



**Broadcasting and Telecommunications Legislative Review Panel  
Responding to the New Environment: A Call for Comments**

**Submission by Stingray Group Inc.**

**January 11, 2019**

1. Stingray Group Inc. ("**Stingray**" or "**we**") is pleased to present its written submission in response to the Legislative Review Panel's Call for Comments as part of the joint legislative review of the *Broadcasting Act* and *Telecommunications Act*. Stingray will be focusing its comments and recommendations on the Broadcasting sector.

## **EXECUTIVE SUMMARY AND INTRODUCTION**

2. As a leading multi-platform music and media company that operates on a global scale with services both linear and non-linear, regulated and unregulated, Stingray is - from a broadcasting perspective - well positioned to recognize the significant negative impacts of the current legislative and regulatory regime and the strong need to modernize such regime in order to continue to fulfill the need for protection and promotion of our Canadian content and creators.
3. Stingray's business experience and our expanding international presence are compelling evidence that a healthy Canadian domestic market is necessary in order to provide Canadians with meaningful cultural content at home, and to export that content successfully around the world. The strong base provided by our licensed pay audio service, Stingray Music (and other licensed and discretionary services) and by the Canadian regulatory regime, which has supported and fostered Canadian owned businesses and Canadian artists, has enabled Stingray's growth.
4. However, in Canada, the introduction of new OTT distribution technologies, and their integration within BDU platforms, is creating a competitive imbalance for Canadian services. Massive non-Canadian music distribution platforms are overwhelming the Canadian market. This will create profound disadvantages for Canadian artists and creators, who depend on Canada's domestic services in order for them to reach Canadian audiences. This is an urgent and pressing problem, as evidenced already by the dominance of non-Canadian music services (offering no Canadian or French-language content) in the currently unregulated, commercial background music sector.
5. In Stingray's view, the new distribution platforms will not, on their own, ensure a vibrant domestic market that is capable of supporting Canadian creators – especially Canada's musical artists. To ensure a vibrant domestic market, it is imperative that: (i) Canadian services and non-Canadian services at the very least operate on a more level playing field; and (ii) online broadcasting services be specifically included in the *Broadcasting Act*.
6. In terms of Stingray's specific recommendations for legislative change, Stingray refers the Panel to the submission provided by the Independent Broadcasters Group / *Groupe de diffuseurs indépendants* (the "**IBG/GDI**"), which Stingray strongly supports as we believe the IBG/GDI presents a detailed and accurate representation of the changes required for independent broadcasters like Stingray to not only survive in today's ever-changing communications environment but also have the support to grow and adequately compete in today's reality of content overload both on a national and international level.
7. Considering the detailed analysis provided by the IBG/GDI, we will focus our submission on providing the Panel with context surrounding Stingray's reality as an international omnichannel music

broadcaster in order to provide a more concrete picture of how the current environment affects our business and, if left unchecked, could threaten the continued growth of our regulated products and services.

8. The following pages will provide more insight into Stingray's perspective on the current legislative regime on two main fronts:

**A) Solving the Competitive Imbalance** – our regulatory environment should cover all players that benefit from operating in Canada (reaching Canadian audiences) and provide for a more even competitive playing field in Canada between Canadian and non-Canadian services. Non-Canadian OTT services with material market penetration in Canada should meet similar regulatory obligations as Canadian regulated services.

**B) Protecting Canadian Diversity in Content and Ownership** - Distribution platforms operating in Canada (reaching Canadian audiences) should provide greater prominence to Canadian Apps and services through mandatory discoverability tools, greater prominence in navigation systems, and similar mechanisms. Measures such as the Wholesale Code should continue to be enforced to ensure the fair treatment of independent programming services and the Commission should be provided with adequate tools towards ensuring a greater diversity of Canadian voices in our national broadcasting industry.

