



**Submission to the House of Commons
Standing Committee on Canadian Heritage**

***Study of Bill C-11, An Act to amend the
Broadcasting Act and to make related and
consequential amendments to other Acts***

Brief submitted by TikTok Canada

June 2, 2022

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TikTok is grateful for the opportunity to provide feedback on Bill C-11, *The Online Streaming Act*, and how platforms, industry, and government can work together to best support Canadian digital creators.

About TikTok Canada

TikTok is an entertainment platform where Canadians create, share, and discover short-form video content. Millions of Canadians, as well as a global community of over one billion people, use TikTok to share in each others' creativity, talent, and humour. TikTok Canada is headquartered in Toronto's Liberty Village, where our rapidly expanding team is dedicated to working with Canadian creators, artists, and brands to help them find and reach their audiences. More than just being an office, we view ourselves as a launch pad for Canadian creators that helps support them as they export their content—and Canada's culture—to the world.

Canada is a critical market for TikTok; our Toronto-based Canadian General Manager, Daniel Habashi, has recently taken on responsibility for TikTok's US, Australia, and New Zealand businesses, a demonstration of how our company values Canadian voices and wants them reflected in TikTok's global leadership. Over the past two years we have recruited a team with extensive experience working in Canada's media, music, broadcast, literary, and tech sectors, who are all immensely passionate about the opportunity for Canadian creators to use TikTok to succeed globally.

And succeed they have. For example, Abbotsford, BC's Kris Collins ([@KallMeKris](#)), one of Canada's most followed creators, has built a global audience of over 44 million people. Kris downloaded TikTok in 2020 when she could no longer work as a hairdresser due to lockdown. Today, she shares daily comedy sketches with followers around the world, and she has been able to leverage her success on platform to create brand partnerships and gain opportunities to further her success outside of TikTok.

There's also Aïcha Bastien-N'Diaye ([@aichella](#)), a Quebec-based dance artist, activist, and content creator of Huron-Wendat Nation (Wendake) and Guinean (Jola) descent. Aïcha, who creates content in French and English was charmed watching her dance students create TikTok videos, so she decided to express herself similarly, showcasing not just her passion for movement but traditional Indigenous dress, beadwork, and traditions.

Supporting Digital Creators

In the debate around Bill C-11, "levelling the playing field" is often discussed. TikTok has levelled the playing field for Canadian creators, letting anyone gain a following regardless of what they look like, where they live, or what type of content they create. In contrast to the high barriers to entry for traditional media, which include high costs and getting the permission of gatekeepers and tastemakers, all you need to get started on TikTok is a phone and an internet connection. Nobody asks for a resume or content portfolio before you can get started. TikTok has also democratized discoverability; everyone starts from the same place, great creative content rises to the top, and Canadian creators are thriving.

When it comes to Bill C-11, we all agree that ensuring the visibility of Canadian voices in the rapidly evolving cultural landscape is critical. However, in contrast to how Canadian culture has largely been represented on screen and over the airwaves for decades under the Broadcasting Act, the content created by Canadians on TikTok authentically reflects what Canada looks and sounds like.

One example of this, which we're incredibly proud of, is how the Indigenous community has used TikTok to share their cultures, stories, music, and humour in their own voices. Creators like James Jones ([@NotoriousCree](#)), Shina Nova ([@shinanova](#)), Jayroy Makokis ([@jayroykakokis](#)), and countless others have attracted audiences in the millions, and have brought their cultures and their content to national and international audiences. Instead of imposing an outdated broadcasting framework on platforms that prescribes demand for CanCon and favours traditional sources of content, we should focus on fostering the supply of high-quality, authentic Canadian content by ensuring that Canadian creators—traditional and digital—have the training and resources necessary to compete and succeed in a global content marketplace.

