistic hierarchies.

The Broadcasting Act plays a central role in Canadian cultural policy and its modernization could serve as an incentive to revisit fundamental assumptions about what is Canadian culture, why it matters, and how we should foster and safeguard it. Such an approach would require for the Canadian cultural policy model to unlearn its Eurocentric, modernist, and capitalist values and instead turn to decolonial, equity-driven, non-instrumentalizing, and social-value based approaches (see for example Belfiore & Bennett, 2010; Campbell, 2022; Datta, 2021; Luka & Wallace, 2020; O'Connor, 2016; Saha, 2018; Thompson & Campbell, 2022). In the *Communication & Cultural Policy in the Age of the Platform: White Paper*, Shepherd et al. (2022) already offer an outline of avenues to reframe broadcasting policy. Drawing from contributions of actors in the field, the document sketches out legal, structural, and financial measures that would provide greater creative and operational control to Indigenous and racialized communities vis-à-vis the broadcasting system. This can be accomplished by better supporting, through financial and policy means, the work of organizations like the Black Screen Office (BSO), the Indigenous Screen Office (ISO), and BIPOC TV & Film. Importantly, these actors should be part of the policymaking process and their expertise should be considered when setting the objectives and mandate of the broadcasting system. In this sense, efforts should be deployed to support production and distribution of “third language” media products, which are currently underserved in the present system and constitute an empowering alternative for ethnic and racialized minorities (Fleras, 2011, pp. 229–249). Along with the adoption of a social-value oriented approach to the cultural industries embedded in the cultural economy model advocated by scholars such as Kate Oakley and Justin O'Connor (2015), these propositions can help reshape Canada's approach to governing its broadcasting system in particular, and its culture in general.

Note

1. This citation also highlights the linguistic duality of Canadian audiovisual markets, that is English and French primary markets. These linguistic markets are products of settler colonial cultural policies and reproduce a cultural citizenship model based on an Anglophone/Francophone cultural nationalist paradigm.

Data Accessibility: All data will not be made publicly available. Researchers who require access to the study data can contact the corresponding author for further information.

Funding: No funding was received for this work.

Disclosure: The author has no conflicts of interest to disclose.

Mariane Bourcheix-Laporte is a PhD candidate at Simon Fraser University's School of Communication and independent consultant in the visual and media arts sector. Email: mbourche@sfu.ca.

References

- Audley, Paul. (1994). Cultural industries policy: Objectives, formulation and evaluation. *Canadian Journal of Communication*, 19(3/4), 317–352. <https://doi.org/10.22230/cjc.1994v19n3a823>
- Bannerman, Sara, Baade, Christina, Bivens, Rena, Shade, Leslie Regan, Shepherd, Tamara, & Zeffiro, Andrea. (2020). Platforms and power: A panel discussion. *Canadian Journal of Communication*, 45(3). <https://doi.org/10.22230/cjc.2020v45n3a3901>
- Belfiore, Eleonora, & Bennett, Oliver. (2010). Beyond the “toolkit approach”: Arts impact evaluation research and the realities of cultural policy-making. *Journal for Cultural Research*, 14(2), 121–142. <https://doi.org/10.1080/14797580903481280>
- Berland, Jody. (1997). Politics after nationalism, culture after “culture.” *Canadian Review of American Studies*, 27(3), 35–50. <https://doi.org/10.3138/cras-027-03-03>
- Bill C-10 (Third Reading). (2021, June 21). Parliament of Canada website. URL: <https://www.parl.ca/DocumentViewer/en/43-2/bill/C-10/third-reading> [April 15, 2022].
- Bill C-11 (First Reading). (2022, February 2). Parliament of Canada website. URL: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/first-reading> [April 15, 2022].
- Bourcheix-Laporte, Mariane. (2019). Creative Canada: A critical look at a “new” cultural policy framework. Canadian Radio-television and Telecommunications Commission website. URL: <https://crtc.gc.ca/eng/acrtc/prx/2019laporte.htm> [April 15, 2022].
- Bourcheix-Laporte, Mariane. (2021). Digital cultural industrialism and the arts: A critical look at Creative Canada and the Canada Council for the Arts’ Digital Strategy Fund. In D. Beauregard & J. Paquette (Eds.), *Canadian cultural policy in transition* (pp. 183–197). New York, NY: Routledge.
- Broadcasting Act. (1991). S.C., c.11. Government of Canada Justice Laws website. URL: <https://laws.justice.gc.ca/eng/acts/b-9.01/page-1.html> [April 15, 2022].
- Broadcasting and Telecommunications Legislative Review Panel. (2020). *Canada’s communications future: Time to act*. Ottawa, ON: Innovation, Science and Economic Development Canada.
- Campbell, Miranda. (2022). *Reimagining the creative industries: Youth creative work, communities of care*. New York, NY: Routledge.
- Canadian Charter of Rights and Freedoms. (1982). Constitution Act, Part I. Government of Canada Justice Laws website. URL: <https://laws-lois.justice.gc.ca/eng/Const/page-12.html> [September 9, 2022].
- Canadian Multiculturalism Act. (1985). R.S.C., c.24 (4th Supp.). Government of Canada Justice Laws website. URL: <https://laws-lois.justice.gc.ca/eng/acts/C-18.7/> [September 9, 2022].
- Canada Revenue Agency. (2021, May 7). GST/HST for digital economy businesses: Overview. Government of Canada website. URL: <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/digital-economy.html> [April 15, 2022].