9. Music is and always has been an integral part of our Canadian culture and we believe companies like Stingray play an important role in supporting our Canadian music and music creators towards achieving the vision stated by the Government in its *Vision for a Creative Canada* (as reiterated in the Panel's Terms of reference for this consultation) to: *"protect, promote and support Canadian culture, in both official languages; capture a greater share of global markets; take a platform agnostic perspective; and embrace culture and creativity's potential as a driver for economic growth, in light of the change and disruption that has taken place in the communications environment"*.<sup>1</sup> The key to achieving this objective is to adjust our legislative framework to better support proud Canadian businesses so that they can continue to support Canadian talent and culture.
10. We respectfully submit to the Panel that many interim changes to our current system should (and can) be made before any long-term legislative reforms are devised and implemented in order to address new distribution models with a view to strengthening our existing broadcasting system. We will address a few of these recommended changes in the following pages.

## **A - OUR BUSINESS**

11. Stingray is an independent broadcasting service and content provider. By "independent", we mean that Stingray does not own or operate any distribution network for the delivery of our services to Canadians (or consumers elsewhere). We depend entirely on the communications and network infrastructure operated by our BDU partners in Canada and elsewhere, on mobile phone distribution, and on the Internet. In this sense, for the licensed and discretionary services contemplated herein,

---

<sup>1</sup> Terms of reference – Government's vision for a Creative Canada announced in the Fall of 2017.

Stingray largely operates on a “B2B” (business-to-business) basis, rather than directly to consumers (as a “B2C” business).

12. In Canada, Stingray operates the licensed pay audio service known as Stingray Music, which is distributed by all Canadian BDUs. Stingray also operates seven Canadian discretionary television services: Stingray Ambiance, Stingray Juicebox, Stingray Loud, Stingray Retro, Stingray Vibe, Stingray Now4K, *PalmarèsADISQ* and Stingray HITS. Stingray's Canadian Now4K service is the first Canadian 4K video music channel and it delivers the greatest number native 4K music videos.
13. Stingray now also operates 101 radio stations (82 FM and 19 AM) across seven provinces following its acquisition of Newfoundland Capital Corporation Limited (now Stingray Radio Inc.) in the fall of 2018 and effectively holds the second largest number of radio licenses in Canada.
14. Stingray is also active well beyond these linear offerings. Stingray has a strong presence in music based applications (“**Apps**”) offered directly to consumers (B2C). These services now include the highly popular family of Yokee music Apps (interactive karaoke, guitar, piano, and piano tutorial Apps) and Qello concerts, which offers a large catalogue of concert programs and related music documentaries. Qello is available on major digital platforms including Amazon Channels, Apple TV, Roku, Google TV, Samsung Smart TV and on the web and mobile devices. Stingray also produces the series PausePlay, which features exclusive interviews and performances of popular and emerging artists, offering important exposure for these artists on FaceBook, Twitter, Instagram as well as Stingray’s linear music channels. Lastly, Stingray Karaoke, with more than 13,000 songs, is available to millions of karaoke fans around the world. It offers the best karaoke experience wherever and whenever people want it through television On-Demand platforms, the web and on mobile devices.
15. While we are a proud and strong Canadian company, we have a substantial presence in world markets for music and related services, and we are focused on building that presence to complement and boost our Canadian operations. We estimate that Stingray's services are currently offered to approximately 400 million subscribers (or households) in 156 countries. Our content and services are offered on a large array of digital platforms and devices worldwide, including digital TV, satellite, mobile platforms, game consoles, OTT Internet delivery and set-top-box apps. Stingray offers more than 2,000 different linear streaming music channels around the world, a wide range of video-on-demand content (typically on an SVOD basis), and 12 different linear television channels with music or comparable themes.
16. Stingray is also, by necessity, a technology company. The demands of managing an extensive library of digital assets and delivering content around the world on an array of platforms, requires us to maintain state of the art – or ahead of state of the art – technical facilities. We believe we operate at the leading edge of new technologies. For example, Stingray was one of the first Canadian-based services (we believe) to provide content for delivery via Comcast's X1 technology in the United States, which is only now being rolled out in Canada. Stingray was also the first company to bring a 4K linear channel (Stingray Ambiance and Festival 4K) to North America.

17. Stingray is continuing to grow internationally, which allows us the unique ability to export Canadian culture and provide international exposure to our homegrown talent and to Canadian culture. However, in order to maintain Stingray's pace of growth, we need to ensure that we can operate on a level playing field with our direct competitors in Canada, which currently include both regulated and non-regulated players, both foreign and Canadian.

