



Broadcasting and Telecommunications Legislative Review Submission

Prepared by the Entertainment Software Association of Canada

January 2019

About ESAC

ESAC is the voice of the Canadian video game industry. Association members include the nation's leading interactive software developers, publishers and distributors, such as **Electronic Arts, Ubisoft, Activision Blizzard, Microsoft Canada, Nintendo of Canada, Capcom, Sony Interactive Entertainment, Other Ocean Interactive, Glu, Take Two Interactive, Warner Bros. Interactive Entertainment, Ludia, Square Enix, Relic Entertainment, Gameloft, Codename Entertainment, Netmarble** and **Solutions 2 Go**.

We work on behalf of our member-companies to ensure that Canada remains a great place to innovate, create and publish video games. We work with decision-makers on regulatory issues that affect our members at the provincial and federal levels; and, regularly conduct and publish original research highlighting the impact of our industry in Canada.

Why we are Participating

We want to begin this submission by explaining why our association is participating in a review of the Broadcasting and Telecommunications Acts when our members are neither broadcasters, nor Internet Service Providers (ISP).

On May 31st, 2018, The Canadian Radio-television and Telecommunications Commission (CRTC) released a report entitled *Harnessing Change: The Future of Programming Distribution in Canada*. The "Future Viability" section of the report contained a market analysis of the various online program distribution models. The section on "Transactional Online Video" contained a list of some of the companies providing these services, which are defined as "global and Canadian online service providers that offer on-demand TV and movie content for purchase or rental without a subscription."¹ Amongst the services listed were Microsoft Movies and TV, and the PlayStation Network, which can be accessed on their respective console menus by users with an internet connection.

We quickly connected with staff from the office of the Minister of Heritage to voice our surprise and concern to find our members being referenced in a report about broadcasting, and to clarify the minor ancillary role transactional video services play in our member's console offerings. Staff appreciated us bringing this to their attention, and indicated that the CRTC report is one input in what would become a broader review and consultation process.

On June 5th, 2018, the Broadcasting and Telecommunications Legislative Review was officially launched, following up on a commitment from the *Creative Canada Policy Framework*.² Shortly

¹ Canada Radio -television and Telecommunications Commission, *Harnessing Change: The Future of Program Viability in Canada* (May 31, 2018) <<https://crtc.gc.ca/eng/publications/s15/futur.htm>>

² Ministry of Canadian Heritage, *Government of Canada launches review of Telecommunications and Broadcasting Acts* (June 5, 2018) <<https://www.canada.ca/en/canadian-heritage/news/2018/06/government-of-canada-launches-review-of-telecommunications-and-broadcasting-acts.html>>

after the announcement, staff from the Minister of Heritage's office suggested we participate in the stakeholder consultation process to educate the Panel on our industry and provide context and details on the transactional online video services available on consoles that were referenced in the CRTC report.

On September 28th, 2018, we had the opportunity to participate in the Toronto based stakeholder consultations led by three members of the Panel, along with staff support from the secretariat. We began by providing insight into the Canadian video game industry through a presentation focused on job numbers, growth, innovation and the conditions that have helped make Canada a global leader in video game development.

We were surprised by the direction the conversation took during the Q & A following the presentation. The Panel members and staff were actually not interested in discussing transactional online video or even over-the-top (OTT) services available on consoles. They pointed out that Canadian video game companies are eligible for Canada Media Fund (CMF) funding even though our sector does make direct financial contributions to the fund like traditional broadcasters. They questioned how our sector could operate without more stringent Canadian content regulation when we are classified as "cultural products." They suggested that the narrative sophistication and audio-visual presentation of games has evolved to the point where the lines are blurred between games and other mediums like film, and asked what differentiates games from other cultural industries.

By the end of the consultation, the Panel members made it very clear that it was incumbent upon us to explain why **video game developers and publishers should not be considered broadcasters**. We strongly disagree with the suggestion that our members be considered broadcasters, and look forward to addressing these comments in this submission.

At ESAC, we believe in working collaboratively with all levels of government and appreciate the opportunity to clarify our position. To this end, we have elected to focus our submission on the questions and comments raised during the September 28th consultation, along with our response to select questions outlined in the Broadcasting & Telecommunications Legislative Review Terms of Reference.

