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A Round-Up of Developments at the CRTC – Winter 2024-2025

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The last few months have been a busy time as the Canadian Radio-television and Telecommunications Commission (CRTC) continues in its efforts to both modernize the Canadian broadcasting regulatory landscape following the passage of the *Online Streaming Act* and implement the new bargaining requirements set out in the *Online News Act*.

On the broadcasting side, the CRTC launched another public consultation on February 20, 2025, seeking industry and consumer comment on the definition of "Canadian content" (CanCon) within the broadcasting industry. Specifically, the CRTC seeks stakeholder input regarding how to define and support CanCon within Canada's audio sector. Interested stakeholders have until **April 7, 2025**, to submit a written intervention in that consultation.

At the same time, the CRTC will be hosting a public hearing in May 2025 as part of its concurrent public consultation on market dynamics within the broadcasting system in Canada. Through the market dynamics consultation, the CRTC seeks to obtain stakeholder and public input regarding the current landscape and interactions between broadcasters, television service providers, and online streaming services in an ever?changing broadcasting environment due to the rapidity of technological innovation and changing preferences in how the public consumes analog and digital content.

On the news side, the CRTC introduced the mandatory bargaining framework contemplated by the *Online News Act*. The framework will govern any future required negotiations between digital news intermediaries (DNIs) – online platforms that publish news content produced by other businesses – and eligible Canadian news organizations.

Public Consultation Regarding CanCon in the Audio Sector

As discussed in a previous Cassels Comment, the *Online Streaming Act* received royal assent in April 2023 and jumpstarted the CRTC's efforts to modernize the regulatory framework for Canada's broadcasting and media production industries. Shortly afterwards, the CRTC published an extensive, multi-phase Regulatory Plan in response to the *Online Streaming Act* that outlined the CRTC's modernization strategy, which included holding various public consultations that seek stakeholder input regarding potential updates to the regulatory framework for the Canadian broadcasting industry.

In a previous Cassels Comment, we examined the CRTC's "What We Heard Report" (Report) published in September 2024 regarding the definition of CanCon. Specifically, that Report spoke to the definition of CanCon within the CRTC's CanCon certification process and focused on cultural and economic elements, intellectual property, and diversity and inclusion within the broadcasting industry. We also explored the CRTC's public consultation flowing from that Report, in which the CRTC sought comments on an updated definition of CanCon in the audiovisual (i.e., film and television) sector of the broadcasting industry. The results of that consultation have yet to be released, as the CRTC will first hold a public hearing on March 31, 2025 to receive further comments from stakeholders and the public.

In the meantime, on February 20, 2025, the CRTC published Broadcasting Notice of Consultation CRTC 2025-52, requesting comments from stakeholders and members of the public regarding the modernization of the definition of CanCon within Canada's audio sector.

Specifically, the CRTC states that it is seeking comments regarding three key areas relating to the current definition of CanCon in the audio sector:

- **Canadian audio content definitions**: The CRTC seeks input regarding the current definitions of "Canadian musical selection," "emerging artist," and "French-language vocal music." The CRTC's objective is to ensure these current definitions are appropriate for both online and traditional audio undertakings.

- **A renewed financial contribution framework**: In 2024, the CRTC released its Broadcasting Regulatory Policy 2024-121, which requires online audio services not affiliated with a Canadian broadcaster to contribute a portion of their annual revenues to certain funds that support Canadian music and audio content. Further to the introduction of that policy, the CRTC seeks comments about adjustments that may be required to facilitate Canadian and Indigenous audio content that promotes diversity and innovation.

- **Additional issues and topics impacting the audio sector**: The rapid development and adoption of artificial intelligence (AI) technologies has resulted in a number of AI tools having been integrated into the Canadian audio sector. In consequence, the CRTC seeks input regarding high-level issues relating to AI. Further, and recognizing that visibility to the listener is essential to an audio broadcaster's success, the CRTC seeks industry input on, among other things, the challenges faced by audio broadcasters when accessing interfaces and platforms on connected devices.

The submission deadline for this consultation is **April 7, 2025**. The CRTC announced it will be holding a public hearing with respect to the audio content consultation on June 18, 2025.

Public Consultation Regarding Broadcasting Market Dynamics

On January 9, 2025, the CRTC published Broadcasting Notice of Consultation CRTC 2025-2, seeking submissions to examine the current market dynamics between stakeholders within the broadcasting system in Canada. The purpose of this consultation is to ensure a sustainable broadcasting market for the delivery and discoverability of Canadian and Indigenous content that is both fair and competitive for all stakeholders.

