



Canadian Independent Music Association

February 13, 2018

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: Broadcasting Notice of Consultation CRTC 2017-359-2: Call for comments on the Governor in Council's request for a report on future programming distribution models – Second phase of comments.

BY THE CRTC FORM

Dear Mr. Claude Doucet:

1. These are the comments of the Canadian Independent Music Association (CIMA) regarding the above-noted call for comments set out in Broadcasting Notice of Consultation CRTC 2017-359-2.
2. CIMA is the not-for-profit national trade association representing the English language, Canadian-owned sector of the music industry.
3. Our membership comprises more than 290 Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the music, sound recording and music-related industries. They are exclusively small businesses which include: record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.
4. CIMA was pleased to participate in the first phase for comments set out in Broadcasting Notice of Consultation 2017-359 and wishes to thank the CRTC for allowing the public to take part in the second phase.
5. In the first phase of this process, CIMA presented the impact of the many changes that have affected creators and producers of Canadian music content for more than a decade. We also showed how the industry has adapted to the digital era and highlighted the barriers that are stifling the progress and potential of the Canadian music industry.



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6. Action must be taken to ensure that Canadians are able to discover content that reflects their culture and speaks their language, both literally and figuratively. This speaks to Canada's incredible diversity. This ability to tell our stories, reflect our culture and diversity from coast to coast to coast is something in which independent record labels and their artists specialize. Canada and Canadians cannot afford to lose our voice.
7. Decision makers must put into place a series of measures to restore the Canadian music market to balance. These measures must be regulatory, legislative, fiscal and financial. They are complementary and all equally essential.
8. In this intervention, we will focus on concrete solutions, the importance for Canadians to have a strong CRTC, with sufficient means and resources to bring all players to our broadcasting ecosystem: online music services and Internet Service providers as well as OTTs.
9. As explained in CIMA's intervention in Phase 1 of CRTC 2017-359, we believe that when it comes to Internet-based services, access to music through streaming services will only increase.
10. Without support in the form of funding for the creation and marketing of Canadian content, the domination of global (multinational) music and digital companies will continue, meaning Canadians will be consuming less and less Canadian-made music.
11. Less homegrown music means that the significant and desirable commercial benefits of creating and owning Canadian IP will be diminished in favour of these global multinational companies.
12. Before digital, the Canadian broadcasting system had managed to create balance and had succeeded in ensuring that rich, high-quality, diversified Canadian content in both languages was available to Canadians on an ongoing basis.
13. For Canadian music, the immediate challenge is to maintain a critical mass of professional-quality Canadian productions, and to make significant efforts to increase the funding for creation, discoverability and success of these productions. This will ensure that Canadian music companies and Canadian artists will retain their valuable IP.
14. Companies that develop new digital broadcasting platforms and telecommunications companies are at the heart of the economic remodelling of the music sector.
15. The telecommunication companies capture a portion of the economic value of the sector, while having no obligation of contribution. And the new digital broadcasting platforms remain exempt from the regulatory and economic obligations that apply to traditional platforms, as well as tax obligations as most are foreign-owned companies.



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Digital Media Exemption Order

16. CIMA believes that the modernization of the rules in place should result in the revision of all financial and regulatory obligations of the new players that emerged in the digital revolution so that substantial revenues could be channelled back to the creation and production of Canadian content.
17. We propose to set precedent for **OTT companies that wish to access the Canadian market to dedicate a percentage of their revenues to Canadian content, in the manner that terrestrial radio is obligated to do.**
18. Requiring OTT services to dedicate a percentage of their revenues into Canadian content production, such as Canadian music videos, would fill an important void in the Canadian music ecosystem.
19. One of the CRTC measures that most hinders a vibrant domestic content market in Canada is the digital media exemption order¹.
20. Under the current regulatory framework, requirements are in place for traditional broadcasting undertakings to continue to support the domestic content and distribution market. However, the existing regulatory framework does not ensure that new business models will support a vibrant content creation and distribution sector. To that end, digital media undertakings have largely been exempted from broadcast regulation by the CRTC.
21. It is important to note that revenues generated by a new levy on OTTs should be directed to support Canadian music content production.
22. CIMA notes that broadcasting companies including Bell and Rogers seem to agree with the point and called for a regulation that will apply to all players. Bell states:

