



February 24, 2025

Mr. Marc Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

*Filed Online*

Dear Secretary General Morin:

**Re: Broadcasting Notice of Consultation CRTC 2025-2 – *The Path Forward – Working towards a sustainable Canadian broadcasting system (“Market Dynamics”)* – DIMA Comments**

1. DIMA appreciates the opportunity to participate in the above-noted call for comments (“**BNC 2025-2**”), on behalf of our members, the world’s leading music streaming companies. DIMA requests to appear in person at the public hearing starting on May 12, 2025, to expand on this submission.
2. We note that our comments address industry-level policy issues; they do not address the operations or commercial dealings of any particular DIMA member company. We have responded selectively to issues most directly affecting our members. Where parties to this proceeding raise issues relating to online music undertakings, we will consider those comments and reserve our right to respond to them during the reply period ending March 11, 2025.
3. The Commission has raised a range of broad and important matters in this proceeding, with sixty questions, and a timeline (February, March and May 2025) that overlaps other proceedings that are relevant to DIMA and its members, notably:
  - [BNC 2024-290](#) *Modernization of radio processes (“Radio Processes”)*, which the Commission launched “[g]iven the emergence of online undertakings in the Canadian broadcasting landscape and the Commission’s new power to regulate these undertakings”;

- [BNC 2024-288](#) *Defining “Canadian program” for the audiovisual sector*, a proceeding which impacts the audiovisual services operated by some DIMA members, and which DIMA has been generally monitoring to prepare for the related review of “Canadian program” for the audio sector; and
  - [BNC 2025-52](#), *The Path Forward – Supporting Canadian and Indigenous audio content* (“**Audio Policy proceeding**”), launched just last week, and of central importance for DIMA and its members.
4. DIMA members will be impacted directly or indirectly by the decisions and policies resulting from these proceedings. However, DIMA and our members are facing challenges in engaging meaningfully in each proceeding, given the short timeframe proposed for these consultation processes, and the fact that the same topics (e.g. discoverability of Canadian content) are raised in parallel consultations. We are concerned both about procedural fairness for all stakeholders, and about whether the resulting records – comprised of submissions prepared with limited time, and addressing key issues over multiple proceedings – will properly support the Commission’s eventual decisions. For the upcoming written and oral rounds for this proceeding, and for the Audio Policy proceeding, we ask that the Commission provide fuller timelines, and consolidated lists of questions and issues, to make the consultation process more effective.
  5. In particular, DIMA intends to provide comments on important issues such as discoverability in a focused and coherent way. The discoverability of audio content has been part of the Radio Processes proceeding and this BNC 2025-2 proceeding, as well as BNC 2023-138 (Initial Base Contributions proceeding) that was decided in 2024, and is now part of the Audio Policy proceeding.<sup>1</sup> This makes the process for interested parties somewhat confusing and largely repetitive. In the context of this BNC 2025-2 proceeding, discoverability of content on music streaming services has limited relevance as a “market dynamics” matter, given the services’ business model of open, non-exclusive access, unlimited shelf space, and constant service- and consumer-led promotion of artists and content. For that reason, DIMA will be making its submissions on discoverability in the Audio Policy proceeding.
  6. Across all of these consultations, the Commission must impose regulation only when it has clear and conclusive evidence that an appropriately tailored regulatory measure would materially contribute to the broadcasting policy objectives set out in the *Broadcasting Act*. The Supreme Court of Canada has repeatedly recognized that the broadcasting policy objectives set out in subsection 3(1) of the Act do not independently confer jurisdiction on the Commission. Rather, any regulation or order issued by the Commission must be founded on a specific power granted by Parliament

---

<sup>1</sup> [Audio Policy](#), paras. 64-73, “Fostering discoverability on online audio services”.

in the *Broadcasting Act*.<sup>2</sup> Even where a policy objective is not currently being achieved, non-regulatory options such as industry dialogue and voluntary arrangements should be explored first, and regulation should be the last response.

