SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

June 10th, 2022

Submission of the Screen Composers Guild of Canada
to the Standing Committee on Canadian Heritage re: study of Bill C-11.

Executive Summary

1. The Screen Composers Guild of Canada (SCGC) recommends an amendment to Bill C-11, to confirm Parliament's intent that no Canadian creator should be forced to permanently give up the copyright that flows from their creative contributions to Canadian content productions, as a precondition of contractual engagement.

2. SCGC recognizes and supports Bill C-11's provisions that would empower the CRTC to implement a modernized broadcasting regulatory framework. SCGC agrees that the CRTC should be given new flexible powers to impose "conditions of service" or "codes of practice" on both traditional and online programming services.

3. SCGC submits that Bill C-11, and any subsequent regulatory direction by the Governor-in-Council to the CRTC, should ensure that Canadian content certification and/or any "conditions of practice" imposed by the CRTC are only extended to productions where (i) no key creator has been required to surrender their copyright to the producer as a condition of engagement, and (ii) all key creatives who contribute to the production do so under the terms of a collective bargaining agreement with the relevant producers' association.

4. Clearly, for the most part, this new requirement would be met under the terms of collective bargaining agreements between organizations that represent 'key creatives' and organizations that represent independent media producers.

5. However, SCGC notes that screen composers are the only points-generating 'key creative' in the Canadian Content certification system not protected by a collective bargaining agreement with the Canadian Media Producers Association (CMPA).

6. As such, our members are frequently required to surrender their legal creator rights as a nonnegotiable condition of contract when providing original musical compositions to projects produced by CMPA members.

7. Moreover, SCGC notes this is an inequity in the current Canadian Content system that is specific to English-language composers and productions. In Quebec, screen composers' creator rights are protected under existing collective agreements covering film and television production between SPACQ and the French-language producers represented by AQPM. However, in English-Canada, CMPA has so far declined to negotiate a comparable agreement with SCGC.

Background

8. The Screen Composers Guild of Canada (SCGC) is the national association certified under the Federal Status of the Artist Act to represent all professional Anglophone composers and music producers for audiovisual media productions in Canada. SCGC is a member and active contributor to the work of the Coalition for the Diversity of Cultural Expression (CDCE) and fully supports CDCE's analysis and recommendations in this legislative process.

9. Historically, no Anglophone Canadian composer was ever asked to surrender their copyright as a condition of employment. They signed a license for the sound recording, and a separate license for the music in the score, and that was all the producer needed in order to market the production internationally. However, in recent years, this unfair commercial practice has become a frequent demand, despite being increasingly out of step with GOC cultural and economic strategies, and despite being out of alignment with media producers' own strident position on 'terms of trade.'

10. Media producers are responsible for contracting the key creative team whose work comes together to create an audiovisual production. Directors, writers, designers, actors, directors of photography, editors and composers all contribute to the final product, which is then licensed and marketed at home and abroad.

11. Composers work with other members of the creative team to conceive and develop the sound of the production. They write and perform the music, sometimes in collaboration with other musicians and performers. They oversee the engineering, mixing, and editing of the recording. They synchronize the music to the picture and deliver individual instrumental components to the production's mixers. They adjust and amend the score as required by the producer, broadcaster, and other creative decision makers.

12. These elements contain a bundle of underlying creator copyrights which belong to the composer (as author and maker of the score) under the *Copyright Act*. As the value of work of art is rarely fully realized at the time of its first sale, those rights have the potential to generate long-term royalty and other revenue for various uses of the score (such as for public performances, TV and radio broadcast, digital streaming, physical and digital reproduction, sales, etc.)

13. These long-term royalties and revenues from other uses of the score, referred to as 'back end', revenue are a key component of composers' ability to derive full economic value for their work over the full term of copyright protection. Historically, the fact composers earned long term

royalties from these copyrights was seen by producers as a trade-off and justification to pay composers lower rates than other key creatives.

14. In recent years however, media producers have increasingly begun to demand that composers surrender some or all of their copyright, which denies the composer access to 'back end **revenues' while** continuing to pay them lower rates than other key creatives and none of the fringe benefits – such as contributions to health insurance and pension funds – that other key creatives receive under the terms of the collective bargaining agreements with CMPA.

Considerations

15. Other than with screen composers, the Canadian Media Producers Association (CMPA) has agreements with every Anglophone key creative role that generates points under the certification system: directors, writers, designers, actors, and editors. The CMPA has repeatedly declined to enter into a comparable agreement with composers

16. This situation has resulted in an imbalanced negotiating environment between composers and producers. SCGC members do not have the bargaining power to counter producers' demands that they surrender ownership of their work. Creator rights have increasingly become a casualty in the Canadian Content system. SGGC submits that ownership and control of their legal creator rights is foundational to the financial health and ongoing existence of emerging and professional AV composers in Canada.