TikTok is already investing in the success of these creators, with a local Canadian team dedicated to providing them with education and support to help develop their content and grow their careers. We also provide them with a number of ways to monetize their content and presence on our platform, with features like Live and Video Gifting, and a Creator Marketplace that connects creators and brands for collaborations. And we're constantly rolling out innovative new ways for creators to monetize, such as the recently announced TikTok Pulse program. Once launched, Pulse will allow eligible creators to share in the revenue generated from ads placed next to their videos.

Bill C-11

TikTok is not opposed to regulation, and we believe government has an important role to play in the digital economy. We have engaged extensively and constructively with the Department of Canadian Heritage on both the Broadcasting Act and the Online Harms files, and we provided significant feedback on last year's Online Harms proposal. However, when it comes to supporting the success of digital creators, we believe the Broadcasting Act is not the right regulatory toolkit.

We all want to see Canadian creators thrive, whether digital-first, traditional, or a combination of the two. TikTok supports the objectives of Bill C-11, and agrees with its approach to user-generated content as described by Minister Rodriguez: that user-generated content should not be regulated under the Broadcasting Act. However, in order to achieve that outcome, we urge the Committee to adopt a few limited technical amendments.

A) Section 4.2

Section 4.2, which creates the much debated "exception to the exception," must either be removed or further narrowed in order to ensure digital creators are not captured by the Act. Many other groups and witnesses have already addressed this provision, and have raised concerning potential interpretations. Of particular concern to TikTok is that it does not differentiate between full-length and short clips of music and videos, or even amateur cover performances.

On TikTok, users can include short clips—typically no more than 30 seconds long—of popular music in the background of their videos. To illustrate how broadly Section 4.2

could be interpreted, take the example of a Canadian TikTok creator who posts a dance video using Ucluelet, BC, singer [Jessia](#)'s song, *I'm Not Pretty*. Even though it's only a 30-second clip of the music, that video would still meet all criteria of Section 4.2:

1. **The video/song is monetized:** TikTok indirectly monetizes all videos on our platform by interspersing ads in a user's feed. This video would be further monetized by the royalties that TikTok would pay to Jessia (or the track's rightsholder) for use of the clip.
2. **The song appears on a regulated platform:** *I'm Not Pretty* is available on streaming platforms (like Spotify or Apple Music) and on the radio.
3. **The song has a unique identifier code:** *I'm Not Pretty* has multiple codes associated with it, including an ISRC for the performance and an ISWC for the underlying work.

This same analysis would apply to uses of short clips of a TV show or movie in a TikTok video, such as a user posting a reaction video to a funny clip from an episode of *Schitt's Creek*. It would also apply to users posting their own amateur cover performances of their favourite songs, as the bill doesn't differentiate between the performance and the underlying work.

To be clear, this means *any* video on TikTok that uses music could be subject to regulation under the Broadcasting Act. Based on the statements of members from all parties, it does not seem that this potential interpretation is the Committee's intent.

TikTok Canada highly recommends the Committee adopt amendments to clarify that partial clips of music or videos, or amateur performances, are not the same as full-length songs or videos.

B) Sections 9 & 10 (Discoverability)

While Bill C-11 does not give the Canadian Radio-television and Telecommunications Commission (CRTC) authority to regulate what content is *posted by* Canadians, Section 9.1(1)(e) would give the CRTC the power to regulate what content is "*presented*" to Canadians, which would have the effect of indirectly regulating creators and their content. This provision could allow the CRTC to require certain content—including but not limited to certified Canadian Content (CanCon)—to be promoted through TikTok's algorithm, over what might otherwise have been recommended based on a user's interests.

While Section 9.1(8) does restrict the CRTC from prescribing that platforms use a specific algorithm, it does not prohibit them from prescribing the *outcomes* that algorithm must achieve. As TikTok is primarily a recommendation platform, it is unclear how we could meaningfully comply with a discoverability requirement aside from modifying our algorithm to promote certified CanCon.

While on its face this may sound like a reasonable objective, when you consider what might qualify as either "Canadian" or "content," and how such certification could be achieved, it raises concerns as to whether this would give an unfair advantage to well-resourced and established media voices—and come at the expense of emerging digital creators, especially young people and those from equity-deserving groups.

