International Center for Law & Economics

Comments of the International Center for Law & Economics Re: Supporting Canadian and Indigenous Audio Content

Broadcasting Notice of Consultation CRTC 2025-52

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I. Introduction

We thank the Canadian Radio-television and Telecommunications Commission ("CRTC" or "the Commission") for the opportunity to offer comments to this Broadcasting Notice of Consultation ("Consultation").[1] We further request that you consider allowing Kristian Stout, author of these comments, to appear at the public hearing for this proceeding. As both a practicing musician with firsthand experience in the streaming economy and a policy expert specializing in copyright, licensing, and commercialization issues, he can offer valuable insights from each of these complementary perspectives. His background spans both the creative and analytical sides of the Canadian music ecosystem, allowing him to address these issues with both practical and theoretical understanding.

The Consultation addresses critical questions about how best to support Canadian content in a changing media landscape. The Commission seeks a comprehensive review of its regulatory framework for audio content, recognizing that approaches designed for traditional radio may not translate effectively to digital platforms. As the CRTC explicitly acknowledges in the Consultation, "current content requirements do not appear to work in an online context."[2] This acknowledgment reflects the Commission's understanding that streaming services operate with fundamentally different business models and audience relationships than do traditional broadcasters. What's needed is a fresh regulatory approach that can achieve the objectives of cultural policy while respecting the technological realities of today's audio ecosystem.

A common point of contention in these discussions concerns Canadian artists' ability to earn a living in the current market. This issue is not local to Canada, as artists around the world have expressed dissatisfaction with streaming royalties.[3] But it is important that the CRTC separate such concerns from their charge to ensure the availability of Canadian and Indigenous audio content, and that Canadian content can be distributed both across Canada and around the world. Indeed, Canadian content is very popular outside of Canada.

With respect to streaming revenues, there complicated problems in both the supply and demand ends of the market. As noted in the Canadian 2021 Study of the Economic Impacts of Music Streaming, we face an apparent conundrum where "the business of recorded music (and streaming specifically) seems to be booming," while simultaneously "reports of music creators earning *de minimis*

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[1] CRTC, *The Path Forward – Supporting Canadian and Indigenous Audio Content*, CAN. RADIO-TELEV. TELECOMMUN. COMM. (Broadcasting Notice of Consultation CRTC 2025-52, Feb. 20, 2025), https://crtc.gc.ca/eng/archive/2025/2025-52.htm [*hereinafter* "Consultation Document"].

[2] Consultation Document at ¶ 51.

[3] Daniel Tencer, *7 In 10 Musical Artists Dissatisfied with Streaming Music Payouts, Survey Finds*, MUSIC BUS. WORLDW. (Jun. 19, 2024), https://www.musicbusinessworldwide.com/7-in-10-musical-artists-dissatisfied-with-streaming-music-payouts-survey-finds.

sums on the use of their works on streaming services—or certainly not enough for a living wage—fill trade journals, blogs, policy reports and mainstream media."[4]

Conditioned in part by widespread piracy serving to depress the market value of recorded music, many consumers simply no longer expect to have to pay to access that music. A 2018 survey found that nearly a third of listeners were unwilling to pay anything at all for a fully subscription-based streaming service, with two-thirds willing to pay up to US$10 monthly for such a service.[5] In the United States, there were 43 million vinyl records and 37 million compact discs sold in 2023.[6] But those sales accounted for just 16% of the recording industry's revenues for the year, demonstrating that consumers are overwhelmingly more likely to gravitate to low-cost streaming services for music.[7] Coupled with the advance of recording and distribution technologies that enable artists at all levels to release professional-quality music,[8] the result has been an explosion of available music, even as consumers expect to pay as little as possible for access to that music.[9]

This situation cannot be resolved via regulatory fiat. Record companies and others engaged in the market have sought to address the difficult economics of music through investments in better streaming products and revenue models;[10] the availability of better physical media, such as vinyl;[11] and other innovations. But importantly, for those investments to yield dividends, music firms need to be able to continue to experiment with business models in order to find those that offer sustainable returns for artists.

