Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194

PDF version

Reference: 2024-121

Ottawa, 29 August 2024

The Path Forward – Supporting Canadian and Indigenous content through base contributions – Finalization of conditions of service

Summary

The *Online Streaming Act* (formerly Bill C-11), which amended the *Broadcasting Act*, requires the Commission to modernize the Canadian broadcasting framework and ensure that online streaming services make meaningful contributions to Canadian and Indigenous content.

On 4 June 2024, the Commission issued Broadcasting Regulatory Policy 2024-121 (the Policy). The Policy establishes base contributions that particular online streaming services must make to support Canadian and Indigenous content. The Policy also included proposed orders on which the Commission sought comments, as required by the *Broadcasting Act*. The Commission received over 50 comments from various parties on the proposed orders.

Today, the Commission is implementing the decisions that were established in the Policy. Based on the comments received, it is clarifying certain aspects of the Policy and is finalizing the orders that establish conditions of service for particular online streaming services. These include questions of interpretation and application, noting that this process was not meant to reconsider the policy determinations made by the Commission. With these clarifications, the requirement to make base contributions will start during the 2024-2025 broadcast year, which begins on 1 September 2024.

Introduction

1. In Broadcasting Regulatory Policy 2024-121 (the Policy), the Commission stated that it would require online undertakings that make $25 million or more in annual contributions revenues either alone or as part of an ownership group and that are not affiliated with a Canadian broadcaster to contribute 5% of their annual contributions revenues to certain funds.

2. To implement the decisions made in the Policy, the Commission proposed orders on the conditions of service that would apply to the particular operators of those online undertakings. Conditions of service 1 (for audio-visual services) and 2 (for audio services) require the operator of an online undertaking to contribute not less than 5% of its annual contributions revenues[1] derived from its audio-visual/audio broadcasting activities from the

[1] Which is defined as "annual Canadian gross broadcasting revenues less any excluded revenue."

previous broadcast year. Condition of service 3 requires these operators to submit reviewed financial statements to the Commission, reporting annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusions or exclusions of revenues.

3. As required by subsections 9.1(4) and 11.1(7) of the *Broadcasting Act* (the Act), the Commission published the proposed orders on its website and sought comments. Given that the Commission had previously consulted on all elements of the Policy, the purpose of this consultation focussed on whether proposed orders accurately reflected the decisions made in the Policy.[2] Consequently, while the Commission took note of all of the submissions filed, it finds that proposals to reconsider its policy determinations lie outside the scope of this consultation.[3]

Interventions

4. The Commission received over 50 comments from online services, traditional broadcasters and distributors, associations representing official language minority communities (OLMC), associations representing private broadcasters, associations representing the creative sector, funds, advocacy groups, unions and guilds, diversity groups, screen offices, public interest and research groups, and individuals.

5. Pursuant to sections 5.1 and 5.2 of the Act, the Commission must enhance the vitality and support the development of OLMCs and consult when making any decision that could adversely affect them. In this regard, the Commission noted in the Policy that the determinations could have an impact on OLMCs and therefore included an additional comment period reserved exclusively for members of OLMCs.[4]

6. Throughout the decision-making process, the Commission engaged in consultations with OLMCs, offering multiple opportunities for input and feedback. This included participating in a public hearing, requests for information, and extended periods for written submissions on the proposed orders. This ensured that the views and needs of OLMCs were thoroughly considered and addressed in the Policy.

7. As a result of the Commission's Policy and orders, OLMCs will benefit from increased funding to the Canada Media Fund (CMF), to Certified Independent Production Funds (CIPF), as well as to FACTOR and Musicaction, which leads the Commission to conclude that there is no adverse effect on OLMCs, either as a result of the Policy or the orders. In arriving at this determination, the Commission has benefited from the views of OLMCs through consultation on this matter.

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[2] See Commission letter dated 13 June 2024.

[3] For example, some interveners argued that the Commission should require online services to make their contributions monthly, rather than annually as determined by the Commission.

[4] See paragraph 188 of the Policy.

Issues

8. After examining the public record for this consultation, the Commission considers that it must address issues regarding:

- the interpretation of the proposed orders;
- the application of the proposed orders;
- requirements that apply to online undertakings that carry on audio-visual broadcasting activities (condition of service 1);
- requirements that apply to online undertakings that carry on audio broadcasting activities (condition of service 2);
- requirements regarding data collection (condition of service 3); and
- other operational and procedural matters.

