

Submitted electronically

July 26, 2023

Mr. Claude Doucet
Secretary-General
CRTC
Ottawa, ON
K1A 0N2

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2023-138 (the “Notice”) – Reply comments on Step 1 of a modernized regulatory framework regarding contributions to support Canadian and Indigenous content

1. FRIENDS is pleased to provide these reply comments in respect of the above referenced proceeding and in furtherance of our 11 July 2023 initial intervention (“Intervention”).
2. The volume of interventions filed in this proceeding and the differences in views expressed within them, clearly illustrate the enormity of the task ahead for the Commission in establishing a new regulatory framework that incorporates online undertakings. In particular, the interventions highlight the need for the Commission to establish priorities – priority needs or recipients of new online undertaking contributions, priority regulatory tools or instruments to be applied, and the priority class or group of undertakings to whom contributions should first be applied to.
3. The Commission has proposed a 3-step process to fully roll out the new regulatory framework – a process that will inevitably take more than two years. Given this protracted timeline, it is essential that the priorities are prioritized as soon as possible.
4. The Commission has indicated that this Step 1, including a public hearing to begin 20 November 2023, “will focus on whether the Commission should establish initial base contribution requirements for online undertakings, and on the possible recipients of those contributions” and that “[t]he initial contributions would be imposed only on certain online undertakings following Step 1”.¹
5. Based on our review of interventions, it is clear that this is the appropriate way forward. Initial base contributions represent critical cash infusions that need to flow to priority policy areas before

¹ Notice, paras 3 and 28. In our Intervention, we used the term “baseline” rather than “base”. We use “base” in this Reply.

any more irreversible damage is done to the Canadian broadcasting system and its capacity to produce relevant Canadian programming by and for Canadians. Our comments will, therefore, primarily respond to interventions on issues that need to be resolved in this Step 1.

Building a Better Canadian Broadcasting System

6. The passing of Bill C-11 was a seminal moment in Canada’s broadcasting history. The Commission’s implementation of the modernized *Broadcasting Act* (the “Act”) represents a once-in-a generation opportunity to set our broadcasting system up for success for the generations of Canadians to come. The overriding issue before us is *how Canadian do we want the Canadian broadcasting system to be?* In looking at the options before it, FRIENDS submits that the Commission needs to ask: *is this approach going to make the system more Canadian tomorrow than it is today?* Looking through this lens, priority must be given to measures that make the system more Canadian, not less. Anything else is inconceivable.
7. In our Intervention, we spoke to this proceeding establishing the foundation for a going-forward framework of equitable contributions from online undertakings in the *Canadian* broadcasting system and the need therefore to support *Canadian* interests and priorities.
8. It is evident from the interventions of foreign online undertakings and their representatives (the “Foreign Streamers”), that they do not respect this principle.² They think this proceeding is about accommodating their interests and their business models. Despite the fact that their model largely mirrors that of traditional broadcasters, they claim to be “unique” and then proceed to argue that, on that basis alone, contribution requirements should not apply to them.³
9. But perhaps no greater example of the contempt the Foreign Streamers hold for the Commission in exercising its mandate under the new Act is this statement from the Motion Picture Association-Canada (“MPA”):

in this proceeding, online undertakings are being asked whether they are willing to make financial contributions to production funds and Canadian programs without knowing how they will be comprised.⁴
10. Sorry, but no. The CRTC is not mandated to ask foreign undertakings whether they are “willing” to make financial contributions to Canadian programming. It is not even mandated to reflect their interests. What the Commission is mandated to do is “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection 5(2).”⁵ As we stated in our Intervention, the revised Act has clarified the Commission’s powers over

² See, generally, Interventions from Amazon, AMC, Apple, Google, MPA, Netflix, and Paramount.

³ See, for example, Google Intervention, para 29 & Q18.

⁴ MPA Intervention, para 9.

⁵ Subsection 5(1) of the Act.

online undertakings and added new priorities, but it has not fundamentally changed underlying policy objectives.

