

# Comments from ACCORD on the Proposed Policy Directions for the *Online Streaming Act*

This is a joint submission from ACCORD, a coalition of Canada’s songwriters, composers, and music publishers as well as the organizations and collective management organizations that support them. Collectively, this includes: ADVANCE, 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, known collectively as “ACCORD”. Together, ACCORD represents over 185,000 English and French-Canadian songwriters, composers, and music publishers as our members.

ACCORD members support the submission from the Coalition for the Diversity of Cultural Expressions (CDCE) in the current process.

We set out below our specific suggested modification to the draft policy direction, along with comments setting out our rationale for the changes, to sections that are of particular importance to the Canadian music sector.

## 1. Social media creator definition

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<b>comments setting out our rationale for the changes social media creator</b> means a person who creates programs that are primarily intended for online distribution as user-uploaded programs through social media services. (créateur pour les médias sociaux)	<b>social media creator</b> means an <u>individual</u> who <u>uploads and</u> creates programs that are <u>primarily</u> intended for online distribution as user-uploaded programs through social media services. (créateur pour les médias sociaux)

*Rationale for the modification:*

- Avoid companies from qualifying as creators by restricting the definition to individuals.
- Clarify that the social media creator must upload the program, not a third party.
- Clearly state that programs must be intended for social media to avoid loopholes.

## **2. Increased support to Canadian programming**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Supporting Canadian programming</b></p> <p>4 The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings.</p>	<p><b>Supporting Canadian programming</b></p> <p>4 The Commission is directed to impose requirements on broadcasting companies to ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting companies that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings. <u>The requirements must aim to significantly increase the volume of high-quality original Canadian programs in the broadcasting system.</u></p>

*Rationale for the modification:*

- Fairness among broadcasting undertakings is important, but it must not lead to deregulation of the system and must instead result in increased support for Canadian programming.
- The music sector especially needs increased support since contributions from traditional broadcasters have been decreasing and online broadcasters have been operating without any contribution or exhibition obligations.
- The government must send a clear signal in favour of increased support for Canadian programming, in a context where certain undertakings are trying to use the modernization to obtain too much flexibility and where the renewal of CBC's license (Broadcasting Decision CRTC 2022-165) was referred back to the Commission because it led to deregulation.

**3. Promotion and recommendation: clearly refer to the objective of the Act**

Current Language in Draft Policy Direction	Proposed ACCORD Modification
<p><b>Discoverability and showcasing</b></p> <p>6 The Commission is directed to consider both established and emerging means of discoverability and showcasing to promote a wide range of Canadian programming. In making regulations or imposing conditions in respect of discoverability and showcasing requirements, the Commission is directed to prioritize outcome-based regulations and conditions that minimize the need for broadcasting undertakings to make changes to their computer algorithms that impact the presentation of programs.</p>	<p><del>Discoverability and showcasing</del> <b><u>Promotion and recommendation</u></b></p> <p>6. The Commission is directed to consider both established and emerging means of <del>discoverability and showcasing to promote</del> <u>promotion and recommendation to allow the discovery of</u> a wide range of Canadian programming. In making regulations or imposing conditions in <u>this</u> respect of <del>discoverability and showcasing requirements</del>, the Commission is directed to prioritize outcome-based regulations, and conditions that minimize the need for <del>broadcasting undertakings to make changes to their computer algorithms that impact the presentation of programs.</del></p>

*Rationale for the modification:*

- The policy direction should be aligned with the objectives of the Canadian broadcasting policy, which under 3(1)(r), states that online undertakings “shall clearly promote and recommend Canadian programming [...] and ensure that any means of control of the programming generates results allowing its discovery”. The terms used in section 3(1)(r) are less ambiguous than “discoverability”, which is a new term and can be interpreted in multiple ways. Section 9.1(1), which uses the word discoverability, gives the CRTC full latitude to impose promotion and recommendation obligations, and to measure the discovery of Canadian programming in order to ensure that the objective of the Act is met. In a results-based approach it is important that the Policy direction refers to the Act’s objectives without ambiguity.
- The last part of paragraph 6 contradicts a results-based approach. The mention of algorithms interferes with the achievement of results, is not technologically neutral, and will allow undertakings to argue that they cannot meet discovery outcomes because it would require them to make more than minimal changes to their algorithms. For example, outcomes that the Commission may prioritize may not be possible for an online undertaking to accomplish without making significant changes to its algorithms, depending on how they have organized their business.

This would harm the benefits of the Broadcasting Act for the Canadian music sector. It is also important to remember that the Act under 9.1(8) clearly mentions that the Commission cannot require the use of a specific computer algorithm. The simplest way to correct the text is to remove the last part of the sentence. Another fix could be to clearly state that the achievement of the Broadcasting policy objectives are more important than the need to minimize changes to computer algorithms, for example: “conditions that, if they do not prevent the achievement of the objectives of the broadcasting policy set out in subsection 3(1) of the Act, minimize the need for broadcasting undertakings to make changes to their computer algorithms that impact the presentation of programs.”

