SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

January 20, 2025

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

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2024-288 The Path Forward – Defining "Canadian program" and supporting the creation and distribution of Canadian programming in the audio-visual sector

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 audio-visual media productions in Canada. SCGC requests to appear at the public hearing.

EXECUTIVE SUMMARY

2. For the reasons elaborated below in response to the specific consultation questions set out in the Notice of Consultation, SCGC respectfully submits that:

A. DEFINITION OF "CANADIAN PROGRAM"

- **The proposed change to the music point should be rejected as inconsistent with the *Broadcasting Act* and directions to the Commission.** SCGC strongly opposes the Commission's preliminary view that the 'music composer' point could be awarded for the use of pre-existing non-Canadian music represented by a "Canadian rights holder". Rights holders are not key creators. The award of key creator points to a non-key creator would be inappropriate and unprecedented. The music composer point should be maintained as it currently exists.

- **The proposed change to the music point would result in negative outcomes for Canadian music creators.** The proposed change to the music point has disastrous implications for Canada's screen composers, songwriters, and musical performers as well as our collective management partners. If implemented, the proposed change

would allow a “Canadian” music key creative point to be earned when music which is neither written nor performed by a Canadian creator is used by a production. This would be absurd in the context of a framework explicitly intended to support and maximize the use of Canadian key creators.

- **The proposed change unfairly targets the most vulnerable key creators in the certification system.** The proposed change is inconsistent with the goal of equitability referenced in the title of cabinet’s direction to the Commission. It would treat screen composers differently from all other points-earning key creators. The result would be that screen composers would become the only key creator replaceable by the pre-existing works of non-Canadians who were not directly engaged by a production.

- **The Commission should instead leverage “Production Costs” criteria to support the use of pre-existing Canadian music in AV productions.** To support greater use of pre-existing Canadian music in AV productions, the Commission should add a new requirement under the Production Costs criteria as follows: "Seventy-five percent (75%) of any licensing costs incurred in respect of the use of pre-existing music by a Canadian program shall be spent on Canadian music as defined by the Commission."

- **Requiring 60% engagement of key creators is not “maximizing” use of Canadian human resources.** The proposed minimum threshold of 60% engagement of Canadian key creators (i.e. 9/15 points) is inconsistent with the “maximum use of Canadian human resources” the Commission has been directed to ensure. Increased flexibility in the certification framework should not come at the expense of failing to achieve Canadian broadcasting policy objectives. SCGC proposes that the Commission should adopt a higher minimum threshold of 80% (e.g. 12/15 points), which SCGC submits would be far more consistent with a plain reading of “maximum use.”

- **Where a showrunner position exists on a program, it should be occupied by a Canadian and a point should be available. However, the Commission should not allow multiple points to be awarded to individuals performing multiple key creator roles.** Points “double-dipping” would be inconsistent with the direction to the Commission to maximize the use of Canadian creative resources. The Commission should therefore implement rules which ensure that key creator points are earned by as many Canadian key creators as possible.

- **Characters, references and settings should not receive points.** SCGC supports the Commission’s preliminary view that subjective cultural elements (such as characters, references and settings) should not be considered in the certification framework.

- **Where a music composer is engaged on a certified production, the position must be filled by Canadian.** Where a screen composer is engaged by a production, the Commission should require that the position is filled by Canadian screen composer(s).

Screen composers are co-authors and co-owners of the final AV work along with screenwriters and directors. Screen composers should be considered equally essential to a production as are screenwriters or directors and should receive like treatment to ensure regulatory fairness between all AV authors.

- **Intellectual property ownership by Canadian independent producers, including screen composers, should be considered an essential element when defining Canadian programs.** Screen composers are co-authors and first co-owners of AV works. Where a screen composer is engaged by a production, the Commission should require they be Canadian. Certification and funding criteria should require IP retention, including in the musical score, by Canadian independent producers -- including screen composers. Canada's Anglophone screen composers are the only point-generating key creators in the certification framework lacking the protections of an independent production agreement. Protection of screen composers' IP rights requires regulatory support.

B. EXPENDITURES ON CANADIAN PROGRAMMING/PNI

- **SCGC agrees broadly with the Commission's preliminary views regarding Canadian Program Expenditure models**. There is no evidence to suggest PNI is no longer needed. On the other hand, past practice suggests that regulatory supports for scripted genres such as drama, comedy, film and documentary are needed. Therefore, the Commission should establish a new PNI framework which includes both minimum expenditure obligations and a flexible component to encourage broadcasters and online undertakings to invest in the hardest to make and highest-risk programming.