ESAC members are not broadcasters nor do we wish to be. We are confident that Panel members and supporting staff will find the information within this submission informative, concur with our positions, and continue to engage with our association moving forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jayson Hilchie".

Jayson Hilchie, President & CEO
ESAC

Agenda

This submission is designed as follows:

- 1) The State of the Canadian Video Game Industry
- 2) Creative vs Cultural: Clarifying CMF Funding and Can-Con
- 3) Video Game Developers and Publishers are not Broadcasters
- 4) Conclusion and Next Steps

Appendix: Responses to Select Questions in the Legislative Review Terms of Reference

1) The State of the Canadian Video Game Industry

Leading the Digital Jobs Revolution

Canada's video game industry is one of the most dynamic and prolific in the world. It employs close to 22,000 full-time direct employees, while supporting another 19,000 indirect jobs for a total of over to 40,000. Our industry's contribution to Canadian GDP is close to \$4 billion. This is not revenue, this is salaries of our employees and those our industry supports along with their collective economic impact.³

Our impact is considerable. The average salary of a video game employee in Canada is over \$77,000 per year, which is more than double the Canadian average. More than 75% of the products we make are bound for export markets where Canadian innovation and creativity ends up on the screens of players all around the globe.⁴

Of the nearly 600 studios that span from St. John's, Newfoundland to Victoria, British Columbia and all points in between, approximately 85% of them are Canadian owned and controlled. The Canadian industry, however, is a mix of large multinational publishers and developers and Canadian owned companies. This mix helps to diversify and strengthen our sector.

We attract significant international investment from our industry's leading multinationals. They are the largest employers in the Canadian industry and are creating some of the biggest games in the world, right here in Canada. 86% of the employment in the sector comes from foreign owned companies who invest billions of dollars into the Canadian economy.⁵

The Canadian video game industry is the envy of many nations around the world, and is often used as a model to emulate when trying to develop a successful strategy to grow a national video game industry.

³ ESAC, *Essential Facts About The Canadian Video Game Industry* (2017) <http://theesa.ca/wp-content/uploads/2017/10/ESAC2017_Booklet_13_Digital.pdf>

⁴ Ibid

⁵ Ibid

In 2018, ESAC was invited to Australia by their national video game industry association to meet with stakeholders and their local industry to present them with an overview of the Canadian success story and some of the best practices that make us so attractive to major developments and investments. While there, ESAC participated in numerous media interviews, extolling the benefits of creating a business environment that will help the video game industry there grow and thrive. In addition, we met with elected officials on both sides of the aisle to help them better understand the story of Canada's success in this industry and ways that Australia could mimic Canadian policies, such as tax incentives for job creation.

In 2016, we visited Barcelona, Spain, to present Canada's video game industry successes to members of the Cortes Generales. As in Australia, this was done in co-operation with the national video game trade association in Spain. The goal was to share best practices with respect to government support to grow the video game industry in that country.

Canadian Games Have Global Appeal

Our industry's success relies on a large global player base for Canadian-made games. The good news is Canada and Quebec are creation powerhouses within our global industry. During the Fall of 2018, the busiest season for video game sales around the world, nine of the most anticipated blockbuster releases of the year were Canadian-made. These include *FIFA 2019*, *Assassin's Creed Odyssey* and *NHL 2019*, to name a few.

The success is not limited to big-budget games. The last few years have seen several Canadian games made by small independent studios that have been met with rave critical reception and high sales, including *Guacamelee*, *Cup Head*, *The Messenger*, *Giant Cop*, and many more.

The ability to successfully export is linked to the quality of a product. Our members won't develop a game unless they believe it will appeal, in some way, to the global marketplace. This approach helps create a link between R&D (development) and ROI (distribution) resulting in popular, and profitable, Canadian content.

Conditions for Success

Canada has the largest video game industry in the world per capita. Our country ranks third in the world for developing video games, just behind powerhouses US and Japan.⁶ Our companies continue to grow and require new talent. That's why we worked collaboratively with the Federal government to help build the Global Talent Stream of the Temporary Foreign Worker Program, which is helping us fill job shortages that can't be filled by Canadians. This explosion of growth in video game development didn't happen by accident. There are a number of vital policies and programs that helped create the conditions for success.