### ***Introduction and Executive Summary***

7. The growth of music streaming has supported competitive market dynamics in Canada, and the market is currently healthy and functioning extremely well – for the benefit of music creators and consumers alike. Our over-arching position is that the Commission should focus on making Canada an attractive place for online undertakings to continue to compete and thrive; in other words, the Commission should avoid imposing regulations that are not realistic for the online environment, and that would ultimately stifle innovation and hamper the system.
8. The *Broadcasting Act* and the Governor in Council’s *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)* (the “**Policy Direction**”)<sup>3</sup> require the regulatory regime established by the Commission to promote innovation and respect audience choice. In this regard, the growth of online music streaming in Canada already supports and benefits the entire chain of supply and demand in the market for music content. That market is in fact built on innovation, from music industry content suppliers (creators and copyright owners) who partnered with music streaming services to build an open, legal system to access music; to services that innovate constantly to remain competitive<sup>4</sup>; to Canadian consumers who actively and freely choose the services and content they want.<sup>5</sup>
9. This represents a sea change from the market failure we saw a decade ago. Working alongside creators and rightsholders, music streaming services shifted the market from a “piracy first” situation to a “paid first” approach. Year over year declines in revenue quickly shifted to unprecedented growth. This is a success story and a compelling example of “market dynamics” at work.
10. In short, the growth of online music streaming in Canada, and the open market that music streaming represents, have benefitted the entire system. The Commission’s regulatory regime must not disrupt the growth trajectory of music streaming and the

---

<sup>2</sup> See for example [Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168](#), 2012 SCC 68 (“Reference re. Broadcasting”), at para. 22-23.

<sup>3</sup> Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) (SOR/2023-239), available at <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2023-239/FullText.html>.

<sup>4</sup> See DIMA: Streaming Innovation Forward 2020 – 10 Music Innovations of the Year, available at <https://dima.org/wp-content/uploads/2021/01/DiMA-Streaming-Innovation-Forward-2020.pdf>.

<sup>5</sup> See DIMA MusicWatch, last updated February 10, 2025, available at <https://dima.org/news-and-resources/streaming-forward-love-is-in-the-air/>.

music industry overall.<sup>6</sup> We believe it is imperative to promote policies that foster an innovative music marketplace and encourage future advances in technology, rather than erect barriers to new ideas.

11. In these comments, we will elaborate on the following key points to explain why new regulation is not warranted, would be unduly burdensome, and could harm the system, counter to the Act and the Policy Direction.
  - a. The market for music services is working well, and in fact better than ever, to provide options to artists and consumers, and increased opportunities for business partnerships.
  - b. The Commission can enact regulation only in accordance with powers explicitly provided under the *Broadcasting Act*. The Act does not provide the Commission with the power to regulate the commercial relationships and activities of online streaming services.
  - c. Most of the Commission’s existing competition rules and measures were put in place to address a consolidated, closed system, and an environment of scarcity – characteristics of the traditional broadcasting industry. Online music streaming services operate in an open-access, highly competitive environment.
  - d. The Commission must ensure that any information gathering is limited to what is absolutely necessary to implement the Broadcasting Policy for Canada under the *Broadcasting Act*, subject to strict confidentiality requirements.

***Understanding the current market dynamics and the opportunities they present***

12. The *Broadcasting Act* provides that the Canadian broadcasting system should “promote innovation”, and the Policy Direction directs the Commission to “respect audience choice” in its regulatory framework.<sup>7</sup> As we will explain, the growth of music streaming services in the Canadian broadcasting system has driven and accelerated innovation, and has created new opportunities to enhance audience choice, which in

---

<sup>6</sup> DIMA, [Final Reply](#) to Broadcasting Notices of Consultation [2023-139](#) and [2023-140](#), page 3; see also DIMA, [Intervention](#) to [Broadcasting Notice of Consultation 2023-138](#) (“BNC 2023-138”), paras 9, 43; see also Music Canada, [Intervention](#) to BNC 2023-138, paras 20, 94-97; see also Music Canada, [Reply](#) to BNC 2023-138, para 7-8.

