

**BEFORE THE CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION**

**IN THE MATTER OF
BROADCASTING NOTICE OF CONSULTATION CRTC 2023-138**

**CALL FOR COMMENTS – The Path Forward - Working Towards a modernized
regulatory framework regarding contributions to support Canadian and Indigenous
content**

INTERVENTION OF



11 July 2023

Table of Contents

Executive Summary..... 3

Introduction..... 6

 The role of Canada’s Major Labels.....6

 Licensed streaming is driving growth..... 7

 The streaming marketplace is highly competitive..... 8

 We must not build borders around Canadian artists..... 8

Issues in Step 1.....9

 Applicability of the Proposed Contribution Framework (Q1, Q2, Q3, Q4, Q5)..... 9

 Thresholds should be clear and not discriminate between similar platforms..... 10

 The framework should apply to professional content only..... 11

 Contribution Requirements (Q6 - Q15)..... 11

 Initial base contribution level should not drive out industry investments (Q6, Q7, Q8)... 12

 The framework should incentivize the hiring of local staff by platforms..... 13

 Local investments that the contribution framework should incentivize..... 13

 Funding Programs & Organizations (Q9, Q10, Q11, Q12, Q13, Q14, Q15)..... 15

Issues for Step 2..... 17

 Outcomes-based approach (Q16, Q17, Q18, Q19, Q20, Q21, Q22)..... 17

 Support for a flexible framework that is not prescriptive..... 17

 Comments on Commission’s proposed 3-tier framework (Q17)..... 18

 Comments on regulatory approach for French language music (Q22)..... 19

 Support for Canadian Programs (Q23, Q24, Q25, Q26, Q27)..... 19

 Music streaming doesn’t have a “sourcing” issue; discovery will come from industry investments and collaboration..... 20

 Workable and thoughtful flexible financial requirements can grow our industry..... 20

 Royalties should not be treated as contributions..... 21

 Support for Indigenous broadcasting (Q28-Q35)..... 21

 Promotion and Discoverability (Q36; Q37, Q38, Q39)..... 22

 Promotion and discovery methods that disrupt the listening experience will harm Canadian artists and creators..... 23

 Promotion and discovery of music from equity-deserving and sovereignty affirming communities..... 25

Conclusion..... 25

Request to Appear at Hearing..... 25

Executive Summary

1. Music Canada and our major label members – Universal Music Canada, Sony Music Entertainment Canada and Warner Music Canada – welcomed Bill C-11’s core principles of enhancing the Canadian music industry. We are excited to work with fellow industry stakeholders and the Commission to ensure we continue to grow our domestic music marketplace and find workable ways to increase opportunities for Canadian artists to reach their fans around the world.
2. Canada’s commercial radio regulatory framework, developed five decades ago, has been integral to today’s successful Canadian music industry. Those rules created new opportunities for careers and professional development for Canadian artists, labels, studios, managers, venues, and an entire emerging Canadian music industry. That commercial success in turn enabled businesses to reinvest in the next generation of talent.
3. **But radio is not only different from on-demand streaming, it’s the opposite.** Radio’s catalogue and geographic reach was finite; streaming platforms are effectively infinite. In radio, programmers understandably had to play the role of gatekeeper filling limited hours of play time. But in music streaming, any artist from anywhere in the world can upload and share their music and listeners can listen to whatever they want whenever they want. And playing a song that a listener didn’t like on radio had finite impacts you could count, but in streaming, the impact – due to algorithmic multipliers – can be exponential.
4. Streaming is how Canadian artists are being discovered and listened to by their fans around the world. Licensed streaming platforms are introducing Canadian artists, across genres and career levels, to new fans, in corners of the world that radio could never have reached. We can learn from the best of the radio framework – but this new framework must be specifically developed to work in the digital world.
5. We applaud the Commission’s recognition that regulation of the digital space is an entirely new arena that requires new policies and new analysis. As Chairperson Eatrises said in her keynote at the Banff Media Festival on June 12, 2023, “[W]e can’t take regulatory frameworks that have been in place for years and simply apply them to our new reality. Square pegs don’t fit in round holes.”
6. This new regulatory framework is a **once-in-a-generation opportunity to leverage the power and breadth of streaming to create new and meaningful opportunities for Canadian artists and the businesses who invest in them. But it’s imperative that we get this right.** To undertake this work, the Commission needs to understand how

Canadian artists reach and engage with their fans and the essential role that licensed streaming platforms, big and small, play in their success.

7. **Canada’s major labels are leaders in understanding how to grow and export the music of Canada’s artists.** Not only for artists who are signed to them, but also for artists signed to independent labels who partner with the majors for distribution. And the investments of Canada’s majors in our domestic industry, together with their work as advocates for the broader community, has also created a domestic marketplace where Canadian artists who bring their music to market without a label can build their careers and share their stories.
8. To seize this moment and build more Canadian success stories, we encourage the Commission to rely upon the following as guiding principles in this Consultation:
 - (i) ***Policies must reflect that radio is not the same as digital and music is not the same as TV/film.*** Historically, the regulatory frameworks that have served each of these markets have been separate and tailored to each. The need for distinctions continues. The framework should reflect how the *music* of Canadian artists is discovered, consumed, and promoted across varying streaming platforms.
 - (ii) ***Policies for the promotion and discovery of music must not restrict user choice on streaming platforms.*** This priority is affirmed in the government’s Policy Directive.¹ If this new regulatory framework introduces friction in the listening experience, users will be driven to unlicensed music and VPNs. This isn’t a concern of the past. Even today, with the wide access that Canadians enjoy to licensed streaming services, a significant subset still obtain their music through unlicensed means: more than 28% of users – and 42% of 16-24 year olds – obtain their music through copyright infringement.² Infringing services don’t pay artists. If we drive listeners to illegitimate sources, that outcome will fly in the face of everything that the *Broadcasting Act* sets out to achieve.
 - (iii) ***Contribution requirements must not drive out industry investments by platforms.*** Government programs are not a substitute for industry investments or a functioning marketplace. Industry investments should be incentivized. Streaming platforms should be able to prove and receive the benefit of their on-the-ground investments in the domestic marketplace. In recent years, the largest music streaming platforms (like Spotify, Apple Music, YouTube Music and Amazon

¹ The government’s draft [Policy Directive](#) published in the Canada Gazette, Part I states: “The Commission would also be directed to implement discoverability in a way that respects and, where possible, **increases choice for users while also minimizing the need to alter algorithms of broadcasting undertakings** [emphasis added].

