



Sent via Intervention Form

2 July 2024

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

**Re: Reply comments of the Canadian Association of Broadcasters with respect to
*Proposed orders imposing conditions of service and expenditure requirements for
carrying on certain online undertakings***

As set out in Broadcasting Regulatory Policy CRTC 2024-121

1. As the national voice of small, medium and large Canadian privately-owned and controlled radio, TV and discretionary broadcasters both independent and vertically integrated, including those operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to respond to the comments filed by other parties on the Commission's proposed orders set out in the Appendix to Broadcasting Regulatory Policy CRTC 2024-121 (the Orders).

Executive Summary

- Like the CAB, many parties raised concerns about the timing of the new contributions, and several made the same recommendation as the CAB, namely, that payments should be required on monthly basis, with wording based on the *Broadcasting Distribution Regulations* (BDU Regulations).
- Some parties suggested that imposing the obligations only on online undertakings that are not affiliated with a Canadian broadcaster is unfair. Given that Canadian broadcasters contribute significantly more than 5%, and have done so for years, while online undertakings have not had any obligations, this is patently untrue.
- Several creator groups have raised concern about the amounts that may be deducted from the contribution to the Canada Media Fund. Noting their concerns, we believe even more strongly that any deductions from the base contribution requirements should only be considered after future proceedings.
- Foreign platforms also raised concerns about the confidentiality of their revenue information. We believe these concerns are misplaced.

- Finally, audio platforms are seeking direct access to the funds to which they will contribute. Given that Canadian radio stations do not have access to the music funds, and the other funds are for very specific purposes, this proposal should be ignored.

2. CAB addresses each of these issues in the following sections.

Clarity is required with respect to the timing of contributions

3. As noted above, many parties raised concerns about the timing of the new contributions.
4. In particular, like the CAB, other representatives of creator groups – including AQMP, the Black Screen Office, the Broadcasting Accessibility Fund, the Canada Media Fund, the CMPA, the Independent Broadcast Group and the Indigenous Screen Office – raised the very real concern that the wording of the Commission’s proposed orders does not properly reflect the Commission’s intent that contributions start flowing quickly, but rather, as currently worded, would only require contributions on the 31st of August 2025.
5. There was strong agreement amongst these parties that the Commission needed to make the payment terms clearer by imposing periodic payment obligations. Several made the same recommendation as the CAB, that payments should be made monthly, and be aligned with the spending obligations imposed in the *Broadcasting Distribution Regulations*.
6. The CAB supports this recommendation, namely, that the Orders be amended for clarity and to better reflect the Commission’s intent that contributions be directed to areas of immediate need, as follows:

1. Commencing in the 2024-2025 broadcast year, the operation of an online undertaking providing audio-visual services shall, ~~by 31 August of each broadcast year,~~ devote not less than 5% of its annual contributions revenues derived from its audio-visual broadcasting activities from the previous broadcast year to the support of Canadian and Indigenous content, to be allocated as follows.¹

1.1 (a) Each contribution that is required under section 1 shall be made separately in 12 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(b) If a designated fund is not equipped to receive contributions by 1 September 2024, the contribution shall be held by the operator until the Commission deems the fund eligible, at which point the operator shall provide the funds on a prorated basis.

(b) The operator may estimate the required monthly contribution for September, October and November.

(c) If a monthly contribution for September, October or November of a broadcast year is based on an estimate that is greater than the amount required, the operator may deduct the excess from the amount of the contribution that is required for December of that broadcast year; however, if the contribution made by the operator is less than the amount required, the operator shall contribute the balance by December 31 of that broadcast year.

¹ This is the same wording we proposed in our initial comments.

7. For their part, several foreign platforms appear to misunderstand the timing issue entirely – with some suggesting that contributions will not begin before November 2026. This misapprehension must be directly and clearly corrected in the Commission’s final Orders. The Commission also needs to make clear that looking at revenues from the previous year is simply a mechanism for calculating the value of contribution requirements in any given year.
8. With the making of these new orders, undertakings will determine the amount they must contribute starting on 1 September 2024 by calculating the value of 5% of their revenues earned in the broadcast year ending 31 August 2024. This should be made crystal clear in the Commission’s final Orders.

