



# Toward a fair, equitable and sustainable broadcasting framework

FINAL COMMENTS  
of the  
Canadian Association of Broadcasters  
with respect to

*The Path Forward – Working towards a modernized  
regulatory framework regarding contributions to support  
Canadian and Indigenous Content*

Broadcasting Notice of Consultation CRTC 2023-138

15 February 2024

As the national voice of small, medium and large, Canadian privately-owned and controlled radio, television and discretionary broadcasters, both independent and vertically integrated, including services operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its final comments on *The Path Forward*, Broadcasting Notice of Consultation CRTC 2023-138, the Commission's call for comments on a modernized regulatory framework.<sup>1</sup>

1. The Commission has identified the central purpose of this proceeding as being about designing a modernized regulatory framework that supports Canadian and Indigenous content, through a multi-step consultation process starting with an initial base contribution requirement.
2. The CAB believes that the best way to support Canadian and Indigenous content, as well as the numerous important diversity and other public policy objectives set out in the *Broadcasting Act* (the Act) and the Policy Direction<sup>2</sup>, is twofold:
  - First, we need to support healthy, viable Canadian owned and controlled broadcasting businesses, and
  - Second, we need a robust and stable funding regime.
3. How do we get there?
4. We get there by leveling the playing field, reducing the regulatory and administrative burdens that currently apply to Canadian broadcasters, and by immediately seeking initial base contributions from foreign players commensurate with what they are earning from the Canadian broadcasting system.
5. According to the Commission's own data, foreign online broadcasting services earned over \$4 billion dollars in Canada last year with no specific obligations to contribute back to the Canadian broadcasting system.<sup>3</sup>
6. It is long past time for the system to be recalibrated, to bring foreign streaming services into the regulatory fold and ensure they make meaningful and equitable contributions to the Canadian broadcasting system, at levels comparable to Canadian broadcasters' level of commitment.

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<sup>1</sup> *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, Broadcasting Notice of Consultation CRTC [2023-138](#), 28 June 2023.

<sup>2</sup> *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*: SOR/2023-239, 9 November 2023.

<sup>3</sup> Table 4 of the Commission's open data set Data – Broadcasting Sector shows estimates from Omdia that Netflix, Amazon Prime Video, YouTube and iTunes alone earned \$3.89 billion.

7. We heard a great deal over the course of this proceeding about the ways in which foreign streamers already contribute, though they seemed unable or unwilling to quantify those contributions, referred primarily to non-Canadian foreign service location production, emphasized the value of unquantifiable ‘partnerships’, and identified a range of activities that have never counted as Canadian expenditures before.
8. The ultimate objective of this exercise must be that foreign online undertakings contribute equitably, directly and measurably to the objectives of Canadian broadcasting policy. The Commission must stand firm in the face of the unwillingness of these global giants to respond in any meaningful way to the Commission’s Step 1 questions about the establishment of an initial base contribution requirement.
9. To that end, here are *our* answers to your Step 1 questions:
  - The Commission should absolutely impose initial base contribution requirements on large standalone online undertakings, i.e., those not affiliated with a Canadian broadcasting undertaking. We have proposed an initial threshold of \$50 million (applied on an *undertaking* basis) which will capture the largest undertakings – those having the most significant impact on the market and the ones most able to contribute.
  - We also believe their contributions must start flowing as soon as possible, with a regime in place by the start of the next broadcast year, 1 September 2024, at the latest.
  - Initial financial contribution levels should be set by activity<sup>4</sup> and be equitable in comparison to the obligations of similar Canadian broadcasting businesses – we recommend contribution levels of 20%<sup>5</sup> for direct-to-consumer programming activities, 5% for distribution activities, and 4% for online audio activities.
  - These contributions should be directed primarily to existing Canadian funds or existing administrators of funds to ensure timely and efficient distribution, immediately filling important gaps in the broadcasting system, gaps largely caused by foreign online undertakings’ massive disruption of Canadian subscriber and advertising revenues.
  - We recommend the following allocations:
    - **No less than 30%** to support the production of news and information programming by private radio and television broadcasters – this funding can be distributed by the CAB as the administrator of the current Independent Local News Fund. We proposed a model for the new fund in our response to the Commission’s Requests for Information.

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<sup>4</sup> The Act itself distinguishes services along these lines, speaking in several places of the exercise of “programming control” which is akin to the activities of programming undertakings and setting out certain objectives for distribution activities in section 3(1)(q), speaking of online undertakings that provide the programming services of other broadcasting undertakings, akin to BDUs.

<sup>5</sup> Which is reflective of the 10-year average combined contributions of Canadian television and distribution undertakings.

- In recognition of the “For us, by us” principle – **5%** to support Indigenous programming and producers, and the production activities of Canadians from Black or other racialized communities, Canadians of diverse ethnocultural backgrounds, or other equity seeking groups including producers with disabilities and producers who self-identify as 2SLGBTQI+;
  - In the short term, these funds should go to the Indigenous Screen Office (ISO), Black Screen Office (BSO) and the Canadian Independent Screen Fund for BPOC Creators, and if recognized by the Commission, a specific Indigenous music fund or program.
  - **At least 5%** should be allocated to support other public policy objectives, for example:
    - the Broadcast Participation Fund (BPF),<sup>6</sup>
    - the Broadcasting Accessibility Fund (BAF),
    - services of exceptional importance (9.1(1)(h) services), and
    - other public interest objectives (including, for example, community channels/programming).
  - **The remainder** should be directed to support Canadian audiovisual programming other than news – through the Canada Media Fund (CMF) and the certified independent productions funds (CIPFs) – or musical content through FACTOR/Musicaction and Radio Starmaker Fund/Fonds RadioStar.
10. We believe these initial contribution requirements would begin to help redress the inequity between Canadian and foreign broadcasting undertakings and deliver meaningful support to begin to address gaps in the system pending the completion of the new regulatory framework. Directing contributions to existing funds will also expedite their distribution to the creators of Canadian and Indigenous programming, including creators of professional broadcast news content.
11. The key message heard throughout this consultation is perfectly clear – Canadian broadcasting undertakings alone cannot support the objectives of the Act. And the disruption caused by foreign online undertakings has made the challenges we have always faced even harder to overcome. They have upended the ability of private Canadian radio and television services to continue supporting Canadian programming and other public policy objectives in the ways and to the extent they used to do, creating gaps in the broadcasting system.

