Canadian Radio-television and Telecommunications Commission   Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Regulatory Policy CRTC 2023-329 and Broadcasting Order CRTC 2023-330

PDF version

Reference: 2023-139

Ottawa, 29 September 2023

Online Undertakings Registration Regulations, and exemption order regarding those regulations

Summary

The Commission announces that it has made the *Online Undertakings Registration Regulations* (the Registration Regulations). Further, the Commission has established an exemption order respecting classes of online undertakings in relation to the Registration Regulations.

As a result of the new Registration Regulations and the new exemption order, various online undertakings that broadcast audio or audio-visual content that is intended to inform, enlighten or entertain must be registered with the Commission and provide it with basic information by no later than **28 November 2023**. Such services include streaming services, social media services, subscription television services that are available online, radio stations that live-stream over the Internet, services that offer podcasts (free or paid subscription), and services that offer unique transactions allowing the user to stream or download content.

Exempted from the new regulations are online undertakings that either alone, or as part of a broadcasting ownership group, have less than $10 million in annual broadcasting revenues in Canada, and those whose single activity and purpose consists of providing either video game services or audiobook services. For the sake of clarity, users that upload content on social media platforms are not subject to the *Broadcasting Act* and therefore will not need to register.

The Registration Regulations will be published in the *Canada Gazette*, Part II, and will come into force on **29 September 2023**. A copy of the Registration Regulations is set out in Appendix 1 to this regulatory policy. The exemption order is set out in Appendix 2.

Introduction

1. The Commission announces that it has made, with some changes, the *Online Undertakings Registration Regulations* (the Registration Regulations) as proposed in Appendix 1 to Broadcasting Notice of Consultation 2023-139 (the Notice). Further, it has established the criteria for exemption from those regulations, based on the *Proposed exemption order respecting classes of online undertakings in relation to the proposed* Online Undertakings Registration Regulations, set out in Appendix 2 to the Notice.

2. The Registration Regulations will come into force on **29 September 2023** and subsequently be published in the *Canada Gazette*, Part II. A copy of the Registration Regulations is set out in Appendix 1 to this regulatory policy. The exemption order is set out in Appendix 2.

Background

3. On 27 April 2023, the *Online Streaming Act* came into force.[1] This Act includes, among other things, amendments to the *Broadcasting Act* to account for the impact that Internet audio and video[2] services have had on the Canadian broadcasting system. The amended *Broadcasting Act* provides the Commission with clear powers and tools to, among other things, regulate certain online undertakings operating in whole or in part in Canada, regardless of their country of origin, when they are operating as "broadcasting undertakings".[3] As set out in the *Broadcasting Act*, "online undertaking" means "an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus."

4. Paragraph 10(1)(i) of the *Broadcasting Act* grants the Commission the power to make regulations respecting the registration of broadcasting undertakings with the Commission. Pursuant to subsection 2(1) of the *Broadcasting Act*, the definition of "broadcasting undertaking" now includes online undertakings.[4]

5. The Commission currently has limited information on online undertakings operating in Canada. Certain information has recently been collected following the implementation of the Annual Digital Media Survey (the Digital Media Survey), the launch of which was approved in Broadcasting Regulatory Policy 2022-47.

6. Considering the clear mandate of the amended *Broadcasting Act* to regulate online broadcasting undertakings, the Commission must obtain information about a broader scope of online broadcasting services operating in Canada to ensure that it can fulfil this mandate. The first step enabling the collection of such information is to require online undertakings to register with the Commission. In this regard, on 12 May 2023, the Commission published the Notice, in which it called for comments on the proposed Registration Regulations, which would require the registration of certain online undertakings, and on a proposed order exempting certain classes of online undertakings from the requirement of being registered.

---

[1] *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, SC 2023, c 8.

[2] The term "video" is used in this regulatory policy, whereas the term "audio-visual" is used in the *Broadcasting Act*.

[3] Prior to the amendments, in order to legally operate in whole or in part in Canada, a broadcasting undertaking was required to be either licensed by the Commission or exempted from the obligation to hold a licence by way of an exemption order. Under the current *Broadcasting Act*, to legally operate in Canada, online undertakings no longer need to hold a licence or be exempted from holding a licence.

[4] Under the amended *Broadcasting Act*, the definition of "broadcasting undertaking" includes a distribution undertaking, an online undertaking, a programming undertaking and a network.

7. Given the above, the proposed Registration Regulations aim to:

   (i) create an up-to-date registry of certain online undertakings; and

   (ii) gather basic information that is essential to fostering a regulatory relationship with online undertakings operating in Canada.

8. The Registration Regulations are meant to provide the Commission with *de minimis* information about online undertakings and their activities in Canada, which would give the Commission an initial understanding of the Canadian online broadcasting landscape and would allow it to communicate with online undertakings. The information collected would allow the Commission to assess whether other obligations are needed and to seek further information, where necessary.

9. On 10 June 2023, the Government of Canada published for comment in the Canada Gazette *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, a proposed policy direction (the proposed Direction) that, once finalized, would guide the Commission in its implementation of the amended *Broadcasting Act*. The Commission notes that the proposed Direction has not yet been finalized.

10. In the sections that follow, the Commission addresses issues relating to the following:

    - the registration requirements of the Registration Regulations;
    - exemptions regarding the requirement to register with the Commission;
    - the revenue calculation method to be used in determining whether to exempt an online service from the requirement to register;
    - deadlines set out in the proposed Registration Regulations; and
    - considerations relating to the deregistration process.

11. The Commission wishes to thank all those who participated in this proceeding. The thoughtfulness and clarity reflected in the written submissions greatly assisted the Commission in its deliberations.

The registration requirements

12. The requirements of the Registration Regulations will apply to all operators of online undertakings subject to the *Broadcasting Act*, except those that have been exempted from such Regulations. The exemption order identifies the classes of online undertakings to which these requirements do not apply. As such, the two instruments should be read in conjunction.

13. The following sections address comments that were received from interveners. For the purpose of its determinations set out below, the Commission has, in general, focused on the comments that were opposed to or proposed changes to the Commission's proposals in the Notice.

Definition of the terms "operator" and "online undertaking"

14. Pursuant to the proposed Registration Regulations, "operator" means a person that carries on an online undertaking to which the *Broadcasting Act* applies. In its intervention, the Forum for Research and Policy in Communications (FRPC) noted that different definitions of "operator" exist, as the *Broadcasting Distribution Regulations* use a definition different from that set out in the proposed Registration Regulations. It recommended using unique terms consistently to avoid costly misunderstanding.

15. The Commission is of the view that the definition of "operator" in the Registration Regulations is sufficiently clear in that context. However, it notes that there is no definition of "operator" in the proposed exemption order. To be clear, the Commission considers that it would be appropriate to define "operator" in the exemption order as a person that carries on a broadcasting undertaking to which the *Broadcasting Act* applies.

16. In its intervention, Bragg Communications Inc., carrying on business as Eastlink (Eastlink), requested that the Commission confirm that online platforms of broadcasting distribution undertakings (BDU) that solely provide the BDU's subscribers with an alternate means of viewing the programming to which they subscribe via the BDU do not qualify as online undertakings. The Commission considers, however, that this type of online platform does constitute an online undertaking, as defined in the *Broadcasting Act*. Accordingly, those online undertakings would be required to register with the Commission, provided they do not fall under one of the exempt classes of undertakings (e.g., under the revenue threshold set out in the exemption order).

Information to be provided by operators of online undertakings

17. The proposed Registration Regulations set out certain information to be provided by operators of online undertakings. More specifically, an operator would be required to register its online undertaking by submitting to the Commission a registration return that contains the following information:

    (a) the online undertaking's name;

    (b) the operator's name, mailing address, phone number and email address;

    (c) if different than the contact information filed under paragraph (b), contact information for a contact person for the operator, such as their name, title, mailing address, phone number and email address;

(d) the place where the online undertaking is incorporated or otherwise formed, if any, and the location of its head office; and

(e) the broadcasting services offered by the online undertaking.

Positions of parties

18. Various interveners, including the global streaming services Apple Canada Inc. (Apple), Netflix Services Canada ULC (Netflix), Spotify, Roku, Inc. (Roku), TikTok Canada (TikTok) and Google LLC (Google), as well as the Canadian Association of Broadcasters (CAB) and the Motion Picture Association of Canada (MPAC), agreed with the proposed registration requirements, and considered them to be light.

19. Some interveners argued that the proposed information requested was too extensive. As an example, Meta Platforms Inc. (Meta) stated that the Commission should limit the information gathered to the name of the service and the contact information.

20. The CAB, who favoured light registration requirements, nevertheless proposed that the basic information should be expanded to include a full description of the service offered, including whether it is an audio or video service, and the language in which the service operates. This was a common proposal among interveners.

21. Several interveners proposed that the Commission require additional information from undertakings given that the information to be requested under the proposal would not allow the Commission to anticipate new trends, properly monitor the sector, or better understand the Canadian online broadcasting landscape. Such additional information included the programming offered (amount of Canadian programming, genre of programs such as programs of national interest [PNI], the use of Canadian resources, information about the service's accessibility features such as closed captioning), financial information (subscription numbers, financial performance, annual revenues, revenues allocated by linguistic market), the operating model for the service, the date the service began operations in Canada, and the corporate structure and beneficial ownership.

22. Various interveners, including Apple, Google, Meta and Spotify, raised the issue of confidentiality of information and recommended that the Commission's approach in this regard be strengthened so that any commercially sensitive information filed is maintained in strict confidence. Meta noted that if online undertakings exempted from the Registration Regulations must still be registered in some capacity, the Commission should limit the information gathered to the name of the service and the contact information. The CAB noted that information relating to revenues, audiences, and subscription levels is already collected under other mechanisms that are treated confidentially via the Digital Media Survey.

23. Finally, AMC Networks Inc. (AMC) proposed that paragraph 2(d)[5] of the proposed Registration Regulations be amended to refer to the "place where the operator is incorporated," rather than the place where the online undertaking is incorporated. Rogers Communications Inc. (Rogers) supported this proposal and explained that an undertaking is not necessarily a corporate entity.

Commission's decision

24. The Commission's objectives in regard to collecting the information specified in section 2 of the Registration Regulations include being able to contact those undertakings that have registered, keeping track of online undertakings operating in Canada, and gathering basic but essential information to better understand the Canadian online broadcasting landscape more generally.

25. The Commission must ensure that it has the information required to better understand the nature and scope of the online undertakings that are part of the Canadian broadcasting system, while being sensitive to the administrative burden imposed on broadcasting undertakings as well as to the competitive sensitivity of certain information.

26. To fulfil these somewhat competing objectives, the Commission is only requiring online undertakings to provide basic information about the operator and its online undertakings, such as the name and contact information of the operator, and information identifying the online undertaking and the types of broadcasting services it offers. In the Commission's view, providing this information would not be burdensome on the operator of the online undertaking, and would be the most minimal information that would allow the Commission to meet its policy objectives.

27. In addition, obtaining information about the language of content provided by online undertakings would provide valuable data to the Commission as it endeavors to achieve the policy objectives of the *Broadcasting Act* relating to the language of programming.[6] As such, the Commission considers that information about the

---

[5] "An operator must register their online undertaking by submitting to the Commission, within 30 days after the day on which they begin to carry on the undertaking, a registration return that contains the following information: […] (d) the place where the online undertaking is incorporated or otherwise formed, if any, and the location of its head office."

[6] Such as those set out in the following subparagraphs:

3(1)(d)(iii.1): The Canadian broadcasting system should provide opportunities to Indigenous persons to produce programming in Indigenous languages, English or French, or in any combination of them, and to carry on broadcasting undertakings.

3(1)(d)(iii.2) The Canadian broadcasting system should support the production and broadcasting of original French language programs.

3(1)(d)(iii.6) The Canadian broadcasting system should support the production and broadcasting of programs in a diversity of languages that reflect Black and other racialized communities and the diversity of the ethnocultural composition of Canadian society, including through broadcasting undertakings that are carried on by Canadians from Black or other racialized communities and diverse ethnocultural backgrounds.

broadcasting services offered by the online undertakings should include information about the language(s) of the services. However, to minimize the burden on operators, the Commission will request only general information, such as the predominant language(s) of content and whether the service offers programming in English, French and/or Indigenous languages.

28. The online undertaking registration form will also ask operators to identify the broadcasting ownership group[7] of which they form part, if applicable. Although, in the Commission's view, this information is helpful for its internal processes and for the administration of the *Broadcasting Act*, this will be an optional field for the operator to complete.

29. As noted, the Commission is mindful of the importance of minimizing the burden of the registration process as much as possible, without undermining the Commission's objectives. Accordingly, the Commission is implementing a registration process that will require operators of online undertakings to register once, and only file updates if the information changes. In addition, the Commission has made available on its website an online undertaking registration form, and requests that operators who operate more than one online undertaking submit only one registration form, with the option of including an appendix for each online undertaking carried on by the operator. This will avoid the filing of information about the same operator multiple times. Further, it will be possible for operators who have already submitted a registration form for the Digital Media Survey to file an Attestation Form, which will allow those operators to confirm that the information that has been filed as part of the Digital Media Survey remains accurate, and to provide only information that has not been provided as part of the Digital Media Survey, or information that is more accurate.

30. Further, in regard to AMC's proposed amendment to paragraph 2(d) of the proposed Registration Regulations, the Commission finds that making this amendment would be in line with the Commission's practice to require information about the place of incorporation of the person that operates the undertaking.

31. Finally, the Commission considers that the confidentiality concerns raised by interveners are likely unfounded given the basic nature of the information to be provided.

3(1)(i)(i.1) The programming provided by the Canadian broadcasting system should reflect and support Canada's linguistic duality by placing significant importance on the creation, production and broadcasting of original French language programs, including those from French linguistic minority communities.

3(1)(i)(i.2) The programming provided by the Canadian broadcasting system reflect the importance of Indigenous language revitalization by supporting the production and broadcasting of Indigenous language programming, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and in response to the Truth and Reconciliation Commission of Canada's Calls to Action.

[7] As set out in the exemption order in Appendix 2 to this regulatory policy, "broadcasting ownership group" means a group of all operators that are affiliates of one another.

32. In light of the above, operators of online undertakings will be required to comply with the Registration Regulations, unless they fall within one of the classes of exempted online undertakings. In addition, the Commission has amended subsection 2(d) of the proposed Registration Regulations in order to request information on the "place of incorporation of the operator," rather than on the "place of incorporation of the undertaking."

Publication of registration information

33. In the Notice, the Commission set out its intention to publish on its website a list of registered online undertakings operating in Canada. Interveners were invited to comment on whether such a list should indeed be made public.

Positions of parties

34. Overall, interveners considered that a list of registrants should be made public as doing so would be in the public interest and favour transparency. The Association québécoise de la production médiatique (AQPM) proposed that the Commission create a mechanism to ensure that the information available to the public is kept up to date.

35. The main concern over making registrants public related to the confidentiality of some information in the event that the Commission broadens the scope of the information requested as part of the registration process. In addition, Vaxination Informatique opposed the publication of registrants as it would be an attack on privacy for someone who, for example, built a website under a pseudonym.

Commission's decision

36. In the Commission's view, publishing the list of registrants and some of the information they provide would be in line with its commitment to transparency and dedication to serving the public interest of Canadians.

37. The public registry would only show the most basic information concerning online undertakings, such as the operator's name, the online undertaking's name, the type of broadcasting service provided (whether it is an audio or video service) and the operator's mailing address.

38. In regard to updating the information available to the public, pursuant to section 4 of the Registration Regulations, an operator must notify the Commission of any change to information previously submitted by submitting the updated information within[8] 30 days after the day on which the change occurs. This would enable the Commission to update the information available to the public as those changes become known.

---

[8] The FRPC noted a grammatical error in section 4 of the proposed Registration Regulations, where the Commission indicated "with 30 days" rather than "within 30 days". The Commission has corrected the wording of that section 4 to read "within 30 days".

39. In light of the above, the Commission will publish on its website and make available to the public the list of registrants and the above-noted basic information.

Exemptions from the requirement to register with the Commission

40. Pursuant to subsection 9(4) of the *Broadcasting Act*, the Commission shall, by order, on the terms and conditions that it considers appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of a regulation if the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

41. In its 1996 policy regarding the use of exemption orders,[9] the Commission stated that "it is not the size or importance of the class of undertaking to be exempted that is the test; the test is whether it is necessary for the class to comply with Part II of the Act or relevant regulations in order to further the implementation of the policy set out in the Act."

42. As noted above, the Registration Regulations impose on online undertakings the most basic of regulatory requirements. They are meant to provide the Commission with *de minimis* information about online undertakings and their activities in Canada. In contrast, the Commission will have no information from, and would have no readily ascertainable way of communicating with, online undertakings that are exempted from the Registration Regulations. While exempted online undertakings will continue to be subject to the *Broadcasting Act*, the Commission will not be able to effectively monitor the development of those undertakings and will not be able to assess whether they should be subject to any form of regulation.

43. Given the importance of online undertakings in the new regulatory regime, and given that the Commission is in the very initial stages of implementing the numerous new policy objectives of the *Broadcasting Act*, and in light of the minimal regulatory requirements at issue here, the Commission finds that it should err on the side of a registration requirement and only exempt online undertakings if it is satisfied that compliance with the Registration Regulations will not contribute in a material manner to the implementation of the Canadian broadcasting policy set out in the *Broadcasting Act*.