## **B – SOLVING THE COMPETITIVE IMBALANCE**

### ***i) Including Online Services within the Broadcast Act***

18. Stingray believes that in order for the concept of broadcasting to remain relevant, it absolutely needs to capture all actual (and future) "broadcasters" that participate in Canada's communication landscape. We believe the IBG/GDI's recommendations adequately reflect what would be required from a legislative perspective to ensure no participant is left out from the broadcasting system. The technological process or platform that allows the consumer to access content (both audio and audio-visual) should not be relevant (much less determinative) when deciding whether a platform should or should not be considered an "undertaking" as they are currently defined in the Act. Any "undertaking" that provides content to the Canadian consumer and derives financial benefit from Canadians should be bound by the Act and existing policy objectives. The objective remaining that we, as an industry, have the framework necessary to ensure the continued support and promotion of our strong Canadian culture, which our broadcasting industry has been able to do quite successfully until now. Stingray's Pay Audio service is a perfect example of this success.

19. It is clear that virtually all Canadian content creators and service providers are facing intensifying competition from the OTT services now available in the Canadian market. Canadian pay audio and streaming services are no different.

20. Stingray now competes directly in Canada with the world's largest online music platforms including such well-known services as Apple Music, Google Play Music, Spotify, and others. These services are penetrating the Canadian OTT market and being accessed by about 69% of Canadians with total annual revenues of approximately 208 million dollars in 2016 (up 245% year over year)<sup>2</sup>. While profitability of these services is still unsure, revenues continue to increase as these online platforms continue to expand their presence in the Canadian market.

21. The key difference between Stingray Music and these OTT services is that Stingray Music has substantial regulatory obligations to meet; competing OTT services have none. These obligations, which Stingray proudly accepts and discharges, include:

- 35% Canadian music on Canadian streaming channels
- 25% of Canadian popular music channels to offer a minimum of 65% French-language selections
- No commercial messages
- No spoken word programming on any streams (other than kids content)
- Subject to express legal obligations regarding abusive content and other matters

---

<sup>2</sup> Data collected from the Media Technology Monitor and the Commission as stated in the Commission's Harnessing Change Report.

- Subject to prior CRTC review and approval of changes in ownership
  - Adherence to content codes such as the CAB's Equitable Portrayal Code
  - Requirement to maintain comprehensive music lists for Canadian channels, and
  - Contribution of 4% of gross revenue to designated CCD initiatives
22. These requirements are in addition to other obligations that generally apply to Canadian broadcasting services such as meeting Canadian ownership requirements, prior approval of ownership transactions and the payment of tangible benefits on changes of control, and regulatory oversight through licensing and renewal proceedings.
23. Stingray acknowledges and confirms that the specific and more general obligations hereinabove set forth are essential to the protection of our Canadian culture and national identity. That is why Stingray has always supported and discharged these obligations without complaint. We recognize the need to support Canadian artists. The question is why this objective of the Commission should be rendered any less imperative based solely on the platform or distribution technology.
24. These online music platforms also have a significant impact on the radio side of our business. Even though Canadian listeners still tune in to FM and AM stations in significant numbers, radio listenership is threatened by new technology platforms used by consumers to access music<sup>3</sup>. Similar to Stingray Music, Stingray Radio is bound by significant regulatory obligations, including Canadian content requirements and CCD contributions. We refer the Panel to the submission presented by the Canadian Association of Broadcasters – CEO Radio Council (“CAB”), which details the significant impact of foreign OTT services more specifically from a radio perspective, and which Stingray supports without qualification.
25. Large foreign OTT services increasingly derive ever-greater revenues from their operations in Canada and they should at a minimum assume an obligation that is on par with Stingray and other Canadian regulated content providers to support Canadian content and creators through minimum content requirements, funding and local programming (to name a few). This recommendation is one of the most common presented by the various interveners from different sectors of our broadcasting industry following the Commission’s consultation in late 2017 and early 2018 and was a clear recommendation of the Commission in its *Harnessing Change* Report. We strongly believe this should be a key priority in the Panel’s recommendations as part of the review process as it impacts the industry in its entirety. More importantly, the inclusion of online services under the purview of the *Broadcast Act* should be implemented immediately without having to wait for a longer term review.

