



SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

Via GC Key

July 12, 2023

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2023-138 The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content

1. This submission is filed by the Screen Composers Guild of Canada (SCGC) in relation to the above-noted Notice of Consultation.
2. SCGC fully supports the objectives of the new contribution framework as outlined at paragraph 19 of the Notice of Consultation, and further supports the analysis and recommendations submitted by ACCORD to the related CRTC Notice of Consultation 2023-139.
3. In line with SCGC's mandate and the role of its members as 'point-generating' key creators within the existing Canadian programming accreditation framework, SCGC notes that the regulatory proposals under focus in this proceeding represent a significant impact on the ability of Canadian screen composers to continue to make a valuable and tangible contribution to the objectives of the *Broadcasting Act*. SCGC supports related interventions from ACCORD and SPACQ in this regard.
4. SCGC notes that its analysis and advice respond to key elements of the (proposed) *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*.
 - a. In its regulation of the broadcasting sector, the Commission would be directed to "... ensure that the sector maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on economic opportunities and remuneration for creators." (emphasis added)

- b. In its determination of what constitutes Canadian programming, the Commission would be directed to, among other things, “... support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility,” and to “... support Canadian ownership of intellectual property.”
5. Accordingly, SCGC’s recommendations are submitted with a view to fostering a regulatory and Canadian programming environment conducive to sustaining creative and commercial opportunities for Canadian creators in the digital and online content marketplace. This includes ensuring the greatest possible retention by Canadian creators in the IP that benefits from Government of Canada support. We look forward to discussing these proposals further at the public hearing in November.

Executive Summary

6. Engaging a Canadian screen composer to provide original music¹ to an audio-visual production triggers one point under the current CRTC and CAVCO Canadian programming certification system, for purposes of regulatory accreditation and/or access to funding bodies for that production.
7. Despite this central role in the current framework, Anglophone screen composers are the only key creators without a collective bargaining agreement with the Canadian Media Producers Association (CMPA). As a result, media producers –both independent and affiliated-- exploit this situation by laying claim to Canadian screen composers’ rights and revenues.
8. In response to the first section of the Notice of Consultation (addressing base contribution levels and the Commission’s approach to determining relevant revenue sources under an updated contribution framework) SCGC respectfully submits that **where broadcasting or online undertakings² take ownership of the copyright in audio-visual scores, any resulting music revenues related to a work’s score which are earned in Canada should be explicitly reported on annual financial returns, alongside other broadcasting revenues, for purposes of determining the level of any “base contribution” as defined in the Notice of Consultation.**
9. In response to the second section of the Notice of Consultation (addressing the future role and structure of funding bodies) SCGC respectfully submits that **an updated contribution framework should eliminate inadvertent incentives within certification and/or funding criteria that encourage media producers (i) to engage only Canadian screen composers for a bare minimum of ‘original music’ required to trigger a point under the CAVCO/CRTC scale (sometimes only a**

¹ For the purposes of this submission, “audio-visual score” and “original music” are understood to mean new music created by a Canadian composer—i.e., music that is composed, orchestrated, recorded, mixed and synched to visual images within a particular audio-visual production-- as distinct from ‘soundtrack’ music that may be licensed by a media producer from catalogues of pre-existing songs and/or background music.

² For the purposes of this submission, “media producers” and “undertakings engaging a Canadian screen composer” are understood to include independent Canadian media producers, as well as media producers affiliated with broadcasting and/or online undertakings.

few seconds), and/or (ii) to claim ownership of copyright in original music composed by a Canadian screen composer.

10. In response to the third section of the Notice of Consultation (addressing the place of ‘intangible’ contributions within an updated contribution framework) SCGC respectfully submits **that incenting retention of ownership of the copyright in audio-visual scores by Canadian screen composers should be a policy priority under the new contribution framework.** SCGC further proposes specific measures to dissuade media producers from forcing Canadian screen composers to accept ‘work for hire’ or ‘work made in the course of employment’ conditions, where no employer-employee relationship exists.