44. As set out in the Notice, the Commission proposed to exempt from the requirement to register:

    (i) online undertakings whose single activity and purpose consists of providing video game services;

    (ii) online undertakings whose single activity and purpose consists of providing unique transactions;

---

[9] See Public Notice 1996-59.

(iii) online undertakings affiliated with a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than $10 million; or

(iv) online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than $10 million.

45. In the sections that follow, the Commission addresses issues relating to a threshold for exemption, as well as the various classes of online undertakings proposed for exemption by the Commission in the Notice and by interveners in their submissions to this proceeding.

Monetary threshold for exemption

46. Based on its review of the record for this proceeding, the Commission has identified the following issues to be examined in regard to the threshold for exemption:

- whether a monetary threshold is the appropriate criterion to determine whether the registration of certain online undertakings would contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*;

- whether it would be appropriate to apply the threshold level on broadcasting ownership groups as a whole, or on individual online undertakings, and to include revenues of traditional broadcasting undertakings; and

- whether the exemption threshold of $10 million in annual Canadian gross revenues from broadcasting activities, as proposed in the Notice, is appropriate.

The use of a monetary threshold

47. The Commission often relies in part on thresholds to trigger requirements or exemptions. For example, it uses revenue levels to determine whether a radio station must make Canadian content development (CCD) contributions and subscriber numbers as the basis for exempting certain discretionary programming services and BDUs. In the Notice, the Commission proposed a monetary threshold based on revenues as one of the bases to exempt online undertakings.

Positions of parties

48. Several interveners[10] considered a revenue threshold to be appropriate.

[10] Including the Canada Media Fund (CMF), Cogeco Inc., the Canadian Media Producers Association (CMPA) and one individual.

49. However, TELUS Communications Inc. (TELUS), and the Association des réalisateurs et réalisatrices du Québec (ARRQ), the Guilde des musiciennes et musiciens du Québec (GMMQ), the Société des auteurs de radio, télévision et cinéma (SARTEC) and the Union des artists (UDA) (joint intervention, collectively ARRQ-GMMQ-SARTEC-UDA), proposed using a subscriber-based threshold rather than a revenue-based threshold. TELUS considered that such an approach would be administratively simpler, and that a threshold based on the number of subscribers would be "a better indicator of relative size than annual revenues, which can be impacted by factors such as different profit margins."

50. Corus Entertainment Inc. (Corus) opposed using only a subscriber-based threshold given that the online broadcasting ecosystem includes platforms with different service delivery and monetization models, such as advertising supported platforms with no subscription component. It argued that using a subscriber-based threshold alone would effectively exempt advertising-driven platforms from the scope of the proposed Registration Regulations.

51. The AQPM, the Independent Broadcast Group (IBG), St. Andrews Community Channel Inc. (St. Andrews), ACCORD,[11] the Société de télédiffusion du Québec (Télé-Québec), the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) and Wildbrain Ltd., among others, submitted that the number of subscribers as an indicator could be used as one factor among others, and thereby capture a larger number of online undertakings. They noted other potential indicators such as the proposed revenue model, degree of influence, how content is funded and made available, market share, number of users, number of clicks and/or views, and number of monthly users or listening hours. Télé-Québec proposed registering online undertakings that reach 5% of Canadian Internet users, in addition to other indicators such as the number of unique customers for subscription services and the number of visits for ad-financed services. An individual intervener proposed using a percentage metric, to be calculated from the net annual revenue.

Commission's decision

52. The Commission considers that a revenue-based threshold is a relatively simple and objective criterion that can be applied by all online undertakings, regardless of their business models.[12]

---

[11] As set out in the intervention, ACCORD groups together ADVANCE Music Canada, the Association des professionnels de l'édition musicale, the Canadian Council of Music Industry Associations (including Alberta Music, Industries culturelles de l'Ontario Nord, Manitoba Music, Music BC, Music Nova Scotia, Music PEI, Music Yukon, Music/Musique NB, Music NL, MusicOntario and SaskMusic), Agence canadienne des droits de reproduction musicaux, Music Publishers Canada, the Association des auteurs-compositeurs canadiens, the Guilde des compositeurs canadiens de musique à l'image, the Société canadienne des auteurs, compositeurs et éditeurs de musique, and the Société professionnelle des auteurs et des compositeurs du Québec.

[12] Bundled services such as Amazon Prime have methods of allocating revenues for their subscription-based broadcasting undertakings.

53. While some interveners preferred a subscriber-based threshold, the Commission finds that it would not be appropriate to adopt a subscriber-based indicator alone given that doing so would not provide an accurate understanding of the online broadcasting system. As noted by other interveners, it would not capture those online undertakings that have no subscribers, such as advertising-based online undertakings.

54. In regard to using multiple criteria, the Commission notes that there is generally a strong relationship between the number of subscribers and the level of revenues of an undertaking. Adding a subscriber threshold would therefore be largely redundant and burdensome. Further, using numerous indicators would make registration much more complex, thereby making it more difficult for the Commission to track information and communicate the requirements for registration. Finally, none of the interveners provided compelling evidence that using other indicators would be a significant improvement to the proposed approach based on an annual revenue threshold.

55. In light of the above, the Commission finds that a monetary threshold based on annual Canadian gross revenues would be the clearest and most comprehensive way to determine which online undertakings are to be exempted from the requirement to register with the Commission.

Monetary threshold based on the revenues of broadcasting ownership groups versus revenues of individual online undertakings, and inclusion of revenues of traditional broadcasting undertakings

56. For those online undertakings whose operator forms part of a broadcasting ownership group,[13] the Commission proposed a monetary threshold based on the revenues of the broadcasting ownership group, rather than on the revenues of each individual undertaking operating within that group. Such revenues would be included irrespective of whether they are generated by traditional broadcasting undertakings or by online undertakings operating within that group.

Positions of parties

Parties that supported the proposal

57. Eastlink, along with public interest groups and associations representing a variety of members of the broadcasting industry,[14] agreed with the proposal set out in the Notice.

---

[13] Whereas in the Notice the Commission referred to online undertakings that either are affiliated with or have no affiliation with a broadcasting ownership group, in the exemption order set out in Appendix 2 to this regulatory policy, and in certain instances throughout the present regulatory policy, the Commission refers to online undertakings whose operator either does or does not form part of a broadcasting ownership group, which, in the Commission’s view, is more appropriate for the purposes of the exemption order and in light of the meaning of the term “affiliate” in the *Broadcasting Act*.

[14] Including ACCORD, ADISQ, the AQPM, the Canadian Association of Community Television Users and Stations (CACTUS), the CMPA, the National Campus and Community Radio Association and the WGC.

58. The Writers Guild of Canada (WGC) raised the issue of fairness. Specifically, it noted that unlike non-affiliated undertakings, online undertakings affiliated with a broadcasting ownership group can benefit from synergies within the group, as those undertakings can cross-promote services and content and consolidate resources that can be made available to multiple undertakings within that group. For the WGC, using a group-based approach would make it more likely that "smaller players" that are exempt are truly smaller, as they lack such synergies and access to resources. The Canadian Media Producers Association (CMPA) added that online undertakings affiliated with Canadian broadcasting ownership groups are rarely standalone services but instead the extension of an existing regulated service within the broadcasting group.

59. The CMPA noted that the group-based approach used by Canadian broadcasters provides those broadcasters with greater flexibility in the allocation of programming resources. It argued that broadcasters would not be able to continue fulfilling their programming commitments as a group should registration be required at the individual undertaking level.

60. Certain interveners also considered that a group-based approach would limit the impact of creative accounting. ACCORD explained that to do otherwise could incentivize broadcasting ownership groups to use creative accounting methods to split revenues among their undertakings to limit the regulatory requirements imposed on them. The AQPM considered that an individual undertaking approach could provide an incentive to broadcasters to separate their group into numerous services to avoid registering and, eventually, being subject to conditions of service.[15] The Canadian Association of Community Television Users and Stations (CACTUS) noted that broadcasters could also divide their networks into imaginary geographic divisions to operate as exempt undertakings.

61. In regard to the broadcasting undertakings (traditional or online) of which the revenues would be included for the purpose of calculating the exemption threshold, interveners including the AQPM, the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP) and TV5 Québec Canada (TV5) favoured registering as many online services as possible.[16] The National Campus and Community Radio Association (NCCRA) added that broadcasters can repurpose content on online platforms and, as such, annual revenues would be better reflected across all services.

[15] In Broadcasting Notice of Consultation 2023-140, the Commission called for comments on proposed conditions of service to be imposed on certain online undertakings. The Commission's decisions in this regard are set out in Broadcasting Regulatory Policy 2023-331, also issued today.

[16] This would help the Commission to fulfil the objectives set out in, among others, subparagraphs 3(1)(d)(i), (ii), (iii), (iii.1), (iii.11), (iii.2), (iii.3), (iv), (i)(i) and (i)(i.1), and paragraph 3(1)(j) of the *Broadcasting Act*.

62. TV5 submitted that all online undertakings broadcasting content from traditional services should be required to register, regardless of the amount of revenues collected, on the grounds that those online undertakings materially contribute to the implementation of the broadcasting policy set out in the *Broadcasting Act*.

Parties that opposed the proposal

63. Traditional Canadian broadcasters,[17] broadcasters associations[18], the Digital Media Association (DiMA), the Information Technology Industry Council (ITIC), the global streaming services AMC, Apple, Google and Tubi, Inc. (Tubi), and an individual intervener opposed the group-based approach for calculating the revenues on which the exemption threshold is based. In their view, using a group-based approach would require the registration of very small or nascent online undertakings owned by broadcasters that do not make meaningful contributions to the Canadian broadcasting system.

64. Sirius XM Canada Inc. (SiriusXM), as well as Corus and Cogeco Inc. (Cogeco), noted that the Commission has, in the past, regularly exempted BDUs and discretionary services from licensing requirements, notwithstanding that they might operate as part of a larger broadcasting ownership group.

65. The CAB and Accessible Media Inc. (AMI) submitted that adopting a group-based approach would do little to provide useful information to the Commission or advance the policy objectives of the *Broadcasting Act*. An individual intervener submitted that the Commission would be overwhelmed with registrations for every small website or service that a large broadcaster owns.

66. The CAB, the Ontario Association of Broadcasters (OAB) and certain Canadian broadcasters[19] submitted that the group-based approach would be unfair. In their view, under such an approach, the vast majority of online undertakings operated by Canadian broadcasters would be registered, even those that earn very little revenue. The OAB further noted that the approach would impact small radio stations, while AMI added that it would impact licensees of services that benefit from mandatory distribution pursuant to paragraph 9.1(1)(h) of the *Broadcasting Act*. AMI submitted that, under this proposal, it could be more challenging for the Commission and stakeholders to monitor developments in the digital media sector in the months and years ahead.

67. Quebecor Media Inc. (Quebecor) noted that using an undertaking-based approach would be in line with section 4 of the proposed Direction, which specifies that requirements on broadcasting undertakings must be equitable, given the size and nature of the undertaking, and equitable between foreign online undertakings and Canadian broadcasting undertakings. For its part, the OAB considered that the

---

[17] Including AMI, BCE Inc., Blue Ant Media Inc, Check Media Group, Cogeco, Corus, Pelmorex Weather Networks (Television) Inc. (Pelmorex), Quebecor Media Inc. (Quebecor), Rogers, SiriusXM, Télé-Québec, TLN Media Group Inc., TV5, and TELUS.

[18] Including the CAB and the Ontario Association of Broadcasters.

[19] Including Corus, Pelmorex, Quebecor and SiriusXM.

adoption of a group-based approach would subject medium-sized independent players to the same rules imposed on large streaming-only companies.

68. Corus considered that using a group-based approach would risk entrenching regulatory inequities between foreign and domestic players. It argued that although the definition of "broadcasting ownership group" is not restricted to Canadian media groups, those Canadian groups would be disproportionately impacted by the adoption of a group-based approach. Corus added that whereas established Canadian media groups owning some combination of licensed broadcasting assets would almost certainly come within the scope of the definition, new or recent foreign digital entrants to the Canadian market likely would not.

69. Certain interveners submitted that a group-based approach would increase the regulatory burden on broadcasting ownership groups. According to the OAB, a group-based approach would impose an undue burden on conventional broadcasters. Rogers noted that the registration requirement would apply to each of its online undertakings, including those earning little to no annual revenues (e.g., an individual website that simulcasts a radio signal online), simply because they are affiliated with a broadcasting ownership group. It considered that an individual online undertaking will not contribute in a material manner to the implementation of Canada's broadcasting policy if its annual Canadian gross revenues from broadcasting activities are less than $10 million, regardless of whether it is operating independently or as part of a larger ownership group. Google noted that the proposed Direction expressly states that, to "support flexibility and adaptability in its regulatory framework, the Commission is directed to minimize the regulatory burden on the Canadian broadcasting system."

70. Interveners also considered that such an approach would be unfair for Canadian broadcasting ownership groups given that they would be required to include revenues from their traditional services, while foreign ownership groups would only be required to include revenues from online broadcasting. Interveners including BCE Inc. (BCE), the CAB, Corus, Pelmorex Weather Networks (Television) Inc. (Pelmorex) and Rogers submitted that the proposed approach would include a broadcaster with $15 million in annual revenues from traditional services even if it earns almost no online revenues, while allowing an independent foreign player not to register even if it earns annual revenues of $9.9 million.

71. According to Corus, this would provide a head start to foreign online platforms, contrary to Parliament's objective of a level playing field. It submitted that placing more onerous conditions on Canadian broadcasters would run counter to the intended purpose of establishing a modernized regulatory framework that creates equity between broadcasters and foreign streamers.

72. Corus further submitted that interveners overstated the importance of synergies for Canadian broadcasting groups given that foreign players have much higher synergies than Canadian broadcasters with their non-broadcasting assets, such as technology devices (Apple), destination travel (Disney) and e-commerce (Amazon). It added that a group-based approach would discourage broadcasting ownership

groups from innovating and investing in new products. Corus further added that registering online undertakings as soon as they collect revenues would not account for the experimental nature of digital distribution, which would not serve the objectives of the *Broadcasting Act*.

73. Cogeco noted that the *Broadcasting Act* imposes requirements on undertakings individually, not on ownership groups. It added that the *Broadcasting Act* makes no mention of broadcasting ownership groups.

74. Finally, within the context of the definition of broadcasting ownership group, Tubi stated that it was not familiar with the Commission's concept of control and how that concept is defined.

Commission's decision

75. Paragraphs 5(2)(g) and (h) of the *Broadcasting Act* state that the Canadian broadcasting system should be regulated and supervised in a flexible manner that is sensitive to the administrative burden that may be imposed on undertakings, and that takes into account the variety of undertakings to which that Act applies and avoids imposing obligations on undertakings if it will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

76. The Commission acknowledges that adopting its proposed approach means that online undertakings affiliated with traditional Canadian broadcasters are less likely to be exempted from registration. Indeed, if the threshold is calculated based on the revenues of the broadcasting ownership group, then individual registration of all online undertakings that operate within those groups will be required.

77. However, the Commission agrees with interveners that argued that broadcasting groups benefit from important synergies associated with operating both traditional and online undertakings. The Commission considers that the benefits associated with group ownership cannot be disassociated with the regulatory obligations that come with such ownership. While the Commission is sensitive to the administrative burden associated with registration, it considers this burden to be rather light, particularly for those larger, group-based undertakings that already have a longstanding regulatory relationship with the Commission.

78. In addition, basing the threshold on the revenues of individual undertakings could prevent the Commission from having information about the variety of undertakings operated by large broadcasting ownership groups. The group-based approach would allow the Commission to better understand the full ecosystem of broadcasting services provided by large broadcasting groups who play a significant role in the Canadian broadcasting system, both national and international.

79. On the matter of the Commission's proposal to include the revenues of traditional broadcasting undertakings in the calculation of the threshold, it notes that several traditional undertakings are moving certain operations online. It is important for the Commission to understand this transition as it is taking place, rather than wait until

the online services of traditional broadcasters reach the threshold. Including revenues from traditional and online services for the purposes of calculating the threshold would give the Commission better insight on how ownership groups are adapting their activities in an increasingly digital environment, allowing the Commission to better understand and monitor the broadcasting system as a whole.

80. In addition, a threshold based on the revenues of broadcasting ownership groups that include the revenues from traditional services would reduce the incentive to use accounting practices through which the revenues of broadcasting ownership groups would be allocated between several undertakings, or between licensed and online services, in a manner that would result in individual online undertakings falling under the revenue threshold.

81. The Commission acknowledges that this approach provides an asymmetrical treatment between those undertakings that operate within a group and those that do not. It is also mindful of the regulatory burden imposed on those Canadian online undertakings that, although their operator forms part of a Canadian broadcasting ownership group, have modest or no revenues. However, the burden imposed by the registration process is very light, given that the information required would be limited and that registration is meant to be a one-time requirement for online undertakings.[20] In the Commission's view, such a minimal burden is justifiable, and the benefits of registering undertakings in this manner outweigh the limited impact on certain online undertakings whose operator forms part of a Canadian broadcasting ownership group.

