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

Broadcasting Regulatory Policy CRTC 2024-121

PDF version

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Ottawa, 4 June 2024

The Path Forward – Supporting Canadian and Indigenous content through base contributions

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.

Immediately after the new legislation was adopted, the Commission published a regulatory plan and launched four public consultations, including one on what base contributions online services must make to support the Canadian broadcasting system.

As part of this consultation for base contributions, the Commission received over 360 written submissions, and held a public hearing in November and December of 2023 with over 120 appearing parties.

Based on the public record, the Commission is imposing requirements on online streaming services. Specifically, the Commission will require online streaming services that make $25 million or more in annual contributions revenues and that are not affiliated with a Canadian broadcaster to contribute 5% of those revenues to certain funds. The Commission expects this condition to take effect in the 2024-2025 broadcast year, which begins on 1 September 2024, and that this will provide an estimated $200 million per year in new funding.

The contributions will be directed to areas of immediate need, such as local news on radio and television, French-language content, Indigenous content and content created by and for equity-deserving groups, official language minority communities (OLMC) and Canadians of diverse backgrounds. To ensure that these areas receive contributions quickly, the Commission relied on existing funds as much as possible.

Specifically, the contributions from audio-visual online streaming services will go to the following funds:

- 2% to the Canada Media Fund and/or direct expenditures towards certified Canadian content;
- 1.5% to the Independent Local News Fund;
- 0.5% to the Black Screen Office Fund, the Canadian Independent Screen Fund for BPOC creators, and/or the Broadcasting Accessibility Fund;

- 0.5% to the Certified Independent Production Funds supporting OLMC producers and producers from diverse communities; and

- 0.5% to the Indigenous Screen Office Fund.

The contributions from audio online undertakings will go to the following funds:

- 2% to FACTOR and Musicaction;

- 1.5% to a new temporary fund supporting local news production by commercial radio stations outside of the designated markets;

- 0.5% to the Canadian Starmaker Fund and Fonds RadioStar;

- 0.5% to the Community Radio Fund of Canada;

- 0.35% to direct expenditures targeting the development of Canadian and Indigenous content and/or a variety of selected funds; and

- 0.15% to the Indigenous Music Office and a new fund to support Indigenous music.

This base contribution decision sets the foundation for meaningful participation by online streaming services in the Canadian broadcasting system. The contributions made by traditional broadcasters and online streaming services will be fine-tuned as the Commission moves forward with the implementation of the amended *Broadcasting Act*.

The Commission will impose base contribution requirements by way of orders issued pursuant to sections 9.1 and 11.1 of the *Broadcasting Act*. The text of the proposed orders is set out in the appendix to this regulatory policy. Parties (which include those who will be required to pay base contributions) may file comments on the proposed orders by no later than **14 June 2024**. Members of OLMCs may submit comments by no later than **25 June 2024**. Parties may submit a reply to any comments received by no later than **2 July 2024**.

Introduction

1. In Broadcasting Notice of Consultation 2023-138 (the Notice), the Commission launched a consultation that focused on whether online undertakings should be required to make contributions to Canadian and Indigenous content. Specifically, the objective of this proceeding is to determine if the Commission should establish base contributions for online undertakings, and if so, how much they should contribute and the possible recipients of those contributions.[1]

2. In the Notice, the Commission noted that a modernized framework should recognize the new perspectives and opportunities that online undertakings bring to the broadcasting system, and should ensure flexibility and adaptability in the future. It also set out various

[1] In the Notice, the Commission indicated that existing contributions by traditional broadcasters would not change as a result of this proceeding.

objectives of the contribution framework,[2] such as ensuring online undertakings participate in providing support for Canadian and Indigenous audio and audio-visual content. The Commission further stated that funds, as a component of the new contribution framework, should provide a sustainable financing option for original Canadian and Indigenous content, both audio and audio-visual.

3. This decision sets the foundation for a modernized contribution framework that will support the creation of Canadian and Indigenous content.

Interventions

4. The Commission received over 360 interventions in response to the Notice. Over 120 parties appeared at a public hearing that took place from 20 November to 8 December 2023, and several parties responded to requests for information and filed final submissions after the hearing.

5. The parties included online services, traditional broadcasters and distributors, associations representing private broadcasters, audio-visual and audio funds, associations representing the creative sector, advocacy groups, unions and guilds, diversity groups, screen offices, public interest and research groups, and various individuals.

Legal framework

6. The *Online Streaming Act* (formerly Bill C-11),[3] which came into force on 27 April 2023 and amended the *Broadcasting Act*, requires the Commission to modernize the Canadian broadcasting framework and ensure that online undertakings[4] invest in Canadian and Indigenous audio and audio-visual content and make it available to Canadians.

7. On 9 November 2023, the Governor in Council issued an *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, emphasizing the need to support Canadian and Indigenous content and to ensure equitable contributions by all players.[5]

8. Under the *Broadcasting Act*, the Commission must regulate and supervise the Canadian broadcasting system in a flexible manner that takes into account the diversity of regions, languages, cultures, abilities, and circumstances of the people and businesses that contribute to, benefit from, and make use of the Canadian broadcasting system. Subsection 3(1) of that Act sets out the broadcasting policy for Canada and subsection 5(2)

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[2] The objectives are set out in paragraph 19 of the Notice.

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

[4] 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.” Pursuant to subsection 2(1) of the *Broadcasting Act*, the definition of “broadcasting undertaking” includes an online undertaking. For clarity, audio and audio-visual creators, whether amateur or professional, are not broadcasting undertakings or online undertakings and are therefore not subject to the *Broadcasting Act*. This means that the Commission cannot make regulatory requirements that apply directly to content creators.

[5] SOR/2023-239, 9 November 2023.

identifies the regulatory policy that the Commission must consider when determining how to regulate the system.

9. According to the broadcasting policy for Canada, traditional and online undertakings must contribute in an appropriate manner to implementing broadcasting policy objectives, such as the creation, production and distribution of Canadian and Indigenous content in Canada's two official languages, as well as in Indigenous languages.

10. According to subsection 5(2), when regulating, the Commission must take into account the nature and diversity of services, along with their size and impact on the Canadian creation and production industry. It must also ensure that broadcasting undertakings make maximum use of Canadian resources or contribute to those resources in an equitable manner.

11. Subsection 9.1(1) allows the Commission to impose conditions on the provision of services by broadcasting undertakings, while section 11.1 allows the Commission to require broadcasting undertakings to make expenditures on developing, financing, producing or promoting Canadian and Indigenous programs.

Issues

12. After examining the record for this proceeding, the Commission considered the following issues in regard to the development of the base contribution framework:

- whether online undertakings should be required to make base contributions;
- application of the requirement to make base contributions;
- how to calculate annual contributions revenues;
- how much online undertakings should contribute;
- which funds should be eligible to receive base contributions;
- how to collect and publish data; and
- what the proposed conditions of service relating to base contribution requirements should be.

Should online undertakings be required to contribute?

13. In the Notice, the Commission asked whether online undertakings should make a base contribution as an important way to ensure continued support for Canadian and Indigenous content and creators.

Positions of parties

14. Traditional broadcasting undertakings, as well as associations representing the creative sector, generally expressed support for imposing base contribution requirements on foreign online undertakings. Rogers Communications Inc. (RCI), along with the Rogers Group of Funds, Quebecor Media Inc. (Quebecor),[6] the Canadian Broadcasting Corporation (CBC), BCE Inc. (BCE), Corus Entertainment Inc. (Corus), Blue Ant Media Inc. (Blue Ant), and the Canadian Association of Broadcasters (CAB), considered that base contribution requirements should be imposed on both foreign online undertakings and Canadian unaffiliated online undertakings. Both the Canada Media Fund (CMF) and the National Campus and Community Radio Association (NCRA) supported requiring all online undertakings to make base contributions. Some stated that contribution requirements for online streaming services should match those imposed on Canadian broadcasters.

15. The Aboriginal Peoples Television Network Inc. (APTN) stressed the urgent need for base contributions to address the significant impact that revenue declines have had on the broadcasting system. It noted that this impact has been particularly felt by Indigenous broadcasters.

16. On the other hand, most foreign online services,[7] along with the Motion Picture Association-Canada (MPAC), opposed base contribution requirements, citing both economic and fairness concerns. In their view, such requirements could restrict innovation and increase operational costs, and thereby disrupt market dynamics.

17. Netflix Services Canada ULC (Netflix), in its final submission, argued that introducing base contributions "fails to recognize current contributions and would introduce additional and potentially discriminatory burdens – particularly if such a requirement were mandated to be directed to specific legacy funds[8] to which contributors would not have access, or to new funds directed to support 'market failures' such as news or services of exceptional importance."

18. Amazon.com.ca ULC (Amazon), Apple Canada Inc. (Apple), Google LLC (Google), Paramount Global, Spotify AB (Spotify) and the Forum for Research and Policy in Communications (FRPC)[9] considered that introducing a base contribution requirement at this stage would be premature. They noted, among other things, the ongoing and incomplete implementation of the amended *Broadcasting Act*, as well as many unknowns regarding the Commission's overall contribution framework. Although the MPAC opposed base contributions, it submitted that any requirement that might be imposed must be a temporary measure.

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[6] On behalf of Videotron Ltd. and TVA Group Inc.

[7] Netflix Services Canada ULC, Paramount Global, The Walt Disney Company, including Buena Vista International, Inc. (Disney), Spotify AB, Apple Canada Inc. and Google LLC.

[8] Netflix referred to the CMF as an example of a legacy fund.

[9] Specifically, in this respect, the FRPC expressed concerns regarding a lack of a data-based starting point and the timing of the various stages of the Commission's regulatory plan.

19. Paramount Global stated that imposing base contribution requirements on global streaming services would result in shifting direct expenditures that foreign online undertakings make to Canadian content and the Canadian creative economy to indirect and less efficient vehicles such as legacy production funds. It proposed instead that the Commission design a holistic contribution system that considers global streaming services' contributions, capabilities and abilities within the Canadian broadcasting system.

Commission's decision

20. In the Notice, the Commission acknowledged that viewers and listeners across the country have increased their use of online services and platforms for some time, while the use of traditional television and radio services has declined. It noted that this decline has impacted the effectiveness of many existing policy and regulatory tools, such as funds, in supporting the policy objectives of the *Broadcasting Act*. As an example, decreased revenues by radio stations and broadcasting distribution undertakings (BDU)[10] have led to a decline in contributions to funds[11] that work towards achieving some of the policy objectives set out in the *Broadcasting Act*. At the same time, online undertakings have captured a growing part of Canadian broadcasting advertising and subscription revenues.[12]

21. Further, for decades, traditional Canadian television and radio services have financially supported the creation of content made by and for Canadians, and have showcased that content on their services. Meanwhile, online streaming services, which have been operating in Canada for well over a decade, have not been required to contribute in similar ways. In the Commission's view, online undertakings that benefit from their place in the Canadian broadcasting system by generating significant revenues and drawing significant Canadian audiences should contribute to the system.

