



SCREEN COMPOSERS
GUILD OF CANADA
GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

May 31, 2021

Submission of the Screen Composers Guild of Canada

In response to:

Consultation on a Modern Copyright Framework for Online Intermediaries

1. 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.
2. In brief, SCGC supports the goals this process, in particular ensuring that:
 - a. rights holders are able to obtain fair remuneration for work they create;
 - b. rights holders are able to negotiate such remuneration without any undue imbalance in bargaining power, and
 - c. rights holders are able to determine for themselves whether the remuneration received is fair;

and respectfully submits that a key consideration in this regard is who is in fact considered “the rights holder.”

3. As outlined below, in relation to these goals, SCGC respectfully submits that:
 - a. This process is overly focused on the middle links of the value chain and not on creators or audiences;
 - b. Intermediaries should not be considered the sole “creators” or “authors” in the copyright framework;
 - c. Independent media producers are using other intermediaries as an excuse to disenfranchise creators of their legal rights;
 - d. The growing role of online intermediaries –as both producers and distributors of content—demands legislative clarity over who is “the rights holder” when it comes to underlying creative elements.

This process is overly focused on middle links of the value chain and not on creators or audiences.

4. A December 2020 report *Digital Disruption: Modernizing the Income of Canadian Music Creators*ⁱ, commissioned by SCGC, Songwriters Association of Canada (SAC), and Société

professionnelle des auteurs et des compositeurs du Québec (SPACQ) analyzes the degree to which digital platforms are increasingly shaping how creative content is created, distributed, and consumed. It concludes that specific practices that have evolved within the streaming economy are limiting the share of royalties making their way to Canadian creators.

5. SCGC notes that this process is positioned in the context of the “central role” that online intermediaries play in how the vast amount of online content is “communicated, collected, and consumed, *as well as a growing role in how such content is produced.*” (emphasis added).
6. SCGC further notes, however, that the consultation paper’s options for reform are all oriented toward communication, collection and consumption practices, and not at all toward how those practices affect production.
7. SCGC respectfully submits that to focus the discussion—in an audio-visual context—solely on the economic relationship between the roles commonly referred to as “content producers” and “content distributors” is to focus on the relationship between two content *intermediaries*, rather than the relationship between Canadian artists and Canadian audiences. In other words, despite a rhetorical nod to the impact of online intermediaries on how content is produced in Canada, in reality this process is focused solely on middle links in the value chain, as opposed to the end links.

Intermediaries should not be considered the sole “creators” or “authors” in the copyright framework

8. This focus risks obscuring the role of actual content creators in the discussion, to the extent that when media producers seek online distribution for “their” content, they are in effect seeking distribution for a parcel of underlying creative rights, held by creators, and the attendant royalties they generate for their creators.
9. Producers may own the rights to the cinematographic work, but this does not necessarily mean they own the rights in its underlying creative elements. Nevertheless, producers are increasingly seeking to “buyout” the rights of creators, and/or to position themselves as the “authors” of those underlying creative elements, despite having had no artistic or creative input into them.
10. In today’s Canadian content ecosystem, “producer” can refer to the production arm of a global streaming platform, or to a traditional Canadian broadcaster, or to an independent media producer. Any film or television project being ‘communicated, collected and consumed’ is essentially a parcel of underlying rights to the creative elements which have been woven into the finished product, including original and licensed music compositions and recordings, which generate remuneration for their creators through performance, reproduction and neighbouring rights royalties.
11. Unfortunately, the shift to online streaming in the AV marketplace has worsened the existing imbalance of bargaining power between content creators and content producers, to the extent

that creators have, in many cases, lost any ability to negotiate fair remuneration for their work, and the ability to benefit from performance, reproduction and neighbouring rights royalties.

Independent media producers are using other intermediaries as an excuse to disenfranchise creators of their legal rights

12. As outlined in the Nordicity Digital Disruption Report:

AV streaming platforms are increasingly exerting pressure on screen composers to forgo performance royalties altogether in exchange for a one-time, upfront payment (commonly referred to as a “buyout”) of performance rights. When a screen composer accepts such a buyout, the potential for any downstream performance revenues disappears entirely. Such downstream revenues have historically been an important part of the screen composers’ income.