We don't know yet what would qualify as CanCon, and whether popular TikTok content verticals like gaming, vlogs, DIY home improvement, unboxing videos, product reviews, and makeup tutorials would be given equal treatment (and access to funding) as traditional artistic forms. Would the certification process be accessible to all Canadians, including young people and those without the resources to navigate the CRTC? Or would it create a barrier to entry, stifling creators' ability to break through?

To use current radio CanCon quotas as a comparison, if TikTok were given an algorithmic quota that three of every ten videos recommended to a user must be certified CanCon, creators who cannot or do not get that certification would be limited to 70 percent of their potential reach. And even if they could get CanCon certification, they would have to choose to create either content that checks the boxes established by the CRTC to be "Canadian" enough for domestic prioritization, or content authentic to themselves and potentially more successful with a global audience.

TikTok is a highly collaborative platform, with creators using our Stitch and Duet features to co-create and iterate on each others' content, often across borders. If a Canadian creator makes a side-by-side Duet of a video originally posted by a creator in France, would that video still be considered Canadian?

When proponents of this bill assert that it will only regulate platforms and not creators, they fail to consider the questions posed above and their impact on creators. As described in a metaphor to this Committee by Matt Hatfield of OpenMedia, it is the equivalent of a law about books that promises not to regulate the content of books or authors, but does regulate libraries and bookstores: there would be an obvious impact on which books and authors are accessible.

If user-generated content is in fact exempt under Section 4.1, then that same content should not be subject to discoverability requirements and other conditions under Sections 9.1 or 10(1) of the Broadcasting Act. This seems reasonable and logical, so much so that the government itself inserted two clauses into Bill C-10 in the last Parliament, Sections 9.1(3.1) and Section 10(1)(4), to address this concern. However, these provisions were inexplicably eliminated from Bill C-11, greatly expanding the potential scope of the CRTC's ability to regulate user-generated content.

To meet the Minister's objective of scoping user-generated content out of the bill, the fix is simple: the Committee should re-insert these clauses into both Sections 9 and 10.

Clarity Should Be Written into the Legislation

A number of witnesses have advocated that the CRTC should determine whether to regulate user-generated content, and that the legislation should be written in a way to give the Commission broad latitude to write these rules. We are very concerned that should the CRTC be given the authority to regulate digital creators, along with their content and its discoverability, there will be an immediate and intense effort to lobby the Commission to do just that once C-11 passes.

In fact, a number of well-funded and well-organized cultural organizations that have appeared before this Committee are already actively campaigning for content on platforms like TikTok to be regulated under the Act. These organizations have decades of experience navigating the regulatory environment and deep existing relationships with the CRTC. On the other hand, digital-first creators have no similar guilds, organizations, or coalition groups advocating for their interests, and those who have attempted to

represent their interests have had their legitimacy attacked. If and when the CRTC considers how to regulate user-generated content, how will independent digital creators expect to have their interests fairly represented at the CRTC against a well-organized established industry?

How to Move Forward and Support Canadian Creators

In summary, we are asking the Committee to ensure the protection of Canadian creators by accepting the following recommendations:

1. Section 4.2 should either be removed or further narrowed, in particular by distinguishing between full length songs or videos, and partial clips or amateur performances.
1. Re-insert into Bill C-11 what were Sections 9.1(3.1) and Section 10(1)(4) from the last Parliament's Bill C-10, to protect creators and their content from indirect regulation.

We believe that adoption of these amendments will help ensure that this bill meets the Minister's intent of protecting and supporting Canadian digital creators. To be clear, we do not object to TikTok being treated like a broadcaster if we act like a broadcaster. However, user-generated content platforms are not the same as broadcasters, and the Broadcasting Act is not the right tool to support digital creators.

There is much that industry and government can do in partnership to support Canadian digital creators. We should work together to ensure creators have the training, resources, equipment, and access to funding that they need to create world class content that will thrive, not just in Canada, but globally.