



Canadian Independent Music Association

October 19, 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

BY THE CRTC FORM

Re: Broadcasting Notice of Consultation CRTC 2020-336: *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic*

Dear Mr. Claude Doucet:

1. Regarding Broadcasting Notice of Consultation (BNC) 2020-336, the Canadian Independent Music Association (CIMA) submits its comments on the application by the Canadian Association of Broadcasters (CAB) requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic.
2. CIMA is the not-for-profit national trade association representing the English language, Canadian-owned sector of the music industry.
3. Our membership comprises more than 300 Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the music, sound recording and music-related industries.
4. They are exclusively small businesses which include: record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.
5. It is on behalf of these Canadian-owned small businesses that CIMA is speaking and providing comments in regard to the CAB's request for regulatory relief for Canadian broadcasters.



Canadian Independent Music Association

6. From the outset, CIMA wishes to thank the CRTC for allowing the public to take part in this process.
7. CIMA will focus its comments strictly on the CAB's application and the Commission's inquiries as they relate to radio broadcasters.
8. Note that the position defended by CIMA in this intervention is supported by CIMA's sister organization representing the francophone independent music industry, l'ADISQ.
9. Similarly, CIMA supports the intervention submitted by l'ADISQ.

Background - Impact of COVID-19 on the Music Industry

10. The Canadian and global music industry is experiencing unprecedented upheaval and turmoil due to the COVID-19 pandemic with consequences that will be felt for years to come.
11. Tours, gigs and live events are cancelled and will likely not resume in earnest until sometime in 2021, due to physical distancing requirements, restrictions of large gatherings and the audience and performers' health and safety concerns. Many album/single releases have been cancelled or postponed. Studio recordings of new music have been postponed. Physical distribution of records has experienced a steep decline due to temporary and permanent store closures.
12. The scope of the devastation captured in surveys done by our industry is staggering. Companies are barely operating and surviving with record low to no revenues.
13. In a survey done by CIMA and other music industry associations in March 2019, respondents reported that staff layoffs have been seen across the industry, and more were expected with some companies stating they anticipate a need to lay off 75-100% of their employees. The livelihood of artists and musicians is at stake with over 88% of respondents anticipating reductions in their contracts or work activity and over 50% of respondents reporting that this represented between 50-100% of their income.
14. In a July 2019 survey done by CIMA and Music Publishers Canada, half of the respondents (52%) expected or were considering having to lay off staff before the end of the year. It's worth noting that this survey was done before we entered a second wave of the pandemic and have seen restrictions tighten once again, including closures of concert



Canadian Independent Music Association

venues, bars and restaurants in provinces that are major music markets in the country (i.e. Ontario, Quebec, British Columbia)

15. Currently, the livelihoods of artists and musicians are collapsing with the vast majority of self-employed artists experiencing major reductions in their contracts or work activity due to canceled tours, concerts and gigs. More than half report that these contracts represent between 50-100% of their income.
16. In the spring, the film and television business had all but ground to a halt, resulting in a decline in work for media composers and the opportunity for music placement in productions. In short, the vast majority of revenue sources in our industry have been significantly impacted temporarily or permanently and the ramifications of the pandemic will become direr as we enter the second wave of the COVID-19 pandemic.
17. Our country's ability to create, perform, own, and globally commercialize valuable intellectual property—music—is at severe risk. The Canadian music industry, and its supply chain, is in desperate need of robust financial support and flexibility in both funding and policy dedicated to supporting our industry as a result of the severe effects of the pandemic.
18. As the industry shifts from a crisis response to planning for stabilization and recovery, a strategic combination of financial support and policy tools is needed to ensure Canada's music industry infrastructure remains intact.
19. The industry was encouraged by the measures implemented by the federal government including the \$500 million COVID emergency fund dedicated to supporting arts, culture and sports sectors.
20. However, it is worth noting that of that \$500 million fund, only \$32.9 million went to support the Canadian music industry, with many companies receiving the minimum payout of only \$5,000. These short-term measures are greatly appreciated and provided some emergency support for the industry, but this was only a stop-gap measure.
21. According to a survey done by CIMA and Music Publishers Canada in July 2019 on long-term recovery relief for this industry, the majority of respondents (58%) reported that their company had not received any "top-up" funding through the Canada Music Fund (CMF) available through the Emergency Support Fund for Cultural, Heritage and Sport Organizations (Phase 1).