11. This proceeding is not about bending the Act to the will of the Foreign Streamers. It is about requiring the Foreign Streamers to conform to the Act. Or as more diplomatically stated by the CMF in its Intervention, “the principles employed by the Commission should remain the same as in earlier proceedings: technological and competitive disruptors cannot be extractive and must make a contribution significant enough to not weaken the Canadian broadcasting system (emphasis in original).”⁶
12. In particular, the Commission is required to implement the section 3 objectives of the Act whose first provision is as follows:
 - 3 (1)** It is hereby declared as the broadcasting policy for Canada that
 - (a)** the Canadian broadcasting system shall be effectively owned and controlled by Canadians, and it is recognized that it includes foreign broadcasting undertakings that provide programming to Canadians;
13. It is worth noting that the maintenance of “effectively owned and controlled by Canadians” from the 1991 Act was not part of the initial language of Bill C-11. It was proposed to the House committee by FRIENDS the CDCE, passed by that Committee and passed at all subsequent stages in the legislative review process, including at the Senate. That legislative history is not without import.
14. Parliament reconfirmed through section 3(1)(a) that the Canadian broadcasting system is to remain effectively owned and controlled by Canadians, and, through its other amendments to section 3, that it is to continue to serve the interests of Canadians. Foreign broadcasting undertakings have now been expressly recognized as part of the system. This means they are obligated to contribute equitably and that they have the right to be heard, not to dictate terms.
15. As it concerns this proceeding, therefore, the CRTC is mandated to impose contribution requirements it deems appropriate, following a due process of consultation – *this* process.
16. In their interventions, despite warm words in support of Commission statements on “flexibility and adaptability” and other general principles,⁷ the Foreign Streamers have effectively opposed the Commission’s proposed regulatory framework, including the very notion of base contributions. While implicitly acknowledging that the current regulatory framework is not equitable,⁸ they seek to place as many roadblocks as possible in the path to a new regulatory framework – arguing nothing can be done without further study, without a redefinition of Canadian programming, and without all requirements being addressed at the same time.

⁶ CMF Intervention, para 138.

⁷ See for, example, MPA Intervention para 6,

⁸ See, for example Netflix Intervention at para 46 “Existing requirements on Canadian broadcasters are too high and should not be transposed onto foreign online undertakings” paraphrasing MPA.

17. FRIENDS submits that the Foreign Streamers' arguments are wrong in fact, policy and/or law.

The objective of this proceeding must be to significantly increase support for Canadian programming

18. As we stated in our Intervention, the point of Bill C-11 was to level the playing field, not lower it. The passage of Bill C-11 was an explicit acknowledgement that online undertakings should be contributing as much to the system as traditional broadcasters are today. Its implementation should not be treated as an opportunity to water down the support of Canadian content in the Canadian broadcasting system.

19. This view was supported by the Canadian creative community,⁹ including the CMPA who argued that:

... a core principle of the framework must be to bring online services into the Canadian broadcasting system. And these contributions must be brought up to meet the obligations of Canadian broadcasting undertakings. This is not the time to reduce existing obligations and contributions to the Canadian broadcasting system.¹⁰

20. Importantly, the CMF similarly argued that the Commission's new modernized regulatory framework should "recognize foundational elements to the Canadian broadcasting system to ensure that online undertakings contribute to and increase the current volume, diversity and the quality of Canadian programs."¹¹

21. The DGC and the WGC each appropriately reference public statements of the now former Minister of Canadian Heritage to the effect that, with the passage of Bill C-11, \$1 billion in new, incremental spending to Canadian programming is anticipated from online undertakings.¹²

22. In addition to rejecting the Foreign Streamer arguments, the Commission must also dismiss outright the self-serving arguments from the major Canadian broadcasters for across-the-board reductions in their obligations.¹³ In advocating for reduced obligations, none of the major Canadian broadcasters have met the onus that should be required of them to coherently explain why the introduction of foreign online undertaking contributions permits them to reduce their commitment to Canadians. Rogers' suggestion of a 2% of revenue contribution is a particular affront. But even the Bell and Corus' model of across the board 20% contribution of revenue requirements on audiovisual services, both traditional and online, would fall far short of the realizable and expected benefits of Bill C-11.¹⁴ Canadian undertakings should be the proud standard bearers for Canadian content. They should not be seeking to pass the buck to non-Canadian entities.