13. Often, and increasingly, a so-called “buyout” of the legal property rights provided to composers under the *Copyright Act* (including related performance, reproduction and neighbouring rights and royalties) is positioned clearly by producers as a condition for obtaining an engagement in the first place. In other words, unless screen composers are willing to surrender their rights afforded to them under copyright law to media producers who have no legal claim to those rights, they don’t get the job.ⁱⁱ
14. In SCGC’s view, such practices are coercive and create a negotiating environment fraught with economic duress. SCGC submits that coercive practices which deprive composers of the ownership of intellectual property provided to them in law undermine the objectives of the *Copyright Act* and Canadian cultural policy in general, by forcing content creators to surrender, against their will, their intellectual property and related rights to media producers.
15. SCGC has sought assurance from the Canadian Media Producers Association (CMPA) that it does not encourage or condone the forced assignment of composers’ legal property rights by its members, but to date has not received any meaningful response.
16. Media production companies seek to justify this forced assignment of copyright under various pretenses, including that they have been required to obtain composers’ copyrights by third parties, including commissioning broadcasters and/or streaming platforms. Whether accurate in all cases, this claim underscores the detrimental impact that “buyout” expectations of online intermediaries have on content creators.
17. Another tactic employed is to take the position that a composer’s engagement is consistent with “work made in the course of employment” provisions in copyright and labour law. While SCGC acknowledges that “work made in the course of employment” is a valid exception to the general rule that authorship equals ownership, SCGC submits that “work made in the course of employment” only applies where there is a legal employment relationship with all the benefits and protections that come with it.

18. In fact, film and TV composers are not employees: they are independent contractors. Unfortunately, however, they often lack the leverage to resist these demands of media producers, particularly where the producer threatens to move on to another supplier if the composer will not agree to the assignment of his/her copyright in the score. As a result, the ownership of the intellectual property rights provided to composers in law are frequently acquired by the media production company commissioning the work, as a condition of engagement.
19. When this occurs, the producer becomes the primary (and in the case of reproduction rights, the sole) beneficiary and recipient of royalty and other revenue streams in the works for the entire duration of copyright protection - currently, the author's life plus 50 years. Given that the copyright in the work is legally the composer's at the time of its creation, and given that the duration of its protection is personal to the author's lifespan, SCGC considers the practice of making a composer's engagement contingent on their acquiescence to the forced assignment of legal property wholly inconsistent with the intent of Canadian and international copyright laws and treaties.

This is a case of market failure unique to Anglophone screen composers in Canada

20. In Quebec, screen composers' creator rights are protected under existing collective agreements covering film and television production between Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) and the French-language producers represented by The Association québécoise de la production médiatique (AQPM).
21. However, in English-Canada, CMPA has declined to negotiate a comparable agreement with SCGC. SCGC's repeated requests to discuss a collective agreement with CMPA have been dismissed by CMPA on various occasions dating back to 2015.
22. CMPA's refusal to enter into a collective agreement with SCGC is inexplicable given the fact that it has comparable agreements in place with all other point-generating key creatives in the Canadian content system, and given that CMPA itself stridently advocates for regulatory protection of its members' rights in negotiation with online streaming services and traditional broadcasters (i.e., "terms of trade).
23. In SCGC's view, CMPA's actions amount to a coordinated discriminatory action against Canada's Anglophone screen composers. CMPA's failure to recognize the IP rights provided to them by Canadian and international law leaves composers exposed to coercive practices and predation of our legal property. SCGC respectfully submits that this is an untenable situation and urges policy makers to make the changes needed to ensure that Anglophone screen composers actually receive the ownership, control and rights in their intellectual property provided by law, as Francophone screen composers do.

24. Simply put, the goals of this *Copyright Act*, and of this proceeding, cannot be met without addressing the current imbalance in negotiating power between actual content creators, and content intermediaries (including traditional and online media producers and media distributors).
25. Absent legislative and regulatory intervention to prevent this type of forced copyright assignment as a condition of screen composers' engagement by media production companies, screen composers—who are the rightful creators/authors and legal owners of the works in question—will not be able “to negotiate such remuneration without any undue imbalance in bargaining power (or) determine for themselves whether the remuneration received is fair.”

The growing role of online intermediaries –as both producers and distributors of content—demands legislative clarity over who is the “rights holder” when it comes to the underlying creative elements

26. This imbalance of bargaining power between content creators and intermediaries in the production and distribution chain ultimately points to the need to clarify within the *Copyright Act* that the “creator” of a work is, and will always remain, its “author.” In addition, it points to the need for legislative measures to ensure that independent contractors who create copyright-protected works in the provision of their services are protected from forced buyouts of those copyrights. SCGC submits that retention of copyright ownership and control by screen composers is essential in order to ensure they have the ability to determine fair remuneration for their services and license of their rights.
27. While intermediaries may become “owners” of a work in the course of its commercial exploitation, it is a perverse outcome –and evidence of market failure requiring legislative redress—that the “owner” could be automatically considered its “author” for the purposes of copyright framework.
28. This market failure has drawn increasing attention and legislative action at the international level, particularly in the context of musical works commissioned for distribution by online intermediaries.
 - a. In May 2021, the government of France, in ratifying the EU Directive on Copyright in the Digital Single Market, proposed legislative provisions to prevent “buyout” practices on musical works.ⁱⁱⁱ
 - b. The International Confederation of Societies of Authors and Composers (CISAC), the world’s leading network of authors’ societies, active in 121 countries, has launched *Your Music, Your Future*, a campaign to educate composers of the negative impacts of forced “buy out” provisions, a market failure CISAC describes as having “taken off so rapidly that creators are often unaware of how their business and careers can be affected.”^{iv}