Canadian Independent Music Association

22. Of the respondents that did receive funding in Phase 1, some reported receiving only \$5,000 to support their business – an amount that is not sufficient to have a significant or long-lasting impact on a company’s ability to survive the effects of the pandemic.
23. 84% of respondents anticipated a decline in revenues over the next year. Of those, more than half anticipated a revenue loss of at least 50% (28% report a loss of 51%-75%, 22% reported a loss of 76%-100%).
24. The Canada Emergency Wage Subsidy (CEWS) helped many music companies retain their full-time staff; however, the music industry employs many self-employed contractors who simply do not qualify for the wage subsidies.
25. Unfortunately, we predict that the music industry will continue to suffer the effects of the COVID-19 pandemic for the two years; conversely, radio broadcasters seem to have seen advertising dollars improve in their first fiscal quarter beginning September 1.
26. The music industry will not be on a true road to full recovery until live events involving critical masses of people are permitted again and international touring and exporting activities resume, which by most conservative estimates will be well into 2021 or even into 2022.
27. Research shows that even as economies begin to slowly re-open, more Canadians expect to stay away from live music events long after physical distancing restrictions are lifted. According to a national public opinion survey commissioned by Music Canada at the end of April, even Canadians who regularly attended live music events before the pandemic, 55% said that they will wait at least 6 months or longer to attend a music festival after physical restrictions end – and for large concert venues, it was 60 per cent.¹
28. Perceptions of risk for attending these types of events are rising over time – instead of declining. The findings ultimately point to the prolonged threat faced by the live music industry.
29. Even if they are allowed to return, many Canadians, including those who love live music the most and miss being able to attend such events, won’t feel comfortable attending until there is a vaccine or their risk of infection is substantially lower.²

¹ Live Music Industry Faces Triple Threat During Recovery <https://abacusdata.ca/live-music-threat-pandemic-music-canada/>

² Ibid.



Canadian Independent Music Association

30. Once restrictions are lifted and the public is ready to attend concerts, the independent music sector faces a new set of challenges. As concert venues continue to close due to the effects of the pandemic, competition for booking a spot at venues that are still in operation will be difficult. This is particularly true for emerging Canadian independent artists and the teams who support them – a community we represent, and which rely on radio's CCD dollars as an investment.
31. There's going to be limited opportunities for independent and emerging artists to get fully on their feet, particularly if live music venues do not survive the pandemic. In fact, we are already seeing many venues across Canada close their doors permanently.
32. These music venues serve as important incubators for these emerging artists, as it is there where musicians grow their artistry and their fanbase.

PROPOSED OUTCOMES (THE CAB'S PROPOSAL)

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?

33. More than ever, the Canadian music industry and its supply chain needs robust financial support in order to survive the profound effects the pandemic is wreaking on our community.
34. As you are aware, Canada's independent music industry – record labels, publishers, managers and of course our artists – rely on Canadian Content Development (CCD) funding in order to produce, market and promote their music.
35. Not-for-profit trade organizations such as CIMA also rely on CCD funding to underwrite important services and programming that directly benefit the artist community. Significant reductions or eliminations in CCD funding, at a time when music industry revenues are gutted by the fallout of the pandemic, is a substantial blow to the Canadian music community when it is at its most vulnerable.
36. CIMA and its members are acutely aware that the economic restrictions imposed on the broader business community as a result of COVID-19 are hitting all of us hard, including Canada's private radio broadcasters.