*« To facilitate a vibrant domestic market, the Federal Government and the Commission must modernize Canada's legislative and regulatory framework so that it applies fairly to all industry players, new and old, international and domestic. This will involve striking the right balance between protecting and supporting valued traditional broadcasting institutions, such as local television and local news (with additional resources) and relaxing regulations to allow domestic players the flexibility to compete in a changing marketplace. **It will also require the Commission to stop treating international streaming services as though they operate outside of the larger broadcasting system. Foreign OTT services are both dependent on, and directly competitive with, the domestic broadcasting industry, and they do not merit a separate regulatory approach.***

¹ Broadcasting Order CRTC 2012-409: <https://crtc.gc.ca/eng/archive/2012/2012-409.htm>



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Canadians do not distinguish between platforms; they simply want good content. The Commission's approach to the industry should reflect this new reality.”²

23. For Rogers, the platform by which content is consumed should not have any impact on the regulatory treatment granted to the incumbent. Rogers states:

“Rogers submits that those OTT services that are operating in Canada today in direct competition with linear Canadian television programming services for audiences and for advertising and/or subscription revenues should, at a minimum, be subject to the following regulatory obligations:

- finance Canadian production (30% of gross revenues);*
- pay licence fees;*
- provide effective navigation and curation of Canadian programming;*
- adhere to Canadian broadcast standards; and*
- satisfy accessibility and public interest obligations, such as closed captioning, described video and public alerting.”³*

24. CIMA is pleased to read that such important players in the Canadian broadcasting system unequivocally recognize the need for fair rules for all players.

25. We also note that all regulated players advocate, to varying degrees, for regulatory relief.

26. On the other end of the spectrum, Corus' position goes as far as to imply that private companies should be relieved of all their obligations in favor of incentives and proposes that the objectives of the Act should be filled in by the public broadcaster, stating:

“To the contrary, we should recognize that such social policy objectives have to be fully funded by government and in Canada, we have a public broadcaster that is largely funded through public monies. Accordingly, in a digital era, the broadcasting social policy objectives will need to be fulfilled by the public broadcaster. And, as mentioned, private broadcasters can, and should, still play a role in achieving certain social policy objectives, but these should be

² Bell Media Inc. BCE, *Broadcasting Notice of Consultation CRTC 2017-359 Call for Comments on the Governor-in-Council's Request for a Report on Future Programming Distribution Models, Comments of BCE Inc.*, 1 December 2017, Par. 141

³ Rogers Communications Inc. (Rogers), *Call for comments on the Governor in Council's request for a report on future programming distribution models*, December 1, 2017, par. 8.



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encouraged by way of incentives rather than regulatory or legislative obligations.”⁴

27. CIMA strongly disagrees with this statement. It is clear in the Act that all broadcasting undertakings must meet the objectives, and there is no justification for doing otherwise.
28. In short, we note that the question of a two-tiered Canadian broadcasting system is of great concern to many players and that many of them agree that the end of this inequity will come through a strong CRTC.

Internet Service Provider Contributions to Canadian Programs

29. For the same reasons outlined above, the legislative, regulatory and policy frameworks should be amended to require ISPs to provide financial support for the development and creation of Canadian programming.
30. ISPs are commercial entities which profit from the digital content that they distribute. As with Canada’s commercial radio industry, ISPs should be required to direct financial resources to support the production of Canadian content.
31. Licensed Broadcast Distribution Undertakings (BDUs) are required to make important contributions to the creation of Canadian programming, the Canada Media Fund and other Canadian independent production funds on an annual basis pursuant to CRTC regulation.
32. However, ISPs have no regulatory obligation to make contributions to Canadian content.
33. In 2009, the CRTC referred to the Federal Court of Appeal the applicability of the Broadcasting Act to ISPs, which determined that ISPs were not “broadcasting” and thus not “broadcasting undertakings” under the Broadcasting Act.
34. This decision meant that the CRTC did not have the authority to require ISPs to contribute to Canadian programming.
35. The matter was referred to the Supreme Court of Canada, which upheld the Federal Court of Appeal’s ruling.⁵
36. However, in March 2017 the Government committed to reviewing the Broadcasting Act and Telecommunication Act.