⁹ See also Interventions of the WGC and the DGC.

¹⁰ CMPA Intervention, para E2

¹¹ CMF Intervention, para 133.

¹² WGC Intervention at paras 18-19; DGC Intervention at para 43.

¹³ We note that smaller independent broadcasters have not made reduced obligation arguments.

¹⁴ Bell estimates incremental Canadian programming contributions of \$457M if effective in 2021, increasing to \$678M by 2026, or roughly half of the 2022 \$1 billion estimate (itself, an increase from \$800M for Bill C-10). Ibid and Bell Intervention at para 82.

Support for outcomes-based regulation comes primarily from the Foreign Streamers who want no substantive requirements.

23. FRIENDS’ concerns with the Commission’s proposed outcome-based regulation approach finds validation in the support the concept has received from the Foreign Streamers. For example, Amazon states “the Commission should reimagine and devise a flexible, adaptable, and minimally disruptive regime that is respectful of a consumer’s right to choose and places maximum reliance on incentives and outcomes”¹⁵. It then goes on to oppose the Commission’s proposed base contribution approach, seeking delay on the basis of “procedural fairness”.¹⁶ MPA, Apple and Paramount go so far as to suggest that imposing base contributions on them would be “inconsistent” with or “directly at odds with” an outcomes-based approach, if not the Act itself.¹⁷
24. Canadian broadcaster support for an outcomes-based approach is cautious. CAB and IBG only support the approach “in theory”.¹⁸ Bell argues that a key desired “outcome” should be the “sustainability of the Canadian broadcasting industry”.¹⁹ On that, we would agree.
25. Like FRIENDS, the creative community stakeholders also expressed serious reservations.²⁰ The DGC plainly states that the proposed outcomes-based approach “will not ensure that the broadcasting system as a whole (including online undertakings) will contribute to the achievement of the Commission’s and the *Broadcasting Act’s* objectives.”²¹ The WGC points out that “the type of “outcomes-based approach” applied by the Commission in its most recent licence renewal of CBC/Radio-Canada (CBC) is not an appropriate model for the regulation of private entities in the broadcasting system”, and that while it is not clear what the Commission has in mind here, it “has used strikingly similar language in the present Notice of Consultation and in the CBC licence renewal decision.”²²
26. Blue Ant also indirectly raises a good example of the potential pitfalls of outcomes-based regulation – the use of “total hours tuned” in the CMF performance envelope program and how it has the effect of limiting access for smaller broadcasters in favour of larger vertically-integrated entities.²³
27. FRIENDS reiterates its concerns that the Commission’s interest in an “outcomes-based approach” is, at best, unclear. At worst, it signals a misguided desire to place less emphasis on proven expenditure-based requirements, which are equitable in application, and more on requirements such as ‘viewing’ which will favour those with the largest platforms, namely, the large, vertically

¹⁵ Amazon Intervention, para 7.

¹⁶ Ibid, para 62.

¹⁷ MPA Intervention, paras 23(b), 28, 38 & Q15; Apple Intervention, para 42; Paramount Intervention, para 6.

¹⁸ IBG Intervention, para 62. CAB Intervention, Q19.

¹⁹ Bell Intervention, para A16.

²⁰ See also, Documentary Organization of Canada Intervention which argues that firm regulatory requirements, not a flexible outcomes-based approach, are required.

²¹ DGC Intervention, para 89.

²² WGC Intervention at paras 118 & 122. Like FRIENDS, WGC also states that “the Commission must be mindful of not repeating the mistakes of the 1999 TV Policy” at para 124.

