



March 11, 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 Reply Comments**

1. These are DIMA’s reply comments in the above-noted call for consultation (“**BNC 2025-2**”), on behalf of our members, the world’s leading music streaming companies.

***Music streaming is already a fair and competitive market***

2. In our initial comments, DIMA and our members demonstrated that the trajectory of the music industry from the days of rampant piracy to the current system of fair payment, full access, and innovation is a strong example that “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**” (BNC 2025-2, para. 22). We pointed to data demonstrating that today, music streaming: (i) allows listeners to create more of a connection with artists and boost their engagement with music; (ii) now accounts for the largest portion of English- and French-language audio consumption in Canada; and (iii) has driven significant increases in payments to rightsholders, representing an “essential partnership” between music streaming platforms and labels and artists in

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Canada.<sup>1</sup> Music Canada supplemented its detailed submission<sup>2</sup> with an economic report concluding that Canada is “by any honest reckoning a case study in streaming success”.<sup>3</sup>

3. However, largely without supporting data, the Commission and certain other interveners in this consultation suggest – or leave the perception – that the market for music streaming services may warrant regulatory intervention. These suggestions appear to have arisen from the failure by the Commission and other parties to: (a) appropriately distinguish among various types of digital services; (b) recognize the nature of music streaming services; (c) recognize that music streaming services have already created an easily accessible and healthy market; and (d) appreciate that “balancing” or “leveling” regulatory obligations between the radio and music streaming sectors is the wrong objective and approach.

***Music streaming services are unique – and should not be regulated with a broad brush approach***

4. The Commission and interveners have in some instances painted “online undertakings” with a broad brush, as though all digital services, including streaming services and services streaming films and other audiovisual programs, had the same business model and the same “market dynamics”. They do not. For example, the Commission focuses on regulatory tools that have long applied to the relationships between broadcasting distribution undertakings (“**BDUs**”) and traditional audiovisual programming undertakings, and the majority of the questions raised in this consultation about market dynamics ask about “online undertakings” without distinguishing between audio and audio-visual services and content. The Commission introduced all of its questions with the comment:

This proceeding will cover both traditional and online **audio-visual and audio undertakings**. However, given that many of the current tools related to access have been developed to govern the distribution of audio-visual undertakings, **not all questions may be relevant to the audio sector**. (para. 7, emphasis added)

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<sup>1</sup> DIMA [Initial Comments](#) at paras. 14-16. See also Amazon [Initial Comments](#) at paras. 23, 48, 53-44; Apple [Initial Comments](#) at paras. 26-28, 33, 34, 41-42; and Spotify [Initial Comments](#) at para. 24.

<sup>2</sup> Music Canada [Initial Comments](#).

<sup>3</sup> Will Page, “Laying a Foundation for Success: Canada’s *Online Streaming Act*”, April 2024, [Appendix A](#) to Music Canada Initial Comments [**Page Report**].

5. Without attempting to address any differences in sectors of the market, the Commission went on to state that one of two key goals for this consultation is:

a **sustainable model** for the delivery and discoverability of diverse Canadian and Indigenous content: A broadcasting system in which Canadians have access to and can discover a diversity of audio-visual and audio content. (para 8).

We generally agree with the Forum for Research and Policy in Communications that the Commission has been vague and imprecise in this consultation about defining the market, the state of the market, and what issues actually exist.<sup>4</sup> The Commission’s “key goal” set out above presupposes that access and discoverability are a problem to be fixed across all markets, and that all players – including music streaming services – require a “sustainable regulatory model” to fix it. In other words, the Commission appears to have diagnosed a problem that needs fixing through regulation, but without any concrete evidence of a market failure. In the case of music streaming, however, the market failure of a decade ago caused by limited access to content and piracy has been fixed.