⁴ Corus, *Broadcasting Notice of Consultation CRTC 2017-359, Call for comments on the Governor in Council’s request for a report on future programming distribution models, Phase I Comments from Corus Entertainment Inc.*, December 1st, 2017, p. 33

⁵ Reference re: *Broadcasting Act*, 2012 SCC 4, [2012] 1 S.C.R. 142: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>



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37. We ask that the Government take the opportunity and amend these statutes to recognize ISPs as commercial broadcasting entities, and require them to contribute financial support for the creation of Canadian programming in the same manner as licensed cable, satellite and IPTV services are required to contribute.
38. A review and consideration of this issue should most certainly form part of the discussion that ensues relating to this legislative reform.
39. Once the appropriate legislation is in place, the Commission can commence a public proceeding to impose appropriate Canadian program expenditure obligations on ISPs.
40. There is no doubt that ISPs are an integral part of the value chain in the digital model and as such should be required to redistribute a portion of their revenues.
41. It is often said that an ISP contribution would be comparable to a new "tax" imposed on the consumer. This is an unfounded assumption. This contribution would be required from profitable commercial companies without the need for the consumer to be penalized. Regulating their support for content creators and producers is putting an end to inequity, not unfairly taxing Canadians.

Role of Online Music Services

42. For the past ten years, there has been an abundance of cultural offers available on the Internet, particularly for music and audiovisual.
43. It is increasingly difficult to stand out in this world where there is an abundance of content. As a result, the industry is forced to increase its investments to position Canadian content both in traditional market segments and in the many digital segments.
44. It should be noted that the majority of interventions have dealt extensively with the audiovisual sector. In these interventions, the American company Netflix occupies much of the discussions; the announced agreement between the Canadian government and the US giant is particularly involved. However, its omnipresence should not make us forget that the problem can not be reduced to a single company or a single sector.
45. In music, several major players have an impact. The most important, without a doubt, are online music services like YouTube (owned by Google), Apple Music or Spotify.



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46. These players are giants in the music industry and active in dozens of countries. Unfortunately, the platforms mentioned above did not participate in the CRTC's consultation process on the future of programming and distribution and therefore, we cannot comment on their perspective.
47. The noticeable absence of all active platforms in Canada testifies to the problematic status of these players. They are currently essential intermediaries for creators and consumers, navigate our system in Canada while escaping all regulatory requirements of other players in the industry.
48. Yet these companies are unavoidable. At present, some operate in relative opacity, which means that the CRTC is not able to properly estimate their impact in our system since they are not required to disclose any information related to their operations.
49. CIMA notes that the Council has very recently sent a letter to a number of non-regulated companies⁶ inviting them to submit information to this effect. However, companies are not obliged to transmit this information and if they do, the data would be confidential.
50. CIMA wishes to express its support for what it sees as a step in the right direction. The collection of reliable data concerning the impact of these services in our market should be a priority.
51. In the digital age both content and its related data is fundamentally important for individual rights holders to help them understand how, where and when their music is being played and shared.
52. CIMA would encourage all online music services and the CRTC to consistently share all relevant data with rights holders, and any additional mechanism that would help the music industry improve the discoverability of Canadian content on online streaming platforms.
53. We encourage streaming services to also collect data on playlist ratios (Canadian versus international artists), if they are not doing so already. This data is invaluable for the music industry, as it indicates such information as market share and the like, and would greatly inform rights holders on their commercial marketing and promotion strategies in every market.
54. Streaming is here to stay and will likely become more prevalent. We must realize the crucial role of these players in our ecosystem.

⁶ Commission Letters 2018 <https://crtc.gc.ca/eng/8045/lc2018.htm>



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Conclusion

55. In the intervention that we submitted during the first phase of this process, we highlighted all the efforts devoted by content producers to adapt to the many challenges that have come their way for more than a decade.
56. However, it is clear that if the market in which they operate remains unfair and unmodernized, their resilience will not be sufficient to enable them to continue to produce quality content, and thus allow the Canadian public to have access to Canadian artists. Ensuring that all new commercial entities such as OTTs and ISPs contribute to the creation of cultural content must be seriously considered by the CRTC.

Yours sincerely,

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