C. DATA-RELATED ISSUES, INCLUDING REPORTING AND PERFORMANCE MEASUREMENT

- **Certified program data should be made public to the greatest extent possible.** There is a public interest in data related to the certification of Canadian programs. To promote accountability, transparency and to track outcomes over time, the Commission should make certification data available to the public to ensure that interested parties can ascertain which programs have been certified and which points were relied upon.

D. ARTIFICIAL INTELLIGENCE

- **There is no basis upon which generative AI works can be considered Canadian content.** The Commission is mandated to maximize the use of Canadian key creative and other human resources. Allowing points to be earned where generative AI has taken the place of a Canadian key creator would be inconsistent with this mandate. There is a significant difference between assistive AI tools and generative AI works.

E. OTHER CRITERIA

- **The existing 75% production cost spending threshold should be maintained.** Additionally, to support greater use of pre-existing Canadian music in Canadian programs, SCGC proposes that a new requirement be added under the Production Costs criteria as follows: "Seventy-five percent (75%) of any licensing costs incurred in respect of the use of pre-existing music by a Canadian program shall be spent on Canadian music as defined by the Commission."

SCGC SUBMISSION, BNOC CRTC 2024-288

A. DEFINITION OF "CANADIAN PROGRAM" (Questions 1-17)

The proposed change to the music point is inconsistent with the *Broadcasting Ac*t and directions to the Commission. It is therefore fundamentally flawed and should not be adopted.

1. SCGC strongly opposes the Commission's preliminary view that a 'Canadian music' point could be achieved "through the purchase or use of pre-existing or pre-recorded music from a Canadian rights holder."

2. Simply put, "rights holder" is not a key creative position. SCGC submits that the Commission's proposed change to the music composer point is fundamentally flawed and broadly inconsistent with the Commission's mandate to ensure maximum use of Canadian key creative resources.

3. SCGC respectfully submits that the language the Commission has employed in its proposal is fundamentally inconsistent with how original and pre-existing music come to be used in certified Canadian programs. In particular, SCGC notes that the rights in pre-existing compositions and sound recordings are not "purchased" by productions. Rather, "synchronization" and "master use" licenses allowing for the use of pre-existing music in a program are granted by rights holders in exchange for negotiated license fees.

4. Consequently, *purchase* and *use* are not interchangeable terms in the context of the Canadian AV music synchronization market. The Commission's interchangeable use of both terms in the Notice of Consultation renders clear interpretation and understanding of its proposal challenging, if not impossible.

5. SCGC notes that Canadian music publishers and record labels represent large catalogues of music from foreign songwriters and performers for the purpose of synchronization licensing in the domestic Canadian AV market. For example, the world's 'major' music publishers and record labels (Warner, Sony and Universal) all have Canadian offices with AV licensing teams serving Canadian AV licensees.

6. Consequently, the vast majority of the world's foreign musical repertoire is represented and available for licensing via the Canadian arms of global media giants representing AV licensing rights within the Canadian marketplace. With the help of music supervisors, Canadian productions customarily license music through these Canadian offices of international rights holders. In this context, the concepts of "Canadian" and "rights holder" are highly amorphous and open to a broad array of interpretations.

7. SCGC notes that when a Canadian production licenses foreign music via Canadian administrators or sub-publishers, the lion's share of license fees paid to Canadian entities subsequently leaves Canada, flowing back to the affiliated foreign offices holding the underlying copyrights in the licensed works.

8. SCGC also notes that it is commonplace for productions to employ both an original score and pre-existing songs in a program's musical soundtrack. SCGC believes that the Commission should support the use of Canadian composers as well as Canadian songs in Canadian programs. However, regulatory measures to achieve these independent objectives should complement, rather than compete with, one another.

9. SCGC notes that composers are frequently asked to create original compositions and recordings prior to a composer's formal engagement on a project. This work is commonly undertaken "on speculation", i.e. without pay or any formal agreement between a composer and production. Therefore, key elements of an original score, including themes, often "pre-exist" a composer's engagement on a project.

10. SCGC also notes that composers are frequently engaged to create original music libraries which are in turn used to score a program. This practice is particularly common in the areas of reality, news, sports, and animated programs. These original scores often pre-exist the final audio-visual work and could be considered pre-existing music within the meaning of the Commission's proposed change to the Canadian music point.