Introduction

11. 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.
12. Canadian screen Composers are the only point-generating key creators in the Canadian programming system whose work produces stand-alone works of art: not only an original musical work that supports moving pictures onscreen, but one which also has a life of its own, separate and apart from its use in an audio-visual work (unlike, for example, a shooting script, or an actor’s performance, or a production design: all of which only exist as inseparable elements of the finished production).
13. Anglophone screen composers are also the only point-generating key creators in the Canadian programming system not protected by a collective bargaining agreement with the Canadian Media Producers Association (CMPA). As a result, SCGC members are frequently required to surrender their legal creator rights and revenues as a non-negotiable condition of engagement when providing screen composing services to projects produced by CMPA members.
14. Screen composers are increasingly presented with U.S.-style ‘buyout clauses’ that require the composer to surrender full control of their work in exchange for an upfront lump-sum payment. In these circumstances, the composer foregoes vital ongoing income derived from additional or subsequent exploitation of their copyright protected work, disrupting long-established industry standards which have allowed screen composers to sustain long careers by receiving ongoing revenues when their audio-visual projects continue to be performed over time.
15. When such ‘buy out’ clauses are imposed, the media producer receives additional music publishing revenues which would have previously, and rightfully, remained with the screen composer. These creator earnings are effectively siphoned off, vanishing from the Canadian creative economy and flowing instead into multinational revenues that accrue to the commissioning party, rather than the Canadian creator.

16. Other than with screen composers, CMPA has agreements with organizations representing all other Anglophone key creative roles that generate points under the certification system: directors, writers, production designers, actors, and editors. CMPA has repeatedly refused to enter into a comparable agreement with SCGC.
17. SCGC notes this is an inequity specific to English-language composers and productions. In Quebec, screen composers' creator rights are protected under existing collective agreements between La Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) and the French-language producers represented by l'Association québécoise de la production médiatique (AQPM). However, in English-Canada, CMPA has continually declined to negotiate a comparable agreement with SCGC.
18. When screen composers are required by some producers to surrender their copyright as a condition of securing an engagement, one or two false explanations are usually offered:
 - a. that the producer must own the copyright in the score to allow the audio-visual work to be distributed/exploited internationally; and/or,
 - b. that the producer is engaging the composer on a 'work for hire' or 'work made in the course of employment' basis, and therefore automatically owns any resulting IP that flows from the composer's work as an 'employee'.
19. The first claim hinges on the false premise that 'control' over IP within an audio-visual production requires 'ownership' of that IP:
 - a. There are well established international copyright licensing frameworks to ensure that works can be distributed internationally without the need to 're-license' a piece of music for use in each territory.
 - b. Moreover, the fact that many productions licence 'hit' or 'classic' songs for use in their productions further belies the claim that producers need to 'own' the rights to every piece of music they use in a soundtrack or score. To the contrary, the frequent practice of licensing existing hit or classic songs for placement in an audio-visual production demonstrates that media producers are able to retain business and creative control over a project without 'owning' all of the copyright in a score or soundtrack.
20. The second claim is equally false:
 - a. It ignores the absence of any 'work for hire' provisions within the *Copyright Act* or the *Status of the Artist Act* and overlooks that section 13(1) of the *Copyright Act* effectively provides that 'authorship equals ownership'.³

³ Copyright Act, s. 13(1): 13 (1) "Subject to this Act, the author of a work shall be the first owner of the copyright therein." <https://laws-lois.justice.gc.ca/PDF/C-42.pdf>

b. It overlooks that ‘work made in the course of employment’ provisions do not apply to independent contractors; moreover, agreements between media producers and screen composers usually stipulate that no employer-employee relationship exists between the producer and the composer.

21. SCGC therefore submits that, in pursuit of the Commission’s “general objectives in regard to Canadian programming and creators,” and in response to the (proposed) *Order Issuing Directions to the CRTC*, any updated contribution framework should require media producers to respect the inherent and statutory rights of Canadian screen composers to retain and exploit the copyrights in any score they create.