²³ Blue Ant Intervention at para 31.

integrated Canadian companies and, certainly, the Foreign Streamers. That said, as two of the three proposed categories of contribution requirements proposed by the Commission are, in fact, expenditure-based, it is self-evident that the Commission’s use of the term “outcomes-based approach” *includes* the use of expenditure requirements. We accordingly agree with the CMPA that this not a matter that needs to be resolved in this Step 1 proceeding, given its focus on base contributions.²⁴

Towards truly equitable contributions from the Foreign Streamers

28. In responding to Commission questions on what would constitute appropriate and “equitable” contribution requirements, the Intervention spoke to the need consider the significant non-monetary contributions of Canadian broadcasters. We demonstrated that, once these are factored in, the monetary *value* of the contributions of most Canadian broadcasters (radio, TV and BDU), are on the order of 30% of gross revenues annually – far higher than monetary contributions alone.
29. This view was echoed by a few Canadian stakeholders in their interventions. IBG notes that the Commission’s figures on direct financial contributions of the major Canadian undertakings “understate, significantly, the actual contribution that Canadian services make to the Canadian broadcasting system.”²⁵ DGC calls for contributions from online audiovisual undertakings of as high as 40% of revenues.²⁶
30. Unfortunately, in suggesting only 4% of revenue obligations on online audio services and 5% on vBDUs, the major Canadian broadcasters are clearly more interested in reducing their obligations than ensuring truly equitable ones in service of the objectives of the Act. For example, Rogers is right to state that “BDUs’ fulfillment of mandatory carriage obligations and payment of 9(1)(h) wholesale rates represents a direct investment in Canadian programming that should be accounted for within the new contribution regime”.²⁷ But their proposed model does not reflect this reality.
31. Meanwhile, the Foreign Streamers argue that the “very sizeable tangible and intangible contributions that foreign online undertakings make to the Canadian broadcasting system must be factored into the contribution framework”.²⁸ They then throw out numerous foreign service production numbers and titles²⁹ designed to look impressive, but provide zero guidance as to how they equate to current (broadcaster) or potential (online) percentages of revenue requirements nor how they support truly Canadian content.

²⁴ CMPA Intervention at para 43: “It is difficult to assess the potential impact of a customized framework will have in fulfilling the objectives of an outcomes-based approach Step 2 in this process will provide a much better opportunity to evaluate the framework and the approach being considered.”

²⁵ IBG/GDI Intervention at para 28-29

²⁶ DGC Intervention at para 41.

²⁷ Rogers Intervention, para 100.

²⁸ MPA Intervention, para 11(d).

²⁹ See, for example, Netflix Intervention paras 7 to 44.

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32. Even though such numbers are routinely disclosed for major Canadian broadcasters,³⁰ no foreign online undertaking has provided information on their annual Canadian broadcasting revenues. Further, none of them made a proposal for a percentage of revenue requirement or provided an estimate of their current spending on Canadian programming, be it based on the current definition or their preferred one.
33. Rather, the Foreign Streamers have systematically obfuscated on the main issue in this proceeding, doing everything in their power to prevent or delay substantive Commission action.
34. In a quasi-judicial proceeding, there is only one way for a tribunal to respond to a deliberate strategy of a party that refuses to answer clear questions and makes arguments unsubstantiated by evidence. It must use the evidence available from other parties to draw an adverse inference from any party's failure to provide meaningful evidence to the contrary.
35. In this case, FRIENDS submits that the evidence *overwhelmingly* shows that the contributions of Canadian broadcasters to Canadian programming are vastly superior to those of foreign online undertakings. The onus in this hearing should not be on the CRTC or Canadian broadcasting system stakeholders to prove that once again. **Canada did not spend years trying to modernize the Act merely to accept the *status quo*.**
36. Fortunately, in this Step 1, the Commission does not have to come to a definitive conclusion on what would constitute equitable contributions overall. Final decisions on overall contributions will come in steps 2 and 3 of the Commission's process, potentially benefitting from more precise economic analysis.³¹ All the Commission must do now is decide on appropriate initial base contributions for certain online undertakings.
37. In that context, as FRIENDS argued in our Intervention, the most reasonable initial step is the imposition of a minimum base contribution of 5% of revenues directed to third party funds that support "policy priority" Canadian programming.
38. This proposal has wide support from Canadian stakeholders:
- The CMPA states: "Five percent of annual revenues derived from Canadian broadcasting activities is a good place to start as a base contribution for online undertakings."³²
 - "WGC proposes that the appropriate level of initial base contribution for online undertakings be no less than 5% of their gross annual revenues. The WGC's proposal is a *minimum* of 5%—we would also support higher percentages."³³

³⁰ Per CRTC Annual Aggregate Returns.

