



SOCAN

Society of Composers, Authors and
Music Publishers of Canada
Société canadienne des auteurs,
compositeurs et éditeurs de musique

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April 29, 2010

Mr. Robert Morin
Secretary General
Canadian Radio-television and Telecommunications Commission
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Québec
J8X 4B1

Dear Mr. Morin:

RE: BROADCASTING NOTICE OF CONSULTATION CRTC 2010-97

*** INTRODUCTION**

1. This Submission is presented on behalf of the members of **The Society of Composers, Authors and Music Publishers of Canada/Société canadienne des auteurs, compositeurs et éditeurs de musique** (“SOCAN”) in response to the Commission’s **Broadcasting Notice of Consultation CRTC 2010-97: “Call for Comments on the reporting requirements for New Media Broadcasting Undertakings”** dated February 18, 2010 (the “Notice”).
2. SOCAN is pleased that the Commission recognizes the need to collect information on both **audio**, as well as **audio-visual** content because they are not the same.
3. Audio content and audio-visual content are created by different creators working within distinct cultural industries which have unique creation, production, and distribution processes
4. SOCAN welcomes this opportunity to respond to the 8 questions included in the Notice, and our Submission is presented under the following headings:
 - I. Who We Are
 - II. SOCAN’s Response to the Commission’s Eight Questions
 - III. Conclusion



I. WHO WE ARE

5. SOCAN is a Canadian owned and operated not-for-profit organization, which represents composers, lyricists, songwriters and publishers of musical works from across Canada and around the world.
6. On behalf of our over 35,000 active Canadian members, and members of affiliated, similar societies from around the world, SOCAN collectively administers **performing rights** in music and lyrics – musical works.
7. The performing right is that part of copyright that gives owners of musical works the sole right to perform in public, to broadcast their works, or to authorize others to do so, in return for royalty payments.
8. Performing rights are essential for music creators and their publishers because they are remunerated by the performing rights royalty payments they receive when their musical works are used (i.e., performed in public or broadcast) by music users, whether as individual musical works or as part of an audio-visual production.
9. As a musical works performing rights society, SOCAN's members are directly interested in maximizing access to Canadian music.
10. When traditional or New Media broadcasters and other music users play musical works written by Canadians, royalties remain at home with Canadian creators, or flow into Canada from foreign sources.
11. On the other hand, when users play more foreign music in Canada, royalties are paid to foreign sources.
12. It is for this reason that SOCAN has always supported measures which promote the creation and use of Canadian music, including the *Broadcasting Act* and the Commission's Canadian Content rules.
13. In particular, SOCAN strongly supports the following policy which is included under the heading "Broadcasting Policy for Canada", where Paragraph 3(1)(f) of the *Broadcasting Act* states:

...each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

(emphasis added)



II. SOCAN'S RESPONSE TO THE COMMISSION'S EIGHT QUESTIONS

Q1. WHAT INFORMATION SHOULD THE COMMISSION COLLECT TO BETTER UNDERSTAND THE NEW MEDIA BROADCASTING INDUSTRY IN CANADA? WHAT ARE THE APPROPRIATE METRICS FOR MEASURING SUCH INFORMATION?

14. The Commission should collect information on both Canadian Content and non-Canadian Content, and should measure the availability, the prominence of the availability, and the actual consumption of such content.
15. The importance of the prominence of availability – which is often referred to as “shelf space” – was highlighted in the Press Release issued by Canadian Heritage Minister James Moore on July 31, 2009, that was entitled **Government of Canada Renews Canada Music Fund and Increases Investment in Digital and International Market Development**. Backgrounder II to the Press Release stated:

Promoting and selling music online is essential to open markets for Canadian music.

Our music entrepreneurs and artists must ensure not only that their content is available digitally, but also that it is highly visible to aid its discovery among the wealth of content online.

No less than 53 percent of Canadian Internet users reported in 2008 that they could not easily find music by Canadian artists online.

16. Second, the appropriate metrics for measuring such content should be based on existing measurement metrics, including the number of musical works and audio-visual programs, and the total number of hours. There are several media measurement organizations such as Nielsen and comScore Media Metrix among others that can track the use of content on websites in Canada.
17. If appropriate metrics are not adopted and are not used to determine the extent of the availability and use of content on Canadian new media outlets, Canadians will not be in a position to know and understand how government laws and policies affect the marketplace.