<sup>7</sup> Policy Direction, supra note 3, section 8: “To support flexibility and adaptability in its regulatory framework, the Commission is directed to [...] respect audience choice and, where possible, increase the options available”.

turn drives opportunities for artists and content creators. (*Question 4*<sup>8</sup>, *Question 5*<sup>9</sup>, *Question 8*<sup>10</sup>).

13. The Commission has recognized that “as business models and distribution platforms are continually evolving”, “the shift in market dynamics can also be an opportunity to remain relevant and grow by finding innovative ways to link content with those who consume it” (para. 22). As discussed in the paragraphs that follow, the trajectory of the music industry and the growth of online music streaming services over the past decade illustrate this brilliantly.
14. Only a decade ago, the music industry faced precipitous declines in revenues and challenges to get listeners to pay for music. Music streaming services, working alongside creators and rightsholders, turned the tide dramatically, such that an industry that faced year over year declines in revenue suddenly saw massive and unprecedented growth. This was the direct result of our members’ investment of time, resources, and creativity to build services that provide legal access to music in a way that benefits creators, rightsholders and music fans alike. Put simply, the system was specifically designed to work for every participant in the chain of supply, distribution, and consumption. As we stated in the [Broadcasting Notice of Consultation 2023-138](#) proceeding:

Today’s framework of partnerships, supports, contributions and agreements – all put in place to make the music streaming system work for all – is the result of years of work by the services together with the rest of the music industry in Canada and globally. Canadian creators have access to listeners around the world, music rights holders are getting paid – more than ever before in history – fans are getting all the music they want legally and for an affordable price, and services available in Canada are continuously investing in innovation for the benefit of creators and consumers.<sup>11</sup>

15. Critically for this proceeding, music streaming turned what had been a collection of fairly rigid local markets, where access to music was dictated by retail store shelf space and the limitations of broadcast airwaves and programming hours, into an innovative, borderless system of distribution and access. Today, music streaming

---

<sup>8</sup> Q4. *What opportunities related to access have emerged from new technologies and the evolving market dynamics? For example, have these changes led to an increase in partnerships or new approaches to reach audiences? How can these opportunities be used to grow and promote innovation in the broadcasting system? Are there opportunities that are specific to the English-language market or the French-language market?*

<sup>9</sup> Q5. *This proceeding aims to examine the evolving market dynamics between programming, distribution, and online undertakings. These dynamics have the potential to affect other players within the industry, including producers, creators, artists, and advertisers. Please comment on the impact of these evolving market dynamics on the relationships between broadcasting undertakings and these other players operating in the Canadian broadcasting system.*

<sup>10</sup> Q8. *In what ways do current access tools either encourage or hinder innovation?*

<sup>11</sup> DIMA [Final Submission](#), February 15, 2024, para. 24.

services are the number one source of both music discovery for consumers,<sup>12</sup> and revenue for creators.<sup>13</sup>

- a. Music streaming services provide consumers with unlimited shelf space, curated experiences, endless opportunities for personalization, discovery and rediscovery, information about music, and recommendations – all accessible anywhere, anytime. According to recent data, music streamers say that streaming helps them to create more of a connection with artists they listen to (84%) and increase their music engagement (67%).<sup>14</sup>
- b. According to Commission’s Communications Market Reports, music streaming now accounts for the largest portion of audio consumption for both anglophone and francophone listeners in Canada.<sup>15</sup> That level of consumer engagement with music streaming helps artists succeed in the Canadian market.
- c. Increasing revenues for online audio streaming services in Canada<sup>16</sup> have an outsized impact on royalties paid out to music rightsholders. Music streaming services generally pay around 70% of the revenues received from music streaming as royalties to music rightsholders. This is 8.5 times more revenue that music streaming services pay directly to music rightsholders than the commercial radio sector does in Canada. As Music Canada has said, “music streaming platforms have become an essential partner to labels and artists, helping the artists reach their fans. In 2022, 79% of Canada’s recorded music revenues were generated from streaming, amounting to a 10.1% increase over 2021.” These royalties are more than just costs to music streaming services; they are payments that support “essential partnerships” and the entire industry including the “creation of new works” and the “development and promotion of Canadian music content.”<sup>17</sup>