**4. Flexible and adaptable regulatory framework to achieve the objectives of the Act**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Flexible and adaptable regulatory framework</b></p> <p>8 To support flexibility and adaptability in its regulatory framework, the Commission is directed to:</p> <p>(a) minimize the regulatory burden on the Canadian broadcasting system; [...]</p> <p>(c) respect audience choice and, where possible, increase the options available;</p> <p>(d) where appropriate, use tools that are based on incentives and outcomes; [...]</p>	<p><b>Flexible and adaptable regulatory framework</b></p> <p>8 To support flexibility and adaptability in its regulatory framework <u>while ensuring that it does not contravene the achievement of the objectives outlined in the Canadian broadcasting policy,</u> the Commission is directed to:</p> <p>a) <del>minimize</del> <u>be mindful of the regulatory administrative burden that may be imposed</u> on the Canadian broadcasting system; [...]</p> <p>c) <del>respect audience choice and, where possible, increase the options available</del> <u>increase the diversity of content offered to the public;</u></p> <p>d) where appropriate <u>and opportune to achieve the objectives of the Canadian Broadcasting Policy,</u> use tools that are based on incentives and <u>measurable</u> outcomes [...]</p>

*Rationale for the modification:*

- We agree that the CRTC should seek to create a flexible and adaptable framework, but not at the expense of the objectives of the Canadian Broadcasting Policy, and that this should be explicit in the policy direction.
- Section 8(a): The Commission needs to be able to impose the required obligations to implement the Act: what it needs to be mindful of is the administrative burden, not the regulatory burden.
- Section 8(c): The increase of the diversity of content offered to the public should be made mandatory. The Act does not give the CRTC any power on audience choice, it only refers to the promotion and recommendation of Canadian programming to allow the discovery of Canadian programming. This part of the policy direction exceeds the powers of the Act and should be removed.
- Section 8(d): It should be clear that incentives should only be used in the right context. The music sector is not aware of contexts in which incentives were appropriate to meet the objectives of the Act. If used, incentives must clearly have measurable outcomes.

**5. Remuneration for the use of Canadian human resources**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Use of Canadian human resources</b></p> <p>9 In its regulation of the broadcasting sector, the Commission is directed to ensure that the sector maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on economic opportunities and remuneration for creators.</p>	<p><b>Use of Canadian human resources</b></p> <p>9 In its regulation of the broadcasting <u>sector system</u>, the Commission is directed to ensure that <del>sector</del> <u>it</u> maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on <del>economic opportunities</del> <u>and</u> remuneration for creators.</p>

*Rationale for the modification:*

- Sectors usually refer to audiovisual or music. The broadcasting system is wider and clearly includes online undertakings, and this draft section already uses the

term “Canadian broadcasting system” and should not create confusion by using the different term “broadcasting sector” in the same section.

- Remuneration for creators is essential for the Canadian music sector. The reference to economic opportunities could lead to problematic interpretations, such as opportunities that never materialize, or that are impossible to measure.

## **6. Clearer wording regarding social media and video games**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Social media creators and video games</b></p> <p>10 The Commission is directed not to impose regulatory requirements on</p> <p>(a) online undertakings in respect of the programs of social media creators, including podcasts; and</p> <p>(b) broadcasting undertakings in respect of the transmission of video games.</p>	<p><b>Social media creators and video games</b></p> <p>10. The Commission is directed not to impose regulatory requirements <u>that would impose obligations on</u></p> <p><del>(a) online undertakings in respect of the programs of social media creators</del> <u>or their programs</u>, including podcasts; and</p> <p><del>(b) broadcasting undertakings in respect of the transmission of video games.</del></p>

### *Rationale for the modification:*

- The proposed text is to align policy direction with the government's stated intent, “platforms in, users out”. The objective has always been to avoid obligations on social media creators, but the text from the policy direction could be interpreted as if online undertakings should avoid all CRTC obligations.
- Considering the intersection between video games and broadcasting, especially the existence of live concerts within what could be interpreted as “video games” it is safer to let the CRTC determine if any obligations should apply. If the complete removal of the text concerning video games is not accepted, an alternate modification could be to direct the Commission not to impose regulatory requirements that would impose obligations on “~~broadcasting undertakings in respect of the transmission of video games.~~”

## 7. A clear interpretation of section 4.2

Current Language in Draft Policy Direction	Proposed ACCORD Modification
<p><b>Regulations — section 4.2 of the Act</b></p> <p>11 In exercising its powers under section 4.2 of the Act, the Commission is directed to set out clear, objective and readily ascertainable criteria, including criteria that ensure that the Act only applies in respect of programs that have been broadcast, in whole or in significant part, by a broadcasting undertaking that is required to be carried on under a licence or that is required to be registered with the Commission but does not provide a social media service.</p>	<p><b>Regulations — section 4.2 of the Act</b></p> <p>11 In exercising its powers under section 4.2 of the Act, the Commission is directed to set out clear, objective and readily ascertainable criteria. <del>including criteria that ensure that the Act only applies in respect of programs that have been broadcast, in whole or in significant part, by a broadcasting undertaking that is required to be carried on under a licence or that is required to be registered with the Commission but does not provide a social media service.</del></p>

