

The organizations set out in the following list have provided a reply on:

The Path Forward, Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content, announced in Broadcasting Notice of Consultation 2023-138.

Andrea Kokonis, of the Society of Composers, Authors and Music Publishers of Canada, on behalf of ACCORD, on July 26, 2023.

List of supporting organizations:

Association des professionnels de l'édition musicale (APEM)

33 Rue Milton, #500

Montréal, Québec

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Attention: Jérôme Payette, Directeur général

Email: jpayette@apem.ca

Canadian Council of Music Industry Associations (CCMIA)

2169 Gottingen Street

Halifax, Nova Scotia

B3K 3B5

Attention: Sean McManus, Chair

Email: sean@manitobamusic.com

Canadian Musical Reproduction Rights Agency (CMRRA)

320 – 56 Wellesley Street West,

Toronto, ON

M5S 2S3

Attention: Paul Shaver, President

Email: pshaver@cmrra.ca

Music Publishers Canada (MPC)

56 Wellesley Street West, Suite 320

Toronto ON M5S-2S3

Attention: Margaret McGuffin, Chief Executive Officer

Email: mmcguffin@musicpublishing.ca

Songwriters Association of Canada (SAC)

41 Valleybrook Dr

Toronto, ON M3B 2S6

Attention: Arun Chaturvedi, President

Email: arun@songwriters.ca

Screen Composers Guild of Canada (SCGC)

41 Valleybrook Dr

Toronto, ON M3B 2S6

Attention: John Welsman, President

Email: john@welsmanmusic.com

Society of Composers, Authors and Music Publishers of Canada (SOCAN)

41 Valleybrook Dr

Toronto, ON M3B 2S6

Attention: Jennifer Brown, Chief Executive Officer

Email: jennifer.brown@socan.com

Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)

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Montréal QC H2X 1V1

Attention: Ariane Charbonneau, Directrice générale

Email: acharbonneau@spacq.ca

July 26, 2023

Filed Electronically

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunication Commission (CRTC)
Ottawa, Ontario
K1A 0N2

RE: Broadcasting Notice of Consultation CRTC 2023-138 – Reply to Interventions

1. This is the reply filed in response to Broadcasting Notice of Consultation 2023-138 (BNOCC 2023-138) reflecting the positions of Canada’s songwriters, composers, and music publishers as well as the organizations that support them. Collectively, this intervention includes: l'Association des professionnels de l'édition musicale, the Canadian Council of Music Industry Associations including Alberta Music, Cultural Industries Ontario North, Manitoba Music, Music BC, Music Nova Scotia, Music PEI, Music Yukon, Music/Musique NB, Music NL, MusicOntario, SaskMusic; the Canadian Musical Reproduction Rights Agency, Music Publishers Canada, the Songwriters Association of Canada, the Screen Composers Guild of Canada, the Society of Composers, Authors and Music Publishers of Canada, and la Société professionnelle des auteurs et des compositeurs du Québec (collectively, “**ACCORD**”). ACCORD represents over 185,000 Anglophone and Francophone songwriters, composers and music publishers as our members.

Executive Summary

2. In reply to the interventions filed in response to BNOCC 2023-138, ACCORD continues to rely on its positions filed in BNOCC 2023-138, 139 and 140. ACCORD summarizes its replies to certain specific points made by other parties as follows:
 - **Current Voluntary Initiatives are Not Contributions:** Several online undertakings argue that certain initiatives (for example, setting up a Canadian office, creating Canadian playlists) should be treated as contributions to the Canadian broadcasting system, or should otherwise reduce their initial base contribution obligations. These types of promotion and marketing discretionary initiatives are not eligible initiatives that ought to count towards an online undertaking’s initial base contributions.
 - **Canadian Content Definition Review Not Required Before Initial Base Contributions Imposed:** Some online services take the position that initial base contribution requirements should not be set until the Canadian content definition is revisited. For the audio sector, the definition of Canadian content need not affect the imposition of basic contributions on online undertakings. The current definition is sufficient for the contributions from online undertakings to make an immediate impact while the process continues into the next phase.
 - **Any Comparison Between Commercial Radio and Streaming Royalties is Irrelevant and Misleading:** Many online music streaming services state their contribution obligations should be substantially lower than those of commercial radio broadcasters, claiming that they pay significantly more of their revenues as royalties to music rights owners as compared to commercial radio. The statistics provided by

these undertakings are both irrelevant and misleading: online music services and radio stations have fundamentally different business models and the statistics they are using are not remotely ‘apple-to-apples’ comparisons.