22. The Commission considers that base contributions should be simple and flexible. These contributions should also be directed to needs that are of the greatest priority.

23. In light of the above, the Commission considers that base contributions will be beneficial to the broadcasting system. The Commission will consider how to fine-tune the contributions of all broadcasters as it moves forward with implementing the changes made to the *Broadcasting Act.*

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[10] Commercial radio licensees (through Canadian content development [CCD] contributions) and BDUs are required to allocate a portion of their revenues to various funds. Over the 2018-2019 to 2022-2023 broadcast years, the total revenues for commercial radio stations and BDUs declined at compound annual growth rates (CAGR) of -6.6% and -4.3%, respectively.

[11] For example, contributions to the CMF by BDUs declined at a CAGR of -2.1% from the 2017-2018 through 2021-2022 broadcast years, and contributions to FACTOR by radio licensees declined at a CAGR of -3.2% over the same period. Source: Open Data – BDU U-T10 and Radio RD-T16.

[12] From 2019 to 2022, estimated Canadian revenues for audio-visual and audio online undertakings went from $3.9 billion to $6.4 billion. Comparatively, over the same period, reported traditional Canadian broadcasting revenues decreased from $16.9 billion to $15.4 billion. Source: Open Data – Broadcasting sector B-T1 and B-T4.

Application of the requirement to make base contributions

24. In the Notice, the Commission sought comments on applying the requirement to make base contributions. To address this issue, the Commission must make determinations on the following:

- the online undertakings that will make base contributions;
- the adoption of a broadcasting ownership group approach for the purposes of the requirement; and
- the threshold for the requirement to make base contributions.

Online undertakings that will make base contributions

25. In the Notice, the Commission stated that the new contribution framework will need to consider how best to ensure equitable treatment between Canadian and foreign online undertakings in supporting the creation of Canadian and Indigenous content. The Commission also stated its intention to impose base contribution requirements only on certain online undertakings.

Positions of parties

26. Most of the traditional broadcasters who intervened in this proceeding,[13] along with the CAB, considered that it would be unfair for the Commission to impose base contribution requirements on online undertakings that are affiliated with Canadian broadcasters. They argued that doing so now would exacerbate the financial challenges Canadian broadcasters face and deepen their competitive disadvantages. Other interveners,[14] however, proposed that both foreign and Canadian online undertakings be subject to base contribution requirements.

27. TELUS Communications Inc. (TELUS) proposed exempting Canadian virtual BDUs (i.e., online undertakings that aggregate third-party services) from the requirement to make contributions for the time being to enable their development. Conversely, the Independent Broadcast Group (IBG) and the MPAC indicated that such undertakings should be subject to contribution requirements.

28. The MPAC and most foreign services[15] noted that they already contribute to the broadcasting system and argued that imposing base contribution requirements only on foreign online undertakings would be inequitable and discriminatory. The MPAC added that if the Commission decides to impose a base contribution requirement, it must be applied equitably to both Canadian and foreign online undertakings.

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[13] Including BCE, Quebecor, Corus, RCI, Blue Ant, 0859291 B.C. Ltd. (CHEK Media), and the Société de télédiffusion du Québec (Télé-Québec).

[14] Including Vues & Voix inc. and the Rogers Group of Funds.

[15] Including Netflix and Paramount Global (in support of the MPAC), Apple and Google.

29. Several interveners, including the CAB and the National Film Board, also considered that online undertakings that earn less than a certain revenue threshold should not be required to make base contributions. Others,[16] however, argued that while a revenue-based threshold appears to be simple, it is not always an objective measure, particularly for online music services that have unique business models.

30. Other interveners proposed additional criteria, including:

- a subscriber/user-based threshold in addition to annual revenues;[17]
- monthly active users, listening hours or market share thresholds;[18] and
- other criteria for online music services such as average revenues per user, the percentage of streams of a rightsholder's music, the subscription price and number of subscribers, and advertising sales and costs.[19]

Commission's decisions

31. While traditional Canadian broadcasters have long contributed to the system through various requirements (financial and other),[20] foreign and Canadian online undertakings have not been required to make financial contributions to the broadcasting system.

32. Online undertakings benefit from their place in the Canadian broadcasting system by generating significant revenues and drawing significant Canadian audiences. However, they do so without any requirement to directly support that system. In order to help level the playing field, the Commission considers that it would be appropriate to impose base contributions on online undertakings.

33. Further, the Commission finds that it would not be appropriate to impose base contribution requirements on online undertakings that are affiliated with traditional Canadian broadcasters or their ownership groups.[21] While online undertakings affiliated with Canadian traditional broadcasters are currently not subject to contribution requirements, the traditional undertakings to which they are affiliated are subject to such requirements. In general, in the television and distribution sectors, the contribution requirements imposed on

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[16] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) and Coalition M•É•D•I•A• (Médias pour l'Équité, la Diversité, l'Inclusion et l'Accessibilité).

[17] Including Butler Business & Media LLC, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), and the Association québécoise de la production médiatique (AQPM).

[18] Including SOCAN, ACCORD, the Association des professionnels de l'édition musicale (APEM), the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) and the Indigenous Music Alliance (IMA)/Indigenous Music Office (IMO).

[19] Butler Business & Media LLC.

[20] In the 2022-2023 broadcast year, discretionary services and on-demand services reported nearly $1.7 billion in Canadian programming expenditures (CPE). Conventional private television stations reported nearly $800 million in CPE. BDUs reported $374 million in contributions, which includes $152 million to local expression. In the 2021-2022 broadcast year, radio stations reported nearly $34 million in CCD contributions.

[21] This would mean that Canadian online undertakings that are not affiliated with a Canadian broadcaster and that are subject to the threshold established by the Commission would be required to make base contributions.

traditional undertakings range from 5%[22] to 45%[23] of their annual revenues. In the radio sector, the requirements range from 0.5% to 4%[24] of their annual revenues.

34. The Commission will consider how to fine-tune the contributions of all broadcasters, including consideration of their affiliated online undertakings, as it moves forward with implementing the amended *Broadcasting Act*. In addition, the Commission indicated in the Notice that in determining who would make base contributions, it would consider any thresholds set in the other proceedings launched at the same time, specifically, those that resulted in the *Online Undertakings Registration Regulations* (Registration Regulations)[25] and in basic conditions of service for carrying on certain online undertakings (Broadcasting Order 2023-332).[26] In those two proceedings, the Commission found that the threshold should be based on revenues, given that it is a relatively simple and objective criterion and can be applied to all online undertakings, regardless of their business models.

35. The Commission considers that none of the interveners in this proceeding provided compelling evidence that using other criteria would be a significant improvement to a revenue-based threshold. In fact, using any other criteria would make base contribution requirements much more complex.

36. Accordingly, the Commission will use revenues to determine which online undertakings will make base contributions.

37. In light of the above, the Commission will impose base contribution requirements based on revenues only on online undertakings, regardless of their national origin, whose operator[27] a) is not a licensee, [28] b) is not affiliated[29] with a licensee; or c) is not 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.

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[22] This 5% contribution requirement is imposed on licensed and certain exempt BDUs as well as on licensed on-demand services.

[23] Contribution requirements imposed on television services vary, whether they are independent services (minimum of 10%) or large television services (generally from 30% to 45%).

[24] Licensees of commercial radio stations must contribute roughly 0.5% of their annual revenues, and licensees of satellite radio services must contribute 4% of their annual revenues.

[25] That proceeding was launched by Broadcasting Notice of Consultation 2023-139 and resulted in the publication of Broadcasting Regulatory Policy 2023-329/Broadcasting Order 2023-330 along with the making of the Registration Regulations.

[26] That proceeding was launched by Broadcasting Notice of Consultation 2023-140 and resulted in the publication of Broadcasting Regulatory Policy 2023-331/Broadcasting Order 2023-332.

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

[28] A licensee is a person who holds a licence to carry on a broadcasting undertaking issued by the Commission under the *Broadcasting Act*.

[29] As defined in the *Broadcasting Act*, "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.

Adoption of a broadcasting ownership group approach

38. In the Notice, the Commission indicated that one of the objectives of the new contribution framework is that contributions be considered at the level of "broadcasting ownership group,"[30] where applicable. This means that the Commission will consider whether each online undertaking will be considered individually, or as part of the ownership group that it is affiliated with (which is known as the broadcasting ownership group approach).

Positions of parties

39. Several associations and other parties[31] supported a broadcasting ownership group approach as it would ensure stable and growing contributions from large broadcasters, recognize the benefits of synergies, and avoid incentives for splitting groups or allocating revenues differently across platforms to avoid regulatory requirements.

40. Others[32] strongly opposed the approach. For some,[33] such an approach would unfairly disadvantage Canadian online undertakings that are affiliated with traditional broadcasters. Others argued that while online undertakings unaffiliated with traditional broadcasters would not be required to contribute until they reach the set revenue threshold, affiliated online undertakings would be required to contribute on their first dollar, given that their revenues would be combined with those of other affiliated undertakings.

41. According to Quebecor, this approach would penalize small online affiliated undertakings with low revenues, and would prevent innovation, sustainability, and ultimately the achievement of cultural objectives by these online undertakings. In its view, given that synergies contribute to reduce broadcasters' expenses, rather than increase revenues on which contributions would be based, they are irrelevant in the context of contribution requirements.

42. The MPAC submitted that such an approach could deter services from entering the Canadian market, push existing services to leave the market, or serve as a disincentive for the launch of new or niche services. It considered that this would hinder innovation and the achievement of the objectives of the *Broadcasting Act*.

Commission's decisions

43. In the Commission's view, a broadcasting ownership group approach is appropriate for the purpose of base contributions. It reflects both the predominant role that broadcasting

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[30] That is, 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.

[31] Including the NCRA, Channel Zero Inc. (Channel Zero), Community-University Television, the IBG, the AQPM, the Public Interest Advocacy Centre (PIAC)/the National Pensioners Federation (NPF)/OpenMedia and the Writers Guild of Canada (WGC).

[32] Including the Association des radios régionales francophones (ARRF), the CAB, Quebecor, Télé-Québec, the CBC, Sirius XM Canada Inc. (SiriusXM), BCE, Corus, RCI, Cogeco Inc. (Cogeco), Pelmorex Weather Networks (Television) Inc., TELUS, Bragg Communications Inc., carrying on business as Eastlink, the MPAC, Paramount Global, Disney, Apple and Tubi, Inc.

