

## **About myself**

On January 3, 2013, I opened up freezenet.ca to cover the world of technology, policy, and law from a Canadian perspective.<sup>1</sup> This was a step forward to build on my news writing career that started in September of 2005. Throughout that time, I've been covering anything from copyright to privacy to how the law interacts with technology. As such, I have been able to get a deep insight into the world of technology when it interacts with the law.

On August 4, 2019, I expanded my reach by opening a YouTube channel.<sup>2</sup> The goal was to not only seek a better understanding of the culture and nature of video games in general, but also to seek a better understanding of what it is like to be a YouTube content creator. As such, I have gained considerable insight by being a person on the ground knowing what it is really like to work in the online environment on multiple fronts. In fact, it is precisely this environment that the Online Streaming Act seeks to regulate. Not only am I familiar with the lawmaking and political side of things, but also the content creation side of things as well.

## **How We Got Here**

On March 21, 2025, the CRTC launched this consultation as a step to implement the Online Streaming Act (henceforth referred to as the "Act"). The Act, when it was debated through the legislative process as Bill C-11, sought to, among other things, take Canada's existing regulatory broadcast system and apply it to the online environment. Like so many others, I made it clear to the government throughout the process that this is an exercise in pushing a regulatory square peg into an online round hole. This is thanks to how fundamentally different the online environment is to the traditional broadcast industry.

Unfortunately, like so many others with practical knowledge in these areas, I was ignored and even accused of being a "shill" for "Big Tech" despite my efforts to present the facts. As a result, the legislation was passed and now we are dealing with the consequences of passing such a bill.

One of the premises of the Act was that Canadian culture was somehow dying or drowning in a sea of non-Canadian content. Thanks to this alleged problem, the alleged solution for the Canadian government was to step in, intervene with the online environment, and demand that so-called "Canadian content" get pushed by various algorithms on various platforms.

Caught in the crossfire in all of this are platforms that deal with user generated content. Content created by users not part of the traditional Canadian content ("Cancon") are faced with the very real prospect that the Canadian government was going to downrank their content in favour of what the Canadian government certifies as "real" Cancon. Some in this debate have gone even further by insulting hard working Canadian content creators as "cat videos". This not only dismisses actual Canadian culture trying to thrive, but also tries to establish a two tier system where only those who work in the cultural establishment are the only true "valid" forms of Canadian expression.

## **Why the Current Definition of Canadian Content Doesn't Fit**

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1 "FreezeNet.ca News Site Opens" (Freezenet) <https://www.freezenet.ca/hello-world/>

2 "New Feature: Video Game First Impression Video's" (Freezenet) <https://www.freezenet.ca/new-feature-video-game-first-impression-videos/>

While it is, indeed, tragic that Canadian's are now having reason to fear that they will soon no longer be able to reach their Canadian audiences, the CRTC, through this consultation, has provided an opportunity to at least create some good in this debate. That is through the process of updating what is classified as Cancon. After all, it is the CRTC itself that stated that they are seeking comment on "how to modernize the current definition of "Canadian program" in the audio-visual sector"<sup>3</sup>

For that, I will direct you to the very webpage explaining what is defined as "Cancon".<sup>4</sup> On that page, there is the following line:

*Very often, a book has only one author. Audio-visual productions, on the other hand, require a team of creative personnel to bring them to our screens to inform, enlighten or entertain us.*

In the context of an era where vacuum tubes were used in television production and scissors were more commonly used in the editing process, this is a definition that does make sense. A whole team of creative personnel is needed to not only create an audio-visual work, but also to distribute it onto television networks so that the content can reach a wider audience.

The problem here, however, is two-fold. For one, times and technology have changed since the early to mid-1900's. For another, the Act is seeking to fold this system into the internet which causes this definition to make even less sense.

For instance, the iPhone 16 Pro can shoot high quality video.<sup>5</sup> One page defines this with the following.

*4K Dolby Vision video recording at 24 fps, 25 fps, 30 fps, 60 fps, 100 fps (Fusion) or 120 fps (Fusion)  
1080p Dolby Vision video recording at 25 fps, 30 fps, 60 fps or 120 fps (Fusion)*

Another example is the Samsung Galaxy which can similarly shoot in high definition.<sup>6</sup> One page shows the following.