***Music streaming services have already developed a successful and competitive market without access barriers***

6. Some interveners have responded to the Commission’s broad set of questions with comments that do not reference the characteristics of music streaming services. For example, the CBC/Radio-Canada has stated that “Canada has fallen behind” in establishing rules and requirements on “key online distribution platforms”, and that regulatory obligations are “expected and required under new domestic legislation as a condition to operate in the Canadian market”, without discussing how the audio market is different from that of audiovisual services.
7. We ask that the Commission carefully consider the voices **from the music and music streaming** industries, in this consultation and in the [Broadcasting Notice of Consultation 2025-52](#), *Supporting Canadian and Indigenous audio content* (the “**Audio Policy Consultation**”) – including DIMA, our members, and Music Canada – to better understand the market for music streaming services. As we explain later in these reply comments, we support and agree with the submissions of Music Canada that:

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<sup>4</sup> FRPC [Initial Comments](#).

the Canadian music streaming market is already achieving the Commission's goals of a fair and competitive market that supports the delivery and discoverability of diverse Canadian and Indigenous content.<sup>5</sup>

***Apportioning “regulatory burdens” cannot be an approach to manage competition***

8. In the recent Radio Processes consultation ([Broadcasting Notice of Consultation 2024-290](#)), both the Commission<sup>6</sup> and some parties<sup>7</sup> made statements suggesting that a perceived “lack of regulation” of online audio undertakings created a competitive disadvantage for commercial radio stations; this assertion has been repeated in this proceeding.<sup>8</sup>
9. For example, the operator of a commercial radio station has submitted that, because its content is accessible over traditional radio airwaves but not available on every single audio streaming service available on the internet, the Commission must intervene. Indeed, the station operator has gone so far as to request that the Commission mandate the carriage of their broadcast on all audio streaming services. The premise appears to be that the internet should be treated as “digital airwaves” – and commercial radio must be available throughout the online universe.<sup>9</sup>
10. This premise is wrong. As the *Broadcasting Act* makes clear, traditional radio wave broadcasting and broadcasting conducted over the internet are unique. The internet does not suffer from limited spectrum, and access to the online universe does not require a license. As a result, Canadians may access myriad programming via the internet, and no broadcasting undertaking can control the programming available to consumers. To require every streaming service to carry a commercial radio broadcast

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<sup>5</sup> Music Canada [Initial Comments](#) at para. 3

<sup>6</sup> BNC 2024-290, *Call for Comments – Modernization of radio processes, Summary*: “Given the emergence of online undertakings in the Canadian broadcasting landscape and the Commission’s new power to regulate these undertakings, the Commission is of the view that the regulatory processes need to be reviewed to reduce the regulatory burden on radio undertakings operating in Canada.”

<sup>7</sup> For example, Stingray [Initial Comments](#), para. 3, “Moreover, BRP 2022-332 did not even attempt to address the fact radio stations in Canada compete directly with foreign online streaming services that are subject to no regulatory requirements”.

<sup>8</sup> See for example Rogers Communications Inc. [Initial Comments](#) at para 38, referencing “the asymmetrical and inequitable treatment of Canadian broadcasting undertakings vis-à-vis global streaming services” as an “undue barrier” to existing broadcasting undertakings and new entrants to the broadcasting system”.

<sup>9</sup> JAZZ.FM91 [Initial Comments](#), p. 1.

is not only *ultra vires* the Act, but contrary to the fundamental nature of internet broadcasting.

11. More fundamentally, the Commission does not have the authority under the *Broadcasting Act* to manage competition between the radio sector and other audio sectors. The Commission may choose to change the regulatory requirements that apply to the traditional radio sector in accordance with its jurisdiction, in the interest of aligning them with the policy and regulatory mandates applicable to radio stations under the *Broadcasting Act* and the Policy Direction to the Commission.<sup>10</sup> However, the Commission does not have jurisdiction to regulate “competition” between classes of broadcasting undertakings, or to protect the revenues or market share of any particular undertaking or class of undertaking.