16. To sum up, DIMA members have broken down boundaries for artists and consumers alike. Canadian artists, including in particular emerging artists, can access new audiences and build and engage with fanbases in ways they could not have dreamed of in years past. The barriers to entry for artists are minimal; they can have access to a

---

<sup>12</sup> Spotify, [Intervention](#) to BNC 2023-138, para 21, “Streaming enables more music discovery than any other medium or historical alternative”, citing to International Federation of the Phonographic Industry (IFPI), “[Engaging with Music](#)” (2022) at page 06; see also DIMA, “[Streaming Forward: Fan Engagement 2023](#)” at 8: “Streaming services are the most common way streamers discover new artists or songs, outranking friends’ recommendations, hearing the artist on traditional AM/FM radio, and hearing the artist on social media.”

<sup>13</sup> Per Music Canada, In 2022, 79% of Canada’s recorded music revenues were generated from streaming, amounting to a 10.1% increase over 2021. See Music Canada comments, [BNC CRTC 2023-140 initial comment](#), para. 4.

<sup>14</sup> DIMA MusicWatch, supra note 5.

<sup>15</sup> Communications Market Reports: [Annual highlights of the broadcasting sector, 2022-2023](#). Chart 15: Average Weekly Hours Spent Streaming Audio, by Type. Source: MTM.

<sup>16</sup> Communications Market Reports: [Annual highlights of the broadcasting sector, 2022-2023](#). Chart 4: Revenue of DMBU Services, 2019 to 2023. “[l]ong term growth of DMBU audio services continued to increase (CAGR of 30.6% since 2019)”.

<sup>17</sup> Music Canada comments, [BNC CRTC 2023-140 initial comment](#), para. 4, para. 6.

global audience almost instantly, thanks to the reach of our members. Likewise, our members have given consumers extraordinary access to music from all corners of the world, and every imaginable genre – through personalized and programmed playlists, integration with social media, easy access to lyrics, album art, and other content, and a vast array of other engagement and discovery tools. Likewise, our members’ offerings make it easier than ever to listen to music – through cross-device control, integration with dashboards, and other tools and functions that make it easier than ever to listen to music in whatever environment a person is in.

17. We fully support the Commission’s statement that:

[...] ensuring that Canadians have access to content, and that it is discoverable, does not mean that content is guaranteed to succeed with audiences. **A policy principle of this proceeding and of the resulting regulatory framework is to ensure choice in content and the ability to consume that chosen content, not to direct Canadians in which content they must consume, or how they must consume it.** (para. 21, emphasis added)

18. Online music streaming is an innovative, market-driven, consumer-led system that works.

***New rules are not required to ensure fair access to the system, and discoverability within it***

19. The online environment represents fair access and an abundance of content, with Canadian artists and content readily discoverable by listeners alongside worldwide content offerings. Music streaming services offer access to millions of songs that users can play anywhere and anytime. This democratization of content has not only empowered creators and rightsholders, but has also provide significant benefits to consumers, who now have far greater choice and access to the history of recorded music. Notably, this system developed in the absence of a restrictive regulatory framework. New rules for music streaming companies are not required to ensure fair access or discoverability, and they would risk harming the existing ecosystem.

20. Most of the Commission’s existing competition rules and measures were put in place to address two factors, neither of which are present in streaming:

- an **environment of scarcity**. The traditional broadcasting regulatory system was designed in large part to address scarce frequencies, limited geographical markets<sup>18</sup>, limited ways to distribute content (over the air via antennas to a

---

<sup>18</sup> See for example the BNC CRTC 2024-290, the Radio Processes consultation, in which the Commission states that “**there is a high probability that frequency scarcity exists in many of Canada’s large to mid-sized urban centres**”: “Specifically, when a broadcaster creates a proposal for a new radio transmitter, it selects a frequency (i.e., channel) and class (which

“broadcasting receiving apparatus”), and limited consumer choice (access to licensed or exempt local frequencies only).