² Canadian statistics generated by IFPI as part of its Engaging with Music 2022 report; see at https://musiccanada.com/wp-content/uploads/2023/07/IFPI_Poster_EngagingWithMusic-2022_CA.pdf and full report with global figures available at <https://www.ifpi.org/ifpi-releases-engaging-with-music-2022-report/>

Music) have increased their presence and investments in Canada, creating meaningful impacts on artists and domestic music companies. Financial contribution obligations must not disincentivize and potentially jeopardize these investments. Instead, we have an opportunity here to help grow investments.

- (iv) On *funding programs*, with this new framework comes opportunities to examine how best to support and grow our domestic marketplace. We agree with Chairperson Eatrdes that “[t]he time is right to innovate and to explore new models.”³ *A review of existing funds along with consideration of independent new funds for music (with new eligibility and criteria) will help ensure that we not only build measurable commercial success and export opportunities for Canadian artists, but that we also support diverse voices and emerging talent.*
 - (v) *Platforms should be treated equitably.* In setting thresholds for applicability of the framework (if any), the Commission should ensure that streaming platforms that operate with similar business models are treated similarly, and platforms that operate with different business models are treated differently. Revenue thresholds for regulation should not distort this principle, for risk of distorting marketplaces. The regulatory framework must be flexible and work with varying business models of different platforms.
 - (vi) *This framework should apply to professional content only, as intended by the government.*⁴ If user-generated content (that is, non-professional content) is subject to regulation and therefore promotion and discoverability incentives, this could drive the promotion of such content in competition with professional content, which remunerates artists in a manner more commensurate with the value of their work. The Commission will accomplish its policy aims by focusing on professional content, as user-generated content drives fans to professional content.
9. With respect to the three-tiered contribution framework proposed by the CRTC, we submit the following:
- **Initial base contributions:** These cannot be set so high as to risk that on-the-ground investments made by the platforms in Canada be reduced or eliminated or that new entrants to our marketplace, which offer new ways for Canadian artists to connect with their fans, are incentivized to avoid the Canadian

³ June 12, 2023, at the Banff Media Festival.

⁴ See e.g., Government Backgrounder: The Government of Canada introduces legislation to support the next generation of Canadian artists and creators, [February 2, 2022](#). “[Bill C-11 requires social media services] to contribute when **commercial programs**, such as music albums, are uploaded and distributed on their platforms. However, the proposed bill clearly specifies that it does not apply to individual users of social media services or amateur programs uploaded by those users. No users or online creators will be regulated; only the platforms themselves will have an obligation to our culture.” [emphasis added]

market. In setting the base for the contribution (e.g., revenues), the Commission should ensure that the base does not disincentivize the entry into the market of new streaming platforms or the growth of current platforms; nor should the base drive less Canadian music on the platform or put downward pressure on remuneration for creators whose music is played on the platforms.

- **Flexible financial requirements:**

- We agree that platforms should be able to show investments in the Canadian music industry and music as a way to offset their contributions. These investments have a meaningful impact on the careers of Canadian artists and the businesses who partner with them.
- However, **royalty payments** made by platforms to rightsholders that give platforms the legal right to make music available **should not count towards their contribution obligations**. Such payments are a legal requirement under intellectual property laws and failure to license music means a platform is stealing the music. Such payments should not be treated as a contribution but rather the cost of running a legal business.

- **Intangible requirements:** These must not result in the restriction of user choice on streaming platforms, nor should they risk unintended consequences for the ability of artists to reach fans who want to hear them, both in Canada and abroad. Canada's new digital regulatory framework cannot introduce friction into the listening experience, as that risks driving users to unlicensed services that don't pay Canadian artists for the use of their music.

10. The world is watching how Canada's new framework will elevate its artists and celebrate new and diverse talent, while also protecting the incredible listening experience that Canadians have come to love on music streaming platforms. We look forward to working with the Commission and fellow stakeholders in furthering these aims.

Introduction

The role of Canada's Major Labels

11. Music Canada is pleased to file this submission and to participate in this proceeding. We represent Canada's major record labels: Sony Music Entertainment Canada Inc., Universal Music Canada Inc., and Warner Music Canada Co. With our members and our industry colleagues, we work to promote a vibrant and robust Canadian music ecosystem.
12. Canada's major labels sign and partner with Canadian artists, helping them achieve commercial success in Canada and export their music abroad. Overwhelmingly, it is artists partnered with major labels that Canadians listen to on the radio, stream, or hear

synched in their favourite TV show. The majors also partner with Canada's leading independent labels to help distribute independent artists both in Canada and around the world. **No other organizations in our industry know more about how to discover, promote, and elevate Canadian artists around the world than Canada's majors.**

Licensed streaming is driving growth

13. Licensed music streaming platforms have become essential commercial partners of labels, both major and indie, as well as publishers and others, as they are where music fans listen to their favourite artists and discover new ones.
14. Like markets around the world, Canada's music industry was seriously harmed by the widespread piracy that came with the introduction of the Internet. That decade-plus period of "free music" meant artists and music companies weren't paid for their music that was used to build the platforms of others. This not only harmed the artists of the time but it threatened investment in the next generation.
15. In response, our industry pivoted, embracing new technologies to deliver music digitally to consumers, making significant investments in infrastructure and talent, and taking huge risks to alter the course of the ship. And it worked. Licensed streaming platforms are part of the reason that revenues have returned.
16. In 2022, 79.4% of Canada's recorded music revenues were generated from streaming, a 10.1% increase over 2021. Paid subscription streaming is a particular driving force, comprising 79% of overall streaming revenues, with ad-supported audio streaming contributing 12%, and ad-supported video streaming contributing 9%.⁵
17. Paid subscription streaming is the listener experience that Canadians have come to expect. The wide-spread adoption of on-demand streaming (where you can choose what music you want to listen to and when) is a key reason why protecting user choice in a digital marketplace is imperative if we want to keep Canadians listening to music through licensed means.
18. Licensed platforms remunerate the artists whose music fuels their platforms, and they're successful because they deliver to fans what they want: a streamlined and safe way to hear the music they love, access to virtually all recorded music catalogues, and recommendations that help fans discover new artists, while enabling artists to reach fans in new corners of the earth.
19. Canadians love streaming. In November of 2021, for the first time ever, more than **two billion songs were streamed** on-demand on licensed platforms **in Canada in a single**

⁵ IFPI Global Music Report 2023, available at <https://globalmusicreport.ifpi.org/>

week. To put this growth in context, in 2014, we were streaming only one million songs in a week. This growth is a success story.

