



June 12, 2023

Filed Electronically

Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Doucet:

**Re: Broadcasting Notice of Consultation 2023-140: Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.
2. In our written submission, we will respond to the questions posed in the Notice of Consultation in the order that they appear in the Notice. At the same time, given the nature and expertise of the WGC, we do not have substantial comments on all the Commission's questions at this time. We are pleased to participate, however, and may provide reply comments where appropriate after having reviewed the comments of others.

**Amending, replacing or repealing current exemption orders**

*Q1. – Q5.*

3. Given the nature and expertise of the WGC, we do not have substantial comments on these issues at this time. We are pleased to participate, however, and look forward to providing reply comments where appropriate after having reviewed the comments of others.

## Transition to conditions of service orders for online undertakings

*Q6. Is the approach of exempting certain online undertakings from the application of conditions of service appropriate? Why or why not? If yes, are the above-mentioned classes of online undertakings appropriate to exempt from the conditions of service being contemplated by this proceeding? Should other classes be considered?*

4. Yes, the approach of exempting certain online undertakings from the application of conditions of service is appropriate. The WGC recognizes that there are and will be a multitude of online undertakings of various types and sizes, and that not all such undertakings may be in a position to materially contribute to the implementation of the broadcasting policy set out in the *Broadcasting Act* (the Act). Indeed, section 5(2)(h) of the Act states that the Canadian broadcasting system should be regulated and supervised in a manner that, in part, “avoids imposing obligations on any class of broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).”
5. That said, the WGC does not understand, and therefore cannot agree with, the proposal to exempt, “online undertakings whose single activity and purpose consists of providing unique transactions.”
6. As stated in the “Proposed exemption order respecting classes of online undertakings in relation to the proposed *Online Undertakings Registration Regulations*,” the Commission proposes to define “unique transaction” to mean, “a one-time rental or purchase of an individual program transmitted or retransmitted over the Internet.” It appears that this definition, combined with the exemption for online undertakings “whose single activity and purpose” consists of providing such “unique transactions”, would mean that services like iTunes would be exempted from registration.
7. What is less clear is why this should be the case. The Commission provides no rationale for this proposal, either in this Notice of Consultation or in the related Notices.<sup>1</sup> With no explicit rationale provided by the Commission, the WGC cannot effectively consider and make meaningful comments on it.
8. Moreover, exempting such undertakings does not seem consistent with past or current regulation of the Canadian broadcasting system. The traditional Canadian broadcasting system has long included video-on-demand (VOD) and pay-per-view (PPV) services that would appear to be analogous—or perhaps even identical—to the “unique transactions” services that the Commission now proposes to exempt. Not only has the Commission required such services to be licensed in the past,<sup>2</sup> but has imposed substantive regulatory obligations upon them. For example, Broadcasting Regulatory Policy CRTC 2016-436 sets out the standard requirements for television stations, discretionary services, and on-demand services, and includes that each VOD and PPV service is required to contribute 5% of its gross annual revenues to an existing Canadian independent production fund.<sup>3</sup>

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<sup>1</sup> Namely, Broadcasting Notice of Consultation CRTC 2023-138 and Broadcasting Notice of Consultation CRTC 2023-139.

<sup>2</sup> The WGC acknowledges that online undertakings will not be licensed under the new *Broadcasting Act*.

<sup>3</sup> Broadcasting Regulatory Policy CRTC 2016-436, Appendix 3, para. 13.

9. Given this, we can see no reason why services providing “unique transactions”, whether that is their single activity and purpose or not, should be exempt. At this point, we lack fundamental information about such services. It may indeed be appropriate for such services to make substantive contributions to the Canadian broadcasting system.
10. Further, the Commission has proposed that online undertakings, whether affiliated with a broadcasting ownership group or not, be exempted from registry requirements, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million.
11. Unfortunately, the WGC cannot effectively comment on this \$10-million threshold because we lack access to the data upon which it may have been based or, indeed, to any data that would help us understand what this threshold means in reality. In other words, we lack the context and rationale for establishing this threshold at this particular level, so we cannot comment on whether it is appropriate.
12. In particular, we note that the Commission’s proposed threshold makes no mention of official language of the service. Presumably, then, this same threshold would apply to both English-language and French-language services that purport to serve Canadians who speak either of those languages. This is despite the fact that the population sizes of predominantly English-speaking and French-speaking Canadians are different, the market realities are different, and the Act expressly recognizes this difference multiple times, and directs the Commission to take it into consideration.<sup>4</sup> These challenges only become magnified with respect to languages other than English or French.
13. The WGC does acknowledge the need for a monetary threshold of some kind. The WGC does not oppose the application of thresholds generally, below which undertakings would have not obligations to register with the Commission. We lack the information to meaningfully comment, however, on the appropriateness of this particular threshold at this time.
14. The WGC does not have other classes of online undertakings to propose to exempt at this time.

*Q7. Is a broadcasting ownership group’s gross revenues from broadcasting activities the appropriate metric for establishing exemption thresholds?*

15. In the Notice of Consultation to this proceeding, the Commission proposes the following two classes of exemption:
  - online undertakings affiliated with a broadcasting ownership group that have, after deducting any excluded revenue, gross annual revenues of less than \$10 million; or
  - online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, gross annual revenues of less than \$10 million.

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<sup>4</sup> E.g. Sections 3(1)(c) and 5(2).