⁶ ESAC, *Essential Facts About The Canadian Video Game Industry* (2016) <http://theesa.ca/wp-content/uploads/2016/11/2016_booklet_Web.compressed2.pdf>

Developing games is not easy. Such labour-intensive work requires complex technical skills, time, and exceptional artistic abilities. We rely on the work of thousands of talented Canadian digital artists and software developers to develop creative content. Our strong domestic workforce is supported by incredible international talent. Programs such as the **Global Talent Stream**⁷ allow us to attract the best and brightest from abroad. That program will be up for renewal next June. It is imperative for our industry that the program remains. The ability for us to bring in high-quality talent within four weeks is essential for us to continue to create jobs and grow here in Canada, while raising the level of digital skills talent here in Canada.

Discoverability is one of the biggest issues in our industry. Hundreds of video games are published globally every year. Many game companies have worked with various celebrities to promote their games on mainstream media, which makes it very hard for Canadian-owned and independent developers to compete with. This is where we need help, finding ways to better promote Canadian-made games to potential players worldwide. Programs like Canada's Creative Export Strategy will hopefully help in getting Canadian-made games into the hands of global consumers.⁸ We need the ability for our video game companies to promote internationally, especially the smaller Canadian-owned studios that have limited resources.

Support from the government to help our creators access foreign markets is highly valuable for us as primarily an export industry. That's why we are supportive of trade missions and the Creative Export Canada program.

Finally, it is important to recognize that part of our success story is due to our sector evolving in a fairly unregulated context. **Innovative sectors require the freedom and flexibility to evolve.** If you restrict these characteristics, innovation is stifled. If our companies cannot innovate effectively, they cannot compete.

Canada's current regulatory environment has allowed our creators to develop innovative and globally popular software while adapting to our consumer's evolving habits. While the industry is thriving, we are subject to fierce global competition. Any shift in the favourable policy and regulatory landscape risks making us vulnerable to losing significant investment, particularly from the multinational companies that employ the vast majority of our sector's workforce.

Video Games - Beyond Entertainment

"#BeyondEntertainment is not an understatement. Inspired by how #innovation pioneered by the gaming industry has improved our everyday lives." Minister Navdeep Bains, (Twitter, 23 Oct, 2017)

In addition to our industry's significant contribution to the economy, Canadian video game companies are actively engaging in innovative product and process developments. This includes

⁷ Employment and Social Development Canada, *Program Requirements for the Global Talent Stream* (November, 2018) <<https://www.canada.ca/en/employment-social-development/services/foreign-workers/global-talent/requirements.html>>

⁸ Ministry of Canadian Heritage, *Creative Export Canada* (November, 2018) <<https://www.canada.ca/en/canadian-heritage/services/funding/creative-export-canada.html>>

notable advances in artificial intelligence, virtual reality (VR), augmented reality (AR), analytics and motions capture.

50% of companies indicated they created at least one process innovation in 2017, while 69% indicated they created an innovative product.⁹ 22% of respondents indicated their products had been utilized in other sectors like education, health care, and training.¹⁰

The Canadian video game industry has benefits beyond the tremendous economic impact, something that our sector is proud of and looks to continue to build on in the years to come.

2) Creative vs Cultural: Clarifying CMF Funding and Can-Con

Canada Media Fund and Video Game Creators: A Win-Win Relationship

Canadian game studios can also apply for funding through the Canada Media Fund (CMF) Experimental Stream, which supports the development of “interactive digital media content and software applications that are innovative and leading-edge.”¹¹

This fund has been particularly valuable to independent game studios. According to the Director of Microsoft’s independent Xbox developer program, Chris Charla, “The government support for video games in Canada has been tremendous and the net result is that Canadian games are by far some of the best in the world... The world owes a little bit of a debt to the Canadian government for what the Canada Media Fund has done in helping jump-start a lot of really amazing games.”¹²

It is important to clarify, however, that **the CMF funding our industry receives is economic development funding, not cultural funding**. It is designed to help support job creation in the digital media sector rather than act as a cultural subsidy.

This fact was recently confirmed by Valerie Creighton, President and CEO of the CMF. On October 17th, 2018, Ms. Creighton appeared as a witness, along with ESAC President and CEO Jayson Hilchie, at a Senate Standing Committee on Foreign Affairs and International Trade hearing focused on cultural diplomacy.