³¹ Including, as FRIENDS suggested in its Intervention, more detailed analysis of the monetary value of current broadcaster contributions to Canadian programming, and impact analysis of commensurate obligations on online undertakings.

³² CMPA Intervention, para E9.

³³ WGC Intervention, para 85.

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- Unifor argues that Canadian content creation and production contribution should be increased from 5% to 7%, with the additional 2% going to a local news media fund.³⁴
 - Major broadcaster proposals for base contributions of 20% of revenue for foreign audiovisual online undertakings and 5% for vBDUs.³⁵

A base contribution to funds is the appropriate first step

39. It is no surprise that the Foreign Streamers oppose the very idea of an initial base contribution. They understandably hate the notion of putting real incremental dollars into funds to support Canadian programming that they don't commission, control, or necessarily broadcast. Naturally, short of no obligations at all, they want Canadian programming expenditure requirements based on their definition of Canadian programming that count their existing expenditures on foreign service production as Canadian programming contributions.
40. The Foreign Streamers then go one step further by having the audacity to argue that imposing an initial base contribution, as the Commission contemplates, is contrary to the Act.
41. In essence, the arguments by the Foreign Streamers amount to wanting us to believe that the word "flexible" trumps every other policy objective.
42. Yes, the word "flexible" appears in the Act – *as it did in the 1991 Act* – in introducing the Regulatory Policy objectives set out at Section 5: "The Canadian broadcasting system should be regulated and supervised in a flexible manner" – *the system, not individual undertakings*. Not only does the definition of the word "flexible" not take on some new magical meaning in the modernized Act, as pointed out by the WGC,³⁶ this regulatory objective remains subservient to the section 3(1) policy objectives,³⁷ including:
- s. 3(1)(f.1) each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve (emphasis added)
43. The Commission has imposed requirements on BDUs and radio stations to contribute to third party funds for decades and, more recently, on large TV broadcasters.³⁸ None of these broadcasters directly benefit from such funds. None of them like contributing to these funds. But it's a price of broadcasting in Canada. That doesn't make the requirements "inflexible" or in conflict with the objectives of Act.³⁹

³⁴ Unifor Intervention, para 39 & 52.

³⁵ See, for example, Bell Intervention at para A6. We note that these proposals appear to be for both initial base contributions and the entirety of proposed contributions.

³⁶ WGC Intervention at para 124.

³⁷ Pursuant to section 5(3).

³⁸ As noted by the Commission in the Notice at para 56.

³⁹ See, generally MPA summary of its arguments at MPA Intervention, para 23.

44. Contrary to the arguments made by the Foreign Streamers:

(i) The recognition in s. 3(1)(f.1) that foreign online undertakings may contribute in a “different” manner works both ways. It is all but expected that the Foreign Streamers will have lesser, or even no express, obligations towards exhibition or distribution of Canadian programming. That means they can legitimately be required to have greater or different obligations towards base contributions than Canadian traditional or online undertakings;

(ii) The Commission has complete discretion to impose initial base contributions on “certain” online undertakings only, particularly large foreign undertakings.⁴⁰ That precedent was established when the Commission imposed fund obligations on large, vertically integrated TV broadcasters but not on smaller ones. Imposing initial base contributions only on those large foreign undertakings who would have the greatest impact would be a more equitable outcome than further delay;

(iii) Broadcasting undertakings have no inherent rights “as to how they choose to direct their contributions”.⁴¹ While the Commission may ultimately approve a combination of mandatory and discretionary funds to which online undertaking base contributions are to be directed, there is nothing “discriminatory” about requiring that funding be directed to funds that support specific genres or types of Canadian programming. Rather, this is entirely consistent with the Commission’s obligation to weigh and advance the policy objectives of the Act; and

(iv) Mandatory contributions to specified third party funds can and should, as appropriate, include support for “content shown on other broadcasting undertakings”.⁴² Nothing in the Act precludes it. The only appropriate test is the net benefit to the broadcasting system. As argued by IBG, Unifor, CHEK, CHCH, and major broadcasters, along with FRIENDS, and as discussed further below, this is certainly the case for local news, given the urgent need for its support.

