*Before the*
*Office of the United States Trade Representative*
*Washington, D.C.*

*In re* Request for Public Comments on Unfair
And Non-Reciprocal Foreign Trade Practices
Docket Number: USTR-2025-0001

# COMMENTS OF THE DIGITAL MEDIA ASSOCIATION (DIMA) REGARDING UNFAIR AND NON-RECIPROCAL FOREIGN TRADE PRACTICES

March 11, 2025

## Introduction

The Digital Media Association (DIMA) is the trade association representing the world's leading audio streaming companies. DIMA's members make it possible for music fans to legally engage with music whenever and wherever they want and discover the music that they want to hear and empower artists to reach new audiences and grow their fan bases more easily by breaking down geographic and cultural barriers. DIMA's members are constantly innovating to provide compelling experiences and opportunities.

Open internet-enabled commerce is essential to the music streaming success story. Streaming has turned what had traditionally been a collection of local markets – where access to music was dictated by retail store shelf space, geographic and cultural boundaries, and broadcasting transmitter limitations – into a globally interconnected landscape where listeners in nearly every corner of the world have access to the music they want to hear. This means that artists and songwriters can reach listeners thousands of miles away and build new fan bases, and that fans have access to music created and produced around the globe.

Streaming is now the leading source of recorded music revenue in the United States, Canada, and numerous other countries. Streaming services pay billions of dollars annually to record labels and music publishers around the world. In the U.S., streaming represents 85% of recorded music revenues, to the tune of $14.4 billion in 2023.[1] **Digital music streaming supported over 92,000 jobs in the U.S. economy in 2021, and for every one job directly created by music streaming, other sectors of the economy gained nine additional jobs.**[2] Music streaming creates tremendous economic value for the American music industry and the broader economy. For every $1 in economic value generated by streaming, other sectors of the U.S. economy gain an additional $1.65.[3] Streaming sustains thousands of businesses large and small, from artists, songwriters, producers, managers, labels, publishers and collective rights management organizations.

In order for this success story to continue, it is critical that trade partners do not impose barriers to innovation that make it harder for U.S. companies to do business. Unfortunately, Canada and Türkiye have implemented policies that threaten many of the benefits that streaming currently provides and that unfairly target U.S. and foreign streaming companies.

## Canada's *Online Streaming Act*

In 2023, the *Online Streaming Act* was passed by the Canadian government. The *Online Streaming Act* (also referred to as Bill C-11) was ostensibly intended to update the country's *Broadcasting Act* in order to bring streaming services under its regulatory framework. According to the Canadian government, the Act was meant to play "an important role in supporting Canada's cultural industries and ensuring Canadian content is available and accessible." In reality, the law and its implementing regulations impose new obligations that fall

[1] https://www.riaa/com/wp-content-uploads/2024/03/2023-Year-End-Revenue-Statistics.pdf
[2] https://dima.org/news-and-resources/new-study-highlights-music-streaming-outsized-impact-us-economy/
[3] https://dima.org/news-and-resources/new-study-highlights-music-streaming-outsized-impact-us-economy/

overwhelmingly on U.S. businesses and compel American streaming services to fund Canadian content.

At the time of its passage, some observers believed the law as written would likely violate the United States-Mexico-Canada Trade Agreement (USMCA) by discriminating against U.S. (and foreign) companies and content.[4] Implementation of the bill has brought these concerns into even sharper focus. On June 4, 2024, the Canadian Radio-television and Telecommunications Commission (CRTC) issued its first major decision implementing Bill C-11.[5] The Commission's decision stipulated that foreign, largely U.S.-based, music and audio-visual streaming service providers with revenues over $25M must **contribute 5% of their gross in-country revenue** to a set of Canadian content funds. This 5% levy, or streaming tax, has also been identified as a potential violation of Canada's USMCA obligations.[6]

DIMA and its members have worked tirelessly to inform and educate the Canadian Government and the CRTC as to why the *Online Streaming Act* is bad for Canada, to no avail.

Critically the 5% levy openly targets foreign companies, and in particular U.S. streaming companies, since it expressly exempts their competitors affiliated with Canadian broadcasters. And, going further, the regulations prevent those same U.S. companies from even accessing the funds to which these levies flow – something traditional Canadian broadcasters are able to do. Moreover, music streaming services are required to allocate 1.5% of their mandatory 5% contribution to subsidize local Canadian broadcast radio news production. This obligation is entirely unreasonable since music streaming services are not in the news business, so the levy represents a government-mandated subsidy to an unrelated industry. The Canadian regulator estimates that the levy will raise some CAD $200m for the Canadian cultural industries.[7]

The U.S. Commerce Department has expressed that the U.S. government "has concerns regarding the CRTC's approach," which has "reinforced the U.S. government's view that Bill C-11 disproportionately targets U.S. companies to financially benefit Canadian firms."[8] We agree.

The CRTC has now (belatedly) begun a consultation on the definition of Canadian content for audio services. This definition was lacking when the regulator purported to assess music streaming services' contributions to the Canadian music sector and concluded that it was insufficient and thus imposed the streaming levy. And now, after the levy is imposed, it remains unclear what the definition is intended for. On the radio side, the Canadian content definition is used to impose quotas for Canadian content, which preferences Canadian content over recordings by U.S. and other artists, reducing the royalty streams U.S. artists would otherwise receive absent this obligation.

