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CRTC Imposes Financial Contribution Requirement on Foreign Online Streaming Services

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After an extensive set of public consultations that took place throughout 2023, the Canadian Radio-television and Telecommunications Commission (CRTC) released a policy decision on June 4, 2024, establishing a base financial contribution requirement on foreign online streaming services to support Canada's domestic film, television, and media industry. The decision, which flows from the CRTC's new authority to regulate online streaming services following the passage of the *Online Streaming Act*, will require all foreign online streaming services that earn more than $25 million in annual Canadian revenue from broadcasting activities to contribute 5% of that annual revenue to a range of Canadian industry funds that support the production and distribution of diverse Canadian media content.

Background

As discussed in our previous Cassels Comment, the *Online Streaming Act* received royal assent in April 2023, providing Canada's *Broadcasting Act* with its most expansive refresh in over 30 years. One of the most important amendments made to the *Broadcasting Act* was to expand the classes of "broadcasting undertakings" subject to regulation to include a new class of "online undertakings," more commonly known as online streaming services. As a result, the CRTC is now charged with the regulation of online streaming services, including any regulatory payment obligations of those services, in addition to the CRTC's pre-existing regulatory power over traditional broadcasters.

Shortly after the *Online Streaming Act* became law, the CRTC announced a set of three public consultations to guide the creation of a refreshed broadcasting regulatory framework in Canada. Arguably, the most contentious of those three consultations related to the extent to which online undertakings should be required to financially contribute to the Canadian broadcasting system. One of the specific proposals on which the CRTC sought comment was the creation of an initial base contribution requirement, pursuant to which online undertakings would be required to financially contribute a set portion of their annual revenue earned from Canadian broadcasting activities to certain industry funds that support a diverse range of Canadian content creation and distribution.

The public consultation attracted significant attention from both domestic and international stakeholders in the film and television industry. Over 360 interested parties submitted written submissions to the CRTC during the Summer of 2023, culminating in the CRTC hosting an oral hearing in November and December of

2023 that included live submissions from over 120 parties.

The New Base Contribution Requirement

On June 4, 2024, the CRTC published Broadcasting Regulatory Policy CRTC 2024-121, outlining the details of the finalized base contribution requirement that it first proposed in 2023. The CRTC noted in its publication that it expects the contribution requirement to go into effect beginning with the 2024-2025 broadcasting year, commencing on September 1, 2024.

Under the new requirement, all online streaming services that either independently earned at least $25 million in the preceding year from Canadian broadcasting activities, or are owned by a broadcasting ownership group that earned that amount in the preceding year, will be required to contribute 5% of their annual revenue to various Canadian industry funds, including the Canada Media Fund, the Independent Local News Fund, and other funds that specifically support diverse Canadian content made by Black creators, Indigenous creators, and creators from other equity?seeking and minority language communities. Online undertakings that are operated by traditional Canadian broadcasters or affiliates of traditional Canadian broadcasters are exempt from this specific financial contribution requirement, meaning that this financial contribution requirement applies only to *foreign* streaming services and not domestic ones.

The $25 million threshold used to determine when a foreign streaming service becomes subject to the financial contribution requirement is a significant increase from the $10 million threshold that the CRTC originally floated at the outset of the consultation period. In explaining why it was increasing the threshold, the CRTC cited arguments made by various interveners during the consultation period that a higher threshold would better ensure that “bigger players” that operate in Canada support Canada’s industry without imposing overly burdensome financial requirements on “smaller players,” and that a higher threshold would avoid capturing new, emerging, and niche streaming services on which it may not be appropriate to impose the financial contribution requirement.

Other key aspects of the initial base contribution requirement include the following:

- Of the total contribution requirement of 5% (which is generally aligned with the proposal of most interveners who proposed a specific number), up to 2% will go by default to the Canada Media Fund, one of Canada’s largest industry funds supporting the production of Canadian content. However, online streaming services can instead choose to contribute up to 1.5% of that via their own direct expenditures towards producing and/or acquiring Canadian content. This direct expenditure incentive is intended to acknowledge that many large foreign online undertakings already contribute financially to Canada’s film and television industry by directly funding Canadian content, and that those undertakings should be incentivized to continue making those contributions.
- When calculating an online undertaking’s annual revenue for the purpose of determining whether

and how much it must pay under the contribution requirement, certain types of revenue are to be excluded. The most notable exclusion is revenue that an online undertaking earns from advertising and subscription revenues associated with the broadcasting of user-generated content uploaded on a social media platform. This is a significant clarification by the CRTC, as arguably the highest profile ongoing debate about the passage of the *Online Streaming Act* has been the uncertainty over the extent to which the broadcasting of user-generated social media content will be subject to the CRTC's regulatory requirements.

- Although the CRTC declined to allow contributions to be allocated to new industry funds (despite several online undertakings proposing that they should be able to satisfy their contribution requirement by creating their own Canadian production funds), it did confirm that existing certified independent production funds will receive a portion of the contributions (0.5% of the total 5%). To be eligible to receive contributions, interested funds will need to apply to the CRTC and commit to allocating at least 10% of their total budget to a permanent envelope dedicated to funding projects produced by members of official language minority communities and other diverse communities.

Key Takeaways and Next Steps

Although most stakeholders are unlikely to be satisfied with every aspect of the base financial contribution requirement, the details of the finalized requirement appear to reflect an attempt by the CRTC to reach a compromise between the positions of Canadian content advocacy groups, who argued that foreign online streaming services that profit from operating in the Canadian media industry should be required to financially support the industry in return, and the large foreign streaming services that operate in Canada, who argued that they already make significant contributions to Canada's media industry by producing content in Canada and distributing Canadian content. In particular, the ability for foreign streaming services to satisfy a portion of the contribution requirement through their own direct expenditures on Canadian content and to choose between different recipient funds in certain cases are likely a result of the CRTC's commitment to balancing the need for the modernized contribution framework to be flexible and adaptable with the need for contributions to be certain and meaningful. That said, some who oppose the base financial contribution requirement have voiced that by imposing a financial contribution requirement on foreign streaming services, the CRTC is making it more difficult for global streaming services to collaborate directly with domestic Canadian creators and therefore disincentivizing them from doing so.

The finalization of the base financial contribution requirement is one major step in the CRTC's refresh of Canada's broadcasting regulatory framework, but many steps remain. The CRTC's initial proposal for Canada's modernized contribution framework included two additional categories of contribution requirements beyond the initial base contribution — a flexible contribution component and an intangible contribution component — so further consultations on those other categories are likely on the horizon. In the interim, the CRTC has also outlined its plan to host several other consultations relating to the regulation of the Canadian broadcasting sector, including those related to potential updates to the definition of "Canadian

content" and further initiatives to promote inclusion and diversity in the broadcasting system.

The Cassels Entertainment & Sports Group represented multiple interested stakeholders in their submissions as part of the CRTC consultation period and has been closely following the updates to Canada's broadcasting system since the *Online Streaming Act* was first introduced. If you have any questions about the new initial base contribution requirement or the *Online Streaming Act*, please do not hesitate to contact any member of the group.

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