**ii) *The Stingray Music Example***

26. Stingray launched its pay audio service in 2009 after acquiring from the CBC some of the assets and brand of the former pay audio service known as *Galaxie* (Stingray had previously acted as *Galaxie*’s affiliate sales and development agent.). This service was actually two services (operated by CBC and Corus, respectively) operated under a common branding arrangement. Pay audio services have been

---

<sup>3</sup> CRTC Report, *Harnessing Change: The future of programming in Canada*, Market Insight 6, May 31, 2018

licensed by the Commission on a competitive basis since their inception in 1995. There is one other pay audio service currently licensed by the Commission, although that service has never been operated.<sup>4</sup> Entry of foreign pay audio services has not been permitted – other than in combination with channels offered through a Canadian-controlled pay audio service.

27. The priority given to Canadian pay audio services, and the presence of widely-penetrated distribution platforms, as represented by Canada's BDUs, presented Stingray with a clear opportunity to make pay audio a success in Canada and to expand around the globe. Stingray's entrepreneurial culture and our focus on the music service as a business priority has allowed us to take full advantage of this opportunity. At the same time, because Stingray Music is a Canadian licensed service, our success has translated into greater exposure for Canadian artists through our playlists, and direct financial support through our CCD contributions.
28. In addition, because Stingray owns and operates Stingray Music on our own, we are able to take full advantage of the intellectual property, expertise, goodwill, other resources we developed in Canada to expand abroad. This is not the case for services that might operate as the equivalent of the Canadian "branch plant" of non-Canadian services and brands (even though they may meet Canadian ownership and content requirements).
29. The amplitude of choice available to Canadian listeners today makes it difficult enough for any artist or song to stand out in the crowd. Continuing to exclude the current larger OTT players from our legislative and regulatory regime will be at the detriment of our Canadian music industry, as the visibility and funding currently available (thanks to traditionally regulated Canadian broadcasters like Stingray) will eventually decline as these foreign OTT services continue to grow unless the regulatory imbalance is resolved. Any legislative change should be geared towards ensuring our broadcasting system provides adequate support so that our Canadian talent can continue to be seen and heard.

### ***iii) The "Public Space" Exclusion***

30. Currently, the *Broadcasting Act* does not extend to the delivery of music to public places. Consequently, commercial audio services – the type that offer music programming for businesses including restaurants and bars, stores or other places – do not need to meet any Canadian content requirements. The reason for this exclusion likely relates to a concern in framing the Act not to capture truly public displays of programming content, such as in theatres, sports venues and similar locations.
31. This distinction makes little sense, however, when it is applied to commercial music services like Stingray Business. Commercial music services are essentially indistinguishable from a service that could be offered to individual Canadians. It is difficult to appreciate the rationale for requiring a music service delivered to the home to contain 35% Canadian music selections, whereas the same service delivered to a shopping mall or airport in Canada has no Canadian content requirement.

---

<sup>4</sup> Broadcasting Decision CRTC 2015-449

32. Stingray believes that this omission within the *Broadcasting Act* is resulting in the loss of an important opportunity for Canadian music programming. It also represents a material loss in CCD dollars for Canadian artists – which are required to be made by licensed services such as Stingray, but not by large commercial audio services. Commercial audio services providing services to public places should be brought within the ambit of the *Broadcasting Act*. This would ensure that Canadian artists receive maximum possible exposure in public – the same way they do in private. Artists would also receive potentially substantial CCD contributions, from these large commercial operations, as well as the benefit of greater royalty revenues.
33. If we assume OTT content providers will be brought under Canadian legislation when transmitting on Canadian territory – taking into account the potential (and recommended) inclusion of online services within the *Broadcast Act* – it would also make sense to ensure that commercial establishments be required to go through regulated entities to broadcast content, including music, within their establishments.
34. On the copyright side, it does not matter whether a business uses a Canadian commercial music service like Stingray Business or a foreign service like Spotify's Soundtrack Your Brand, royalties must be paid to the relevant Canadian rights collectives for the public performance of music in a commercial establishment. Why would it be any different for the respect of Canadian content requirements under the Act (as an example)?
35. In the current unregulated environment, businesses in mainly French speaking municipalities in Quebec are not required to play any French music and in fact choose never to play a single French song in their establishments serving French-speaking customers. The fact that a Canadian consumer would only have guaranteed access to Canadian music in his or her own private space through radio or television but may not hear any Canadian music when out in public does not align with our broadcast policy objectives and should be adjusted in the legislative reform.
36. Taking into account that OTT players would be regulated under a new regime, requiring that businesses enter into agreements with regulated content providers only (including for background music) would ensure increased visibility for Canadian content in public commercial spaces and increased CCD dollars available for Canadian creatives due to the additional revenue stemming from these commercial music services.
37. Stingray believes that the current regime does not adequately ensure the continued support and promotion of Canadian artists in today's communications landscape. By including all players that benefit from operating on Canadian soil (reaching Canadian audiences) into our broadcasting industry and making sure the definition of "broadcasting" does not exclude any areas that could add significant revenues and visibility to our Canadian talent, an important first step will have been taken in modernizing our legislative framework.