11. SCGC notes its difficulty in interpreting what the Commission means by the phrase "rather than requiring an original composed <u>song</u> for the production." (emphasis added) As there is no current requirement that an original "song" be composed to receive the music composer point, nor any such requirement under the proposed change to the music point, this provision is perplexing. SCGC is left to wonder if the Commission means to say "score" rather than "song" here.

12. Notwithstanding these interpretational uncertainties, SCGC concludes that the proposed change would clearly make a key creative point available for the use of pre-existing music which is neither written nor performed by Canadians, provided the use has been obtained via a "Canadian rights holder."

13. SCGC respectfully submits, therefore, that the proposed change to the music point would be broadly inconsistent with the objectives and specific directions to the Commission set out in the *Broadcasting Act* and the *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, *SOR/2023-239*.

14. In particular, SCGC submits that the proposed change is inconsistent with the policy objective in s.3(1)(d)(i)&(ii) of the *Broadcasting Act* that the Canadian broadcasting system should "… safeguard, enrich and strengthen the cultural…and economic fabric of Canada" and "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming."

15. SCGC further submits the proposed change is inconsistent with the direction in s.10(1) of the *Broadcasting Act* that, in prescribing what constitutes a Canadian program, the Commission shall consider:

    (a) whether Canadians, including independent producers, have a right or interest in relation to a program, including copyright, that allows them to control and benefit in a significant and equitable manner from the exploitation of the program;

    (b) whether key creative positions in the production of a program are primarily held by Canadians

    (c) whether a program furthers Canadian artistic and cultural expression

16. Far from advancing these legislative objectives, the proposed change to the music point would disenfranchise Canadian music creators, while enriching multinational rights holders of pre-existing music. Canadian screen composers' longstanding role as a points-earning key creator would be effectively usurped by rights holders in pre-existing musical works which need not have been composed or recorded by a Canadian.

17. SCGC further submits the Commission's proposal is inconsistent with cabinet directions to the Commission set out in the *Order Issuing Directions to the CRTC*, in particular:

    1) The direction in s.4 "to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system…strongly supports a wide range of Canadian programming and Canadian creators."

    2) The direction in s.9 "to ensure that the system 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 Canadian creators.

3) The directions in s.13 to:

(b) support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility;

(c) support Canadian ownership of intellectual property;
…
(f) consider, as it relates to audio-visual programming, the vital role of Canadian independent producers and of the Canadian creative resources that are being used by both Canadian and foreign broadcasting undertakings; and

18. Far from meeting Cabinet's direction in this regard, the proposed change to the music point would support multinational rights holders of foreign music over Canadian creators. It would effectively withdraw support from Canadian music creators, while simultaneously incentivizing the forced divestiture of valuable Canadian creator IP to global streaming giants, as a condition of engagement. Furthermore, the proposed change would inequitably target the only Canadian key creators not currently protected by an independent production agreement with Canadian audiovisual producers.

Adoption of the proposed change to the music point would result in negative outcomes for Canadian music creators.

19. The proposed change to the music point has truly disastrous implications for Canada's screen composers, songwriters and musical performers, as well as our collective management partners.

20. If the proposed change was adopted, the "Canadian" music point could be earned even where none of the music (either original or pre-existing) used in a production was written or performed by Canadians, thereby giving rise to a wide array of extremely negative outcomes.

21. For example, rather than engaging a Canadian screen composer, a production could earn the "Canadian" music point simply by:

    i. Engaging a foreign composer to create an original score, while also licensing pre-existing foreign composed/performed music via a so-called Canadian rights holder, which in many cases could be a major international music publisher or record label with a Canadian office.

    ii. Commissioning an original music library from a foreign composer and then acquiring the IP rights in the pre-existing library.

iii. Using pre-existing original music from prior seasons of a program to score new episodes of the same show, where the composer has been forced to surrender their IP in the score.

iv. Using pre-existing original music from other productions to score a program where a production holds the rights in that music or has licensed its use via a Canadian entity.

v. Using pre-existing foreign music owned by a Canadian broadcasting undertaking or the Canadian office of a foreign online undertaking to score a program.