She had this to say; *“I want to add to Mr. Hilchie’s comment. Regarding our experimental stream program that supports game development, about 60 per cent of that \$33 million*

⁹ ESAC, *Essential Facts About the Canadian Video Game Industry* (2017) <http://theesa.ca/wp-content/uploads/2017/10/ESAC2017_Booklet_13_Digital.pdf>

¹⁰ Ibid

¹¹ Canada Media Fund, *Programs* <<http://cmf-fmc.ca/programs-deadlines>>

¹² Financial Post, *Canada takes its \$3 billion video game industry seriously as it pushes sector to new levels* (March 13, 2017) <<https://business.financialpost.com/technology/canada-takes-its-3-billion-video-game-industry-seriously-as-it-pushes-sector-to-achieve-powerhouse-status>>

provides financial investment to those games. In fact, it's not a cultural mandate. It's very much an economic mandate. That piece of the content pie that we finance brings returns back to the fund to be able to support more.”¹³

Our relationship with the CMF is a win-win situation. In addition to the thousands of jobs created by our sector with support from government programs and policies, the profit that the CMF makes off of investment in video games is a tangible example of how our industry “contributes to the system.”

Video Games and Canadian Content

While there are Canadian games that may include Canadian characters, or are set in the country, there exist many other amazing Canadian-made titles that do not have this focus. What matters here is that these are Canadians creating games that they are passionate about. They are making games that are influenced by their own life experiences, their upbringing, the world around them and the people in their lives.

All these influences are very much Canadian at the core, but may not necessarily translate into a game being about Canada or set in Canada. They are created by Canadians and involve Canadians telling stories. If a game is created by Canadians in Montreal, Vancouver, Toronto, Halifax or any other locale around the nation, that should be the key factor which defines the production as “uniquely Canadian” and therefore fit the criteria of Canadian content.

Video Games are Creative but not necessarily “Cultural Products”

Developing a video game is an inherently creative process involving the collaboration of talented artists, programmers, musicians and writers to name a few. We recognize and celebrate the integral role that our industry plays in the broader creative industry. We do not believe, however, that video games can be universally classified as cultural products or that our sector is a cultural industry.

It is not just our opinion, however, that the creation and sale of video games should not be considered a cultural industry. The recently approved United States Mexico Canada Agreement (USMCA) retained the cultural exemption contained in NAFTA in Chapter 36, Exceptions and General Provision. Section 32.6 in particular provides a detailed definition of what is included as a cultural industry.¹⁴

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine-readable form but not including the sole activity of printing or typesetting any of the foregoing;

¹³ Ms. Valerie Creighton, *Senate Standing Committee on Foreign Affairs and International Trade* (October 17, 2018) <<https://sencanada.ca/en/Content/SEN/Committee/421/aefa/54287-e>>

¹⁴ United States-Mexico-Canada Agreement, *Chapter 32 – Exceptions and General Provisions* <<https://usmca.com/exceptions-and-general-provisions-usmca-chapter-32/>>

- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine-readable form; or
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services

Video games, entertainment software or interactive digital media, are nowhere to be found on this list.

The Canadian video game industry makes entertainment products for a global market. We survive because we can export our products all over the world. If the video game industry was ever deemed to be a cultural industry that could or would be protected by cultural protections, it could result in other countries putting walls up to protect their own video game industries. This is a fundamental reason why we do not want to be included in cultural exemptions in trade agreements. We do not need or want cultural protections that could result in our inability to sell our products abroad. Ultimately, any type of regulation related to cultural content could be detrimental to the growth and long-term viability of our sector.

3) Video Game Developers and Publishers are not Broadcasters

ESAC Members do not fit the Definition of Broadcaster

As outlined in section 2 (1) of the *Broadcasting Act (1991)*, broadcasting means “any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.”¹⁵

Gaming is conducted in an “open” and not “closed” environment like broadcasting. Our members do not have access to spectrum or any of the other special benefits that broadcasters have when they acquire a broadcasting license. The core business of our members is to develop, publish and distribute entertainment software.

Some of our members also make and sell video game consoles. These consoles can access the internet for online gameplay and other proprietary uses. In this regard, game consoles are like smart phones, BlueRay Players or i-pods.

