



Also submitted via online form

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**Re: Canada Gazette, Part I, Volume 157, Number 23: Order Issuing Directions to the CRTC
*Sustainable and Equitable Broadcasting Regulatory Framework***

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 comments on the proposed Order Issuing Directions to the Canadian Radio-television and Telecommunications Commission (CRTC) (the Order) with respect to the implementation of the updated *Broadcasting Act* (the Act).

We commend and support the intent of the draft Order, which is subtitled *Sustainable and Equitable Broadcasting Regulatory Framework*. We agree that the new regulatory framework must support sustainability and equitability as key objectives. The goal must be the creation of a stable industrial policy foundation which can then support important cultural and public policy goals.

The Government must be clear in its directions to the CRTC to ensure that the regulatory framework is implemented in a way that:

- is flexible, fair, and equitable;
- recognizes the central role of Canadian broadcasters in Canada's cultural, social, economic fabric and supports their sustainability;
- reinforces and supports the Canadian program rights market;
- supports professionally produced news and information programming; and
- acknowledges the value that Canadian broadcasters bring as producers and creators of Canadian content.

Each of these points is elaborated on in the sections that follow. A marked-up copy of the draft Order is attached as an Appendix.

A flexible, fair, and equitable framework

It is long past time for foreign online giants to make direct contributions to the Canadian broadcasting system commensurate with the value they extract from their unfettered access to the Canadian market. Canadian broadcasting companies make meaningful contributions to the creation, funding, and exhibition of Canadian content. Yet, their long-term sustainability is at risk in light of the unfair and imbalanced treatment of competitive broadcasting organizations.

It is therefore essential to move forward quickly to implement the modernized *Act* and rebalance regulatory obligations amongst all players in the Canadian broadcasting system. This entails both introducing new requirements for digital players and adjusting existing requirements on Canadian broadcasters in a manner that better reflects their position in the market.

As such, we are delighted that the draft Order emphasizes the importance of ensuring equitable treatment for Canadian broadcasters who are currently competing directly with foreign platforms for audiences, subscribers, advertisers, and program rights, and urge the government to make no changes to section 4 of the Order.

Recognizing the central role of Canadian broadcasters and supporting their sustainability

With Bill C-11, Parliament reaffirmed the importance of a Canadian-owned and controlled broadcasting system, which is currently undergoing historic disruption and facing significantly increased competition for audiences and advertising dollars. To support the important cultural objectives laid out in the *Act* and the draft Order, mechanisms must be put in place to support the sustainability of Canadian-owned and controlled businesses, including the recalibration of their regulatory responsibilities.

Canadian broadcasters make irreplaceable contributions to the Canadian broadcasting system, both directly and indirectly, with over 60,000 jobs created and supported; more than \$2.5 billion spent annually on Canadian programming and copyright payments; over \$680 million spent on news and community information programming; and \$13.4 billion contributed to Canada's GDP.

This level of contribution is now at risk, as Canadian-owned broadcasting undertakings face historic challenges that are increasingly threatening their viability. These include significantly increased competition for audiences, advertising dollars, and programming rights from unregulated foreign players with vastly greater scale and resources. According to CRTC data, total revenues for private Canadian radio, conventional television, discretionary television and on-demand services fell roughly 15 per cent between 2016 and 2021.

To preserve a place for Canadian-owned broadcasting undertakings in the Canadian broadcasting system – as Parliament clearly intends – new mechanisms must be put in place to ensure their sustainability. This also entails rethinking and recalibrating their regulatory burdens. We have proposed amendments to sections 5 and 8(a) to reflect these priorities.

Supporting and reinforcing Canadian program rights

As one mechanism for ensuring the sustainability of Canadian broadcasting undertakings, it is necessary to support Canadian intellectual property rights and reinforce the Canadian rights market. To this effect, we recommend that no amendments be made to section 13(b) or 13(c).