Where broadcasting or online undertakings⁴ take ownership of the copyright in audio-visual scores, any resulting music revenues related to a work’s score which are earned in Canada should be explicitly reported on annual financial returns, alongside other broadcasting revenues, for purposes of determining the level of any “base contribution” as defined in the Notice of Consultation.

22. Paragraph 56 in the Notice of Consultation notes that:

Q.7 Many of the Commission’s existing contribution requirements are calculated on the basis of annual revenues. On what basis should the initial base contribution level and the overall contribution commitment of online undertakings be calculated? If the Commission were to use annual revenues, please comment on the appropriateness of the following definition.

“Annual revenues means revenues attributable to the person or that person’s subsidiaries and/or associates, if any, collected from the Canadian broadcasting system across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which the revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings.”

23. SCGC notes that the current annual financial return employed by the Commission to collect financial data from licensees does not include a field relating to revenues derived from exploiting copyrights under the broadcaster’s control. Notionally those revenues may be captured in the ‘other revenues’ field, but this approach does not provide the Commission, or its stakeholders, with enough information to track trends in IP licensing or copyright exploitation within the broadcasting system.

24. Therefore, in line with a policy focus that incents retention of IP in the hands of Canadian creators, SCGC respectfully submits that the financial return process should specifically include a requirement for licensees and registrants to report revenues derived from exploitation of copyrights.

⁴ For the purposes of this submission, “media producers” and “undertakings engaging a Canadian screen composer” are understood to include: independent Canadian media producers, as well as media producers affiliated with broadcasting and/or online undertakings.

25. For greater clarity, 'exploitation of copyrights' should include all music royalty revenue a broadcasting or online undertaking receives for Canadian performances, reproductions or from any other source (e.g. from SOCAN or any other domestic or foreign collective rights management organization). This should further include royalty revenue earned in Canada but paid to a rights management organization in another territory (such as "Performing Rights" royalties earned in Canada but paid in another territory via a foreign collective management organization).

An updated contribution framework should eliminate inadvertent incentives within certification and/or funding criteria that encourage media producers to (i) only engage Canadian screen composers for a bare minimum of 'original music' required to trigger a point under the CAVCO/CRTC scale (sometimes only a few seconds), and/or (ii) claim ownership of copyright in original music composed by a Canadian screen composer.

26. Paragraph 59 of the Notice of Consultation outlines the Commission's general objectives in regard to contributions to Canadian programming and creators, seeking comments on ways that existing content-support funds could be improved to better reflect these objectives.
27. SCGC notes that among the Commission's general objectives is "the establishment of long-term sustainable funding for content." SCGC fully agrees, and respectfully notes that when a screen composer is deprived of ownership of their IP by media producers exploiting their economic advantage within the relationship, these revenues are rarely returned to the system either in the form of increased investment in audio-visual content, or in the form of sustaining income that permits a screen composer to contribute to the Canadian content system.
28. SCGC submits that the Commission could leverage the mandate and operations of existing funding bodies to ensure that the funds (and the certification bodies that administer them) (i) incent maximum participation by Canadian creators in the system, and (ii) disincent media producers from seizing composers' copyright as a condition of engagement.

CAVCO and CRTC certification criteria

29. Under Canadian Audio-visual Certification Office (CAVCO) criteria "...the point for the position of music composer is allotted only if all original music created for a production is composed by a Canadian."⁵ Under the CRTC's certification criteria a point is awarded where the screen composer is one of "key creative functions being performed by Canadians."

⁵ Canadian Program Certification Guide: <https://crtc.gc.ca/canrec/eng/guide1.htm>

"This point is only awarded if the production commissions a Canadian to compose original music specifically for the production. Music composed by Canadians for the first season of a television series may also be claimed for the music composer point for subsequent seasons.

Rearranging existing music, even if it is Canadian, uses the position but does not earn the point. The production can use existing music in addition to the original music.