¹⁵ Broadcasting Act (S.C. 1991, c. 11) <<https://laws-lois.justice.gc.ca/eng/acts/B-9.01/FullText.html>>

What Makes Video Games Unique

A video game is defined as an electronic game in which players control images on a video screen.¹⁶ While this is an accurate and basic definition, there are elements common to all video games that differentiate the experience of playing a video game from passively consuming a television, film or radio program.

Video games are fundamentally software products that include content, both creative and functional. **Without the software, a video game does not exist as a product.** The audiovisual element in games is only ancillary to the computer software element that ensures interactivity, which is itself the key feature of video games. The IP, and to some degree the creative content, could exist in different mediums, but it would not be considered a video game without the software element.

Playing video games requires attentiveness and demands problem-solving skills or physical activity. The operative word in video game is “game”. First and foremost, what our industry is producing and selling is a gaming mechanic. That is what makes a successful game. It is the sense of progression and accomplishment the player, or players, are experiencing playing the game. **As such, the main subject of a game is the player itself.**

Though storytelling or cultural contextualization can be used in a game, it is an accessory in the same way it is in board games like *Monopoly*, *Axis & Allies* or *Dungeons and Dragons*. Storytelling and cultural context might or might not be used in a game, but they are by no means a prerequisite.

It is true that many video games feature complex narratives and well-developed characters. On the other hand, some have very minimal story lines or no stories at all. Many games are primarily ludic in nature, meaning they rely heavily on the inherent moment-to-moment gameplay to provide entertainment. Such games can be equally as successful as narrative driven experiences. Examples include: *Chess*, *Soccer*, *Pacman*, *Thumper*, *Space Invaders*, *Rocket League*, *Unreal Tournament*, etc., the list goes on. None of these games have a strong (if any) story line, but have been very successful regardless, and are every part a video game as epics like *Final Fantasy* and *Zelda*.

Video games are sports that take place in a computer. They are digital board games and card games. They are interactive adventures and role-playing experiences. When you dig deeper, it is apparent that the label video game casts an absurdly large net over a whole lot of different things. There are thousands of different kinds of video games, and each of them function as their own form of entertainment media. Since we do not have concrete labels for all those individual types — just loose genre descriptions — we consider everything to be a video game. **What all video games have in common is that they are interactive software products driven by player input.**

¹⁶ Meriam Webster Dictionary: “video game” <<https://www.merriam-webster.com/dictionary/video%20game>>

We appreciate that the Panel has been tasked with thinking outside the box during this review, but suggesting video games might be considered “programs” and video game developers and publishers as “broadcasters” is unjustifiable, not innovative.

No Mention of Video Games in CRTC Report

On May 31st, 2018, The Canadian Radio-television and Telecommunications Commission (CRTC) released a report entitled *Harnessing Change: The Future of Programming Distribution in Canada*. The genesis of the report was an Order in Council issued by the Federal Government in September 2017,¹⁷ in which the CRTC was asked to address the following three matters:

1. The distribution models of programming that are likely to exist in the future;
2. How and through whom Canadians will access that programming; and
3. The extent to which these models will ensure a vibrant domestic market that is capable of supporting the continued creation, production and distribution of Canadian programming, in both official languages, including original entertainment and information programming.

It is worth noting that it **does not mention video games at all**, nor are they discussed or referenced in any of the recommendations.

ESAC was not pro-actively engaged during the consultation period. This is likely because the CRTC, which regulates all programming in Canada, does not consider video games a broadcasting medium nor our members as stakeholders in the work they do. Even in a future oriented report, they did not engage with our association. Conversely, we did not proactively participate in the consultation because our members are not directly involved in broadcasting and telecommunications.

No International Precedent

As you are no doubt aware, the Canadian government is not the first to consider how best to modernize their approach to broadcasting in an increasingly digital world. A number of countries and regulatory bodies around the globe have also decided to review their broadcasting systems with an eye towards evolving regulatory frameworks to meet a number of needs, including the continued funding of domestic “cultural content”.

It is worth noting that to our knowledge, no other review has suggested that video games be considered part of the broadcasting system. This includes recent reports and new legislation, reforms and directives from the European Union and Australia.