Thus, we strongly support the Commission's identified intention that:

> this proceeding will help the Commission determine the best ways to [allow] traditional and online broadcasters [to] rely on flexible policies to support, promote and make

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[4] *2021 Study of the Economic Impacts of Music Streaming on the Canadian Music Industry*, WALL COMMUN. INC. (2021), https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/economic-impact-music-streaming.html#a5.

[5] Patrick Leu, *What Is the Most You Would Be Willing to Pay for a Music Streaming Service Without Any Ads?*, STATISTA (May 29, 2024), https://www.statista.com/statistics/819836/price-limit-music-streaming-service-without-ads.

[6] Wes Davis, *Vinyl Records Outsell CDs For the Second Year Running*, THE VERGE (Mar. 26, 2024), https://www.theverge.com/2024/3/26/24112369/riaa-2023-music-revenue-streaming-vinyl-cds-physical-media.

[7] *Id.*

[8] Eric Goldberg, *A Studio in Every Home: DAWs, Plug-Ins and the Democratization of the Recording Studio*, HARV. TECHNOL. OPER. MANAG. (Nov. 17, 2016), https://d3.harvard.edu/platform-rctom/submission/a-studio-in-every-home-daws-plug-ins-and-the-democratization-of-the-recording-studio.

[9] As of May 2023, there were more than 120,000 new tracks being uploaded to music-streaming services daily. *See* Murray Stassen, *There Are Now 120,000 New Tracks Hitting Music Streaming Services Each Day*, MUSIC BUS. WORLDW. (May 25, 2023), https://www.musicbusinessworldwide.com/there-are-now-120000-new-tracks-hitting-music-streaming-services-each-day.

[10] For example, Apple and Amazon reportedly pay out twice the amount per stream as Spotify—a direct effort to attract more interest into the use of their service. *See* Dylan Smith, *Apple Music and Amazon Music Are Paying More Than Double Spotify's Per-Stream Royalty Rate, Report Finds*, DIGIT. MUSIC NEWS (Jan. 24, 2025), https://www.digitalmusicnews.com/2025/01/24/apple-music-royalty-rate-spotify-study.

[11] Davis, *supra* note 6.

> available Canadian and Indigenous audio content in ways that fit their business models today and in the future…[and that] actions taken to support Canadian and Indigenous audio content are efficient, easily implementable, measurable and transparent.[12]

This laudable objective can be achieved through careful, forward-looking approaches that embrace, rather than resist, the streaming sector's innovative business models. By developing flexible policies that recognize the fundamentally different discovery and consumption patterns in today's audio landscape, the Commission can help to sketch a framework that supports Canadian creators, while allowing services to leverage their technological advantages to promote content discovery.

II. Canadian-Content Definitions and IP Ownership

The Consultation raises important questions about how to define Canadian content in a way that supports the Canadian creative sector, while avoiding unintended consequences. We are particularly concerned with the current approach to defining Canadian content, especially the emphasis on Canadian intellectual-property ownership as a necessary precondition, rather than one factor among many.[13]

Under existing CRTC requirements, Canadian-content qualification depends heavily on IP ownership and control at the time of production.[14] This rigid requirement can lead to paradoxical outcomes, such as where productions deeply rooted in Canadian culture, and created predominantly with Canadian talent and resources, fail to qualify as "Canadian" solely due to foreign IP-ownership arrangements.

This approach fundamentally misaligns incentives in content production and distribution. International-commercialization partnerships, which often require IP sharing or transfer arrangements, play a crucial role in helping Canadian content to reach global audiences across all forms of media.[15]

III. Discoverability in a Streaming Context

The Consultation also seeks information on challenges faced by broadcast undertakings in having their services and content promoted and discovered. In the streaming era, Canadian artists have unprecedented access to audiences, recently reaching 10.5% of *global* audiences.[16] Thus, given the

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[12] *Id.* at ¶ 11.

[13] *Canadian Program Certification Guide*, CAN. RADIO-TELEV. TELECOMMUN. COMM., https://crtc.gc.ca/canrec/eng/guide1.htm#2.1 (*last visited* Apr. 1, 2025).

[14] *Id.*

[15] Charles H. Davis & Janice Kaye, *International Film and Television Production Outsourcing and the Development of Indigenous Capabilities: The Case of Canada*, *in* LOCATING MIGRATING MEDIA (Greg Elmer, Charles H. Davis, Janine Marchessault, & John McCullough eds., 2010).

