



Sent via CRTC Submission Form

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

Dear Mr. Doucet:

Re: Final Reply comments of the Canadian Association of Broadcasters with respect to Broadcasting Notices of Consultation CRTC 2023-139 and 2023-140

1. As the representative of small, medium and large Canadian owned and controlled private radio and television stations and discretionary services, both independent and vertically integrated, including certain services subject to 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to file these final reply comments with respect to the above two Notices of Consultation.
2. In contrast to the hyperbole put forward by some intervenors, the CAB fully supports the Commission's objective to create a public registry of online services which will include certain basic information about those undertakings. We also fully support the Commission's objective of finding a balance by exempting certain online undertakings from the obligation to register and the base conditions of service – particularly smaller or nascent services – limiting a potential administrative burden for services that are unlikely to be able to contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act* (the Act).
3. The CAB is also satisfied that the threshold established for registration will not dictate the threshold(s) eventually established for the purposes of the contribution regime that is the subject of a separate notice of consultation. Indeed, as many parties have suggested, there is value in establishing a lower threshold for registration than for contribution, to permit the Commission to monitor services as they grow and become more important in the Canadian broadcasting system.

Apply the threshold to undertakings, not groups

4. The Commission's stated intent to create a registry to permit it to "(1) keep track of online undertakings operating in Canada, and (2) collect the most basic information from these undertakings" also supports the CAB's recommendation that the thresholds for registration (and base conditions of service) should be applied at the level of undertakings and not groups. To the extent that the Commission wishes to compile a list of online undertakings that have revenues above a certain threshold, it is not necessary (and is arguably unfair) to capture online undertakings affiliated with broadcasting undertakings that earn revenue below that threshold.
5. We note that some parties opposed this proposal in reply, arguing that a group-based approach better takes into consideration the multiplatform distribution of content and operational and programming synergies that exist within broadcast groups. The CAB acknowledges that these may be considerations when it comes time to design the type of flexibility in meeting contribution requirements but continues to believe that they are not relevant to the creation of a registry of online undertakings.

Adopt a "just right" threshold

6. The CAB notes that in reply, recommendations regarding the appropriate level of the threshold for registration continue to vary, with recommendations ranging from "too low" (\$0) to "too high" (\$100 million). We continue to believe that a threshold of \$20 million is "just right." It will ensure that the Commission has the information it needs to identify those online undertakings most likely to contribute in a material manner to the objectives of the broadcasting policy for Canada. As we argued in our initial submission, the largest online undertakings – Netflix, Disney+, Spotify – all have revenues exponentially higher than the \$10 million threshold proposed by the Commission. Further, as online undertaking revenues grow, \$10 million will quickly seem out of date, capturing services that will not make a material contribution to the system.

Maintain "light" information requirements

7. The CAB agrees with those parties that argued in favour of minimally intrusive information requirements and base conditions. However, as requested by some parties, the Commission may wish to add additional specificity with respect to the description of service to be provided under 2(e) of the proposed *Online Undertakings Registration Regulations* – namely, whether the service is audio or video (or both), and the languages in which it operates. However, we disagree with those that recommend that the registration return include information on revenue, audience, or subscription levels. This is information that the Commission collects under other mechanisms, subject to appropriate considerations with respect to confidentiality, as currently set out for the Annual Digital Media Survey.²

¹ Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations, Broadcasting Notice of Consultation 2023-139, para. 7.

² As set out in Broadcasting Regulatory Policy CRTC [2022-47](#) and Broadcasting Decision CRTC [2023-34](#).

Avoid expanding the classes of exemption

8. Like many intervenors, we are concerned about the proposals of certain parties to exclude broad categories of services or activities that ought to be subject to Commission oversight and, ultimately, to the extent that their contribution will be material, subject to obligations to contribute to the Canadian broadcasting system commensurate with the value they draw from it. Therefore, the CAB urges the Commission to resist attempts to broaden the classes of exempt undertakings – as noted by IBG:

"social media services" – section 4.1(2) of the Act includes such services to the extent that they include programs uploaded by the service provider or an affiliate. This is meant to capture significant online undertakings that function in largely the same manner as other online undertakings. This could, in fact, capture some of the largest online undertakings operating in Canada today.

"services that aggregate third-party content"³ – Section 3(1)(q) of the Broadcasting Act includes critical broadcasting policy objectives in the Act that relate specifically to "online undertakings that provide the programming services of other broadcasting undertakings". Numerous other objectives and powers of the Commission could be exercised only in relation to service aggregators – which are poised to become the BDUs of the future. It would be most unwise and irrational to exclude such undertakings – and the request that the Commission do so betrays a lack of understanding of broadcasting regulation and policy in Canada.