- Canadian Radio-television and Telecommunications Commission. (1999, December 17). ARCHIVED—Public notice CRTC 1999-197 exemption order for new media broadcasting undertakings. Government of Canada website. URL: <https://crtc.gc.ca/eng/archive/1999/pb99-197.htm> [April 15, 2022].
- Datta, Ranjan (Ed.). (2021). *Indigenous reconciliation and decolonization: Narratives of social justice and community engagement*. New York, NY: Routledge.
- Davis, Charles H., & Zboralska, Emilia. (2019). Cultural policy in the time of digital disruption: The case of Creative Canada. In L. Albornoz & Ma. T. García Leiva (Eds.), *Audiovisual industries and diversity: Economics and policies in the digital era* (pp. 153–168). New York, NY: Routledge.
- Department of Canadian Heritage. (2016). *Canadian content in a digital world: Focusing the conversation consultation paper*. Ottawa, ON: Department of Canadian Heritage.
- Department of Canadian Heritage. (2017). *Creative Canada: Policy framework*. Ottawa, ON: Department of Canadian Heritage.
- Dorland, Michael. (1996). Cultural industries and the Canadian experience: Reflections on the emergence of a field. In M. Dorland (Ed.), *The cultural industries in Canada: Problems, policies and prospects* (pp. 347–365). Toronto, ON: James Lorimer & Co.
- Dowler, K. (1996). The cultural industries policy apparatus. In M. Dorland (Ed.), *The cultural industries in Canada: Problems, policies and prospects* (pp. 328–346). Toronto, ON: James Lorimer & Co.
- Druick, Zoë. (2012). Continuity and change in the discourse of Canada's cultural industries. In I. Wagman & P. Urquhart (Eds.), *Cultural industries.ca: Making sense of Canadian media in the digital age* (pp. 131–146). Toronto, ON: James Lorimer & Co.
- Edwardson, Ryan. (2008). *Canadian content: Culture and the quest for nationhood*. Toronto, ON: University of Toronto Press.
- Fatona, Andrea. (2013). Arts funding, the state and Canadian nation-making: Producing governable subjects. In L. Caldwell, D. Leroux, & C. Leung (Eds.), *Critical inquiries: A reader in studies of Canada* (pp. 33–52). Halifax, NS: Fernwood Pub.
- Fleras, Augie. (2011). *The media gaze: Representations of diversities in Canada*. Vancouver, BC: UBC Press.
- Foot, John A. (2005). The changing environments of cultural policy and citizenship in Canada. In C. Andrew, M. Gattinger, M.S. Jeannotte, & W. Straw (Eds.), *Accounting for culture: Thinking through cultural citizenship* (pp. 91–103). Ottawa, ON: University of Ottawa Press.
- Foucault, Michel. (1991). Governmentality. In G. Burchill, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality with two lectures by and an interview with Michel Foucault* (pp. 87–104). London, UK: Harvester Wheatsheaf.
- Geist, Michael. (2022, February 23). Bill C-10. Michael Geist. URL: <https://www.michaelgeist.ca/tech-law-topics/acta/> [August 30, 2022].
- Haque, Eve. (2013). The bilingual limits of Canadian multiculturalism. In L. Caldwell, D. Leroux, & C. Leung (Eds.), *Critical inquiries: A reader in studies of Canada* (pp. 18–32). Halifax, NS: Fernwood Pub.
- Hogarth, Kathy, & Fletcher, Wendy L. (2018). *A space for race: Decoding racism, multiculturalism, and post-colonialism in the quest for belonging in Canada and beyond*. New York, NY: Oxford University Press.
- Indigenous Screen Office. n.d. Who we are. Indigenous Screen Office website. URL: <https://iso-bea.ca/who-we-are/> [April 15, 2022].
- Indigenous Languages Act. (2019). S.C. c.23. URL: <https://laws-lois.justice.gc.ca/eng/acts/i-7.85/page-1.html> [September 15, 2022].
- Jessup, Lynda, Morton, Erin, & Robertson, Kirsty (Eds.). (2014). *Negotiations in a vacant lot: Studying the visual in Canada*. Montréal, QC: McGill-Queen's University Press.

