

The persons set out in the following list have provided interventions/comments opposing:

- Request for CRTC emergency regulatory flexibility by the Canadian Association of Broadcasters, announced in Broadcasting Notice of Consultation 2020-336.

This is to confirm that:

1. the persons named on this list have requested that this applicant or party submit the attached interventions/comments on their behalf;
2. each person named on this list has been informed by the applicant or party that their name and intervention/comment will be posted on the Commission's website as part of the public record of this proceeding and that all information provided by this person becomes part of a publicly accessible file, including personal information such as full name, e-mail address, postal/street address, telephone and facsimile number(s) and any other personal information provided;
3. no person named on this list is requesting to appear at the hearing.

Jennifer Brown, on behalf of the Society of Composers, Authors and Music Publishers of Canada, on October 16, 2020.

List of supporting organizations:

Association des professionnels de l'édition musicale (APEM)

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Canadian Council of Music Industry Associations (CCMIA)

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Attention: Sean McManus, Chair
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Canadian Musical Reproduction Rights Agency (CMRRA)

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Attention: Paul Shaver, President
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Music Publishers Canada (MPC)

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Songwriters Association of Canada (SAC)

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Attention: Greg Johnston, President
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Screen Composers Guild of Canada (SCGC)

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

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

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Attention: Alexandre Alonso, Directeur général
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Submitted through the Intervention/Comment/Answer form

BACKGROUND

1. This intervention is in response to Broadcasting Notice of Consultation CRTC 2020-336.
2. The CRTC (the “**Commission**”) is requesting comments based on an application by the Canadian Association of Broadcasters (“**CAB**”) requesting regulatory relief for Canadian broadcasters from the effects of the COVID-19 pandemic.
3. In particular, the CAB proposal requests that the Commission deem all broadcasters to be in compliance in respect of their expenditure requirements for the 2019-2020 broadcast year. The expenditure requirements for the 2019-2020 broadcast year would not have to be carried forward or “made up” in any way. Regular expenditure requirements would resume for the 2020-2021 broadcast year.
4. In addition to the relief from expenditure requirements, the CAB has also requested the Commission provide flexibility for exhibition and other regulatory requirements for the 2019-2020 broadcast year. The CAB requests that the Commission refrain from auditing broadcasters’ locally reflective news and local programming requirements for the latter half of the 2019-2020 broadcast year.
5. The preliminary view of the Commission is that the “deemed compliance” approach requested by the CAB may not be the most appropriate, and that any flexibility for exhibition or other regulatory requirements must be able to be monitored by the Commission.
6. The Commission invited interventions to address the issues raised by the CAB proposal.

OPPOSITION TO CAB PROPOSAL

7. This intervention is filed on behalf of CCMIA, CMRRA, MPC, SAC, SCGC, SOCAN and supported by APEM and SPACQ (“**Creator and Music Publisher Organizations**”). Collectively, these organizations represent the perspectives of songwriter, composer and music publisher groups operating in both English and French Canada.
8. The Creator and Music Publisher Organizations oppose the CAB proposal that the Commission find licensed broadcasters, absent bad faith on their part, in “deemed compliance” for all conditions of licence and regulations related to the broadcast year 2019-2020, as well as confirm flexibility for exhibition-related and other conditions of licence subject to a “should resources permit” condition due to the impacts of COVID-19 on the broadcasting sector.
9. The Creator and Music Publisher Organizations fundamentally oppose the “deemed compliance” request that broadcasters be exempt from their expenditure requirements for the 2019-2020 broadcast year. We believe that this type of regulatory measure does not balance the needs of broadcasters with the elements of the music industry that depend on expenditures commitments like Canadian Content Development (“**CCD**”) to fund critical activities, and that granting the CAB’s request would result in unreasonable effects on the music industry ecosystem that depends on regulatory requirements like CCD.
10. We are against any flexibility on the exhibition-related conditions of licence (we assume the CAB request only focuses on local news or local programming conditions and not on the Canadian or musical content requirements of the *Radio Regulations*, 1986 SOR/86-

982, so are not commenting further) and make no comment at this time on the proposed changes to local management agreements.¹