Interpretation of the proposed orders

Calculation of the 5% contribution level

Positions of parties

9. The Motion Picture Association – Canada (MPAC) and Apple Canada Inc. (Apple), among others, proposed clarifying that contributions should not be calculated based on the revenues of an ownership group, arguing that this was not the Commission's intention in the Policy. The MPAC proposed amending the definition of "annual contributions revenues" to refer to the total revenues attributable to an online undertaking (less excluded revenue).[5]

10. The Writers Guild of Canada replied that the MPAC misinterpreted the proposed orders as it referred to an "online undertaking" making contributions, whereas it is an operator that has the obligation under the Commission's proposed orders. It added that the MPAC's proposed amendments appear to undermine the Commission's group approach.

Commission's decision

11. "Annual contributions revenues" is defined as "annual Canadian gross broadcasting revenues less any excluded revenue". Since "annual Canadian gross broadcasting revenues" captures revenues of an entire broadcasting ownership group, there is some confusion regarding the specific revenues that should be included in the calculation of the 5% requirements for audio-visual and audio online undertakings. The Commission's intention was for base contributions to be calculated at the individual online undertaking level.[6]

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[5] As set out in conditions of service 1 and 2, the 5% contribution requirement is based on "annual contributions revenues."

[6] See paragraph 100 of the Policy.

12. Accordingly, to clarify its policy intent, the Commission has amended the definition of "annual contributions revenues" to read as follows (changes in bold) "**total revenues attributable to an online undertaking derived from its Canadian broadcasting activities 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)** less any excluded revenue."

Double-counting of revenues between two undertakings

Positions of parties

13. Amazon.com.ca Inc. (Amazon), Apple and the MPAC, among others, requested that the Commission clarify that revenues are not counted more than once (double counted) toward any online undertaking's contributions (for example, in the case of an online undertaking acting as a reseller for other services).

14. To avoid the possibility of double-counting, Amazon proposed that the Commission clarify that revenues passed on by an online undertaking reselling another online undertaking are defined as "excluded revenue" or are otherwise exempted from annual contributions revenues. The MPAC proposed that the Commission clarify that only those revenues paid to the online undertaking distributed by a reseller are to be included in the calculation of the online undertaking's annual contributions revenues, consistent with the instructions in the Annual Digital Media Survey.[7]

15. The Canadian Media Producers Association (CMPA) replied that these arguments had already been discussed in the context of the proceeding leading to the publication of the Policy, and that the proposed orders reflect the consistent application of contributions to be made by these services.

Commission's decision

16. The Commission finds that the current definitions of "annual Canadian gross broadcasting revenues" and "annual contributions revenues" could inadvertently result in more than one undertaking making contributions derived from the same revenues. This does not conform to the Commission's usual revenue calculation practices and the Commission did not intend to change such practices in the Policy.

17. Accordingly, the Commission has amended the definition of "annual contributions revenues" to clarify that, when calculating annual contributions revenues, if an online undertaking's service is being resold (either directly to consumers or as part of a bundle), only the portion paid to the undertaking should be included. The remaining portion (the portion retained by a reseller) should be counted by the reseller only. This clarification regarding double-counting also applies when calculating the $25 million applicability threshold.

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[7] This refers to the instructions found in form 1511 (Digital Media Broadcast Undertaking - Audiovisual services - Financial Summary).

18. The Commission has also amended the definition of "annual contributions revenues" to clarify that it may accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

Application of the proposed orders

19. The proposed orders include an "Application" section, which specifies the particular operators to which the conditions of service would apply. Among the noted exceptions were online undertakings whose operator forms part of a broadcasting ownership group that has annual contributions revenues of less than $25 million.

Positions of parties

20. The Information Technology Industry Council (ITIC) proposed that the Commission clarify that the requirement regarding data collection (condition of service 3) applies only to registered online undertakings that are required to make expenditures pursuant to conditions of service 1 and 2. Given the changes it proposed to the definition of "annual contributions revenues" (as explained above), the MPAC proposed replacing the definition "annual contributions revenues" by "annual Canadian gross broadcasting revenues less excluded revenue" when referring to online undertakings that form part of a broadcasting ownership group.

Commission's decision

21. In the Commission's view, the clarification proposed by the ITIC is not necessary given that the proposed orders are sufficiently clear that condition of service 3 applies only to registered online undertakings that are required to make expenditures pursuant to conditions of service 1 and 2.[8]

22. As noted above, the Commission has amended the definition of "annual contributions revenues" such that the revised definition captures the revenues attributable to a single undertaking. Therefore, to ensure that the ownership group approach is maintained for the purpose of calculating the applicability threshold, the Commission has amended exception (a) in the "Application" section to replace the phrase "annual contributions revenues of less than $25 million" with "after deducting any excluded revenue, annual Canadian gross broadcasting revenues of less than $25 million."