[33] Including Quebecor, the CAB, TELUS, Corus, Cogeco, RCI and SiriusXM.

ownership groups play in the Canadian broadcasting system and the important benefits that smaller online undertakings may receive from being a part of a group. Under this approach, if a group operates more than one broadcasting undertaking (for example, an audio-visual online undertaking and an audio online undertaking), the Commission will consider the total revenues of the group's broadcasting undertakings to determine if they need to make base contributions.

44. Further, no compelling evidence was provided to clearly demonstrate that the adoption of a group-based approach would deter some online undertakings from entering into or continuing to operate in the Canadian market. The base contribution framework is intended to apply to large groups whose financial resources allow them to experiment and innovate, and would not apply to smaller online undertakings that do not benefit from similar resources. Ultimately, this approach would mean that only the largest groups, which can structure their business how they like, would be captured in the framework.

45. The Commission has in the past implemented a group-based approach for licensing undertakings of large television ownership groups,[34] and over the last ten years has issued various licensing decisions based on that approach. Adopting a group approach in the present case would also be consistent with other regulatory frameworks in place, such as the Annual Digital Media Survey,[35] the Registration Regulations and the *Broadcasting Fees Regulations*.[36]

46. Finally, a broadcasting ownership group approach would reduce the incentive to allocate revenues inappropriately between several broadcasting undertakings. This approach also recognizes the important advantages from which small online undertakings can benefit by belonging to an ownership group.

47. While some parties expressed concern that a group-based approach may unfairly disadvantage Canadian online undertakings that are affiliated with traditional broadcasters, the Commission has determined that base contributions will not apply to those undertakings.

48. In light of the above, the Commission adopts a broadcasting ownership group approach for the purposes of base contributions.

Revenue threshold for the requirement to make base contributions

49. In the Notice, the Commission sought comments on the revenue threshold to be applied for the new contribution framework. It also noted that online undertakings exempt from the requirement to register would not be required to make base contributions. In light of the exemption threshold of $10 million in annual broadcasting revenues[37] established for the

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[34] In Broadcasting Regulatory Policy 2010-167, the Commission adopted a group-based licensing approach for large private television ownership groups, which it applied at licence renewal. It also adopted a modified group approach for a number of discretionary services (e.g., Blue Ant in Broadcasting Decision 2018-291).

[35] See Broadcasting Regulatory Policy 2022-47.

[36] See Broadcasting Regulatory Policy 2024-65.

[37] Represented as annual Canadian gross revenues less excluded revenue.

Registration Regulations, the Commission only considered proposed thresholds above $10 million in this proceeding.

Positions of parties

50. Certain interveners[38] supported a $10 million threshold based on annual revenues. They considered that such a threshold would maximize participation and contributions, while not imposing an undue administrative burden, nor discouraging online undertakings from entering the Canadian market.

51. TikTok Technology Canada Inc. (TikTok), AMC Networks Inc. (AMC) and the Public Interest Advocacy Centre/National Pensioners Federation/OpenMedia proposed a threshold of $25 million in annual broadcasting revenues for audio undertakings and a threshold of $50 million in annual broadcasting revenues for audio-visual undertakings or for undertakings offering both audio and audio-visual programming content, based on the broadcasting ownership group approach. RCI, Sirius XM Canada Inc. (SiriusXM), the CBC and Cogeco Inc. (Cogeco) proposed the same thresholds, but under an individual-undertaking approach. Further, in the event the Commission implements a broadcasting ownership group approach, certain of these interveners[39] proposed a $10 million threshold.

52. The Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP) submitted that thresholds in the range of $25 million to $50 million are too high if based on individual undertakings, as they could result in exempting up to half of all audio-visual online undertakings, and even more audio undertakings.

53. WildBrain Ltd. (WildBrain) and the IBG submitted that if traditional broadcasting revenues are included, a $50 million threshold should be used for the entire ownership group. Broadcasters including BCE, TELUS, Quebecor and the Société de télédiffusion du Québec (Télé-Québec), as well as the CAB,[40] the MPAC and foreign online services including Paramount Global and Ultimate Fighting Championship (UFC), proposed establishing a $50 million threshold for all online undertakings, based on an individual undertaking approach. Specifically, some of these interveners argued that this proposed threshold would:

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[38] Including the NCRA, Blue Ant, Channel Zero, St. Andrews Community Channel Inc. (operator of CHCO-TV St. Andrews), CHEK Media, the Canadian Media Producers Association (CMPA), the Alberta Media Production Industries Association, the WGC and Meta Platforms Inc.

[39] SiriusXM and RCI.

[40] The CAB specified that if $50 million was too high to capture the major online streamers, then $25 million would be more appropriate.

- be in line with the principle of equity set out in the Government of Canada's policy direction,[41] as it strikes a balance between ensuring contributions from significant online undertakings and considering the financial viability of smaller players;[42] and

- avoid capturing thematic, niche or new or emerging online undertakings that individually are well below the threshold, but would be included if considered as part of a broadcasting ownership group.[43]

54. Tubi, Inc. (Tubi) proposed a $100 million threshold for advertising video-on-demand (AVOD) services, arguing that such services have vastly different financial models and challenges that should be recognized in the contribution framework.

Commission's decisions

55. Paragraph 5(2)(h) of the *Broadcasting Act* states that the Canadian broadcasting system should be regulated and supervised in a flexible manner 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) of that Act.

56. For the present case, the Commission finds that the threshold of $10 million in annual broadcasting revenues proposed by some interveners is too low. The $10 million threshold adopted for the Registration Regulations allows the Commission to collect basic information to better understand the nature and the scope of online undertakings operating in Canada. The objective of the present proceeding is to establish a financial requirement, which constitutes a higher regulatory and financial burden.

57. In the Commission's view, a threshold of $25 million in annual Canadian gross broadcasting revenues less excluded revenue (as defined below), to be referred to as annual contributions revenues, is more appropriate. This threshold would capture the largest broadcasting ownership groups in the audio-visual and audio sectors that have a material impact on the Canadian broadcasting system.[44] It would begin to ensure that they contribute in a way that is commensurate with the place they occupy and the role they play in the system, while ensuring that smaller players can continue to operate without having contribution requirements.

58. Moreover, the Commission finds that a $25 million threshold for broadcasting ownership groups, whether they operate audio or audio-visual undertakings, or both, would be the simplest, most effective way to ensure that the undertakings that fall under the *Broadcasting Act* contribute meaningfully to the Canadian broadcasting system. In

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[41] *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*. Section 4: "[…] The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings."

[42] TELUS.

[43] MPAC, supported by Netflix and Paramount Global.

[44] Based on Canadian broadcasting-related revenues reported in the 2022-2023 broadcast year and recent data collected pursuant to the Registration Regulations.

addition, implementing a single revenue threshold, rather than different thresholds as proposed by certain parties, addresses the fact that many ownership groups operate both audio and audio-visual undertakings. A single revenue threshold avoids the complications that would likely arise as a result of this crossover.

59. In light of the above, the Commission will require online undertakings that either alone make more than $25 million in annual contributions revenues or form part of a broadcasting ownership group that makes more than $25 million in annual contributions revenues to make base contributions.

Calculation of annual contributions revenues

60. Using consistent definitions across the various regulatory policies resulting from the amended *Broadcasting Act* would help to provide certainty and clarity to broadcasting ownership groups in assessing their regulatory requirements. The Commission also recognizes that different circumstances may call for different approaches.

61. With this in mind, for the purpose of determining whether an online undertaking is required to make a base contribution and how much that contribution should be, the Commission finds it appropriate to use the same definition of "annual Canadian gross revenues" (referred to as "annual Canadian gross broadcasting revenues" in this decision) set out for registration purposes in Broadcasting Order 2023-330 and for the basic conditions of service in Broadcasting Order 2023-332. However, for the purposes of the base contribution framework, the Commission also considers it appropriate to amend the list of what count as excluded revenue to better reflect the nature of the obligations and of the services.

Revenues to be excluded

Positions of parties

62. Various interveners commented on the issue of user-generated content in relation to social media services.[45] Among those interveners, some added that the criteria used to define these services should relate to, among other things, (1) social interaction, (2) the primary function of the online undertaking in hosting and facilitating the sharing of user-generated content, and (3) the absence of programming control over such content by the online undertaking providing the service. Google, Meta Platforms Inc. (Meta) and TikTok, among others, considered that the definition of social media service should be as broad and adaptable as possible given that online business models are in constant evolution.

63. The Association des professionnels de l'édition musicale (APEM), the Indigenous Music Alliance (IMA)/the Indigenous Music Office (IMO) and the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), among others, stated that

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[45] These include Google, Meta, TikTok, SiriusXM, Rumble Inc., RCI, the CMF, the Alliance of Canadian Cinema, Television and Radio Artists, SPACQ, ADISQ, the Canadian Independent Music Association (CIMA), Digital First Canada, ACCORD, PIAC/NPF/OpenMedia, the Fédération culturelle canadienne-française (FCCF), Coalition M•É•D•I•A•, MediaSmarts, the Information Technology Industry Council, Champlain Media Inc., Music Canada, the AQPM, the CMPA, the Regulatory Authority for Audiovisual and Digital Communication, and an individual.

attempting to define “social media service” as a category of undertaking is not relevant. They submitted that the Commission must instead examine the broadcasting activities of such services in order to determine the impact, if any, they have on the achievement of the objectives set out in subsection 3(1) of the *Broadcasting Act*.

64. According to Meta, Rumble Inc., Google and TikTok, among others, social media services should be exempted from making contributions, consistent with the provisions of the *Broadcasting Act* and the Government of Canada’s policy direction. Others, including RCI, Friends of Canadian Media (FoCM), the Alliance des producteurs francophones du Canada (APFC) and the Association québécoise de la production médiatique (AQPM), considered that such services should be regulated.

65. FoCM submitted that since social media services monetize user-generated and uploaded content through advertising, making it free to all users, revenues derived from this type of programming should be excluded. It added, however, that revenues derived from providing movies, television programs and music should be included, consistent with section 4.1 of the *Broadcasting Act*.

66. Apple, Spotify and the Digital Media Association (DiMA) considered that podcast services and audiobook services should be exempted from contribution requirements, with DiMA noting that such services fall outside the scope of the regulation. Télé-Québec considered that online undertakings providing video game services should be exempt from the contribution framework. RCI, on the other hand, submitted that podcast platforms, new and emerging services and niche services should not be exempted from the requirement to make base contributions.

Commission’s decisions

Revenues derived from podcast services, video game services, audiobook services and exempt undertakings

67. In Broadcasting Regulatory Policy 2024-65, the Commission determined that broadcasting activities associated with podcasts are not currently expected to generate a significant level of regulatory activity for the Commission. Accordingly, the Commission adopted a straightforward regulatory approach of excluding all podcast revenues from the calculation of fee revenue in the new *Broadcasting Fees Regulations*.

