SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

February 24, 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 2025-2 - The Path Forward – Working towards a sustainable Canadian broadcasting system

1. The Screen Composers Guild of Canada (SCGC) is the national association certified under the Federal *Status of the Artist Act* to represent all professional Anglophone composers and music producers for audiovisual media productions in Canada. SCGC requests to appear at the related public hearing.

2. SCGC supports the Commission's goal of fostering a fair and equitable commercial environment in which composers and other creators contribute to the policy objectives on the *Broadcasting Act*, while realizing the cultural and commercial potential of their work as individual artists and content creators.

3. SCGC agrees broadly with the Commission's analysis of the challenging dynamics that characterize current market relationships between small, medium, and large programming, distribution, and online services.

4. SCGC notes that many of these challenges are also faced by composers, writers and other key creators in their commercial and contractual relationships with both traditional and online broadcasters as well as the independent producers they engage to create programming. As such, SCGC situates its comments in response to question 5 of the Notice of Consultation:

> *Q5: These dynamics have the potential to affect other players within the industry, including producers, creators, artists, and advertisers. Please comment on the impact of these evolving market dynamics on the relationships between broadcasting undertakings and these other players operating in the Canadian broadcasting system.*

5. SCGC fully supports calls for regulated codes of practice to protect smaller players from predatory business models of larger players. As outlined below, SCGC submits that regulatory action is needed to protect the ability of the smallest and most vulnerable creators in the system to retain ownership of the copyrights they create.

6. Moreover, measures to incent retention of IP in the hands of Canadian creators should be buttressed with measures that provide transparency in how that work is brought to audiences by traditional and online broadcasters.

7. Specifically, SCGC submits that the regulatory framework should incorporate measures that recognize that:

    - **The Notice of Consultation's framing of the macro dynamics between smaller and larger players in the broadcasting system is accurate.** With traditional and online players increasingly prioritizing proprietary, in-house content, cutting budgets, and relying on buyout contracts, key creators face shrinking opportunities and diminished long-term earning potential.

    - **'Work made for hire' does not exist in the *Copyright Act*, and broadcaster and producer arguments in favour of seizing composer rights do not stand up to scrutiny.** The Commission should implement measures preventing the imposition of unfavourable extra-jurisdictional laws (such as "work made for hire) which entirely undermine the legal rights provided to authors, including composers, under Canadian law. The royalty revenues generated by screen composers work should not be allowed to further subsidize independent producers nor broadcasters.

    - **The Commission's current approach to financial reporting contains blind spots that once illuminated would empower composers in commercial relationships with producers and broadcasters**. The financial return process should specifically include a requirement for licensees and registrants to report revenues derived from exploitation of music copyrights.

The Notice of Consultation's framing of the macro dynamics between smaller and larger players in the broadcasting system is accurate.

8. SCGC concurs with paragraph 12 of the NOC:

    > *12. The influx of new players to the Canadian broadcasting system, combined with consolidation and vertical integration within the sector, has impacted the competitive landscape and the market dynamics of the system...*

9. Indeed, the Canadian broadcasting system is increasingly dominated by a few powerful entities. Whether the result of two decades of steady consolidation between domestic broadcasters, vertical integration between broadcasters, BDUs and streaming services, or the influx of new global-scale players, creating significant power imbalances, these shifts have strained commercial relationships and made it harder for independent producers, creators, and artists to negotiate fair compensation and sustain viable careers.

10. SCGC further agrees with paragraph 41 of the NOC, which finds that because of the dynamics accurately captured in paragraph 12:

> *… there are power imbalances in the broadcasting system that can be leveraged by certain entities. These imbalances have strained commercial relationships and hindered the ability of various services to participate in the system in a fair and meaningful way.*

11. For Canadian screen composers, this undue leverage manifests itself in U.S.-style 'buyout clauses' that require the composer to assign ownership of their copyrights to producers and broadcasters, in exchange for a one-time lump sum payment.

12. In these circumstances -often presented as take-it-or-leave-it offers-- 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.

13. When such 'buy out' clauses are imposed, it is the media producer or broadcaster that 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.

14. Other than with screen composers, CMPA has agreements with organizations representing all other Anglophone key creative roles that generate points under the Canadian content certification system: directors, writers, production designers, actors, and editors. Despite preliminary conversations, CMPA has yet to enter into a comparable agreement with SCGC.

15. 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.

16. SCGC further notes that changes to the 'music composer point' proposed in Notice of Consultation 2024-288 would grossly exacerbate the imbalance in negotiating power between composers and producers/broadcasters. The Commission's preliminary view that the 'music composer' point could be awarded for use of pre-existing, non-Canadian music in place of original compositions created by a Canadian screen composer is deeply misguided, for reasons outlined in SCGC's submission to that concurrent proceeding.

17. In short, rights holders are not key creators. If producers and broadcasters could earn their full subsidies and full regulatory status by licensing non-Canadian music from the Canadian office of a multinational music publisher, and/or from their own in-house music libraries, they will have little or no incentive to invest in original work from a Canadian screen composer.

'Work for hire' does not exist in the *Copyright Act*, and broadcaster and producer arguments in favour of seizing composer rights do not stand up to scrutiny.