Requirements that apply to online undertakings that carry on audio-visual broadcasting activities

23. Condition of service 1.(a) requires an online undertaking carrying on audio-visual broadcasting activities to contribute not less than 2% of its annual contributions revenues to

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[8] Specifically, the "Application" section sets out that the proposed conditions of service apply to "all operators carrying on online undertakings that are registered with the Commission pursuant to the *Online Undertakings Registration Regulations*". Moreover, condition of service 3 clearly specifies that the requirement relating to data collection applies to "[t]he operator of an online undertaking that is required to make expenditures as provided in either conditions 1 or 2."

the CMF. It also allows audio-visual online undertakings to deduct certified Canadian content expenditures of up to 1.5%.

Canadian content expenditures

Positions of parties

24. The CMPA proposed specifying that the deduction applies only to "direct expenditures" towards certified Canadian content, to better reflect the wording in the Policy. It suggested that "direct expenditures" is a term defined by the Commission, and argued that including the proposed precision would ensure appropriate limits on the redirection of contributions (e.g., licence fees or other direct expenses).

25. Apple and the MPAC proposed that the Commission specify that Canadian content includes "productions/investments or acquisitions."

26. Various interveners proposed that only original certified Canadian content should be deducted (and not acquisitions), with some, including the CMPA, noting that this would be in line with the Commission's intent to allow this deduction in order "to encourage online undertakings to produce Canadian content."[9]

Commission's decision

27. Although the Commission has used the expression "direct expenditures" in various published documents, it does not have an established definition of that expression. In the Commission's view, the words "certified Canadian content expenditures" along with the accompanying definition[10] is sufficiently clear to articulate the Commission's intent and identify eligible expenditures. Accordingly, the Commission has not added a reference to "direct expenditures" to condition of service 1.(a).

28. The Commission finds that the proposal to exclude acquisitions from the deduction would not align with the Commission's intent to afford sufficient flexibility, as specified in paragraphs 133 and 145 of the Policy. Accordingly, the Commission has not accepted this proposal. Further, for clarity, the Commission has added to condition of service 1.(a) a reference to productions and acquisitions in order to properly reflect this intention.

Contributions to French-language OLMC productions and content

Positions of parties

29. The Alliance des producteurs francophones du Canada (APFC), the Fédération culturelle canadienne-française (FCCF) and the Fédération des communautés francophones et acadienne du Canada (FCFA) proposed amending condition of service 1.(a) to require that at least 15% of the expenditures made towards French-language content be allocated to French-

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[9] As noted in paragraph 133 of the Policy.

[10] "Certified Canadian content" is defined in footnote 101 of the Policy as follows: "content that is certified by the Canadian Radio-television and Telecommunications Commission or Canadian Audio-visual Certification Office, under their respective criteria."

language OLMC productions. The Ontario French-language Educational Communications Authority also considered that a minimum percentage should be allocated to French-language OLMC productions.

Commission's decision

30. The Policy specifies that up to 2% of the base contributions must be allocated to the CMF, which has a proven record of investing in OLMC productions, in both official languages. In the 2022-2023 broadcast year, 20.1% of CMF funding for French-language television was allocated to French minority language support, and 8.1% of CMF funding for English-language television was allocated to English minority language support.[11] Since a portion of the base contributions will go to the CMF, OLMC producers will benefit from this additional support through the "Official Language Minority Communities Production Funding" envelope.

31. For the portion that can be used towards certified Canadian content expenditures, online undertakings may choose to invest in OLMC and French-language productions. At this stage, it is not possible to predict whether or how online undertakings will use this incentive. In the Commission's view, adding additional rules would be premature at this point.

32. In light of the above, the Commission finds that the funding allocation within condition of service 1.(a) is sufficient to ensure that both French-language and English-language OLMC content receive support from base contributions at this stage. Accordingly, the Commission has maintained the wording of condition of service 1.(a). However, the Commission will be monitoring how French-language content and OLMCs are supported by the flexibility offered to online undertakings, and may make adjustments in the context of future proceedings should evidence be filed that a change in approach may be needed.

Allocating funding to OLMC producers and producers from diverse communities

33. Condition of service 1.(e) requires that a portion of the base contributions be allocated to any or a combination of identified CIPFs that demonstrates a dedicated funding envelope for producers from OLMCs and producers from diverse communities.