68. In addition to podcasts generating a low-level of regulatory activity for the Commission, recent data indicates that the revenues related to the distribution of podcast services in Canada are also low. In light of this and consistent with the *Broadcasting Fees Regulations*, the Commission considers that including revenues from podcast services in the calculation of base contribution requirements would not contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*. In the Commission’s view, it would be appropriate to adopt a straightforward regulatory approach similar to that used in the *Broadcasting Fees Regulations*. In light of the above, the Commission excludes revenues derived from providing podcast services from the calculation of annual contributions revenues.

69. Further, in the Registration Regulations, in Broadcasting Order 2023-332 (basic conditions of service for carrying on certain online undertakings) and in the *Broadcasting Fees Regulations*, the Commission excluded revenues derived from audiobook services and video game services. It also excluded revenues derived from broadcasting undertakings that are exempt under an exemption order. In the Commission's view, it is appropriate to maintain these exclusions for base contributions.

Revenues derived from the broadcast of user-generated content

70. Subsection 2(2.1) and section 4.1 of the *Broadcasting Act* describe how the Act applies to social media services and users who upload programs on these services. Under the *Broadcasting Act,* the Commission cannot impose regulatory obligations on users of social media services who upload their programs to those services. However, the Commission may impose regulatory obligations on the broadcasting activities of online undertakings that provide social media services.

71. In the Notice, the Commission stated its intention to explore the meaning of "social media service" and sought comments on a possible definition of these services in order to help it develop a clear understanding of the online undertakings that fall unambiguously within its jurisdiction. While certain parties provided input as to how to define "social media service" in the context of contributions, these concepts continue to evolve as the Commission examines social media services and their role in the Canadian broadcasting system.

72. To make sure that the Commission focuses only on content that is subject to the *Broadcasting Act,* the Commission will continue to consult on the role and importance of online undertakings that broadcast user-generated content, along with the underlying question of how to define terms such as "social media service." This will ensure that the Commission clearly delineates which online undertakings and what content are subject to the *Broadcasting Act* as the markets and technologies associated with these services continue to evolve.

73. In light of the above, the Commission is not requiring base contributions on revenues associated with the broadcast of user-generated content. Accordingly, it has broadened the current definition of "excluded revenue" for the purposes of annual contributions revenues. For these contributions, advertising[46] and subscription revenues associated with the broadcast of user-generated content will be excluded. At this time, the Commission understands user-generated content to be any program that is generated and uploaded by a user of a social media or similar service for the primary purpose of interaction with other users of the service.

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[46] This includes advertising uploaded by the online undertaking that appears, for example, on a user's feed, or advertising added by the online undertaking to a program uploaded by a user, such as advertising added at the beginning or in the middle of that program. Reference to "online undertaking" in this context also means the online undertaking's affiliate or the agent or mandatary of either of them.

Revenues to be included

Positions of parties

74. Amazon and Apple considered that revenues derived from transaction-based services (i.e., unique transaction services) should be exempted from contribution requirements. Further, Amazon and Google considered that such an exemption should apply in particular to transactional video-on-demand (TVOD) services. In their view, the unique business model for these services, along with the significant payments made to content rightsowners and these services' declining revenues and low profit margins make the addition of regulated contributions unwarranted.

75. However, other interveners[47] submitted that the Commission should include revenues from TVOD services, or other types of transactional services, due to the significant revenues they generate and their significant impact on the broadcasting system.

76. The MPAC argued that thematic services[48] (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*) should be exempted from contribution obligations, where the Commission is satisfied that, due to their nature or theme, they will not contribute in a material manner to the implementation of the broadcasting policy objectives.

77. Apple proposed exempting fitness services from contribution requirements. Interveners including UFC proposed excluding niche, online undertakings that do not compete with Canadian broadcasting services.

Commission's decisions

Unique transaction services

78. In Broadcasting Regulatory Policies 2023-329, 2023-331 and 2024-65, the Commission decided to include revenues from unique transaction services[49] since the overall market in Canada for unique transaction services is significant,[50] and since their inclusion would avoid regulatory asymmetry between traditional and online services. Similarly, in the context of this proceeding, the Commission notes that online undertakings deriving revenue from unique transactions, in addition to advertising and subscription revenues, draw significant audiences and derive significant benefits from the Canadian broadcasting system.

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[47] Including Corus, the Documentary Organization of Canada (DOC), the Directors Guild of Canada (DGC), the CMPA and Telefilm Canada.

[48] At the public hearing, the MPAC provided Sony's Crunchyroll as an example of a thematic service.

[49] In the Notice, the Commission proposed to define a "unique transaction" as a one-time rental or purchase of an individual program transmitted or retransmitted over the Internet. This definition is consistent with that used in Broadcasting Regulatory Policy 2023-329 for the exemption order regarding the Registration Regulations.

[50] Online undertakings (both audio and audio-visual) reported over $280 million in transactional Canadian revenues in the 2022-2023 broadcast year (or closest four fiscal quarters).

79. Accordingly, the Commission will include the revenue derived from providing unique transaction services as part of annual contributions revenues for the purpose of base contributions.

Thematic or niche services

80. Excluding the revenue derived from broadcasting activity based on the theme or nature of the content (e.g., niche services) would require assessing such content individually. This would be both complex and subjective since most undertakings or groups of undertakings offer services or content that could be considered "niche." This type of exclusion would create uncertainty for broadcasters, and would utilize significant resources of broadcasters and the Commission to process. In addition, the Commission finds that thematic or niche content and services play an important role in the broadcasting system, even if they may not compete directly with traditional broadcasters or online services.

81. Accordingly, the Commission will include the revenue derived from providing thematic and niche services as part of annual contributions revenues for the purpose of base contributions.

Conclusion

82. In light of the above, the Commission will apply the following definition of "excluded revenue" for the purposes of base contributions:

> ***excluded revenue*** means 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.

83. For clarity, any annual Canadian broadcasting revenues derived from any other broadcasting activity are to be included in the annual contributions revenues for the purpose of base contributions.

How much should online undertakings contribute?

84. In the Notice, the Commission stated that a modernized contribution framework should recognize that each broadcasting undertaking or group of undertakings is unique, while ensuring the principles of regulatory fairness and equitability are upheld across all contributors. It sought comments on the percentage of revenues that applicable audio-visual and audio online undertakings would be required to make as base contributions to support Canadian and Indigenous content.

Positions of parties

85. Traditional broadcasters generally stressed the need for equitable contributions from all industry players to support Canadian and Indigenous content and ensure industry sustainability.

86. Many interveners[51] considered that for online undertakings, a contribution level of 5% based on annual revenues would be appropriate, while some proposed higher percentages. Specifically, BCE, echoed by the CBC, Corus, Cogeco and the CAB, proposed base contribution levels that are "similar to the current contribution levels for broadcasting undertakings having comparable activities on traditional platforms." They generally proposed a 20% contribution level for audio-visual online undertakings, 5% for virtual BDUs and 4% for audio online undertakings. Unifor proposed a 7% contribution level, and indicated that it supported a platform-agnostic approach.

87. TELUS proposed a contribution level of 3% of annual revenues for online distribution undertakings, and that the requirement for traditional distributors be reduced from 5% to 3% at the same time. RCI 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 artistes (UDA) (joint intervention) (collectively ARRQ-GMMQ-SARTEC-UDA) proposed, respectively, 2% and 5% contribution levels for both audio-visual and audio online undertakings.

88. ADVANCE (Canada's Black music business collective) and ACCORD[52] considered a contribution level of 5% of annual revenues to be an appropriate start.

89. Finally, SiriusXM and the Canadian Independent Music Association (CIMA) considered that audio online undertakings should be required to contribute at least 4% of their annual revenues to support Canadian and Indigenous artists and content, which would align with the long-standing requirement in this regard for satellite radio and pay audio services.

90. Most online services opposed directing base contributions to funds, expressing a preference for direct expenditures in production or other forms of contributions. Accordingly, they did not propose a specific contribution level. At the hearing, Netflix reiterated its opposition but stated that contributions to funds should be no more than 2% of Canadian broadcasting revenues, in line with the median levy seen internationally. The MPAC acknowledged in its final submission that proposals for a base contribution of 2% or 3% would be generally consistent with the averages on the overall contribution levels in the European Union.

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[51] The AQPM, the APFC**,** Blue Ant**,** the CMF, the Canadian Independent Screen Fund for BPOC creators, Channel Zero, the CMPA, the DGC, FoCM, the Racial Equity Media Collective, the Racial Equity Screen Office, the WGC and WildBrain. The position of the DOC varied slightly from that of other interveners, as it proposed a base contribution level of 5-10% of online undertakings' annual revenues.

[52] ACCORD represents the following supporting organizations: the APEM, the Canadian Council of Music Industry Associations, the Canadian Musical Reproduction Rights Agency, Music Publishers Canada, the Songwriters Association of Canada, the Screen Composers Guild of Canada, SOCAN and the SPACQ.

91. UFC submitted that the overall contribution requirement imposed on undertakings that broadcast niche programming should be lower than that imposed on television groups or online undertakings with broader operations. It considered that a contribution level similar to that for commercial radio stations would better reflect what they see as the limited impact that these undertakings have on the Canadian broadcasting industry.

92. In Google's view, the imposition of a base contribution requirement should recognize the substantial existing contributions made by online undertakings. It added that a requirement in line with the approach applied by the Commission in regard to Canadian content development (CCD) contributions for commercial radio stations would be more appropriate.

93. Spotify noted that it distributes nearly 70% of its music revenue to rightsholders, a figure substantially higher than what traditional radio offers, and that it supports artists through investments in local markets. It added that contribution requirements for music streaming services should be set lower than those for traditional radio to prevent placing those streaming services at an economic disadvantage. Google and Apple expressed similar views.

Commission's decisions

94. Base contributions set the foundation for a modernized contribution framework. In future proceedings, based on the evidence submitted, the Commission may consider other types of contributions, such as direct expenditures on certain types of programming, the carriage of certain services, or the promotion, discoverability and prominence of Canadian or Indigenous content. The Commission may also adjust overall contributions of traditional and online broadcasters as it moves forward with the implementation of the amended *Broadcasting Act*.

95. Of the interveners who commented on contribution levels, most supported a 5% contribution level for audio-visual online undertakings, and a contribution level of at least 4% for audio online undertakings. In the Commission's view, any base contribution must be meaningful in order to support important elements of the Canadian broadcasting system. Accordingly, the Commission finds that a base contribution level of 5% of annual contributions revenues for both audio-visual and audio online undertakings is appropriate. The Commission also considers that this level is fair given the size and nature of the undertakings to which it will apply.

96. For the audio-visual sector, a 5% base contribution requirement is similar to the financial requirement imposed on licensed and certain exempt BDUs as well as on licensed on-demand services. This level is well below the Canadian programming expenditure (CPE) requirements imposed on the services of large television groups (which generally range from 30% to 45% of annual gross revenues), and the minimum 10% CPE requirement imposed on licensed independent television services.