A base contribution to funds would be consistent with any conceivable Policy Direction

45. In addition to the above quasi-legal arguments, a number of the Foreign Streamers argue that the Commission’s plan for base contributions is inconsistent with the Draft Policy Direction.⁴³ In particular, they argue that the Policy Direction should preclude the Commission from proceeding as planned until the Commission has prioritized: (a) a new definition of Canadian programming; and (b) where appropriate for a given business model and set of objectives, the imposition of expenditure requirements.

46. Leaving aside the fact that the Policy Direction remains in draft form, this is demonstrably false for three reasons.

⁴⁰ Contrary to MPA argument at MPA Intervention, para 11(j).

⁴¹ Contrary to MPA argument at MPA Intervention, para 11(i)&(k)

⁴² Contrary to MPA argument at MPA Intervention, para 11(l).

⁴³ Netflix Intervention at paras 50 & 51. Google Intervention at para 18.

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47. First, the priority given to defining Canadian programming in the draft Policy Direction is relative to the implementation of the entire regulatory framework. The Government is simply asking that, within a two-year overall implementation timeline, the Commission look to redefining Canadian programming (and engagement with the Indigenous community and other equity-seeking groups) on a priority basis. This in no way precludes the Commission from establishing other priorities as part of an overall implementation plan that it believes best meets its responsibilities under the Act.
48. Second, while any new definition of Canadian programming would necessarily apply to determinations on Canadian programming expenditure requirements, it is not required for the purposes of the Commission's proposed initial base contributions. Whatever the definition of Canadian programming, the Commission is well within its jurisdiction to direct initial base funding to a subset rather than the entirety of that universe – be that news produced by traditional broadcasters or '10/10' point drama funded by the CMF.
49. Third, any Policy Direction that sought to specifically prevent the Commission from doing something it believes it should do pursuant to the Act would be *ultra vires* the powers of the Governor in Council. The CRTC is an arms-length independent quasi-judicial tribunal. Policy directions are "binding" on the Commission only to the extent that they are "of general application on broad policy matters".⁴⁴ Even if the final Policy Direction contained instructions that were "inconsistent" with the Commission's plan for base contributions, the Commission would be obliged to ignore any such specific instructions, if it was of the view those instructions conflicted with the Commission's obligations under the Act.

The logical recipients of initial base contributions have revealed themselves

50. Interveners have made varied arguments on what type of online undertakings should be exempt from contribution requirements outright and what the revenue threshold should be for any contributions that are required of online undertakings. These include arguments against applying requirements on an entity basis, on Canadian online undertakings, on music services, on any programming provided by social media services and on online undertakings with annual revenues of less than \$50 million.
51. For the reasons outlined in the Intervention, FRIENDS maintains that contribution requirements should be applied on an entity basis to all online undertakings with annual revenues of more than \$10 million. However, for the purposes of introducing the initial base contributions to be determined in this proceeding *as quickly as possible*, FRIENDS would be prepared to support a more limited application – namely only to the largest foreign online undertakings. In this regard, it appears that a \$50 million annual revenue threshold may be appropriate to capture the largest foreign streamers (including Netflix, Disney+, Amazon Prime, Paramount+, and Apple TV+) and the largest online audio services (Spotify and Apple Music), but the CRTC would need to confirm this before making that determination.⁴⁵

⁴⁴ Section 7(1)&(3) of the Act.

⁴⁵ See Bell Intervention at para 75 & 76.

52. FRIENDS also agrees with the major broadcasters that, given the magnitude of current contributions of Canadian broadcasters, in order to make a crucial first step towards equity, initial base contributions should not be applied to the Canadian broadcaster affiliated online undertakings, including ones that may exceed \$50 million in annual revenue (e.g. Corus' StackTV and Bell's Crave), in Step 1. This, along with issues of broader application generally, can be addressed in Steps 2 and 3.