Positions of parties

34. The FCFA, the APFC, and the English-Language Arts Network/the Quebec Community Groups Network/the Quebec English-Language Production Council (joint intervention) requested that the Commission establish a clear allocation between the portions of the envelope that CIPFs should devote to OLMC producers and to diverse communities.

35. Further, the FCFA and the APFC proposed that at least half of the envelope be dedicated to OLMC producers specifically, and the remaining to producers from diverse communities.

36. French-language OLMC representatives including the FCCF, the FCFA, the APFC and the Ontario French-language Educational Communications Authority submitted that the portion

[11] CMF Annual Report 2022-2023.

of the base contributions going to CIPFs will most likely favour English-language OLMC content, since most of the CIPFs already fund such content. They argued that since there is no obligation to divide the funding between French-language and English-language OLMCs, French-language OLMC producers could be disadvantaged as online undertakings may choose to devote their contributions to CIPFs supporting English-language OLMC content only.

37. To address this issue, the APFC proposed that the Commission require CIPFs with an OLMC/diversity envelope to allocate 40% of the OLMC allocation to French-language OLMC producers. The Ontario French-language Educational Communications Authority also supported dedicating a minimum percentage of the OLMC contribution to French-language OLMC productions, but did not provide a specific breakdown.

Commission's decision

38. In regard to the allocation split between OLMC producers and producers from diverse communities, paragraph 138 of the Policy specifies that 50% of the new CIPF funding envelope would be allocated to OLMC producers while paragraph 140 specifies that "a minimum of" 50% would be allocated to those producers. The Commission's intent was for the new envelope to be allocated equally between each group of producers, to ensure a balanced approach to funding allocations and to recognize the strong support throughout the proceeding for more OLMC funding, as well as the need to support producers from diverse communities.

39. Accordingly, the Commission clarifies that the proportion of the contribution allocated to CIPFs will be split evenly (i.e., 50%-50%) between OLMC producers and producers from diverse communities.

40. With respect to allocating a minimum percentage of the CIPF envelope to French-language OLMCs, the Commission considers that determinations set out in the Policy will benefit OLMCs and aim to enhance their vitality and support their development. With respect to CIPFs that will be the recipients of base contributions specifically, many of these funds have historically supported OLMC producers, with some CIPFs funding both English- and French-language OLMCs.[12] As such, the Commission reiterates its finding that no further rules are required at this stage given the measures it took in the Policy to benefit OLMCs.

41. Nevertheless, the Commission's intent was for CIPFs to better support programming by OLMCs and producers from diverse communities. To ensure that the Commission has adequate information to measure this initiative and make adjustments, if necessary, the Commission will require eligible CIPFs to provide the following additional information in their annual reports to the Commission:[13]

- the number of OLMC projects that CIPFs would have evaluated in each minority language;

[12] See the annual reports filed by CIPFs on the Commission's website.

[13] In addition to the information set out in paragraph 140 of the Policy.

- the number of OLMC projects approved in each minority language;

- the number of projects supporting producers from diverse communities that CIPFs would have evaluated; and

- the number of projects supporting producers from diverse communities approved.

42. This will help identify how the new CIPF envelopes are supporting OLMC producers (including the support received in each minority language) and producers from diverse communities.

43. Finally, the Commission will require CIPFs, when filing their applications to become eligible, to confirm that they will report on this new information as part of their annual CIPF reports.

44. Accordingly, the Commission finds that adjustments to condition of service 1.(e) are not necessary, and has therefore maintained the wording of the condition.

Requirements that apply to online undertakings that carry on audio broadcasting activities

Contributions to Canadian Starmaker Fund and Fonds RadioStar

Positions of parties

45. The Canadian Association of Broadcasters (CAB) indicated that it is currently the first recipient of contributions directed to the Canadian Starmaker Fund and Fonds RadioStar. It proposed modifying the wording of condition of service 2.(c) to specify that contributions should be directed to the CAB, who would in turn allocate the contributions to these two funds.

Commission's decision

46. While the CAB may be the first recipient of contributions stemming from tangible benefits directed to the Canadian Starmaker Fund and Fonds RadioStar, the wording of condition of service 2.(c) is consistent with the determination made in the Policy that both of these funds are recipients of base contributions.[14] The wording is also consistent with determinations and language used in other policies, including the Revised Commercial Radio Policy[15] and the Tangible Benefits Policy.[16]

47. Accordingly, the Commission has maintained the wording set out in condition of service 2.(c).

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[14] See paragraph 165 of the Policy.

[15] See the appendix to Broadcasting Regulatory Policy 2022-332.