97. For the audio sector, if looking strictly at financial contribution requirements, a 5% base contribution requirement is in the same range as that imposed on satellite radio services (4%), but is higher than the financial requirement imposed on commercial radio stations

(roughly 0.5%). The Commission notes that with the rise of streaming and the shift in advertising revenues from traditional media to online platforms, among other factors, financial contributions within the radio sector have experienced even greater declines than those experienced by BDUs.[53] A 5% requirement for online audio undertakings will help mitigate these declines.

98. Regarding the argument by Spotify and other interveners that contribution requirements for music streaming services should be set lower than those for traditional radio given the royalty payments they make, the Commission considers that royalty payments are an inherent cost of making musical content legally available to users and should not offset contribution obligations. Further, the Commission has historically not taken royalty payments into account when setting financial or other requirements for radio stations.

99. Online undertakings, like Canadian radio, television and distribution undertakings, have access to Canadian audiences and Canadian revenues. However, online undertakings do not have CPE, CCD or programming requirements. Base contributions would ensure that they make meaningful contributions to the Canadian broadcasting system.

100. In light of the above, the Commission will require that applicable online undertakings devote at least 5% of their annual contributions revenues from the previous broadcast year to support the creation of Canadian and Indigenous content in each year, starting in the 2024-2025 broadcast year (i.e., 1 September 2024 to 31 August 2025).

Funds eligible to receive base contributions

101. In the Notice, the Commission solicited comments on, among other things, the possible funds that could be the recipients of base contributions, and whether it should consider the creation of new funds.

Allocation of base contributions in the audio-visual sector

Positions of parties

102. Certain interveners, including the APFC, the CMF, the CAB, the AQPM, Blue Ant and Telefilm Canada, proposed allocating base contributions to existing funds given that creating new funds could dilute the money distributed, affect the efficiency of existing funds, and lengthen the time it would take for new contributions to flow back into the broadcasting system.

103. Interveners including the Writers Guild of Canada, WildBrain and TELUS considered the CMF to be best placed to receive base contributions, with the APFC and the AQPM noting the key role played by the CMF in supporting French-language content. Various

[53] Contributions from the radio sector declined by 38.8% between the 2011-2012 and 2021-2022 broadcast years. Contributions by BDUs were down 22.7% over the same period. Source: Annual highlights of the broadcasting sector 2021-2022 | CRTC.

interveners[54] proposed that 80% be directed to the CMF and 20% to Certified Independent Production Funds (CIPF), which represents the ratio set out in the *Broadcasting Distribution Regulations* for BDUs. On the other hand, interveners including MPAC, Netflix, Paramount Global and Google opposed base contributions being allocated to the CMF given that they are currently not eligible to access CMF funding.

104. Other interveners proposed creating new funds to support services of exceptional importance, fiction or documentaries, youth content, official language minority community (OLMC) content, news and feature films from racially diverse producers, as well as training and accessibility.

105. Interveners representing both English- and French-language OLMCs stressed the need to support productions produced in minority settings, and in particular the importance of financing OLMC productions given the decline in the volume of these productions. Certain associations[55] proposed that 10% of the base contributions be allocated to English-language OLMC productions, along with the creation of a new OLMC independent production fund. Other associations[56] proposed increasing support for OLMC content, noting a significant decline in OLMC productions in the programming of broadcasting undertakings. The APFC proposed that not less than 15% of base contributions be dedicated to French-language OLMC content.

106. Several interveners proposed that a portion[57] of the base contributions be specifically devoted to CIPFs that target support for Indigenous content and content from racialized and diversity groups, in particular the ISO Fund, the Black Screen Office (BSO) Fund and the CISF. The ISO stressed that support for Indigenous content must be independent from support for equity-deserving groups, and proposed that it receive 10% of the base contribution.

107. The Canadian Media Producers Association (CMPA) proposed including the Broadcasting Accessibility Fund (BAF) and the Broadcasting Participation Fund (BPF) as recipients. Including these funds as recipients was supported by many foreign online services[58] as well as by the MPAC and The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE).

108. Several interveners argued that base contributions should support news content, with many citing the crisis that is currently shaking up the news ecosystem. In this regard,

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[54] Including the CMPA, the DGC, the ISO, the Independent Production Fund (IPF), the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the CBC and the DOC.

[55] The Quebec Community Groups Network, the English-Language Arts Network of Quebec and the Quebec English-Language Production Council.

[56] The FCCF and the Fédération des communautés francophones et acadienne du Canada (FCFA).

[57] The proposed percentages varied, ranging from 5% or less (FoCM, BCE, the CAB and the Black Screen Office Fund) to between 20% and 35% (Racial Equity Media Collective).

[58] Including Apple, Amazon and Netflix.

broadcasters including 0859291 B.C. Ltd. (CHEK Media), RNC[59] and Corus proposed that a portion of base contributions be dedicated to the Independent Local News Fund (ILNF).[60] However, some interveners proposed the creation of new funds to support the following:

- news programs produced by vertically integrated undertakings, which would centralize support for news and information programs under a single fund and be accessible by both vertically integrated and independent undertakings;[61]
- news made by local media, similar to the now defunct Local Programming Improvement Fund;[62] and
- local and community news that would offer financing to all commercial radio and television stations, along with community stations and channels producing local or regional news.[63]

109. While the CMPA supported proportionate and measured support for news, it considered that contributions in this regard should be over and above base contributions, so as not to divert financing from production funds.

110. The MPAC, Netflix, The Walt Disney Company, including Buena Vista International, Inc., and Paramount Global opposed directing base contributions to support news programs, given that they do not produce this type of content.

111. Some interveners[64] proposed that the portion of the CMF's budget allocated to French-language productions be set at 40%, and considered that this level should be applied to CIPFs as well, arguing that original French-language productions are underfunded. FilmOntario and the CMPA opposed any such increase in support for French-language content.

112. Finally, several foreign online services including Amazon, Netflix and Tubi requested that their current expenditures on Canadian programming be deducted from base contributions. They stated that they preferred to directly invest in production rather than contribute to funds that will subsequently serve their Canadian competitors and to which they do not have access.[65]

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[59] RNC added that a specific percentage of funding should be directed to French-language content given that the current allocation of Independent Local News Fund funding for such content is limited.

[60] Managed by the CAB, the ILNF provides funds to traditional private television stations that offer local news and information, and that do not belong to a vertically integrated group.

[61] This proposal was made by Quebecor, BCE and RCI. RCI considered that access to this new fund should also be provided to radio stations, a viewpoint not shared by Quebecor or BCE.

[62] This proposal was made by Unifor. The defunct Local Programming Improvement Fund was phased out starting in 2012 (see Broadcasting Regulatory Policy 2012-385) and was amalgamated with the ILNF.

[63] This proposal was made by the CPSC-SCFP.

[64] Quebecor, the AQPM, the ARRQ-GMMQ-SARTEC-UDA, ADISQ, Coalition M•É•D•I•A•, the Alliance nationale de l'industrie musicale, the APFC, Télé-Québec, the FCCF, the FCFA and the DOC.

[65] The issue of access to funds by foreign online undertakings is addressed below.

Commission's decisions

113. The Commission appreciates the proposals made by certain interveners to create new funds in the audio-visual sector. However, to ensure that base contributions are simple and that contributions flow quickly into the broadcasting system, the Commission finds it appropriate to use existing funds.

114. The Commission has determined that base contributions should be directed to areas of immediate need, including news, French-language content, Indigenous content, content created by and for equity-deserving groups, and content made by OLMCs and diverse communities. These elements of the Canadian broadcasting system fulfill particular needs, as reflected in the policy objectives of the *Broadcasting Act*.[66] It is the Commission's view, that there is a need for additional support for these elements of the broadcasting system that would otherwise not be sustainable.

115. In making its decisions on the recipients of base contributions, the Commission has considered funds that provide support to one or many of the above-noted elements of the *Broadcasting Act*.[67] As such, the Commission has designated funds that are eligible recipients of the base contributions that audio-visual online undertakings will be required to make. These funds will support:

- news;
- French-language content;
- Indigenous content;
- content created by and for equity-deserving groups; and
- other Canadian audio-visual content, including content made by OLMCs and diverse communities.

Support for news

116. News is a fundamental element of the broadcasting system. However, it is very expensive to produce. As announced in the Commission's regulatory plan, the Commission intends to launch a consultation on the accessibility and sustainability of broadcast news on television, radio and online, taking into account how the market and audience expectations may change.

117. In the meantime, the Commission acknowledges that there is a need to increase support for news production. For this reason, the Commission will require online undertakings to allocate at least 1.5% of the annual contributions revenues derived from their audio-visual activities to the ILNF. The Commission notes that the consistent decline of BDU revenues

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[66] See, in particular, subparagraphs 3(1)(d)(iii.1), 3(1)(d)(iii.5), 3(1)(d)(iii.6), 3(1)(d)(iii.11), 3(1)(i)(i.1), 3(1)(i)(ii.1), 3(1)(i)(ii.2) and 3(1)(i)(iii.5).

[67] For example, the CMF supports French-language productions, producers from Black and racialized communities, Indigenous content and OLMC producers.

since 2014[68] has impacted ILNF funding, which in turn can affect local news operations provided by independent television stations. In the Commission's view, the 1.5% allocation is appropriate for providing critical support to local independent news broadcasters that provide timely and fact-based information to the communities they serve. It will also reflect the importance of independent broadcasting undertakings and the provision of news coverage as set out in the *Broadcasting Act*,[69] and will ensure that the independent broadcasters supported by the ILNF continue to be able to play a vital role within the broadcasting system.[70]

118. While online streaming services argued that they should not be required to support news production given that they do not produce news content, the Commission notes that not all traditional broadcasters that currently pay into funds are able to benefit from those funds. For example, BDUs, who are required to contribute to the ILNF, are not recipients of its funding and therefore do not benefit from it. Contributions to funds are meant to address the above-noted areas of immediate need in the broadcasting system as a whole.

119. The contributions will significantly increase the amount of money being distributed by the ILNF. For this reason, the Commission will launch in the near future a focused review of the ILNF to consider the allocation method and other elements of the fund, along with the eligibility of certain independent broadcasters to access the fund. The Commission intends to finalize this process during the 2024-2025 broadcast year to ensure that ILNF recipients benefit from the contributions as soon as possible.

Support for French-language content

120. French-language content is an important aspect of the Canadian broadcasting system. The Commission recognizes the importance of this content and considers that there is a need to further support its creation and production. Moreover, while online streaming services have access to French-language audiences and the revenues derived from those audiences, these services generally do not produce or make significant investments in French-language content. The Commission has considered the above in its determinations.