## **C – PROTECTING CANADIAN DIVERSITY IN CONTENT AND OWNERSHIP**

38. In addition to including all players more officially into the broadcasting sector, we, as an industry, also need to ensure our Canadian players are protected. The Canadian marketplace is dominated by large vertically integrated distributors and platforms that are well placed to harm smaller independent services. With the addition of foreign OTT services also competing against Canadian broadcasters, the survival of independent services is highly threatened in today's environment.
39. Stingray believes any changes to the current legislative framework should include more protections for independent services to ensure a diversity of voices and ownership within the broadcasting system and supports the IBG/GDI recommendations to include a specific policy objective to that effect in the *Broadcast Act* to better align the Commission on the necessity to protect independent services, especially in today's constantly changing communications landscape.
40. This protection is especially essential considering new BDU entrants are coming from outside of Canada without any of the protections that traditionally regulated Canadian BDUs are required to provide to Canadian services. Independent services like Stingray are already under enormous pressure to stand out in the current "pick and pay" environment. It is absolutely crucial that Canadian independent services benefit from additional legislative protection to remain accessible and discoverable to the Canadian consumer in an environment where regulated and non-regulated services and Apps, both foreign and Canadian, are available to the consumer through one same platform.

### ***i) Promotion and discoverability of independent Canadian services***

41. The policies resulting from the Commission's Let's Talk proceedings back in 2015 clearly stated the importance of discoverability for Canadian services and more specifically independent Canadian services<sup>5</sup>. To ensure the preponderance of Canadian services, the Commission required that all BDUs offer more Canadian than non-Canadian services. Stingray submits that this is not sufficient to protect independent services and further measures should be implemented to ensure Canadian-owned services and programs are prominent on all digital platforms.
42. Stingray is particularly concerned about the coming integration of OTT services and traditional broadcasting services within a single set-top-box. Existing technology allows BDUs to deliver OTT services to consumers using the same interface and EPG that is used to deliver standard broadcasting services. As a consequence, Stingray's pay audio service (which has significant regulatory obligations as noted above) could, in theory, be replaced by an unregulated OTT service making no contribution to Canadian programming. From the consumer perspective, there could be little perceivable difference in the interface. In fact, new set-top boxes being deployed by larger BDUs now include an all-in-one search platform, serving as a modernized TV Guide, which allows consumers to search for content in one seamless process no matter how the content is made available to them from a technological standpoint. Similarly, a BDU could argue that Stingray's independent music service could be replaced by a competing service delivered on an OTT basis, without regard to the existing linkage

---

<sup>5</sup> Broadcasting Regulatory Policy CRTC 2015-96

rule in the *Broadcasting Distribution Regulations*, which is intended to ensure competition in the market<sup>6</sup>.