22. The Commission's proposal would also introduce inequitable and contradictory definitions of what constitutes "Canadian" music in the context of Canadian programs versus radio and audio streaming. For example, if the Commission's proposed approach to defining Canadian AV music was applied to radio, MAPL (or future) criteria would also be optional and any song could be deemed 'Canadian' provided the rights to the song were owned by a multinational music company with a Canadian office.

23. SCGC submits these outcomes would be absurd in the context of a framework intended to safeguard and enrich the creative and economic fabric of Canada and to maximize the use of Canadian creators in Canadian programs. Indeed, the proposed change would render concepts such as "key creative position" and "Canadian" -- which should be foundational to Commission's task of defining Canadian Content – meaningless.

The proposed change is inequitable.

24. SCGC submits that the proposed change is also inconsistent with the goal of equitability referenced in the title of cabinet's direction to the Commission. SCGC notes that three conditions are currently required in respect of the grant of all key creator points, namely:

i. The individual in respect of whom the point is earned is a key creator;

ii. The key creator in respect of whom the point is earned is engaged by the production in question;

iii. The key creator in respect of whom the point is earned is Canadian.

25. Under the revised system the Commission has proposed, these conditions would still apply to 14 of the 15 key creator points. However, none would apply in respect of the proposed 'music composer' point. Under the proposed change, the music point would be awarded where:

i. The individual in respect of whom the point is earned is a multinational company holding the Canadian rights to the music.

ii. The key creator of the pre-existing music would not have been engaged by the production in question;

iii. The composer and performer of the pre-existing music need not be Canadian.

26. SCGC believes the above conditions must apply equally to all key creator points and respectfully submits that omitting these requirements in respect of the proposed 'Canadian' music point would be clearly discriminatory to Canada's screen composers.

27. The proposed change would also compound the gross inequality of bargaining power between composers and producers, thereby worsening the already challenging commissioning environment in which composers operate. If the Commission were to make a 'Canadian' music point available to productions engaging foreign composers, it would greatly undercut Canadian composers' ability to realize any economic benefit from the IP ownership rights provided to them under Canada's *Copyright Act*.

28. For example, SCGC believes audiovisual producers could capitalize on the leverage created by the proposed change to pressure Canadian composers to agree to US-style "work for hire" provisions and/or writer's share buyouts on the basis that they could just as easily hire an American composer on such terms and still get the music point.

29. SCGC is equally concerned that online undertakings may impose requirements on their Canadian producer partners to secure "work for hire" or writer's share buyouts in composer agreements for the Canadian programs they have commissioned.

30. SCGC submits that "work made for hire" – an American legal concept – is inconsistent with the clear intent of Canadian copyright law. Canada's *Copyright Act* provides that the author is the first copyright owner of a work (s.13(1)). By contrast, in the US, work for hire provisions effectively deem the producer of a program the author and first owner of copyright in the works of certain creators, including screen composers and screenwriters. SCGC respectfully submits that Canadian creators should not be forced to accept unfavourable, extra-jurisdictional, legal terms in order to secure an engagement on a Canadian program.

Adoption of the proposed change to the music point would result in negative outcomes for other Canadian key creators.

31. Equitable application of the proposed change to other key creators would give rise to equally absurd and negative outcomes. For example, if the Commission applied the same principle in respect of the screenwriters, a pre-existing screenplay by a foreign

writer would earn the Canadian screenwriter point provided the rights therein had been acquired by a Canadian entity.

32. More generally, adoption of the proposed change would also negatively impact the standing of other points-earning key creators. For example, if a production chose a minimalist certification path employing the proposed 'pre-existing music point' as part of its 9 required points, another Canadian key creator -- a lead actor or picture editor, for e.g. -- would lose out on an engagement opportunity they would otherwise have had.

33. In summary, SCGC submits that the Commission's proposed change to the Canadian music composer key creative point is broadly inconsistent with the Commission's mandate under the *Broadcasting Act* and cabinet directions. It would result in absurd and profoundly negative outcomes for Canadian screen composers, songwriters, musical artists, and other points-earning key creators. Therefore, the proposed change to the music composer point should not be adopted and the music composer point should be maintained as it currently exists.

The Commission should adopt an alternative approach to support the use of pre-existing Canadian music in AV productions.

34. Notwithstanding the foregoing, SCGC supports the Commission's apparent goal of supporting greater use of pre-existing Canadian music in Canadian programs. SCGC believes such support would result in positive outcomes for Canadian songwriters and musical performers. SCGC submits that such support would be best placed under production cost spending requirements.