Canadian Independent Music Association

37. However, as noted in the previous section, CIMA submits that the music industry was one of the first to experience dramatic losses resulting from the pandemic and will be one of the very last to recover.
38. As stated in BNC 2020-336, the Commission believes that any potential regulatory relief must ensure that:
- *the viability of the Canadian broadcasting sector, insofar as it has been affected by the COVID-19 pandemic, is not further harmed as a result of the regulatory relief proposed;*
 - *parties that currently benefit from the requirements imposed by the Commission on broadcasters are not unreasonably affected by any potential regulatory relief; (CIMA's emphasis)*
 - *when viewed as a whole, current news and information programming and the service such programming provides to Canadians is maintained; and*
 - *any resulting regulatory action granting potential relief is minimally administratively burdensome on those entities seeking relief but is easily monitored and supervised by the Commission in order to ensure appropriate accountability.*³
39. CIMA agrees with the Commission's preliminary view that "deemed compliance' for all broadcasters, as proposed by the CAB, may not be the appropriate approach, as it is not convinced that the CAB's proposal meets the above-mentioned outcomes against which the application should be measured."⁴ (CIMA's emphasis)
40. CIMA opposes the CAB's request that states:
- "First, under CAB's proposed 'deemed compliance' policy, absent evidence of bad faith, licensees would be deemed compliant with their expenditure based conditions of licence and applicable regulations for the 2019-2020 broadcast year, meaning:*
- *Licensees would be considered in compliance with their conditions of licence and applicable regulations for the 2019-2020 broadcast year regardless of actual expenditure levels; and*

³ CRTC, Broadcasting Notice of Consultation CRTC 2020-336, September 17, 2020, paragraph 23:
<https://crtc.gc.ca/eng/archive/2020/2020-336.htm>

⁴ Ibid. paragraph 25



Canadian Independent Music Association

- *The Commission would not require any shortfalls or under-expenditures resulting from this broadcast year (2019-2020) to be carried forward or “made up” in any way.* ⁵

41. We respectfully ask the Commission not to allow Canada’s private radio broadcasters to walk away from their CCD obligations for broadcasting year 2019-2020, including as they relate to the tangible benefits contributions they are required to make as a condition of their broadcast license.
42. Doing so would without a doubt “unreasonably affect” the Canadian independent music community only as it would shift the broadcasters’ challenges onto an already vulnerable small business community. It would serve to make the pain inflicted by this pandemic all the more acute on our sector, which is comprised of thousands of vulnerable artists and hundreds of small business owners, almost half of which are sole proprietors.
43. 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 contributions⁶. 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.
44. CIMA believes, as a not-for-profit organization that budgets for and relies on CCD dollars to deliver quality programming directly to our members and their artists (especially during this global pandemic when our revenues are in jeopardy) is not justified nor is it sustainable for us as an organization. And it will be no less so for our members and the broader music industry if CCD support were to be forgiven now and for the foreseeable future.
45. Our industry is truly struggling to survive right now and will continue to be severely affected by the COVID-19 pandemic over the next year or two. We must collectively, at the very least, **sustain** current levels of investments in the many artists telling Canadian stories from diverse perspectives, some of whom would not otherwise see support from radio broadcasters outside of CCD, given the nature of their play-hits-to-sell-ads structure.

⁵ Canadian Association of Broadcasters, “Re: Emergency application to address extraordinary impacts of COVID-19 on private broadcasters”, July 13, 2020, paragraph 22.

⁶ FACTOR Annual Report, 2019-2020, <https://factorwpmmedia.blob.core.windows.net/wp-media/2020/08/20200921-FACTOR-Digital-Report-2.9.pdf>



Canadian Independent Music Association

46. This is not the time to reduce investment in music; the news cycle shows it is time to give more voice to creators, whether through platforms or financial contributions. As an industry, it is our duty to lead these charges.
47. Radio broadcasters have the power and ability to help shape the musical Canadian narrative; it behooves them to at least continue supporting the creation and promotion of truly Canadian content that reflects the very people from whom they have the privilege of potentially earning their revenues.
48. Furthermore, these CCD requirements are based on a percentage of the previous year's revenues and are already subject to year-over-year flexibilities that permit the carrying over of under-expenditures into subsequent broadcast years. Clearly, the policy regulating CCD contributions is built to be a flexible payment system that floats with fluctuating revenues so that the requirements remain fair and don't become too burdensome for the licensees.
49. CCD contributions are integral to Canada's cultural policy framework. They ensure that much needed capital exists to keep the Canadian cultural sector vital, growing, and representative of diverse voices.
50. Accordingly, any amendment that would impact previously agreed upon CCD contributions must be scrutinized with great care.
51. The operative question is: would it support the mandate of the CRTC and the Broadcasting Act to temporarily decrease or eliminate conditions of licence that require the licensee to make contributions to CCD? If not, then the terms of the 2020-336 application cannot be accepted.
52. Eliminating the licensee's CCD responsibilities during a time of crisis for the music industry can only be seen as harmful to the Canadian music industry.