The position of Music Director is not accepted as equivalent to Music Composer.

30. SCGC notes that some media producers take advantage of the wording in the CAVCO guidelines by engaging a Canadian composer to only create a few seconds of “original music” for a production, filling the rest of the production with non-Canadian catalogue music, then claiming to CAVCO that “all original music” was in fact provided by a Canadian composer, because there were only a few seconds of “original music” in the production.
31. In gaming the system in this way, these media producers’ practices deviate from key objectives of the Canadian Content framework, i.e. ensuring *key creative functions are being performed by Canadians*.
32. SCGC therefore respectfully submits that any ‘screen composer point’ only be awarded within future certification criteria where a **predominant** amount of screen music is both (i) original and (ii) created by a Canadian composer. Separate consideration could be given to recognizing use of existing certified Canadian music within a soundtrack, but producers should not have access to the full suite of tax credits based on a few seconds of ‘original music’.
33. Media producers seeking CAVCO certification should also be required to include an attestation to the effect that the composer in question has not been required to surrender any of their copyright in the music as a condition of engagement.

Canada Media Fund (CMF) recoupment policies

34. SCGC further notes that the Canada Media Fund’s *Standard Recoupment Policy* permits, if not indirectly encourages, producers to lay undue claim to screen composers’ rights and royalties by including ‘music publishing revenues’ on the list of financial sources those producers can direct toward repayable CMF contributions.
35. Accordingly, to better promote the retention of IP in the hands of Canadian creators, SCGC respectfully recommends that CMF remove this artificial inducement for the seizure of screen music rights and royalties by:
 - a. removing references to ‘music publishing’ and ‘music royalties’ from among the revenue sources permitted to count towards repayable contributions, and;
 - b. applying CMF’s existing safeguards spelled out in the Recoupment Policy against “undue leverage or coercion in the negotiation process” to disqualify for a period of time any producers who demand non-negotiable assignment of screen composers’ rights and/or royalties as a condition of engagement.

No point is given when producers use existing music and do not engage the services of a Canadian music composer to create original music for the production being certified.”

Role of non-Canadian and/or non-human generated music within a production seeking Canadian Content certification

36. Throughout the Bill C-11 process, some of the world's largest media companies have suggested that they are best positioned to make all the decisions about a project's Canadian content status. For example, the Motion Picture Association (MPA) proposal for a "modern, flexible approach" where Canadian programming is anything "made with, by, or about" Canadians, with "no one factor being determinative."⁶ This means that intangible subject matter, themes, settings or characters within a project would carry as much regulatory weight as tangible contributions from Canadian creators.
37. In essence, MPA's proposal would allow online undertakings to replace creators with characters, writers with references, and composers with computers, at their own whim, all the while enjoying access to Government of Canada tax credits and subsidies, without any participation by any actual Canadian creators.
38. SCGC acknowledges that there may be room within a comprehensive, updated Canadian content framework for more subjective elements, and/or incentives for greater engagement by equity-deserving creators. SCGC respectfully submits, however, that regardless of the range of objective and/or subjective criteria the CRTC is asked to consider, at the end of the day **the centrality of Canadian creators within the system should not be subordinated to non-Canadian intermediaries' desire to do whatever they please.**
39. Moreover, in light of the volume of attention currently focused on the impact of artificial intelligence (AI) on copyright frameworks, SCGC respectfully cautions against certification or funding criteria which do not distinguish between content created by a human author, and content generated by means of AI. Simply put, just as a human author is required before copyright in a piece of original music can be registered, AI-generated music should not trigger any regulatory recognition of 'screen composers' or 'original music' within a production seeking Canadian content certification, under any definition or application.

Incenting retention of ownership over the copyright in audio-visual scores in the hands of the Canadian screen composer should be a policy priority under the new contribution framework.