35. SCGC agrees with the Commission's preliminary view that the Commission's current approach regarding production costs – that at least 75% of a production's service costs must be paid to Canadians and at least 75% of the production's post-production and laboratory costs must be paid for services provided in Canada by Canadians or Canadian companies – should be maintained.

36. Additionally, SCGC submits that the Commission should implement a new requirement under the existing Production Costs criteria to support greater use of pre-existing Canadian music in Canadian programs.

37. Therefore, to encourage greater use of pre-existing Canadian music in Canadian programs, SCGC respectfully proposes that a new requirement be added under the Production Costs criteria as follows: "Seventy-five percent (75%) of any licensing costs incurred in respect of the use of pre-existing music by a Canadian program shall be spent on Canadian music as defined by the Commission."

The proposed requirement for 60% engagement of Canadian key creators would not ensure "maximum" use of Canadian creative resources.

38. Under s.9 of the *Order Issuing Directions to the CRTC*, the Commission is directed to "ensure that the system maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system."

39. SCGC respectfully submits that the proposed minimum threshold of 60% engagement of Canadian key creators (i.e. 9/15 points) is inconsistent with the "maximum use of Canadian human resources" the Commission is directed to ensure. SCGC therefore proposes that the Commission should adopt a higher threshold of 80% (e.g. 12/15 points), which SCGC believes would be more consistent with the Commission's mandate.

40. SCGC agrees that in cases where a production does not utilize sufficient key creative positions to attain the minimum points, all key creative positions must be filled by Canadians.

Where a showrunner position exists on a program, it should be occupied by a Canadian.

41. SCGC supports with the Commission's proposal that a key creator point (or points) should be made available in respect of the engagement of a Canadian showrunner. SCGC supports the definition of "showrunner" proposed by WGC in its submission to this proceeding.

42. Further, SCGC submits that when the showrunner position exists on a program, it should be occupied by a Canadian because of the high degree of creative and key creative hiring decision-making power held by showrunners.

Multiple points should not be awarded to individuals performing multiple key creator roles.

43. At the same time, SCGC notes that in many cases an individual may perform more than one points-earning key creative role on a program. For example, an individual may write, direct, and show-run a production. They may also star in it.

44. Under the proposed points system, it appears to SCGC that a single individual could earn the vast majority of the points required for certification. For example, if the individual wrote, directed and starred in the show, and also served as showrunner, they could earn 7 of the 9 points the Commission has proposed as the minimum certification threshold.

45. SCGC submits that such 'double-dipping' would be inconsistent with the Commission's requirement to ensure that the certification framework maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system.

46. SCGC respectfully proposes, therefore, that the Commission should implement a rule that individuals may earn points only in respect of the performance of one key creative role on any given program. Further, in the context of series, this rule should apply to each episode of each season of the series.**Characters, references and settings should not be considered as certification criteria.**

47. SCGC agrees with the Commission's preliminary view that cultural elements should not be considered in the certification framework.

48. In various appearances before Parliament and the Commission, organizations representing global web giants have recommended that Canadian content be content (quote) "by, with, or about Canadians." These organizations add that none of those three qualifiers should have any more weight than the others.

49. In essence, the world's largest media production companies take the position that fictional Canadian characters or locations should receive the same recognition under Canadian broadcasting law as actual Canadian key creators. SCGC believes this approach would be inconsistent with the direction to ensure that maximum use of Canadian creative and other human resources is achieved in the Canadian broadcasting system.

Creative control by Canadian creators and independent producers should be considered essential elements when defining Canadian programs.

50. SCGC respectfully disagrees with the Commission's proposal to revise its rules for awarding points where a single position (such as screenwriter or director) is performed by multiple individuals, in particular the proposal that points may be awarded where 20% of such positions are filled by foreign key creatives. In SCGC's view, the proposed change would diminish Canadian creative input and control in Canadian programs.

51. SCGC respectfully submits this change would again be inconsistent with the cabinet direction in s.9 that the Commission is required to "ensure that the system maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system." The Commission's current rule -- that the production earns the point only if all of the positions with creative control are held by Canadians -- is consistent with the plain meaning of 'maximization' and should be maintained.