COMMISSION'S PRELIMINARY VIEW ON THE CAB'S PROPOSAL

Q2. Does the 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?



Canadian Independent Music Association

53. CIMA opposes an approach that would determine a broadcaster's compliance with its regulatory obligations for the 2019-2020 broadcast year based on whether they fulfil their financial obligations over a more protracted period of time.
54. Allowing financial requirements to be protracted over a year or more would not align with the outcomes for this proceeding as set out by the Commission, specifically as it relates to the impact it would have on parties that currently benefit from CCD requirements.
55. CIMA is of the opinion that the required flexibility broadcasters are seeking is already built into the system as CCD contributions are based on a percentage of revenues, and not a fixed fee per year.
56. As the CAB reports a significant impact on the advertising revenues of Canadian broadcasters, particularly during the third quarter of the 2019-2020 broadcast year, we believe that the current CCD policies accounts for these types of changes in revenue and that further relief measures should not be considered.
57. We ask the Commission not to entertain greater flexibility than broadcasters currently enjoy, as our membership is equally in a time of need and relies on the inflow of these dollars to stabilize their businesses during the COVID-19 pandemic and continue to invest and support their artists.
58. Between July 7-24, CIMA and Music Publishers Canada surveyed Canada's music companies to evaluate the impacts of COVID-19 and to understand the projected impact of the pandemic over the next year. Our survey found that 84% of respondents expected a decline in their revenues over the next year, with almost 30% projecting losses of half or three-quarters of their revenues.
59. As previously stated, this is a "make or break" time for the music industry. Many businesses in our community may not survive the next six months to a year without sustainable funding. A delay in CCD contributions may be the deciding factor in their success.
60. The same can simply not be said for radio broadcasters as they are already on the road to recovery, meaning they are well positioned to absorb the allocation of 0.5% of their previous year's annual revenues to aid in the development and promotion of Canadian musical content through their mandated contributions.



Canadian Independent Music Association

61. In the same survey, respondents whose company benefited from radio broadcasters' CCD contributions were asked how important this funding is to the growth and development of their company and artists, the majority (57%) said it would be "important" to "crucial".
62. CIMA strongly believes that radio broadcasters have already received significant support when the federal government waived \$30 million in Part I licence fees for the 2020-2021 fiscal year to the CRTC in March.
63. Relieving broadcasters of their CCD obligations, after \$30 million of CRTC fees were waived, will have deep and lasting impacts to the broader music industry in Canada.
64. The music industry is fighting for its life because of this pandemic; any more loss in its support will only serve to hasten the demise of a significant number of music companies across its ecosystem, and the decline of our valued artist community.

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

65. In the CAB's application to the Commission, the applicant does not explicitly mention whether or not tangible benefits requirements are included in their request for the forgiveness of CCD obligations for broadcasting year 2019-2020.
66. Contributions of tangible benefits occur in the case of ownership transactions resulting in a change in effective control and require the purchaser to make annual contributions equivalent to 6% of the value of the transaction, over seven consecutive years beginning the same year of the purchase. These contributions must include funding to Radio Starmaker, Radiostar, FACTOR or Musicaction, and the CRFC. Stations may also choose to contribute to other eligible initiatives.
67. CIMA strongly opposes any consideration of alleviating tangible benefit requirements for licensees for broadcasting year 2019-2020 or in any subsequent years.
68. Of the 6% of the value of the transaction dedicated to CCD, the acquiring party can direct 1.5% of the amount of the contribution to FACTOR, or FACTOR's French-language counterpart Musicaction.



Canadian Independent Music Association

69. As these transactions become rarer and current tangible benefit payments are approaching the last few years of funding, the industry is already bracing itself for a financial hit as can be seen in FACTOR's projected tangible benefits below:

- 2020-2021: \$9.2M ⁷
- 2021-2022: \$7 M
- 2022-2023: \$6.3M
- 2023-2024: \$1.97M

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?

70. CIMA opposes the granting of any delays for radio broadcasters to meet their regulatory obligations for the 2019-2020 broadcasting year.

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:

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

71. In its submission, the CAB stated that broadcasters had difficulties understanding how to treat the discretionary portion of mandated CCD expenditures due to canceled and rescheduled events:

"Mandated CCD expenditures go exclusively to third parties and much of the discretionary portion of this funding can be heavily oriented towards the summer months and latter half of the broadcast year. Moreover, in addition to generally greater radio revenue losses, events and concerts that would have otherwise received CCD

⁷ This amount includes funding from television broadcasters for music programming which will expire in 2022.