20. The success of Canada's licensed streaming marketplace is an accomplishment of which we should be proud. **Canada ranks as the 7th largest music streaming market in the world.**⁶ We need to maintain an environment that protects and grows this marketplace for Canadian artists.

The streaming marketplace is highly competitive

21. Because anyone can upload their music at any time to multiple streaming platforms, this marketplace has become dense, making it difficult for Canadian artists with potential for a professional career to reach their fans. In 2022, 158 million new ISRCs⁷ were created globally, but only 22 million (or 14%) of those tracks had more than 1000 streams; and only 1.2% of all tracks uploaded globally did more than 100K streams.⁸ 24% had no streams.
22. It's incredible that anyone can share their music on these platforms, including hobbyists. But if we want to grow the Canadian industry and create meaningful opportunities for Canadian artists to build their careers and for businesses who partner with them to be able to invest in the next generation of Canadian talent, then we have to develop regulatory frameworks that are not driven for the hobbyist but are for our rising professional talent. Canada has no shortage of such talent.
23. This saturated environment makes the local market investments that labels make, together with investments by their streaming platform partners, even more vital. Without domestic teams at the platforms working together with labels, both majors and independents, Canadian music runs a major risk of getting lost in the noise of this crowded ecosystem.

We must not build borders around Canadian artists

24. Regulatory frameworks that aim to support and grow the reach and discoverability of Canadian artists need to understand the global digital marketplace in which they operate. In the global digital marketplace, success in Canada is a stepping stone to international success. The ability of a Canadian artist to reach fans in markets outside of Canada is also essential to their success at home. The digital marketplace is truly global.

⁶ IFPI Global Music Report 2023, available at <https://globalmusicreport.ifpi.org/>

⁷ An ISRC (or International Standard Recording Code) is an international standard code for uniquely identifying sound recordings and music video recordings

⁸ Luminate Data, as reported by Music Business Worldwide at <https://www.musicbusinessworldwide.com/files/2023/03/image001.jpg>

25. Music is one of Canada's most recognizable and successful exports. Over the last few years, Canada has had 2-3 artists in the top 10 list of the most streamed artists in the world.⁹ But those global stars are not the only Canadian artists enjoying success today in streaming. Artists like Ali Gatie, Tate McRae, Eli Rose, Charlotte Cardin, Daniel Caesar, Soran, Rêve, 347aidan, Forest Blakk, JESSIA, Savannah Ré, Aqyila, grandson, Lilyisthatyou, Loud Luxury, and many others are reaching fans across Canada and around the world through online streaming. These artists likely would not have achieved the same level of success through radio alone.
26. Canada's regulatory framework must facilitate the crucial role that international exposure and streams play in Canadian artists' success at home and around the globe. Building proverbial walls around streaming in our country will only harm the Canadian voices we are trying to support, as they rely on reaching fans not only at home but abroad.
27. For example, according to Spotify,¹⁰ 8 billion streams of Canadian music or podcasts are exported every month on Spotify. The top 9 international markets for Canadian artists provide 7.2 streams of Canadian content for every one stream in Canada. On YouTube, more than 90% of Canadian creators' watch time comes from international audiences.¹¹
28. Canadian artists thrive when they can reach fans not only across Canada but around the world. The Commission's regulatory framework should facilitate such reach and not build walls around it.
29. Music Canada welcomes the opportunity in this Consultation to help shape the Commission's work. We address the Commission's specific questions below.

Issues in Step 1

Applicability of the Proposed Contribution Framework (Q1, Q2, Q3, Q4, Q5)

Q1. The thresholds proposed in Broadcasting Notice of Consultation 2023-139 and Broadcasting Notice of Consultation 2023-140 are being consulted on as part of those proceedings, and any decisions in that regard will be considered by the Commission in the context of this proceeding. Are there other criteria upon which the Commission should base its threshold for the purposes of the new contribution framework? If so, what should the specific threshold be (e.g., what specific revenue or subscriber level should apply)? Indicate whether the criteria or threshold should be different for audio versus video services and online versus traditional undertakings.

Q2. In regard to Q1, if you are proposing to consider elements other than Canadian broadcasting revenues, please indicate how the Commission should measure those elements.

Q3. Are there other factors that the Commission should take into consideration in establishing which broadcasting

⁹ IFPI Global Music Reports for the years of 2021; 2022; 2023 available at <https://globalmusicreport.ifpi.org/>

¹⁰ Submission of Spotify to the Standing Committee of Canadian Heritage, June 1, 2022.

¹¹ Submission of YouTube to the Standing Committee of Canadian Heritage, published June 6, 2022.

undertakings do not have a material effect on the implementation of the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act* and should therefore be exempted from the requirement to make specific contributions to the Canadian broadcasting system?

Thresholds should be clear and not discriminate between similar platforms

30. On the applicability of the proposed contribution framework, we support the Commission’s desire to achieve a flexible and tailored framework.¹²
31. Music Canada does not at this time take a specific view on the quantum of revenues proposed by the Commission as a threshold. However, we encourage the Commission to listen closely to the views of the streaming platforms, who understand how registration requirements, exemptions, and thresholds will impact their ability to operate successfully in the Canadian marketplace. The resulting regulations should be clear on which platforms are subject to regulation and which are not.
32. When setting a threshold (if any), the Commission should ensure that streaming platforms that operate with similar business models are treated similarly, and platforms that operate with different business models are treated differently. Revenue thresholds for regulation should not distort this principle.
33. Disparate treatment of like platforms, and placing regulatory obligations on one platform but not its competitor, will distort the marketplace. A fair and level playing field is an essential requisite for Canadian creators to maximize the value returned to them for the use of their music. A distorted marketplace could incentivize platforms or new entrants to avoid the market or regulation, counter to the aims of the *Broadcasting Act*.
34. Distortions in the music marketplace have historically created a “race to the bottom,” where platforms that legitimately license music and return value to creators face competition from those that do not. This impacts the ability of artists to receive remuneration in the marketplace commensurate with the value of their music. For the health and growth of Canada’s music marketplace, it is imperative that creators be able to license the use of their music across a variety of platforms and receive remuneration that matches the value of their work. Any other outcome would run counter to the policy aims of the *Broadcasting Act*.