### ***Lack of focus in consultations leading to stakeholder confusion***

12. In our comments in this and other recent proceedings, we noted that the Commission’s approach to raising the same issues and questions across multiple consultations is raising challenges for participants and for the development of a clear record before the Commission.<sup>11</sup> It appears that this approach has led some parties to make submissions that are misplaced, better suited to other consultations, or otherwise not related to “market dynamics” matters relevant to the *Broadcasting Act*.
13. For example, the Canadian Association of Broadcasters has commented on “equitable programming contributions” including the level of contributions made by online undertakings to funds under Broadcasting Regulatory Policy CRTC 2024-121-1.<sup>12</sup> ACCORD and APEM have made detailed comments about the discoverability and promotion of music, which are a matter for the Audio Policy Consultation.<sup>13</sup> And the Canadian Independent Music Association has raised issues around copyright collective music licensing with a social media service,<sup>14</sup> summarizing and repeating submissions it has made to the Competition Bureau of Canada, which therefore would

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<sup>10</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>11</sup> DIMA [Initial Comments](#) paras. 3-4.

<sup>12</sup> CAB [Initial Comments](#), paras. 11-12.

<sup>13</sup> ACCORD [Initial Comments](#), APEM [Initial Comments](#).

<sup>14</sup> CIMA [Initial Comments](#), paras. 4-9.

in substance and in forum not be a matter for the Commission. None of these submissions has a place in this proceeding.

14. The regulatory issues the Commission is addressing here are too important to consider without focus and precision. One of DIMA's key concerns is making sure that the Commission appreciates the unique characteristics of music streaming. We have summarized key factors in these reply comments, and look forward to addressing music-specific issues more fully in the Audio Policy Consultation.

***Music Streaming Services operate with unique market dynamics and the Commission must reflect that in any decision***

15. Across many submissions to the Commission, including our initial comments in this proceeding, DIMA and our members have explained the open-access characteristics of music streaming services: the fact that music streaming “is driven in terms of each consumer’s individual interest”, that it “represents nearly infinite hours of listening, a vast catalogue of recordings, a plethora of languages”, and that it “has broken down not just physical geography but international borders as well”.<sup>15</sup> It is unlike radio and other traditional media.
16. However, various parties in this consultation fail to recognize that music streaming services are not – and are not like – BDUs or traditional broadcasters, including radio or satellite radio services. Music services are also different from audiovisual streaming services in that barriers to entry to produce music content are quite low, distributors are generally not content producers, and the same catalog is available across competing services. Even where the Commission’s questions and stakeholder submissions clearly distinguish between traditional broadcasters and online undertakings, in many cases it is difficult to determine whether those questions<sup>16</sup> and submissions are referring to all online services, audio-visual services, or music streaming services, or indeed whether they have given serious consideration to drawing distinctions between market sectors. For example, Friends of Canadian Media has

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<sup>15</sup> Music Canada and DIMA joint letter to CRTC, September 25, 2024, available at <https://musiccanada.com/news/music-canada-and-dima-issue-joint-letter-to-crtc-following-canadian-content-audio-workshops/>.

<sup>16</sup> For example, after citing existing tools such as basic carriage of over-the-air stations, 9.1(1)(h) mandatory distribution, the 1:1 rule, packaging requirements and preponderance, the Commission asked the following question without specifying whether it was referring to all online undertakings, or breaking down the question to address different types of online undertakings: “Q20. *Would it be appropriate to adapt these access tools to online undertakings, considering the Commission’s authority under the Act? If so, how could they be adapted in order to maximize their effectiveness?*”

stated that its extensive comments (which addressed the Wholesale Code, priority carriage and predominance of Canadian services) “have **largely** been oriented to audio-visual services”, but it has undertaken to provide further comments on “regulatory protections” for radio “after reviewing the interventions of such Canadian audio services and listeners”.<sup>17</sup> ACCORD, in citing data from SOCAN, has referred to collections from audiovisual and music streaming services by putting all the different income streams into a single statistic.<sup>18</sup>

17. The lack of clarity around whether questions and submissions are directed to online audio-visual undertakings, online audio undertakings or traditional broadcasters makes assessing certain submissions challenging. At best, it indicates that music streaming services are not front-and-centre in this proceeding for a fair reason: they simply do not present “market dynamics” challenges that warrant regulation. At worst, we are concerned that lack of understanding of the music streaming sector and its basic characteristics could lead the Commission to use a broad brush approach. As in the Initial Base Contribution decision, which required audio services to contribute the same 5% of gross revenues as audiovisual services,<sup>19</sup> we are concerned that the Commission seeks to once again impose regulatory rules and obligations on music streaming services without appreciating that Canada is an outlier internationally in failing to distinguish between the music and film/TV sectors, and failing to recognize the distinct nature of the music streaming market. The Commission is required under the *Broadcasting Act* to recognize the characteristics of undertakings before regulating,<sup>20</sup> and to avoid “imposing obligations on any class of broadcasting undertakings” if doing so would not materially contribute to the Act’s policy objectives (s. 5(2)(h)). The record does not demonstrate that regulation is warranted.