- Kim, Taeyoung. (2021). Understanding creative economy policies in the Canadian context: A case study of "Creative Canada." *Cultural Trends*, 30(5), 425–441. <https://doi.org/10.1080/09548963.2021.1904207>
- Lamont, Victoria, & McGuirk, Kevin. (2017). Introduction: Culture and the economization of everything. *Canadian Review of American Studies*, 47(2), 161–170. <https://doi.org/10.3138/cras.2016.013en>
- Lewis, Justin, & Miller, Toby (Eds.). (2003). *Critical cultural policy studies: A reader*. Oxford, UK & Malden, MA: Blackwell Pub.
- Liberal Party of Canada. 2021. *Forward. For Everyone*. URL: <https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf> [April 15, 2022].
- Litt, Paul. (1992). *The muses, the masses, and the Massey commission*. Toronto, ON: University of Toronto Press.
- Luka, Mary Elizabeth, & Wallace, Jacqueline. (2020). *Towards a measurement framework for creative hubs*. Ottawa, ON: Department of Canadian Heritage, Arts Branch.
- Mackey, Eva. (1999). *The house of difference: Cultural politics and national identity in Canada*. Toronto, ON: University of Toronto Press.
- McKelvey, Fenwick, & Hunt, Robert. (2019). Discoverability: Toward a definition of content discovery through platforms. *Social Media + Society*, 5(1), 1–15. <https://doi.org/10.1177/2056305118819188>
- Nam, Geneva A. (2021). Analysing Canadian third language media policy: Carving a path for the future of Canadian ethnic media. In D. Beaugregard & J. Paquette (Eds.), *Canadian cultural policy in transition* (pp. 166–180). London, UK: Routledge.
- O'Connor, Justin. (2016). After the creative industries: Cultural policy in crisis. *Law, Social Justice & Global Development*, (1), 1–18.
- Oakley, Kate, & O'Connor, Justin (Eds.). (2015). *The Routledge companion to the cultural industries*. London, UK: Routledge.
- Official Languages Act. (1985). R.S.C., c.31 (4th Supp.). Government of Canada Justice Laws website. URL: <https://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html> [April 15, 2022].
- Paquette, Jonathan, Beaugregard, Devin, & Gunter, Christopher. (2017). Settler colonialism and cultural policy: The colonial foundations and refoundations of Canadian cultural policy. *International Journal of Cultural Policy*, 23(3), 269–284. <https://doi.org/10.1080/10286632.2015.1043294>
- Raboy, Marc. (1990). *Missed opportunities: A story of Canada's broadcasting policy*. Montreal, QC: McGill-Queen's University Press.
- Raboy, Marc. (1996). Linguistic duality in broadcasting policy: A microcosm of Canada's constitutional politics. In H. Holmes & D. Taras (Eds.), *Seeing ourselves: Media power and policy in Canada*, 2nd ed. (pp. 154–172). Toronto, ON: Harcourt Brace Canada.
- Radio-Canada. (2021, May 16). Segment | Tout le monde en parle. *ICI Radio-Canada.ca Télé*. URL: <https://ici.radio-canada.ca/tele/tout-le-monde-en-parle/site/segments/entrevue/355460/lepage-steven-guilbeault-blanchet-loi-radiodiffusion> [August 6, 2021].
- Saha, Anamik. (2018). *Race and the cultural industries*. Cambridge, UK & Malden, MA: Polity Press.
- Schnitzer, Ben. (2019). Netflix: Canadian (dis)content. Competing sovereignties and the cultural politics of cultural policy. *American Review of Canadian Studies*, 49(1), 85–104. <https://doi.org/10.1080/02722011.2019.1572205>
- Shepherd, Tamara, Cramer, Dana, & Bannerman, Sara. (2022). *Communication & cultural policy in the age of the platform: White paper*. Communications Governance Observatory. URL: https://cnmap.mcmaster.ca/events/comcultpolicy2021/White%20Paper_January%202022_FINAL.pdf [April 15, 2022].

- Stursberg, Richard. (2019). *The tangled garden: A Canadian cultural manifesto for the digital age*. Toronto, ON: James Lorimer & Co.
- Taras, David. (2015). *Digital mosaic: Media, power, and identity in Canada*. Toronto, ON: University of Toronto Press.
- Thompson, Cheryl, & Campbell, Miranda (Eds.). (2022). *Creative industries in Canada*. Toronto, ON: Canadian Scholars.
- UNESCO. (2005). *The 2005 convention on the protection and promotion of the diversity of cultural expressions*. URL: <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf> [September 9, 2022].
- Wagman, Ira, & Winton, Ezra. (2014). Canadian cultural policy in the age of media abundance: Old challenges, new technologies. In L.R. Shade (Ed.), *Mediascapes: New patterns in Canadian communication*, 4th ed. (pp. 107–126). Toronto, ON: Nelson Education.
- Winseck, Dwayne. (2020). *Growth and upheaval in the network media economy in Canada, 1984–2019*. Global Media and Internet Concentration Project, Carleton University. URL: <http://www.cmcrcp.org/growth-and-upheaval-in-the-network-media-economy-in-canada-1984-2019/> [April 15, 2022].