*8K resolution offers incredible video quality and with galaxy devices you can record, edit and share your 8K videos quickly and easily.*

The point is that shooting and editing video no longer necessarily requires big bulky and heavy video recording equipment, nor does it necessarily require a full set of staff personnel to edit. High quality content can very easily be shot, and even edited, by your average person.

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3 "Broadcasting Notice of Consultation CRTC 2024-288" (CRTC) [https://crtc.gc.ca/eng/archive/2024/2024-288.htm?\\_ga=2.243690822.272813365.1736113326-1467812276.1736113326](https://crtc.gc.ca/eng/archive/2024/2024-288.htm?_ga=2.243690822.272813365.1736113326-1467812276.1736113326)

4 "So what makes it Canadian?" (CRTC) [https://crtc.gc.ca/eng/cancon/c\\_cdn.htm](https://crtc.gc.ca/eng/cancon/c_cdn.htm)

5 "iPhone 16 Pro" (Apple) <https://www.apple.com/ca/iphone-16-pro/specs/>

6 "How to record, edit and share videos in 8K with your Galaxy device" (Samsung) <https://www.samsung.com/ie/support/mobile-devices/how-to-record-edit-and-share-videos-in-8k-with-your-galaxy-device/>

What's more, reaching a massive audience has also been made possible by the number of platforms that exist today. Indeed, there are those who have reached high levels of success. Examples of this include Canadian comedy duo, Darcy & Jer who have amassed over 100 million views and got over 243,000 subscribers<sup>7</sup>, Super Simple Songs who have amassed over 54 billion views and got over 43 million subscribers<sup>8</sup>, or even Linus Tech Tips who have amassed over 8 billion views and got over 16 million subscribers<sup>9</sup>. These are far from isolated as many others have achieved success on various platforms that exist today. Ultimately, reaching a large audience can very easily be achieved by a single person or a small number of people without the intervention of the federal government or established media companies. Indeed, I, myself, have been working hard to establish a presence on YouTube. So far, I have gotten over 18,000 views and 163 subscribers.<sup>10</sup>

It is these success stories that really should be celebrated, not demonized as “not art” or “cat videos”. Unfortunately, this is precisely the reception that such creators received when trying to tell their stories to the Canadian federal government. More often than not, these Canadian creators are treated as illegitimate and unworthy of support. Even through the CRTC consultation process, some organizations continue to demonize these creators as little more than “cat videos”.<sup>11</sup> Nothing could be further from the truth.

### **How The Definition of Canadian Content Can Be Improved**

Canadian creators deserve to be supported, not ghettoized by the system that proclaims to support Canadian storytelling. Fundamentally, the internet, and online platforms for that matter, is a global platform where people around the globe can connect with other people around the globe. Just because someone is talking about a computer system doesn't necessarily make them not Canadian. General children's learning channels can be Canadian and not make explicit references to identifiably Canadian stories. If I were to talk about a racing video game on my channel, that doesn't make me not Canadian. All people like us are doing is responding to what audiences want and serving those interests. If it's not us that are covering these topics, someone, somewhere else on the planet will tell those stories instead. Wouldn't it be better if Canadian creators are the ones producing that content and benefiting their respective local economies instead from the Canadian economic perspective?

Indeed, I am aware of the Canada Media Fund (CMF) announcing an online creator support program. The problem is that while the Act allows for the extraction of millions upon millions of dollars from platforms, the fund is merely giving a paltry \$500,000 for the creators who actually helped create that wealth in the first place. Even worse, the requirements to qualify are so onerous, almost no Canadian content creator working on these platforms would qualify.<sup>12</sup> For an overwhelming majority of Canadian creators out there working on platforms, this is a support program in name only.