53. By targeting the largest foreign online undertakings for initial base contributions, the Commission would:

(i) Target those online players that have had the biggest sustained negative impact on the Canadian broadcasting system;

(ii) Bring in a large majority of conceivable base contributions. The largest foreign online streamers and audio services likely represent on the order of 80%-90% of online streaming revenues; and

(iii) Be in a position to move quickly. Applying base contributions to a broader grouping of contributors, while desirable in the long term, risks delays from increased administrative burden in the short term. Moving quickly with the proposed smaller grouping would be a reasonable compromise to ensure greater contributions, as opposed to moving slowly over a larger grouping.

Initial base contributions must be directed to key policy priorities such as local news

54. Using CRTC data from 2021 and 2022 revenues, the DGC's estimates the potential value of a fully implemented online undertaking contribution regime, including a projected \$1.2 billion from online audiovisual undertakings alone, at a 30% of revenue contribution level.⁴⁶ Based on the same data and assuming a 2024 effective date, we estimate that at a 5% of revenue contribution level, an initial base contribution applied only to large online audio and audiovisual undertakings, could be expected to bring in on the order of \$200-\$250 million annually.⁴⁷

55. This is a material but not overwhelming sum. While the desire may be to support as many areas as possible, for these moneys to have a significant and enduring impact, priorities need to be established.

56. To that end, FRIENDS is pleased to note the broad support for those priorities identified in our Intervention, but also notes that these priorities cannot all be supported at the level that many proponents advocate. This includes:

⁴⁶ Based on CRTC data. DGC Intervention, para 42.

⁴⁷ This assumes that the discounting for exempt and smaller online undertakings is made up through continued mid double digit level annual growth in online undertaking revenues. See, for example, growth from 2014 to 2021 per <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2022/rad.htm#a7.3.3>

(i) Almost universal support for designated funding for Indigenous content and broadcasting – including, as much as of 7-9% of base contributions going to Indigenous video productions and audio projects;⁴⁸

(ii) Strong support for funding of diversity, inclusion and accessibility – as high as 35% of base contributions to equity-deserving communities, alone;⁴⁹

(iii) Support among almost all broadcasters for significant news funding – as high as 50% of all base contributions;⁵⁰ and

(iv) Support among all creator groups for ongoing significant funding of the CMF and other Certified Independent Production Funds (“CIPF”s) – with creators calling for a majority of base contributions going to the CMF.⁵¹

57. Contrary to the submissions of the Foreign Streamers, we remain of the view that base contributions should not go to self-directed or self-benefitting initiatives – be it a fund operated by an online undertaking or programming aired by that undertaking. Base contributions should be about meeting objectives of the Act that cannot otherwise be sufficiently addressed.
58. In the same vein, however, we do not believe the Foreign Streamers should be required to fund CIPFs branded or associated with major broadcasters. We do not dispute the merits of these funds, and thus feel they should be immediately eligible for any discretionary portion of online undertaking base contribution funding. Ultimately, however, if these funds wish to receive mandatory funding, they should become visibly independent from their vertically integrated BDU founders.
59. Also, contrary to the views of the Foreign Streamers, and particularly in respect of audiovisual undertakings, we submit that while initiatives supporting Canadian talent provide key foundational pillars to the sector, directing the majority of initial contributions to the creation of Canadian programming would generate a much larger impact and would be more in keeping with the objectives of the Act.⁵²
60. Moreover, while we agree that all funds or broadcasters receiving base contributions must be certified or otherwise approved by the CRTC, we do not agree that initial base contributions need only go to pre-existing funds. We have great confidence that any potential fund recipient will be motivated to get themselves organized and approved on an expedited basis. Moreover, if absolutely necessary, funds could always be held in escrow pending Commission approval.

⁴⁸ ISO Intervention; analogous to ISO’s submissions in CBC’s renewal on the appropriate percentage of the Corporation’s programming budget to be allocated to independent productions made by Indigenous producers.

⁴⁹ BIPOC TV and Film Intervention.

⁵⁰ Channel Zero Intervention.

⁵¹ See, for example, WGC Intervention at para 102.

⁵² We recognize that for traditional music services, CCD is currently the most prominent recipient of funding, but it nevertheless receives less than 0.5% of radio revenues.

FRIENDS looks forward to appearing at the public hearing starting 20 November 2023.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Marla Boltman', with a stylized flourish at the end.

Marla Boltman
Executive Director

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