



Canadian Independent Music Association

**Submission to the Standing Committee on Canadian Heritage on C-10 (An Act to
Amend the Broadcasting Act)**
from the Canadian Independent Music Association

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The Canadian Independent Music Association (CIMA) is the not-for-profit national trade association representing the English-language, Canadian-owned sector of the music industry. CIMA's membership consists of over 350 Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the music, sound recording and music-related industries. They are exclusively small businesses which include record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.

CIMA's mandate is to develop and advocate policies and services that serve to support a strong and economically stable Canadian independent music and sound recording industry, ensuring the long-term development of the sector and to raise the profile of Canadian independent music both in Canada and around the world.

CIMA continues to take a leadership role in improving the economic viability and well-being of the independent music and sound recording sector in important areas such as cultural industry policies and programs; intellectual property and copyright law; tax laws and tariffs; international export and trade development programs; and professional development.

HOW LEGISLATIVE REFORM IMPACTS THE INDEPENDENT MUSIC LANDSCAPE

Between the variable funding levels at the Canada Music Fund, the potential reforms to the Copyright Act, and the recently introduced Broadcasting Act legislation (Bill C-10), there is some uncertainty surrounding the policy environment in which Canadian independent music companies will operate.

In practical terms, the degree to which Canadian and foreign-based broadcasters will be able (or compelled) to contribute to Canadian culture (including the commercial music industry) is one example of how this policy environment influences business realities for independent music companies. Indeed, such legislative changes can provide crucial funding support via marketplace solutions, and reforms to both Acts need to be accelerated, particularly as companies recover through this pandemic.

C-10

In the absence of being able to appear before the Standing Committee on Canadian Heritage, CIMA seeks to outline its rationale in support the passage of Bill C-10, with minor amendments that would improve the level of support received by the independent music sector. In general, C-10, if approved by Parliament as currently written, would amend the Broadcasting Act in many ways that are beneficial to the music industry.



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C-10 would expand the authority of Canada's broadcasting regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), to include online video and music streaming services. Currently, such services ('online undertakings') that deliver audio and audio-visual content over the internet are exempt from licensing and most other regulatory requirements. This means that unlike commercial radio stations, 'online undertakings' are not required to make financial contributions towards Canadian Content Development (CCD) or have any promotion requirements. The CCD dollars invested by commercial and ethnic radio broadcasters include important contributions to FACTOR or Musicaction and the Community Radio Fund of Canada (CRFC).

Other key changes that CIMA supports, already written within C-10, include:

- The Bill clarifies that 'online undertakings' would now be within the scope of the Canadian broadcasting regulatory system.
- The Bill provides the CRTC with new powers to regulate online audio and audio-visual services, allowing the CRTC to create new 'conditions of service' and other regulatory requirements under which these online broadcasters would operate in Canada. It also updates the CRTC's regulatory powers as they relate to traditional broadcasters.
- Traditional broadcasters would be required to obtain a license to operate, but this license will only give them the authorization to operate. This is new. What was formerly known as the 'Conditions of License' is changing to 'Conditions of Service' for all online and traditional broadcasters, which will dictate their obligations to operate in Canada.
- The Bill provides the CRTC with express powers to require broadcasting undertakings, including online undertakings, to make financial contributions to Canadian content and creators.
- The Bill ensures that the Act would not apply to users of social media services, or social media services themselves for content posted by their users.
- The Bill provides the CRTC with new enforcement powers through an administrative monetary penalty scheme (AMPs).
- The Bill recognizes that the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the



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needs and interests of all Canadians—including Francophones and Anglophones, Indigenous Peoples, Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socioeconomic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages.

One area of C-10 that CIMA believes **should be amended** can be found in Section 9.1(1)(c), related to the exemption the legislation would grant to online undertakings from obtaining the approval of the Commission before entering into any contract with a telecommunications common carrier. **CIMA recommends that the highlighted and bolded section below be struck from Section 9.1(1)(c)**

9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting

(c) a requirement for a person carrying on a broadcasting undertaking, **other than an online undertaking**, to obtain the approval of the Commission before entering into any contract with a *telecommunications common carrier*, as defined in the *Telecommunications Act*, for the distribution of programming directly to the public;

As independent music companies, we rely on a competitive market for our existence. This exemption would allow telecom companies to use their dominance in the ISP and mobile network markets to disrupt the currently level playing field of competition among online audio streaming services (i.e. online undertakings) for their own commercial benefit. This would open the door to unanticipated anticompetitive behaviours and almost certainly have negative consequences for the Canadian owned and controlled music industry. Audio streaming services need to be subject to the same degree of oversight as any other broadcaster when making agreements with ISPs.

In addition to this important legislative change, there are a number of amendments that have been put forward by both the Intellectual Property Institute of Canada (IPIC) and the Coalition for the Diversity of Cultural Expression (CDCE) in their submissions, that would provide additional foundational supports received by the entire cultural sector. CIMA supports these amendments and encourages committee members to vote in favour of them as they are presented as part of clause-by-clause consideration before the Heritage committee.

THE FUTURE OF SUPPORT FOR THE INDEPENDENT MUSIC SECTOR

As outlined above, if C-10 is passed by Parliament, the Broadcasting Act would be amended in ways beneficial to the Canada's independent music industry. For example, if music streaming services are obligated to contribute funding and promote Canadian cultural content, as one



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example, Government estimates this would generate funding over \$800 million per year by 2023 to be invested in Canada's cultural industries, including music.

That said, the details of this funding (including how much of it would be allocated to music) will be determined as the result of both passage of the legislation, and review by the Canadian Radio-television and Telecommunications Commission (CRTC) in the Fall of 2021.

Given that the drop in revenue, estimated in CIMA's recent report on the effects of COVID-19 on the independent music sector ([COVID-19 Recovery Recommendations for the Canadian Independent Music Industry, undertaken by Nordicity](#)), will last until at least 2023, **it is recommended that the development of the new funding mechanisms include provisions for funding to be directed to the Canada Music Fund or a complementary fund.**

Indeed, it will take 2-3 years from presenting a bill to Parliament to creating the mechanisms and collecting and allocating funds generated as a result of C-10. In the interim, new funding could be considered as the replacement for any pandemic-related recovery funding (such as the 2021-22 increase to the Canada Music Fund) the sector is currently receiving and may continue to receive over the short-term horizon.

Moreover, since the significant public benefits that flow from funds to the music sector are declining from now through to 2023-24, the infusion of funds from the streaming services is quite timely.

In sum, CIMA encourages the Committee and Parliament to consider Bill C-10 in conjunction with support programs, emanating from the COVID-19 pandemic, for the independent music sector in the short, medium, and long-term.