52. SCGC notes no evidence is advanced to suggest that allowing foreign key creatives to write a significant percentage of Canadian programs might somehow "facilitate the exportability and discoverability of Canadian programming domestically and abroad." On the other hand, there are numerous examples of Canadian programs written and directed by Canadians which have performed well in the international marketplace (Paw Patrol, Schitt's Creek, Letterkenny, Rookie Blue, Degrassi, to name but a few.)

53. SCGC acknowledges that casting plays a role in the exportability and discoverability of Canadian programming abroad. However, SCGC submits that the current points system allows producers, and their broadcasting and distribution partners, sufficient flexibility in casting to enhance a production's marketability in foreign markets.

Screen composers are co-authors of AV works and independent producers of the score. Where a screen composer position exists, the position should be occupied by a Canadian.

54. Screen composers are the authors and owners of original scores for Canadian programs. The original score is both an integral component of an AV work as well as stand-alone copyrightable set of works. Screen composers, along with screenwriters and directors, are co-authors and first co-owners of audiovisual works. Screenwriters, directors and screen composers share a crucial authorial voice in Canadian programs and are all key creators with a "high degree of creative control or visibility" within the meaning of the cabinet directions to the Commission.

55. Screen composers are the producers and owners of the sound recordings comprising the original score and are independent producers within the meaning of the *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework): SOR/2023-239*. Under Canadian copyright law, screen composers are the first owners of the highly valuable intellectual property rights in the compositions and sound recordings comprising the score.

56. SCGC respectfully submits that when screenwriters, directors and screen composers are engaged in the creation of a Canadian program, all such positions must be filled by Canadians. SCGC submits that such an approach is consistent with a plain reading of the directions to the Commission in s.13 of the cabinet direction to:

> (b) support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility;
>
> (c) support Canadian ownership of intellectual property;
> …
> (f) consider, as it relates to audio-visual programming, the vital role of Canadian independent producers and of the Canadian creative resources that are being used by both Canadian and foreign broadcasting undertakings; and

57. SCGC further submits that if the Commission requires that any authorial position (such as screenwriter) must be filled by a Canadian, the same treatment must apply to all of the other authorial key creator positions. In SCGC's view, providing such treatment to one class of Canadian AV author (screenwriters) without providing the same treatment to another AV author (screen composers) would clearly result in regulatory unfairness to the disadvantaged class of authors.

The Commission should require that the IP rights in certified programs are Canadian-owned.

58. SCGC agrees with the Commission's view that control over the IP and financial aspects of a production are important elements of what makes a program Canadian. SCGC notes that under paragraph 10(1.1)(a) of the *Broadcasting Act*, the Commission is required to consider whether Canadians, including independent producers, have a right or interest in relation to a program, including intellectual property rights, that allows them to control and benefit in a significant and equitable manner from the exploitation of the program.

59. To support a strong, competitive, and sustainable Canadian broadcasting system which benefits Canadians and our economy, SCGC believes it is vital that the Commission implement an intellectual property rights model which requires that Canadians, including independent AV producers and screen composers, own the IP in Canadian programs as well as copyright in the compositions and sound recordings comprising a program's original score.

60. SCGC reiterates that screen composers are the authors and independent producers of the original scores they create for Canadian programs and are the legal owners of their works under the *Copyright Act*. In SCGC's view, the Commission is clearly directed to support Canadian screen composers' ability to retain ownership of our intellectual property.

61. Of the models outlined by the Commission, SCGC supports the adoption of "models where intellectual property rights in programs are fully Canadian-owned and key creative roles are all held by Canadians." Further, SCGC supports the Commission's vision of "a modernized approach where intellectual property rights retention in the program is applied to maintain, strengthen, expand, and protect Canada's competitiveness in the audio-visual production industry as well as to ensure continued international investment in the Canadian production system."

62. In SCGC's view, the best way for the Commission to achieve its vision is to support an intellectual property rights model which requires that the IP rights in Canadian programs -- and related IP (including copyright in the musical score) -- are Canadian-owned, while also ensuring that Independent producers, key creators, broadcasting and online undertakings, and other investors, including distributors, equitably share in the revenues generated by Canadian programs.

63. SCGC reiterates that Anglophone screen composers are the only point-generating key creators in the Canadian certification framework lacking the protections of an independent production agreement with the Canada's independent audio-visual producers. As a result, SCGC members are frequently required to surrender their valuable IP rights and revenues as a non-negotiable condition of engagement when agreeing to screen composing engagements on Canadian programs. SCGC submits that such assignment of IP rights is frequently coerced and is directly related to the significant imbalance of negotiating power between screen composers and audio-visual producers.

