



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 2023-139: Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations

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.

The WGC supports the creation of a public registry for online streaming services

2. The WGC supports the creation of a public registry for online streaming services. The WGC agrees that such a registry would support the regulation and supervision of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act* (the Act). The WGC agrees that the definition of “online undertaking” in the Act is broad and, as such, may include undertakings whose activities do not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the Act. Given this, it makes sense for the Commission to exempt certain classes of broadcasting undertakings.

“Unique transactions”

3. That said, the WGC does not understand, and does not agree with, the proposal to exempt, “online undertakings whose single activity and purpose consists of providing unique transactions.”

4. 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.
5. 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.¹ With no explicit rationale provided by the Commission, the WGC cannot effectively consider and make meaningful comments on it.
6. Moreover, such an exemption does not appear consistent with either the stated purpose of the registry or with any substantive regulation that may follow it. The Commission states in the Notice of Consultation:

Requiring online undertakings to be registered with the Commission would allow it to (1) keep track of online undertakings operating in Canada, and (2) collect the most basic information from these undertakings. Having such information would also help to better understand the Canadian online broadcasting landscape more generally.

7. Information on undertakings providing “unique transactions” surely are also relevant to understand the Canadian online broadcasting landscape, as well as to keep track of their operation in Canada.
8. In addition, 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 from a registry. Not only has the Commission required such services to be licensed in the past,² 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.³
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 from registration. At this point, we are not even talking about substantive regulatory obligations to support Canadian content—we’re only talking about registration. It may indeed be appropriate for such services to make substantive contributions to the Canadian broadcasting system. In our view, it is *certainly* appropriate that they register, subject to the other thresholds that the Commission may establish.

¹ Namely, Broadcasting Notice of Consultation CRTC 2023-138 and Broadcasting Notice of Consultation CRTC 2023-140.

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

³ Broadcasting Regulatory Policy CRTC 2016-436, Appendix 3, para. 13.

Annual Canadian gross revenues of less than \$10 million

10. In the Notice of Consultation in this proceeding, 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.⁴ 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, be it with respect to a registry or with respect to more substantive regulatory obligations. The WGC does not oppose the application of thresholds generally. We lack the information to meaningfully comment, however, on the appropriateness of this particular threshold at this time.

Conclusion

14. 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,



Neal McDougall
Assistant Executive Director, WGC

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

⁴ E.g. Sections 3(1)(c) and 5(2).

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