

CRTC Releases Final Order Imposing Financial Contribution Requirement on Foreign Online Streaming Services

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After several rounds of public consultations, and the publication of a proposed order earlier this year, the Canadian Radio-television and Telecommunications Commission (CRTC) has now released its final order regarding the new initial base contribution requirement on foreign online streaming services. This base contribution requirement is intended to support Canada's domestic film, television, and media industry. The final order, which is now in effect for the 2024-2025 broadcasting year beginning September 1, 2024, is largely the same as the proposed order that the CRTC published in June 2024, but clarifies certain important aspects of the proposed order that some streaming services argued were vague.

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 series of public consultations](#) to guide the creation of a refreshed broadcasting regulatory framework in Canada. One of those public consultations led to the CRTC's creation of an initial base contribution requirement, pursuant to which some foreign online undertakings will 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.

A proposed version of the CRTC's initial base contribution order was published on June 4, 2024. We discussed that proposed order at length in a [previous Cassels Comment](#). In short, the proposed order mandated that, beginning with the 2024-2025 broadcasting year, all foreign online streaming services that earned at least \$25 million in the preceding broadcasting year from Canadian broadcasting activities (or are owned by a broadcasting ownership group that collectively meets that threshold) must 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.

The Final Order

After reviewing over 50 sets of comments on the proposed order from interested stakeholders in the Canadian broadcasting industry, the CRTC published a final version of the order in a [policy decision released August 29, 2024](#). The final order takes effect beginning in the 2024-2025 broadcasting year; accordingly, non-exempt online streaming services must make their first set of required contributions under the order between September 1, 2024 and August 31, 2025, based on their eligible revenues from the 2023-2024 broadcasting year.

The final order is mostly unchanged from the proposed order. However, the CRTC made a few notable revisions to the proposed order to address comments from stakeholders regarding certain important elements of the proposed order that were viewed as vague or unclear:

- **Annual Contribution Revenues.** The final order adds significant detail to the definition of “annual contribution revenues.” Previously, that term was defined simply as “annual Canadian gross broadcasting revenues less any excluded revenue.” The updated definition in the final order adds more explicit language confirming that those revenues are to be assessed at the individual online undertaking level (as opposed to the broadcasting ownership group level) for the purpose of calculating the quantum of contributions an undertaking must make. The final order also adds language to address concerns about the “double counting” of certain broadcasting revenues by clarifying that if an undertaking’s services are re-sold, the undertaking’s “annual contribution revenues” only include the portion of the revenue from those sales that are remitted back to the undertaking, whereas the re-seller’s revenues only include the portion the re-seller keeps. Finally, the updated definition gives the CRTC the authority to accommodate requests by online undertakings for alternative reporting periods other than the default period of September 1 to August 31.
- **Revenue-based Exemption Threshold.** The final order now expressly clarifies that the revenue-based exemption to the contribution requirement applies to online undertakings who are part of an ownership group that has annual revenues under \$25 million, *after deducting “excluded revenues” as defined by the order*. The idea that the exemption threshold would deduct excluded revenue was presumed based on the wording of the proposed order, but the CRTC has now eliminated any doubt on this point.
- **Canadian Content Expenditure.** The final order clarifies that the “Canadian content expenditure” incentive built into the contribution requirement—pursuant to which an undertaking can satisfy up to 1.5% of its 2% contribution to the Canada Media Fund by making direct expenditures on Canadian content—can include expenditures on the production or the acquisition of Canadian content. This

detail was originally included in the larger policy note that accompanied the CRTC's proposed order, but it was not directly stated in the order itself until now.

- **Revenue Reporting.** Lastly, the final order relaxes the requirements on online undertakings regarding how they report their revenues to the CRTC. The proposed order originally required undertakings to submit financial statements that had been reviewed by third-party practitioners in accordance with the Canadian Standard on Review Engagement (CSRE) and Canadian Generally Accepted Accounting Principles (GAAP). The final order eliminates the CSRE requirement and confirms that any internationally recognized GAAP can be used.

Outside of the order itself, the CRTC's latest policy decision also addresses concerns from many streaming services regarding the effects of the contribution requirement on the confidentiality of their financial information. Specifically, several streaming services noted in comments to the CRTC that because the contribution requirement requires each applicable undertaking to make its contributions directly to recipient industry funds in accordance with specific percentages, those recipients would theoretically be able to calculate by extrapolation the streaming service's annual revenue from Canadian broadcasting activities based on the contribution amount the industry fund receives.

To resolve this concern, the CRTC has ordered that the payment of contributions under the contribution requirement is contingent on the applicable online undertakings and the recipient industry funds reaching a mutually satisfactory agreement that addresses confidentiality concerns. The CRTC has not imposed a specific form of agreement, but instead has offered some non-exhaustive examples, including an agreement that resembles a non-disclosure agreement, or an agreement with a third-party administrator who would distribute aggregated contribution amounts to the recipient funds on several undertakings' behalf. The required agreements must be submitted to the CRTC by October 28, 2024, failing which either an undertaking or a recipient fund can ask the CRTC to rule on the matter.

Key Takeaways

Although very similar to the proposed order that the CRTC previously released in June 2024, the final order provides some helpful clarity on certain aspects of the initial base contribution requirement that were open to interpretation or potential misunderstanding. These clarifications are particularly useful now that the contribution requirement is officially in effect as of September 1, 2024.

While the initial base contribution requirement is now final, the CRTC's refresh of Canada's broadcasting regulatory framework is far from complete. The CRTC currently has numerous other consultations planned and continuing to 2026, including those that relate to the potential introduction of further contribution requirements that are more flexible or non-financial in nature, the definition of "Canadian content", and how the CRTC can continue to promote inclusion and diversity across Canada's broadcasting and production industries.

Cassels

The Cassels [Entertainment & Sports Group](#) 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 initial base contribution requirement imposed by the CRTC's latest order, or the *Online Streaming Act* generally, please do not hesitate to contact any member of the group.

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