[16] See Broadcasting Regulatory Policy 2014-459.

Allocating funding to support French-language and OLMC initiatives

Positions of parties

48. OLMC interveners proposed that the Commission require certain recipient funds to dedicate a portion of their contributions in support of French-language OLMCs.

- The FCFA proposed amending condition of service 2.(a) to require that at least 20% of the contributions allocated to Musicaction be dedicated to the support of content by French-language OLMCs.

- In regard to condition of service 2.(b),[17] the FCCF requested that the Commission immediately commit to requiring the temporary fund supporting local news production to allocate its spending as follows: 60% to English-language markets, 34% to French-language markets, and 6% to English-language or bilingual markets, directed to French-language stations.

- The FCCF proposed amending condition of service 2.(e) to require that at least 40% of the flexible contributions be allocated to French-language eligible initiatives, with at least 20% of that portion allocated to initiatives within French-language OLMCs. It further proposed that any amount disbursed to the Canadian Starmaker Fund and Fonds RadioStar be done in tandem and respectively allocated in a 60%-40% ratio.

Commission's decision

49. The Policy clearly establishes that base contributions should provide additional support to OLMCs.[18] In the Policy, the Commission also emphasized the achievements of recipient funds in terms of their support for OLMCs, and encouraged FACTOR, Musicaction and the Community Radio Fund of Canada to use a portion of base contributions to bolster support for OLMCs.

50. As it relates to Musicaction specifically, the Commission notes that serving the interests of French-language OLMCs is a key element of that fund's mandate. In response to a Commission request for information following the public hearing, Musicaction provided data indicating that at least a quarter of production and marketing projects funded in recent years supported artists from French-language OLMCs.

51. In regard to condition of service 2.(b), as indicated in the Policy, the Commission intends to launch a public consultation to seek comments on a plan submitted by the CAB to operate a temporary fund supporting local news production by commercial radio stations outside

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[17] Condition of service 2.(b) sets out that not less than 1.5% of annual contributions revenues are to be directed to the CAB, to be allocated to a temporary fund supporting local news production by commercial radio stations outside of the designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton and Ottawa-Gatineau.

[18] See the section of the Policy entitled "Summary".

designated markets.[19] As part of that consultation, the Commission intends to explore how the temporary fund could serve the specific needs and interests of OLMCs.

52. Finally, in regard to condition of service 2.(e), it was the Commission's intention to provide some flexibility for audio online undertakings in how they choose to support Canadian and Indigenous content. As such, online undertakings could direct a portion of that flexible contribution to initiatives targeting English- and French-language content, including content from OLMCs. However, to keep this portion of the contribution flexible, the Commission did not specify percentages.

53. In light of the above, the Commission has maintained the requirements set out in condition of service 2.

Requirements regarding data collection

54. Condition of service 3 sets out that financial statements must be reviewed by a third-party practitioner following Canadian Standard on Review Engagement (CSRE) 2400 and prepared in accordance with Canadian Generally Accepted Accounting Principles (GAAP).

Positions of parties

55. Parties including Spotify AB (Spotify), Google LLC (Google), Roku, Inc. (Roku), the Digital Media Association (DiMA), the ITIC and Amazon expressed concern over the need for reviewed financial statements to be prepared in accordance with CSRE 2400 and Canadian GAAP. They argued this would place an unnecessary and inappropriate burden on foreign online undertakings that would not necessarily prepare statements in line with those requirements. Spotify and Roku specifically noted that this differs from the approach to financial filings required by the Commission for telecommunications service providers.

56. Spotify added that the Policy did not provide explanations for requiring that financial information be reviewed by "third-party practitioners."

57. Google, the MPAC and Apple questioned whether the requirement to participate in annual broadcasting surveys would be in addition to or in place of the requirement to participate in the Annual Digital Media Survey.[20]

58. Many parties proposed amending condition of service 3 to state that the data submitted will be treated as confidential. Amazon specifically proposed amending condition of service 3 to clarify that only revenues within the scope of the Act should be reported.

Commission's decisions

59. With respect to concerns over data collection, the Commission notes that the underlying intent of the Policy was for online streaming services to file accurate and verifiable data, similar to the requirements imposed on traditional broadcasting services, while being mindful

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[19] The CAB submitted the operational plan for this fund on 4 July 2024. It has been placed on the public record for the proceeding initiated by Broadcasting Notice of Consultation 2023-138.