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[4] https://ccianet.org/library/ccia-white-paper-on-canadas-online-streaming-act-bill-c-11/
[5] The final order implementing the decision was issued on August 28, 2024.
[6] https://www.uschamber.com/international/u-s-chamber-condemns-crtcs-decision-on-u-s-streaming-services-citing-trade-agreement-violations-and-investment-impact
[7] https://ottawa.citynews.ca/2024/06/04/online-streaming-services-must-now-pay-into-fund-for-canadian-news-content/
[8] https://www.trade.gov/country-commercial-guides/canada-digital-economy

The CRTC consultations may lead to local content production and discoverability requirements on top of the already onerous 5% gross revenue contribution requirement, or to further levies.

Taken together, the *Online Streaming Act* is an unfair and openly discriminatory trade practice that primarily targets U.S. companies. We are deeply concerned that this approach is a departure from the principles of the USMCA. Article 19.4 of the USMCA ensures non-discriminatory treatment of digital products. Further, the approach under Canada's C-11 is also not exempt under the cultural industries exception. That exemption contains to express or implicit extension to making music available nor to streaming services. In fact, the only definition of "distribution of sound recordings" in the USMCA is in the IP Chapter and is expressly limited to the "distribution of tangible copies." If other trading partners follow suit, it would further directly and significantly impact U.S. companies and jeopardize their ability to operate and provide access to music, while also negatively impacting American songwriters, artists, and copyright owners.[9]

**Canada Digital Services Tax (DST)**

The implementation of the *Online Streaming Act* comes against a backdrop in which Canada is already imposing other unfair and discriminatory practices against U.S. businesses and employers. Specifically, Canada's new Digital Services Tax (DST) imposes new taxes on online services, and the U.S. has already concluded that similar taxes discriminate against U.S. businesses. For example, Canada's DST proposal is similar to the French DST, which the U.S. Trade Representative previously ruled was "discriminatory" and actionable under Section 301 of the Trade Act of 1974. On February 21, 2025, President Trump signed a memorandum on DSTs and digital trade, urging renewed DST investigations under Section 301, and investigating any additional countries that use a DST to discriminate against U.S. companies.[10]

Bill C-11 and the implementing regulations are similarly discriminatory. And together, Bill C-11 and the DST impose cumulative tax and investment requirements of 8% on certain online services.

**Türkiye Digital Services Tax (DST)**

In 2020, Türkiye introduced a 7.5% DST through Law No. 7194 on revenues from digital services, including advertisements and subscriptions.[11] This tax applies to companies with global revenues exceeding €750 million and local revenues over TRY 20 million. Notably, the law also grants the President the authority to reduce this rate downward to 1 percent or to increase it upward to 15 percent. The tax has been in effect since March 1, 2020. The USTR has already determined that Türkiye's DST is unreasonable or discriminatory and burdens or restricts U.S.

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[9] Importantly, because the Canadian music industry is an exporting industry, many Canadian music rights holders make much more in royalties from streaming outside Canada than streaming in their home market.

[10] https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/

[11] https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Turkey%E2%80%99s%20Digital%20Services%20Tax.pdf

commerce, making it actionable under Section 301(b) of the Trade Act, but did not act upon this finding.[12]

**Radio and Television Supreme Council (RTÜK) Fees**

Law No. 6112 grants RTÜK regulatory authority over broadcasting services and media content in Türkiye, which includes streaming platforms. As a condition of their operating licenses, these digital services must pay additional fees or levies on both ad revenues and subscriptions with RTÜK considering them as broadcasters. In December 2023, RTÜK tripled the subscription levy, increasing it from 0.5% to 1.5% of annual subscription revenues (RTÜK subscriptions levy), while the advertising levy remained at 1.5% of annual advertising revenues (RTÜK ads levy). This regulatory approach makes Türkiye one of the only two countries in the world, alongside Canada, to impose broadcaster "fees" on music streaming services.

**Conclusion**

Canada and Türkiye have implemented policies that jeopardize the music streaming success story, ignore its significant distinctions from traditional broadcast radio, and unfairly target and discriminate against U.S. businesses and employers.

The imposition of mandatory financial contributions and national cultural preferences on U.S. and foreign companies risks disrupting consumer preferences and ultimately harming U.S. businesses and creators.

In Canada, the *Online Streaming Act* and its regulations constitute an unreasonable and discriminatory restriction on trade that is intended to extract financial resources from U.S. companies for the benefit of domestic Canadian content development funds and local Canadian broadcasters, without corresponding opportunities for U.S. companies to access benefits. This is in addition to policies such as a Digital Services Tax, which further discriminate against and impose burdens on U.S. companies.

In Türkiye, the government has implemented a sizable DST, combined with the imposition of broadcaster “fees” on music streaming services.

We appreciate the United States Trade Representative inviting comment on unfair trade practices by other countries as you consider appropriate actions to remedy such practices and urge you to consider the ramifications of policies such as those in Canada and Türkiye as you continue your work.

We believe these policies merit further investigation from the USTR.

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[12]https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Determination_Turkey%E2%80%99s_DST.pdf