82. In light of the above, the Commission finds that for the purposes of determining exemption from the requirement to register, it would be appropriate to implement an exemption threshold based on the revenues of the broadcasting ownership group and to include the revenues of traditional services, as proposed in the Notice. Specifically, including revenues from both traditional and online services would allow the Commission to gain a better understanding of the Canadian online broadcasting environment and how ownership groups are adapting their activities in that increasingly digital environment.

83. In regard to Tubi's comment on the concept of control, the Commission finds that the current definition of broadcasting ownership group in the proposed exemption order can be improved. Accordingly, in the exemption order, the Commission has amended the definition of broadcasting ownership group so that it reads as follows (change in bold): "**a group of all operators that are affiliates of one another**", and has added the following definition of "operator": "a person that carries on a broadcasting undertaking to which the *Broadcasting Act* applies."

[20] Additional filings will only be required to amend the information provided as part of the registration when this information will be no longer accurate.

84. Given that the *Broadcasting Act* defines "affiliate,"[21] "control"[22] (which is used in the definition of "affiliate") and "broadcasting undertaking,"[23] the Commission finds that these amendments will provide more clarity to both Canadian and foreign operators.

The appropriate amount for the exemption threshold

85. In the Notice, the Commission proposed to exempt from the requirement to register with the Commission those broadcasting ownership groups, either Canadian or foreign, that have, after deducting any excluded revenue, annual Canadian gross broadcasting revenues from broadcasting activities of less than $10 million.

Positions of parties

86. Rogers, Unifor, the Public Interest Advocacy Centre (PIAC) and the Canada Media Fund (CMF) considered the threshold to be appropriate.

87. Certain interveners, including Canadian broadcasters,[24] global corporations[25] and industry associations,[26] submitted that the exemption threshold should be set at a level higher than $10 million in annual Canadian gross broadcasting revenues, as the proposed threshold would include online undertakings that do not contribute in a material manner to the objectives of the *Broadcasting Act*. They noted that this could deter new players from entering the market and disadvantage smaller Canadian broadcasters. However, the specific threshold proposed by each intervener often varied.[27]

88. According to the CAB, a $20 million threshold would be appropriate given that Netflix, Disney+ and Spotify all have revenues that are much higher than this amount. In its view, it is likely that setting a $10 million threshold would result in numerous services that do not make a material contribution to the system being required to register. BCE supported a $20 million threshold and added that such a threshold would ensure the relevance and the efficiency of the registration regime.

89. An individual intervener, supported by Apple, considered that to preserve Canada's media industry, creators' livelihoods and Canadians' access to choice, the Commission should err on the side of caution and adopt the higher thresholds set out in the Digital Media Survey (specifically, $50 million for audio-visual digital

---

[21] "Affiliate": "in relation to any person, means any other person who controls that first person, or who is controlled by that first person or by a third person who also controls the first person."

[22] "Control": "in the definition of "affiliate," in paragraph 9.1(1)(m) and in subparagraph 9.1(1)(n)(i), includes control in fact, whether or not through one or more persons."

[23] "Broadcasting undertaking": "includes a distribution undertaking, an online undertaking, a programming undertaking and a network."

[24] Such as CHEK Media Group, Cogeco, Corus, Quebecor and SiriusXM.

[25] Such as AMC, Apple, Public Broadcasting Service (PBS), Tubi, Google and TikTok.

[26] Such as the MPAC and the CAB.

[27] Given that several interveners favoured a threshold level imposed on individual undertaking level rather than on the broadcasting ownership group level, the amounts they proposed refer sometimes to a threshold determined for each undertaking, rather than for a group as a whole.

media broadcasting undertakings [DMBU] and $25 million for audio DMBUs). OpenMedia Engagement Network (OpenMedia) supported a $50 million threshold on the grounds that anything lower could inadvertently place a burden on smaller startups and niche foreign services. It noted that many diasporic Canadians rely on niche foreign services to maintain essential cultural connections with the wider world, which might be deterred from entering Canada by the requirement to register. According to Roku, a threshold of less than $50 million would impose burdens on still-nascent services that are not yet in a position to have a material effect on the Canadian broadcasting ecosystem and the policy objectives of the *Broadcasting Act*. An individual intervener argued that setting a threshold below $50 million may also overwhelm the Commission with a high number of registrations.

90. According to Télé-Québec, if only online revenues are accounted for, a threshold of $100 million should allow the Commission to attain the objectives of the *Broadcasting Act*, without dissuading new players or small services with limited services. It added, however, that if both traditional and online revenues are included, a $500 million threshold would be appropriate. Tubi also proposed a $100 million threshold given that before online services reach this threshold, they might be unable to compete against the larger, dominant streaming services, thereby reducing the ability for Canadian viewers to select lower-cost alternatives.

91. Several interveners,[28] primarily members of the industry associations and public interest organisations, considered the $10 million threshold to be too high, and proposed either lower thresholds or no threshold at all. In their view, if the Commission's rationale for creating a public registry of online broadcasting undertakings is to "keep track of online undertakings operating in Canada," the threshold should be set as low as possible in order for the Commission to best attain that objective.

92. According to the CMPA, a higher threshold should not be chosen based on the argument that a lower threshold poses a regulatory burden, since such a burden has not been substantiated by facts. ACCORD added that the Society of Composers, Authors, and Music Publishers of Canada (SOCAN) reviewed its licensing data and noted and that a $10 million exemption threshold would exempt virtually all of the online undertakings for which they license music.

93. Many interveners, including the Alliance des producteurs francophones du Canada (APFC), the AQPM and the IBG, argued that a $10 million threshold would exclude several online undertakings that contribute in a material manner to the broadcasting system, such as services dedicated to the realities of official language minority communities (OLMC) and Indigenous communities, as well as third-language services, Indigenous services, community services, and smaller English- or French-language independent broadcasters.

---

[28] Including the NCCRA, the Quebec English-language Production Council, the CMPA, St. Andrews and CACTUS.

94. According to the WGC, several parties proposing higher thresholds are also the only ones that have the information required for the Commission to issue a ruling on this matter, but have not provided that information on the public record.

95. In regard to the proposal to use the same threshold as in the Digital Media Survey, the WGC noted that the threshold was set before the recent amendments to the *Broadcasting Act* were in effect, and that there are now no reasons for the Commission to tie itself to a previous threshold established in a different context under different legislation.

96. The NCCRA proposed a threshold of $2.5 million to maximize the number of services required to support the creation and presentation of Canadian programming. In its view, online broadcasters with gross revenues of more than $2.5 million would contribute materially to the implementation of the broadcasting policy set out in the *Broadcasting Act*. It noted that the current CCD contribution framework requires all commercial and ethnic radio broadcasters with more than $1.25 million in annual revenues to make direct financial CCD contributions.

97. Several interveners proposed a threshold of $1 million. FRIENDS of Canadian Broadcasting (FRIENDS) argued that it would be roughly equivalent to the threshold for currently licensed and exempt Canadian broadcasting undertakings. The Directors Guild of Canada (DGC) argued that this threshold would provide the Commission with an effective, transparent, and fulsome registration system that would allow stakeholders and interested parties to properly monitor developments in this important and fast changing digital media sector. The Fédération culturelle canadienne-française (FCCF) supported a $1 million threshold, and noted that this would be similar to that established for the data collection of telecommunication providers.

98. The CPSC-SCFP considered that the Commission should register all online broadcasting undertakings, regardless of their revenues. It argued that interveners do not have enough information regarding the level of revenues of foreign undertakings to recommend a specific threshold at this point.

99. Certain interveners proposed different thresholds depending on the type of undertaking. In this regard, ADISQ, ACCORD and the ARRQ-GMMQ-SARTEC-UDA argued that a $10 million threshold would be too high for the music industry. According to ARRQ-GMMQ-SARTEC-UDA, the fact that the video industry is much more expansive than the audio industry justifies a lower exemption threshold for online audio services. They added that the current exemptions established by the Commission use different thresholds for audio and video services.

100. Interveners including the APFC, the AQPM, the DGC and the WGC proposed distinct thresholds for English- and French-language markets. In this regard, the APFC noted distinctions between those markets relating to population, revenues

and the services that operate in them. The WGC added that paragraphs 3(1)(c)[29] and 5(2)(a)[30] of the *Broadcasting Act* expressly recognize this difference multiple times and direct the Commission to take it into consideration.

101. Finally, the IBG proposed adding a provision for optional registration by online undertakings that fall below the financial or other threshold, which would enable services that make a material contribution to Canadian broadcasting and wish to be recognized for that contribution within the regulated framework to register. This approach was supported by certain interveners, including Pelmorex, the Documentary Organization of Canada (DOC) and the DGC.

Commission's decision

102. As noted above, the Commission's exemption power is set out in subsection 9(4) of the *Broadcasting Act*. In addition, the Commission has taken into account the regulatory objectives set out in subsection 5(2), and in particular paragraphs 5(2)(g) and (h).

103. In the Commission's view, setting a low threshold for registration and thereby registering as many online undertakings as possible would provide the most accurate view of online broadcasting undertakings in Canada. However, it would also be administratively impractical. Indeed, it is reasonable to expect that many online undertakings have very low revenues or no revenues at all. Registration of such undertakings, to the extent that their operator does not form part of a broadcasting ownership group, would not, in the Commission's view, contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*.

104. Conversely, setting too high a threshold could result in the collection of information on a small number of very large mainstream services. Having no information on small and medium-sized undertakings, many of which provide diversified or niche programming, would limit the Commission's capacity to fulfil the objectives of the Canadian broadcasting policy set out, for example, in subparagraph 3(1)(i)(i) of the *Broadcasting Act*, which states that the programming provided by the Canadian broadcasting system should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes. Likewise, it would limit the Commission's ability to ensure the fulfilment of subparagraph 3(1)(i)(iv), as the Commission would not be able to assess whether the programming offered provides a reasonable opportunity for the public to be

---

[29] "It is hereby declared as the broadcasting policy for Canada that while sharing common aspects, English and French language broadcasting operate under different conditions — in particular, the minority context of French in North America — and may have different requirements."

[30] "The Canadian broadcasting system should be regulated and supervised in a flexible manner that takes into account the different characteristics of English, French and Indigenous language broadcasting and the different conditions under which broadcasting undertakings that provide English, French or Indigenous language programming operate — including the minority context of French in North America — and the specific needs and interests of official language minority communities in Canada and of Indigenous peoples."

exposed to the expression of differing views on matters of public concern and to directly participate in public dialogue on those matters including through the community element.

105. In light of the above, the Commission finds that it would be better positioned to implement the broadcasting policy objectives set out in the *Broadcasting Act* by seeking a balance between registering small or medium-sized undertakings and the need to minimize the regulatory burden on small undertakings that do not benefit from having its operator form part of a broadcasting ownership group.

106. In the Commission's view, adopting the same threshold used in the Digital Media Survey would be inappropriate given that the purpose of that survey was different than the objective of the Registrations Regulations and, therefore, targeted a different subset of undertakings. Further, given that the information to be requested as part of the registration process is of a different nature and is significantly less detailed than the information requested as part of the Digital Media Survey, the Commission finds that it would be reasonable for the registration threshold to be lower than that established for the Digital Media Survey, commensurate with the lower regulatory burden.

107. Moreover, based on the information available to the Commission, registering online video services only when they have revenues over $50 million, and only those online audio services with more than $25 million in revenue, would provide an incomplete picture of the online Canadian broadcasting landscape.

108. A $10 million threshold would include online services offered by a larger number of broadcasting ownership groups, which would include a more representative set of broadcasting ownership groups. A higher level would exclude many medium-sized undertakings, impairing the Commission's ability to fully understand and therefore regulate and supervise these aspects of the broadcasting ecosystem.

109. Further, given the very limited information that would be requested as part of the registration process, it is reasonable to expect that a $10 million threshold for registration would not deter services from entering the Canadian market, nor push those who have reached the $10 million threshold to leave that market.

110. In regard to the request made by several interveners to allow for online undertakings to register on a voluntary basis, the Commission notes that the objective of the registration process is to provide it, and in turn the Canadian public, with a picture of the broadcasting system that is as complete and accurate as possible. In the Commission's view, an opt-in approach with voluntary registration would result in a distorted view of the broadcasting system and would be complex to administer. Consequently, the Commission does not consider that it would be appropriate for online undertakings to register on a voluntary basis.

111. In regard to the proposal to set different thresholds for different types of undertakings (specifically, for undertakings that provide either audio or video content), the Commission notes that several broadcasting ownership groups offer

both types of services. To the extent that online undertakings whose operator forms part of a broadcasting ownership group of which the annual Canadian gross revenues exceed the monetary threshold for exemption, they would be required to be registered with the Commission in any case. Given that the monetary threshold is applied at the group level, distinct revenue thresholds between audio and video services within that group would be mostly irrelevant, since all online undertakings whose operator form part of that group, regardless of whether they provide audio or video services, would be required to be registered.

112. In addition, setting different thresholds for audio and video services would add little value as the $10 million threshold is sufficient to ensure that the Commission collects relevant data from both types of services. Based on the information on traditional broadcasters that is available, halving the threshold as the Commission did in regard to the Digital Media Survey, which would set the threshold at $5 million for audio programs, would not capture a significant number of additional players.

113. As for using separate thresholds for English- and French-language markets, the Commission notes that several online undertakings offer English, French and multilingual content. In fact, these online undertakings offer much of their content in multiple languages. It would therefore not be simple or perhaps even possible to distinguish between language-specific revenues from services that operate in both English and French. Consequently, the Commission does not consider that it would be appropriate to establish different exemption thresholds for undertakings that operate in English or in French markets.

114. In light of the above, the Commission has adopted an exemption threshold of $10 million in annual Canadian gross revenues, as proposed in the Notice. Such a threshold should provide the Commission with sufficient information about online undertakings operating in the Canadian broadcasting market, while allowing independent smaller online undertakings to reach a certain level of revenues before being required to register.

115. The Commission notes that the exemption from registration should not impact any potential rights of or benefits for online services as a result of their exemption status. For example, exemption from registration should not preclude online undertakings from qualifying for funding in the future. Further, registration of an online undertaking does not in and of itself indicate that the undertaking will be exempt from all potential regulatory requirements.

Video game services

116. In the Notice, the Commission proposed to exempt online undertakings whose single activity and purpose consists of providing video game services. This exemption is also included under excluded revenue, meaning that any revenue that originates from providing video game services is excluded from the annual revenue calculation.

Positions of parties

117. Interveners who commented on this issue[31] generally supported the Commission's proposal to exempt video game services from the requirement to register, with minimal caveats.

118. The most contentious issues arising from the exclusion of video game services relate to the integration of some broadcasting elements in video games. ACCORD, who noted that some online video game services have started broadcasting virtual concerts as part of their digital worlds, argued that these types of transmission activities should be covered by the Commission's mandate, even if they take place in the context of a video game. It added that these exemptions would need to be monitored and that definitions would need to be adapted as service models evolve and change. The DOC supported ACCORD's view and noted that although video game services should be exempt, their service models are adapting to include broadcasting activities that should be monitored by the Commission. It argued that exemption should therefore be monitored going forward to prepare for any changes.

119. ARRQ-GMMQ-SARTEC-UDA considered that the exemptions should not be blanket exemptions, and that if an online undertaking carries out broadcasting activities as part of its video game services, this should not result in an automatic exemption. In their view, given that recent developments in the video game services market have overlapped with broadcasting activities, such services act as broadcasters and therefore should not be exempt.

120. The CMF stated that the Commission's definition for "video game" as proposed in the Notice is based on the notion of interactivity between the game and the user, and that this notion does not apply to new immersive online worlds offering XR3 productions[32] involving "passive reception" of sound and visual images. It therefore questioned whether this definition includes augmented reality,[33] virtual reality[34] and mixed reality,[35] and other types of content in the immersive and/or interactive world (collectively referred to here as XR). In its view, confusion is possible because many XR applications might be considered video games, and many video games may be played using virtual reality. It added that several XR applications might not be considered as games because they do not involve active interaction, but rather passive reception of sounds and visual images. In its view, these ambiguities merit consideration for regulation that is responsive to technological developments. The APFC agreed with this position.

---

[31] Including BCE, Rogers, the Canadian Broadcasting Corporation (CBC), the DGC, Cogeco, the Entertainment Software Association of Canada (ESAC), the IBG, Warner Bros. Discovery, SiriusXM, APFC and Unifor.

[32] Productions or exhibitions that used all three types (AR, VR, MR) of extended reality. Ex: Immensiva.

[33] Designed to add digital elements over real-world views with limited interaction, such as Pokémon Go (See Microsoft).

[34] Immersive experience helping isolate users from the real word, usually via a headset device and headphones designed for such activities.

[35] Combining augmented reality and virtual reality elements so that digital objects can interact with the real world means businesses can design elements anchored within a real environment.

121. TikTok considered that the proposed video game services exemption should be broadened in scope. It argued that the concept of "single activity" is too limiting, as there are very few, if any, video game services (or software services) that have no other (ancillary) audio/video streaming activities. As such, TikTok stated that the description of this class of undertaking, as proposed in Appendix 2 to the Notice, be amended to refer to online undertakings whose primary purpose (rather than single activity and purpose) consists of providing video game services. In TikTok's view, this amendment would allow the Commission to exercise flexibility and discretion when it comes to the continually evolving ways that Canadians use these platforms.

