



MUSIC MANAGERS FORUM CANADA

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:

Music Managers Forum Canada (MMF Canada) is a non-profit trade association representing both French and English managers and self-managed artists across Canada. We offer education, networking and advocacy on behalf of our members, their artists, and the wider Canadian music community. Our membership comprises 147 members and associate members. All members are small business owners.

We thank the CRTC for allowing us to take part in this process.

BACKGROUND

1. This intervention is in response to the 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.

Impact of COVID-19 on the Music Industry

7. The music industry is experiencing unprecedented upheaval due to the impact of COVID-19.

8. Artists and managers experienced a drop up to 90% of their income due to the government mandated closure of all live music venues and public gatherings as well as international travel. Live music performances are not expected to begin the path to recovery until Fall 2021.

9. 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, vastly impacting the income of artists and managers. 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 more dire as we enter the second wave of the COVID-19 pandemic.

10. Our country's ability to create, perform, own, and globally commercialize valuable intellectual property, music, is at risk. The Canadian music industry and its supply chain are 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 economic effects of the pandemic.

11. 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.

12. However, 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.

13. Once restrictions are lifted and the public are 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 venues that are still in operation will be difficult, additionally, public comfort levels for attending events will be negatively affected. 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.

14. 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.

15. These music venues serve as important incubators for these emerging artists, as it is there where musicians grow their artistry and their fanbase.

OPPOSITION TO CAB PROPOSAL

16. MMF Canada opposes 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.

17. MMF Canada opposes 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.

18. MMF Canada 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, and are not commenting further) and have no comment at this time on the proposed changes to local management agreements.

19. The CAB proposal is loosely based 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”.

20. 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?

21. The “deemed compliance” request would have an unreasonable effect 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.

22. CCD is indispensable to the music industry, with their objective to support the development and promotion of Canadian content. This funding supports creation of new content, export and marketing through training, development, showcasing, conferences and many other initiatives. The importance of CCD funds has not diminished due to COVID-19. The industry has pivoted to virtual methods to continue this work in innovative ways.

23. The overall value of funding via CCD to the industry is paramount. This is distributed via FACTOR and Musicaction to artists, managers, record labels, publishers as well as to national and provincial music industry associations (such as MMF Canada) and is essential to the ecosystem.

24. In its proposal, the CAB recognizes that “CCD requirements represent a relatively low percentage of fixed radio expenditures”. CCD contributions for radio broadcasters in 2018 was \$43.7 million, compared to \$1.5 billion in revenues for private commercial radio stations. Losing these funds would devastate the music industry, in a manner that is far disproportionate to the relief the CAB is requesting.

25. There is already flexibility for CCD contributions reflected in the formula for calculating the expenditures required by radio broadcasters which we believe is a sufficient amount to account for the current situation.

26. The CAB proposal is asking for additional relief for the 2019-2020 year plus further relief when the CCD expenditure formula is applied based on previous year’s revenue.

27. The proposal does not mention the relief previously granted to broadcasters to waive Part 1 license fees for the 2020-2021 broadcast year.

28. The proposal does not respect or acknowledge the symbiotic relationship between broadcasters and the music industry. While it benefits their constituents, it harms ours.

29. The proposal will set a precedent of asking the music industry to subsidize the operations of multi-billion dollar companies that profit from the intellectual property of hardworking artists, musicians & producers.

30. We respectfully ask the Commission not to allow Canada's private radio broadcasters to neglect their CCD obligations for broadcasting year 2019-2020, as they relate to the tangible benefits contributions they are required to make as a condition of their broadcast license.

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?

31. MMF Canada does 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.

32. 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.

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

33. No comment on exhibition-related requirements. 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?

34. 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?

35. We do not believe regulatory relief is warranted at this time. MMF Canada opposes the granting of any delays 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:

- 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?**

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

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?

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

38. We do not believe that additional measures beyond current reporting requirements are needed.

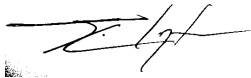
Q9. Are there any elements of this reporting for which broadcasters should be granted confidentiality?

39. No, the process should be transparent.

Yours Sincerely,



Helen Britton
President, Music Managers Forum Canada



Jermayne Clayton
Government Relations, Music Managers Forum Canada