16. As the WGC understands it, this means that in the first instance, the \$10-million threshold applies to the broadcasting ownership group as a whole; whereas in the second instance, the \$10-million threshold applies to the individual online undertaking. In this understanding, if an individual online undertaking itself earns gross annual revenues of less than \$10 million, it is *not* exempt if it is affiliated with a broadcasting ownership group where that group earns \$10 million in gross annual revenues or more; but it *is* exempt if it has no affiliation whatsoever with a broadcasting ownership group.
17. If this understanding is correct, then as a preliminary view, and subject to our review of the comments of others in this proceeding, the WGC agrees with this approach. Such an approach would appear to recognize the synergies that exist within ownership groups, including the ability of undertakings within such a group to share costs, cross-promote services and content, and consolidate resources that can be made available to multiple undertakings within that group. This approach would make it more likely that “smaller players” that are exempt are *truly* smaller, in that they lack such synergies and access to resources, as opposed to merely having been created by the drawing of arbitrary lines within a broadcasting corporate group.
18. As to the question of gross revenues from broadcasting activities, it is difficult for the WGC to determine whether such a metric would be the best one in all possible cases. Speaking in generalities can be difficult when we do not have specific cases to consider or the facts and data that comes with them. That said, as a preliminary view, and subject to our review of the comments of others in this proceeding, the WGC agrees that gross revenues from broadcasting activities are, at the very least, *an* appropriate metric for establishing exemption thresholds, as a starting point.

*Q8. Is a threshold of at least \$10 million in total gross annual Canadian broadcasting revenues an appropriate threshold to apply to online undertakings in regard to the application of conditions of service on such undertakings? If no, what threshold (in terms of type and the amount) would be appropriate to apply, and why?*

19. See our answer above to Q6. In brief, the WGC cannot effectively comment on this \$10-million threshold because we lack access to the data upon which it may have been based or, indeed, to any data that would help us understand what this threshold means in reality.
20. In addition, we note that currently, the application of the Commission’s Annual Digital Media Survey is \$50 million for audiovisual services,<sup>5</sup> which is obviously different—and significantly higher—than the \$10-million threshold proposed in the current Notice of Consultation. We would propose that going forward, once the Commission has determined which threshold(s) to use for exemption from conditions of service, the Commission should look at aligning that threshold with that of the Annual Digital Media Survey —or whatever comparable or successor report or survey the Commission may create in the future—so that there is alignment between the entities that the Commission monitors and regulates, and the entities which provide important information to the Commission that are the basis of that monitoring and regulation.
21. In stating this, we do *not* recommend that the Commission *increase* the proposed threshold from \$10 million to \$50 million. While it is difficult for us to say with certainty that the \$10 million threshold is appropriate, we do agree that it is preferable to the \$50 million threshold for audiovisual services

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<sup>5</sup> Broadcasting Regulatory Policy CRTC 2022-47, Appendix 1.

applicable to the Annual Digital Media Survey. We believe that the \$50 million threshold is too high, and the Commission should harmonize the Annual Digital Media Survey and the other applicable thresholds *downwards* to a new, lower threshold, and not harmonize upwards to \$50 million.

*Q9. If the proposed exemptions are adopted by the Commission, how should the Commission address situations where an undertaking's total gross annual Canadian broadcasting revenues moves above or below the threshold from year to year? And, in such cases, at which moment should the proposed exemptions begin or cease to apply?*

22. Given the nature and expertise of the WGC, we do not have substantial comments on this issue at this time. We are pleased to participate, however, and look forward to providing reply comments where appropriate after having reviewed the comments of others.

### **Conditions of service**

*Q10. Should a condition of service in regard to information gathering be imposed as drafted in the proposed order appended to this notice of consultation? If yes, why? If no, what changes would be appropriate?*

23. Yes, a condition of service in regard to information gathering should be imposed. The reason for this is as indicated by the Commission: To measure and monitor Canadian broadcasting content on online services as well as those services' growing importance and significance in the Canadian broadcasting system. This information is vital for the Commission and the Canadian public to better understand these issues and to respond through substantive regulation, where appropriate.

24. As a preliminary view, and subject to our review of the comments of others in this proceeding, the WGC supports the condition of service as drafted in the proposed order appended to this notice of consultation.

*Q11. Should the condition of exemption specified above in regard to undue preference/undue disadvantage be continued as a condition of service for online undertakings as drafted in the proposed order appended to this notice of consultation? If yes, why? If no, why not?*

25. Given the nature and expertise of the WGC, we do not have substantial comments on this issue at this time. We are pleased to participate, however, and look forward to providing reply comments where appropriate after having reviewed the comments of others.

*Q12. Should the condition of exemption specified above in regard to offering content over the Internet be continued as a condition of service for online undertakings as drafted in the proposed order appended to this notice of consultation? If yes, why? If no, why not?*

26. As a preliminary view, and subject to our review of the comments of others in this proceeding, the WGC supports the condition of exemption in regard to offering content over the Internet be continued as a condition of service for online undertakings as drafted in the proposed order appended to this notice of consultation.

Q13. – Q15.

27. Given the nature and expertise of the WGC, we do not have substantial comments on these issues at this time. We are pleased to participate, however, and look forward to providing reply comments where appropriate after having reviewed the comments of others.

**Conclusion**

28. We thank the Commission for the opportunity to comment in this proceeding, and we look forward to examining the comments of others in the ensuing phase.

Yours very truly,

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

Neal McDougall  
Assistant Executive Director, WGC

Cc: Victoria Shen, Executive Director, WGC  
Council, WGC

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