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<sup>17</sup> Friends of Canadian Media, [Initial Comments](#), paras. 107-110, emphasis added.

<sup>18</sup> ACCORD [Initial Comments, para. 7](#).

<sup>19</sup> We refer to the Commission’s decision to apply a financial contribution requirement to music streaming services, and moreover, a 5% contribution level that is the same for audio-visual and audio services, without distinguishing between those sectors. The orders were issued further to the consultations leading to Broadcasting Regulatory Policy CRTC [2024-121](#) and [2024-121-1](#). Certain of these orders are the subject of legal proceedings brought in the Federal Court of Appeal in respect of which DIMA’s members reserve their legal rights.

<sup>20</sup> The *Broadcasting Act* requires the Commission to ensure that any regulation: “is appropriate in **consideration of the nature of the services provided by the undertaking**” (s. 3(1)(a.1); and take into account “**the variety of broadcasting undertakings**” the Act applies to, avoiding “imposing obligations **on any class of broadcasting undertakings**” if doing so would not materially contribute to the Act’s policy objectives (s. 5(2)(h)).

18. On the contrary, DIMA and its members have demonstrated, with clear examples, that the growth of music streaming has supported – not challenged – competitive market dynamics in Canada. Market access barriers have never been lower, and more music than ever before has been made available online by music streaming services.<sup>21</sup> That achievement is based on the very business model of music streaming services: music streaming services licence virtually all available commercial music and make it available to consumers. They then relentlessly and creatively compete with other services to provide consumers with features to discover and promote artists.
19. Interveners in this proceeding such as ACCORD<sup>22</sup> and l'Association des professionnels de l'édition musicale<sup>23</sup> tend to focus on the legacy characteristics of commercial radio – with its heavily-managed system of music quotas applied within limited broadcast time, all within small marketplaces in Canada – and attempt to apply the same limited metrics of “success” to music streaming services. In doing so, they appear to miss, or vastly underestimate, the value to artists of (i) readily finding a place on music streaming services where they can make their songs available and engage directly with their fans, and (ii) worldwide exposure for them and their content. As Music Canada has stated, music streaming is “the **primary distribution means and revenue driver** for artists and labels, and has brought about **renewed investment in the next generation** of Canadian and Indigenous artists.” Moreover, “Canadian artists have succeeded in **punching way above their weight on the world stage**”, with approximately 10 streams overseas for every one at home in Canada.<sup>24</sup> Clearly, these are the markers of success for music streaming services, not the legacy measures of Canadian content quotas and counting plays solely within Canada.
20. The Commission and stakeholders who choose to comment on music streaming should consider reports and data that are that are focused on the music streaming market. In its initial comments, Music Canada summarized the findings of the 2022 UK Competition and Markets Authority report, which concluded that consumers and artists were benefiting significantly from the increased access, continuous innovation, and improved service offerings provided by music streaming services. That extensive

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<sup>21</sup> See for example DIMA [Initial Comment](#) at paras. 14-16. See also Amazon [Initial Comment](#) at paras. 23, 48, 53-44; Apple [Initial Comment](#) at paras. 26-28, 33, 34, 41-42; and Spotify [Initial Comment](#) at para. 24.

<sup>22</sup> ACCORD [Initial Comment](#).

<sup>23</sup> APEM [Initial Comment](#).