Q4. How should the Commission determine the appropriate level of contributions in cases where only a portion of an online undertaking’s services are covered by the *Broadcasting Act*?

Q5. How should the Commission define “social media service”? What, if any, criteria should be used to assess whether an online undertaking is providing a social media service?

¹² Consultation BNC 2023-138, Paragraph 58.

The framework should apply to professional content only

35. We agree with the government's stated intent from the very introduction of Bill C-11¹³ that only **professional content** (and not user-generated content or "UGC") should be subject to the regulatory framework of the *Broadcasting Act*.
36. While some stakeholders may express an interest in ensuring that every piece of content uploaded to a social media service that contains music be captured by the regulatory framework, this could have unintended consequences that are harmful to Canadian creators.
37. For example, if UGC is subject to promotion incentives on a platform that also shares professional content, the framework could inadvertently encourage the promotion of that UGC over professional content. This will harm Canadian creators, as UGC typically does not remunerate artists as fully as the licensing of their professional content. In order for artists to achieve lasting and sustainable success, it is important that listeners engage primarily with their official licensed content.
38. Some stakeholders may argue that delineating professional or commercial content from user-generated content made available on platforms is an impossible task. Such a statement reflects a lack of knowledge of this marketplace. Professional content is that which is provided to a platform by the owner of the copyright in the work or recording (or its agent) and is associated with an international identifier. Licensed platforms have operationalized ways to identify this content through partnerships with labels, publishers and copyright societies.
39. We encourage the Commission to hear from the platforms on how to carve out the user-generated content aspects of platforms that are not professional content.

Contribution Requirements (Q6 - Q15)

Q6. Generally speaking, commercial radio stations with total revenues exceeding \$1,250,000 are required to make basic CCD contributions of \$1,000 plus 0.5% of revenues in excess of \$1,250,000. Large English-language vertically integrated television groups have CPE requirements of approximately 30% of gross revenues from the previous broadcast year, while large French-language vertically integrated television groups have CPE requirements of up to 45% of gross revenues from the previous broadcast year, along with a requirement to produce original French-language programs. Licensed BDUs are generally required to contribute 4.7% of their previous broadcast year's gross revenues relating to broadcasting activities to Canadian programming, less any allowable contribution to local expression. With this in mind, under the new contribution framework, should the overall contribution commitment of online undertakings be comparable to the existing contribution levels of traditional broadcasting undertakings? If so, which traditional broadcasting undertakings? Please explain.

¹³ Minister of Canadian Heritage, Pablo Rodriguez, upon tabling of Bill C-11, February 2, 2022 (translation): "When it comes to social media, we made it very clear in the Online Streaming Act that this does not apply to what individual Canadians and creators post online. So let me be extremely clear. No users, no online creators will be regulated. No digital first creators, no influencers, no cat videos,"

Q7. 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. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

Q8. What would constitute an appropriate level of initial base contributions for online undertakings? Should this initial base contribution be the same for online undertakings operating audio services versus those operating video services? Please explain and specify the level that should be established for each type of service.

Initial base contribution level should not drive out industry investments (Q6, Q7, Q8)

40. Music Canada does not at this time propose a specific quantum or basis upon which an initial contribution should be set. However, we respectfully submit that any such contribution obligations applicable for music streaming platforms should not be set at a level which risks reducing or eliminating the investments already being made by streaming platforms in Canada. These investments have been critical to Canada's ability to not only create opportunities for Canadian artists here but to export their music around the world.
41. Nor should base contribution levels act as a disincentive for platforms to enter our market and make domestic investments.
42. We support the Commission's approach of a mix of contributions that can be flexible and tailored to the business model of the platform, as well as the Commission's recognition that contribution levels for audio streaming platforms need not necessarily mimic those of audiovisual platforms.
43. Ultimately, contribution requirements must be responsive to the business model of the platform to ensure that our regulatory environment is workable and one that incentivizes platforms to enter and remain in our market. Success in the market creates opportunities for success for Canadian artists.
44. When we make industry investments, we grow our domestic industry. We need to look no further than the example set by Canada's major labels who are leaders on this front. They have built offices in Toronto and Montreal and filled them with Canadians, making great Canadian music that is successful at home and abroad. That infrastructure, their investments in technology, and their talented staff are essential to helping Canadian artists find success in today's heavily saturated digital music marketplace.

The framework should incentivize the hiring of local staff by platforms

45. The hiring of staff by music streaming platforms who work on the ground in Canada should be incentivized by the regulatory framework, as these staff play an important role in growing the Canadian industry. Over recent years, the largest on-demand music streaming platforms have hired staff in Canada and this has made a significant difference in the ability to build relationships between creators and the platforms, and finding opportunities to promote Canadian artists.
46. Local staff curate playlists for Canada (by Canadians, for Canadians, with great Canadian music). These playlists allow users from all over the world to connect directly with Canadian content. Playlists provide opportunities for Canadian artists, week over week.
47. Local teams at music streaming platforms also help build key relationships with the major labels, indie labels, artists, and their various teams. The platforms work in lockstep with those teams to ensure they are well versed across developments, innovations, and new opportunities on their platforms. Local platform staff attend artist showcases, industry events and help make introductions for Canadian artists with the platform's global teams. They also offer events to help educate artists on the ways to best use the various tools on their specific platform to help the artist reach their fans.
48. Moreover, with digital streaming comes vast amounts of data. Analysis of that data can be helpful, showing an artist where to plan their next tour or which tracks to prioritize for their next album. But data alone does not make a career. Labels engage local champions within the platform to help their Canadian artists get global exposure, build their profile and cut through the noise.

