Disney asks for Bill C-11 clarification

By MARIE WOOLF

Staff

OTTAWA - The Walt Disney Co. wants the federal government to redefine what counts as a Canadian film, saying that some of its productions made in Canada with a Canadian cast and crew - and telling a Canadian story - do not qualify under the current rules.

David Fares, vice-president of global public policy at the Walt Disney Co., told a Senate committee on Thursday that Disney wants an online streaming bill that is now passing through Parliament to make the definition of which films and TV programs count as Canadian more flexible.

Mr. Fares said recent productions such as Turning Red, the story of a Chinese-Canadian teen growing up in Toronto that features Ottawa-born Sandra Oh; Barkskins, a National Geographic series chronicling the experience of immigrants to New France and their descendants, filmed in Quebec; and Washington Black, a forthcoming series based on a novel by Canadian author Esi Edugyan, do not qualify as Canadian because Disney, a U.S. company, owns the intellectual property rights.

The online streaming bill would update Canada's broadcasting laws to apply to streaming platforms including Disney+ and Netflix. Like traditional broadcasters, platforms would have to promote Canadian content and support it financially.

Heritage Minister Pablo Rodriguez has said he will ask the Canadian Radio-television and Telecommunications Commission (CRTC) to update the definition of Canadian content.

Producers of content defined as Canadian could benefit from financial incentives, including tax breaks.

Mr. Fares told the transport and communications Senate committee on Thursday that a new CRTC definition should give "flexibility around Canadian content."

He said Disney has a "special relationship with Canada" and has spent about $3 billion here in the past few years, including on 18 TV series.

"We hope to invest further in Canada, and a flexible regulatory regime will allow us to maximize those future investments," he said.

He called for a new definition of what counts as a Canadian film or TV program to address an "anomaly" that allows some productions not made in Canada and not telling Canadian stories to qualify because the intellectual property is owned by a Canadian company.

Michael Geist, the University of Ottawa's Canada Research Chair in internet and E-commerce law, said Disney's testimony about the definition of Canadian content "places the spotlight on a key fiction with the current system, namely that it often has little to do with Canadian stories."

"We know that there are many productions that are Canadian in virtually every way yet do not qualify because the system is geared toward Canadian ownership rather than Canadian stories," he said.

Representatives of Spotify argued for more flexibility on how a Canadian song is officially defined under Bill C-11.
They told the committee Spotify promotes Canadian play lists covering genres from Quebec rap to country, and uses several sources to classify a work as Canadian, including whether the artist says they are Canadian.

But under the CRTC's rules - which include who owns the intellectual property of the work - some Canadian artists, including country singers producing music in Nashville, Tenn., might not qualify.

The music streaming platform has said even a song by Justin Bieber might not count as Canadian.

But Reynolds Mastin, CEO of the Canadian Media Producers' Association, said "people sometimes forget that Canadian content rules exist to determine access to financial incentives from the federal government."

He said the financial aid should benefit Canadian companies.

"It's great when a novel by a Canadian author becomes a hit TV series. But if the TV rights to that series are owned by a U.S.-based company, and the profits flow out of Canada, that project shouldn't be defined as Canadian content."

Regan Smith, Spotify's head of public policy and government affairs, told the Senate committee the company supports the bill's aim to promote Canadian creative work, but wants to customize music to listeners' tastes.

Forcing it to serve up uncurated Canadian songs might hurt an artist's popularity and sales, Spotify has warned. This is because certain listeners might not like songs in the Canadian playlists.

Not clicking on the song could signal to the algorithm it is not popular, leading to it being given less exposure.

Nathan Wiszniak, head of artist and label partnerships in Canada at Spotify, who gave evidence to the committee, told The Globe and Mail: "We support the goals of C-11, but we are concerned that, as currently written, the bill could inadvertently disrupt the discovery of Canadian artists on streaming platforms, hurting the industry and the creators."

Laura Scaffidi, a spokeswoman for Mr. Rodriguez, said the minister "will direct the CRTC to consider all the ways Canadian content can be made discoverable."