¹⁷ Prescott, Scott M., *The CRTC's Vision of the Future*, Fasken's (June 19, 2018)
<https://www.fasken.com/en/knowledgehub/2018/06/ottawa-newsletter-the-crtcs-vision-of-the-future#_ftn2>

On October 2, 2018, the European Parliament overwhelmingly voted to update the rules on the Audiovisual Media Services Directive (AVMSD), to apply the rules to both traditional broadcasters as well as Video-on-Demand (VOD aka OTT) providers such as Netflix, YouTube or Facebook, and live streaming on video-sharing platforms.¹⁸

The revised AVMSD is a substantial update that makes a number of controversial changes, however **the terms “video game”, “game” or “console” are not referenced anywhere in the 89-page document.** In fact, the Directive carries over the original express exemption of “online games” found in section (22) of the preamble in the original AVMSD from 2010.¹⁹

The Australian government has recently undertaken a similar review resulting in a new Broadcast and Content Reform Package.²⁰ Notable reforms include:

- Abolishing broadcasting license fees
- Introducing a price for the use of broadcast spectrum
- Restricting gambling advertising to reduce exposure to children
- Launching a review on increasing support for the development of Australian content

With respect to the new pricing reforms, the review refers to how the rise in the use of services including free-to-air television, pay TV, catch up TV, streaming services, subscription video on demand and user generated video, has led to a fragmentation of audiences and general erosion of advertising revenue for the traditional media outlets, including commercial television and radio.²¹ **Once again, the terms “video game” “game” or “console” are not referenced or covered by the new reforms.**

While the government of Canada is certainly not required to adhere to foreign legislation and regulation, it is prudent during a review of this scale that international precedent be taken into consideration.

¹⁸ European Commission, *Revision of the Audiovisual Media Services Directive (AVMSD)* (November 6, 2018) <<https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>>

¹⁹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), Section 22 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0013>>

²⁰ Australian Government Department of Communications and Arts, *Broadcast and Content Reform Package* <<https://www.communications.gov.au/what-we-do/television/broadcast-and-content-reform-package>>

²¹ Ibid

4) Conclusion and Next Steps

The Canadian video game industry is helping lead the charge in the digital jobs revolution. We employ thousands of talented workers, continue to evolve and innovate, and create experiences that appeal to customers all over the world.

The jobs in our sector are future-proofed and in high demand in a time when the economy is in transition, and traditional Canadian employment sectors like resources and manufacturing are in decline. The success of the Canadian video game industry, however, is not guaranteed in perpetuity. In addition to continued investment in digital skills and innovation, we need to ensure that the policy and regulatory environment that has supported our growth remains in tact. It is imperative that no unnecessary tariffs (both international and domestic), cultural protections, or regulatory burdens be placed on our sector.

The government has made it clear that whatever approach is taken to modernize the broadcasting and telecommunications system, should not impose new costs on Canadians.²² A cultural levy paid by global video game companies that would support the creation of Canadian-specific content or games is unnecessary. Many of the largest global video game publishers operating in Canada already have initiatives and/or programs that help identify, support and distribute Canadian made games on various platforms on PC, console and mobile. These include the ID @ Xbox initiative that lets Canadian independent developers self-publish on the platform, PlayStation Partners, which provides support for independent developers to make and publish games on the PlayStation and the Ubisoft Indie Series, which provides support to Canadian independent video game developers.

Video game publishers and developers are not broadcasters, nor do we wish to be. Our industry thrives by identifying the best IP and content to develop, publish and distribute. The best way to help the Canadian video game industry is to continue providing support through CMF for games that have the potential to be successful as commercial products internationally and to help independent developers find buyers, partners and distributors for their game. Discoverability is the single most pressing issue that Canadian video game developers are facing. A cultural levy will not solve this problem. Programs and initiatives that help games get discovered are a much better way to support the creation of innovative content right here in Canada. The world is our market.

A strong video game industry helps support Canada's economic, innovation and creative priorities. We trust you have found our submission informative and compelling, and we look forward to continued engagement moving forward.

²² Alex Ballingal and Alex Boutilier, *Canada urged to respond faster as digital landscape evolves*, Toronto Star (October 12, 2018) <<https://www.thestar.com/politics/federal/2018/10/12/canada-urged-to-respond-faster-as-digital-landscape-evolves.html>>

Appendix
Responses to Select Questions in the Legislative Review Terms of Reference

We have carefully considered the questions set out in the Terms of Reference for the Expert Panel. Since our members are not broadcasters, we decided to focus on providing comments and feedback on the questions where we feel we can contribute to in a meaningful way. Many of these questions have been addressed already within the submission, but we thought it might be helpful to include direct answers in the format provided:

Broadcasting Definitions

8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

It would be more appropriate for broadcasters to answer this question. The industry we represent makes entertainment software. Canada's entertainment software industry is a major player in our global industry and is growing, thanks in part to the current set of policies in place that support investments from major studios here while fostering the development of local talent & start-ups.