Local investments that the contribution framework should incentivize

49. Platform investments that help drive our industry and Canadian artists forward include the following:
 - hiring staff, including leadership roles, based in Canada;
 - marketing and promotion expenditures aimed at elevating Canadian artists; examples include:
 - support for creating and capturing artist content (such as interviews, video content, etc.) that help the artist reach and grow their fan base on the platform;
 - touring and merchandise integrations on the platform;
 - promotion on platform websites and apps (like banner ads, etc.);
 - out-of-home advertising initiatives such as billboards to amplify the artist, playlisting, on-platform campaigns and projects (in Canada and internationally).
 - sponsorship of industry events that celebrate Canadian artists and the businesses who partner with them;

- sponsorship of initiatives that promote the health and diversity of the Canadian industry;
- sponsorship of live music events that offer stages for new Canadian talent; and
- creator-centred incubators, accelerator programs, and other related initiatives that help Canadian artists achieve their creative and commercial aims.¹⁴

50. As discussed above, if contribution levels are set too high, we risk narrowing or even eliminating these local investments, which are essential to Canadian artists reaching ears at home and around the world.

Q9. In the current system a variety of funds exist to support the creation and promotion of Canadian content. In what ways are the existing funds successful in their support of Canadian content generally, and in what ways could they be improved? Similarly, do the existing funds sufficiently support the objectives of the current *Broadcasting Act*, including those relating to OLMCs, diversity, inclusion and accessibility? How can they be improved? For example, should the Commission consider amending the CIPF criteria?

Q10. The current *Broadcasting Act* sets out that the Commission “may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of [...] supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.” Should the Commission direct a portion of initial base contributions to the BPF or other funds with similar objectives?

Q11. Should base contributions flow only to existing funds or could they be directed to newly created independent funds? Should online entities be permitted to create their own independent production funds, to which their contributions would flow? If yes, what criteria should they be required to meet? For any proposal, please describe the initiative, including the level of funding that would be required to support it.

Q12. How can production funds better support Canada’s diversity, inclusion and accessibility, as they relate to representation in programming, creators, or a combination of both? Should contributions or a portion of the contributions be directed towards the funds specifically dedicated to supporting diversity, inclusion and accessibility in the broadcasting system? If yes, which organizations and funds? Should new funds be created? In addition, please comment on the selection process, eligibility criteria, and reporting requirements that would be necessary to support this objective.

Q13. Comment on the possibility of a certain percentage or envelope of production funds being dedicated to Indigenous video productions and audio projects. What percentage would be appropriate and what entities should be required to contribute to such a fund? How could/should such a requirement be implemented and who should administer and be responsible for such a fund? What other considerations are relevant to the creation and management of such a fund?

Q14. Are there new funds that should be created? If so, what entities should be required to contribute to such a fund? Who should administer and be responsible for the fund?

¹⁴ For example:

<https://newsroom.spotify.com/2023-05-31/charlotte-cardin-kicks-off-can-you-hear-me-spotifys-new-series-dedicated-to-canadas-one-of-a-kind-music-scene/>;
<https://blog.google/intl/en-ca/company-news/outreach-initiatives/introducing-cncpt-mtl-celebrating-and-supporting-the-next-generation-of-quebecois-creators/>

Q15. Should the Commission require that a certain percentage or proportion of an undertaking's or ownership group's base contribution be directed to a particular fund or type of fund?

Funding Programs & Organizations (Q9, Q10, Q11, Q12, Q13, Q14, Q15)

51. Music Canada applauds the Commission for undertaking a close review of existing funding programs and organizations, to assess where they can be improved and identify new funding programs and organizations that make sense in a digital marketplace.
52. We agree with the Commission's view that "funds financed through the regulatory framework need to reflect the updated elements of the broadcasting policy for Canada set out in the current *Broadcasting Act*."¹⁵
53. We should take lessons from the best results from the past regulatory system for terrestrial radio, but we should not simply port over that system. The regulatory framework for radio funding programs worked because radio is a closed ecosystem. Radio stations were required to play Canadian content and to ensure there was sufficient Canadian content to play, their contributions were directed into organizations aimed at creating that content. It was a virtuous circle.
54. But on-demand streaming is entirely different from terrestrial radio. In streaming, virtually all Canadian music ever recorded is already available on the majority of licensed streaming platforms. We don't have a sourcing issue to solve. Instead, we need programs and frameworks that help Canadian artists elevate their creative process and that encourage partnerships between creators, the Canadian-based businesses that invest in them, and platforms. We have to think outside of this circle if we want to grow our industry in a global digital marketplace.
55. The Commission has thoughtfully acknowledged these important distinctions.¹⁶
56. **New funds, new eligibility, and new criteria need to reflect how music is made in Canada and how Canadian artists achieve commercial success and export their music abroad.**
57. (Q11, Q14) Programs and organizations that are funded by the success of the streaming marketplace should be designed to ***grow measurable success for Canadian artists in that streaming marketplace. To that end, base contributions should not only flow to existing funds, but online entities should be permitted to create or direct their funding towards independent funds that help them promote Canadian artists.***

¹⁵ Consultation BNC 2023-138, para 52 .

¹⁶ Consultation BNC 2023-138, para 17. "Similarly, although exhibition requirements have been a key regulatory tool applied to traditional linear radio and television services, in their current form, such requirements may not be applicable to on-demand and personalized services."

58. We also support the growth of current funds that have operated with high levels of efficiency and responsiveness to the needs of Canada’s artists and the businesses with whom they partner. For example, **Radio Starmaker** is a highly efficient fund that serves the needs of artists aiming for commercial success.
59. (Q12, Q13) With respect to the Commission’s questions on how funds can better support Canada’s *diversity, inclusion and accessibility* aims, and how to support Indigenous audio projects, we again urge the Commission to listen to affected groups and communities.
60. There are also initiatives and partnerships rooted in an understanding of the industry that have had significant success. Examples include the Orion¹⁷ funding stream as a part of Radio Starmaker. The funding supports music creation by members of the Canadian music industry who are Black, Indigenous, and People of Colour. As well, The Remix Project,¹⁸ which through both government and private funding provides 360 degree career training in the arts and entertainment field to youth who face barriers to entry.
61. A number of key stakeholders such as **ADVANCE, Canada’s Black Music Business Collective**, the **Indigenous Music Alliance** and the **National Indigenous Music Office** have important views to share on building the success of these communities in the music industry, and we encourage the Commission to listen and prioritize their views.
62. The Commission should also look at the **success of industry-led initiatives and partnerships** that are creating opportunities to discover, grow, and celebrate the diverse talent that comes from equity-seeking and sovereignty-affirming communities. For example, in 2021, the Indigenous women-owned label Ishkōdé Records was created to foster and amplify Indigenous voices. The label signed a distribution deal with Universal Music Canada. ShoShona Kish, co-founder of Ishkōdé Records, notes that “the team at UMC continue to be vital allies and collaborators for us...”¹⁹ Ishkōdé Records works with incredible Indigenous artists, including JUNO-nominated Aysanabee and Sebastian Gaskin, winner of the 2021 Western Canadian Music Award for R&B Artist of the Year. These artists are reaching their fans through streaming and through collaboration.
63. The music industry, in order to thrive, requires industry partnerships. This framework is an opportunity to incentivize more of that work.
64. (Q14, Q15) On the specifics of new funding, eligibility and criteria, we look forward to working with fellow industry stakeholders and the Commission in helping to design such funds to ensure that programs and organizations supported by contributions of online