17. There is no justification whatsoever for producers' insistence that composers assign all right, title and interest in their works. Noting that all Canadian creators – including producers and composers – work under well-established and regulated copyright licensing regimes, there is no legitimate business reason for media producers to demand ownership of a composers' work when it could simply be licensed under long-standing and well-established practices and procedures.

18. Demanding any part of creators' **rights** is patently unfair in commercial terms and is out of step with overarching trends in cultural and economic policy. The Government of Canada's Innovation Agenda, the findings of PCH's *Canadian Content in a Digital World* consultation process, the findings of the CRTC's *Consultation on the Future of Program Distribution in Canada*, the findings of the Broadcasting and Telecommunications Legislative Review (BTLR) panel's *Canada's Communications Future: A Time to Act*, and Telefilm Canada's *Partner of Choice: 2022 Strategic Plan,* and critical submissions made to this Committee's study of the *Status of the Artist **Act*** **each** recognize that the ability to monetize intellectual property over the longest possible timeframe is key to cultural and economic success in a digital economy.

19. Moreover, SCGC notes this practice is completely out of alignment with the producers' own frequent arguments in favour of regulated 'terms of trade' to compensate for an imbalance in bargaining power with broadcasters.

20. CMPA has long maintained that government intervention is required to redress an imbalance in bargaining power between its members and the broadcasters who commission audiovisual projects from them. CMPA argues convincingly, at every available opportunity, that independent media producers should not be forced to surrender rights and revenues to broadcasters in order to secure a commission for film or TV series. Unfortunately, CMPA's commitment to a fair negotiating environment stops as soon as it is CMPA's members who see an opportunity to **exploit an** imbalance in bargaining power to issue 'take it or leave it' demands for screen composers' rights and revenues.

21. In its February 22, 2021 written brief to this Committee's study of Bill C-10, CMPA recommends:

> "An express power that would authorize the Canadian Radio-television and Telecommunications Commission (CRTC) to require streaming services and broadcasters to enter into codes of practice with independent producers … Among other things, codes of practice would support key cultural and economic objectives (and) right imbalances in negotiating power by providing all stakeholders with an equitable share in the risks and rewards of a production."

22. In its June 1, 2022 contribution to this Committee's study of Bill C-11, CMPA outlines the imbalance of power that enables buyers of content to demand that creators of content give up future rights and revenues, as a precondition to getting a deal done. CMPA requests that Parliament amend Bill C-11 to prevent these anti-competitive practices:

> "Our second amendment is about ensuring a healthy balance in the broadcasting system by requiring fair negotiations between buyers and sellers of content … (content buyers) hold an outsized advantage in negotiations with Canadian producers … with the decks stacked against them, most producers are forced to agree to a "take it or leave it" upfront payment. This means that with little leverage to negotiate meaningful ownership for the bucket of rights associated with their IP, producers risk not getting their shows made at all."

23. As an illustrative exercise, when we take the CMPA's statement and replace the word 'buyer' with 'CMPA member,' and 'producer' with 'screen composer,' we see the ironic gap between what CMPA demands of Government, and what its members routinely demand of screen composers:

> *Our second amendment is about ensuring a healthy balance in the broadcasting system by requiring fair negotiations between buyers and sellers of content … (**CMPA members**) hold an outsized advantage in negotiations with Canadian **screen composers** … with the decks stacked against them, most **screen composers** are forced to agree to a "take it or leave it" upfront payment. This means that with little leverage to negotiate meaningful ownership for the bucket of rights associated with their IP, **screen composers** risk not getting their shows made at all.*

24. To be clear, SCGC considers that both statements are equally true. SCGC fully supports CMPA's recommended amendment, which would strengthen Canadian producers' ability to negotiate with the purchasers of their content, so that they may retain their commercial rights. But SCGC respectfully submits that the same principle should apply to music composers' ability to negotiate with CMPA's own members.

25. It is both ironic and unfortunate that CMPA's compelling requests for Government to protect its members from having their rights and revenues involuntarily claimed by broadcasters in order to get a deal done continues to be undermined by its ongoing refusal to discuss similar protections with respect to its members' increasing demands over the rights and revenues of screen composers.

26. On four separate occasions in recent years, CMPA has rejected requests from SCGC to enter into negotiations towards a scale agreement with Anglophone screen composers, such as CMPA has negotiated with every other point-generating creator organization, and just as Francophone media producers have negotiated with Francophone screen composers. CMPA has not provided any reasonable or credible grounds for its refusal to discuss with screen composers the same protections that it demands from the Government.

Recommendation

27. In light of these considerations, SCGC respectfully submits that Bill C-11 and any related regulatory direction by the Governor-in-Council to the CRTC, should ensure that:

    - Canadian content certification and/or any "conditions of practice" imposed by the CRTC are only extended to productions where (i) no key creator has been required to surrender their copyright to the producer as a condition of engagement, and (ii) all key creatives who contribute to the production do so under the terms of a collective bargaining agreement with the relevant producers' association.

28. SCGC appreciates the opportunity to share its views in this important proceeding.

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