For the same reason, we recommend that the CRTC be directed to ensure that the contributions of foreign web giants are directed solely to Canadian funds that support Canadian and Indigenous content, be it audio or video, and other public policy objectives. This is the most meaningful way to ensure that new money in the system is managed in the best interests of Canadian and Indigenous creators, does not unduly impact the Canadian rights market, and that the contributions of foreign companies are directed to fully qualified Canadian and Indigenous content. It is also a mechanism to ensure that spending by foreign streaming services is material and not simply directed to existing projects, a few big budget shows, or toward acquiring rights for markets other than Canada. It would be too easy for foreign streamers to meet a Canadian programming expenditure (CPE) requirement without meaningful spending on truly Canadian programming. We have therefore proposed an amendment to section 12(e).

We further recommend that, consistent with the previous draft policy direction, the government direct the CRTC to prioritize the establishment of an initial contribution requirement for online undertakings, to ensure that they begin to contribute immediately and appropriately to the support of Canadian and Indigenous programming and other important cultural policy objectives. Because online undertakings that are affiliated with Canadian broadcasters are already making significant contributions to the Canadian broadcasting system, the new contribution requirement need not apply to them, but only to online undertakings that are not affiliated, i.e. those online undertakings that are “standalone.” We we have proposed changes to the wording in section 19 accordingly.

Supporting professionally produced news and information programming

Recognizing the vital role Canadian radio and television services play in the delivery of trusted, professional news programming, and noting the Act’s commitment to news programs, the CAB recommends that the Order *require* the CRTC to ensure that funding and other support remains available for professional newsgathering and production by Canadian broadcasters.

While we recognize that the passage of Bill C-18 should provide Canadian broadcasters (that operate digital news platforms) with some opportunity to access fair compensation through a negotiation regime with foreign search and social platforms, other measures, including through broadcasting regulations, must also prioritize local, regional and national news delivered by Canadian broadcasting undertakings. This is especially vital given that Canadian radio and television broadcasters remain Canadians’ most frequent and trusted source for news, which foreign online streaming services will not duplicate. Our proposed amendment to section 12(i) will ensure that support for Canadian news is a key priority of the new regulatory framework.

The future of Canadian news depends on the long-term viability of the sector. News, community information and the in-house content produced by radio and television broadcasters – and their thousands of creative and knowledgeable employees across the country – cannot be an afterthought as the new Act moves into the implementation phase.

Acknowledging the value of Canadian broadcasters as producers and creators

It is also important that the new regulatory regime recognize that the traditional value chain for the production of content has changed and, more particularly, that broadcasters are themselves important creators and producers of Canadian content. Canadian broadcasters recognize that production is a growth opportunity and are prepared to invest in the creation of high-quality Canadian programming. To that end, television broadcasters are also investing in production companies to support their growth and capacity to produce high-quality Canadian programming.

We therefore recommend a small change to section 13(f) to acknowledge and recognize the important role Canadian broadcasters play in the creation and production of Canadian programming. The primary policy objective should be telling stories made and owned by Canadians, regardless of the corporate structure of the Canadian company making the production, or the genre of program created. Canadian intellectual property ownership is crucial, regardless of which Canadian persons or entities control it.

In conclusion

Given that the regulatory processes to implement the Act could take as long as three years – a lifetime in the media business – there is deep concern about the continued viability of the Canadian radio and television sectors without immediate and forward-looking adjustments to their regulatory frameworks. The Order issuing directions to the CRTC will be critical to address these concerns and must prioritize the immediate recalibration of regulatory obligations.

Please note that we have also submitted our comments via the online form.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Desjardins', with a stylized flourish at the end.

Kevin Desjardins
President
Canadian Association of Broadcasters

Appendix – CAB Proposed amendments to the Draft Order

Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)

Interpretation

Definitions

1 The following definitions apply in this Order.

Act

means the *Broadcasting Act. (Loi)*

social media creator

means a person who creates programs that are primarily intended for online distribution as user-uploaded programs through social media services. (*créateur pour les médias sociaux*)

Diversity among Indigenous peoples

2 In applying this Order, the Commission is directed to consider the diversity among Indigenous peoples.

General

Meaningful participation of Indigenous persons

3 In furtherance of the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, the Commission is directed to support the meaningful participation of Indigenous persons in the broadcasting system, including by supporting

- (a) their ability to create a wide range of programs;
- (b) access to those programs; and
- (c) their ownership and control of broadcasting undertakings.