- **Obligations on Online Undertakings Should Not Reduce Traditional Broadcasting Undertakings’ Obligations:** Several traditional broadcasting undertakings have requested regulatory relief from the Commission on the basis that contribution obligations imposed on online undertakings should reduce their regulatory obligations. This request is premature, would destabilize the system, unreasonably affects Canada’s music industry, and would result in a stagnant broadcasting system. All broadcasting undertakings must contribute to the Canadian broadcasting system. The contributions from one type of undertaking should not offset or reduce the contributions required from another type of undertaking, particularly as the entire contribution framework is under review.

Current Voluntary Initiatives are Not Contributions to Canadian Content

3. Several online undertakings propose that their current voluntary initiatives in the Canadian market should be recognized as contributions that warrant reducing their initial base contribution obligations.¹ These discretionary initiatives do not meet the Commission’s eligibility criteria for Canadian Content Development (CCD) contributions, and likewise ought not be recognized as part of online undertakings’ initial base contributions in support of Canadian content.
4. In its recent decision in the Revised Commercial Radio Policy, the Commission noted that the eligibility criteria for discretionary CCD contributions “must be directed to initiatives that go well above and beyond promotional activities and regular programming costs.”²
5. The examples provided by online undertakings, such as voluntary investments in producing content or promotion, are nothing more than promotional activities or regular programming costs: costs that are simply the costs of doing business, and which further the private interests of the undertaking itself, rather than the Canadian broadcasting system as a whole. According to the Commission, these activities are not even relevant for an online undertaking’s discretionary CCD obligations. Certainly, they are not the type of expenditures that ought to be factored into the calculation of an online undertaking’s initial base contribution.
6. Even if these types of initiatives met the eligibility criteria for discretionary CCD funding, the Commission has indicated a preference for non-discretionary funding. In the commercial radio review, the Commission proposed an 80%/20% split for non-discretionary/discretionary funding.³ ACCORD maintains that non-discretionary contributions to the existing music funds like FACTOR and Musicaction are the best way of delivering direct benefits to the Canadian music sector and the best way for the Commission’s new contribution policy framework to meet the objectives of Canada’s broadcasting policy. Furthermore, in the event the Commission does recognize any voluntary initiatives as intangible benefits, they must be

¹ BNOC 2023-138 Interventions, Amazon at paras. 23-32 and 50-56, Apple at paras. 45-53, Digital Media Association at para. 43, Google at para. 20, and Spotify at paras. 7, 8, 71, and 79-82.

² [Broadcasting Regulatory Policy CRTC 2022-332](#), para. 143.

³ *Ibid.*, para. 144.

subject to the same degree of transparent accounting and public reporting as any required/tangible benefits.

Review of Canadian Content Definition is Not Required Before Initial Base Contributions Imposed

7. Online undertakings are critical of the Commission's process to establish an initial base contribution from them as "an important early step to ensure continued support for Canadian and Indigenous programming and creators."⁴ Instead of establishing initial base contributions to start online undertakings contributing to the Canadian broadcasting system now, they argue that the definition of "Canadian programs" and "Canadian content" must be revised first before any contributions begin.⁵ Essentially, the online undertakings who have operated in a regulatory vacuum for decades are asking for a further extension before they are required to contribute to Canadian content.
8. For the audio sector and online music services, the questions asked by the Commission do not require these definitions to be settled. The "percentage of annual Canadian broadcasting revenues that applicable online undertakings would be initially required to make" and which funds should be the recipients of those initial contributions⁶ can be decided in parallel with the Commission's review of the definition of Canadian programs and Canadian content.
9. The definitions will be reviewed in Step 2 by the Commission. But today, the intent is to establish a first category of contributions that require online undertakings to start contributing to the Canadian broadcasting system now. ACCORD agrees with the Commission's intent to establish initial base contributions in Step 1 without waiting for a review of the definitions.

Any Comparison between Commercial Radio and Streaming Royalties is Misleading

10. Many online undertakings cite a statistic that they pay more than 70% of every dollar that they receive to music rightsholders, whereas commercial radio stations pay out only about 8.2% of every dollar that they receive to music rightsholders.⁷ They then suggest that online undertakings should contribute significantly less than commercial radio broadcasters, or nothing at all. These statistics are not only irrelevant, but misleading.
11. First, we query why these statistics, even if they were not misleading, are remotely relevant to the questions posed in this proceeding.
12. Second, the business models of online music services and commercial radio stations are fundamentally different on virtually every level between the services they offer, how they use music, how they are monetized, and their operational costs.
13. Finally, these figures are not remotely comparable. The 70% cited by Amazon, the Digital Media Association (DMA), and Spotify is based only on US data provided by the DMA. For example, the DMA uses royalty rates from the U.S. Copyright Royalty Board and data reported to the U.S. Mechanical Licensing Collective to establish the amounts paid out to

⁴ BNOC 2023-138, at para 26.