Canadian Independent Music Association

monies have been cancelled (many with advances having been paid). The ongoing nature of the crisis has left the rescheduling of events in doubt, and as a result, broadcasters are uncertain how to treat their CCD requirements.”⁸

72. We would like to remind the applicant that there are existing organizations that the Commission considers eligible under the CCD that provide direct services and programming to the industry that are not affected by canceled events.
73. The Commission considers that the parties and activities below are eligible for funding under the CCD for their consideration:
- National, provincial, and territorial music industry associations (MIAs);
 - Schools and educational institutions that are (1) accredited by provincial authorities; and (2) benefit students of music and journalism by way of (a) scholarships or (b) the purchase of musical instruments;
 - Initiatives, including talent contests, for the production and promotion of Canadian local music and local musical artists, particularly emerging artists.
 - Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast
 - Audio content initiatives further advancing the fulfillment of specific objectives of the Canadian broadcasting system as outlined in *the Act* such as the CRFC, Indigenous radio and other specialized audio broadcasting services dedicated to the particular needs and interests of children, Aboriginal peoples, and persons with disabilities⁹
74. If the applicant believes that this process is too burdensome to maneuver given the ongoing changes and cancellations in the industry, CIMA would suggest that flexibility could be granted to broadcasters that would allow them to direct these funds towards FACTOR and Musicaction, which would simplify the process.

REPORTING AND COMPLIANCE MONITORING

⁸ Canadian Association of Broadcasters, “Re: Emergency application to address extraordinary impacts of COVID-19 on private broadcasters”, July 13, 2020, paragraph 39.

⁹ *Canadian Content Development Contributions and Eligible Initiatives:*
<https://crtc.gc.ca/eng/general/ccdparties.htm>



Canadian Independent Music Association

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?

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?

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

75. In order for this process to be transparent, equitable and authentic, radio broadcasters should continue to be obligated to report as they are required to do under current regulations.
76. They must report to the CRTC and the public the type and amount of non-compliance on spending obligations in the 2019-2020 broadcast year.
77. Should the Commission adopt an approach that would allow for protracted payments of the required contributions, we ask that radio broadcasters continue to report on a specified basis until they have remedied the non-compliance.
78. Also, we oppose the CAB's request that the Commission deem radio broadcasters in compliance "absent any bad faith" as this would be very challenging to prove. We suggest that the onus to explain non-compliance remains with radio broadcasters.
79. Lastly, in its application to the Commission, the CAB claims to only be requesting that their proposed relief measures be applicable for the 2019-2020 broadcasting year, however, this request comes with an important caveat captured in the footnote below:

"This would be subject only to the 2020-2021 broadcast year being no worse for licensees in revenue terms than the 2019-2020 broadcast year, and normal evolution of regulatory policy."¹⁰

¹⁰ Canadian Association of Broadcasters, "Re: Emergency application to address extraordinary impacts of COVID-19 on private broadcasters", July 13, 2020. Footnote 13



Canadian Independent Music Association

80. CIMA believes that non-compliance with spending obligations in the 2020-2021 broadcast year must be strongly discouraged.
81. Additionally, we ask that consideration of any application requesting relief measures for broadcasting year 2020-2021 by the CAB be done in the context of a notice of consultation so that relevant stakeholders may participate in the discussion.

CONCLUSION

82. The music industry is fighting for its life because of this pandemic; any more loss in its support will only serve to hasten the demise of a significant number of music companies and the decline of our valued artist community.
83. In an era where the independent music community will continue to experience depressed revenues for a significant period of time, we believe that the continuance of current levels of CCD funding are crucial in the development emerging artists and the independent music companies who support them.
84. Therefore, the music industry's need for stability and continued funding is going to be greater over the next two years than radio-broadcasters' needs to cut back or delay their regulatory obligations, including CCD.
85. We thank the Commission for its time and consideration of this very important matter.
86. A copy of this intervention has been sent to the applicant.
87. All correspondence can be sent by email to Stuart Johnston at stuart@cimamusic.ca

Yours sincerely,

Stuart Johnston
President
Canadian Independent Music Association

End of Document