Support for Indigenous content

121. In the Notice, the Commission stated that there is a need for funds that better support programs that serve the needs and interests of Indigenous peoples. On 8 November 2023, the Commission approved the certification of the ISO Fund as a new Indigenous-led CIPF, with a mandate to support Indigenous narrative sovereignty through storytelling on screen. As noted above, many interveners requested that a portion of base contributions be allocated to the ISO Fund.

122. The amended *Broadcasting Act* places greater emphasis on the importance and role of Indigenous broadcasters and creators in the Canadian broadcasting system. In the Commission's view, contributions to the ISO Fund would help foster Indigenous

[68] Source: Open Data – BDU U-T10.

[69] See subparagraphs 3(1)(d)(iii.5) and 3(1)(i)(ii.1).

[70] In line with subparagraph 3(1)(d)(iii.5).

production and Indigenous narrative storytelling within the screen industry. Moreover, additional contributions to the ISO Fund would advance many of the policy objectives set out in the *Broadcasting Act*, such as support for the production of Indigenous programming and for providing opportunities to Indigenous persons to produce programming in Indigenous languages, in English or in French, or in a combination of those languages.

123. In light of the above, the Commission will require that at least 0.5% of an online undertaking's annual contributions revenues derived from audio-visual activities be allocated to the ISO Fund, a level that is in line with what the ISO proposed.

Support for content created by and for equity-deserving groups

124. Supporting equity-deserving groups is another important objective of the *Broadcasting Act*.[71]

125. The following funds specifically support this policy objective:

- the BSO Fund, a new CIPF that supports the production of Black-led content and the advancement of Black Canadian producers and creators in the industry;
- the CISF, a CIPF that supports Black and People of Color (BPOC) creators for the development and production of their screen-based projects; and
- the BAF, an independent and impartial funding body that provides grants for innovative projects that advance accessibility to broadcasting content in Canada.

126. Accordingly, the Commission will require that at least 0.5% of an online undertaking's annual contributions revenues derived from audio-visual activities be allocated to one or a combination of the three above-noted funds, at the discretion of the online undertaking. These contributions will support the creation and availability of programming by producers who are members of equity-deserving groups, including Black or other racialized communities, and accessibility of programming.

127. The Commission considers that a flexible requirement is appropriate because multiple funds exist to support related policy objectives. Moreover, this level of support should contribute to the funding capabilities of these funds and sustained support for equity-deserving groups.

Support for Canadian audio-visual content

128. It is the Commission's view that supporting Canadian audio-visual content continues to be a priority. It is important for Canadians to see themselves in the content they watch and that this content reflects the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples and languages within that society.

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[71] See subparagraph 3(1)(d)(iii).

129. The Commission considers that the CMF is a well-established fund that plays an important role in the funding of audio-visual productions in the broadcasting system. While the CMF receives public funding, the portion of its contributions from BDUs has been declining (due to the decline in BDUs' annual revenues).[72]

130. The CMF finances projects through many different streams and envelopes, supporting, among other things, French-language productions, producers from Black and racialized communities, Indigenous content and OLMC producers. In particular, the CMF devotes a third of its annual budget to original French-language production. As such, contributions to the CMF would support producers from these various communities.

131. The Commission notes that foreign online services were opposed to base contributions flowing to the CMF given what they considered to be the limited genres of programming it supports and the fact the foreign online services are currently not eligible to receive CMF funding on their own (the CMF currently requires the involvement of a Canadian broadcaster).[73] However, as part of the CMF's ongoing process to modernize its program model, it indicated its willingness to continue to adapt its policies to serve a continually evolving market and to expand the types of entities that can receive CMF funding.

132. In light of the above, the Commission will require that at least 2% of an online undertaking's annual contributions revenues derived from audio-visual activities be allocated to the CMF. In the Commission's view, this contribution level is appropriate given the CMF's proven track record of successful support for and financing of audio-visual content in Canada, and in particular French-language content.

133. As previously noted, foreign online services argued that they already make significant expenditures on Canadian productions and that these should be considered as part of the base contributions. To provide flexibility and to encourage online undertakings to produce Canadian content, the Commission will allow online undertakings to contribute up to 1.5% of their annual contributions revenues derived from audio-visual activities to the production or acquisition of certified Canadian content – the remainder (0.5%) must be allocated to the CMF.[74] Should online undertakings avail themselves of this incentive, these expenditures can only be deducted from their contribution requirement to the CMF (2%).

134. The Commission considers that the above incentive must encourage production in both official languages. Accordingly, of the 1.5% in expenditures that online undertakings will be allowed to deduct from the portion of the base contributions to be directed to the CMF, a maximum of 60% can be allocated to English-language productions and a maximum of

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[72] Source: [Open Data]() – BDU U-T10.

[73] As indicated in the Notice, most of the CMF's allocations are disbursed through the Performance Envelope Program, which relies on partnerships between Canadian broadcasters and Canadian producers to create content being developed for distribution. While broadcasters receive a funding envelope allocation based on their track record of supporting Canadian content, the funds for these projects go directly to applicants.

[74] Certification from either the Canadian Audio-Visual Certification Office (CAVCO) or the Commission, including international co-productions and Commission-recognized co-ventures, under the current definitions would be required. The definitions of Canadian content will be examined in an upcoming proceeding.

40% to French-language productions. The Commission notes that this 60-40 ratio is in line with the proposals of several interveners in the French-language market.

135. In other words, to make full use of this incentive (1.5%), online undertakings must make expenditures in both languages within the 60-40 ratio. However, if an online undertaking only makes expenditures towards English-language certified Canadian content, it can only deduct from its contribution requirement to the CMF a maximum of 0.9% (that is, 60% of the total 1.5% incentive) of its annual contributions revenues.

Support for OLMCs and diverse communities

136. In the Notice, the Commission stated that funds financed through the regulatory framework need to reflect the broadcasting policy for Canada set out in the amended *Broadcasting Act*. There is a need for funds that will better support content serving the needs and interests of OLMCs and Canadians from diverse communities.

137. The Commission considers that it is important to encourage CIPFs to better serve the needs of these communities.[75] In order to do so, the Commission will allow certain CIPFs that allocate at least 10% of their total budget[76] to a permanent envelope dedicated to OLMC producers (in either official language) and producers from diverse communities[77] to be eligible[78] to receive contributions from audio-visual online undertakings.

138. In the Commission's view, this would strike a balance between ensuring that funds have a meaningful envelope dedicated to these important purposes while maintaining the independence of their funding decisions. Further, considering the strong support for more OLMC funding throughout the proceeding, the Commission determines that 50% of this new envelope must be dedicated to projects by OLMC producers.

139. The Commission will require online undertakings to allocate at least 0.5% of their annual contributions revenues derived from audio-visual activities to one or a combination of the eligible CIPFs. This contribution level will provide additional support for the eligible CIPFs, whose funding from BDUs has also declined, and will further help these funds to continue supporting Canadian programming, including programming by OLMCs and producers from diverse communities. The Commission considers that these contributions will support the creation of programming in both official languages and programming by producers who are members of equity-deserving groups.

140. Any CIPF, other than the ISO Fund, the BSO Fund and the CISF, wishing to be eligible to receive contributions from audio-visual online undertakings must file an application with

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[75] Consistent with subparagraph 3(1)(d)(iii) of the *Broadcasting Act*.

[76] Total of the contributions from BDUs, as well as possible new contributions from audio-visual online undertakings.

[77] Including Canadian producers from Black or other racialized communities and Canadian producers of diverse ethnocultural backgrounds, abilities and disabilities, sexual orientations, gender identities and expressions.

[78] As the ISO Fund, the BSO Fund and the CISF will be eligible to receive base contribution amounts, as outlined above, they will not be eligible for this contribution.

the Commission, within 120 days of the publication of this regulatory policy, confirming that:

- it will allocate at least 10% of its total budget to an envelope dedicated to OLMC producers (in either official language) and producers from diverse communities,[79] of which a minimum of 5% will be allocated to OLMC producers;
- the envelope will be permanent, and the CIPF will continue to respect the criteria, clarifications and reporting requirements for CIPFs set out in Broadcasting Regulatory Policy 2016-343; and
- in its existing annual CIPF report, it will demonstrate that the minimum spending requirements were met by indicating: 1) the amount and percentage of total funding allocated to projects supporting OLMC producers, by language; 2) the amount and percentage of total funding allocated to projects supporting producers from diverse communities; and 3) the amount of total funding received from licensed undertakings and audio-visual online undertakings.

141. Applications must be accompanied by written confirmation of the above that is approved and signed by the Board of Directors. Applications will be processed administratively (that is, without a public process).

142. Applications filed in regard to the above must be submitted in electronic form by using the secured service “My CRTC Account” (Partner Log In or GCKey).

143. The list of eligible CIPFs will be posted on the Commission’s website in the 2024-2025 broadcast year. The 0.5% contribution must be held by the online undertaking 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 CMF.[80]

144. The Commission will consider the success of this new envelope as part of any future CIPF review.

Summary of the allocation of audio-visual online undertakings’ base contributions

145. The following table summarizes the allocations of base contributions that audio-visual online undertakings will be required to make to the various funds, where the contribution level equals a percentage of an undertaking’s annual contributions revenues.

[79] Including Canadian producers from Black or other racialized communities and Canadian producers of diverse ethnocultural backgrounds, abilities and disabilities, sexual orientations, gender identities and expressions.

[80] In such case, the Commission would post this information on its website, and the CMF’s dedicated portion would represent 2.5%.

Funds	Contribution level
Canada Media Fund (CMF) Incentive: Online undertakings will be allowed to deduct from this contribution any certified Canadian content expenditures (production or acquisition) of up to 1.5% of annual contributions revenues, of which a maximum of 60% (0.9% of annual contributions revenues) can be allocated to English-language productions and a maximum of 40% (0.6% of annual contributions revenues) to French-language productions)	**2%**
Independent Local News Fund	**1.5%**
Indigenous Screen Office (ISO) Fund	**0.5%**
Diversity and inclusion funds Allocation to any or a combination of the Black Screen Office (BSO) Fund, the Canadian Independent Screen Fund for BPOC creators (CISF), and the Broadcasting Accessibility Fund	**0.5%**
Certified Independent Production Funds (CIPF) (excluding the ISO Fund, the BSO Fund and the CISF) with a permanent envelope to support official language minority community producers and producers from diverse communities[81] Allocation to any or a combination of eligible CIPFs. If no existing CIPF comes forward, the contribution must be allocated to the CMF.	**0.5%**
Total	**5%**

Access to audio-visual funds by foreign online undertakings

Positions of parties

146. Various interveners raised the issue of access to funding, in particular audio-visual funds.[82] Specifically, interveners including Netflix, Google, Apple and Amazon considered that they should be able to access funds to which they would be required to contribute. Most other interveners (including interveners from the Canadian music sector) opposed such a proposal as they considered that the contribution framework should not be self-serving.