43. Currently, most subscribers to Stingray's pay audio service also have access to the Stingray Music App which is delivered on an OTT basis through the BDUs' TV Everywhere platform (when available). While the regulatory obligations of our pay audio service, which we have summarized above, do not apply to our Stingray Music App or the delivery of Stingray music content online, Stingray's App on a TV Everywhere platform will mirror our BDU channel lineup, which includes our popular Canadian-produced "hit list" and era channels (e.g. 70s, 80s and 90s) that include Canadian music. Currently, a BDU could choose to carry a foreign music App rather than Stingray's Canadian App without implication – in a world where consumers are increasingly accessing their content through OTT platforms rather than through linear distribution, the fact that no priority would be given to Canadian Apps (operated by regulated Canadian players that exhibit Canadian content) causes significant concern.
44. Similar to the new fully integrated set-top boxes, smart TVs and non-BDU platforms such as Roku or Apple TV are hardwired with Apps that are automatically made available to the consumer. These foreign platforms have no obligation whatsoever towards Canadian content or the availability of Canadian Apps and services on their platforms when sold to Canadian consumers. Music services are continuing to develop with the objective of accessing all manner of platforms and devices so that the content is available to the consumer, no matter how he or she chooses to access it. The threat of non-Canadian music services integrating these different platforms (BDU controlled or not) to become competitive replacements for BDU-delivered Canadian pay audio services is real and will cause direct harm to Canadian services.
45. This is a primary concern for Stingray, and it should concern Canadian artists and policy makers interested in ensuring a real space for Canadian music in our broadcasting system. There is, literally, a world of difference between Stingray Music – which features Canadian artists in a fully integrated manner within all of our Canadian music channels – and non-Canadian OTT services that might offer a couple of dedicated "Canadian only" streams in the "international" section. We have seen this approach before on OTT services. This type of marginalized, separate "Canada only" offering has never been viewed as adequate airplay for Canadian artists.
46. Moreover, Canada's diversity is profoundly reflected in our music. There is no standard Canadian identity or taste. The likelihood of globally-oriented, non-Canadian services offering meaningful selections of Canadian Celtic music, East Coast Roots, Canadian Folk, Indigenous artists, Quebec pop, Acadian country or any of the other distinctive Canadian musical genres that Stingray offers is very small. These Canadian artists will lose the outlet to reach audiences represented by Canadian services like Stingray Music.
47. The more easily accessible these platforms become to Canadian consumers, the higher the risk to Canadian pay audio services like Stingray. When Stingray Music's subscriber base declines, so does

---

<sup>6</sup> Linkage rules are found in Section 23 of the *Broadcasting Distribution Regulations* (SOR/97-555)

the amount of revenue available to finance CCD initiatives, which directly help support and promote our Canadian artists. In the current legislative environment, OTTs are not participating in filling this funding gap, which will continue to expand as consumers switch to pure OTT platforms. We refer the Panel to the Commission's *Harnessing Change* report which demonstrates the financial impact of declining subscriber and advertiser revenue from the broadcast industry on Canadian programming and content in terms of funds available for our content creators and producers<sup>7</sup>. When Canadian services are negatively impacted, there is a direct negative impact on the artists both from a visibility and financial standpoint. This goes directly against current policy objectives for the promotion and support of our Canadian culture and talent.

48. As one potential solution, Stingray supports the requirement that any platform providing content access to consumers on Canadian territory provide a greater prominence on distribution platforms for Canadian-owned and operated services. Our cultural heritage is our own resource and economic birthright. Our system should provide as much opportunity as possible for Canadians to work at home in our own creative sector and should support Canadian cultural businesses and services to this end.
49. Stingray supports, therefore, the development of discoverability tools for Canadian programming and Canadian-owned services when they are offered on digital platforms in Canada. For example, Canadian service Apps should be displayed more prominently within the choice architecture of App platforms and on set-top-boxes and EPGs. In addition, manufacturers selling technology to the Canadian market should embed Canadian Apps in their product's offerings instead of non-Canadian, out-of-market services. Just as we expect sellers of digital technology to comply with technical standards set in Canada for our market, we should require them to comply with made in Canada standards regarding embedded service offerings and choice architecture. From a Canadian BDU perspective, the delivery of OTT services offered within a common STB environment would then be regulated on the same basis as licensed Canadian programming services. In Stingray's view, where BDUs offer OTT services through the same set-top-box and infrastructure, they should be considered to form a part of the same, single, regulated BDU and be subject to the same rules.
50. Stingray's experience with our pay audio service and App supports the view that Canadians are increasingly accessing music from a variety of platforms and sources. Traditional radio and downloading songs for playback are only part of the total music distribution universe and streaming platforms, such as Stingray's, are capturing audiences.
51. With this trend continuing, Canadian pay audio and streaming digital services, such as Stingray's, will be essential to ensure a meaningful Canadian presence in this space. Only Canadian streaming services offer meaningful levels of Canadian music programming and feature an experience that caters specifically to Canadian tastes – with Canadian music interwoven into the overall experience. The guaranteed discoverability and accessibility of these services to Canadians will be essential in protecting our proud Canadian services moving forward.