¹⁷ <https://www.starmaker.ca/about/orion>

¹⁸ <https://theremixproject.com/>

¹⁹ Universal Music Canada [Press Release](#), March 1, 2023.

streaming platforms create real opportunities for commercial success of Canada's artists.

Issues for Step 2

Outcomes-based approach (Q16, Q17, Q18, Q19, Q20, Q21, Q22)

Q16. Would an outcomes-based approach and customized contribution framework ensure that the broadcasting system as a whole (including online undertakings) contributes to the achievement of the Commission's above-noted objectives? What other outcomes or objectives, other than those set out in the above list, may be required to ensure that Canada's broadcasting system can thrive now and in the future? Is the above list of objectives complete, accurate, fair and representative of the objectives set out in the current *Broadcasting Act*?

Q17. Would the proposed new contribution framework achieve desirable policy outcomes for the Canadian audio and video broadcasting system? Why or why not?

Q18. Should the regulatory approaches for traditional broadcasting undertakings and online undertakings (audio and/or video) be separate and different, or should the Commission establish a new approach that considers the broadcasting system as a whole?

Q19. Would an outcomes-based approach and customized contribution framework, once finalized, ensure regulatory symmetry between traditional broadcasting undertakings and online undertakings?

Q20. Could/should the new contribution framework be applied to broadcasting undertakings or to broadcasting ownership groups? If the framework is applied at the ownership-group level, are there any impediments to it being implemented via orders issued pursuant to subsection 11.1(2) of the current *Broadcasting Act*?

Q21. To what extent is the proposed new contribution framework adaptable to the needs and capacities of smaller, independent players?

Q22. What, if any, special considerations should be given to English- and French-language Markets?

Support for a flexible framework that is not prescriptive

65. The general objectives listed at paragraph 19 of the Consultations are important ones, and we are encouraged by the Commission's approach through a flexible, incentive-based framework that understands the digital music marketplace. We agree that the Commission should not be prescriptive.²⁰
66. We agree that platforms should be able to support the domestic industry through contributions, be they intangible, flexible, or financial, in a manner that respects differences across varying business models of platforms and allows them to maximize their support of the domestic marketplace while maintaining their success. If we hamper the ability of platforms to be successful in our marketplace, harmful effects will be passed down to the music industry.
67. Music Canada supports a flexible framework with incentives that aren't prescriptive measures in disguise. The harms of prescriptive measures are more fully explained in the

²⁰ Consultation BNC-2023 138 at para 81.

section below beginning at paragraph 82.

Comments on Commission's proposed 3-tier framework (Q17)

68. The Commission's initial proposal to establish a contribution framework with three tiers of requirements (initial base, flexible, intangible), where different platforms can satisfy obligations in ways that work with their business models, is a sensible approach if the goal is to ensure that funding flows swiftly into funding programs, organizations, and initiatives.
69. In establishing contribution levels within that framework, the Commission should be attuned to the following:
- **Initial base contributions** should not be set so high as to put at risk on-the-ground investments by platforms in Canada or to disincentivize new entrants from offering new ways for Canadian artists to connect with their fans or from entering the Canadian market at all.
 - **Flexible financial requirements** should encompass reasonable and workable investments that meaningfully offset financial contributions of platforms. Allowing platforms to satisfy their contribution requirements through meaningful investments on the ground in Canada will protect and grow investments here in Canada. It is industry-led investments and partnerships, not government funding programs, that will maximize potential success for Canadian artists. Royalty payments for music should not count towards contribution obligations. Please see paragraphs 79 -80 for further explanation.
 - **Intangible requirements** must not result in the restriction of user choice on streaming platforms, nor should they risk unintended consequences for the ability of artists to reach fans who want to hear them, both in Canada and abroad. Even with widespread free and ad-supported streaming, and reasonably priced subscription-based streaming services that have not significantly increased in price in over a decade, a segment of Canadians still choose to acquire music through unlicensed means. Intangible requirements must not introduce friction into the listening experience, otherwise, more listeners may move to unlicensed services or VPN services. Such an outcome would prevent Canadian artists from being paid for the commercialization of their music and result in real harm to our domestic marketplace. Such a result would run counter to the very policy aims of the *Broadcasting Act*.
70. A tiered contribution framework that offers flexibility across different platform business models, and where platforms are incentivized to make domestic industry-facing investments, will create an environment where Canadian artists and the businesses that

partner with them can find success and share our stories around the world.

Comments on regulatory approach for French language music (Q22)

71. Many Quebec-based artists who wouldn't have found success relying on radio alone are finding success in streaming. Many of them may not fit into the traditional funding or support programs offered under the past regulatory framework. The work of the Commission presents an important opportunity to find better ways to build their success and help them reach international markets.
72. A fundamentally different medium requires a new approach. The regulatory framework for radio was successful in part because it was a closed loop. Canadians were served music by radio programmers complying with regulatory mandates. Songs received air time whether they were listened to or not, and funding was generated for the creation of new content. But in music streaming, the walls around that garden have come down. In an on-demand streaming environment, Canadians choose what they want, when they want, in any language and in any genre. At two billion on demand songs streamed in Canada per week, Canadians have diversified what they're listening to, from many languages and genres. This means massive competition to reach fans with finite time for listening. But this listening is happening around the world, which brings opportunities for English and French-language artists to reach fans in international markets. Success in streaming for French-language artists will not come from building new walls, but rather understanding and nurturing what works.
73. We recommend that the Commission listen closely to the artists and businesses who are finding success in the domestic and global Francophone markets. This includes Canada's major labels, who have offices in Montreal and who distribute Quebec-based independent labels. The type of industry-specific investments and incentives that we have advocated for throughout this consultation would also serve to grow the Quebec-based market. We look forward to working with the Commission and fellow stakeholders on this issue further.