Commission's decision

122. Aside from the circumstances considered in Public Notice 1995-5 in regard to the Exemption order respecting video games programming service undertakings, set out in the appendix to that public notice, the Commission has historically held the view that the transmission of video games does not constitute broadcasting. The Commission notes that it is not changing that view in the present regulatory policy.

123. However, the Commission notes that video games have evolved considerably and the games themselves may now, or in the future, include some broadcasting activity. Nevertheless, in the Commission's view, online undertakings that provide such video game services currently have a relatively marginal place in the Canadian broadcasting system. Due to the unique nature of video games within the system, the Commission is of the view that, to the extent online undertakings provide video game services, registration information concerning these undertakings would not further the policy objectives of the *Broadcasting Act* at this time. The Commission notes that exempting online undertakings that provide video game services would be consistent with the proposed Direction, which directs the Commission to not impose regulatory requirements on broadcasting undertakings in respect of the transmission of video game services.

124. With respect to online undertakings that provide video game services in addition to other broadcasting services, the Commission considers that it would be important for those online undertakings to register. The rationale for exempting video game service providers does not apply if there are other broadcasting services being provided. Indeed, such online undertakings may well generate significant revenues from video-on-demand (VOD) services, for example. Accordingly, the Commission finds that it would not be appropriate to amend the class of exempted undertaking, as proposed by certain interveners, to exempt from the requirement to register online undertakings whose primary purpose consists of providing video game services. Nevertheless, the Commission notes that revenues derived from providing video game services are excluded from the calculation of "annual revenues" used for the purpose of determining whether an online undertaking should be exempted from the requirement to register.

125. The Commission therefore finds that compliance with the registration requirements by online undertakings whose single activity and purpose is the provision of video game services would not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.

126. In light of the above, the Commission has retained the exemption for online undertakings whose single activity and purpose consists of providing video game services, as proposed in the Notice.

127. The Commission intends to continue monitoring the sector as it evolves.

Unique transactions

128. In the Notice, the Commission proposed exempting from the requirement to register online undertakings whose single activity and purpose consists of providing unique transactions. In the proposed exemption order, the Commission defined "unique transaction" as a one-time rental or purchase of an individual program transmitted or retransmitted over the Internet.

Positions of parties

129. Interveners who supported[36] the proposed exemption noted that these unique transaction services are a digital evolution of the "brick and mortar" music and video stores, which were not previously subject to the Commission's regulatory requirements. These interveners expressed concern over the potential impacts that imposing registration on transaction-based services may have on these services. In this regard, Amazon noted that revenues of transaction-based services are declining relative to subscription-based streaming services. It also noted, as did BCE, that those services already contribute to the system through investments of time and money in content creation, promotion and interaction with consumers.

130. Apple, Amazon and the ITIC urged the Commission to follow the proposed Direction to adopt equitable regulation that accounts for the nature of an undertaking. Apple noted that extending registration to transactional VOD (TVOD) entities would, as argued by other interveners, be neither equitable nor principled. It noted that the transactional nature of purchasing or renting music or videos affords less control over the content, given the reliance on third parties. The interveners argued that the TVOD business model is different than the subscription business model, which operates on a curation model driven by relationships with their rights holders and customer base.

131. According to the ITIC, unique transaction services such as TVOD services are primarily content marketplaces, rather than services that carry on a broadcasting activity, and work on a unique business model. It echoed other parties' concerns over the potential imposition of excessive regulatory obligations on services that fall beyond the core scope of the broadcasting policy, as well as the potential

[36] Including Amazon, Apple, BCE, Eastlink, Cogeco, Cineplex Entertainment LP, the ITIC, the MPAC, Rogers, and the Ultimate Fighting Championship.

implications for the public's perception of the regulatory system as a whole in Canada.

132. Apple also commented on the importance of the need to remain technology agnostic in implementing the *Broadcasting Act*, noting that the services it provides are akin to home videos and serve to complement traditional broadcasting services. It added that the purpose of the present proceeding is not to simply extend all broadcasting regulations to the online world.

133. The Ultimate Fighting Championship (UFC) supported the proposed exemption and sought further clarity on the definition of a one-time rental or purchase of an individual program. It voiced concerns about how its revenues may be calculated for the purpose of determining whether it can be exempted. Similarly, the MPAC, though in favour of the proposed exemption, sought more information as to why the exemption was specific only to this model while other models (e.g., free ad-supported television [FAST], subscription-based VOD [SVOD] and advertising-based VOD [AVOD]) also exist.

134. A greater number of interveners opposed[37] the proposed exemption. They considered that the Commission did not provide sufficient rationale for exempting those services, and sought further clarification on the Commission's intent and rationale, and supporting evidence, for excluding this group of services from registration. Interveners argued that these services make a material contribution to the broadcast system since they are a key access point to feature films for large Canadian audiences, are growing in size and number,[38] and generate significant revenues.[39]

135. Other interveners[40] submitted that it is too early to exempt unique transactions given their size and impact. The Ontario Educational Communications Authority (TVO) noted that the registration of TVOD services would help provide the Commission with a "complete picture" of the manner in which programs are provided to Canadian consumers by online undertakings. The DGC noted that much of TVOD service revenues are generated by global companies that are well positioned to support the creation, distribution and presentation of Canadian programming, and that TVOD services are but one of many services offered by the same online undertaking and should not be overlooked. Netflix noted that this exemption would apply to a significant segment of online undertakings despite TVOD service revenues, and argued that exempting these services would provide an incomplete landscape of operations of online undertakings.

---

[37] Including the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the APFC, the AQPM, ARRQ-GMMQ-SARTEC-UDA, the CMF, the CMPA, the CBC, Corus, the CPSC-SCFP, the DGC, the DOC, PIAC, Quebecor, the Racial Equity Media Collective, St. Andrews, Téléfilm Canada, The Ontario Educational Communications Authority (TVO), Unifor, Vaxination Informatique, and the WGC.

[38] Current examples of this type of service include Illico, iTunes, Microsoft Movies & TV, Google Play, PlayStation Network, CinemaNow, Cineplex Store, Amazon Instant Video and YouTube Premium.

[39] TVOD services as a whole operating in Canada had estimated revenues of $320.7 million in 2020, higher than revenues of other groups currently being regulated. They also noted TVOD services' double digit compound annual growth rate.

[40] Including the APFC, the CMPA, the DOC, Téléfilm Canada and the WGC.

136. Interveners also submitted that regulatory approaches should be consistent with the objectives of the *Broadcasting Act* for the fair and equitable treatment of players in the broadcasting system, and that technology used to deliver the programming should not be the deciding factor in exempting them from registration. Interveners including the Canadian Broadcasting Corporation (CBC), Corus, the CPSC-SCFP, the DGC, the DOC, PIAC, Quebecor and Téléfilm Canada considered unique transaction services to be similar to currently licensed BDUs that offer TVOD services and currently fall under the Commission's regulatory requirements. As such, they questioned why unique transactions online should be treated differently. TELUS also noted the need for regulatory symmetry, and proposed extending the exemption to licensed VOD services.

137. The DOC and the APFC, noting that the *Broadcasting Act* specifically states at paragraph 3(1)(e) that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming," argued that excluding a significant element of the Canadian broadcasting system at this early stage does not seem to be an appropriate action. Saskatchewan Telecommunications (SaskTel) added that the only difference between online VOD services and the on-demand services provided on traditional broadcast platforms is the provision of content via a managed network instead of over the Internet.

138. The CAB also requested regulatory symmetry, and considered that TVOD services both on traditional broadcast platforms and online should be either regulated or unregulated. It recognized, however, as did Cogeco, that there is no parallel in the broadcasting system for online undertakings that sell music on a transactional basis, and argued that it would therefore be appropriate to exempt such services. Unifor submitted that method or frequency of payment (subscription fee versus one-time rental) should not be a determining factor in regard to whether or not a service should be exempted.

139. The APFC noted that other foreign jurisdictions that already regulate online undertakings, such as France, require TVOD services and other transactional services to contribute to the broadcasting ecosystem at the same level as online streaming platforms. According to the APFC, these jurisdictions do not distinguish between traditional and online undertakings. It also countered the position of other interveners that online undertakings offering transaction-based broadcasting are unique and different from the traditional pay-per-view (PPV) or other VOD services given their lack of control on content, and because their business models are less relationship-driven. In this regard, the WGC argued that such services exercise full control over programs offered to users by definition of "programming control" within the *Broadcasting Act*. It added that online services providing unique transactions also have an ongoing service relationship, such as a customer account, payment and other information, so that the relationship is maintained over time.

140. Finally, the CBC and the CMPA noted that models will continue to evolve. The CMPA further noted the risk that online undertakings, with their flexibility of developing consumer offers, will broaden the application of any exemption by categorizing subscription activity as being transactional in nature (as demonstrated

by Amazon's initial request to expand the exemption to subscriptions). They also noted the risk of traditional BDUs requesting an exemption of VOD services in the name of equitability. In this regard, BCE, Eastlink, the CAB, Cogeco, Quebecor, SaskTel and TELUS, all of whom opposed the exemption, stated that they would all seek regulatory equity for traditional BDUs if the Commission proceeds with the exemption. In their view, the lack of regulatory obligations imposed on unique transaction online undertakings would create an unjust and unfair advantage for those undertakings.

Commission's decision

141. As noted above, the issue here is whether the Commission should exercise its power to exempt from the Registration Regulations undertakings that transmit or retransmit programs over the Internet for reception by the public by means of broadcasting receiving apparatus if the programs are "rented" for a one-time viewing or "purchased" once to allow for access on an ongoing basis. This type of service is described herein as a "unique transaction service".

142. As a result of this proceeding, it appears to the Commission that the overall market in Canada for unique transaction services provided by online undertakings, while divided among a number of players, can be considered significant. In light of this, the Commission considers it premature to exempt these services, as proposed, as doing so could mean that the Commission would not be able to collect information and ensure that some measure of basic regulatory oversight is maintained during this transition period. This could have significant ramifications for its ability to implement the broadcasting policy objectives set out in the *Broadcasting Act*.

143. The Commission notes that the business models for broadcasting, along with the technology, have continuously evolved over the course of the history of broadcasting. Whether scheduled only or on demand; advertising- or subscription-based; VOD or PPV; or requiring payment for ongoing access to the program, it is neither the payment method nor the moment in which the public can access (or re-access) a program, but the fact that these services all involve the transmission of programs by means of telecommunications for reception by the public by means of broadcasting receiving apparatus that makes them significant from the perspective of the broadcasting policy for Canada.

144. Fundamentally, the broadcasting policy for Canada does not specifically distinguish between scheduled and on-demand broadcasting, or between subscription- or transaction-based services. Indeed, the Commission is tasked with exercising its powers in a manner that, among many other things, is readily adaptable to technological change and that takes into account the diversity of the services provided by broadcasting undertakings.

145. The Commission recognizes that online undertakings and BDUs provide their unique transaction services under different circumstances – transmission by online undertakings over the Internet rather than by BDUs over managed networks – and differ in regard to the nature of the relationship with their customers. Further, BDUs may provide one-time transactions through the use of specific hardware and software provided by the BDU as part of the subscription service offered to the

customer. Nevertheless, it is the similarities of the services that are important from the perspective of implementing the policy objectives set out in the *Broadcasting Act*, and specifically here the requirement to register with the Commission to implement these objectives. The unique transaction services offered by BDUs and online undertakings offer a catalogue of programs available to customers: both types of undertakings exercise control over programming as they decide which content is offered, and may set the price charged to the customer for accessing the content. Moreover, services provided by online undertakings that involve "renting" the program for one-time viewing are akin, in particular, to the VOD and PPV services offered by BDUs. Therefore, exempting from the registration requirement online undertakings that provide unique transaction services merely because they transmit or retransmit the programs by means of the Internet would result in unjustifiable regulatory asymmetry between traditional and online services.

146. Moreover, without registration information from online undertakings that provide unique transaction services, given the nature of the services and their increasing size and number, the Commission would have a distorted picture of the online broadcasting system.

147. Finally, the Commission notes that exempting online undertakings providing unique transactions services – i.e., based primarily on the method of payment – could unintentionally and inappropriately lead to a shift toward providing services in this fashion in order to qualify for exemption.

148. In light of all of the above, the Commission concludes that exempting from registration the class of online undertakings that provide unique transactions services could have a material impact on its ability to implement the objectives of the *Broadcasting Act*, including, for example, those set out in paragraphs 3(1)(a.1),[41] 3(1)(f.1),[42] 3(1)(q),[43] and 3(1)(r)[44] of that Act.

---

[41] 3(1)(a.1): "It is hereby declared as the broadcasting policy for Canada that […] each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;"

[42] 3(1)(f.1): "It is hereby declared as the broadcasting policy for Canada that […] each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve;"

[43] 3(1)(q): "It is hereby declared as the broadcasting policy for Canada that […] online undertakings that provide the programming services of other broadcasting undertakings should (i) ensure the discoverability of Canadian programming services and original Canadian programs, including original French language programs, in an equitable proportion, (ii) when programming services are supplied to them by other broadcasting undertakings under contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and (iii) ensure the delivery of programming at affordable rates;"

[44] 3(1)(r): "It is hereby declared as the broadcasting policy for Canada that […] online undertakings shall clearly promote and recommend Canadian programming, in both official languages as well as in Indigenous languages, and ensure that any means of control of the programming generates results allowing its discovery;"

149. The Commission therefore finds that it is premature to exempt from registration online undertakings that provide unique transaction services. In the Commission's view, the better course would be to register such undertakings so as to permit the Commission to better monitor their development and examine, in the context of future proceedings, how such services should be treated. The Commission has amended the exemption order accordingly.

150. The Commission notes that other jurisdictions are struggling with the same questions and that some have taken the view that transactional services should be captured within the scope of broadcasting regulation. As of March 2023, all EU states have implemented the Audiovisual Media Services Directive (AVMSD) and currently regulate VOD services in some form. There is some flexibility in the way in which the AVMSD may be implemented, but many member states have implemented quotas for EU and national content, and some have elected to apply investment obligations.[45]

151. In light of the above, the Commission finds that compliance with the registration requirement will contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*. The Commission therefore finds that it is not necessary, and would not be appropriate, to exempt from the requirement to register online undertakings that provide unique transaction services. Accordingly, the Commission has not included in the exemption order the proposed class of online undertaking whose single activity and purpose consist of providing unique transactions.

Social media services

152. The *Broadcasting Act* distinguishes between the content uploaded by users of social media services, the persons who upload content, and the social media services themselves.[46]

153. Subsection 4.1(1) of the *Broadcasting Act* stipulates that the Act does not apply in respect of a program that is uploaded to an online undertaking that provides a social media service by a user of the service for transmission over the Internet and reception by other users of the service. However, as set out in subsection 4.1(2), despite subsection 4.1(1), the *Broadcasting Act* does apply in respect of a program that is uploaded as described in that subsection if the program (a) is uploaded to the social media service by the provider of the service or the provider's affiliate, or by the agent or mandatary of either of them; or (b) is prescribed by regulations made under section 4.2 of the *Broadcasting Act*.

154. The *Broadcasting Act* also does not apply to the person who uploads such content insofar as they are deemed under subsection 2(2.1) not to be carrying on a broadcasting undertaking. Specifically, a person who uses a social media service to

---

[45] For further information about international requirements on VOD, please refer to the Commission's webpage.

[46] The proposed Direction also references "social media creator," a new term not included in the *Broadcasting Act*.

upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider's affiliate, or the agent or mandatary of either of them — is deemed not, by the fact of that use, to carry on a broadcasting undertaking for the purposes of the *Broadcasting Act*.

155. Further, subsection 4.1(3) of the *Broadcasting Act* stipulates that the Act does not apply in respect of online undertakings whose broadcasting consists only of programs in respect of which the *Broadcasting Act* does not apply under this section.

Positions of parties

156. While interveners agreed that the content uploaded by users on social media is not covered by the *Broadcasting Act*, there was disagreement as to whether social media platforms, which may contain broadcasting programs in addition to social media content, should be exempted from the requirement to register.

157. Most associations, including the CAB and ACCORD, argued that social media platforms such as Facebook (owned by Meta), TikTok, and YouTube (owned by Google) directly compete with radio and television services for content, audience, and advertising. As such, these interveners, along with the CMPA, the IBG and PIAC, opposed exempting social media services from the requirement to register. They also noted a distinction between regulating the individual users of social media services (i.e., creators) and regulating social media services.

158. The IBG noted that paragraph 3(1)(q) of the *Broadcasting Act*, which was added following the coming into force of the *Online Streaming Act*, includes broadcasting policy objectives that relate specifically to online undertakings that provide the programming services of other broadcasting undertakings. For the IBG, "numerous other objectives and powers of the Commission could be exercised only in relation to service aggregators, which are poised to become the BDU[s] of the future."

159. Finally, PIAC submitted that while the *Broadcasting Act* does not apply to creators of digital content, online undertakings that provide the platforms for this content are not so clearly exempted.

160. Other interveners, including Digital First Canada, Google, Meta, TikTok, the ITIC, Vaxination Informatique and individual interveners, as well as social media platforms, supported the exemption of social media platforms altogether from the requirement to register. One of the individual interveners argued that social media services should be exempted on the grounds that registering social media services is not likely to contribute in any manner to the implementation of the objectives of the *Broadcasting Act*.