- c. In the United Kingdom, the Musicians Union has launched a campaign Composers Against Buyouts, on the basis that 61% of its members describe the commissioning environment to be “coercive.”^v
29. In Canada, it is clear that absent legislative action to prohibit the forced “buy out” of composers’ rights by media production companies, Canada will become an outlier among its co-production and copyright treaty partners in this regard.
30. CMPA has made it equally clear that unless compelled to do so, its members will not recognize Anglophone screen composers’ legal property rights in the same way they have recognized the rights of Francophone screen composers and all other point-generating key creatives.
31. In conclusion, SCGC appreciates that the scope of this proceeding encompasses the role that online intermediaries play in the distribution and production of content.
32. At the same time, SCGC respectfully submits that options for reform should not be entirely focused on the relationship between producers and distributors, who are in effect both intermediaries between the actual creators of Canadian content and Canadian audiences.
33. To be fully consistent with the goals of this proceeding, and of Canadian cultural policy in general, any resulting amendments to the *Copyright Act* must include provisions to (i) prevent coercive “buyouts” of creator rights in commissioned works.
34. Where media production companies force screen composers to surrender their copyrights so they can purport to be the “author” of someone else’s work, then it is not possible to have a technical discussion on how to ensure that the actual creators of Canadian content are able to obtain fair remuneration for its use by online intermediaries.
35. SCGC appreciates the opportunity to provide its views to this important consultation.

End of Document

ⁱ <https://screencomposers.ca/digital-disruption-study/>

ⁱⁱ See Appendix A, a Spring 2021 offer for an underscore composer, from an independent media production company emphasizing that the production company will claim ownership the composer’s share of publishing royalties as a condition of contract, and will be considered the co-author of the any music composed for the production.

ⁱⁱⁱ [Legislative File: Ordinance n ° 2021-580](#) of 12 May 2021 transposing 6 of article 2 and articles 17 to 23 of directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9 / EC and 2001/29 / EC

^{iv} <https://international.yourmusicyourfuture.com/composer-compensation/>

^v <https://musiciansunion.org.uk/campaigns/composers-against-buyouts>

Appendix A : Spring 2021 request for underscore composer, emphasizing that the media production company requires the composer to surrender their copyrights as a condition of engagement.

Hi there,

We have an exciting opportunity to share with you - we are looking for an underscore composer for an upcoming animated TV series that has been green lit and awarded to [producer name redacted]. Here are the details:

Show Order

- 1) Series - 19 x 22:00 episodes
- up to 145 minutes of underscore (@ \$300 CAD/minute)

- 2) Specials - 2 x 66:00 & 1 x 44:00 specials
- up to 90 minutes of underscore (@ \$300 CAD/minute)

This project will be some serious heavy lifting for the composer, both creatively and workload.

Schedule

The Series and Specials have separate schedules, however they do overlap:

- 1) Series - Approximate start date June 2022 - production schedule allows for 2 weeks per 22:00 for composition & mixes are bi-weekly

- 2) Specials - Approximate start date April 2022, with style development starting February 2022 - production schedule allows between 6-8 weeks for composition

The entire post schedule will run from approximately April 2022 - March 2023. The project is a beast and will be very rich and involved musically, so it will be a full time job for at least one year. [Redacted] will provide the music editor for this project.

Payment

We are offering \$300 CAD/minute for up to 235 minutes of underscore. **The producer of the show takes 100% of the publisher's share of royalties. The remaining writer's share of royalties will be split 50/50 between the winning composer and [redacted]. (emphasis added)**

Underscore Pitch Test

We are asking that those who are interested to please score a 1:00 test clip on spec. This is a highly confidential show. The producer of the show [redacted] nor the subject matter can be mentioned in any capacity.

[Redacted] would like to handle the NDAs themselves. If you are interested in pitching on this series, please expect an NDA from [redacted] legal department directly. Once you have signed the NDA, we will share the brief with you.

The 1:00 test clips will be due March 26 at 12:00 pm EST. You must be a Canadian Citizen/Permanent Resident to be considered for this project. Please let us know if you are interested and we will begin the NDA process. Thanks,