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<sup>6</sup> Recognizing that the BPF recently received funding from the Federal Government.

12. The best way to begin to address these gaps in the near term is through initial base contributions from standalone (unaffiliated) online undertakings, directed to Canadian funds.<sup>7</sup>

13. In conclusion, the CAB's recommendations are as follows:

- The sustainability of the Canadian owned and controlled broadcasting system must be identified as a priority and named as one of the Commission's key objectives for the new contribution framework. Canadian broadcasters can only make meaningful ongoing contributions to the many cultural and public policy goals set out in the Act, listed in the Policy Direction, and identified by the Commission in its notice of consultation, under the following conditions:
  - They must be able to operate viable businesses that are capable of adapting to the profound structural challenges facing their operations;
  - They need flexibility to be able to adjust quickly as audience preferences and the market shifts or with the introduction of new technologies, techniques or platforms; and
  - They must be subject to a lighter regulatory touch than has existed up until now, to permit them to contribute to the outcomes sought by the Commission in a way that is most appropriate given their particular circumstances.
- The Commission must urgently take this opportunity to recalibrate the contribution framework to ensure that foreign online streamers make meaningful and equitable contributions to the Canadian broadcasting system, and to reduce the regulatory and administrative burden of Canadian radio and television broadcasters.
- The initial contribution requirements established as part of Step 1 in the present public process should apply only to **standalone** online undertakings, and not those undertakings affiliated or associated with Canadian radio and television services. The content on such Canadian undertakings is largely content made by and for existing radio and television services, which are already subject to significant regulatory obligations that have become unrealistic in today's media landscape. Layering on additional obligations for these undertakings would simply exacerbate their current challenges and prolong the unlevel playing field on which they operate.

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<sup>7</sup> The Commission can always reassess these requirements as part of future processes – reserving its ability to do so with “except by condition of service” provisions, as it already does in several regulations.

- Although the Commission’s model suggests an initial base contribution requirement that will form part of overall contribution requirements to be established in Step 2, the CAB recommends that the financial contribution requirement for large standalone online undertakings – defined as undertakings earning more than **\$50 million** from broadcasting activities in Canada – be established now. At this level of revenue there is no need to spoon-feed these companies, requiring only a small contribution at first, especially considering the quantum of revenue being taken out of the Canadian broadcasting system at this time.
- Consistent with the arguments of most broadcasting undertakings – including the global streamers that participated in this process – the CAB urges the Commission to apply both the threshold and the contribution requirements on an undertaking basis. The Commission’s proposed “group-based” approach unduly disadvantages Canadian undertakings at a time when they must be given the maximum opportunity to adapt and succeed.
- The CAB recommends that the entire contribution requirement of standalone online undertakings be directed to Canadian funds that support Canadian and Indigenous artists or programming and other important public policy objectives. Requiring the contributions of foreign web giants to be directed solely to Canadian funds is the most effective way to ensure that new money in the system is managed in the best interests of the system, does not unduly impact the Canadian rights market, and that the contributions of foreign companies are directed to fully qualified content initiatives and public policy objectives. In other words, it is the only way to prioritize Canadian ownership and control of the system.
- The CAB further recommends that the contributions of standalone online undertakings be split into four funding buckets, as outlined above. We believe our proposal is a reasonable and practical way to address immediately the many interests identified throughout this consultation process.
- The CAB also specifically and urgently recommends additional funding to support the production of broadcast news. This recommendation flows directly from section 3(1)(i)(ii.1) of the Act, which was introduced as part of the *Online Streaming Act*, and provides that the Canadian broadcasting system should “include programs produced by Canadians that cover news and current events... and that reflects the viewpoints of Canadians.” This recommendation also responds to section 12(j) of the Policy Direction which directs the Commission to “consider the importance of sustainable support **by the entire Canadian broadcasting system** for news and current events programming, including a broad range of original local and regional news and community programming.” [emphasis added]

- As noted above, the entry of foreign streamers into Canada has had a marked impact on Canadian private radio and television stations, massively disrupting their primary source of revenue and their ability to continue to sustain their news operations. This is a critical moment for the CRTC to ensure that sustainable funding remains available for professional newsgathering and production by Canadian radio and television broadcasters, Canadians' most frequent and trusted source for news.
14. The CAB believes that its proposals represent a reasonable, balanced and fair approach to the initial regulation of online streaming services, recognizing that adjustments can be made in future processes and that the obligations of Canadian broadcasting undertakings – including affiliated online undertakings – will also be examined and recalibrated as a result of future processes.
15. We look forward to continuing to cooperate with the Commission in the design of a modernized regulatory framework that ensures the resiliency of the Canadian broadcasting system and the achievement of the broadcasting policy objectives set out in the Act and the Government's Policy Direction.

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