- a **consolidated, closed system**. The environment of scarcity was accompanied by restrictive regulation that limited market access through Canadian<sup>19</sup> and cross-media ownership restrictions,<sup>20</sup> licensing to manage scarce frequencies and limited geographical markets,<sup>21</sup> and a limited number of viable industry participants.<sup>22</sup> Over time, those factors led in turn to issues of industry consolidation and vertical integration, which was a significant challenge within the traditional closed system.

21. The characteristics of online music streaming services are the opposite of the above. They operate in an open, global market for content supply, distribution, and consumption, with a much broader range of operators, business partners, and distribution models. The Commission must recognize these differences and the reality of the online environment so that the successful, functioning system is not disrupted or harmed.

### ***The Commission’s Wholesale Code should not apply to online services***

22. The Commission’s suite of regulatory tools for the traditional broadcasting system, including the Wholesale Code, were designed years ago for the particularities of a closed, consolidated system: a limited number of business partners, and entrenched vertical integration with major broadcasting distributors owning their own, competing,

---

generally defines the transmitter’s reach) for the selected location. If the Commission cannot identify another frequency that can provide similar or greater coverage when compared to that proposed by the applicant, the market is considered to have frequency scarcity. Generally, this means that the Commission will issue a call for applications if the market assessment indicates that there is capacity to accommodate an additional radio station, or it will announce that it will not be prepared to accept applications for this market for two years. There is a high probability that frequency scarcity exists in many of Canada’s large to mid-sized urban centres.” (para. 32)

<sup>19</sup> Ownership and control of traditional radio and audio licensees and exempt undertakings are restricted under the Direction to the CRTC (Ineligibility of Non-Canadians) (SOR/97-192) available at <https://laws.justice.gc.ca/eng/regulations/SOR-97-192/FullText.html>.

<sup>20</sup> See Broadcasting Public Notice CRTC 2008-4, Regulatory Policy – Diversity of voices, available at <https://crtc.gc.ca/eng/archive/2008/pb2008-4.htm>; and “Local Broadcast Markets – Diversity of Voices” available at [https://crtc.gc.ca/ownership/eng/dov\\_ind.htm](https://crtc.gc.ca/ownership/eng/dov_ind.htm).

<sup>21</sup> See “How to apply for a broadcasting licence – The Basics”, available at [https://crtc.gc.ca/eng/info\\_sht/b313.htm](https://crtc.gc.ca/eng/info_sht/b313.htm).

<sup>22</sup> See Broadcasting Regulatory Policy CRTC 2022-332, *Revised Commercial Radio Policy*, in which the Commission expressed concern that ownership consolidation could lead to a decrease in diversity of voices (paras. 40-41). See also Radio Processes, in which the Commission proposed new measures to make broadcasting licences more accessible, and to foster greater diversity among licensees (para. 67).



programming services, within the traditional closed system. (Questions 24-27<sup>23</sup>, Question 29<sup>24</sup>)

23. Again, online undertakings are not part of that closed system; they are part of an open, global market, with a variety of operators, business partners, and distribution models. The Wholesale Code would be inappropriate considering the nature of the online services and the reality of the market.

24. Furthermore, there is no jurisdictional basis for the Commission to apply the Wholesale Code – or any similar code or set of carriage or commercial requirements – to online undertakings. The Wholesale Code was initially imposed on licensed distribution and programming undertakings (other than radio programming undertakings) by an order issued under subsection 9(1)(h) of the *Broadcasting Act*.<sup>25</sup> Before its repeal in the 2023 amendments to the Act, it read:

9(1) Subject to this Part, the Commission may, in furtherance of its objects, [...] (h) require any licensee who is authorized to carry on a **distribution undertaking** to carry, on such terms and conditions as the Commission deems appropriate, **programming services specified by the Commission**.