64. SCGC submits that the retention of IP rights by Canadian screen composers as independent producers of audio-visual scores requires regulatory support. Moreover, the implementation of regulatory support ensuring IP retention by Canadian screen composers is consistent with Commission's vision, powers and mandate and would further many of the policy objectives the Commission has been directed to support.

65. In SCGC's view, discussion of the regulatory supports the Commission should consider to ensure a fair marketplace for Canadian screen composers is better left to the Commission's upcoming consultation on market dynamics, fairness and sustainability, *Broadcasting Notice of Consultation CRTC 2025-2*. However, if the Commission wishes SCGC to outline its proposals as part of the current proceeding SCGC will be pleased to address the topic at the public hearing

B. EXPENDITURES ON CANADIAN PROGRAMMING (Questions 18-26)

SCGC agrees broadly with the Commission's preliminary views regarding Canadian Program Expenditure models. SCGC concurs specifically with the analysis and recommendations of the Directors Guild of Canada in this regard, namely:

- Expenditure rules should apply to licensed broadcasting and online undertakings that generate at least $25 million or more in broadcasting revenues in Canada. This includes Canadian and foreign online undertakings operating in Canada.

- The Commission should establish an overall Canadian program expenditure (CPE) obligation of at least 25% of the previous year's revenues for English-language broadcasting undertakings (licensed and online) that meet the $25 million revenues threshold.

There is no reason to assume that, absent PNI requirements, broadcasting undertakings will continue to invest in "risky to produce and difficult to monetize" programming.

66. SCGC respectfully disagrees with the premise of the Commission's preliminary view with respect to PNI, specifically that the current approach is no longer needed, as "on demand" business models are based on drama and documentaries.

67. While it is true that certain online undertakings have historically focused their content offering on drama and documentaries, SCGC notes the Commission has not made public any data or research to indicate that broadcasting undertakings (including related on-demand services) will not shift investment away from "risky to produce and difficult to monetize" programming, and towards low-risk, inexpensive lifestyle or reality programming as business models adapt in a competitive and rapidly changing business environment.

68. SCGC notes that film, drama, scripted comedy and documentaries represent the lion's share of commissions for original scores, whereas traditionally, lifestyle and reality productions are more frequently soundtracked by pre-existing music. Consequently, the loss of PNI requirements has the potential to impact screen composers more negatively than some other classes of key creators.

69. As such, SCGC specifically supports the analysis and recommendation of the Directors Guild of Canada, namely:

    - The Commission should establish a new PNI framework that includes both minimum expenditure obligations and a flexible component to encourage broadcasters and online undertakings to invest in the hardest to make and highest-risk type of programming, namely original Canadian Dramas, Feature Films and Long-form Documentaries. To that end, the framework could include incentives for broadcaster and online undertaking investments in original Canadian and Indigenous Dramas, Feature Films and Long-form Documentaries.

C. DATA, REPORTING AND PERFORMANCE MEASUREMENT (Questions 27-39)

Certified program data should be made public to the greatest extent possible

70. SCGC supports the Commission's preliminary view that the collection of data relating to the revenues and programming expenditures of broadcasting undertakings should be made public to provide transparency and to ensure the Commission's ability to monitor the Canadian broadcasting system. In addition, SCGC submits there is a public interest in access to data which would allow the public to identify certified productions and to determine which key creator points were employed in respect of such certification.

71. To this end, SCGC respectfully proposes that the Commission should make available any data needed to determine the means by which certified Canadian programs have earned their certification -- in particular the key creative points employed by each production to achieve certification. SCGC believes that access to this information will help the public and stakeholders to track outcomes and therefore assess whether Canadian broadcast policy objectives are successfully met over time. SCGC proposes that the Commission should also make information related to past certifications available.

72. SCGC notes that under the Commission's newly proposed points system, certification is easily achievable without the engagement of any post-production key creatives. If, over time, it became evident that post-production key creatives (including screen composers) were being less frequently engaged on Canadian programs, SCGC would consider the outcome a regulatory failure. Therefore, going forward, SCGC wishes to have the ability track this metric against historical data.