---

<sup>7</sup> This data is presented in the Opportunities and Risks section of the Commission's report for both radio and television.

**ii) Diversity of ownership and voices**

52. In its submission, the IBG/GDI discusses the essential need for a diversity in ownership and more specifically, independent ownership, to help further Canadian interests. We agree that adding a clear objective towards a greater diversity in ownership and voices will help ensure a healthy domestic market and encourage innovation and diversity in our Canadian programming while releasing some of the competitive pressure faced by Canadian independent services like Stingray's. As a result, a healthy domestic market will better promote the growth and development of our Canadian owned and controlled broadcasters, which allows for greater opportunities both nationally and on a global scale.
53. It is one thing to ensure Canadian content is made available to Canadians, it is another to ensure Canadians can continue to create and produce quality and innovative content that consumers will want to access. Formally recognizing the need for a diversity of voices and ownership will help reach that objective.
54. We would submit that relaxing certain ownership rules on the radio side would represent an example of changes that further promote the diversity of voices from an independent ownership perspective. This would include current policy rules that prevent radio operators from owning more than two FM stations in any market so that independent radio operators have a greater opportunity to grow through economies of scale and more adequately compete both against vertically integrated competitors and foreign OTTs<sup>8</sup>. To that effect, Stingray supports the recommendations presented by the CAB on a format neutral approach to ownership. Maintaining the AM/FM distinction from an ownership perspective no longer makes sense in today's environment and we would push the CAB's recommendation further by adding that the restriction on a maximum of three stations in one language also be revised. Evidently, the Commission's analysis for each situation should be made on a case by case basis – but rather than focus on pre-determined limitations, the Commission should look at how each case supports reaching broadcasting policy objectives, including the IBG/GDI's recommended new objective for the independent sector.
55. Stingray believes that these changes will help further promote the growth of Canadian independent businesses so that they can, in turn, continue to invest in the development and promotion of Canadian content. In cases like Stingray where technological development is essential to support its services and improve the consumer experience, these tools for growth will also help support further advancement from a technological perspective, which will allow Stingray to more adequately compete (at least on Canadian territory) against much larger foreign OTT players that have much deeper pockets.
56. On the other hand, we also submit that our Canadian market is currently vulnerable to global players that may take shortcuts and otherwise abuse of the Canadian system. While certain ownership rules

---

<sup>8</sup> Broadcasting Public Notice CRTC 2008-4

should be relaxed, rules surrounding the determination of effective Canadian ownership and control should be tightened so that only “real” Canadian companies benefits from the advantages provided to them through our legislative and regulatory framework.

57. To that effect, Stingray believes that any changes to the current legislative framework should include a more transparent process for any service that would want to operate as a Canadian service (including under any exemption order). For example, if the current exemption orders should be maintained, the requirements regarding Canadian ownership set out in the *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers* (set out Broadcasting Order CRTC 2015-88) should be reviewed in order to ensure a more transparent process. Currently, there is a complete lack of transparency regarding the ownership of these undertakings and it is not possible for the public to have any meaningful insight into their operations because the related ownership information is typically treated as confidential information by the entities concerned.
58. Consequently, there are no mechanisms in place to guard against international players by-passing legitimate Canadian partners and setting up ownership of arrangements of convenience that flout Canadian ownership laws. We propose that exempt services be required to file, for the public records, the same information that would be required by the Commission for an undertaking to be eligible for a license. Disclosing this information would allow the Commission and third parties to review and comment on any more apparent deficiencies. The purpose is not to increase the administrative burden to the Commission but rather to ensure the undertaking actually respects the terms of the *Direction to the CRTC (Ineligibility of Non-Canadians)* before launching its operations as an exempt service so that only true Canadian companies can benefit from the advantages of such an exemption.
59. In addition, we believe the Direction itself should be further detailed in order to ensure the Commission has all of the appropriate tools required to determine what is considered to be “effective Canadian control”. For example, it should be made clear that the Canadian entity should be effectively in charge of all programming and distribution decisions – including the relevant negotiations with BDUs or other distribution partners. Companies wishing to operate exempt Canadian services would need to provide clear representations to the effect that all the programming decisions are taken by the Canadian entity operating the service. Amendments to the Direction would not require a full legislative review and could be made independently from the legislative reform.
60. The current environment is difficult enough for regulated Canadian services operating under license or an exemption order, the legislative review should make sure adequate tools are in place to avoid any bypasses to our laws and regulations so that only “real” Canadian companies can benefit from protections meant for Canadians, which in turn ensures our broadcasting system remains owned and controlled by Canadians.