So, what is the solution? For starters, I would argue that a definition be set so smaller creators who want to qualify as Cancon would be able to do so. If you are a Canadian who has created content independently, you can easily have it certified as such. Such a system should be voluntary because different creators may have different needs. Qualifying for being officially recognized as Cancon

7 “Darcy & Jer” (YouTube) <https://www.youtube.com/@darcyandjer>

8 “Super Simple Songs” (YouTube) <https://www.youtube.com/@SuperSimpleSongs>

9 “Linus Tech Tips” (YouTube) <https://www.youtube.com/@LinusTechTips>

10 “Your Era Gamer” (YouTube) <https://www.youtube.com/@YourEraGamer>

11 “CRTC Hearings: ACTRA Insults Canadian Creators, Refers to Their Content as “Cat Videos”” (Freezenet) <https://www.freezenet.ca/crtc-hearings-actra-insults-canadian-creators-refers-to-their-content-as-cat-videos/>

12 “CMF Sets Out Criteria to Qualify so Onerous, Even a Canadian MrBeast Would Fail to Qualify” (Freezenet) <https://www.freezenet.ca/cmfc-sets-out-criteria-to-qualify-so-onerous-even-a-canadian-mrbeast-would-fail-to-qualify/>

should not be difficult should a creator feel the need to do so. So, for instance, the criteria could be something along the lines as the following:

*Are you a Canadian resident or landed immigrant? If so, is the work produced by yourself or in collaboration with others who may or may not be Canadian? If so, congratulations, your work qualifies as being Canadian content!*

Indeed, I tried to run through the current set of rules to see if my content could theoretically be classified as Cancon. Despite my best efforts and being the only person producing that content, I was unable to figure out how I would fulfill those requirements.<sup>13</sup> This is why the rules need to be changed to better recognize the global digital reality we live in today.

There will be those that argue that such ideas would somehow “dilute” the meaning of Cancon. Such fears are highly overblown and are more of a ploy to ensure that a small handful of established companies retain exclusivity on producing content that counts as Cancon. In fact, I consider it insulting that if I create content, despite my status as a Canadian citizen, I should be excluded from the system because I’m not considered “Canadian enough”.

If the fear is that Canadian stories will be left untold, why are we locking out Canadian story tellers from the system? If the goal is, indeed, to better promote Canadian stories and Canadian experiences, why are we dictating that only a select few people in Canada be permitted to tell those stories while telling other Canadian’s that they aren’t “Canadian enough” to tell their stories? It makes absolutely no sense.

In the effort to promote cultural protectionism – which is something that ultimately defines the Act in any practical sense – the push seems to be to snuff out Canadian story telling in a bid to protect a handful of players who are afraid of competing content. This while proclaiming that this effort somehow “protects” Canadian culture. Canadian culture thrives on a diverse number of perspectives and experiences. By limiting the number of people who are permitted to tell their stories, we, as a country, are actually threatening the vibrancy of Canadian culture.

It is my belief that a regulatory system that wants to promote Canadian culture should be open and inviting to players both old and new. This regulatory system should better reflect the world we live in today – which is that just about anyone anywhere in this country can not only tell their stories, but also share their experiences with a wider audience. A Failure to recognize that things have changed since the mid 1900’s would be tragic and cause considerable harm to Canadian culture.

### **The Legal Risk of Not Implementing Such a System**

While what this document proposes is fairly straight forward in nature, it may be easy to dismiss this idea as unnecessary or simply not worth the time to implement. The reality is that such an idea is necessary to avoid making the government more legally vulnerable than it already is. Given that there have already been no less than three lawsuits against the CRTC over the implementation of the Act<sup>14</sup>, it is reasonable to assume that the government and the CRTC would like to avoid costing taxpayers even more money over costly litigation defending the Act.

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13 “How 100% Canadian Freezenet Doesn’t Qualify As “Canadian”” (freezenet) <https://www.freezenet.ca/how-100-canadian-freezenet-doesnt-qualify-as-canadian/>

14 “CRTC Completes Litigation Trifecta Over Bill C-11 Courtesy of Apple, Amazon” (freezenet) <https://www.freezenet.ca/crtc-completes-litigation-trifecta-over-bill-c-11-courtesy-of-apple-amazon/>

When a platform recommends content to a user, such as a video, there's usually a short list of pieces of media that the platform recommends. It is an effective way to better the user experience without bombarding the user with thousands, if not, millions of recommendations on the same screen. Simply put, this means that screen real-estate is limited and there are only so many recommendations that can be made to users at any given time.