161. Meta supported this claim and explained that social media platforms have no material impact on the Canadian broadcasting system. It argued that these platforms are not like traditional television since they do not select programs and since the volume of content is not limited by a few available channels, nor do they produce and/or distribute professionally produced programming pursuant to commercial carriage agreements.

162. Meta further submitted that the *Broadcasting Act* does not apply to social media online undertakings whose broadcasting consists of programs of social media creators.[47] It argued that its services are primarily not broadcasting, and that any programs that might be considered to be broadcasting are the creations of its users, who are social media creators. Further, Meta argued that the broadcasting activities on its services are minimal and entirely ancillary to the predominant purpose of its services, which is to help people connect with friends and family, to help build communities and to help grow businesses.[48]

163. According to TikTok, if video game services are exempted because they are not broadcasting, social media content, which has never been considered broadcasting, must also be exempted to avoid any ambiguity. Although the intervener agreed that social media services could provide content that is also available through a licensed or registered broadcasting undertaking, it argued that this should not preclude the exemption of these services. In TikTok's view, the determinative factor should be whether the primary function of the social media service is to access social media content. It therefore proposed exempting online undertakings whose primary purpose consists of providing a social media service.

164. Google also considered that online undertakings of which the primary function is to serve as a platform for the dissemination of user-generated content, namely, social media services, should not be subject to the same regulatory framework as that for traditional broadcasting undertakings. It added that exempting social media services would be consistent with the Commission's statement that it does not intend to regulate any aspect of a social media service, and that this was the clear intention of Parliament.

165. Vaxination Informatique submitted that, whatever the business model of a social media platform, any requirement imposed would ultimately be passed on to social media creators. As a consequence, creators would be harmed through a reduction in revenues.

166. The ITIC supported the exemption of social media platforms hosting user-generated content given that such platforms lack editorial control and do not exert any programming control over broadcast content. It added that exempting undertakings that provide social media services would be consistent with the proposed Direction, avoid potential unintended consequences that could impact Canadian consumers, and reflect the Government of Canada's legislative intent.

---

[47] Meta cited subsection 4.1(3), which declares that the *Broadcasting Act* does not apply in respect of online undertakings whose broadcasting consists only of programs in respect of which that Act does not apply, and subsection 4.1(1), which declares that the *Broadcasting Act* does not apply in respect of programs that is uploaded to an online undertaking that provides a social media service by a user of the service.

[48] In this regard, Meta cited paragraph 2(2.3)(a) of the *Broadcasting Act*, which declares that a "person does not carry on an online undertaking for the purposes of this Act in respect of a transmission of programs over the Internet that is ancillary to a business not primarily engaged in the transmission of programs to the public and that is intended to provide clients with information or services directly related to that business."

167. Finally, an individual intervener warned that a regulatory framework that uses a content-based approach risks turning the Commission into a content moderator, making specific decisions about the types of content that are covered by the *Broadcasting Act*.

Commission's decision

168. As noted above, pursuant to subsection 9(4) of the *Broadcasting Act*, the Commission is required to exempt from regulations, including the Registration Regulations, broadcasting undertakings of any class it specifies if the Commission is satisfied that compliance with the requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

169. It appears clear at this point that social media platforms play a large and increasingly dominant role in terms of the Canadian online broadcasting advertising market. This alone would seem to point towards a need to register such services to enable the Commission to gather further information and monitor their impact, where necessary. In addition, exempting all or a subset of online undertakings that provide social media services would require that the class of undertakings to be exempted be clearly defined. Through the proceeding initiated by Broadcasting Notice of Consultation 2023-138, the Commission has only just begun to explore the concept of social media and the role, if any, that social media platforms may play in the broadcasting system, should they engage in activities that are subject to the *Broadcasting Act*. That proceeding is only a first step — future proceedings will likely be necessary to delineate more clearly a regulatory approach to these services.

170. Given the ongoing proceedings that are considering various issues surrounding the definitions of social media services and their activities that are subject to the *Broadcasting Act*, the Commission is of the view that it would be premature to define a class or classes of online undertakings specific to social media undertakings for the purposes of the exemption order. More importantly, even if there were such clarity on definitions, the registration information from social media online undertakings that are subject to the *Broadcasting Act* is essential at this point in the development of the Commission's new regulatory framework under the amended *Broadcasting Act*. Taking into account the minimal regulatory burden imposed by the proposed Registration Regulations, the Commission finds that imposing a registration requirement on social media services would be appropriate, at least for the time being.

171. In the Commission's view, it is essential, however, to distinguish between online undertakings that provide social media services and the users that upload content to these services. While the undertakings providing the social media services are required to register with the Commission, the users of these services are not.[49] Even

[49] Specifically, a user that is not the provider of the service or the service's affiliate, or the agent or mandatory of either of them, does not become an online undertaking merely by uploading their programs to an online social media service.

users that may earn $10 million or more annually from content uploaded to social media services are not required to register with the Commission.

172. In light of the above, the Commission finds that it is neither necessary nor appropriate at this time to exempt from the Registration Regulations online undertakings that provide social media services. The Commission recognizes that the requirement to register may need to be reviewed in the future once the Commission has collected sufficient information on these services, and once it has provided more clarity and resolved a variety of issues concerning these services. Finally, for the sake of clarity, the Registration Regulations only apply to those social media online undertakings that are subject to the *Broadcasting Act* and, further, do not apply to users of social media services.

Content-related categories

Thematic services

Positions of parties

173. For the purposes of the present proceeding, the MPAC introduced the concept of "thematic service," which it defined as a service that due to its nature or theme of service will not contribute in a material manner to the implementation of the broadcasting policy objectives of the *Broadcasting Act*, and should therefore be given special consideration by the Commission (i.e., should be exempted from the requirement to register). An individual intervener proposed adding to this class of services "specialty services," which it defined as undertakings whose primary broadcasting activities consist of distributing programs associated with a particular nation/region, foreign language or cultural group.

174. According to the MPAC, the Commission should only exempt a thematic service if it is satisfied that it will not contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*. The UFC proposed that exemption eligibility be based on a qualitative application process where undertakings can submit written applications as to why a service considers that it does not compete with Canadian services or does not materially impact the Canadian broadcasting industry.

175. Similarly, Apple requested the exemption of fitness services, which it defined as services that consist primarily of programs promoting health and fitness via guided workouts and similar features, such as Apple Fitness +, provided over the Internet.

176. Certain interveners opposed exempting "thematic services" as defined by the MPAC. The CMPA expressed concerns that such an exemption category would lack specificity and be a blanket exemption. Corus also took issue with the MPAC's definition of thematic services and its proposal to exempt such services from the requirement to register, stating that the intervener did not provide any limiting principle or other supplementary interpretive guide, and that adoption of such a proposal could lead to regulatory uncertainty and inequity.

177. The CAB also expressed concern over the proposals to exclude broad categories of services, arguing that thematic and ad-support programming services directly compete with television and radio services for content, audiences and advertising.

178. According to the CMPA, exemption status is not necessary for specific programming genres of a service given that the Commission has proposed a threshold based on a level of revenues that, when met, indicates that a service has the potential to contribute in a material manner to the policy objectives, and therefore should be subject to regulation regardless of content.

179. An individual intervener submitted that a content-based exemption approach could risk turning the Commission into a content moderator, and that adding further regulatory requirements depending on the content provided would make the Commission determine which content should be exempted.

180. Finally, ARRQ-GMMQ-SARTEC-UDA did not agree with Apple's recommendation to exempt fitness-related services if all other criteria are met for registration.

Commission's decision

181. Exempting any kind of content based on its theme would require assessing such content, which involves a certain level of subjectivity. Further, exemptions based on content would provide some uncertainty to online broadcasters, as well as utilize significant resources from both online broadcasters and the Commission to process.

182. Further, exempting thematic services from the requirement to register would hamper the Commission's ability to assess whether these services provide broadcasting services in English and in French, which in turn would make it more difficult for the Commission to fulfil broadcasting policy objectives, such as that set out in paragraph 3(1)(k) of the *Broadcasting Act*, which provides that a range of broadcasting services in English and in French shall be extended to all Canadians. Thematic services are also of interest to persons with disabilities, and not having basic information on those services would limit the capacity of the Commission to achieve the broadcasting policy objective set out in paragraph 3(1)(p.1) of the *Broadcasting Act*, which states that "programming that is accessible without barriers to persons with disabilities should be provided within the Canadian broadcasting system, including without limitation, closed captioning services and described video services available to assist persons living with a visual or auditory impairment." It is therefore important for the Commission to monitor whether these services continue to be provided, for the benefit of Canadians who may rely on them.

183. Finally, creating too many additional exemption categories would limit the purpose of creating a registry, specifically, to gather information to help the Commission to better understand the Canadian online broadcasting landscape more generally. In this regard, exempting certain categories of thematic services would limit the capacity of the Commission to assess whether the programming provided by the

Canadian broadcasting system is varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes, as required pursuant to subparagraph 3(1)(i)(i) of the *Broadcasting Act*. It would also make it more difficult for the Commission to determine whether thematic services are contributing to the achievement of paragraphs 3(1)(k) and 3(1)(p.1) of the *Broadcasting Act*.

184. In light of the above, the Commission finds that it would not be appropriate to exempt the broad category of thematic services as defined by the MPAC from the requirement to register.

Online news services

Positions of parties

185. The CAB proposed that the Commission explicitly exempt online news services so that there is no distinction between news providers whose programming consists predominantly of alphanumeric text and those who would be considered to be broadcasting audio or video "programs". It argued that this would also keep the Commission from having to measure and track the point at which a website becomes mainly textual, and therefore lies outside of the scope of the *Broadcasting Act*. The CAB warned that not adopting such an exemption would provide an incomplete picture of the market and may even encourage some operators to tailor their offerings to put a greater emphasis on text versus video to avoid registration. The CAB also noted that a broadcaster's website is generally made up of content created for its linear channels, which is already subject to the Commission's oversight. Other interveners, including Rogers, Pelmorex, BCE, Corus, Apple and an individual, supported the CAB's proposal.

186. Corus urged the Commission to exempt online news for competitive reasons. It noted that online news sites associated with licensed news broadcasters compete with the online news sites of print publications and international media organizations. Corus considered that it is not the Commission's intent to regulate websites such as those for the *Globe and Mail*, and that the playing field should therefore be level for news sites associated with Canadian broadcast news organizations.

187. BCE submitted that such an exemption would be in the public interest. It argued that there is no need to ensure these undertakings contribute to Canadian culture since they do so by definition, by providing news and stories that cover Canada and the world. BCE raised a point similar to that of the CAB in that regulation may create a disparity of treatment between online providers who offer mostly videos versus those who offer mainly text. Rogers and Apple agreed with this rationale.

188. The WGC opposed exempting online news services from the requirement to register. It considered that the Commission is only gathering information through registration, and that there is therefore no reason to exclude online news. The WGC noted that the Commission's rationale for requiring such services to register is that such information increases the public transparency applicable to such services and informs the Commission's substantive regulatory decisions that may follow.

189. The IBG also disagreed with the proposal to exempt online news services from the requirement to register. It argued that subparagraphs 3(1)(d)(i) and (ii)[50] of the *Broadcasting Act* are highly relevant to news and information content provided to Canadians, and that such services should therefore not be excluded from registration requirements.

190. The CMPA disagreed with exempting online news services as well. It argued that an exemption is not necessary for specific programming genres of a service given that the Commission proposed a threshold based on a level of revenues that, when met, would indicate that a service has the potential to contribute in a material manner to the policy objectives and should therefore be subject to regulation, regardless of content.

Commission's decision

191. There are a variety of news services that are not covered by the *Broadcasting Act* or are otherwise exempted by the Commission. For example, print-media undertakings fall outside the scope of the *Broadcasting Act* as the Commission's authority under that Act extends only to broadcasting undertakings. Further, online news services that do not broadcast programs, but rather only content that consists predominantly of alphanumeric text, are excluded.[51]

192. In addition, subsection 4(5) of the *Broadcasting Act* stipulates that the *Broadcasting Act* does not apply to the operator of a digital news intermediary[52] in respect of which the *Online News Act* applies when the operator acts solely in that capacity. Finally, online undertakings whose operator either forms or does not form part of a broadcasting ownership group, with broadcasting revenues under the $10 million threshold, would be exempted from registration.

193. The Commission notes that the above-noted news services would not be required to register given that they either fall outside the scope of the *Broadcasting Act* (and thus are not subject to the Registration Regulations) or would be exempted from the Registration Regulations based on their annual revenues.

---

[50] "It is hereby declared as the broadcasting policy for Canada that the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada (3(1)(d)(i)) [and] encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view, and foster an environment that encourages the development and export of Canadian programs globally (3(1)(d)(ii))."

[51] This is because the definition of "program" in the *Broadcasting Act* excludes visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

[52] As defined by the *Online News Act:* means an online communications platform, including a search engine or social media service, that is subject to the legislative authority of Parliament and that makes news content produced by news outlets available to persons in Canada. It does not include an online communications platform that is a messaging service the primary purpose of which is to allow persons to communicate with each other privately.

194. Nevertheless, other broadcasting undertakings, including online undertakings that provide audio and video news services subject to the *Broadcasting Act*, are of primary concern for the Commission. In fact, the *Broadcasting Act* sets out specific policy objectives regarding news (see, for example, subparagraphs 3(1)(i)(ii.1)[53] and (iv)).[54] Further, as set out in section 12(i) of the proposed Direction, the Commission would be required to consider the importance of sustainable support by the entire Canadian broadcasting system for news and current events programming, including a broad range of original local and regional news and community programming.

195. Online undertakings that are not part of a broadcasting ownership group are exempted from registration when they have broadcasting revenues under the $10 million threshold. For online news undertakings that, in addition to transmitting or retransmitting audio and/or video news, also provide content that consists predominantly of alphanumeric text (which is not broadcasting), only their broadcasting revenues are to be included in the annual revenue calculation. Accordingly, certain online news undertakings may not reach the $10 million threshold, and those undertakings would be exempted from registration.

196. In regard to the intervention by Corus, the main difference between the two types of services is that the Commission has regulatory oversight over broadcast news but not over printed news. As such, the competitive differences between the two types of services may not necessarily be levelled, as proposed by Corus, by simply not regulating the entities.

197. As discussed earlier, in order to exempt a class of online news undertakings, the Commission must determine that registration of these services would not contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*. Given that Act's emphasis on news in the broadcasting system, it is hard to envision how the registration of online undertakings providing news services could not contribute in a material manner to the Commission's ability to further the objectives of the *Broadcasting Act*.

198. More specifically, exempting online undertakings that provide news services from the requirement to register would prevent the Commission from having an adequate understanding of the players providing such services. Without information about the online broadcasting undertakings involved in the Canadian broadcasting system, it would be much harder for the Commission to develop policies aimed at implementing the above-noted policy objectives of the *Broadcasting Act* and conform to the proposed Direction.

---

[53] The programming provided by the Canadian broadcasting system should include programs produced by Canadians that cover news and current events – from the local and regional to the national and international – and that reflect the viewpoints of Canadians, including the viewpoints of Indigenous persons and of Canadians from Black or other racialized communities and diverse ethnocultural backgrounds.

[54] The programming provided by the Canadian broadcasting system provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern and to directly participate in public dialogue on those matters including through the community element.

199. In light of the above, the Commission finds that it would not be appropriate to exempt online undertakings that provide news services from the requirement to register. The Commission notes, however, that online undertakings that fall under one of the categories described in paragraphs 191, 192 and 195 are already either excluded from regulation under the *Broadcasting Act* or would be exempted from the Registration Regulations, and would therefore not need to register.

Adult content websites

Positions of parties

200. 9219-1568 Québec inc. (doing business as Entreprise MindGeek Canada) proposed that the Commission exempt adult content websites from the requirement to register given that such content is not an expression of Canadian cultural identity that Canadians expect the federal government to protect. It proposed amending the proposed exemption order by adding as exempted services "online undertakings whose dominant activity and purpose consists of providing explicit adult video streaming services."

201. Entreprise MindGeek Canada's proposal was supported by Vaxination Informatique and an individual intervener, both of whom considered that imposing registration requirements on adult content websites would not help the Commission in achieving its broadcasting policy objectives.

202. Télé-Québec supported exempting adult content and noted that several countries, such as Spain and France, exempt services devoted to violent or pornographic content.

Commission's decision

203. Adult content is part of the current broadcasting system, and certain regulatory measures are currently in place for service providers providing such content that operate via traditional broadcasting undertakings. These measures focus on protecting children from such content and ensuring that such content is only available to those adults who wish to deliberately access it.[55] The Commission considers that it would be asymmetrical to exempt online services that provide adult content, while traditional broadcasters offering such content remain regulated. Further, the record of the proceeding shows that the resources employed in the

---

[55] See, for example, the definition of "adult programming service" in the *Broadcasting Distribution Regulations*, as well as subsections 25(1) and (2), which speak to the distribution of such services. Also, in the appendix to Broadcasting Regulatory Policy 2017-138, the Commission set out expectations (8 and 9) for licensees who operate adult programming services to provide a copy of their internal policies as they relate to such programming, and to adhere to such policies. Further, Broadcasting Public Notice 2003-10 approved a new industry code of programming standards and practices governing pay, PPV and VOD services. This code contains provisions to ensure that only adult programs that have been approved and rated by a provincial film classification board will be broadcast, that licensees will review all adult programming prior to broadcast to ensure that such programming is consistent with the licensees' internal policies on adult programming, and that viewers and subscribers will be informed of the nature of the adult programming being aired throughout the purchase, selection and viewing of such programming.

operations of these service providers are not insignificant and that they generate substantial advertising and subscription revenues.