A 5% contribution requirement for non-affiliated undertakings is far from unfair

9. Contrary to the comments of some parties that it is unfair to impose a 5% contribution requirement only on online undertakings not affiliated with a Canadian broadcaster, we hasten to point out that Canadian undertakings generally have much higher obligations, for example, Canadian television stations and discretionary services have exhibition obligations as well as Canadian programming expenditure obligations between 30 and 45%. Canadian radio stations are also subject to content quotas over-and-above their spending obligations. Accordingly, it is not unfair in any way to require an interim contribution requirement of 5%, pending the consideration of broader commitments to Canadian broadcasting policy objectives.

It is too soon to consider direct spending

10. We read with a great deal of interest the comments regarding the Commission’s proposed direct spending flexibility, namely the ability of online undertakings to redirect up to 1.5% of their contributions from the CMF to the production or acquisition of Canadian content, as certified by the CRTC or the Canadian Audio-Visual Certification Office (CAVCO). Several creative groups raised concern that, as drafted, this would not result in new production, or could be directed to content other than that normally supported by the CMF.
11. Moreover, foreign online undertakings have requested additional flexibility in the application of this spending obligation, including the ability to over- or under-spend in any given year, spending credits for the Indigenous or official language minority content, and the application of group-based spending. These are all broader questions that were not addressed in the proceeding that led to the publishing of the draft Orders and would be more appropriately considered in a broader conversation about contributions to the Canadian broadcasting system.
12. This to us demonstrates that it is too soon to consider direct programming expenditure requirements. Allowing online undertakings to make a significant part of their initial base contributions in the form of direct spending does not make it possible to achieve the Commission’s desired objectives, nor does it ensure that they are contributing to the Canadian broadcasting system in a meaningful (and measurable) manner.

Concerns about confidentiality (and reverse-engineering) are over-stated

13. Several platforms raised concerns about making contributions directly to the funding recipients, suggesting that recipients would be able to “reverse engineer” and determine the total (Canadian) revenues of online undertakings, a number that is usually held in confidence. We believe this concern is misplaced and over-stated.
14. The CAB has a long history of managing contributions in a responsible and professional way. It has fairly and transparently administered several CRTC-created funds, including the Local Programming Improvement Fund, the Small Market Local Production Fund, and the Independent Local News Fund (ILNF), collecting contributions from broadcasting distribution undertakings based on their revenues. Additionally, the CAB was chosen to administer the broadcasting component of the Federal Government’s COVID-19 Emergency Relief Fund and COVID-19 Recovery News Support Fund, demonstrating the reliance that can be placed on the association. The CAB undertakes the administration of such funds as a service to the industry and, as such, does so at very little administrative cost.
15. We are committed to ensuring that any information provided to the CAB will be handled with strict professional responsibility and accountability, including the same degree of confidentiality as granted by the CRTC. Further, we confirm that confidential information provided by recipients to be used for the purpose of calculating allocations will not be shared with members of the association or personnel involved in advocacy activities.
16. The CRTC could seek such confirmation from other recipients as well.
17. We are concerned that identifying a third-party as the initial recipient of funds would result in additional time and unnecessary administrative cost. The Commission clearly wishes funds to flow quickly to areas of immediate need. Setting up additional administrative steps will frustrate the achievement of this objective.

Commercial radio stations have no access to music funds, nor should online audio services

18. The Digital Media Association and Spotify have recommended that the audio funds be required to amend their rules to ensure that online audio undertakings can access them. The CAB notes that Canadian radio stations do not have access to FACTOR, Musicaction, the Canadian Starmaker Fund or Fonds RadioStar. There is no need to amend their rules.
19. As for the Community Radio Fund of Canada and the new commercial radio news fund, these are designated funds with very specific and limited purposes, and no changes to them would be appropriate.

Conclusion

20. The CAB believes that the Commission’s proposed Orders are an important step on the road to leveling the playing field between online providers and Canadian radio and television broadcasters. However, we remain concerned that the Commission has not gone far enough and is not moving quickly enough to address the urgent need for regulatory reform. Canadian broadcasters continue to be regulated under rules established long before the massive disruption of the Canadian broadcasting system by online undertakings.

21. The Commission must urgently move to hone its regulatory tools and focus on what matters, including regulating only what is truly important and meaningful. It must reassess its modernization plan and immediately move forward with a fulsome consideration of the obligations of Canadian radio and television stations, with the objective of reprioritizing the success of Canadian-owned and controlled broadcasters who are the foundation of the domestic media marketplace.
22. All of which is respectfully submitted.

Yours sincerely,

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

Kevin Desjardins
President

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