

June 9, 2023

VIA Broadcasting Intervention Form

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

Re: Intervention of the Documentary Organization of Canada - Broadcasting Notice of Consultation CRTC 2023-139

A. Introduction

1. This submission is the intervention of the Documentary Organization of Canada (DOC) in relation to Broadcasting Notice of Consultation CRTC 2023-139 (BNC 2023-139). The Canadian Radio-television and Telecommunications Commission (CRTC or Commission) issued three notices of consultation on May 12th, 2023, namely Broadcasting Notices of Consultation CRTC 2023-138, 2023-139 and 2023-140. These are the Commission's initial public proceedings launched following the recent and important revisions made to the *Broadcasting Act*.
2. This is an historic moment in our sector. Although documentaries have never been more popular, they are vulnerable within the Canadian independent production community. DOC is compelled to participate in these proceedings, and intends to participate at every stage, in order to speak for one of the most socio-economically, culturally and racially diverse creative communities in Canada, deeply committed to a genre of filmmaking that has never been more important to understanding our country and the world around us.
3. The Documentary Organization of Canada (DOC) is the collective voice of Canada's independent documentary creators. Founded in 1983, DOC has grown to 1,300 members across six chapters from coast to coast. DOC's mandate is to advocate for an equitable, sustainable environment for documentary production and to strengthen the sector within the broader cultural industry. Sometimes referred to as Canada's National Art Form, Canadian documentaries have gone from niche to mainstream. In addition to

being an important Canadian export, documentary is a gateway into the screen sector for many creators who have been historically marginalized and excluded due to systemic inequities. Indeed, half of DOC's membership is Black, Indigenous or racialized and many of our members live in rural and remote regions of Canada.

4. In this submission, DOC addresses a number of the issues raised in BNC 2023-139. We look forward to reviewing the submissions of other interveners in this proceeding, and providing further comments in relation to any or all of the issues raised in BNC 2023-139 in the reply and final reply phases of this proceeding.
5. In particular, DOC discusses the Commission's proposed Registration Regulations and its proposed categories of exempt undertakings.

B. Proposed Regulations for the Registration of Online Undertakings

6. In this proceeding, the Commission has proposed Online Undertaking Registration Regulations, which would require certain online audio and video services that operate in Canada to register with the Commission. Appendix 1 of BNC 2023-139 sets out the proposed Registration Regulations. Please note that DOC's comments in this submission relate to video services only.
7. DOC applauds the Commission for proposing a registry of all online undertakings. It is important to be able to track the online sector as it evolves. DOC, therefore, supports this CRTC initiative. DOC notes that the Commission may also be required to modify the registration regulations from time to time in the future due to shifts in the online sector.
8. DOC is interested in what level of detail can be expected from this online registry. It would be beneficial to track data about financial performance, language, genre of programming, data about the self-identification of the production team, and other qualifiers that will support the Commission's work to ensure that the sector continues to evolve toward a more equitable landscape that represents all Canadians.

C. Exemption Order Regarding the application of the *Online Undertaking Registration Regulations*

9. In this public proceeding, the Commission has also proposed to exempt four categories of undertakings from the application of the proposed Online Undertaking Registration Regulations (and hence exempt from the proposed contribution regime set out in

Broadcasting Notice of Consultation CRTC 2023-138). The four categories that the Commission proposes to exempt are:

- i. “online undertakings whose single activity and purpose consists of providing video game services
- ii. online undertakings whose single activity and purpose consists of providing unique transactions;
- iii. online undertakings affiliated with a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million;
- iv. or online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million.”

i) Video Game Services

10. DOC has no objection to excluding persons carrying on, in whole or in part in Canada, broadcasting undertakings whose single activity and purpose consists of providing video game services. DOC, therefore, supports this component of the Commission’s proposed exemption regime.

ii) Transactional Services

11. It is, however, with concern that DOC notes the Commission proposes to exclude online undertakings whose single activity and purpose consists of providing unique transactions also known as TVOD services.
12. The *Broadcasting Act* defines the term “broadcasting” as “any transmission of programs – regardless of whether the transmission is scheduled or on demand or whether the programs are encrypted or not – by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus.”

13. The Commission has also historically regulated transactional video-on-demand services in Canada. See for instance Broadcasting Regulatory Policy 2017-138, *Standard requirements for on-demand services* (formerly known as pay-per-view and video-on-demand services).
14. Furthermore, the *Broadcasting Act* specifically states at section 3(1)(e) that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.”
15. DOC respectfully submits that the Commission should not exempt any services that fall within the scope of the *Broadcasting Act*, and can meaningfully contribute to the Canadian broadcasting system, such as TVOD services. We note that TVOD services operating in Canada include iTunes, Microsoft Movies & TV and Google Play. Moreover, excluding a significant element of the Canadian broadcasting system at this early stage does not seem like an appropriate action. We look forward to reviewing and responding to other intervenors on this point.

iii) Online Undertakings with Broadcasting Revenues Under \$10 million

16. The Commission also proposes to exempt from the registration regime online undertakings affiliated (or with no affiliation) with a broadcast ownership group that have broadcast revenues less than \$10 million.
17. Without adequate and transparent access to the annual Canadian gross revenues of all of the online undertakings in question, it is difficult at this stage to discuss the level of annual Canadian gross revenues of undertakings that should be excluded from registration with the Commission. DOC is concerned that it is premature to exclude online undertakings with annual Canadian gross revenues of less than \$10 million without the necessary data to analyze which entities fall below this demarcation, and how this demarcation impacts online undertakings operating in languages other than English.
18. DOC is also concerned that in defining “Annual Revenues” across all services during the previous broadcast year, whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings, the Commission could miss the opportunity to specifically track data regarding shifts within online undertakings.



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DU CANADA

D. Conclusion

19. Documentarians are an incredibly diverse community of creators, whose highly successful, award-winning content connects Canadians coast to coast with shared stories and values and brings our perspective to the world. DOC appreciates the opportunity to speak on behalf of Canada's documentary community in this proceeding and looks forward to engaging with the other intervenors on these and other issues related to the revised *Broadcasting Act* in the reply and final reply phases of this proceeding.

Sincerely,

Sarah Spring
Executive Director, Documentary Organization of Canada