[20] This survey is set out in Broadcasting Regulatory Policy 2022-47.

of the administrative burden on the industry. The Commission further notes that licensed broadcasting undertakings with revenues over $10 million must provide audited statements to the Commission.[21] With this in mind, in the Commission’s view, it is necessary to provide precision on certain elements of its data collection determinations in order to ensure that the Commission’s intent in the Policy is clear.

60. The Commission clarifies that it will allow the filing of financial statements in accordance with international standards, in line with current accounting practices.[22] Accordingly, the Commission has amended condition of service 3 to reflect this.

61. The Commission further clarifies that, consistent with current practices, all data collected pursuant to condition of service 3 that is designated as confidential will be treated by the Commission as confidential.

62. Finally, the Commission clarifies that data collection will not be duplicated. The forms currently used in the Annual Digital Media Survey will be amended and integrated into the annual broadcasting surveys in fall 2024. Further, the Annual Digital Media Survey set out in Broadcasting Regulatory Policy 2022-47, established to monitor how the activities of digital media broadcasting undertakings are changing in an increasingly digital environment, will be discontinued.

63. In regard to Amazon’s proposal to clarify that only revenues within the scope of the Act be reported, the Commission does not consider that this clarification is needed, as the orders clearly refer to Canadian broadcasting activities. Specifically, condition of service 3 is clear that online undertakings must submit financial statements reporting annual “Canadian” gross broadcasting revenues. Those revenues relate to Canadian broadcasting activities only, as noted in the definition of “annual Canadian gross broadcasting revenues” and the amended definition of “annual contributions revenues”. As such, the Commission finds it unnecessary to add the clarification proposed by Amazon.

Other operational and procedural matters

Retroactivity of conditions of service

64. Conditions of service 1 and 2 specify that base contributions are to start in the 2024-2025 broadcast year, based on annual contributions revenues from the previous broadcast year.

Positions of parties

65. Amazon, Spotify and the DiMA submitted that requiring payments for the 2024-2025 broadcast year based on revenues earned during the 2023-2024 broadcast year would make the conditions of service retroactive. They submitted that this would not be authorized under the Act, making the orders unenforceable.

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[21] Pursuant to Circular No. 404.

[22] See Part 1 of the Canadian accounting handbook.

Commission's decision

66. The Commission finds that the conditions of service are not retroactive. Revenues from the 2023-2024 broadcast year will only be used for the purpose of calculating the contributions that online undertakings must make on a forward basis (i.e., in the 2024-2025 broadcast year). Online undertakings will not be required to make contributions retroactively for the 2023-2024 broadcast year.

67. Accordingly, the Commission maintains the requirements of conditions of service 1 and 2 relating to when online undertakings must start making base contributions.

Comment period under the Canada-United States-Mexico Agreement

68. In the Policy, the Commission indicated that parties (including those who would be required to pay base contributions) would have 10 days from the issuance of the proposed orders to file comments on those orders.[23]

Positions of parties

69. The Computer & Communications Industry Association and the ITIC expressed concerns over the 10-day comment period, noting that the Canada-United States-Mexico Agreement (CUSMA) mandates a minimum 60-day comment period for any draft regulation expected to have significant impact on trade. The ITIC urged the Commission to align more closely with these international commitments to enhance stakeholder participation.

Commission's decision

70. While the Policy and the proposed orders were issued on 4 June 2024, the notice of consultation that launched the proceeding regarding base contributions was issued on 12 May 2023. The Commission considers that the proposed orders were made following a fulsome and open public process that took place over the course of several months, during which all interested persons had ample opportunity to comment on the Commission's proposals regarding contributions.

Confidentiality of online undertakings' financial information

Positions of parties

71. Various interveners[24] raised concerns regarding the potential disclosure of confidential revenue information if online undertakings are required to make direct contributions to funds and to the CAB. They argued that confidentiality could be compromised by third parties reverse engineering an online undertaking's annual revenue information. The MPAC also noted concerns over providing sensitive financial data to the CAB, which represents private television broadcasters—who are competitors and content licensees of online undertakings.

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[23] As noted above, members of OLMCs were provided with additional time to file comments.

[24] Apple, the DiMA, Google, the MPAC, Roku and Spotify.

72. According to Google, the Policy fails to provide details on how fund recipients will be bound by confidentiality measures. Google proposed that recipient funds only have access to aggregated data, showing the base contributions received from online undertakings collectively. Alternatively, it proposed that online undertakings make contributions to the Commission directly or, echoing the proposal by Apple, the MPAC and Roku, to an independent third party, who would be bound by non-disclosure obligations, and would be required to manage and allocate contributions in a manner that safeguards the confidentiality of broadcasting revenues.