204. Clearly, whether offered online or by traditional broadcasters, adult content is substantially different from other content offered by broadcasting undertakings and, therefore, requires different regulatory approaches. Specifically, the Commission sees little likelihood that regulation governing Canadian content levels or promotion of content would be necessary in furtherance of the objectives of the *Broadcasting Act.* However, as in the traditional broadcasting system, there are several forms of regulatory intervention that are likely warranted in regard to online undertakings that broadcast adult content programs, which will require substantive action on the part of the Commission. For example, the Commission may examine ways to ensure that children are protected. That said, the record of this proceeding is not sufficient for the Commission to make any specific determinations on what form of regulatory action, if any, would be appropriate. Moreover, there are limits set out in the *Broadcasting Act* in regard to the Commission's authority to act in this space. Issues, such as those set out above, related to online undertakings offering adult content will be addressed in future proceedings.

205. In light of the above, and given the relatively light burden of registration, the Commission finds that it would not be appropriate, for the time being, to exempt online undertakings that provide adult content from the requirement to register.

Podcasts

Positions of parties

206. Certain interveners proposed a specific exemption for podcast services. Apple submitted that regulating podcast services (such as Apple Podcasts) would not contribute in a material manner to the implementation of the broadcasting policy of the *Broadcasting Act*. It added that the Commission has expressly stated its intention not to regulate podcasters.

207. Apple noted that the application Apple Podcasts is made up of podcasts that are available for no charge (Free Podcasts) and that are not hosted or transmitted directly by Apple. It noted that this podcast content, rather than residing on Apple servers, is solely hosted on the servers of third-party hosting providers chosen by each podcaster at their discretion. Apple argued that, in essence, for this podcast content, Apple Podcasts is merely a directory. It explained that when a listener requests Free Podcasts content using the Apple Podcasts service, it links the listener to an external URL that has been provided via RSS feed by the content provider to where the audio content is hosted. Apple argued that, as a result, it is not involved in the "transmission" or "retransmission" of these programs within their meaning under the *Broadcasting Act*.

208. Apple added that Apple Podcasts offers a small portion of podcasts by subscription (Paid Podcasts). Paid Podcasts content is typically uploaded by a podcaster directly to Apple servers where the Paid Podcasts content is hosted and distributed to the

podcaster's subscribers using the Apple Podcasts service. Apple noted, however, that it does not exercise any curation function or programming control over Paid Podcasts content within the meaning of the *Broadcasting Act*, and that it simply operates as an online store and receives, as a commission, a percentage of the subscription price paid by a user.

209. Spotify, in agreement with Apple's submission, stated that podcasts lie outside the scope of the *Broadcasting Act*. It submitted that regulating podcast services would regulate podcast creators by proxy and certainly improperly capture user-generated content, which cannot be regulated under the amended *Broadcasting Act*. According to Spotify, regulating podcasts would not materially contribute to the implementation of the objectives of the broadcasting policy of the *Broadcasting Act*. It noted that podcasts services are still a nascent field and cannot absorb costs, and that regulating them would constrain this still-evolving medium. Spotify added that imposing revenues on podcasts would be taking from an emerging industry to fund a legacy industry. It submitted that podcasts are defined by their low barriers to entry, and that the lack of regulation provides a space for free expression. In Spotify's view, podcasts are still an emerging form of expression, and regulation risks stifling innovation.

210. Google reiterated that even if a specific activity or service lies within the scope of the *Broadcasting Act*, it is appropriate that certain other services offered by online undertakings should be exempt from regulation even if that online undertaking provides other services that do not fall under the exemption criteria. It referred to Spotify's submission in which it stated that podcasts and audiobooks should be exempted from the requirement to register even though music services fall within the scope of the *Broadcasting Act*.

211. The ITIC also considered that user-generated content should be exempt from registration requirements. Both Unifor and the DiMA supported exempting podcasts, with the DiMA stating that podcasts fall outside the target for online streaming activities.

212. Other interveners, however, opposed the exemption of podcasts from the requirement to register with the Commission. The CAB considered that exempting podcast services would open the door too wide for other undertakings to be exempt. It added that podcasts compete directly with television and radio services for content, audiences and advertising. In the CAB's view, there is no reason to expand the classes of exemption.

213. Corus stated that it is premature to exempt all podcast services from the requirement to register. It considered that podcasting clearly falls within the definition of programs and broadcasting, and that platforms that distribute podcasting are presumptively online undertakings. Although Corus acknowledged that many podcasts are uploaded by users, it noted that the market also includes many podcasting programs that are directly produced or exclusively licensed by podcasting platforms for release on said platforms. In Corus's view, there is a significant difference between user-generated podcasts and professional enterprises

that directly compete with licensed radio stations for audiences and revenues. As an example, it referred to the multi-year licensing deal with Joe Rogan to bring "the Joe Rogan Experience" on an exclusive basis to a platform, reported to have been valued at over $200 million US.

214. Rogers and ADISQ considered that podcasts services should not be exempt from the requirement to register. Rogers stated that although the proposed Direction would direct the Commission not to impose regulatory requirements on online undertakings in respect of the programs of social media creators, including podcasts, it is clear that it would allow and enable the Commission to regulate social media platforms insofar as they are acting like broadcasters. It argued that the intent of the proposed Direction is to ensure that the revenues of social media creators, including podcasters, are not captured by the regulatory framework, the same way that revenues of independent producers are not currently captured. Further, Rogers addressed Apple's intervention in regard to its two different business models. It submitted that when Apple merely links a listener to an external URL where the audio content is hosted, it should not be captured by the Registration Regulations because it is not engaged in the transmission or retransmission of content, but that when Apple hosts podcasts on its servers and these are transmitted to the listeners, it acts as an online undertaking and its revenues should be captured.

Commission's decision

215. A podcast generally refers to a digital audio file, containing, for example, news or radio-type programming created by a user or a broadcaster that can be downloaded to a personal media device for subsequent listening. Podcasts can be produced by social media users or professionals, and delivered on different types of platforms, each having a different business model. Examples of what constitute "podcasts" include the following:

- streaming services that host the content;
- paid podcasts, where a creator pays a platform that then distributes the content; on such platforms, the content can be accessed by listeners for a fee;
- free podcasts in which a platform is merely a directory of podcasts such as that provided by streaming platforms;
- advertising-based podcasts created by individuals on their own websites, or on membership platforms that allow podcasters to run a subscription service; and
- podcasts available on social media platforms.

216. The *Broadcasting Act* defines "program" as sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

217. Based on this definition, the Commission finds that podcasts constitute programs under the *Broadcasting Act*, given that they are comprised of sounds intended to inform, enlighten or entertain. Further, based on the definition of "broadcasting" set out in subsection 2(1) of the *Broadcasting Act*, the Commission finds that the transmission of podcasts over the Internet, a means of telecommunication, constitutes broadcasting when, as is typically the case, such transmission is for reception by the public by means of broadcasting receiving apparatus such as a computer, tablet or wireless phone. It is important to note that, as set out in the Notice, the *Broadcasting Act* does not give the Commission a mandate to regulate creators of programs; rather, its powers extend only to those services that are involved in the broadcasting of programs, which are referred to as broadcasting undertakings.

218. As noted above, the *Broadcasting Act* defines "broadcasting undertaking" as including an online undertaking, which is, in turn, defined as an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.

219. The Commission finds that where the undertaking is hosting or distributing the podcasts, it is engaged in the transmission or retransmission of programs (podcasts) over the Internet for reception by the public by means of broadcasting receiving apparatus (computer/tablet/wireless phone). The Commission therefore concludes that online undertakings that host or distribute podcasts transmitted or retransmitted over the Internet to the public for reception on their phones, computers, tablets or other broadcasting receiving apparatus are carrying on "online undertakings" as defined in the *Broadcasting Act*.

220. The Commission considers that where an undertaking is only providing a directory of podcasts that does not host or distribute, the undertaking is not engaged in the transmission or retransmission of programs over the Internet; rather, its function is more akin to a program guide. Accordingly, such an undertaking is not carrying on an online undertaking, and therefore the Registration Regulations would not apply.

221. The Commission further notes that the Registrations Regulations would also not apply to individuals and online undertakings that are specifically excluded from the *Broadcasting Act*:

- a person that uploads a podcast (or any program) to a social media service (if that person is not the provider of the service or the provider's affiliate, or agent or mandatory of either of them); or

- an online undertaking providing a social media service that only hosts or distributes podcasts (or any other program) excluded from the *Broadcasting Act* by virtue of section 4.1 of that Act. Excluded programs, including podcasts, cover those that are uploaded by individual users of the social media service (and not uploaded by the provider of the service or the provider's affiliate, or agent or mandatory of either of them) and not otherwise prescribed by the Commission.

222. Individuals that host podcasts on their own websites or make them available on a subscription service platform other than a social media service are not explicitly excluded from the *Broadcasting Act* under subsection 2(2.1). Nevertheless, the Commission expects that such individuals (i.e., individuals that transmit or retransmit their podcasts through their own websites, or that otherwise upload their podcasts to a service available on the Internet) would not be required to register because their annual revenues, in most likelihood, would be below the proposed exemption threshold.

223. There are a variety of podcasts that can provide a wide range of content relating to information, opinion and entertainment. Without information about online undertakings that transmit or retransmit podcasts, it would be more difficult for the Commission to ensure the achievement of the objectives of subparagraph 3(1)(i)(iv) of the *Broadcasting Act*, which relate to, among other things, providing a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and of subparagraph 3(1)(i)(i), pursuant to which the programming provided by the Canadian broadcasting system should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes.

224. Given that podcasts constitute a quickly evolving type of content that is consumed by Canadians, the registration of online undertakings that transmit or retransmit podcasts over the Internet and that are subject to the *Broadcasting Act* would assist the Commission in improving its understanding of that type of content in order to ensure that the broadcasting system is working to achieve the identified objectives of the *Broadcasting Act*.

225. In light of the above, the Commission finds that it would not be appropriate to exempt from the requirement to register all online undertakings that transmit or retransmit podcasts that are subject to the *Broadcasting Act*. The Commission notes that those undertakings that only provide podcasts that are not subject to the *Broadcasting Act*, as discussed above, are consequently not subject to the Registration Regulations in the first place. The Commission also notes that other online undertakings that transmit or retransmit podcasts will be exempted from the Registration Regulations where their revenues fall within the threshold for exemption.

Audiobooks

Positions of parties

226. According to Google, the DiMA and Apple, online services that broadcast audiobooks should be exempted from the requirement to register with the Commission. Google reinforced this position by referring to the explicit exclusion of podcasts proposed in the proposed Direction.

227. According to Spotify and the ITIC, audiobooks are "books" and not "broadcasting" or "programs". They noted that audiobooks have never been the object of Commission regulation, and submitted, as a matter of principle, that they should not be. Spotify argued that traditional print and digital book publishing lie outside the scope of the *Broadcasting Act*, that the regulation of audiobooks was not contemplated by amendments to the *Broadcasting Act* following the coming into force of the *Online Streaming Act*, or by legislators in Parliament, and that any such regulation would not be constitutionally sound.

228. Spotify added that audiobooks serve the important social value of increasing the accessibility of the written word to Canadians with diverse abilities and disabilities and should be treated as their textual counterparts. In its view, if burdensome obligations are imposed on audiobooks, there is a risk that publishers will decide to produce fewer books in audio format.

229. Spotify also noted that Canadian writers and book publishers are supported through existing and distinct cultural programs that are unrelated to the framework of the *Broadcasting Act*. It further noted that the Canadian government had developed a funding model that does not include charges or obligations on the industry to foster growth, increase discoverability for Canadian authors and provide greater access to Canadian books. Spotify argued that to impose a different standard on audiobooks would be unjustified and would hamper a growing distribution channel for authors and the overall industry.

Commission's decision

230. Based on the definition of "program" in the *Broadcasting Act*, audiobooks are technically audio programs, and their transmission by means of the Internet for reception by the public by means, for example, of computers, tablets or phones, constitutes broadcasting. Accordingly, the transmission or retransmission of audiobook services over the Internet could be considered an online undertaking.

231. However, audiobooks are generally reproductions, in audio form, of works that have been published in print or digital format. Services offering books, in any format, have never been regulated by the Commission, and, unlike with transactional video content discussed above, there is no parallel for such a service within the traditional broadcasting system. As such, the Commission considers that requiring online undertakings that provide such services to register would not contribute in a material manner to the implementation of the broadcasting policy set out under the *Broadcasting Act*.

232. In light of the above, the Commission adds online undertakings whose single activity and purpose consists of providing audiobook services as a class of undertakings that will be exempted from the requirement to register. Further, the Commission will exclude revenues derived from providing audiobook services by amending the definition of "excluded revenue" used to determine exemption from the requirement to register.

233. Finally, similarities between audiobooks and other spoken word programs could blur the line between exempted and not-exempted services. To ensure a distinction between audiobooks and other spoken word programs, the Commission defines "audiobook," in the exemption order, as an audio program that reproduces a text, published in print or digital format, that has an International Standard Book Number.

234. The Commission will continue to monitor this sector as it evolves.

Teleshopping programming service undertakings

235. Teleshopping programming service undertakings (i.e., undertakings that provide a programming service consisting exclusively of programming intended to sell or promote goods and services) are currently exempted from the requirements of Part II of the *Broadcasting Act* and any regulations.[56]

Positions of parties

236. Rogers, supported by the MPAC, proposed that online undertakings whose single activity and purpose involves the direct sale of goods and services (i.e., teleshopping services) be exempt from the requirement to register. It argued that teleshopping programming service undertakings are already exempt from licensing and are not subject to any contribution or expenditure requirements. It also noted that the Commission has consistently been of the view that teleshopping services do not contribute in a material manner to the implementation of the Canadian broadcasting policy set out in the *Broadcasting Act*. Similarly, Apple noted that, historically, the Commission has exempted a range of services, such as home shopping channels, whose activities do not contribute in a material manner to implementation of that broadcasting policy.

Commission's decision

237. The Commission has little information on this type of online undertaking. While, as noted by Rogers, the Commission has taken the view that traditional teleshopping programming service undertakings do not contribute in a material manner to the objectives of the *Broadcasting Act*, it is not clear at this time whether the same can be said of online "teleshopping" undertakings. In the Commission's view, their registration would enable it to have a better understanding of the role such undertakings play in the broadcasting system and whether they contribute in a material manner to the implementation of the objectives of the broadcasting policy set out in the *Broadcasting Act*.

---

[56] The *Exemption Order Respecting Teleshopping Programming Service Undertakings* (Broadcasting Order 2020-193) is set out in the appendix to Broadcasting Regulatory Policy 2020-192.

Revenue calculation method

238. In the proposed exemption order appended to the Notice, the Commission set out the following definition of “annual revenues”:

> **Annual revenues** means revenues attributable to the person or that person’s subsidiaries and/or associates, if any, collected from the Canadian broadcasting system across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which the revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

239. Certain interveners proposed amendments to the definition of “annual revenues”. The CAB and Quebecor, along with the FCCF and the CPSC-SCFP, proposed replacing the phrase “annual revenues” with “annual gross revenues,” to capture the total revenues of an undertaking. The FRPC noted that in the proposed exemption order, the Commission uses the phrase “Canadian gross revenues from broadcasting activities,” but only defines online revenues. The Commission acknowledges interveners’ concerns regarding the use of different wording in the description of the exemption order (annual Canadian gross revenues) and the above definition (annual revenues). While the Commission considers that the definition is appropriate as only “annual revenues” and not “annual Canadian gross revenues” must be defined, it also considers that, for the purpose of clarity, it would be appropriate to amend the defined expression to read “annual Canadian gross revenues”. Accordingly, the Commission has amended the exemption order so that the defined expression is “annual Canadian gross revenues”.

240. Roku proposed amending the definition of “annual revenues” to specify that the revenues are collected from **regulated broadcasting services** of online undertakings in Canada (proposed amendment in bold). In its view, this amendment would provide organizations of which certain portions of their business are not broadcasting undertakings with certainty that revenues garnered from those portions of their business, along with other revenues not derived from the Canadian broadcasting system, would not be included for the purposes of determining exemption from the requirement to register. The Commission notes, however, that only revenues from broadcasting activities of broadcasting undertakings are included in the amended definition of “annual revenues”. Accordingly, the Commission finds that it is not necessary to amend the definition as proposed by the intervener.

241. SiriusXM submitted that “annual revenues” should be revenues that an online undertaking earns from broadcasting activities that determine their ability to materially contribute to the broadcasting system. In the Commission’s view, the

issue here is whether the requirement to register will contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*, not whether the broadcasting activities of particular online undertakings do so. SiriusXM's proposal would also require the Commission to assess content of individual programs, which it aims to avoid doing by not exempting services based on specific format. Accordingly, the Commission finds that it would not be appropriate to adopt SiriusXM's proposal.