Supporting Canadian programming

4 The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings.

Canadian broadcasting undertakings, Community community broadcasters and broadcasters of exceptional importance

5 The Commission is directed to consider how to encourage innovation by, and support the sustainability of, Canadian broadcasting undertakings, including community broadcasters and broadcasting undertakings that are of exceptional importance to the achievement of the objectives of the broadcasting policy set out in subsection 3(1) of the Act.

Regulation

Discoverability and showcasing

6 The Commission is directed to consider both established and emerging means of discoverability and showcasing to promote a wide range of Canadian programming. In making regulations or imposing conditions in respect of discoverability and showcasing requirements, the Commission is directed to prioritize outcome-based regulations and conditions that minimize the need for broadcasting undertakings to make changes to their computer algorithms that impact the presentation of programs.

Accessibility

7 The Commission is directed to regulate and supervise the Canadian broadcasting system with a view to supporting the provision of programming that is accessible without barriers to persons with disabilities.

Flexible and adaptable regulatory framework

8 To support flexibility and adaptability in its regulatory framework, the Commission is directed to

(a) minimize the regulatory burden on the Canadian broadcasting system, including balancing the respective obligations of broadcasting undertakings in a flexible, fair and equitable manner by reducing the regulated contributions that existing Canadian undertakings already make to the broadcasting system;

(b) avoid disruptions to programs and undertakings to which the Act does not apply;

(c) respect audience choice and, where possible, increase the options available;

(d) where appropriate, use tools that are based on incentives and outcomes;

(e) where appropriate, use digital tools and solutions; and

(f) consider other Canadian or foreign regulatory regimes that affect online undertakings.

Use of Canadian human resources

9 In its regulation of the broadcasting sector, the Commission is directed to ensure that the sector maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on economic opportunities and remuneration for creators.

Social media creators and video games

10 The Commission is directed not to impose regulatory requirements on

- (a)** online undertakings in respect of the programs of social media creators, including podcasts; and
- (b)** broadcasting undertakings in respect of the transmission of video games.

Regulations — section 4.2 of the Act

11 In exercising its powers under section 4.2 of the Act, the Commission is directed to set out clear, objective and readily ascertainable criteria, including criteria that ensure that the Act only applies in respect of programs that have been broadcast, in whole or in significant part, by a broadcasting undertaking that is required to be carried on under a licence or that is required to be registered with the Commission but does not provide a social media service.

Regulations and orders — section 11.1 of the Act

12 In exercising its powers under section 11.1 of the Act, the Commission is directed to

- (a)** regularly review expenditure requirements to ensure that they are proportional to their objectives and that those objectives are clear;
- (b)** recognize the diversity of services provided by broadcasting undertakings;
- (c)** consider providing flexibility for all broadcasting undertakings in meeting expenditure requirements;
- (d)** consider demographic data — including data concerning the participation of Black and other racialized persons in the Canadian broadcasting system — collected from various sources, including broadcasting undertakings, industry organizations and information published under the *Employment Equity Act*;
- (e)** where appropriate for a given business model and set of objectives, prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming, with the exception of non-Canadian online undertakings, who would be required to contribute to Canadian production funds, or other funds designated by the Commission;
- (f)** ensure that expenditure requirements support the creation and availability of programming
 - (i)** by Indigenous creators and broadcasting undertakings, including programming distributed by Indigenous broadcasting undertakings and programming in Indigenous languages, taking into consideration the importance of reconciliation with Indigenous peoples and the challenges and obstacles that they face, including those stemming from historical injustices or the legacies of colonialism,
 - (ii)** by creators from Black and other racialized communities and other equity-seeking groups, taking into consideration the challenges and obstacles that they face, including systemic racism and the obstacles faced by those whose first language is not an official language, and
 - (iii)** in both official languages, including programming by creators from official language minority communities, taking into consideration the minority context of French in Canada and North America, the specific challenges involved with creating and making available original French-language programming and the challenges and obstacles faced by those creators;