40. Paragraph 61 of the Notice of Consultation asks:

Q24. Should the Commission recognize other forms of contributions to the Canadian broadcasting system, such as rights payments, predominance/carriage commitments (for example, 9.1(1)(h) or 9.1(1) services), promotion/discoverability, training/internships, or

⁶ https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/2022-10-04_TRCM_Brief_MPA_e.pdf

capital expenditures? If yes, how should such contributions be recognized, measured and monitored?

41. SCGC agrees that promotion and discoverability enhance the achievement of other policy priorities and agrees they should qualify as ‘contributions’ however otherwise defined within the framework.
42. Moreover, SCGC notes that its proposals above would formally recognize (for the first time in Canadian broadcasting regulation) the significant long-term value of the screen composer’s IP rights, while ensuring that screen composer’s legal property is not unduly seized by media producers exploiting their economically dominant position in negotiations with composers.
43. The retention of IP ownership and the long-term benefits it generates for Canadians are well-established principles within cultural and economic policy in Canada. SCGC submits that within the contribution framework, the objective should not only be to retain IP within Canadian media producers’ hands, but within the hands of contributing Canadian creators as intended by Canadian copyright law. SCGC again notes that the copyrights screen composers create stand separate from the copyrights in an audio-visual work created by a media producer.
44. Therefore, while reserving our right to comment on detailed definitions of Canadian programming as part of any future proceeding, in addition to the measures proposed above, SCGC respectfully submits that the following elements should be reflected within any contribution framework that supports Canadian content policy objectives:
 - a. Certification bodies should continue to assign credit for productions that engage a Canadian screen composer, with additional credit where the application is accompanied by attestation that composer has not been required to surrender ownership rights in the audio-visual score.
 - b. Certification bodies should not assign any credit for engagement of a Canadian screen composer if the producer has required the composer to surrender their copyright as a condition of engagement.
 - c. Rights payments should only count as a ‘contribution’ for independent productions, not in-house productions, and where the Canadian producers/creator retains the copyrights, not when broadcasting or online undertakings hold the rights (and thus would be, in effect, generating regulatory credit for paying themselves).

Conclusion

45. In conclusion, SCGC submits that whether establishing a contribution framework for broadcasting and online undertakings, or defining Canadian programming for any other purpose, the framework should encompass three key qualities of Canadian programming:

- a. *Content which is owned and controlled by Canadian creators (including Canadian producers as well as contributing creator partners such as screenwriters and screen composers);*
- b. *Content for which the copyright and any related IP rights and revenues is retained by Canadian creators (including Canadian producers as well as by contributing creator partners such as screenwriters and screen composers);*
- c. *Content which makes predominant use of Canadian talent in both production and post-production.*

46. SCGC further reiterates that:

- a. Where broadcasting or online undertakings⁷ take ownership of the copyright in audio-visual scores, any resulting music revenues related to a work's score which are earned in Canada should be explicitly reported on annual financial returns, alongside other broadcasting revenues, for purposes of determining the level of any "base contribution" as defined in the Notice of Consultation.
- b. An updated contribution framework should eliminate inadvertent incentives within certification and/or funding criteria that encourage media producers to (i) only engage Canadian screen composers for a bare minimum of 'original music' required to trigger a point under the CAVCO/CRTC scale (sometimes only a few seconds), and/or (ii) claim ownership of copyright in original music composed by a Canadian screen composer.
- c. Incenting retention of ownership over the copyright in audio-visual scores in the hands of the Canadian screen composer should be a policy priority under the new contribution framework.

47. **SCGC respectfully requests an opportunity to appear before the Commission during the scheduled public hearing announced in Notice of Consultation 2023-138.** As the sole national organization representing Anglophone screen composers across Canada, SCGC's members will be directly affected by changes to the Canadian Programming contribution framework, and by other related changes to the current system of certifying or supporting Canadian audio-visual productions.

48. SCGC appreciates the opportunity to provide its comments as part of this important proceeding.

End of Document

⁷ For the purposes of this submission, "media producers" and "undertakings engaging a Canadian screen composer" are understood to include: independent Canadian media producers, as well as media producers affiliated with broadcasting and/or online undertakings.