25. The Federal Court of Appeal and the Supreme Court of Canada both held that the above provision did not encompass a general power to regulate terms and conditions of carriage.<sup>26</sup>

26. Moreover, there is no provision in the amended *Broadcasting Act* that would empower the Commission to impose general terms and conditions of distribution on all online undertakings. Provisions regulating the terms and conditions of distribution are expressly limited to traditional broadcasting undertakings, and distribution undertakings in particular:

---

<sup>23</sup> Q24. *What are the key challenges faced by broadcasting undertakings in commercial negotiations related to broadcasting activities? Please explain how and why the Commission ought to help address these challenges.*

Q25. *At what point in the process for entering or renewing a distribution or affiliation agreement is it in the public interest for the Commission to intervene? Does this public interest arise from market failures and, if so, what are those failures? Provide an example of a situation in which it would be in the public interest that the Commission intervene.*

Q26. *What are the advantages and disadvantages of having the Commission intervene in such negotiations?*

Q27. *Are there any notable differences between the English- and French-language markets or specific challenges for Indigenous communities, OLMCs, and other diverse groups, including equity-deserving groups, regarding negotiations for the carriage and distribution of programming or of broadcasting undertakings that ought to benefit from Commission intervention? Please explain your reasoning.*

<sup>24</sup> Q29. *To what extent should the Wholesale Code or an updated code be made applicable to online undertakings, both audio-visual and audio?*

<sup>25</sup> [Broadcasting Regulatory Policy CRTC 2015-438](#), *The Wholesale Code*.

<sup>26</sup> [Bell Canada v. 7262591 Canada Ltd.](#), 2018 FCA 174, para. 169; [Bell Canada v. Canada \(Attorney General\)](#), 2019 SCC 66, para.

9.1(1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting [...]

(h) a requirement for a person carrying on a **distribution undertaking** to carry, on the terms and conditions that the Commission considers appropriate, programming services, specified by the Commission, that are provided by a broadcasting undertaking;

[...]

(j) terms and conditions of service in contracts between **distribution undertakings** and their subscribers;

27. The Act explicitly carves out online undertakings from the definition of distribution undertakings, which states at subsection 2(1):

**distribution undertaking** means an undertaking for the reception of broadcasting and its retransmission by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking, **but does not include such an undertaking that is an online undertaking**;

28. The Commission therefore has no authority to impose a code or other terms and conditions of carriage on online undertakings.

### ***Defining “good faith” in competitive dealings***

29. The Commission’s authority to regulate competitive dealings is limited, and intentionally so, under the *Broadcasting Act*. The reference to “good faith” in subsection 9.1(9) of the *Broadcasting Act* relates solely to “a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking” as enumerated in paragraph 9.1(1)(i) of the Act.

30. The manner in which online music streaming services operate is not analogous to distribution undertakings. Accordingly, there is no basis to apply subsection 9.1(9) to online music streaming services. (*Question 32*<sup>27</sup>)

---

<sup>27</sup> Q32. When defining or examining the applicability of “good faith” negotiation under subsection 9.1(9) of the Act, which relates to distribution orders for online undertakings, are there existing concepts that the Commission should consider, such as those developed under the Quebec Civil Code or in labour relations? Should behaviours, actions, and/or metrics be considered? These could include, for example, transparency, timeliness of responses, or fairness. If so, please propose a definition or approach, specifying which of these aspects should be considered and why.