Support for Canadian Programs (Q23, Q24, Q25, Q26, Q27)

Q23. Some online undertakings offer only or mostly Canadian-created content. Should their contribution requirements be adjusted to reflect this reality? If yes, how? What type of information should the Commission use to determine this?

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)(i) services), promotion/discoverability, training/internships, or capital expenditures? If yes, how should such contributions be recognized, measured and monitored?

Q25. How can the Commission incent online undertakings to source Canadian and Indigenous content? How can the Commission facilitate creators' access to supports, and creators' ability to make their content available to domestic and non-Canadian audiences? How can the Commission better encourage partnerships between foreign online

undertakings and Canadian and Indigenous creators?

Q26. In what other ways can the Commission encourage the support of Canadian and Indigenous audio and video content? What types of projects or endeavours would be the most impactful? What initiatives for the support of Canadian and/or Indigenous content are you currently exploring/considering/undertaking?

Q27. How should the Commission support Canadian and Indigenous spoken word programming in a digital context?

Music streaming doesn't have a "sourcing" issue; discovery will come from industry investments and collaboration

74. These questions on sourcing of Canadian and Indigenous content underscore the important differences between audio-visual platforms and music platforms and the need for music frameworks to take those differences into account.
75. (Q25) With respect to sourcing Canadian music, today's largest music streaming platforms like Spotify, Apple Music, YouTube Music, and Amazon Music already make available virtually all Canadian music ever recorded. For example, over 80 million tracks are available on Spotify.²¹ This is because there are virtually no barriers for an artist sharing their music through streaming and because these platforms have licensed virtually entire catalogues (exclusivity is not a typical part of the music distribution model). Depending on the platform, artists can upload their music to the platform themselves, or with the help of a distributor, or with an independent or major label.
76. Because that content is so widely available and searchable on these platforms, "sourcing" of content is not an issue for music. Instead, the goal should be ensuring that platforms are incentivized to invest in our industry and form partnerships with creators. This will provide the type of content that drives measurable success for Canada. Those investments may take different shapes depending on the nature of the platform, as more fully discussed below.

Workable and thoughtful flexible financial requirements can grow our industry

77. (Q23, Q24) We support the recognition of different forms of contributions by music streaming platforms, that are reflective of their business models, as a means to offset other financial contribution requirements. Such flexible financial contributions should only include those which meaningfully help to support and grow Canada's music marketplace.
78. (Q24, Q25) We agree that platforms should be able to benefit from investments that they are making in our domestic industry and that such investments count towards their mandated contributions. Such contributions should include:

²¹ Submission of Spotify to the Standing Committee of Canadian Heritage, June 1, 2022

- hiring staff, including leadership roles, based in Canada;
- marketing and promotion expenditures aimed at elevating Canadian artists; examples include:
 - support for creating and capturing artist content (such as interviews, video content, etc.) that help the artist reach and grow their fan base on the platform;
 - touring and merchandise integrations on the platform;
 - promotion on platform websites and apps (like banner ads, etc.);
 - out-of-home advertising initiatives such as billboards to amplify the artist, playlisting, on-platform campaigns and projects (in Canada and internationally).
- sponsorship of industry events that celebrate Canadian artists and the businesses who partner with them;
- sponsorship of initiatives that promote the health and diversity of the Canadian industry;
- sponsorship of live music events that offer stages for new Canadian talent; and
- creator-centred incubators, accelerator programs, and other related initiatives that help Canadian artists achieve their creative and commercial aims.

Royalties should not be treated as contributions

79. (Q24) In spite of our support for the above flexible contributions, not all platform expenditures should be counted towards the regulatory obligations of online undertakings under the *Broadcasting Act*.
80. (Q24) We urge the Commission to **not credit royalty payments made to rightsholders** by the streaming platforms to offset contribution obligations. There is broad consensus amongst music industry stakeholders on this point.²² Royalty payments are not an investment made into our domestic marketplace for the furtherance of Canadian content. They are what streaming platforms pay under intellectual property laws for the right to make music available. Without such licensing, a platform is stealing music. Not committing theft should not be the baseline used to offset contributions under the *Broadcasting Act*.

Support for Indigenous broadcasting (Q28-Q35)

81. Music Canada encourages the Commission to hear from sovereignty-affirming groups and their perspectives on ways to meaningfully and respectfully support and elevate Indigenous voices. Organizations like the Indigenous Music Alliance and the National Indigenous Music Office are leaders in this area and the Commission should prioritize their views.

²² See ACCORD Reply Intervention (BNC 2023-139 and BNC 2023-140), June 27, 2023, at paragraphs 10-13; and ADISQ Reply Intervention (BNC 2023-139 and BNC 2023-140), June 27, 2023, at paragraphs 17-19.

Promotion and Discoverability (Q36; Q37, Q38, Q39)

Q36. How can the Commission ensure that online undertakings make Canadian and Indigenous audio and video programming available in Canada and abroad? What types of requirements or incentives would best optimize the distribution of Canadian and Indigenous content, both internationally and domestically?

Q37. How can the Commission ensure that Canadian and Indigenous content is discoverable and promoted on online platforms? What incentives can be applied?

Q38. What is the role of content curators and aggregators, and playlists, in assisting with promotion and discoverability?

Q39. Should the Commission consider requirements, incentives, or both to best ensure that audio and video content created by equity-deserving communities is distributed, promoted and discoverable? Are there different considerations for traditional versus online undertakings?

82. Promoting and making Canadian content available at home and abroad is the business model of Canada's major labels. They are proud supporters and advocates for Canadian music and they're excited to work with the Commission and fellow stakeholders to share their knowledge of ways to find successes for Canadian artists in the digital marketplace.
83. In addition to hearing the views of Music Canada and our major label members, the Commission should give significant weight to the work undertaken by platforms to support and market Canadian artists; what has worked and what has not worked to grow audiences for Canadian artists. Developing incentives around those experiences is more likely to drive effective policy.
84. When it comes to promoting and making Canadian content "discoverable" on platforms, we must take into account the unique nature of digital music streaming. What worked for radio will not work for digital.
85. To this end, we fully support the Commission's approach that it should not "prescribe or require an undertaking to use a certain method or tool in order to achieve desired promotion and discoverability outcomes."²³
86. Prescriptive measures aimed at promotion and discovery in an on-demand music streaming marketplace can have unintended harms.
87. Some stakeholders may argue that platforms should be held to broad content quotas in what music is served to Canadians. Such an approach reveals a misunderstanding of the streaming marketplace. Broad content quotas in an on-demand environment, which had benefits in our traditional radio framework, risk unfavourable outcomes in on-demand

²³ Consultation BNC-2023 138 at para 81.

music streaming.