What the Act aims to accomplish is placing Cancon higher up on the recommendation lists regardless of user choice. If certain kinds of content is recommended more than others, then it gets more exposure and, naturally, more clicks. The direct consequence is that if one form of content is getting artificially boosted over other forms of content, those other forms of content get pushed down the list and obtain less visibility to the general audience. It is no secret that such content would be negatively impacted in terms of overall expected performance.

The critical aspect of this change is the fact that it is the government that is compelling such change. As previous CRTC Chair, Ian Scott, told a House Committee, the Act doesn't necessarily tell the platforms to implement a specific algorithm, but rather, mandates specific outcomes of those algorithms.<sup>15</sup>

Knowing all of this, and the current state of how content is certified Cancon, content made by Canadian's could also suffer from being demoted for the simple reason that they are not "officially" recognized as Cancon.<sup>16</sup>

This is legally problematic because the Canadian Charter of Rights and Freedoms expressly protects against the government from removing or otherwise suppressing the expression of Canadian citizens. This goes for expression in the physical world and in the digital space. What the Act very easily runs the risk of doing is ghettoizing the expression of Canadian citizens in the name of promoting the expression of other Canadian voices for the simple reason that they were certified by the Canadian government as a more valid form of expression over others. It is this very activity that the Canadian Charter seeks to prevent in the first place.

As a result, the CRTC and the Federal Canadian government is legally vulnerable on this front. The only corrective measure that would potentially head off the inevitable legal ramifications of this is to allow all citizens protected by the Canadian Charter to have their content certified as Cancon, not just those who satisfy a specific points system. Given how data driven social media is, it wouldn't really take a whole lot to notice a sudden drop in streams since many creators have access to real time analytics.

This problem isn't even exclusive to social media platforms specializing in user generated content. It applies to all platforms that the Act covers. If a Canadian production company, for instance, was able to have their content appear on Netflix, but was unable to obtain official certification for their content being "Cancon", they too would be at risk of being downranked on the platform thanks to the Act. Thus, the Canadian's behind the production would technically have their Charter rights violated. Sooner or later, someone is going to litigate when they find themselves in such a situation.

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15 "Another Talking Point Goes Down in Flames: CRTC Chair Confirms Bill C-11 Manipulates Algorithm Outcomes" (freezenet) <https://www.freezenet.ca/another-talking-point-goes-down-in-flames-crtc-chair-confirms-bill-c-11-manipulates-algorithm-outcomes/>

16 "The Effects of Bill C-10 on User Generated Content Visualized" (freezenet) <https://www.freezenet.ca/the-effects-of-bill-c-10-on-user-generated-content-visualized/>

## Conclusions

There is no question that times have changed from when the original Cancon rules were implemented. While these rules may have made some sense at a time when it required large teams of people (and significant investment) to not only produce content, but also considerable effort and numerous business agreements to reach an audience afterwards, that time has passed. Now, a single person with a personal cell phone can produce something and reach a wide audience with the help of platforms that are open to anyone at no financial charge.

The Act has always been an attempt to fit a regulatory broadcasting square peg into a digital round hole. This in an effort to preserve the business models of a select couple of legacy businesses at the expense of new digital innovators navigating the internet landscape. Changes, at this point, are merely aimed at mitigating the damage caused by such ill-informed legislative initiatives given how far along the regulatory process the Act is.

Already, the CRTC has faced multiple lawsuits in response to the implementation of the Act. It can actively choose to avoid even more costly litigation by opening up what can be considered “Cancon” to all Canadian citizens. By allowing any person protected by the Charter to be certified as Cancon, and not just those who can clear the hurdles of a points system, the CRTC can avoid ghettoizing the speech of Canadian citizens and leaving themselves legally vulnerable to a Charter challenge.

Given the data driven world we live in today, Canadian digital first creators will very quickly see a drop off of their audiences. It’s not going to go unnoticed. When Canadian creators notice that their voice is being suppressed, it’ll only be a matter of time before the Canadian federal government is implicated in all of this. As such, it only makes sense that the CRTC sets up a system that actively avoids such costly legal headaches before they appear.

Thank you for your time and consideration.