73. In reply, the CAB confirmed that confidential information received would not be shared with members of the association or with personnel involved in advocacy activities.

74. In contrast, the Directors Guild of Canada called for the release of as much data and information as possible, emphasizing that transparency is crucial for stakeholders to analyze sector evolution, participate in public proceedings, and provide informed comments.

Commission’s decision

75. The Commission acknowledges the concerns over confidentiality. However, it considers that any issues relating to confidentiality can be adequately addressed between the online undertakings and the third-party fund administrators, including the CAB.

76. Given the importance of confidentiality, the Commission finds it appropriate to make the payment of contributions contingent upon online undertakings and the funds or the CAB reaching a mutually satisfactory agreement, for example:

    - an agreement similar to a non-disclosure agreement;
    - an agreement with a third-party administrator that would distribute aggregated amounts to applicable funds or the CAB, ensuring that specific financial information of the undertakings remains confidential; or
    - any other type of agreement reached between the online undertaking and the funds or the CAB.

77. The parties will be expected to enter into and submit their agreements to the Commission by no later than **28 October 2024**. If the parties are unable to reach an agreement by this deadline, either party can request that the Commission issue a ruling on the matter pursuant to section 25.3 of the Act.

Conclusion

78. In light of the above, and pursuant to subsections 9.1(1) and 11.1(2) of the Act, the Commission hereby makes orders imposing on particular operators of online undertakings the conditions of service set out in the appendix to this regulatory policy.

79. The financial information submitted by online undertakings through the Annual Digital Media Survey has been treated as confidential by the Commission since 2022.[25] Based on that information, the Commission has identified the particular operators that are subject to the base contribution requirements. Concurrently with the publication of this regulatory policy, the Commission has issued specific orders to each of these operators.[26] In order to maintain the confidentiality of the information received by the Commission, the identity of each individual operator has not been publicly disclosed. However, the Commission confirms that the orders issued to the operators are the orders set out in the appendix to this regulatory policy.

Related documents

- *The Path Forward – Supporting Canadian and Indigenous content through base contributions*, Broadcasting Regulatory Policy CRTC 2024-121, 4 June 2024

- *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, as amended by Broadcasting Notice of Consultation CRTC 2023-138-1, 9 June 2023, and Broadcasting Notice of Consultation CRTC 2023-138-2, 1 February 2024

- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022

- *Annual Digital Media Survey*, Broadcasting Regulatory Policy CRTC 2022-47, 23 February 2022

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014

- *Requirements for the Filing of Financial Statements with the Broadcasting Annual Return*, Circular No. 404, 23 August 1994

Secretary General

[25] See Broadcasting Regulatory Policy 2022-47.

[26] The orders will be confidential as the financial information submitted by online undertakings through the Annual Digital Media Survey are identified as confidential and have consistently been treated as confidential by the Commission.

Appendix to Broadcasting Regulatory Policy CRTC 2024-121-1

Broadcasting Order CRTC 2024-194

Orders imposing conditions of service and expenditure requirements

These orders are binding upon the operator, as well as on any of its affiliates carrying on audio-visual and/or audio online undertakings within Canada. These orders shall continue to be enforceable against any entity that carries on the broadcasting undertaking in question, including any successor, assignee, or transferee. They shall also continue to be enforceable in the event of a reorganization, merger, dissolution or any change in the name or corporate structure of the operator or its relevant affiliates. The operator must notify the Commission of any change to the information previously submitted in accordance with the *Online Undertakings Registration Regulations*, SOR/2023-203.

Conditions for carrying on certain online undertakings

The Commission hereby orders, pursuant to subsections 9.1(1) and 11.1(2) of the *Broadcasting Act*, operators of the online undertakings described herein to comply with the following conditions.

Interpretation

The following definitions apply in these orders.

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.

annual Canadian gross broadcasting revenues means the 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.

annual contributions revenues means the total revenues attributable to an online undertaking derived from its Canadian broadcasting activities 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) less any excluded revenue. When calculating annual contributions revenues, if an undertaking’s service is being resold (either directly to consumers or as part of a bundle), only the portion remitted to the undertaking should be included. The remaining portion (the portion retained by a reseller) should be counted by the reseller only. 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, and 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.

broadcasting ownership group means a group of all operators that are affiliates of one another or, in the case of an operator that is not an affiliate of any other operator, that operator.