Q2. WHAT ARE THE MOST APPROPRIATE METRICS FOR MONITORING THE AVAILABILITY OF NEW MEDIA BROADCASTING CONTENT? IN PARTICULAR, ADDRESS THE APPROPRIATENESS OF USING THE FOLLOWING METRICS FOR MONITORING AVAILABILITY OF NEW MEDIA BROADCASTING CONTENT:

- * THE NUMBER OF AUDIO AND AUDIO-VISUAL PROGRAMS OFFERED BY A NEW MEDIA BROADCASTING UNDERTAKING IN THE PAST YEAR; AND



* **THE TOTAL HOURS OF NEW MEDIA BROADCASTING CONTENT OFFERED BY A NEW MEDIA BROADCASTING UNDERTAKING IN THE PAST YEAR.**

18. As discussed in our response to Question 1, SOCAN believes that the Commission should measure the number of Canadian and foreign musical works offered and used, as well as the total hours of Canadian and foreign music offered and used. The prominence of the music's availability should also be measured. The same measurement should apply to audio-visual works that are made available on the Internet.

Q3. WHAT ARE THE MOST RELEVANT AND FEASIBLE METRICS FOR MEASURING THE AVAILABILITY OF CANADIAN CONTENT IN NEW MEDIA BROADCASTING? IN PARTICULAR, ADDRESS THE APPROPRIATENESS OF USING THE PERCENTAGE OF CANADIAN CONTENT, EITHER IN TERMS OF TOTAL NUMBER OF HOURS OR TOTAL NUMBER OF PROGRAMS, OFFERED ON NEW MEDIA PLATFORMS AS A POSSIBLE METRIC FOR MONITORING AVAILABILITY OF CANADIAN NEW MEDIA BROADCASTING CONTENT?

19. For audio programming, SOCAN submits that the Commission's current metrics should be used to monitor the availability of Canadian New Media broadcasting musical content. Similar metrics used for audio-visual programming might also be used in New Media and audio-visual content.
20. Two of the key components of the Commission's current audio programming policy are the content criteria and minimum thresholds included in the *Radio Regulations, 1986* (the "Radio Regulations").
21. Section 2.2 of the *Radio Regulations* provides that a musical selection must generally meet at least two of the criteria set out below in order to qualify as a Canadian selection. This is commonly referred to as the "MAPL" system, which includes the following elements:
- **M** (*music*) – *the music is composed entirely by a Canadian.*
 - **A** (*artist*) – *the music is, or the lyrics are, performed principally by a Canadian.*
 - **P** (*production*) – *the musical selection consists of a live performance that is*
 - *recorded wholly in Canada, or*
 - *performed wholly in Canada and broadcast live in Canada.*
 - **L** (*Lyrics*) – *the lyrics are entirely written by a Canadian.*



22. SOCAN submits that it is appropriate to use the percentage of Canadian musical content – both in terms of total number of hours and the total number of musical works offered on New Media – to monitor the availability of Canadian New Media broadcasting content.
23. In addition, musical content that is highly visible should be given greater weight than content that is not easily accessible.

Q4. TO UNDERSTAND WHETHER BROADCASTING IN THE NEW MEDIA ENVIRONMENT IS SERVING A COMPREHENSIVE RANGE OF INTERESTS AND TASTES, CONSISTENT WITH THE BROADCASTING POLICY SET OUT IN THE ACT, TO WHAT EXTENT IS IT APPROPRIATE TO CATEGORIZE CONTENT BASED ON THE FOLLOWING FIVE CHARACTERISTICS FOR THE PURPOSES OF REPORTING? WHAT ARE THE MOST APPROPRIATE METRICS FOR MEASURING THESE CHARACTERISTICS?