8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms?

For our industry, it is not about introducing or updating legislation when it comes to supporting Canadian and Quebec voices. We are very much global in scope and studios from all over the world have chosen Canada and Quebec as a place to develop innovative software.

Some of the top developers have chosen Canada and Quebec because we have the talent and the right set of policies in place to produce the best and most innovative games in the world. As a result of these local and foreign investments, we sell Canadian-made games such as NHL 19, FIFA 19 or Assassins Creed all over the world. During the Fall of 2018, nine of the most anticipated worldwide video game releases were made in Canada.

It is important to note that half of our developer community is located in the province of Quebec, which is now recognized as one of the top video game production hubs in the world.

Support for Canadian Content and Creative Industries

10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?

Any support that the government can provide in terms of promoting and exporting Canadian-made products is welcome by our industry. The government has done a great job in the past few years of helping promote our industry in global markets by “match-making” and setting up engagement opportunities where we can showcase our products and talent at trade shows around the world. For example, Canada was the partner country at GamesCom in Germany in 2017, which provided incredible exposure for our video-game industry on a global scale.

Another useful tool brought forward by the government is the \$125 million invested in the Creative Export Funding Program launched in summer 2018.²³ It is another good example of measures that can support development of Canadian-made software with high export potential.

10.2 How can the CRTC be empowered to implement and regulate according to a modernized Broadcasting Act in order to protect, support, and promote our culture in both official languages?

Speaking for the entertainment software industry, our success relies on the global market. The good news is Canada and Quebec are creation powerhouses within our global industry. One of the reasons the Canadian industry is such a success story, and Canadian-made and Quebec—made games are sold all over the world, is because we have been evolving in a fairly unregulated context, which has allowed our creators to develop innovative and globally popular software while adapting to our consumers’ evolving habits.

Any type of regulation related to cultural content will be detrimental to the growth and long-term viability of our sector. For example, we worked hard with trade negotiators to ensure that the Cultural Audiovisual Exemption found in USMCA, and other agreements, does not include mention of video games as it could result in protectionist measures in other markets that prevent Canadian-made games from being sold there.

²³ Ministry of Canadian Heritage, *Creative Export Canada* (November, 2018) <<https://www.canada.ca/en/canadian-heritage/services/funding/creative-export-canada.html>>

10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?

The video game industry is global in nature and Canada plays a major role in it. Our Canadian made games are being enjoyed by gamers all across the globe, and are becoming more popular every year. We don't feel any legislative changes are necessary to support the availability and access of our games here in Canada and abroad.

Cultural Diversity

12.1 How can the principle of cultural diversity be addressed in a modern legislative context

At a high-level, our entertainment products are increasingly consumed by people of all ages, genders and cultural background. As a matter of facts, our latest stats demonstrate that 64% of Canadians gamers.²⁴ This shows the increasingly universal appeal of our products.

On the supply side, our industry needs talent and we know more can be done to attract women to our field. In a report we co-authored in 2016 we called on government to further invest in teaching and promoting digital skills and STEM training at an early age, with a special focus increasing education opportunities for girls and young women.²⁵

At the local level, the video game industry is involved in many external and voluntary efforts to engage girls and women in game making. These groups aim to provide education and mentorship in an open and friendly setting in order to counter stereotypes and to welcome girls and women into the industry. Pixelles (Montreal), Dames Making Games (Toronto), and Girl Force (Ottawa) are a few Canadian examples of these efforts.

²⁴ ESAC, *Essential Facts About the Canadian Video Game Industry* (2018) < http://theesa.ca/wp-content/uploads/2018/10/ESAC18_BookletEN.pdf >

²⁵ ESAC and Dawson Strategic, *Playing for the Future - The Critical Role of Skills for Canada's Video Game Industry* (March, 2016) <<http://theesa.ca/wp-content/uploads/2016/03/DawsonStratESACReportEnglish-Final.2.pdf>>