**iii) Reinforcing the tools available to the Commission**

61. The successful application of the concepts we have discussed thus far rests on the Commission having the appropriate tools at its disposal to adequately protect independent services.

62. The Wholesale Code, more specifically, is essential to ensuring the continued vitality of the independent sector. In addition to greater discoverability requirements, Stingray would support strengthening the Wholesale Code with respect to negotiations surrounding the continued carriage of independent services. At this time, independent services are especially vulnerable upon the expiry of their carriage agreements with BDUs. BDUs may be required to respect the 120 day rule and follow the dispute resolution process, but once a BDU has decided to terminate the distribution of a given channel, there is really nothing the broadcaster can do to stop it. This places vertically integrated BDUs at a significant advantage in negotiations and independent services often have to accept conditions that are not necessarily reflective of the actual value of the service or risk having their agreements expire and their services disconnected. We believe a potential solution to this issue would be to require BDUs to obtain an approval from the Commission before dropping any independent programming service.
63. The BDU would be forced to adequately support its decision to end the distribution of an independent service in a similar fashion to how it currently is required to support its financial proposition in the context of a Final Offer Arbitration. The decision to drop an independent service would need to be supported by a strong enough business case considering the potential impact on the future of that independent service once dropped by a BDU (especially considering the negative perception of such a decision for other BDUs carrying the service).
64. We also support the recommendations presented by the IBG/GDI to further empower the Commission in support of independent services, notably that the Commission have the explicit authority to regulate commercial relationships to further achieve policy objectives so that Canadian independent services have a better chance to obtain fair and equitable carriage terms.
65. The Commission currently plays a vital role in the protection of independent services and the legislative review should further strengthen this role towards reaching proposed policy objectives of fostering innovation and creativity through the support of a greater diversity of voices and ownership.

#### **D - CONCLUSION**

66. The current system in which Canadian players have significant obligations to Canadian culture, but competitive non-Canadian services do not, cannot be sustained.
67. Stingray believes that the only way to ensure a healthy domestic market in today's ever-changing communications landscape is to include all players that benefit from operating on Canadian territory (addressing Canadian audiences) in our legislative framework – no matter where they are headquartered or what technology they use to make content available. Participants in the broadcasting industry should at least be required to exhibit a minimum ratio of Canadian content and provide some financial support for the development of Canadian programming.
68. As a competitor in international markets, we would only expect that our international services would be required to meet the standards and requirements set in local markets. International players

entering Canada should – and indeed do – expect no different. The European Commission has recently made its own move towards including obligations for foreign OTT players servicing consumers within the European market with its amendments to the *Audiovisual Media Services Directive* which were approved by Parliament this fall. There is no reason why Canada’s broadcast system should not be going in that same direction.

69. In fact, before anything else, the system needs to formally recognize the inclusion of online services as broadcasters so that our broadcasting regime can actually reflect the reality of what broadcasting is today. The concept of broadcasting has not necessarily changed – the players, however, have. Any new legislation will need to be as inclusive and adaptable as possible to face the speed at which communications are changing.

70. Stingray appreciates having the opportunity to share its comments on the current legislative regime and the issues facing our business in today’s new environment. We look forward to further supporting the Panel throughout its review process towards a new legislative and regulatory framework that supports increased innovation, competition, diversity and choice in our Canadian broadcasting and Telecommunications industry.

\*\*\*\*\*