### *Rationale for the modification:*

- By focusing on one criterion, the text put forward in the draft policy direction contradicts the text of the Act which says the CRTC needs to consider three criteria. We are concerned that this could have the effect of excluding original content not broadcast by a registered or licensed company.
- If the last part of the paragraph is not completely removed, we ask for the removal of one word. “in respect of programs that have been broadcast in whole or in significant part”. The Broadcasting Act refers to “in whole or in part”. All parts of musical works should be considered when the CRTC regulates the broadcasting activities of social media services, especially if it intends to support social media creators as suggested in paragraph 12(j).

## 8. Expenditures

Current Language in Draft Policy Direction	Proposed ACCORD Modification
<p><b>Regulations and orders — section 11.1 of the Act</b></p> <p>12 In exercising its powers under section 11.1 of the Act, the Commission is directed to [...]</p>	<p><b>Regulations and orders — section 11.1 of the Act</b></p> <p>12 In exercising its powers under section 11.1 of the Act, the Commission is directed to [...]</p>

<p>(c) consider providing flexibility for all broadcasting undertakings in meeting expenditure requirements; [...]</p> <p>(e) where appropriate for a given business model and set of objectives, prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming; [...]</p> <p>(j) support activities and services — including training and development activities, conferences, the activities of organizations that represent creators and the development of digital and open-source tools and solutions — that support Canadian creators of audio or audio-visual programs for broadcasting by broadcasting undertakings, including social media creators.</p>	<p><del>(c) consider providing flexibility for all broadcasting undertakings in meeting expenditure requirements; [...]</del></p> <p><del>(e) where appropriate for a given business model and set of objectives, prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming; [...]</del></p> <p><del>(j) support activities and services — including training and development activities, conferences, the activities of organizations that represent creators and the development of digital and open-source tools and solutions — that support Canadian creators of audio or audio-visual programs for broadcasting by broadcasting undertakings, including social media creators.</del></p> <p><u>(k) take into account the importance of sustainable support, provided by the Canadian broadcasting system as a whole, for programs of national interest.</u></p>
--	--

*Rationale for the modification:*

- Section 12(c) is not needed since the Act already mentions flexibility.
- Section 12(e) conflicts with a regulatory process currently conducted by the CRTC. In the music sector, direct expenditures from undertakings on the creation, production and presentation of Canadian programming is uncommon and undesirable. Contributions should be made to existing funds.
- Section 12(j) if the broadcasting activities of social media services are not fully regulated by the CRTC, then the social media creators should not benefit from the regulation. If expenditures benefit social media creators, the amounts should come from the broadcasting activities of social media services.
- Section 12(k) programs of national interest are very important for the broadcasting system, including the music sector.



## **9. Canadian programming**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Determination of Canadian programming</b></p> <p>13 In its determination of what constitutes Canadian programming, the Commission is directed to [...] (c) support Canadian ownership of intellectual property; [...]</p>	<p><b>Determination of Canadian programming</b></p> <p>13 In its determination of what constitutes Canadian programming, the Commission is directed to [...] (c) support Canadian ownership of intellectual property, <u>including the ownership of rights or interests in programs that allows Canadians to control and profit from their exploitation.</u></p>

### *Rationale for the modification:*

- This modification is to ensure that not only Canadian ownership of intellectual property is maintained, but Canadians also control and benefit from the exploitation of their works.

## **10. Implementation**

<b>Current Language in Draft Policy Direction</b>	<b>Proposed ACCORD Modification</b>
<p><b>Implementation</b></p> <p>19 The Commission is directed to make changes to its regulatory framework that are necessary for the purposes of the implementation of this Order within two years after the day on which it comes into force. In doing so, the Commission is directed to prioritize the implementation of sections 13 to 16 and to ensure that changes to its regulatory framework are made as soon as feasible and on a continual basis during that two-year period.</p>	<p><b>Implementation</b></p> <p>19 The Commission is directed to make changes to its regulatory framework that are necessary for the purposes of the implementation within two years after the day on which it comes into force. In doing so, the Commission is directed to prioritize the implementation of <u>significant initial contribution requirements on online undertakings pursuant to section 4 as well as</u> sections 13 to 16, and to ensure that changes to its regulatory framework are made as soon as feasible and on a continual basis during that two-year period.</p>

*Rationale for the modification:*

- The Commission is prioritizing the establishment of initial contribution requirements on online undertakings as part of its process to modernize the broadcasting system. Online undertakings have pointed to this section as an indication that the Commission's focus on contributions should be paused until the definition of Canadian programming is settled. This would delay online undertakings from having to contribute to the broadcasting system for an indeterminate amount of time.
- As a result, we suggest that the policy direction indicates that contributions also must be prioritized when implementing changes to the regulatory framework.