- **TYPE OF PROGRAMMING E.G.:**
 - * **ORIGINAL NEW MEDIA CONTENT**
 - * **CONTENT COMMON TO NEW MEDIA AND CONVENTIONAL BROADCASTING**
 - * **LIVE CONTENT**
 - * **ON-DEMAND CONTENT**
 - * **COMPLETE PROGRAM/CLIP**
 - **ORIGIN (E.G. CANADIAN/FOREIGN, INDEPENDENT/BROADCASTER-AFFILIATED/IN-HOUSE PRODUCTION);**
 - **GENRE;**
 - **ACCESSIBILITY (E.G. CAPTIONED AND/OR DESCRIBED); AND**
 - **LANGUAGE OF CONTENT.**
24. SOCAN agrees that the Commission should measure a broad range of interests and tastes, and that it is appropriate to categorize content based on the foregoing characteristics. These categories of content are as relevant in new media universe as they are in traditional media.
 25. Where possible, the Commission's current metrics for measuring the use and availability of audio and audio-visual Canadian Content should also be applied to New Media, including the MAPL rules of origin and musical categories.



- Q5. SHOULD CONFIDENTIALITY BE EXTENDED TO INFORMATION REGARDING ANY OF THE DATA WHICH PARTIES PROPOSE THE COMMISSION COLLECT IN QUESTIONS 1 THROUGH 4 ABOVE? IF SO, TO WHAT EXTENT SHOULD SUCH CONFIDENTIALITY BE EXTENDED?**
26. To promote transparency, and since the data to be collected is not commercially sensitive, confidentiality should not be extended to the information envisaged in Questions 1 through 4 above.
- Q6. CONSIDERING THE DYNAMIC NATURE OF THE NEW MEDIA ENVIRONMENT, WHAT IS THE APPROPRIATE FREQUENCY FOR REPORTING PURSUANT TO THE NEW MEDIA EXEMPTION ORDER? IN PARTICULAR, ADDRESS THE APPROPRIATENESS OF ANNUAL REPORTING, AS PROPOSED IN PARAGRAPH 14.**
27. To ensure a reasonable regulatory burden, SOCAN agrees that reporting by New Media broadcasting undertakings pursuant to the New Media Exemption Order should be carried out on an annual basis concurrent with the annual broadcasting survey.
28. SOCAN also supports the Commission's proposal that this annual reporting commence in the fall of 2010.
- Q7. SHOULD ALL AFFILIATED NEW MEDIA BROADCASTING UNDERTAKINGS BE SUBJECT TO REPORTING REQUIREMENTS? IF NOT, WHAT ARE THE APPROPRIATE CRITERIA AND METHODOLOGY FOR IDENTIFYING THOSE NEW MEDIA BROADCASTING UNDERTAKINGS AFFILIATED WITH A CONVENTIONAL BROADCASTING UNDERTAKING THAT OUGHT TO SUBMIT DATA?**
29. Since conventional broadcasting undertakings are already subject to reporting requirements, SOCAN submits that all of their affiliates should also be subject to such requirements.
- Q8. CONSIDERING THE POTENTIALLY LARGE NUMBER OF UNAFFILIATED NEW MEDIA BROADCASTING UNDERTAKINGS, WHAT CRITERIA AND METHODOLOGY SHOULD THE COMMISSION USE TO DEFINE THE SUBSET OF UNAFFILIATED NEW MEDIA BROADCASTING UNDERTAKINGS, CARRIED ON IN WHOLE OR IN PART IN CANADA, THAT SHOULD SUBMIT DATA? IN PARTICULAR, SHOULD THE SUBSET BE DEFINED BY LEVEL OF REVENUE, UNIQUE VISITORS, AND/OR THE AMOUNT OF CONTENT TRANSMITTED?**
30. SOCAN submits that unaffiliated New Media broadcasting undertakings carried on in whole or in part in Canada should report data to the Commission.



31. The key threshold should be the amount of content made available and transmitted to Canadians.

III. CONCLUSION

32. To ensure the Commission's five-year review of its New Media policy is based on the best information available, SOCAN submits that the foregoing information should be collected and placed in the public domain.
33. SOCAN thanks the Commission for this opportunity to provide input on this issue, which is very important to our members. We look forward to continuing to provide input on the Commission's New Media Canadian Content policies.

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Yours truly,

C. Paul Spurgeon

CPS/jb