73. In answer to the Commission's specific questions, SCGC submits that the Commission should set out reporting requirements for all broadcasting undertakings operating in Canada, whether they are Canadian or foreign, and whether they operate on traditional platforms or online. Further, the Commission should require the public disclosure of the revenues and programming expenditures of all broadcasting undertakings subject to CPE requirements and the information collected should be published by the Commission so that all collected data is available from one source for ease of reference and searchability.

74. SGCG submits that published revenue and any CPE data should be broken down by service and/or by ownership group and believes that further grouping such as, for example, by program category, language, or other elements will be vital to tracking outcomes.

75. SCGC agrees that a unique identifier (such as a Canadian certification number) for each certified program would be beneficial. Notwithstanding the foregoing, SCGC submits that programs should be searchable by program and/or episode title within the database made available to the public and stakeholders.

D. ARTIFICIAL INTELLIGENCE (Questions 40-42)

There is no basis upon which works created by generative AI shold be considered Canadian content.

76. The Commission has been directed to ensure maximum use of Canadian key creative and other human resources via the rules and regulations it imposes in respect of the certification of Canadian programs. SCGC submits that uses of generative artificial

intelligence which deprive Canadian key creators and other workers of potential engagements would be inconsistent with the Commission's mandate.

77. For example, if a production employed a minimalist pathway to certification under the Commission's proposed key creative point system (i.e. 9 of 15 points) and then used generative AI systems to perform other key creator functions which could have been performed by Canadian human key creators, SCGC believes that maximal use of "Canadian key creative and other human resources" would not be achieved.

78. In response to Question 40, SCGC submits there is no basis upon which generative AI works can be considered Canadian content.

79. Notwithstanding the foregoing, SCGC notes that there is a significant difference between assistive AI tools and generative AI works. SCGC believes that assistive AI tools can be of great use to human creators in their work and acknowledges that the use of assistive AI tools is widespread in the screen composer community.

E. OTHER CRITERIA (Question 43)

The existing 75% production cost spending threshold should be maintained and expanded to support greater use of pre-existing Canadian music in Canadian programs.

80. SCGC agrees with the Commission's preliminary view that the Commission's current approach regarding production costs -- that at least 75% of a production's service costs must be paid to Canadians and at least 75% of the production's post-production and laboratory costs must be paid for services provided in Canada by Canadians or Canadian companies -- should be maintained.

81. Additionally, to support greater use of pre-existing Canadian music in Canadian programs, SCGC proposes that a new requirement be added under the Production Costs criteria as follows: "Seventy-five percent (75%) of any licensing costs incurred in respect of the use of pre-existing music by a Canadian program shall be spent on Canadian music as defined by the Commission."

CONCLUSION

82. In conclusion, SCGC emphasizes three key points in respect of the questions raised by the Commission in the present Consultation.

The Commission should not implement the proposed change to the music composer point. The point should be maintained as it currently exists.

83. Rights holders should not be treated as key creators in the Canadian content system. The proposed change would not ensure that any Canadian music is used in a production,

new or otherwise. Rather, it would only ensure that the rights in music used in a production are held by Canadians, regardless of where the was composed and recorded. Screen composers would become the only "key Canadian creator" whose contributions could be replaced by rights holders of pre-existing foreign works.

Where a screen composer is engaged on a certified production, the Commission should require that the composer is Canadian.

84. Currently, for an AV production be certified as Canadian Content, the Commission requires that certain roles with a high degree of creative control must be held by a Canadian (e.g. producer, director, screenwriter, etc). Screen composers are co-authors and first co-owners of the final AV work alongside the screen writer and director. Screen composers should be considered as essential to a production as screenwriters and directors. All three positions, when utilized, should be required to be filled by Canadians in the Commission's modernized certification framework.

The Commission should require that 75% of production spending on pre-existing music must go toward the use of Canadian music.

85. SCGC shares the CRTC's apparent goal of supporting greater use of pre-existing Canadian music in Canadian programs. However, such support should not come at the expense of Canadian screen composers by substituting their integral authorial contributions with pre-existing, non-Canadian works in which the rights happen to be represented by a Canadian entity.

86. Instead, the Commission should implement measures under "Production Costs" spending requirements to support greater use of pre-existing Canadian music in Canadian programs. Specifically, the Commission should require that 75% of a certified production's licensing costs for pre-existing music be spent on pre-existing Canadian music.

87. SCGC appreciates the opportunity to provide its comments as part of this important proceeding. SCGC requests to appear at the public hearing in relation to this proceeding.

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