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:

    - That the producer must own the copyright in the score to allow the audio-visual work to be distributed/exploited internationally; and/or,

    - 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:

    - 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.

    - 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 'work for hire' claim is equally false:

    - 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* provides that 'authorship equals ownership.'[1]

    - 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's recommendations to this proceeding are informed by the EU's leadership in protecting against forced transfers of wealth from the smallest and most vulnerable to the largest and most valuable.

22. The EU has enacted measures to protect composers from being compelled to relinquish their copyrights under "work made for hire" or buy-out contracts. Articles 18 and 19 of the Directive on Copyright in the Digital Single Market (Directive (EU) 2019/790) are central to these efforts. [2]

    - Article 18 mandates that authors and performers receive appropriate and proportionate remuneration for the exploitation of their works. This provision aims to prevent scenarios where composers are forced to accept American-style work-for-hire one-time payments, thereby forfeiting future royalties.

    - Article 19 of the directive requires transparency from those exploiting the works, ensuring that composers are adequately informed about how their creations are used.

23. SCGC further notes that paragraph 10(1.1)(a) of the *Broadcasting Act*[3] requires the Commission to consider whether Canadians, including independent

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[1] 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

[2] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng

[3] https://laws.justice.gc.ca/eng/acts/b-9.01/FullText.html

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.

24. As such, SCGC respectfully submits that regulatory action is needed to address exploitation by those with the economic clout to claim the IP of others. To that end, SCGC agrees with the statement at paragraph 43 of the NOC, that:

> *… fostering fair and transparent relationships within a broadcasting sector that now includes both traditional and online undertakings involves having in place a clear set of effective and transparent rules or guidelines to steer negotiations.*

25. Specifically, SCGC fully supports CMPA's longstanding call for a 'code of practice' to foster a fair and transparent marketplace for producers in their interactions with traditional and online broadcasters.

26. SCGC further recommends that such a code of practice must also require producers to negotiate and conclude independent production agreements with the associations representing key creatives (including screen composers). It should further require that these agreements actually be used when contracting key creatives for Canadian productions.

27. SCGC also submits that the Commission should require that all funding bodies receiving contributions from regulated or registered broadcasting entities (e.g. Canada Media Fund, or any certified independent production funds approved by the Commission) must implement IP retention measures requiring that recipients respect the intellectual property rights afforded to key creators under the Copyright Act.

The Commission's current approach to financial reporting contains blind spots that once illuminated would empower composers in commercial relationships with producers and broadcasters.

28. SCGC notes that the current annual financial return employed by the Commission to collect financial data from traditional and online broadcasters does not include a field relating to revenues derived from exploiting copyrights under the broadcaster's control.

29. SCGC recognizes that notionally those revenues may be captured in the 'other revenues' field, but this approach does not provide the Commission, or stakeholders, with enough information to track trends in IP licensing or copyright exploitation within the broadcasting system.

30. 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 music copyrights.

Conclusion

31. SCGC welcomes the Commission's intention to address the exploitative and discriminatory business practices employed by larger players in the system at the expense of smaller players.

32. In the absence of regulatory intervention, those with the economic clout to bully and badger those without into accepting unfair contractual terms will continue to do so. The world's largest and most profitable companies will continue to argue that it is "central to their business model" to 'own' content they could easily (and profitably) license from Canadian creators. Significant royalty revenues which should rightfully benefit Canadian creators will instead subsidize the operations of publicly supported AV producers and huge broadcasting corporations, both domestic and foreign.

33. The Commission must act now to prevent the exploitative and predatory business practices of global online streaming platforms from becoming the norm among Canadian traditional broadcasters, and the independent producers they engage.

34. Absent regulatory intervention now, the Commission will tacitly endorse a new era wherein 'the long tail' of domestic and international royalties which has heretofore sustained Canadian composers is instead entirely diverted to the pockets of publicly supported producers and publicly traded broadcasting and streaming corporations.

35. SCGC submits that nowhere within the objectives set out for the Commission in the *Broadcasting Act* or in recent directions from cabinet is there any justification for unduly enriching the world's largest corporations at the expense of entrepreneurial Canadian music creators.

36. Accordingly, SCGC respectfully submits that:

    - **The Notice of Consultation's framing of the macro dynamics between smaller and larger players in the broadcasting system is accurate.** With traditional and online prioritizing proprietary, in-house content, cutting

budgets, and relying on buyout contracts, key creators face shrinking opportunities and diminished long-term earning potential.

- **'Work made for hire' does not exist in the *Copyright Act*, and broadcaster and producer arguments in favour of seizing composer rights do not stand up to scrutiny.** The Commission should implement measures preventing the imposition of unfavourable extra-jurisdictional laws (such as "work made for hire) which entirely undermine the legal rights provided to authors, including composers, under Canadian law. The royalty revenues generated by screen composers work should not be allowed to further subsidize independent producers nor broadcasters.

- **The Commission's current approach to financial reporting contains blind spots that once illuminated would empower composers in commercial relationships with producers and broadcasters**. The financial return process should specifically include a requirement for licensees and registrants to report revenues derived from exploitation of music copyrights.

37. SCGC appreciates the opportunity to participate in this important proceeding and looks forward to participating in the public hearing scheduled for May 12, 2025.

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