SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

Submission from the Screen Composers Guild of Canada
To the Standing Committee on Canadian Heritage
Concerning the Status of the Artist Act

March 21 2022

Executive Summary

1. The Screen Composers Guild of Canada recommends that the *Status of the Artist Act* be amended to address the increasing trend of media producers and other intermediaries exploiting an inherent imbalance in bargaining power to lay claim to the rights and revenues associated with music they commission from independent artists.

2. SCGC respectfully submits that:

    a. The definition of 'Producer' set out in section 6(1)(a) should be expanded to include independent media producers who commission artists to provide creative elements to an audiovisual production.

    b. The definition of 'pressure tactic' set out in section 5 should be expanded to prohibit situations where a producer makes an engagement conditional on independent artists' acquiescence to 'work for hire' and 'work made in the course of employment' language.

    c. In instances where employers refuse to comply with the Board's order, the Act should make explicit the Board's authority to order arbitration, at the sole expense of the recalcitrant party.

Introduction

3. The Screen Composers Guild of Canada (SCGC) is the national association certified under section 28(2) of the Act to represent all professional Anglophone composers and music producers for audiovisual media productions in Canada.

4. SCGC's members create musical scores and background music for original audiovisual productions. They 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 musical components to the production's mixers. And they adjust and amend the score as required by the media producer.

5. When a media producer engages a Canadian screen composer for an audiovisual project, it triggers one point under the 'key creative points' system used by CAVCO and CRTC to determine whether a screen project officially qualifies as 'Canadian Content', for regulatory and taxation purposes.

6. SCGC members are now the only point generating key creators in the Canadian content system without a collective bargaining agreement with Canadian Media Producers Association (CMPA). This leaves SCGC members in a marginalized and ambiguous position, which CMPA members frequently exploit by demanding, as a condition of engagement, that SCGC members surrender some or all of the natural rights that accrue to them as creators under the copyright framework.

7. SCGC notes that the current situation is unique to Anglophone screen composers in Canada, as l'Association québécoise de la production médiatique (AQPM, representing Quebec-based Francophone media producers) has entered into an agreement with le Société professionnelle des auteurs et des compositeurs du Québec (SPACQ, representing Francophone screen composers).

8. Historically, no Anglophone Canadian composer was ever asked to surrender their copyright as a condition of engagement. The composer signed a master use license and a synchronization license for the music in the score, and that was all the producer needed in order to market the production internationally. Increasingly, engagements between producers and composers are contingent on the composer surrendering their copyrights as a condition of engagement.

9. This situation is ironic given CMPA's strident advocacy in favour of regulated 'terms of trade' or 'conditions of service' that would prevent broadcasters from demanding rights to finished audiovisual works from producers who commission the script, score and other creative elements from creators.

10. To be clear, SCGC supports CMPA's position that just because an organization commissions a creative work, it does not automatically assume all rights to it, simply because it has the economic leverage to do so. SCGC does however wish that CMPA was more consistent in its convictions, when it comes to its own members' frequent practice of assuming rights and revenues from screen composers, simply because they have the economic leverage to do so.

The definition of 'Producer' set out in section 6(1)(a) should be expanded to include independent media producers who commission artists to provide creative elements to an audiovisual production.

11. Currently the Act refers to government and broadcast entities who were, at the time the Act was adopted, the main 'commissioners' of screen compositions from independent artists. Today, most screen compositions are commissioned from independent media producers, who function as an intermediary between broadcasters, and the screen writers, directors, actors, production designers and screen composers who supply the actual creative services. In English Canada, the majority of these independent media producers are represented by the CMPA.

12. 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, just such as CMPA has negotiated with other creator organizations that certified under the Act. CMPA has not provided any reasonable or credible grounds for depriving SCGC members of their rights to collective bargaining under the Act.

13. Currently, section 5 of the Act defines 'producer' as:

> *"… a government institution or broadcasting undertaking described in paragraph 6(2)(a), and includes an association of producers."*

14. Section 6(2) states that this definition applies:

> a. *"to the following organizations that engage one or more artists to provide an artistic production, namely,*
>
> i. *government institutions listed in Schedule I to the Access to Information Act or the schedule to the Privacy Act, or prescribed by regulation, and*
>
> ii. *broadcasting undertakings, including a distribution or programming undertaking, under the jurisdiction of the Canadian Radio-television and Telecommunications Commission; and,*
>
> b. *to independent contractors determined to be professionals according to the criteria set out in paragraph 18(b), and who*
>
> i. *are authors of artistic, dramatic, literary or musical works within the meaning of the Copyright Act, or directors responsible for the overall direction of audiovisual works,*
>
> ii. *perform, sing, recite, direct or act, in any manner, in a musical, literary or dramatic work, or in a circus, variety, mime or puppet show, or*
>
> iii. *contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound-recording, dubbing or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by regulation."*

15. SCGC notes that the Act's application to professions occupying 'key creative' roles under the Canadian content framework is evident, as is the Act's recognition that authors of musical works are independent contractors of producers and are not employees of producers.

