SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

October 6, 2022

Submission of the Screen Composers Guild of Canada
to the Senate Committee on Transport and Communications Study of Bill C-11
The Online Streaming Act

Executive Summary

1. The Screen Composers Guild of Canada (SCGC) fully supports the objectives of Bill C-11, and respectfully urges the Senate to ensure its swift passage into law.

   - In expanding Canada's regulatory framework for broadcasting to include online undertakings, Bill C-11 equips the Government of Canada with the legislative tools necessary to ensure a place for Canadian creators, today and into the future, within the dynamic and evolving media system that serves Canadians.

2. C-11 and its supporting framework should embody the principle that no creator should be forced to surrender their legal rights over the content they create, as a condition of engagement.

   - Making maximum possible use of Canadian talent while retaining Canadian rights and royalties in the hands of Canadian creators should be prerequisites for anyone asking the Canadian public to subsidize the content they produce in Canada.

3. Anglophone screen composers are the only creators within the Canadian content framework without a collective bargaining agreement with Canadian media producers. This, even though the music created by screen composers is a 'production within the production:' a stand-alone work with revenue and royalty opportunities completely separate from its first use in a film or program. Canadian media producers know this, and exploit this, by unfairly laying claim to Canadian screen composers' rights and revenues, at the same time as they ask Government to protect their rights and revenues from being unfairly claimed by others.

- SCGC submits that any eventual "conditions of service" or "codes of practice" imposed by the CRTC should embody the principle that no Canadian creator should be forced, as a condition of contractual engagement, to surrender their copyright to their creative contribution within an audio-visual work.

4. C-11's Related Amendment to the *Status of the Artist Act* will only make it harder for Canadian composers to protect their rights and revenues. Its de-prioritization of independently produced programming will only make this situation worse. This exemption should be removed from the Act.

    - Regulatory protection from 'forced buyout' or 'work for hire' conditions will be doubly important, should Bill C-11 strip Canadian creators of their current right to bargain collectively at the federal level with the same online undertakings who demand the surrender of creators' copyrights. This Related Amendment to the *Status of the Artist Act* is a solution in search of a problem and should be removed from Bill C-11.

5. The Senate should use this opportunity to restore a core policy objective under the *Broadcasting Act*: ensuring a diversity of programming sources by re-conferring a priority on programming acquired from independent media producers.

    - The language of section 3(1)(i)(v) of the *Broadcasting Act* (requiring that the Canadian broadcasting system "include a significant contribution from the independent production sector") should be fully restored, removing Bill C-11's equivalent priority-of-place within the system for in-house and affiliated programming from broadcasting undertakings. Broadcasting undertakings do not require regulatory incentives to broadcast content they produce themselves. However, history has proven that they do require regulatory incentives to broadcast content acquired from independent sources.

About the SCGC and the role of screen composers

6. 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.

7. Historically, no Anglophone Canadian composer was ever asked to surrender their copyright as a condition of employment. They signed a master use license and a synchronization license for the music in the score –which has always been, and remains, all a producer needs 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.'

8. 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.

9. 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.

C-11 and its supporting framework should embody the principle that no creator should be forced to surrender their legal rights over the content they create, as a condition of engagement

10. Making maximum possible use of Canadian talent while retaining Canadian rights and royalties in the hands of Canadian creators should be prerequisites for anyone asking the Canadian public to subsidize the content they produce in Canada.

11. The scores created by screen composers consist of two separate elements: the underlying melody, notes and lyrics (the compositions), and the audio recordings of those compositions (the master recordings). Collectively, these elements are referred to as a show's musical 'score'.

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.) In fact, a score is the only 'point-generating' element of a 6/10 or 10/10 Canadian content production that constitutes a 'production within the production:' a stand-alone work that has a commercial life of its own, after its first use in a film or program.

13. This so-called 'back end' revenue is a key component of composers (and their heirs) deriving 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. Today, producers generally expect composers to surrender their copyrights in a 'forced buyout', while continuing pay the lower rates that had been premised on composers retaining those rights.

14. Demanding any part of a creator's intellectual property 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* 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.

15. SCGC strongly agrees with these principles and conclusions, and urges the Senate to ensure that C-11 provides the Government with the tools to ensure they are reflected clearly and prominently in Canada's broadcasting framework.