242. The FRPC submitted that if undertakings are owned by more than one entity, the definition of "annual revenues" should ensure that revenues are attributed to the appropriate owner to avoid double-counting and overestimation of revenues. It added that the same definition should be used across all broadcasters, and that the Commission should clarify how and on what basis it plans to attribute revenues and how those revenues will be audited to ensure full disclosure. In this regard, the Commission notes that the revenues of all of the operators that are affiliated are included for the calculation of the revenues of the broadcasting ownership group, regardless of their ownership structure. Accordingly, the Commission clarifies that revenues of an operator cannot be split amongst several shareholders.

243. The FRPC also questioned the use of the phrase "will accommodate" in the last sentence of the definition, and expressed concern over the Commission fettering its jurisdiction by committing to accommodate all requests for alternative reporting periods. Rogers, however, requested that the flexibility to use alternative reporting periods not be applied on a case-by-case basis, but instead extend to all online undertakings and eventually all licensed undertakings as well. In the Commission's view, amending the definition would be appropriate as the Commission should retain flexibility on this matter. Accordingly, the last sentence of the definition of "annual revenues" will read as follows: "The Commission may accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years."

244. Finally, Rogers and the CAB submitted that the definition to be adopted should clarify the applicable period for determining annual revenues for the purpose of determining exemption status. In this regard, Rogers proposed the following change to the Commission's proposed definition (in bold): " […] during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year **within ~~for~~** which the revenue calculation is being filed) […]." To illustrate the potential confusion, Rogers explained that it assumed the Registration Regulations and the exemption order would come into effect on 1 September 2023. Pursuant to the language in the Commission's proposed definition, online undertakings would determine exemption/registration based on the revenues generated in Canada during the broadcast year ending on 31 August 2022. Rogers assumed the Commission's intention is that undertakings register based on the revenues generated during the broadcast year ending on 31 August 2023. In regard to the above, the Commission notes that online undertakings must file the information based on the revenues of the preceding broadcast year. Accordingly, the Commission will amend the definition of "annual revenues" as

proposed by Rogers, such that the information must be based on the revenues of the preceding broadcast year.

245. Interveners also commented on types of revenues and contributions that should be taken into consideration when determining the annual revenues of an undertaking. These are addressed in the following sections.

Revenues derived from social media services

246. In line with its proposal to exempt social media services from the requirement to register, TikTok proposed exempting revenues from social media services. For these services, it proposed instead an approach that identifies the revenues to be included, rather than which specific revenues are to be excluded. This approach was supported by an individual intervener who stated that revenues derived from user-generated content uploaded by third parties should not count toward the social media service's annual revenues for purposes of determining revenue-based exemption eligibility.

247. Given the Commission's decision not to exempt social media services from the Registration Regulations, it is necessary to determine those revenues that must be included by online undertakings that provide social media services in calculating the $10 million revenue threshold for the requirement to register.

248. For the reasons discussed above, the Commission does not consider that all of the revenues of a social media service should be exempt, as proposed by some interveners. While it would be inappropriate at this stage to make any fundamental policy decision regarding social media services, the Commission considers that it is essential to provide guidance regarding which revenues are to be included for the calculation of "annual revenues".[57]

249. With the above in mind, it is the Commission's view that the revenues of social media services derived from their own broadcasting activities, which could include, for example, advertising[58] or subscription revenues, should form part of those services' annual revenues as these activities would not be excluded from regulation.

250. The Commission intends to undertake a broader analysis of social media, social media creator and social media services over the course of other, future proceedings. Further, the Commission will continue to monitor the development of the regulatory environment of social media services and the utilization of these platforms by actors of the broadcasting system.

---

[57] Where the online undertaking's broadcasting activities only consist of these types of programs, the online undertaking itself is not subject to the *Broadcasting Act* under subsection 4.1(3) of that Act, and thus would not be subject to the Registration Regulations in the first place.

[58] This means that any advertising uploaded by the social media service that falls into the definition of "program" and that appears, for example, on a user feed in social media services, would be included. It also includes advertising added by the social media service to another program uploaded by a user, such as advertising added at the beginning or in the middle of a program uploaded by a user.

251. In light of the above, the Commission confirms that the revenues of online undertakings that provide social media services and that are derived from their own broadcasting activities, such as advertising revenues or subscription revenues, will be included in the calculation of their annual Canadian gross revenues from broadcasting activities for the purpose of the exemption order.

Contributions made to third parties

Positions of parties

252. According to Spotify, who noted that it allocates a significant portion of its revenues to the payment of royalties, gross revenues may not be the best metric for determining exemption status given that it is distorted and disadvantages them against other online undertakings. The intervener noted that nearly 70% of its music revenues are passed through to rights holders who engage in the production of content and who compensate artists and writers. It added that by providing significant support to Canada's music ecosystem, royalty payments make important contributions to Canadian broadcasting. Spotify noted that if gross revenues serve as the metric for determining exemption status, it would be placed in the same category as other undertakings with different cost structures.

253. For the purpose of determining exemption from the requirement to register, Tubi proposed excluding annual expenditures attributed to licensing and acquiring content from Canadian producers and distributors, as well as the amounts spent to finance film and television series created by Canadian producers and distributors.

254. ACCORD opposed this type of exclusion. Noting that royalties are paid by all broadcasting undertakings who use the work of rightsholders, it submitted that such royalties are the cost of doing business. It added that royalties, which are a matter of copyright law, are different than contributions to the system, which are not based on a broadcasting undertaking's profits.

255. Rogers, noting that its traditional services pay millions of dollars to rightsholders, opposed such exclusions until the Commission undertakes a broader review of the regulatory treatment of the programming expenditures of traditional broadcasting undertakings, and of royalty and licensing payments. Corus agreed and proposed that the Commission conduct a broader discussion of the issue encompassing all broadcasting undertakings. SiriusXM stated that if the Commission were to exclude royalties, it would expect the Commission to rebalance the regulatory framework. Eastlink opposed the proposal given that the framework regulating BDUs and VOD services is based on gross revenues, which include contributions to Canadian programming, affiliation payments, copyright royalties and other third-party costs.

256. TELUS requested that the Commission clarify that when an online undertaking aggregates and bundles third-party online services, such as a virtual BDU, the revenues attributable to the virtual BDU only include those that they receive from the third-party online services, or those that remain after the virtual BDU has remitted the wholesale payments to the third-party services (i.e., the margin), and

not the gross revenues collected from the end-user. It argued that this would be consistent with the Commission's approach to collecting information for the Digital Media Survey. Similarly, Corus proposed amending the definition and specifying that only collected revenue "not otherwise accounted for" be included in the definition of "annual revenues". Roku made a similar argument in regard to its advertising-supported VOD service, as it collects all advertising revenues and shares them with the owners of third-party channels.

257. For its part, the CMPA submitted that there is no need to change the proposed definition of revenues. It explained that the *Broadcasting Distribution Regulations* include a specific contribution requirement for BDUs that is set at a lower level (i.e., 5%) in specific recognition of the margin versus gross revenues argument made by TELUS in its intervention.

Commission's decisions

258. The Commission acknowledges that different services have different business models and different costs structures. However, allowing, for the purpose of calculating the revenue threshold, audio streaming services to deduct royalties from their revenues or video services to deduct wholesale payments from their revenues would be inequitable since this would effectively allow deductions from revenues that are not allowed for traditional media, such as radio and television stations. Accordingly, the Commission finds that it would not be appropriate to allow online services to claim those deductions for the purposes of calculating the revenue threshold for exemption from the requirement to register.

259. Further, adding "not otherwise accounted for" in the definition of "annual revenues" as proposed by Corus may allow BDUs to deduct expenses paid to broadcasting services from their revenues, which again is inconsistent with the Commission's current practice. Accordingly, the Commission finds that it would not be appropriate to amend the definition as proposed by Corus.

Revenues derived from exempted services

260. The MPAC submitted that revenues from exempt services or content excluded from regulation should be excluded from the definition of annual revenues. TikTok argued that Canadian gross revenues from broadcasting activities that count towards the registration threshold in the proposed classes (iii) and (iv) in the proposed exemption order should be limited to revenues from activities that are subject to regulation and should not include exempt services or programs. Similarly, Spotify stated that only revenues from services that are subject to the Commission's regulatory framework should be included in the definition of "annual revenues," and that services that lie outside of the Commission's scope or are otherwise subject to exemption (including as a result of the present proceeding) should be excluded.

261. Google proposed that certain revenues from exempt services be excluded from the calculation of "annual revenues". More specifically, it submitted that "annual revenues" should itself explicitly exclude revenue from exempt services or content directed to be excluded from regulation.

262. As noted above, several services are currently exempted from licensing requirements and regulations made by the Commission[59] under Part II of the *Broadcasting Act*.[60] These undertakings have been exempted on the grounds that compliance with the Commission's requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*. Accordingly, the Commission considers that it would not be appropriate to include the revenues from these exempted undertakings in the calculation of annual revenues.

263. In light of the above, the Commission finds that, in addition to revenues of online undertakings, only the revenues of licensed broadcasting undertakings should be included in the definition of annual revenues. In this regard, the Commission notes that the definition of "annual revenues" refers to traditional broadcasting undertakings. Given that there is no definition for the term "traditional," the Commission will replace "traditional broadcasting undertakings" with "licensed broadcasting undertakings".

264. Also in this regard, the Commission has amended the definition of "excluded revenue" by including revenue derived from broadcasting activities by broadcasting undertakings that are exempted from licensing requirements, or all regulations made under Part II of the *Broadcasting Act*, unless, in either case, otherwise specified in the exemption order providing for such exemption.

Revenues derived from licensing fees

265. AMC proposed that revenues associated with royalties or other licensing fees collected in the context of business-to-business licensing arrangements, whereby an online undertaking licenses content to a third-party online undertaking for distribution by that third party to its own Canadian consumers, should be excluded from the calculation of annual revenues for the purpose of determining exemption from the requirement to register. The MPAC supported this proposal and noted that, to the best of its knowledge, the Commission has not historically included revenues from commercial and unregulated activities, such as programming licensing arrangements, in its calculation of gross broadcasting revenues, as that would be outside of its purview.

---

[59] For examples of regulations made by the Commission, see the *Broadcasting Licence Fee Regulations, 1997*, the *Broadcasting Distribution Regulations*, the *Discretionary Services Regulations*, the *Radio Regulations, 1986*, and the *Television Broadcasting Regulations, 1987*.

[60] A full list of exempted services is available on the Commission website. Of note, these services include small services, but also certain VOD services such as hybrid VOD services (Crave and Illico) (see Broadcasting Regulatory Policy 2015-355 and Broadcasting Order 2015-356).

266. The Commission confirms that its long-standing practice is to exclude revenues derived from licensing fees from the calculation of broadcasting revenues.

Revenues derived from non-Canadian services authorized for distribution in Canada

267. AMC and the MPAC submitted that revenues derived from a non-Canadian service authorized for distribution in Canada should be excluded from the definition of “annual revenues”. The CMPA, however, opposed this position on the grounds that the revenues involved are generated in Canada and are paid by Canadian customers/subscribers. It added that this would establish an inequitable regulatory framework in favour of services like AMC to the disadvantage of other, largely Canadian services operating in that same market.

268. The Commission notes that there are no changes required, as non-Canadian services authorized for distribution in Canada are not licensed under the *Broadcasting Act*. Accordingly, revenues of these services will not be included in the definition of “annual Canadian gross revenues” for the purpose of determining exemption from the requirement to register.

Other revenues

269. According to the Public Broadcasting Service (PBS), “gross revenues” should not include monies received in the form of donations, non-profit pledge drives, government appropriations, memberships to non-profit organizations, or non-commercial underwriting. It submitted that the revenue threshold should only capture Canadian broadcasting revenues. Rogers, however, opposed this proposal on the grounds that memberships to non-profit organizations are largely analogous to subscription fees charged by for-profit undertakings.

270. The Commission’s practice is to include other revenues such as donations, non-profit pledge drives, government appropriations and memberships to non-profit organizations as part of the revenue calculation, and notes that no compelling evidence has been provided to change this practice. Accordingly, the Commission does not consider that it would be appropriate to exclude such other revenues from its definition of “annual revenues”.

Inclusion only of revenues derived from broadcasting activities

271. The definition of “annual revenues” set out in the proposed exemption order specifies revenues “collected from the Canadian broadcasting system.” The CAB proposed adding a phrase to the proposed definition to specify that the revenues are collected from broadcasting activities of an online undertaking collected from the Canadian broadcasting system. Rogers supported the CAB’s proposal and argued that the current definition, as worded above, might be interpreted to extend beyond an online undertaking’s broadcasting activities in Canada. Google submitted that “annual revenues” should only include those of services that are appropriately in scope of the Commission’s authority to regulate (i.e., revenues “derived from

broadcasting activities”). Other interveners, including Corus and the FCCF, supported adding the term “broadcasting activities” to the definition of annual revenues.

272. Quebecor added that the provision proposed by the Commission does not provide any details regarding the revenues of online businesses that would come from the Canadian broadcasting system, but that would not result from the activities and services that the Commission intends to regulate.

273. Roku proposed revising the proposed definition of “annual revenues” to clarify that revenues not derived from broadcasting undertakings within the meaning of the *Broadcasting Act* are not to be counted for the purposes of the registration threshold. It argued that this would provide organizations with certainty that the portions of the business that are not broadcasting undertakings within the meaning of the *Broadcasting Act* will not have their revenues added to the calculation, and that revenues not derived from the Canadian broadcasting system will not be added to the calculation.

274. The Commission acknowledges that the proposed definition of “annual revenues” appears to be ambiguous and might erroneously be interpreted as including revenues from business related to the broadcasting system that is not regulated by the *Broadcasting Act*. In the Commission’s view, the use of the expression “derived from broadcasting activities” would be more appropriate. Accordingly, the Commission has amended the definition of “annual revenues” to specify that they only include revenues derived from broadcasting activities.

Revenues derived from the selling or the leasing of software and hardware

275. Roku submitted that the Commission should exclude from the calculation of annual revenues those revenues that are not derived from broadcasting, such as those from hardware and software interfaces like connected televisions and the Roku OS. In its view, the Commission should adopt a definition of annual revenues consistent with the scope of the *Broadcasting Act* and the activities it regulates.

276. Rogers opposed Roku’s proposal on the grounds that the definition of “gross revenues from broadcasting activities” that applies to BDUs includes “gross revenues from basic and discretionary service subscriptions, additional outlets, installation and reconnections fees, set-top box sales and rentals, commercial messages, as well as revenues from the operators of exempt programming undertakings such as home shopping and real estate services.” Rogers added that when software interfaces are used to generate revenue associated with advertising, they are transmitting programming and, therefore, are broadcasting within the meaning of the *Broadcasting Act*.

277. The Commission notes that revenues derived from non-broadcasting activities are not covered by the definition of “annual revenues”. However, revenues derived from the rental of set-top boxes are covered by the definition of revenues for the purpose of calculating the regulatory obligations of traditional BDUs. In the

Commission's view, to ensure regulatory symmetry between traditional and online services, it would be appropriate for revenues derived from the selling or renting of software and hardware for the purpose of allowing a customer to access programs, and that are integral to the provision of the broadcasting service, to also be covered by the definition of "annual revenues".

278. The Commission further notes the evolving nature of hardware and software that are integral to the provision of the broadcasting service, and acknowledges that the types of hardware that allow a customer to access programs are extremely broad and could arguably include, among other things, mobile devices and computers. It is not the Commission's intent to include revenues from these devices as part of the definition of annual revenues. In the Commission's view, the hardware and software revenues that should be included in annual revenues are those of hardware and software that are designed primarily for the purpose of allowing a customer to access a specific broadcasting service and that are integral to the provision of that service.

279. In light of the above, the Commission finds that revenues derived from the selling or the leasing of software and hardware designed primarily for the purpose of allowing a customer to access a specific broadcasting service, and that are integral to the provision of that service, are to be included in the calculation of "annual Canadian gross revenues".

Deadlines relating to registration of online undertakings

280. In the Notice, the Commission proposed several deadlines relating to the registration of the online undertakings.

Positions of parties

281. While certain interveners, such as TV5, Spotify and the CPSC-SCFP, considered the deadlines to be reasonable, others considered that the timing of when registration must occur remains unclear.

New registrations and updates

282. Cineplex Entertainment LP (Cineplex) proposed that the exemption order specify the moment when the proposed exemption should apply. An individual intervener noted that should a platform grow to the point of generating annual revenues in excess of $10 million, it is unclear if that operator would be able to predict the future and know to register within 30 days of starting up such a business.

283. Similarly, Rogers considered that the timing of the registration requirement — which is triggered 30 days after an online undertaking begins carrying on the undertaking — is unclear in the case of undertakings that operate under the exemption order but become subject to the registration requirement once their annual revenues exceed the threshold for exemption. To address this, Rogers proposed imposing the obligation to register the online undertaking 30 days

following the end of the broadcast year for which the undertaking's annual revenues exceed $10 million. It further proposed amendments to section 2 of the proposed Registration Regulations in order to specifically refer to the $10 million threshold.