<sup>24</sup> Music Canada [Initial Comment](#) at para. 3 and 49, citing [Page Report](#), supra note 3 at page 36.



review, conducted in a market very similar to Canada, concluded that no regulatory intervention was warranted.<sup>25</sup>

***Commission’s limited authority to regulate online undertakings’ commercial activities requires a light touch for all obligations***

21. In our initial comments, DIMA and our members explained that Parliament clearly directed the Commission via the *Online Streaming Act* not to interfere with the commercial dealings of online undertakings.<sup>26</sup> The Commission does not have the authority, and parties have moreover not provided evidence, to support the application of the Wholesale Code to music streaming services.<sup>27</sup> There similarly has been no evidence put forward to apply an undue preference regime to music streaming undertakings,<sup>28</sup> much less an expanded “undue or unreasonable preference” regime, as proposed by APEM.<sup>29</sup>
22. A traditional radio station operator has invited the Commission to mandate the carriage of their audio programming on connected devices under the guise of “discoverability”.<sup>30</sup> With respect, this submission is misplaced. The Commission does not have the jurisdiction to mandate the carriage of any programming on audio streaming services. In any event, there is no evidence on the record of any legitimate concern that Canadian programming is being stifled – all radio stations may maintain their own online streams (and many in fact do so), and the artists featured on

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<sup>25</sup> Music Canada Initial Comments at para. 25-27, citing UK Competition and Markets Authority, [Music and streaming market study final report – Executive Summary](#).

<sup>26</sup> See for example DIMA [Initial Comments](#) at paras. 34-35; Spotify [Initial Comments](#) at paras. 7-18; Apple [Initial Comments](#) at paras. 60-62, 69-70; Amazon [Initial Comments](#) at paras. 31-34, 71, 80, 85.

<sup>27</sup> Friends of Canadian Media has proposed that “as a matter of principle, we believe that, to the extent feasible, The Wholesale Code should be adapted to online undertakings, both audio-visual and audio” ([Initial Comments](#) at para. 70). Friends did not explain how or why the Wholesale Code could or should apply to audio online undertakings.

<sup>28</sup> Friends of Canadian Media stated that undue preference is a tool “to ensure Canadian content is not sidelined by foreign market powers”; however as we have explained at para. 16 of these Reply Comments, this is an instance of an intervention that appears to apply to audio-visual services, and not audio services.

<sup>29</sup> APEM [Initial Comments](#) at paras. 106-109.

<sup>30</sup> JAZZ.FM91 [Initial Comments](#), p. 2.

commercial radio now have the ability to be discovered on a plethora of other undertakings, including online streaming services.

23. The record demonstrates that music streaming services' business model depends on providing full and fair access to Canadian artists, songwriters, and music, and that music streaming in fact provides outsized exposure and benefits to them.

### ***Dispute Resolution***

24. Parties broadly recognize that the Commission does not have authority to resolve disputes involving online undertakings.<sup>31</sup> While some parties may accept alternative dispute resolution ("ADR") as a voluntary option, if the Commission were to make this available, it should not become a regulatory expectation.

### ***Data Sharing***

25. Some parties, including APEM, l'Adisq, and ACCORD, have called for data collection regarding plays of Canadian, francophone, and Indigenous recordings.<sup>32</sup> These comments are misplaced in this proceeding, and premature. DIMA responded to APEM's Part I application on this matter in October 2024, and urged the Commission to address data-collection issues, including the significant challenges relating to them, in the Audio Policy Consultation proceeding. In that proceeding, the Commission will, among other things, be addressing key issues such as the definition of "Canadian content", which cannot be measured effectively until it is defined. Counting plays is not a "market dynamics" issue and should not be part of this consultation.

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<sup>31</sup> See for example Rogers Communications Inc. [Initial Comments](#) at paras. 17 & 25; Friends of Canadian Media, [Initial Comments](#) at para. 94; Amazon [Initial Comments](#) at para. 80; Apple [Initial Comments](#) at paras. 69-70; Spotify [Initial Comments](#) at paras. 7-8.

<sup>32</sup> APEM [Initial Comments](#); ADISQ [Initial Comments](#); ACCORD [Initial Comments](#).

**Conclusion**

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

Sincerely,

A handwritten signature in black ink, appearing to read 'CRushing', written in a cursive style.

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

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