***The potential continued or updated application of various Commission dispute resolution rules (e.g. “undue preference”) and mechanisms (e.g. staff-assisted mediation and arbitration), to both traditional broadcasters and online undertakings***

*Undue Preference*

31. We support earlier submissions to the effect that the Commission’s “undue preference” rule imposed as a temporary measure under [Broadcasting Regulatory Policy 2023-331](#) is not necessary or appropriate to apply to online undertakings, as it was designed to apply to a particular context.<sup>28</sup> The Commission has most frequently applied this concept to Canadian vertically integrated companies, who operate broadcasting distribution undertakings alongside programming undertakings or telecommunications services.
32. We oppose any regulatory requirement that would prohibit a service from freely negotiating content licensing and distribution agreements. Such restrictions would alter and disrupt individual business agreements in the music streaming world that almost always extend beyond Canada’s jurisdictional borders. DIMA does not believe that the *Broadcasting Act* as amended by the *Online Streaming Act* goes so far, in either the Act’s jurisdiction or in its intent. We are, moreover, unaware of any undue preference complaints concerning non-Canadian online undertakings since the Commission put in place the temporary measure in [Broadcasting Order 2023-332](#). This demonstrates that extending the undue preference regime to include online undertakings is not warranted.
33. The Commission has asked whether it should provide guidelines around undue preference behaviors such as “the no head start rule” and the “prohibition on exclusivity”. Virtually all commercially released music is now released globally at the same time, across the full spectrum of services. Head starts and exclusivity are not applicable to the business of online music streaming: services access and distribute content openly, with minimal if any restrictions.

*Dispute Resolution*

34. The Commission’s authority under the *Broadcasting Act* to regulate disputes between broadcasting distribution undertakings and programming undertakings does not extend to disputes involving online undertakings. This was a clear legislative choice. Paragraph 10(1)(h) of the Act provides that

10 (1) The Commission may, in furtherance of its objects, make regulations (h) for resolving, by way of mediation or otherwise, any **disputes arising**

---

<sup>28</sup> Broadcasting Notice of Consultation CRTC 2023-140 – *Call for reply comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*. See comments from Apple Canada, Inc. at para. 23; and comments from Spotify at para. 40.

**between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings[.]**

35. In the Parliamentary review of Bill C-11, a Government official explained that the amendments to the dispute resolution powers were not designed to apply to online undertakings:

Senator Dasko: My other question deals with the fact that, right now, the commission has the authority to resolve disputes between distribution undertakings and programming services, but this authority does not extend to disputes involving online distribution. Was that left out and not extended to arrangements in the online environment intentionally? Is this part of the bill something that was intended, or was it something that might have been left out?

Mr. Ripley: It was intended in the sense that — and this relates to the discussion I was having with Senator Simons about the distinction between the traditional regulatory power versus 9.1(1)(h) services and the new one that is at 9.1(1)(i). **The regulatory powers that the CRTC has right now is really grounded in a context where we have a consolidated Canadian industry with heavily vertically integrated companies that control both programming and distribution assets.**

**As we now include these global streaming and distribution services in the Canadian context, it is going to give an opportunity for there to be new kinds of business arrangements and new business partners to work with. The assessment was that you do not need the same degree of economic regulatory tools that existed in that Canadian context in the new one.**

[...]

Mr. Ripley: **Right now, the Canadian system is a closed system. There are a limited number of business partners. [...] The regulatory tools that the CRTC currently has are designed to make sure that consolidation in these vertically integrated companies is not abused, that there continue to be opportunities for independent programming services to have distribution and, for example, for independent cable or satellite companies in smaller regional markets to make sure that they are able to access programming that's owned by those big vertically integrated companies so they have a competitive offering. Those tools are very much grounded in that context.**

**Moving forward, you will have different business partners. The idea is, because we're recognizing that global services now operate in Canada, that**

**you don't have the closed ownership restrictions that have in part given rise to that consolidated business environment in the Canadian context.**

Senator Dasko: So you think that it is fine as it is, not including the online platforms in this mechanism.