16. Where the Act is less clear is in its application to independent media producers who are commissioned by broadcasting, programming or distribution undertakings to supply them with film and TV content. As noted above, the Act assumes that most artistic creations are commissioned by government or broadcast entities when in fact, in today's global content market, most commissions for the types of creative services provided by independent artists are from independent media producers, and other intermediaries.

17. SCGC notes that the Act's application to independent media producers is implicit in the Act's current wording, and made stronger by the fact CMPA has entered into scale agreements with numerous organizations certified under section 28(2) of the Act.

18. Nevertheless, SCGC respectfully submits that its proposed addition of a new 6(2)(a)(iii) would remove any ambiguity with respect to the Act's application to independent media producers, in their capacity as employers of independent contractors.

> 6(2)(a) (iii) Independent media producers who engage one or more artists, as independent contractors, to provide key creative elements to an audiovisual production.

The definition of 'pressure tactic' set out in section 5 should be expanded to prohibit situations where a producer makes an engagement conditional on independent artists' acquiescence to 'work for hire' or 'work made in the course of employment' language.

19. 'Work for hire' as a concept is inconsistent with the Act's stipulation that artists who are commissioned by a producer to provide creative services are independent contractors. 'Work made in the course of employment' only applies, logically, in situations where an employer/employee relation exists. To the contrary, agreements made between media producers and screen composers typically include language stipulating that no employer/employee relationship exists between the producer and composer. Nevertheless when producers exploit their bargaining power to grab screen composers' rights and revenues, it is typically couched in this type of language, as a take-it-or-leave-it condition. If the composer refuses, they do not get the commission.

20. The practical effect of this coercive practice is that individuals who commission a musical composition or sound recording from someone else then become legally considered a 'maker' and/or 'composer' for the purposes of collecting future royalties. It follows that the rightful owner of those titles is then deprived of the long-term economic benefits of the work they create, as the royalties flow to someone who did nothing to earn them but abuse an imbalance in negotiating power.

21. To address this situation SCGC recommends that a third definition be adopted under the Act's Interpretation section, specifically under the definition of 'pressure tactic' found at section 5:

> 5 (c) Offers of engagement from a producer to an independent artist that are conditional on the artist assigning some or all of their copyrights in the work being provided to the producer are prohibited.

In instances where employers refuse to comply with the Board's order, the Act should make explicit the Board's authority to order arbitration, at the sole expense of the recalcitrant employer

22. This proceeding is also an opportunity to strengthen and clarify the Board's authority to compel an employer organization to enter into a first scale agreement, by clarifying the remedies available to the Board in situations where an employer organization refuses to comply.

23. SCGC recognizes that section 54 of the Act ascribes broad remedial powers to the Board, including the authority to order a party to comply, and the authority to order a party to do anything that is equitable.

24. SCGC submits that this broad authority should be made more explicit by specifying that in situations where an employer organization refuses to comply with an order from the Board to enter into scale agreement negotiations with an organization certified under the Act:

    a. The Board may order arbitration between the two organizations; and,
    b. The Board may order all costs for arbitration to be paid by the recalcitrant organization.

Conclusion

25. SCGC respectfully submits that independent media producers' claims to screen composers' copyrights, as a condition of engagement, run directly contrary to the spirit and objectives of the Act, and as such, should concern policymakers assessing the Act's impact on economic relationships between producers as employers, and artists as independent contractors.

26. As such, SCGC recommends that the Act be amended to redress the balance of bargaining power, in order to better equip screen composers (and other artists working as independent contractors) in their negotiations with producers (however defined).

27. Specifically, SCGC recommends that:

    a. The definition of 'Producer' set out in section 6(1)(a) should be expanded to include independent media producers who commission artists to provide creative elements to an audiovisual production.

    b. The definition of 'pressure tactic' set out in section 5 should be expanded to prohibit situations where a producer makes an engagement conditional on independent artists' acquiescence to 'work for hire' or 'work made in the course of employment' language.

    c. In instances where employers refuse to comply with the Board's order, the Act should make explicit the Board's authority to order arbitration, at the sole expense of the recalcitrant employer.

28. SCGC appreciates the opportunity to participate in this important proceeding.

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