16. Along related lines, SCGC strongly opposes the self-serving suggestions made to this Committee from foreign online undertakings, such that that the Government of Canada should abandon any requirement that intellectual property in content subsidized by Canadian taxpayers be retained by Canadians.

17. Retention of intellectual property within Canada is a core principle of Canadian cultural and economic policy. When foreign-based global media companies (with market capitalizations that dwarf the entire Canadian media sector) ask Canadian taxpayers to subsidize their massively profitable operations, while leaving the least amount of rights and royalties they possibly can in the hands of Canadian creators, they disrespect the policy objectives of the Broadcasting Act, Canadian taxpayers and Canadian creators.

18. Preserving intellectual property, to the greatest extent possible, in the hands of its author(s) was, and must remain, a fundamental prerequisite for accessing Canadian tax credits to offset the cost of producing commercial and cultural content in Canada. SCGC strongly submits that current language found under section 3(1)(i)(v) of the *Broadcasting Act* –pertaining to significant contributions to the system from the independent production sector—should be restored.

Anglophone screen composers are the only creators within the Canadian content framework without a collective bargaining agreement with Canadian media producers. Canadian media producers exploit this situation by unfairly laying claim to Canadian screen composers' rights and revenues, at the same time as they ask Government to protect their rights and revenues from being unfairly claimed by others

19. In recent years, Canadian media producers (including those producing content for both online and traditional undertakings) have begun to insist that composers give up some or all of their copyright, 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 their collective bargaining agreements with Canadian Media Producers Association (CMPA).

20. Exacerbating this situation is the fact that Canadian screen composers are the only points-generating 'key creative' in the Canadian Content certification system not protected by a collective bargaining agreement with the CMPA.As a result, 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.

21. Other than with screen composers, 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 refused to enter into a comparable agreement with screen composers.

22. 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.

23. 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. For over a decade CMPA has argued, at every available opportunity, that the Government should intervene to protect its members' ownership position in the content produced in Canada.

24. Appearing before this Committee on September 15, 2022, CMPA representatives submitted that:

> "The buyer side of content production is concentrated in the hands of Canada's large, vertically integrated telecom companies and foreign tech giants. They hold an outsized advantage in rights negotiations. Producers often face a "take it or leave it" proposition: give up their rights in the program or risk it not being made at all. There is a real need to correct this market imbalance. Canadian production companies must be able to retain an ownership stake in their content and provide the market conditions needed for longer-term sustainability and investment. Bill C-11 should ensure that the CRTC is empowered to require and enforce collective terms of trade between buyers and producers — a code of baseline conditions to be applied in good faith negotiations between the buyers and sellers of content."[i]

25. SCGC fully supports CMPA's position on terms of trade, and notes, respectfully, that a slight paraphrase of CMPA's statement would be equally accurate:

> **CMPA members** hold an outsized advantage in rights negotiations. **Canadian screen composers** often face a "take it or leave it" proposition: give up their rights **to the score** in the program or risk it not being made at all. There is a real need to correct this market imbalance. **Canadian screen composers** must be able to retain an ownership stake in their content and provide the market conditions needed for longer-term sustainability and investment. Bill C-11 should ensure that the CRTC is empowered to require and enforce collective terms of trade between **independent media producers** and **key creators** — a code of baseline conditions to be applied in good faith negotiations between the buyers and sellers of content.

C-11's Related Amendment to the *Status of the Artist Act* will only make it harder for composers to protect their rights and revenues. Its de-prioritization of independently-produced programming will only make this situation worse. This exemption should be removed from the Act.

26. As the only point-generating creators in the Canadian Content framework without a collective agreement with CMPA to protect its members' rights and revenues, SCGC is concerned that C-11's Related Amendment to the *Status of the Artist Act* means its members will have even less leverage going forward when negotiating with producers and other intermediaries who commission the creation of new screen music, while increasingly demanding the surrender of the composer's legal rights under the *Copyright Act* as a condition of engagement.

27. Like others, SCGC has sought, but failed to receive, a clear explanation as to why this Related Amendment to the *Status of the Artist Act* is necessary, apart from vaguely defined concerns over potential overlap with provincial labour laws. SCGC respectfully notes that this explanation invites questions as to when the Government became aware of a constitutional issue so serious it could only be addressed by stripping Canadian creators' of their right to collective bargaining with online undertakings.