(g) consider the need for sustainable and predictable funding to support participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under the Act;

(h) support broadcasting undertakings that offer programming services that are of exceptional importance to the achievement of the broadcasting policy set out in subsection 3(1) of the Act;

(i) ~~provide~~ consider the importance of sustainable support ~~by~~ to the entire Canadian broadcasting system for news and current events programming, including a broad range of original local, ~~and~~ regional and national news and community programming, created and produced by Canadian programming undertakings; and

(j) support activities and services — including training and development activities, conferences, the activities of organizations that represent creators and the development of digital and open-source tools and solutions — that support Canadian creators of audio or audio-visual programs for broadcasting by broadcasting undertakings, including social media creators.

Determination of Canadian programming

13 In its determination of what constitutes Canadian programming, the Commission is directed to

(a) consult Canadians, the creative and production sectors and other interested parties;

(b) support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility;

(c) support Canadian ownership of intellectual property;

(d) recognize the distinctions between broadcasting undertakings that distribute audio programs and those that distribute audio-visual programming;

(e) recognize that the Act applies to foreign broadcasting undertakings;

(f) consider, as it relates to audio-visual programming, the vital role of Canadian independent producers and of the Canadian creative resources that are being used by both Canadian and foreign broadcasting undertakings; and

(g) consider whether its determination of what constitutes a Canadian program complements other Canadian content policies that are applicable to the Canadian broadcasting system, including those pertaining to audio-visual tax credits or government funding.

Engagement

Indigenous peoples

14 In its regulation of the broadcasting sector, the Commission is directed to engage with Indigenous peoples and Indigenous partners, governing bodies, broadcasters, creators, producers, industry organizations and community members and, in doing so, collaborate with relevant federal departments where possible to solicit comments on, among other things,

(a) how to best support Indigenous broadcasting undertakings to help ensure the viability of the Indigenous broadcasting sector;

(b) the use of regulatory conditions that foster the success of business models that provide and reflect Indigenous perspectives;

- (c) how to support the discoverability of programs by Indigenous creators;
- (d) the most appropriate tools, including funding mechanisms, for supporting Indigenous storytelling and production as well as Indigenous-led organizations that could manage and be responsible for that support; and
- (e) the measures that are necessary to ensure its regulatory approach is in furtherance of the objectives of the United Nations Declaration on the Rights of Indigenous Peoples and supports narrative sovereignty in the Canadian broadcasting system.

Equity-seeking groups

15 In its regulation of the broadcasting sector, the Commission is directed to engage with Black and other racialized communities and other equity-seeking groups to solicit comments regarding

- (a) the most appropriate tools, including funding mechanisms, to support those communities and groups; and
- (b) the development of a framework of measurable targets to support the creation, availability and discoverability of programming made by members of those communities and groups.

Official language minority communities

16 The Commission is directed to engage with official language minority communities to solicit comments regarding the creation of and access to programming by and for those communities, including with respect to funding, distribution and discoverability.

Participation support

17 The Commission is directed to consider how to make the participation in the engagements referred to in sections 14 to 16 as accessible as possible.

Information and Implementation

Information — policy objectives

18 The Commission is directed to provide information to the public on a periodic basis regarding the progress made in achieving the objectives of the broadcasting policy set in subsection 3(1) of the Act, including progress on the inclusion and participation of members of equity-seeking groups in the Canadian broadcasting system.

Implementation

19 The Commission is directed to make changes to its regulatory framework that are necessary for the purposes of the implementation within two years after the day on which it comes into force. In doing so, the Commission is directed to prioritize the implementation of an initial contribution requirement for standalone online undertakings (i.e., those not affiliated with Canadian broadcasting undertakings) pursuant to section 4 and as well as sections 8(a), and 13 to 16, and to ensure that changes to its regulatory framework are made as soon as feasible and on a continual basis during that two-year period.

Coming into Force

Registration

20 This Order comes into force on the day on which it is registered.