11. The Creator and Music Publisher Organizations also note that the CAB proposal is overly broad and ill-defined. While at face value we can acknowledge that the COVID-19 pandemic has likely impacted revenues within the broadcasting system to some degree, without data on the nature of non-compliance anticipated for 2019-2020 in terms of both expenditure and exhibition requirements, it remains unclear how it could possibly be determined whether an instance of non-compliance was “absent bad faith”.
12. In addition, the “deemed compliance” request applies to all broadcasters – television and radio, the English market and the French market – despite operating in distinct regimes and without accounting for the differing effects of COVID-19 on individual broadcasters. While we are in agreement in principle that broadcasters (like much of the Canadian economy) are experiencing revenue losses as a result of COVID-19, we would also point out that the music industry ecosystem is also facing major challenges across all sectors of the value chain.

Q1. Does the CAB’s proposal align with the outcomes for this proceeding as set out above? If not, how could the CAB’s proposal be modified to better align with these outcomes?

13. The CAB’s proposal does not align with the outcomes identified by the Commission. The “deemed compliance” request would have an unreasonable affect on Canadian music creators and publishers that would not be proportional to the regulatory relief sought. In addition, by asking the Commission to deem broadcasters compliant (absent by bad faith), the proposal neglects the broadcaster’s responsibility to explain non-compliance and has shifted this responsibility to the Commission.
14. The importance of CCD to the music industry cannot be overstated. The goal of CCD, within the context of the *Broadcasting Act*, is to support the development and promotion of Canadian content. This funding supports the creation of new content and a wide variety of activities integral to the functioning of the sector, including showcases at music festivals, professional development and training, award shows, conferences as well as local, regional and national music initiatives. For creators and organizations engaging in these activities, COVID-19 may have shifted them towards virtual formats, and the sector has proven to be innovative and forward-thinking in the way that it has embraced the new digital environment. Thus, the importance of the activities that CCD funds have not diminished in importance due to COVID-19.
15. Second, the overall value of the funding to the ecosystem via CCD cannot be underestimated. In 2019-2020, Canada’s radio broadcasters provided \$16,334,075 to FACTOR through mandated CCD contributions². CCD funding is also distributed via Musicaction to the French-language market, as well as directly to national, provincial, and territorial music industry associations engaging in eligible activities. In short, this funding is significant to the broader music industry ecosystem.

¹ We recognize that the CRTC has recognized that the proposal regarding local management agreements (“LMAs”) would be better addressed in the commercial radio policy framework review (CRTC 2020-25), and any comment on LMAs from the Creator and Music Publisher Organizations will be through that proceeding.

² FACTOR Annual Report, 2019-2020, <https://factorwpmedia.blob.core.windows.net/wp-media/2020/08/20200921-FACTOR-Digital-Report-2.9.pdf>

16. In its proposal, the CAB recognizes that “CCD requirements represent a relatively low percentage of fixed radio expenditures”.³ CCD contributions for radio broadcasters in 2018 was \$43.7 million, compared to \$1.5 *billion* in revenues for private commercial radio stations.⁴
17. For CAB radio broadcasters, CCD contributions may amount to a rounding error but losing these funds has a devastating effect on the health of the music industry ecosystem. This is disproportionate to the relief the CAB is requesting.
18. Moreover, there is already flexibility for CCD contributions reflected in the formula for calculating the expenditures required by radio broadcasters. These funds are based on the previous years’ revenues, such that CCD contributions in a particularly bad broadcasting year are not decreased until the following broadcasting year. Conversely, in a particularly good broadcasting year, these benefits are not felt by music creators and publishers until the CCD contributions are increased in the next broadcasting year. We feel that this is already a sufficient amount of flexibility to account for the current situation.
19. The CAB proposal is essentially a “double-dipping” of relief – immediate relief for the 2019-2020 broadcasting year *plus* the additional relief obtained when the CCD expenditure requirements formula is applied based on the previous year’s revenues, sharply decreasing the amount payable for the 2020-2021 broadcasting year.
20. Additionally, the CAB proposal makes no mention of the immediate relief granted to broadcasters already by the federal government to waive Part I licence fees for the 2020-2021 broadcasting year. This is estimated to free up more than \$30 million for broadcasters.⁵
21. The Creator and Music Publisher Organizations acknowledge that this is an unprecedented time, and the economic effects of the COVID-19 global pandemic will be felt for years to come. We have no doubt that CAB’s members are suffering; our members are suffering too. The problem with the CAB’s proposal is that it ignores the symbiotic relationship between broadcasters and the music industry ecosystem. Unfortunately, providing the relief as set out in the CAB’s proposal *benefits* their members but disproportionately *harms* our members.
22. In short, the CAB proposal is unworkable. It sets a harmful precedent of asking creators and publishers to *subsidize* the operations of multi-billion-dollar companies that profit off the use of our works.