Commission’s decision

147. Paragraph 3(1)(f.1) of the *Broadcasting Act* sets out that each foreign online undertaking “shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming.” The Commission considers that it is essential to ensure that the principles of regulatory fairness and equitability are upheld across all contributors.

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[81] Including Canadian creators from Black or other racialized communities and Canadian creators of diverse ethnocultural backgrounds, abilities and disabilities, sexual orientations, gender identities and expressions.

[82] The Commission notes that the issue of access does not apply in the same way to audio online undertakings given that traditional radio broadcasters also do not have access to the music funds; instead, they benefit from the subsequent creation of Canadian music, which they can air to attract audiences.

148. The Commission’s current contribution framework requires certain Canadian broadcasters to make contributions to funds to which they do not necessarily have access. For instance, for audio-visual undertakings, while most of the contributions made by BDUs must be directed to the CMF, with the remainder to be directed to one or several CIPFs and to the ILNF, BDUs cannot access such funds to support their own purposes. As an example, TELUS and Cogeco (BDUs) are required to contribute to these funds and cannot directly or indirectly benefit from these contributions since they do not operate television programming services.

149. In addition, the Commission is not convinced that foreign online undertakings are entirely unable to access funds. While it is true that access to CMF funding requires the participation of Canadian programming undertakings, the CMF provided examples of CMF-funded projects that also involved foreign online undertakings.[83] There is also nothing in Broadcasting Regulatory Policy 2016-343 that prohibits CIPFs from funding a project involving a foreign online undertaking, provided that the project achieves at least six points for Canadian content certification or is eligible as a pilot project recognized by the Commission and is available on a platform accessible by Canadians.

150. In light of the above, the Commission finds that directing base contributions to the various funds described above is a proportionate and equitable measure.

Allocation of base contributions in the audio sector

Positions of parties

151. Interveners including traditional broadcasters and members of the Canadian music community[84] generally considered that existing music funds (i.e., FACTOR, Musicaction, the Canadian Starmaker Fund[85] and Fonds RadioStar) are successful in meeting the objectives of the *Broadcasting Act*. They considered that a significant portion of base contributions should be allocated to these funds.[86]

152. However, certain of these interveners noted ways in which the existing funds could improve their support for OLMCs, Indigenous content, diversity, inclusion and accessibility. ADISQ indicated that envelopes specifically dedicated to these communities could be administered by existing funds. Other interveners supported similar changes within existing funds to enhance support for Indigenous communities and equity-deserving groups.[87] The Alliance nationale de l’industrie musicale highlighted the success of

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[83] The CMF stated that *Untitled Arctic Comedy* (now *North of North*) is an example of a CMF-funded series that was co-commissioned by two Canadian broadcasters and Netflix.

[84] Including BCE, RCI, Cogeco, SiriusXM, the CAB, the CBC, Nettwerk Music Group Inc., the CIMA, ADISQ, the ARRQ-GMMQ-SARTEC-UDA and ACCORD.

[85] Formerly Radio Starmaker Fund.

[86] The CAB, Cogeco and Corus, notably, recommended that about 60% of base contributions be allocated to the support of existing funds supporting Canadian music.

[87] Including CIMA, SiriusXM, ACCORD, BCE and the CAB.

Musicaction's dedicated funding for OLMCs, indicating that enhanced support for OLMCs through Musicaction would be preferable as opposed to the creation of new funds.

153. Music Canada specifically supported the growth of the Canadian Starmaker Fund, and highlighted the fund's Orion program, which was launched to support members of the music industry who are Black, Indigenous and People of Colour.

154. Interveners from the Canadian music sector[88] commented on the allocation between the two main language markets, indicating that 60% of base contributions should go towards funds supporting the English-language music market and 40% to funds supporting the French-language music market.

155. Moreover, many interveners from the community radio sector, along with various individual Canadians, considered the Community Radio Fund of Canada (CRFC) to be an efficient tool to help meet the objectives of the *Broadcasting Act*. This sector[89] was overall in support of directing base contributions from online undertakings to the CRFC to help it implement a new, $25 million funding stream to provide core resources for community, Indigenous and campus radio stations. Interveners including SiriusXM, RCI and Cogeco[90] also supported additional funding for the CRFC.

156. Certain interveners proposed instead the creation of new funds. Many interveners (including the CAB, Unifor, FoCM and the OAB) proposed the creation of new funds that would target the production of quality local news by traditional undertakings, including radio. To that end, interveners from the commercial broadcasting sector[91] proposed establishing a temporary news fund that would be administered by the CAB,[92] who stated its willingness to do so if requested. The CAB itself recommended that 30% of base contributions from online undertakings be set aside to support news programming by radio and television broadcasters. Cogeco proposed that 20% of contributions from online undertakings be allocated to support news.

157. Makusham Musique noted the multiple challenges faced by Indigenous artists and music companies in accessing funding from existing funds. It recommended that 10% of the contributions from online undertakings be allocated to the creation of a new fund to support Indigenous music, to be administered by and for Indigenous peoples. The IMO[93] shared a similar viewpoint and proposed to be a recipient of the base contributions, indicating it could play a key role in advocating for Indigenous music and artists and the Indigenous-owned music industry. Makusham Musique expressed concerns over the IMO's ability to represent Indigenous peoples for whom the second language is French and

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[88] Including ADISQ, APEM and SPACQ.

[89] Including the NCRA, the Association des radiodiffuseurs communautaires du Québec, Radio Sidney, Radio Queen's University, and individuals.

[90] Cogeco recommended that 15% of base contributions be allocated to the CRFC.

[91] Including Bell, Corus, RCI, the ARRF and Cogeco.

[92] In response to a Commission request for information, the CAB indicated that all private radio and conventional television stations that provide news and information would be eligible to access this temporary news fund.

[93] Supported by the IMA.

not English, and considered that an Indigenous music fund should be set up following a consultation that the Commission could facilitate. Other interveners[94] also supported the creation of a new fund to support Indigenous music, to be administered by and for Indigenous peoples.

158. ADVANCE, supported by Music Canada, proposed that it be a recipient of base contributions so that it can administer and oversee a fund that would prioritize Black-led labels, booking agencies, artist management companies, and publishers.

159. Other interveners proposed directing base contributions towards support for Canadian artists and workers in the music industry who are experiencing hardship or crisis,[95] for media literacy[96] and for accessible audio and audio-visual programming for the benefit of hearing and viewing impaired audiences.[97]

160. Finally, audio online services generally opposed being directed to contribute to existing funds supporting local news production and Canadian musical works. They argued that they currently invest in the production and/or promotion of Canadian and Indigenous musical content, including through marketing campaigns, sponsorships, training, and collaborations. Certain interveners, including Apple, Google and Amazon, considered that they should have the ability to create their own funds and/or determine themselves the funds to which they would contribute.

Commission's decisions

Existing funds

161. Existing funds have provided sustainable financing for the development and promotion of Canadian content, helping many artists build their careers. Certain funds that intervened in this proceeding have demonstrated their capacity to manage a large influx of new resources, as exemplified by the COVID-19 emergency funding programs that they were mandated to deliver on behalf of the Department of Canadian Heritage.

162. These funds also provided clear examples of recent initiatives to strengthen support towards Indigenous content and to foster diversity and inclusion. For example, FACTOR, using CCD contributions, provided funding over a three-year period to help launch the IMO, and funded an initiative led by ADVANCE. Musicaction stated that it has developed an Indigenous entrepreneurship accompaniment initiative to establish relationships with and offer personalized training for Indigenous industry professionals. It also has a dedicated jury for francophone OLMC artists. The CRFC has secured funding sources to support Indigenous languages and created the Amplifying Voices program.

163. The declining revenues faced by Canadian radio stations, combined with a significant reduction in the number of transactions yielding tangible benefits, have had a negative

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[94] Including the CAB, Music Canada, All Out Arts Management, the NCRA, Corus, RCI and FoCM.

[95] This proposal was made by Unison Fund, supported by Music Canada.

[96] This proposal was made by MediaSmarts.

[97] This proposal was made by Vues & Voix.

impact on contributions paid to existing funds. Channeling base contributions from online undertakings to these funds would be simple and efficient. It would also recognize their demonstrated ability to adapt to an evolving environment and provide funding to support the development and promotion of Canadian and Indigenous content.

164. FACTOR and Musicaction, the pillar funding organizations for the Canadian music sector, have long demonstrated their expertise in managing resources from the Department of Canadian Heritage as well as CCD contributions from radio stations. For these reasons, the Commission will require online undertakings to allocate to these existing funds at least 2% of annual contributions revenues derived from audio activities, with 60% of that amount to be directed to FACTOR and 40% to Musicaction.

165. The Canadian Starmaker Fund and Fonds RadioStar are currently funded strictly through CCD contributions stemming from tangible benefits. The Commission will require online undertakings to allocate to these existing funds at least 0.5% of annual contributions revenues derived from audio activities to ensure the sustainability of these funds going forward. Of these contributions, 60% must be allocated to the Canadian Starmaker Fund and 40% to Fonds RadioStar.

166. However, the Commission acknowledges that Indigenous interveners and interveners from equity-deserving groups identified systemic barriers that persist within the current framework and prevent them from fully benefiting from funding opportunities.

167. FACTOR and Musicaction offer dedicated funding streams for OLMC artists and do offer in their main programs support to some extent to Indigenous artists and Indigenous music organizations, and artists from equity-deserving groups and organizations representing those groups. However, there are no dedicated funding streams available to those Indigenous artists and music organizations or to artists from equity-deserving groups and organizations representing those groups. In light of this, the Commission encourages FACTOR and Musicaction to use a portion of base contributions from online undertakings to bolster support for OLMCs, Indigenous artists and music organizations, and artists from equity-deserving groups and organizations representing those groups, including by offering dedicated funding streams. Similarly, it encourages the Canadian Starmaker Fund and Fonds RadioStar to use such contributions to enhance support for Indigenous artists and artists from equity-deserving groups.

168. The Commission also notes the important role of the CRFC in supporting the campus and community radio sectors. To support community broadcasting as provided for in subparagraph 3(1)(d)(iii.4) of the *Broadcasting Act*, the Commission will require online undertakings to direct at least 0.5% of annual contributions revenues derived from audio activities to the CRFC.

169. Finally, the CRFC indicated how its various funding streams help support a wide diversity of content. The Commission encourages it to use these new contributions to fund projects that support Indigenous content, content from equity-deserving groups, content from OLMCs, French-language content and journalism.

