



SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

February 16th, 2021

Submission of the Screen Composers Guild of Canada (SCGC) to the Standing Committee on Canadian Heritage pre-study on the subject matter of Bill C-10.

Executive Summary

1. SCGC is requesting an amendment to Bill C-10, to confirm Parliament's intent that no Canadian creator should be forced to permanently give up the copyright that flows from their creative contributions to Canadian content productions, as a precondition of contractual engagement.
2. SCGC recognizes and supports Bill C-10's provisions that would empower the CRTC to implement a modernized broadcasting regulatory framework. SCGC agrees that the CRTC should be given new flexible powers to impose "conditions of service" on both traditional and online programming services.
3. SCGC submits that Bill C-10, and any subsequent regulatory direction by the Governor-in-Council to the CRTC, should ensure that:
 - Any "conditions of service" imposed by the CRTC should support the principle that no Canadian creator should be forced, as a condition of contractual engagement, to surrender their copyright to their creative contribution within an audio-visual work; and to that end,
 - The CRTC should be given express powers to ensure that Canadian content certification is only extended to productions where it can be reasonably demonstrated that no key creators have been required to surrender their rights to intellectual property they have contributed to the production in question.
4. For the most part, this new requirement will be met under the terms of collective bargaining agreements between organizations that represent 'key creatives' and organizations that represent independent media producers.
5. However, SCGC notes that screen composers are the only points-generating 'key creative' in the Canadian Content certification system not protected by a collective bargaining agreement with the Canadian Media Producers Association (CMPA). As such, our members are frequently required to surrender their legal creator rights as a non-negotiable condition of contract when providing original musical compositions to projects produced by CMPA members.

6. Moreover, SCGC notes that is an inequity in the current Canadian Content system that is specific to English-language composers and productions. In Quebec, screen composers' creator rights are protected under existing collective agreements covering film and television production between SPACQ and the French-language producers represented by AQPM. However, in English-Canada, CMPA has so far declined to negotiate a comparable agreement with SCGC.

Background

7. 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.
8. Historically, no Anglophone Canadian composer was ever asked to surrender their copyright as a condition of employment. They signed a master use license and a synchronization license for the music in the score, and that was all the producer needed in order to market the production internationally. However, in recent years, this unfair commercial practice has become a frequent demand, despite being increasingly out of step with GOC cultural and economic strategies, and despite being out of alignment with media producers' own strident position on 'terms of trade.'
9. Media producers are responsible for contracting the key creative team whose work comes together to create an audiovisual production. Directors, writers, designers, actors, directors of photography, editors and composers all contribute to the final product, which is then licensed and marketed at home and abroad.
10. Composers work with other members of the creative team to conceive and develop the sound of the production. They write and perform the music, sometimes in collaboration with other musicians and performers. They oversee the engineering, mixing, and editing of the recording. They synchronize the music to the picture and deliver individual instrumental components to the production's mixers. They adjust and amend the score as required by the producer, broadcaster, and other creative decision makers.
11. A score consists of two separate elements: the underlying melody, notes and lyrics (the compositions), and the audio recordings of those compositions (the master recordings). Collectively, these elements are referred to as a show's musical 'score'.
12. These elements contain a bundle of underlying creator copyrights which belong to the composer (as author and maker of the score) under the Copyright Act. These rights have the potential to generate long-term royalty and other revenue for various uses of the score (such as for public performances, TV and radio broadcast, digital streaming, physical and digital reproduction, sales, etc.)

13. This so-called ‘back end’ revenue is a key component of composers (and their heirs) deriving full economic value for their work over the full term of copyright protection. Historically, the fact composers earned long term royalties from these copyrights was seen by producers as a trade-off and justification to pay composers lower rates than other key creatives.
14. In recent years however, media producers have begun to insist that composers give up some or all of their copyright, while continuing to pay them lower rates than other key creatives and none of the fringe benefits – such as contributions to health insurance and pension funds – that other key creatives receive under the terms of the collective bargaining agreements with CMPA.

Considerations

15. Other than with composers, the Canadian Media Producers Association (CMPA) has agreements with every Anglophone key creative role that generates points under the certification system: directors, writers, designers, actors, and editors. The CMPA has repeatedly declined to enter into a comparable agreement with composers.
16. This situation has resulted in an imbalanced negotiating environment between composers and producers. SCGC members do not have the bargaining power to counter producers’ demands that they surrender ownership of their work. Creator rights have increasingly become a casualty in the Canadian Content system. SGGC submits that ownership and control of their legal creator rights is foundational to the financial health and ongoing existence of emerging and professional AV composers in Canada.
17. There is no justification whatsoever for producers’ insistence that composers assign all right, title and interest in their works. Noting that all Canadian creators – including producers and composers – work under well-established and regulated copyright licensing regimes, there is no legitimate business reason for media producers to demand ownership of a composers’ work when it could simply be licensed under long-standing and well-established practices and procedures.
18. Demanding any part of a Creators’ Rights is patently unfair in commercial terms and is out of step with overarching trends in cultural and economic policy. The Government of Canada’s Innovation Agenda, the findings of PCH’s Canadian Content in a Digital World consultation process, the findings of the CRTC’s Consultation on the Future of Program *Distribution in Canada*, the findings of the Broadcasting and Telecommunications Legislative Review (BTLR) panel’s *Canada’s Communications Future: A Time to Act*, and Telefilm Canada’s *Partner of Choice: 2022 Strategic Plan* each recognize that the ability to monetize intellectual property over the longest possible timeframe is key to cultural and economic success in a digital economy.

19. Moreover, SCGC notes this practice is completely out of alignment with the producers' own frequent arguments in favour of regulated 'terms of trade' to compensate for an imbalance in bargaining power with broadcasters. For over a decade CMPA has argued, at length, that the Government should intervene to protect its members' ownership position in the content being produced. Unfortunately, CMPA does not practice what it preaches when it is inconvenient to its members.
20. To be clear, SCGC fully supports Recommendation 61 of the BTLR report, which would "strengthen Canadian producers' ability to negotiate terms of trade with the purchasers of their content, so that they may retain the commercial rights." But respectfully submits that the same principle should apply to music composers' ability to negotiate terms of trade with purchasers of their content, so that they may retain the commercial rights.

Recommendation:

21. In light of these considerations, SCGC submits that Bill C-10, and any subsequent regulatory direction by the Governor-in-Council to the CRTC, should ensure that:
- Any "conditions of service" imposed by the CRTC should support the principle that no Canadian creator should be forced, as a condition of contractual engagement, to surrender their copyright to their creative contribution within an audio-visual work; and to that end,
 - The CRTC should be given express powers to ensure that Canadian content certification is only extended to productions where it can be reasonably demonstrated that no key creators have been required to surrender their rights to intellectual property they have contributed to the production in question.

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