88. For example, if a radio listener is fed a Canadian song but it happens that they don't like it, they may keep listening until they hear something they like, change the channel, or turn the radio off. That song has not connected with that one listener, which of course is a loss, but on a song-by-song level, is not likely to have significant impacts on the reach of that artist. But in a digital setting, the listener's action will send a signal that they don't like the song (e.g., skipping it, giving it a "thumbs down", etc.) – and this signal makes it not only less likely that this specific listener will hear it again, but also less likely that the song will be served to others with similar listening habits or similar signals. And those "signals" will instantaneously inform plays around the world.
89. On digital music platforms, serving the wrong song to the wrong ears can cause exponential harm to the ability of a Canadian artist to reach their potential fans, both in Canada and abroad. In a world where Canadians compete with 120,000 songs uploaded to a service like Spotify every day, and where Canadian creators rely on streams from outside of Canada, the ability of an artist to connect with the right fans at the right time is absolutely essential if they stand any chance of being heard and growing their career.
90. This example illustrates what can happen if outcome-based or prescriptive measures have impacts on algorithms designed to harness listeners' preferences to deliver the music that will most appeal to a particular listener at a particular moment in time. Both the government and the Commission have signalled their understanding of the need to avoid directly or indirectly regulating algorithms and the importance of respecting user preferences and choice as an essential element of a thriving music marketplace.²⁴ Music Canada fully supports that approach.
91. Throughout the consultative process, we encourage the Commission to give significant weight to the views of the music streaming platforms, which understand best how their services work and how to provide their customers the music they love best, and where they identify any potential unintended consequences of prescribed outcomes.

Promotion and discovery methods that disrupt the listening experience will harm Canadian artists and creators

92. As the hearings progress, and stakeholders and the Commission discuss reasonable and workable ways to help promote and discover Canadian music, we urge everyone to be

²⁴ See for example:

CRTC [News Release](#) of May 8, 2023 (launch of regulatory Roadmap): "The CRTC ... has no intention to regulate algorithms, or creators of user-generated content and their content"; and

Draft Policy Directive in Canada Gazette Part 1, June 10, 2023: "Implementing discoverability requirements in a way that minimizes the need to alter algorithms of broadcasting undertakings and that, where possible, increases choice for users;"

mindful of the harm that ill-thought out requirements could wreak on our industry and Canadian artists.

93. The music industry knows first hand what is at stake in getting this right. Just two decades ago, peer-to-peer music sharing sites made music “free” for anyone with a DSL connection and a computer. For many, the immediate excitement of being able to search for and download any music obstructed their appreciation of what it would do to the artists and creative industry who created the music they loved. This afflicted music first, because the Internet wasn’t yet fast enough for high speed downloading of films. This era almost wiped out our industry. It harmed not only the artists coming of age in that era, but closed doors on creative opportunities for the next generation of Canadian talent.
94. But our industry pivoted – embracing new technologies and new ways for artists to connect with their fans and *vice versa*. Licensed streaming platform services were essential to completing the industry’s rebound. They respected the artist’s right to control how their music was commercialized, and they paid artists for their music. And the major labels will continue to advocate for ways to maximize the value that artists receive from platforms.
95. Ultimately, licensed platforms were successful because they delivered to fans what they wanted: a streamlined and safe way to hear the music they love, access to virtually all recorded music catalogues, and recommendations that help fans discover new artists and enable artists to reach fans in new corners of the earth.
96. This partnership and growth didn’t happen overnight. It took years of investments in infrastructure, a willingness by rightsholders and creators to take risks, and the unrelenting ability of Canadian artists, across genres and career stages, to deliver some of the world’s very best music. And today, platforms continue to evolve and grow – and they are where Canadians are listening to music.
97. We cannot design regulatory frameworks for the promotion and discovery of music that risk introducing friction back into the music listening experience and driving listeners to VPNs (virtual private networks) and unlicensed services. This will take remuneration from Canadian creators and harm them in ways that run counter to the aims of the Commission and the *Broadcasting Act*. Even today, a significant subset of Canadians still obtain their music through unlicensed means: more than 28% of users – and 42% of 16-24 year olds – obtain their music through copyright infringement.²⁵ Canada’s new digital framework cannot make that problem worse.

²⁵ Canadian statistics generated by IFPI as part of its Engaging with Music 2022 report; see at https://musiccanada.com/wp-content/uploads/2023/07/IFPI_Poster_EngagingWithMusic-2022_CA.pdf and full report with global figures available at <https://www.ifpi.org/ifpi-releases-engaging-with-music-2022-report/>

Promotion and discovery of music from equity-deserving and sovereignty affirming communities

98. With respect to ensuring that content created by equity-deserving and sovereignty-affirming communities is distributed, promoted, and discoverable, we encourage the Commission to listen closely to the experiences of these communities to better understand their needs in the digital space.
99. The cautions that we flag above with respect to the risks of serving Canadian music in a way that ignores the listener's listening habits will also not serve these communities. There are incredible artists from these communities making music that's ready for the world if we leverage the power of global streaming to help them reach larger markets.

Conclusion

100. We look forward to working with the Commission and fellow industry stakeholders, including music streaming platforms, on finding reasonable and workable ways to celebrate, uplift, and grow Canadian music.

Request to Appear at Hearing

101. Music Canada requests to appear at the public hearing. As the representative of Canada's major labels whose business model is to partner with, support, and celebrate Canadian artists, whether signed to them or their partner independent labels, we have unique insights into how the Commission can help build Canada's music industry, nurture emerging and diverse talent and achieve the policy objectives set out in the amended *Broadcasting Act*. In that hearing, we will also be able to elaborate with examples of successes that can help shape the Commission's work.
102. We are prepared to participate at the main location for the public hearing in Gatineau.

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