[16] Will Page, *Laying a Foundation for Success: Canada's Online Streaming Act*, MUSIC CAN. (2023), 13, *available at*

relative size of the Canadian population, Canadian artists clearly punch well above their weight in representation on streaming services. [17]

Streaming services also have an incentive to reduce search time for consumers, as time spent searching for content is time not spent consuming it. Many services invest in developing curation algorithms customized for individual users.[18] Mandated discoverability regulations, such as algorithmic quotas, risk creating inefficiencies by overriding consumer preferences. To the extent that Canadian consumers demand more Canadian, Indigenous, or French-language content, existing algorithms already provide opportunities to discover it. Any regulation should be limited to transparency requirements, rather than prescriptive placement or prioritization.

IV. Alternative Approach to Supporting Canadian Content

Given the dynamic content landscape, the CRTC should exercise caution in considering new access mandates or extending existing ones. Regulations appropriate for current technology and market conditions can quickly become obsolete or counterproductive as markets evolve.

A more nuanced approach to regulation may better serve the Commission's objectives than rigid requirements around ownership and content quotas. Such an approach would recognize that cultural production flourishes, not through isolation, but through dynamic interaction with global markets and distribution networks, while still maintaining appropriate safeguards for Canadian cultural interests.

Access regulation is potentially appropriate only in highly concentrated markets where substantial, persistent barriers to entry exist. The market for audio services is not such a market. Traditional access regulation assumes that market power derives primarily from control over physical infrastructure, whereas streaming services derive influence from network effects, superior use of data, and technological innovation—sources of power that are often transient.

V. Specific Responses to Consultation Questions

Q30. Does the Commission's preliminary view for a renewed annual financial contribution framework, which includes online and traditional audio undertakings, align with various business models found within the current broadcasting system?

The Commission's preliminary view to require contributions from all audio undertakings whose operators form part of broadcasting ownership groups with Canadian gross broadcasting revenues

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https://musiccanada.com/wp-content/uploads/2024/04/Laying-a-Foundation-for-Success-Canadas-Online-Streaming-Act.pdf.

[17] Canada accounts for about 0.49% of global population. *Canada Population*, WORLDOMETER, https://www.worldometers.info/world-population/canada-population (*last visited* Apr. 1, 2025).

[18] *See, e.g., DJ*, SPOTIFY, https://support.spotify.com/us/article/dj (*last visited* Apr. 1, 2025).

of $25 million or more represents a step toward regulatory symmetry but fails to recognize fundamental differences among divergent business models.[19]

Traditional broadcasters operate in a relatively constrained spectrum environment with direct regulatory benefits—such as protected service areas and exclusive frequency assignments—that justified historical contribution frameworks. In contrast, streaming services operate in an unconstrained internet environment with fundamentally different cost structures, revenue models, and user experiences.

A more proportionate approach would acknowledge these different structural positions by:

1. Recognizing content-discoverability initiatives—such as investments in advanced search and distribution technology—as legitimate contributions from streaming services, rather than imposing on them identical financial contribution frameworks; and

2. Accounting for the global investments that streaming services make in Canadian-content production and distribution that fall outside existing Canadian-content definitions, despite employing Canadian creative talent.

The rigid application of traditional broadcasting-contribution frameworks to streaming services risks creating market distortions and regulatory arbitrage. A more flexible approach that focuses on outcomes (Canadian-content creation and discovery), rather than identical contribution mechanisms, would better align with the diverse business models in today's audio ecosystem.

Q32. Should the Commission require all traditional and online audio undertakings to allocate their financial contributions in the same way?

No, the Commission should not require identical allocation of financial contributions across all audio undertakings. A one-size-fits-all approach to contribution allocation would fail to account for vastly differing market positions, audience relationships, and content-discovery mechanisms across the audio ecosystem.

Instead, the Commission should adopt a flexible framework that allows for differentiated allocation based on several considerations.

Service Type and Audience Relationship: Traditional radio broadcasters have deep connections to local communities and may be better positioned to direct contributions toward local talent development, while streaming platforms with algorithmic recommendation engines might better support Canadian content through targeted discoverability and distribution initiatives.