9. The CAB also opposes recommendations – like MPA-Canada's and HAYU's – to exempt services that offer "thematic" content or podcasts. Thematic and ad-support programming services and services with podcasting content all compete directly with television and radio services for content, audiences and advertising. It would make no sense to exempt them from the Commission's oversight.
10. As noted by Rogers with respect to podcasts in particular:

Rogers submits there is no policy rationale justifying the proposed exemption of online undertakings with respect to podcasting content. Podcasts directly compete with radio (both traditional and online), sometimes with the very same programs. Failing to capture these types of online undertakings under the new framework, while continuing to regulate other broadcasting undertakings offering news, talk and information programming via traditional audio mediums, would be harmful to competition and consumer choice.

³ See submission of Amazon at paragraph 19. The definition proposed by Amazon would exclude dominant distribution platforms offering access to content from third-party providers – that are functionally similar to BDU platforms.

11. The record also demonstrates significant concern about the Commission's proposal to exempt "online undertakings whose single activity and purpose consists of providing unique transactions." The CAB reiterates that like undertakings need to be regulated in a like manner. As a result, transactional VOD, regardless of whether it is distributed by a BDU over a managed network or delivered over the Internet, should either be regulated or not regulated. The mode of delivery – online or via a broadcast distribution undertaking (BDU) – is not a distinguishing factor.

Exempt online news services

12. Unlike IBG, however, the CAB continues to believe that the Commission should exempt online news undertakings. The impetus for our recommendation is not to remove those services from the ambit of the Commission, or to exclude them from the contribution regime, but to ensure fairness and consistency, and to remove burden from the Commission in determining at what point a service becomes "predominantly text." In any event, the content of broadcasters' news sites is almost entirely composed of content created for their linear channels, which are already subject to the Commission's oversight (unlike the broad categories of services or activities that some interveners are advocating for, as noted above), including adhering to codes of conduct. Further, they already contribute in meaningful ways to the objectives of the broadcasting policy set out in the Act. And, as stated by Corus:

Unambiguously exempting all news websites is also important for competitiveness reasons. Online news sites associated with licensed news broadcasters now compete with those of print publications and international media organizations. These outlets all vie for the same Canadian web traffic, target advertising to the same users with Canadian IP addresses and feature similar content offerings. As we do not believe it is the Commission's intention regulate news websites like theglobeandmail.com, nationalpost.com, CNN.com, and BBC.com, it should maintain a level playing field for news sites associated with Canadian broadcast news organizations.

Avoid amendments to the definition of "annual revenues" that would create asymmetry with other types of broadcasting undertakings

13. As we highlighted in our reply comments, the Commission must approach with caution any proposed amendments to the definition of "annual revenues" and "broadcasting activities" to ensure that these amendments do not, intentionally or not, remove revenue that should be considered by the Commission in its eventual contribution regime, or create further regulatory asymmetry with respect to how the contributions of broadcasting undertakings will be calculated.

Apply undue preference to all online undertakings

14. The "just trust us" responses of foreign online undertakings demonstrate that the Commission must apply undue preference provisions (including the requirement to make content available over the Internet) to all online undertakings and not just those with

revenues above a certain threshold to ensure that there is oversight and recourse if ever an undertaking, regardless of size, were to confer an *undue* preference or disadvantage.

15. Applying the prohibition more broadly will ensure some degree of supervision over smaller online undertakings – for example, niche services serving ethnic and third-language audiences, which despite lower revenues still compete with Canadian services for content, subscribers and, in some cases, advertising – and will be more consistent with how the Commission applies rules of this nature to other industry players.
16. While the foreign services have expressed concern about possible ‘regulatory uncertainty,’ the Commission has a well established, open and transparent process for dealing with such claims.
17. And finally, while the CAB does not fully understand PIAC’s reply comments, we nevertheless wish to confirm that far from trying to create a “walled garden”, the CAB applauds the CRTC’s efforts to introduce a fair and equitable regime that recognizes there are no walls. We simply repeat that extending undue preference provisions to all online providers – and not just those above the threshold for registration –ensures that the Commission will have a degree of oversight if ever smaller online undertakings should engage in unduly preferential or disadvantageous activities. The CAB reiterates its comments about the appropriate method for imposing the undue preference provisions, as set out in its initial comments.
18. All of which is respectfully submitted.

Yours sincerely,



Kevin Desjardins
President
Canadian Association of Broadcasters

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