284. Tubi proposed a trigger threshold of 20% over the set revenue threshold for 12 consecutive months for exemption to begin to apply. It added that a regulated service should once again become exempted once its annual Canadian gross revenues from broadcasting activities move below the threshold for at least one twelve-month period of operations. Quebecor proposed a similar threshold to avoid early registration, specifically, the 21,000-subscriber level set out in the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers (see Broadcasting Order 2017-320, set out in the appendix to Broadcasting Regulatory Policy 2017-319).

285. The CAB proposed amending section 2 of the proposed Registration Regulations to read as follows (change in bold): "An operator must register their online undertaking by submitting to the Commission, within 30 days after the day on which they **become subject to the requirement to register**, a registration return that contains the following information […]". It added that when an online undertaking starts operating or even at launch, its revenues are unlikely to exceed the threshold set by the Commission. In the CAB's view, its proposed amendment addresses the issue by requiring registration within 30 days of an undertaking becoming subject to the registration requirement.

286. The MPAC proposed that the 30-day deadline begin from the date the online undertaking is officially launched in Canada and begins transmitting programs for reception by the public, rather than from the day the operator begins to carry on the undertaking. In its view, this would ensure that the timeframe does not include pre-launch marketing or sales. According to Cineplex, it is unclear when the 30-day period would be triggered; it proposed that this section be clarified to specify scenarios of when it is deemed that an undertaking is being carried on, given that online undertakings may vary considerably from one operator to another.

287. SiriusXM submitted that in rare cases where an online undertaking moves above and below the annual revenue threshold, a special rule is not necessary. It proposed that in the broadcast year following the broadcast year during which the online undertaking exceeds the threshold, the operator would be required to register the undertaking with the Commission. It added that in the event the same undertaking falls below the threshold the next broadcast year, the operator would simply inform the Commission as soon as it becomes aware of that fact, following which the undertaking would automatically become exempted and would no longer be registered.

288. Roku proposed that the obligation to register apply 30 days following the end of the broadcast year during which the annual revenues of the online undertaking exceed the threshold. It noted that this is a standard expectation in regulatory contexts where the trigger is calculated on an annual basis.

289. Certain interveners, including Google and Netflix, proposed longer time frames for registration. For example, Netflix proposed that the deadline be extended to 60 days.

290. Finally, Warner Bros. Discovery proposed that section 2 of the proposed Registration Regulations be revised to clarify that an operator of an online undertaking is subject to the registration deadline for existing undertakings under the transitional provision at section 7.

Deregistration timeframe

291. In regard to the timeframe to deregister, the CAB proposed amending subsection 5(1) of the proposed Registration Regulations to read as follows (changes in bold): "An operator must submit a request to deregister their online undertaking within 30 days after the day on which they cease to carry on the **undertaking or the end of the broadcast year in which the undertaking falls under a class listed in the Exemption order respecting classes of online undertakings in relation to the *Online Undertakings Registration Regulations***." In its view, this would allow an online undertaking that no longer has revenues exceeding the threshold for deregistration set by the Commission to deregister. BCE supported the CAB's proposal.

292. According to Rogers, it would be appropriate to include a mechanism within the Registration Regulations to deregister online undertakings if their annual revenues fall below the threshold. In this regard, it proposed that subsection 5(1) of the proposed Registration Regulations be amended to make reference to that threshold. Specifically, Rogers requested that subsection 5(1) be amended to read as follows (changes in bold):

> An operator must submit a request to deregister their online undertaking within 30 days after **(a)** the day on which the operator ceases to carry on the undertaking**; or (b) the end of the broadcast year in which they earn annual gross revenues from Canadian broadcasting activities of less than $10 million**.

293. In regard to subsection 5(1), Apple considered that if the operator of an online undertaking ceases to carry on the undertaking, the Registration Regulations should provide that the operator of the undertaking can simply notify the Commission that it is deregistering the undertaking. Accordingly, it proposed to amend that subsection by replacing the phrase "a request" with "a notice".

294. According to UFC, online undertakings like UFC Fight Pass that currently generate annual revenues below the threshold amount should only be required to register with the Commission after five consecutive years of revenues above the threshold. The intervener argued that this multi-year approach would ensure that the registration requirement is consistent and predictable for streaming services in a growth stage, while minimizing inefficiencies and complications associated with shifting eligibility for the exemption on a year-to-year basis. It added that a one-year assessment system would particularly disadvantage online undertakings

that are in the growth stage in Canada and may experience more volatile year-to-year revenues than more established undertakings.

Commission's decision

295. In the Commission's view, the registration deadlines overall are reasonable in light of the minimal regulatory burden entailed by registration. Further, the timing of the filing of information under existing exemption orders has similar deadlines.[61] However, after considering interveners' comments, the Commission finds that clarification is necessary in regard to the deadline to register online undertakings and in regard to how the threshold set out in the proposed exemption order can impact that requirement.

296. The Commission considers that incorporating the exemption threshold into the registration requirement, as suggested by Rogers, would not be a practical solution given that the exemption order is a better tool for quantifying that threshold, and is better suited for amendments, should amendments become necessary. The Commission has more flexibility to make timely adjustments in an exemption order in contrast to the more complex and time-consuming proceedings for amending regulations.

297. It is also the Commission's view that it would be helpful to clarify that online undertakings that fall within an exempted class of online undertaking by virtue of falling below the revenue threshold at the time when the Registration Regulations come into force, but subsequently exceed the threshold for exemption, are required to register 30 days following the end of the broadcast year during which the annual revenues of the online undertaking exceed the threshold, as suggested by Roku.

298. In addition, the Commission clarifies, first, that if an online undertaking's annual revenues (or the annual revenues of the broadcasting ownership group of which its operator forms part) (which by definition are those generated during the previous broadcast year) meet or exceed the established threshold for a broadcast year, the operator will be subject to registration requirements 30 days after the end of that broadcast year. Secondly, in the case of a new online undertaking whose operator forms part of a broadcasting ownership group whose total annual revenues exceed the threshold, it will be required to be registered within 30 days after the day on

---

[61] See for example, paragraph 4 a) of the Exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services and paragraph 2 a) of the Exemption order respecting certain third-language television undertakings, Broadcasting Order 2012-689, as well as paragraph 4 a) of the Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers, Broadcasting Order 2015-88, which all state that information must be filed with the Commission "at least 30 days before the service is first distributed".

Under the Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers, registrants that operate an exempt discretionary programming undertaking that has maintained more than 210,000 subscribers for three consecutive months or more are no longer eligible for exemption and must apply for a licence.

which the operator began to carry on the undertaking. For example, this would mean that:

(i) for a new online undertaking whose operator forms part of a broadcasting ownership group that reaches the $10 million threshold in broadcasting year 2023-2024, it will be required to be registered within 30 days following the end of 2023-2024 broadcast year (i.e., 31 August 2024); or

(ii) if a new online undertaking, whose operator forms part of a broadcasting ownership group that reaches the $10 million threshold in the 2023-2024 broadcast year, launches on 3 September 2024, it will be required to be registered within 30 days following the date on which the operator begins to carry on the undertaking.

299. The Commission notes that there is an extended deadline specific to the transitional phase immediately following the coming into force of the Registration Regulations. In the case of an operator who began carrying on an online undertaking before the day on which the Registration Regulations come into force, the operator will have 60 days to register its undertaking(s), in light of the transitional provision in section 7 of the Registration Regulations. Given that the Registration Regulations come into force on 29 September 2023, if an online undertaking (or its group) has revenues of $10 million or more in the 2022-2023 broadcast year, that online undertaking will have until 28 November 2023 (60 days) to be registered.

300. In regard to the proposal by UFC, the Commission acknowledges that variations in annual revenues above or below the threshold may occur. However, requiring registration only after five consecutive years of revenues above the threshold, as proposed by this intervener, would undermine the purpose of the proposed Registration Regulations, which is to allow the Commission to have a better understanding of the online broadcasting environment, particularly in the initial period after the implementation of the *Online Streaming Act*. The existence of the threshold is meant to mitigate some of the short-term volatility concerns that were raised by UFC.

301. In regard to the proposal by the MPAC to change the wording for the 30-day deadline from when an operator begins to carry on the undertaking in whole or in part in Canada to when the operator begins broadcasting in Canada, the Commission considers that such a change is neither necessary nor appropriate given that the expression "carry on" is used in the *Broadcasting Act*, the proposed Registrations Regulations and the proposed exemption order. For the sake of clarity, however, the Commission notes that to carry on an online undertaking essentially means to operate an online undertaking. Moreover, the mention of a launch date, as suggested by the MPAC, would further introduce unnecessary ambiguities. Accordingly, the Commission finds that it would not be appropriate to make the proposed amendments.

302. In regard to the proposal by Apple regarding section 5(1) of the proposed Registrations Regulations relating to deregistration, the Commission considers that simply requiring notification on the part of the operator when the online undertaking ceases operations, although less burdensome that submitting a request to deregister, would be insufficient, given that the Commission must verify that any conditions for deregistration are met before proceeding with deregistration. Accordingly, the Commission finds that it would not be appropriate to adopt Apple's proposal.

303. However, based on certain comments, the Commission acknowledges that there may be some uncertainty about what triggers deregistration when the Registration Regulations are read in conjunction with the exemption order. Further, under the proposed regulations and exemption order, if an operator of an online undertaking that has registered with the Commission later becomes exempted from registration because the annual revenues of the service fall below the threshold in a given broadcast year, that operator would no longer be subject to the Registration Regulations and, as a consequence, no longer be subject to the deregistration requirement set out in those regulations.

304. In order to provide certainty regarding the events that would trigger deregistration, and to ensure that the deregistration obligation is met by operators of online undertakings that become exempted from the Registration Regulations after the undertaking has been registered, the Commission finds that it would be appropriate to include a condition of exemption in the exemption order requiring operators who had previously registered their online undertakings, and whose online undertakings subsequently become exempted from the Registration Regulations, to submit a request to deregister their online undertaking within 30 days of (i) the day on which the undertaking ceases to be carried, or (ii) the day on which the undertaking qualified for exemption pursuant to the exemption order,[62] whichever occurs first.

Deregistration process

305. In the proposed Registration Regulations, the Commission set out the following subsection 5(2) relating to deregistration of online undertakings:

> 5 (2) An online undertaking must be deregistered if, after an attempt to contact the operator using the information on file, the Commission is unable to verify that the operator continues to carry on the undertaking

306. AMC proposed amending that subsection so that it read as follows (changes in bold): "An online undertaking must be deregistered if, after **a reasonable number of attempts** to contact the operator using the information on file, the Commission is unable to verify that the operator continues to carry on the undertaking." The Commission notes, however, that it has flexibility on whether it deregisters an

---

[62] For greater clarity, an undertaking would qualify for exemption pursuant to the exemption order on 31 August of the broadcast year in which it falls into one or more of the classes of exemption identified in section B of the exemption order.

undertaking or not. Accordingly, the Commission does not consider that it would be appropriate to amend subsection 5(2) as proposed by AMC.

307. The Commission further notes that deregistration of an online undertaking based on the rationale specified in subsection 5(1) is at the Commission's discretion. Accordingly, the Commission considers that it would be appropriate to amend subsection 5(2) to replace the verb "must" with "may". Subsection 5(2) will therefore read as follows (change in bold): "An online undertaking **may** be deregistered if, after an attempt to contact the operator using the information on file, the Commission is unable to verify that the operator continues to carry on the undertaking."

Secretary General

Related documents

- *Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Regulatory Policy CRTC 2023-331 and Broadcasting Order CRTC 2023-332, 29 September 2023
- *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Notice of Consultation CRTC 2023-140, 12 May 2023
- *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations*, Broadcasting Notice of Consultation CRTC 2023-139, 12 May 2023
- *Notice of hearing – The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, Broadcasting Notice of Consultation CRTC 2023-138, 12 May 2023
- *Annual Digital Media Survey*, Broadcasting Regulatory Policy CRTC 2022-47, 23 February 2022
- *Revised Exemption Order Respecting Teleshopping Programming Service Undertakings*, Broadcasting Regulatory Policy CRTC 2020-192 and Broadcasting Order CRTC 2020-193, 15 June 2020
- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings*, Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356, 6 August 2015

- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *New exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services, and amendments to the* Exemption order respecting certain third-language television undertakings, Broadcasting Order CRTC 2012-689, 19 December 2012
- *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003
- *Policy regarding the use of exemption orders*, Public Notice CRTC 1996-59, 26 April 1996, as corrected by Public Notice CRTC 1996-59-1, 24 May 1996
- *Policy Governing the Distribution of Video Games Programming Services*, Public Notice CRTC 1995-5, 13 January 1995

.

Appendix 1 to Broadcasting Regulatory Policy CRTC 2023-329

Online Undertakings Registration Regulations

Interpretation

Definition of *operator*

1 In these Regulations, ***operator*** means a person who carries on an online undertaking to which the *Broadcasting Act* applies.

Registration

Registration return

2 An operator must register their online undertaking by submitting to the Commission, within 30 days after the day on which they begin to carry on the undertaking, a registration return that contains the following information:

(a) the online undertaking's name;

(b) the operator's name, mailing address, phone number and email address;

(c) if different than the contact information filed under paragraph (b), contact information for a contact person for the operator, such as their name, title, mailing address, phone number and email address;

(d) the place where the operator is incorporated or otherwise formed, if any, and the location of their head office; and

(e) the broadcasting services offered by the online undertaking.

Request for additional information

3 **(1)** If it appears to the Commission that a registration return is incorrect or incomplete, the Commission may request that the operator submit any information that is necessary to correct or complete the registration return.

Submission of additional information

(2) The operator must submit the requested information to the Commission as soon as feasible.

Updates to registration return

4 An operator must notify the Commission of any change to information previously submitted by submitting the updated information within 30 days after the day on which the change occurs.

Request for deregistration

5 **(1)** An operator must submit a request to deregister their online undertaking within 30 days after the day on which they cease to carry on the undertaking.

Deregistration

(2) An online undertaking may be deregistered if, after an attempt to contact the operator using the information on file, the Commission is unable to verify that the operator continues to carry on the undertaking.

Electronic submission

6 All information that is submitted under these Regulations must be submitted electronically in the format specified by the Commission.

Transitional Provision

Registration deadline — existing undertaking

7 If an operator began carrying on an online undertaking before the day on which these Regulations come into force, the operator must register the undertaking by submitting to the Commission, within 60 days after that day, a registration return that contains the information referred to in section 2.

Coming into Force

Registration

8 These Regulations come into force on the day on which they are registered.

Appendix 2 to Broadcasting Regulatory Policy CRTC 2023-329

Broadcasting Order 2023-330

Exemption order for classes of online undertakings in respect of the *Online Undertakings Registration Regulations*

Pursuant to section 9(4) of the *Broadcasting Act*, the Commission, by this order, exempts from all of the requirements of the *Online Undertakings Registration Regulations*, as amended from time to time, those persons carrying on in whole or in part in Canada online undertakings of any of the four classes specified herein, subject to the conditions set out below:

A. Interpretation

The following definitions apply in this exemption order.

Annual Canadian gross revenues means total revenues attributable to the person or that person’s subsidiaries and/or associates, if any, derived from Canadian broadcasting activities across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year within which the revenue calculation is being made), whether the services consist of services offered by licensed broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that receive revenue from other online undertakings by offering bundled services on a subscription basis. The Commission may accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

Audiobook means an audio program that reproduces a text, published in print or digital format, that has an International Standard Book Number.

Audiobook service means the transmission or retransmission of audiobooks over the Internet for reception by the public by means of broadcasting receiving apparatus.

Broadcast year means the period beginning on 1 September of a calendar year and ending on 31 August of the following calendar year.

Broadcasting ownership group means a group of all operators that are affiliates of one another.

Excluded revenue means revenue derived from providing video game services or audiobook services as well as revenue derived from broadcasting activities by broadcasting undertakings that are exempted from licensing requirements, or all regulations made under Part II of the *Broadcasting Act* unless, in either case, otherwise specified in the exemption order.

Operator means a person that carries on a broadcasting undertaking to which the *Broadcasting Act* applies.

Video game means an electronic game that involves the interaction of a user by means of an Internet connected device, where the user is primarily engaged in active interaction with, as opposed to the passive reception of, sounds or visual images, or a combination of sounds and visual images.

Video game service means the transmission or retransmission of video games over the Internet for reception by the public by means of broadcasting receiving apparatus.

B. Classes of undertakings

1. Online undertakings whose single activity and purpose consists of providing video game services;

2. online undertakings whose single activity and purpose consists of providing audiobook services;

3. online undertakings whose operator forms part of a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues of less than $10 million; or

4. online undertakings whose operator does not form part of a broadcasting ownership group, that have, after deducting any excluded revenue, annual Canadian gross revenues of less than $10 million.

C. Condition - deregistration

An operator that had registered its online undertaking in accordance with the *Online Undertakings Registration Regulations* at any time prior to becoming exempt from those Regulations pursuant to this Order, must submit a request to deregister that online undertaking within 30 days after the first of these occurrences:

(i) the day on which the undertaking ceases to be carried on or

(ii) the day on which the undertaking qualified for exemption pursuant to this Order. For greater clarity, an undertaking would qualify for exemption pursuant to this Order on 31 August of the broadcast year in which it falls into one or more of the classes identified in B.