⁵ BNOC 2023-138 Interventions, Amazon at paras. 57-67, Apple at paras. 10 and 36, Google at para. 18, Digital Media Association at paras. 18 and 30, and Spotify at para. 70.

⁶ BNOC 2023-138, at para. 27.

⁷ BNC 2023-138 Interventions, Amazon at para. 55, Digital Media Association at para. 14, and Spotify at para. 25.

rightsholders.⁸ Notably, this statistic is not based on any Canadian data so its utility in this proceeding is highly questionable.

14. The statistics cited by these online undertakings are not remotely ‘apples to apples’ comparisons and ought to be regarded by the Commission with extreme suspicion. Even if these comparisons were not misleading, we fail to see the relevance of this information to the questions posed by the Commission.

Obligations on Online Undertakings should not Reduce Traditional Broadcast Undertakings’ Contribution Obligations

15. Many traditional broadcasting undertakings request the Commission to immediately ease or reduce the regulatory requirements imposed on them.⁹ ACCORD opposes this request for regulatory relief and notes the Commission has stated that “existing contributions by traditional broadcasters will not change” in this first stage of consultations.¹⁰
16. Stability in the system is important at this critical juncture as this Commission undertakes this policy review. It is certain that no matter how quickly the Commission moves on this policy proceeding, the flow of the actual contributions from online undertakings to the Canadian music industry will take some time. It is imperative that the system and the funding available to it, which is already in decline, not be further destabilized by reducing the existing obligations of traditional broadcasters.
17. The Commission has faced requests for reductions or decreases to regulatory obligations repeatedly in the past and continues to face them in additional applications launched by these undertakings while this policy review is underway.¹¹ In considering this type of request for regulatory relief, the Commission has previously required that any relief meets four expected outcomes, one of which is that parties that currently rely on the requirements imposed by the Commission on broadcasters are not unreasonably affected by any potential regulatory relief. The Commission has repeatedly denied requests where this outcome is not met.¹²
18. The relief sought would unreasonably affect the Canadian music industry and the Canadian creative and production communities. As noted by the Commission previously, “Investment in Canadian programming is essential to help the broadcasting system achieve the policy objectives relating to the creation of Canadian content, as described in subsection 3(1) of the Act”. Funding is a central pillar of regulatory support for Canadian music. The Canadian music industry relies on the contributions from broadcasting undertakings to support the development and creation of Canadian content. This funding supports the creation of new content and a wide variety of activities integral to the functioning of the music sector, such as funding for local, regional, and national music initiatives.

⁸ Digital Media Association, “U.S. On-Demand Subscription Streaming Revenue: Who gets paid and how much?” available online: <<https://dima.org/news-and-resources/who-gets-paid-and-how-much/>>.

⁹ BNOc 2023-138 Interventions, BCE Inc. at paras. 24, 38 and 39, Canadian Association of Broadcasters at paras. 5 and 27, Rogers Communications Inc. at paras. 22 to 24, Telus Communications Inc. at paras. 39 to 45.

¹⁰ BNOc 2023-138, para. 5.

¹¹ For example: BNOc CRTC 2020-336, Broadcasting Part 1 Application CRTC 2021-0784-6, and Broadcasting Part 1 Applications CRTC 2023-0379-1; CRTC 2023-0307-2; and CRTC 2023-0373-3.

¹² See: [Broadcasting Decision CRTC 2021-274](#), [Broadcasting Decision CRTC 2022-221](#).

19. The only beneficiary of the regulatory relief sought is the broadcast undertakings themselves and those undertakings have done nothing to establish that their request will not unreasonably affect the parties that currently rely on the existing requirements. All broadcasting undertakings must contribute to the Canadian broadcasting system. Contributions from one type of undertaking do not offset or reduce the contributions required from another type of undertaking, and certainly not while one of those contributions remains in flux.
20. Ultimately, reducing obligations on traditional broadcasting undertakings could result in the total contributions to the Canadian music industry staying stagnant, while the objective of the contribution policy framework must be to *increase* contributions to the system. As noted in our initial intervention, the framework must include a levelling up of online undertakings' contributions to Canadian music, with an increasing market share for Canadian music, as well as more money for racialized and underrepresented groups in our broadcasting system. Online undertakings have benefitted from the regulatory vacuum for far too long: they must begin contributing to the Canadian broadcasting system as soon as possible.
21. ACCORD thanks the Commission for its consideration of its intervention and reply in this important consultation.

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