Q2. Does the CRTC approach align with the outcomes for this proceeding as set out above? Please explain. If not, how could this approach be modified to better meet the outcomes?

23. The Commission suggests that it may be more appropriate to adopt an approach, applicable to all broadcasters, by determining a broadcaster’s compliance with its regulatory obligations for the 2019-2020 broadcast year over a more protracted period of time.

³ Canadian Association of Broadcasters, “Re: Emergency application to address extraordinary impacts of COVID-19 on private broadcasters”, July 13, 2020, paragraph 50.

⁴ CRTC, “Communications Monitoring Report 2019 – Radio Sector”, section ii <
<https://crtc.gc.ca/eng/publications/reports/policyMonitoring/2019/cmr5.htm#a2>>.

⁵ <https://www.canada.ca/en/canadian-heritage/news/2020/03/covid-19-the-government-of-canada-provides-relief-to-the-broadcasting-sector.html>

24. The Creator and Music Publisher Organizations do not agree that this approach aligns with the outcomes identified by the Commission. We believe that the current formula for CCD allows sufficient room for flexibility, and that any additional regulatory relief would be unduly harmful.

Q3. Is this approach applicable equally to all expenditure- and exhibition-related requirements? If not, how should such requirements be treated?

25. The Creator and Music Publisher Organizations make no comment on the exhibition-related requirements, subject to the assumption in paragraph 10.

26. This approach would be applicable to all expenditure requirements.

Q4. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?

27. We do not believe regulatory relief is warranted at this time.

Q5. If the Commission were to adopt this approach, what period of time should be granted to broadcasters for meeting their regulatory obligations for the 2019-2020 broadcast year? Should these obligations be spread equally over a period of time or ramped up over time?

28. We do not believe regulatory relief is warranted at this time.

Q6. What possible regulatory relief or flexibility other than that requested by the CAB or proposed by the Commission could be granted to Canada's broadcasters and would align with the outcomes set out by the Commission? In proposing solutions, the following must be addressed:

- i. **What regulatory requirements should be subject to these proposed flexibilities?**
- ii. **To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?**
- iii. **For how long should any flexibilities provided by the Commission to Canada's broadcasters apply?**

29. We do not believe regulatory relief is warranted at this time.

30. Rather, we believe further regulations are required for foreign "over-the-top" online broadcasters who have thrived during the COVID pandemic. Not only would it be fair for these revenues to remain in Canada and contribute to the funding of Canadian content, these regulations are long overdue.⁶ Imposing these regulations would help level the playing field between the CAB's members and online broadcasters.

⁶ The Speech from the Throne on September 23, 2020 recognized that "Web giants have been taking Canadians' money while imposing their own priorities...the Government will act to ensure [Web giants] contribute to the creation, productions, and distribution of [Canadian content]." < <https://www.canada.ca/en/privy-council/campaigns/speech-throne/2020/stronger-resilient-canada.html>>

Q7. On which elements of any flexibility proposed in the context of this notice of consultation should the Commission require broadcasters to report? On which elements should they be required to publicly report?

31. We do not believe that any flexibility is warranted in this case.

32. Should the Commission allow for any flexibility, broadcasters must be required to report on the nature of their non-compliance with regards to expenditure and exhibition requirements, both to the Commission and to the public.

Q8. What form and frequency should such reporting take? Are additional measures beyond current reporting requirements (relating, for example, to annual returns and the program logs) necessary in regard to reporting on and monitoring compliance with the proposed approach?

33. The Creator and Music Publisher Organizations do not believe that additional measures beyond current reporting requirements are needed.

Q9. Are there any elements of this reporting for which broadcasters should be granted confidentiality?

34. The Creator and Music Publisher Organizations do not see any reason for the reporting to be granted confidentiality.

*****END OF DOCUMENT*****