28. SCGC notes that this apparent constitutional issue was not addressed at all in the previous Bill C-10, and that Canadian Heritage officials briefed Members of the House of Commons Standing Committee on Canadian Heritage on the *Status of the Artist Act* as recently as April 2022, and did not mention any potential constitutional conflicts.

29. SCGC agrees with those who have noted that the fundamental premise of this Related Amendment is out of step with the overall direction and purpose of Bill C-11, which is a legislative response to the commercial and regulatory imbalances arising from the many streaming platforms now operating in Canada. C-11's Related Amendment to the *Status of the Artist Act* deepens this imbalance between traditional broadcasters and online undertakings, and contradicts the Government promise, and premise, that all undertakings in the broadcasting system should be treated equally.

30. SCGC notes that broadcasting is federal jurisdiction because its services are provided across provincial borders. Labour relations in broadcasting is therefore under federal jurisdiction. Like traditional broadcasters, online streaming platforms make, acquire, and distribute programming as defined in the *Broadcasting Act* across provincial borders. Where any of them engage point-generating key creators in Canada, SCGC strongly submits that the *Status of the Artist Act* must continue to apply. Bill C-11's Related Amendment to the *Status of the Artist Act* is a solution in search of a problem, and should be removed.

The Senate should use this opportunity to restore a core policy objective under the *Broadcasting Act*: ensuring a diversity of programming sources by re-conferring a priority on programming acquired from independent media producers.

31. The language of section 3(1)(i)(v) of the *Broadcasting Act* (requiring that the Canadian broadcasting system "include a significant contribution from the independent production sector") should be fully restored, removing Bill C-11's equivalent priority-of-place within the system for in-house and affiliated programming from broadcasting undertakings.

32. The effect of de-prioritizing the independent production sector within section 3 of the *Broadcasting Act* will compound the harmful effects of C-11's undermining of the *Status of the Artist Act*. With in-house and affiliated programming gaining equal priority within the system, both traditional and online broadcasting undertakings will have added incentive to disenfranchise creators and producers of their intellectually property.

33. Broadcasting undertakings do not require legislative incentive to broadcast content they produce themselves. However, history has proven that they do require legislative incentive to broadcast content acquired from independent sources, and to permit those independent producers and creators to retain their copyright in the work created.

34. Absent a clear priority of place within the system for independently produced content – where the intellectual property is retained in the hands of its creators, and is not subject to forced buyout provisions –C-11 will have the perverse effect of reducing programming diversity in the system, while at the same time exacerbating the increasing misdirection of rights and royalties in the system away from artists and creators, and towards those who simply have the economic leverage to demand them.

35. Taken together, C-11's undermining of the *Status of the Artist Act* alongside its de-prioritization of independently produced content in the system amount to a compound triumph of intermediaries over creators, of financiers over artists. The Senate should ensure that C-11 does not undo decades of successful cultural policy outcomes in this regard.

Conclusion

36. SCGC fully supports the objectives of Bill C-11, and respectfully urges the Senate to ensure its swift passage into law.

37. C-11 and its supporting framework should embody the principle that no creator should be forced to surrender their legal rights over the content they create, as a condition of engagement. Making maximum possible use of Canadian talent while retaining Canadian rights and royalties in the hands of Canadian creators should be prerequisites for anyone asking for public subsidy of content produced in Canada.

38. Anglophone screen composers are the only creators within the Canadian content framework without a collective bargaining agreement with Canadian media producers. Canadian media producers exploit this situation by unfairly laying claim to Canadian screen composers' rights and revenues, at the same time as they ask Government to protect their rights and revenues from being unfairly claimed by others.

39. C-11's Related Amendment to the *Status of the Artist Act* will only make it harder for composers to protect their intellectual property. It is a solution in search of a problem, and should be removed from C-11.

40. The Senate should use this opportunity to restore a core policy objective under the *Broadcasting Act*: ensuring a diversity of programming sources by re-conferring a priority on programming acquired from independent media producers.

41. SCGC appreciates the opportunity to share its views with the Senate Committee on Transport and Communications.

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[i] EVIDENCE Thursday, September 15, 2022 The Standing Senate Committee on Transport and Communications study of the subject matter of Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts,* https://sencanada.ca/content/sen/committee/441/trcm/17ev-55649.pdf