The CRTC accepted submissions until February 24, 2025, and is now in the process of preparing for a public hearing on this consultation, which is scheduled to commence on May 12, 2025.

In particular, the Notice of Consultation called for stakeholder input regarding:

- A sustainable model for the discoverability and delivery of both Canadian and Indigenous content. Questions were posed regarding barriers to entry and opportunities, as well as the impact of the evolving market dynamics.

- The effectiveness of the CRTC's existing regulatory tools and how they might be adapted, revised, or created to support the current broadcasting regulatory landscape.

- The challenges experienced and opportunities available in light of current market dynamics, including how emerging areas may require regulatory support and ways to modernize dispute resolution.

Establishment of a Mandatory Bargaining Framework Under the Online News Act

As discussed in a previous Cassels Comment, the *Online News Act* received royal assent in June 2023. The *Online News Act* established a mandatory bargaining process by which digital news intermediaries (DNIs) are required to enter into commercial agreements with eligible Canadian news businesses in order to compensate those news businesses for sharing their news content on the DNIs' platforms.

Since the *Online News Act* came into force, the CRTC has engaged in numerous public consultations intended to inform the eventual establishment of a mandatory bargaining framework. We previously discussed several of those consultations, including one in which the CRTC sought public input regarding the timing and stages of the bargaining process (proposing a 90-day bargaining period, a 120-day mediation period, and if no agreement is reached, a 45-day final offer arbitration (FOA) period), and another that related to the CRTC's proposed bargaining Code of Conduct that parties to the mandatory bargaining process would be required to follow.

Those consultations culminated in the CRTC publishing Online News Regulatory Policy CRTC 2024-327 on December 12, 2024, officially establishing a mandatory bargaining framework under the *Online News Act*.

The policy provides a summary of submissions received during the public consultations and renders the CRTC's decision regarding key features of the mandatory bargaining framework:

- **90-day bargaining period:** Consistent with the CRTC's initial proposal, eligible news businesses and groups of eligible news businesses will be required to give notice of their intent to initiate the mandatory bargaining process through the submission of a written package to the DNI and to the CRTC. The CRTC agreed with the position of many stakeholders that there should not be a deadline for parties to agree to a bargaining schedule, ensuring flexibility to all parties.

- **120-day mediation period**: The CRTC chose to adopt its existing *Rules of Practice and Procedure* to govern deadlines for calculating notice periods under the bargaining process and to provide parties with flexibility. Regarding external mediators, parties will be given the option to choose external mediation if they agree to do so, but if an agreement cannot be reached between the parties, the mediation will by default be conducted by CRTC staff.

- **45-day FOA period**: Parties will be required to notify the CRTC, in writing, no later than 24 hours after the final day of the mediation period, if they have not reached an agreement by the end of the 45-day FOA period.

- **Arbitrator Code of Conduct**: The CRTC declined to introduce a separate code of conduct for arbitrators, citing the fact that the *Online News Act* already includes requirements for arbitrator conduct and penalties, and that there already exists legislation that governs arbitrators.

Key Takeaways & Next Steps

The latest steps from the CRTC over the last several months continue to highlight the CRTC's commitment to maintaining its momentum in the implementation of its new regulatory mandates under both the *Online Streaming Act* and the *Online News Act*.

On the broadcasting side, both the CanCon audio consultation and the market dynamics consultation demonstrate the CRTC's continued priority of supporting the production and discoverability of Canadian content. The CanCon audio consultation underscores that the CRTC is attuned to the importance of incentivizing and promoting the unique aspects of audio content as a genre when compared to the audiovisual sector, as the consultation seeks input on definitions of audio-specific categories and more broadly on how the contribution framework can be revised to align with emerging online audio services. At the same time, the market dynamics consultation reinforces that the CRTC is taking a broad and all-encompassing approach to how the broadcasting sector as a whole can be best regulated and supported to encourage the promotion and discoverability of Canadian content and broadcasters in emerging areas.

On the news side, the CRTC's mandatory bargaining process continues the drill down implementation of the *Online News Act* in anticipation of the emergence of DNIs who choose to carry or stream news content in Canada. Notably, the CRTC did not finalize its proposed Code of Conduct at the same time as its release of the final mandatory bargaining framework, but has reiterated that the Code of Conduct will focus on information-sharing, prohibitions of certain provisions in agreements, and the protection of confidential information that is exchanged by parties through the FOA process.

The Cassels Entertainment & Sports Group has been closely following the updates to Canada's broadcasting system and online news sector since the *Online Streaming Act* and *Online News Act* were first introduced. If you have any questions about the content of this article or how the CRTC's regulatory efforts may impact your business, please contact any member of our team.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.