Mr. Ripley: Yes, **the intention is that the CRTC does not have the same economic tools that it currently has. There have been intentional decisions made about** which one should be extended, which one should look slightly different, and **which one should not exist at all in the new online environment.**<sup>29</sup>

36. The Commission has asked whether it should develop ADR mechanisms tailored specifically to the unique needs of music services, and, in particular, to facilitating the resolution of disputes involving online music broadcasting undertakings. (*Question 56*<sup>30</sup>) The Commission does not have dispute resolution authority over online undertakings. This means that Commission-led or Commission-regulated ADR cannot be imposed on<sup>31</sup> online undertakings.

***Revenue and expenditure data gathering and sharing must be limited and subject to strict confidentiality protections***

37. The Commission must ensure that information gathering is limited to what is absolutely necessary to accomplish the implementation of the Canadian Broadcasting Policy under the *Broadcasting Act* and to those activities in Canada that are regulated under the *Broadcasting Act*, without imposing undue burdens on services that operate globally. (*Question 36*<sup>32</sup>)

38. Furthermore, any information gathering should be imposed only if it is subject to strict confidentiality requirements that do not compromise confidentiality or competitively sensitive information, including but not limited to with regard to third party information. DIMA strongly opposes any proposal to publicly disclose commercially sensitive information.

39. The Commission should not interfere in the commercial relationships between the parties by mandating the type of data that must be shared. Each online undertaking has

---

<sup>29</sup> Standing Senate Committee on Transport and Communications, November 22, 2022, at 32:39-32:41, available at <https://sencanada.ca/content/sen/committee/441/trcm/32ev-55835.pdf>.

<sup>30</sup> Q56. *Should the Commission develop ADR mechanisms tailored specifically to the unique needs of audio services, and, in particular, to facilitating the resolution of disputes involving online audio broadcasting undertakings?*

<sup>31</sup> By "imposed on", we mean both formally and informally, in the form of a regulatory expectation or encouragement.

<sup>32</sup> Q36. *Are there key data points (e.g., financial, audience, or other) being gathered by audio-visual or audio online undertakings that may be relevant during negotiations that should be shared between parties or that would serve the public interest by being made publicly available, whether individually or aggregated? If so, how frequently should they be made available (i.e., at regular intervals or on an ad hoc basis) and at what level of aggregation? Audio examples for key data points could include lists of most-listened tracks, programs and services, or source of streams (i.e., how listeners are engaging).*

different data capacities and capabilities. Online undertakings already provide data tools to their partners as part of their competitive strategy to strengthen their commercial relationships. Innovation in systems and data capabilities will continue to thrive as long as online undertakings are free to innovate without regulatory constraints.

40. Finally, return-path (i.e. listenership) data is subject to privacy restrictions under Canadian<sup>33</sup> and international laws and cannot be shared or otherwise made public (*Question 35*<sup>34</sup>, *Question 37*<sup>35</sup>).

### **Conclusion**

41. Thank you for the opportunity to provide our comments in this consultation.

Sincerely,



Colin Rushing  
Executive Vice President and General Counsel  
Digital Media Association (DIMA)

\*\*\* END OF DOCUMENT \*\*\*

---

<sup>33</sup> [Personal Information Protection and Electronic Documents Act](#) (S.C. 2000, c. 5).

<sup>34</sup> Q35. *With respect to return-path data and program guide data, respectively, should the Commission establish rules or guidelines for how this data should be shared or made available to the public? Should rules, guidelines, or incentives be established for other relevant information to be shared among broadcasting undertakings, whether individually or aggregated? If so, which measures should be established and what should the data gathering activities aim to achieve? Should these rules and activities differ in the English-language market and the French-language market or for Indigenous communities, OLMCs, and other diverse groups of Canadians, including those from equity-deserving groups?*

<sup>35</sup> Q37. *Which potential safeguards and industry standards, if any, should be introduced across both the English- and French-language markets to ensure that the rights and privacy of Canadians will be protected, even in the context of data sharing? For example, would it be appropriate to require permission be obtained from the end-user for particular forms of collection, use, and retention? What data governance and transparency obligations, or guidelines supplementing existing general legal obligations, ought to be introduced with respect to the collection, storage, and use of audience information?*