[19] Consultation Document at ¶ 78.

Language Market Differences: The challenges facing French-language content differ significantly from those in the English-language market. Undertakings that serve French-language audiences should have greater flexibility to allocate contributions toward production, promotion, and distribution mechanisms specific to that market's needs.

Contribution Efficacy: The ultimate goal of contribution rules should be to maximize the creation, distribution, and discovery of Canadian content, not to effect administrative simplicity. Undertakings should be permitted to concentrate contributions in areas where they can demonstrate the greatest impact, whether that's in content development, promotion, or audience development.

A more tailored approach to contribution allocation would better serve the Act's policy objectives, while recognizing the diverse operational realities of differing audio undertakings in today's complex media environment.

Q44. Can AI be used innovatively to promote Canadian content?

Yes, artificial intelligence offers significant potential to promote Canadian content in innovative ways, underscoring that dynamic markets require flexible regulatory approaches, rather than static structural policies created for the broadcast era.

AI has already revolutionized content discovery, recommendation, and audience outreach in ways that traditional Canadian-content quotas could never achieve. For example, Spotify's AI DJ feature learns from user preferences to create personalized content streams, while intelligently introducing new recommendations that align with core listener interests.[20] This creates a dual benefit for Canadian content: Canadian listeners who engage with domestic artists naturally receive more Canadian recommendations, while international listeners who enjoy music with characteristics similar to Canadian productions gain exposure to Canadian artists they might otherwise never discover.

These AI-powered discovery mechanisms demonstrate why the Commission's focus should be on outcomes—ensuring Canadian content reaches appropriate audiences—rather than prescriptive distribution methods. Recommendation algorithms have already surpassed traditional programming practices in their ability to match content with interested listeners, creating value for both creators and audiences.

Furthermore, AI can assist smaller Canadian artists in audience development by identifying potential fans with remarkable precision, analyzing consumption patterns across billions of data points to find meaningful connections between content and listeners. This capability transcends geographic boundaries in ways that traditional broadcasting simply cannot match.

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[20] *Meet Your DJ*, SPOTIFY (Feb. 22, 2023), https://newsroom.spotify.com/2023-02-22/spotify-debuts-a-new-ai-dj-right-in-your-pocket.

As AI continues to evolve rapidly, any regulatory framework that rigidly prescribes distribution methods risks interfering with these innovative discovery mechanisms, rather than harnessing their potential. The Commission should therefore focus on establishing principles and outcomes. while allowing flexibility in how those outcomes are ultimately achieved.

VI. Conclusion

The Commission faces a critical inflection point as it seeks to adapt Canada's audio regulatory framework to the modern streaming ecosystem. While the objectives of promoting Canadian-content creation and accessibility remain important, the regulatory tools employed must evolve to match the technological and economic realities of today's market.

Rigid approaches based on outdated broadcast paradigms risk not only failing to achieve their intended purposes but potentially harming the very Canadian creators they aim to support. By focusing on IP ownership rather than broader impacts, the current definitions create barriers to the very international partnerships that could expand the global reach of Canadian content. Such an outcome would harm the revenue stream of Canadian artists, who increasingly depend on global revenue to support themselves. This could also foster vicious negative feedback cycles that hinder the viability of artists' careers in Canada.

Similarly, inflexible contribution frameworks that fail to recognize the fundamental differences between traditional broadcasters and streaming services risk creating market distortions that benefit neither creators nor consumers.

The streaming era presents unprecedented opportunities for Canadian artists to reach global audiences. If allowed to operate efficiently, the technologies that drive these platforms—particularly the emerging AI-driven recommendation systems—can serve as powerful tools to promote Canadian content. Regulatory approaches that work with, rather than against, these innovations will better serve the long-term interests of the Canadian audio ecosystem.

We urge the Commission to adopt a flexible, outcome-oriented framework that recognizes diverse business models and their unique contributions to the Canadian content ecosystem; allows for varied approaches to meeting content-promotion objectives; embraces technological innovation in content discovery; and measures success by the actual reach and impact of Canadian content, rather than by rigid compliance metrics.

With such an approach, the Commission can help ensure that Canadian creators thrive in the global audio marketplace, while preserving the cultural expression that makes Canadian content distinctive and valuable.