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

excluded revenue means the revenue derived from providing audiobook services, podcast services or video game services; revenue associated with user-generated content; as well as revenue derived from broadcasting activities that are carried out by broadcasting undertakings that are, by order, exempted from licensing requirements or exempted from all regulations made under Part II of the *Broadcasting Act*, unless, in either case, otherwise specified in an exemption order.

licensee means a person who is authorized by a licence issued by the Commission to carry on a broadcasting undertaking under the *Broadcasting Act*.

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

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

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.

Application

The conditions of service set out herein apply to all operators carrying on online undertakings that are registered with the Commission pursuant to the *Online Undertakings Registration Regulations*, with the following exceptions:

(a) online undertakings whose operator forms part of a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross broadcasting revenues of less than $25 million;

(b) online undertakings whose operator does not form part of a broadcasting ownership group, that have annual contributions revenues of less than $25 million; and

(c) online undertakings whose operator:

(i) is a licensee; or

(ii) is affiliated with a licensee; or

(iii) is a person operating, or affiliated with a person operating an exempt broadcasting undertaking that operates pursuant to an exemption order that requires the undertaking to be licensable.

Condition of service relating to base contributions applicable to online undertakings carrying on audio-visual broadcasting activities

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

(a) not less than 2% to the Canada Media Fund. The operator may deduct certified Canadian content expenditures[27] (productions or acquisitions) of up to 1.5% of the contribution for this initiative. Of that 1.5%, a maximum of 60% of these expenditures can be allocated to English-language productions and a maximum of 40% to French-language productions;

(b) not less than 1.5% to the Independent Local News Fund;

(c) not less than 0.5% to the Indigenous Screen Office Fund;

(d) not less than 0.5%, at the discretion of the operator, to any or a combination of the following funds:

(i) Black Screen Office Fund,

(ii) Canadian Independent Screen Fund for BPOC creators, and

(iii) Broadcasting Accessibility Fund; and

(e) not less than 0.5% to any or a combination of identified Certified Independent Production Funds (CIPF), other than the Indigenous Screen Office Fund, the Black Screen Office Fund and the Canadian Independent Screen Fund for BPOC creators, that demonstrates a dedicated funding envelope for producers from official language minority communities and producers from diverse communities, as approved by the Commission. This contribution shall be held by the operator until the Commission publishes the list of eligible CIPFs or indicates that there are no eligible CIPFs. Should no CIPF be deemed eligible, the 0.5% contribution shall be directed to the Canada Media Fund.

[27] Certified Canadian content is content that is certified by the Canadian Radio-television and Telecommunications Commission or by the Canadian Audio-visual Certification Office, under their respective criteria.

Condition of service relating to base contributions applicable to online undertakings carrying on audio broadcasting activities

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

   (a) not less than 2% to FACTOR and Musicaction, of which 60% is to be allocated to FACTOR and 40% to Musicaction;

   (b) not less than 1.5% to the Canadian Association of Broadcasters, to be allocated to a temporary fund supporting local news production by commercial radio stations outside of the designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton and Ottawa-Gatineau;

   (c) not less than 0.5% to the Canadian Starmaker Fund and Fonds RadioStar, of which 60% is to be allocated to the Canadian Starmaker Fund and 40% to Fonds RadioStar;

   (d) not less than 0.5% to the Community Radio Fund of Canada;

   (e) not more than 0.35% to Canadian expenditures on initiatives supporting Canadian or Indigenous content, in the following categories:

      (i) songwriting camps specifically developed for Canadian and/or Indigenous artists;

      (ii) support for the production of sound recordings by Canadian and/or Indigenous artists; and

      (iii) support for Canadian events (award shows and festivals) exclusively featuring Canadian and/or Indigenous artists;

   Any remaining amount is to be allocated to any or a combination of funds among the Canadian Starmaker Fund, Fonds RadioStar, the Community Radio Fund of Canada, and the Indigenous music fund identified in (f) once in operation; and

   (f) not less than 0.15% to the Indigenous Music Office (IMO) for a new fund to support Indigenous music. For the 2024-2025 broadcast year, 0.05% shall be directed to the IMO by 31 December 2024, to allow the IMO to conduct consultations and develop an operational plan for an Indigenous music fund. The remaining 0.10% for that broadcast year shall be held until the Commission approves the fund.

Condition of Service – Data Collection

3. The operator of an online undertaking that is required to make expenditures as provided in either conditions 1 or 2 above shall submit reviewed or audited financial statements,[28] reporting its annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusions or exclusions of revenues. Financial statements shall be prepared in accordance with internationally recognized Generally Accepted Accounting Principles (GAAP), and if the operator is Canadian, in accordance with Canadian GAAP.

[28] Further information on the types of reports on financial statements can be found on CPA Canada's website.