Support for news

170. As with the audio-visual sector, the Commission recognizes the importance of news to the broadcasting system's audio sector and notes that the only source of local news for many small communities comes through their local radio stations. While campus, community and Indigenous radio stations can benefit from the Local Journalism Initiative administered by the CRFC, there is no funding mechanism within the current contribution framework that specifically supports news and information programming by commercial radio broadcasters. The Commission considers that it would be appropriate to address this important funding gap in the radio sector through a temporary fund.

171. Until the Commission holds its consultation regarding news programming, and to provide timely relief where the needs are more pressing, the Commission considers that this new temporary fund should first and foremost support commercial radio stations outside of the designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton and Ottawa-Gatineau, as audiences in these larger markets typically benefit from a greater variety of local news outlets.

172. The CAB submitted a proposal for a temporary fund that would support both the private television and radio sectors. The Commission considers that the CAB is well placed to administer a fund that would support the commercial radio sector. Accordingly, the Commission invites the CAB to submit, by no later than **4 July 2024**, an operational plan to administer a temporary fund that will support news production by commercial radio stations outside of the above-noted designated markets. In this plan, the CAB must demonstrate that it has the capacity to administer this fund, indicate the date it expects the fund to be operational, and provide details of the fund, including governance, eligibility criteria, accountability measures, reporting requirements, and the funding allocation method. The plan should also provide details on the proposed outreach initiatives that the CAB intends to implement to promote the fund's accessibility to all commercial radio stations outside of the designated markets, including stations serving ethnocultural and Indigenous communities. The Commission will launch a public consultation to seek comments on the CAB's submitted plan.

173. This fund should be operational in the 2024-2025 broadcast year. Accordingly, the Commission will require that a portion of base contributions be allocated to a new temporary fund, to be administered by the CAB, to support the production of news programming by commercial radio stations. Online undertakings will be required to direct at least 1.5% of their annual contributions revenues derived from audio activities to the new temporary news fund. In the Commission's view, the 1.5% allocation is appropriate for providing critical support to radio broadcasters that provide timely and fact-based information to the communities they serve. It also reflects the importance of the provision of news coverage as set out in subparagraph 3(1)(i)(ii.1) of the *Broadcasting Act*.

Support for Indigenous content

174. Many parties generally considered that Indigenous music creators do not benefit from the same funding opportunities as Indigenous creators in the audio-visual sector. Accordingly,

in view of advancing key policy objectives set out in the *Broadcasting Act*,[98] the Commission considers that base contributions from online undertakings should address the important funding gap regarding Indigenous music content.

175. Further, the Commission considers that for Indigenous voices to be available throughout the broadcasting system, the development of Indigenous content must be properly funded in a way that is culturally sensitive and meaningful. This requires a funding organization operated by and for Indigenous peoples. Supporting their ability to create and produce a wide range of content will foster the meaningful participation of Indigenous peoples in the Canadian broadcasting system consistent with numerous objectives set out in the *Broadcasting Act*.[99]

176. In the Commission's view, the IMO is well positioned, if properly funded, to set up an Indigenous music fund fully dedicated to fostering the growth of the Indigenous music sector. Further, the Commission recognizes that, as explained by Makusham Musique in its submissions, the Indigenous music industry in Quebec may face different challenges than in the rest of Canada. In the Commission's view, this should not be ignored within the context of the contribution framework.

177. Accordingly, the Commission will require online undertakings to allocate at least 0.15% of their annual contributions revenues derived from audio activities to the IMO so that it has the means to build capacity and operate an Indigenous music fund. The Commission considers that this contribution level will help address an important funding gap.

178. In making this determination, the Commission acknowledges that the IMO may need resources to conduct consultations and develop an operational plan for an Indigenous music fund. So that the IMO has rapid access to funds, the Commission will require audio online undertakings to allocate 0.05% of their annual contributions revenues to the IMO by **31 December 2024**. The remaining 0.10% allocation of their annual contributions revenues for the 2024-2025 broadcast year should only be made once that fund is in operation.

179. The Commission expects the IMO to first consult with Indigenous music industry players from all regions, with a view to developing a plan to set up an Indigenous music fund. The IMO should file this plan at the earliest opportunity following the completion of its consultation, and by no later than **4 June 2025**. The Commission intends to then publish this plan for a short comment period to ensure that the new Indigenous music fund can launch promptly. The plan should include information on its consultation process, governance, structure, eligibility criteria, funding allocation method, accountability measures and reporting requirements.

180. The Commission encourages the IMO, FACTOR and Musicaction to work collaboratively to share their respective expertise to the benefit of the Canadian and Indigenous music sectors.

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[98] For example, subparagraphs 3(1)(d)(iii) and 3(1)(d)(iii.1).

[99] For example, subparagraphs 3(1)(d)(iii), 3(1)(d)(iii.1) and 3(1)(i)(ii.2), and paragraph 3(1)(o).

Flexibility for audio online undertakings

181. Consistent with its overall approach regarding flexibility, the Commission considers that online undertakings should be able to direct a portion of their base contributions to eligible initiatives at their discretion. Accordingly, online undertakings may devote up to 0.35% of their annual contributions revenues derived from audio activities to Canadian expenditures on the following initiatives:

- songwriting camps specifically developed for Canadian and/or Indigenous artists;
- support for the production of sound recordings by Canadian and/or Indigenous artists; and
- support for Canadian events (award shows and festivals) exclusively featuring Canadian and/or Indigenous artists.

182. Any portion of those annual contributions revenues not allocated to the above initiatives is to be allocated to any or a combination of funds among the Canadian Starmaker Fund, Fonds RadioStar, the CRFC, and the Indigenous music fund once in operation.

Summary of the allocation of audio online undertakings' base contributions

183. The following table summarizes the allocations of base contributions that audio online undertakings will be required to make to the various funds, where the contribution level equals a percentage of an undertaking's annual contributions revenues.

Funds	Contribution level
FACTOR and Musicaction	2% (60% to FACTOR; 40% to Musicaction)
New temporary fund supporting local news production by commercial radio stations outside of the designated markets	1.5%
Canadian Starmaker Fund and Fonds RadioStar	0.5% (60% to the Canadian Starmaker Fund; 40% to Fonds RadioStar)
Community Radio Fund of Canada (CRFC)	0.5%
Flexible contributions for 1) initiatives specifically targeting the development of Canadian and Indigenous content, or 2) any or a combination of funds among the Canadian Starmaker Fund, Fonds RadioStar and the CRFC, and the Indigenous music fund once in operation	0.35%
Indigenous Music Office and a new fund to support Indigenous music	0.15% (0.05% by 31 December 2024; 0.10% once the new fund is operational)
Total	**5%**

Data collection and publication

184. In addition to the determinations set out in this regulatory policy, the Commission will require applicable online undertakings to participate in annual broadcasting surveys, providing information on revenues, contributions and programming to the Commission via its Data Collection System. This information must be submitted along with reviewed financial statements, reporting its annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusion/exclusion of revenues.[100]

185. Along with collecting data from applicable online undertakings, the Commission will validate declared contributions with recipient funds. To help ensure transparency, while maintaining individual confidentiality for online undertakings, the Commission intends to publish the annual aggregate contributions made to each recipient fund.

Proposed conditions of service relating to base contributions

186. In order to give effect to the determinations in this regulatory policy, pursuant to subsections 9.1(1) and 11.1(2) of the *Broadcasting Act*, the Commission proposes to make the orders set out in the appendix to this regulatory policy imposing conditions of service relating to expenditure requirements for base contributions and data collection on online undertakings. The Commission will use the Registration List as the basis for identifying the particular persons to whom the base contribution orders apply. In other words, online undertakings belonging to ownership groups who are on the Registration List will be subject to the orders; however, they will only have to make contributions if, as a group, they earn $25 million or more in annual contributions revenues and are not affiliated with a licensed or licensable broadcasting undertaking. Proposed definitions of key terms used throughout those conditions of service (as well as throughout this regulatory policy) are also included in that appendix.

187. Consistent with subsections 9.1(4) and 11.1(7) of the *Broadcasting Act*, parties, including those who would be subject to these conditions of service, may file comments on the proposed orders by no later than **14 June 2024**.

188. Pursuant to section 5.2 of the *Broadcasting Act*, the Commission is required to consult OLMCs when making any decision that could adversely affect them. The Commission notes that its decisions set out in this regulatory policy could have an impact on OLMCs and considers it appropriate to do such consultation. Accordingly, and as an exception to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), the Commission has included an additional comment period, reserved exclusively for members of OLMCs.

189. In this regard, members of OLMCs may file comments on the proposed orders by no later than **25 June 2024**.

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[100] Reviewed financial statements would be the product of an engagement performed by a third-party practitioner in accordance with Canadian Standard on Review Engagement (CSRE) 2400 and Canadian Generally Accepted Accounting Principles (GAAP).

190. Finally, parties, including those who would be subject to these conditions of service, may submit a reply to any comments received, by no later than **2 July 2024**.

191. Parties who wish to submit comments on the proposed orders may do so on the Commission's public proceedings webpage.

192. The procedure described above applies only to this regulatory policy and does not constitute a predetermination on other regulatory policies or any other decision, and should not be seen or understood as amending the Rules of Procedure with respect to other proceedings. The Commission, in consultation with OLMC members, will consider more definitive amendments to the Rules of Procedure in due course.

Secretary General

Related documents

- *Broadcasting Fees Regulations*, Broadcasting Regulatory Policy CRTC 2024-65, 21 March 2024
- *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
- *Online Undertakings Registration Regulations, and exemption order regarding those regulations*, Broadcasting Regulatory Policy CRTC 2023-329 and Broadcasting Order CRTC 2023-330, 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
- *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
- *Blue Ant – Discretionary Services – Licence renewal*, Broadcasting Decision CRTC 2018-291, 21 August 2018
- *Policy framework for Certified Independent Production Funds*, Broadcasting Regulatory Policy CRTC 2016-343, 25 August 2016

- *Review of the Local Programming Improvement Fund*, Broadcasting Regulatory Policy CRTC 2012-385, 18 July 2012

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

Appendix to Broadcasting Regulatory Policy CRTC 2024-121

Proposed orders imposing conditions of service and expenditure requirements for carrying on certain online undertakings

Conditions for carrying on certain online undertakings

Pursuant to subsections 9.1(1) and 11.1(2) of the *Broadcasting Act*, the Commission proposes to make orders imposing the following conditions of service, including expenditure requirements, on the particular operators of the online undertakings described herein.

Interpretation

The following definitions apply in this order.

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 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 annual Canadian gross broadcasting revenues less any excluded revenue.

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 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 proposed conditions of service set out herein apply to all operators carrying on online undertakings who 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 annual contributions 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[101] 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.

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

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

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 financial statements, reporting its annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusions or exclusions of revenues. Reviewed financial statements shall be the product of an engagement performed by a third-party practitioner in accordance with Canadian Standard on Review Engagement (CSRE) 2400 and Canadian Generally Accepted Accounting Principles (GAAP).