

## Response for CRTC Consultation 2023-139

This response is divided into the sections that the Commission has asked for response in. Due to the extremely short deadline for this consultation, it is possible that the answers given may not be entirely comprehensive.

**18. The Commission invites comments on the proposed Online Undertakings Registration Regulations set out in Appendix 1 to this notice. Specifically, the Commission is seeking comments on the wording of the proposed regulations, the appropriateness of the deadlines to register, the type of information to be collected as part of the registration process, and whether the list of registered online streaming services should be made public on the Commission's website. The Commission also invites comments on any other issues that may be essential to the making of these regulations.**

In reading the wording of these regulations, it is noted that the following was written:

*2 An operator must register their online undertaking by submitting to the Commission, within 30 days after the day on which they begin to carry on the undertaking, a registration return that contains the following information:*

This appears to conflict with paragraph 17 which reads, in part, as follows:

*In Appendix 2 to this notice of consultation, the Commission sets out a proposed exemption order in regard to the requirements of the proposed Online Undertakings Registration Regulations. This exemption order would exempt from those requirements those persons carrying on broadcasting undertakings defined by any of the following four classes:*

*[...]*

- online undertakings affiliated with a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million; or*
- online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million.*

If a platform were to grow to generating an annual turnover rate of \$10 million, it is unclear if that operator would know to register within 30 days of starting up such a business. After all, that operator is basically being asked to predict the future which is, of course, not practically possible. In reading the rest of Appendix 1, there doesn't seem to be much clarity in regard to such a situation.

**19. The Commission also invites comments on the proposed exemption order respecting classes of online undertakings in relation to the proposed *Online Undertakings Registration Regulations*, set out in Appendix 2.**

In reading through the definitions, one item of note is as follows:

*Video game means an electronic game which involves the interaction of a user by means of an Internet connected device, where the user is primarily engaged in active interaction with, as opposed to the passive reception of, sounds or visual images, or a combination of sounds and visual images.*

While many modern video games involve an internet connected device, not all of them do. This is especially true with older games such as video games that can be played on a Nintendo 64 or a Playstation 1 for instance. The definition may not capture all video games.

Separately, there is the following definition towards the end:

*The Commission, pursuant to subsection 9(4) of the Broadcasting Act, by this order, exempts from all the requirements of the Online Undertakings Registration Regulations, as amended from time to time, persons carrying on, in whole or in part in Canada, broadcasting undertakings defined by any of the following four classes:*

- *online undertakings whose single activity and purpose consists of providing video game services;*
- *online undertakings whose single activity and purpose consists of providing unique transactions;*
- *online undertakings affiliated with a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million; or*
- *online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million.*

It is recommended that there be an inclusion of online undertakings that primarily offers or is involved in the dissemination of user generated content. As mentioned by several government officials and at least one representative of the Commission, the intent is to not regulate user generated content. If that is truly the intent, then exempting a platform that is involved in the dissemination and sharing of user generated content would make sense.

As it stands now, the Online Streaming Act is quite unclear. In paragraph 4 in the notice of this consultation, there is an explanation that Section 2 of the Online Streaming Act generally exempts the creators from inclusion. The problem is that Section 4 of the Online Streaming Act first exempts, then brings back in place, the content that those creators produce and disseminate on the platforms. At the heart of the controversy surrounding the Online Streaming Act is the content that those producers create is not exempt and thus, causing significant harm to those creators. The knock on effect is that public trust in the CRTC has been damaged. There is the perception that both the government and the CRTC is using misleading statements with how the Online Streaming Act is to be enforced.

So, an excellent way to restore that public trust is to generate a class of exempted platforms that deals with user generated content. An example might be something along the lines of “online undertakings that are primarily involved in the dissemination of user generated content”. This would clearly exempt platforms like Twitch or TikTok.

As a number at the CRTC may likely point out is that there are platforms that deal with a mixture of content. YouTube is a prime example of that. On the one hand, the more public facing side of YouTube clearly involves user generated content. On the other hand, there are also premium services provided by the platform where users pay for content that is produced, as some would describe, “professionally” (the term is debatable given that user generated content can be produced at a professional level of quality as well).

With the above in mind, it would be advisable to create a second class that deals with what could be described as platforms that fall within a grey area. An example might be, “In the cases of online undertakings that offer services that both disseminate content produced by a broadcasting undertaking and online creators, the portion that involves content disseminated by online creators”.

Making these clear cut exemptions that target specifically user generated content for exclusion under the Online Streaming Act would go a long way in restoring trust in the regulatory process.

I do hope that my response proves helpful in the consultation process. I thank you for taking the time to read this submission and look forward to any follow-up questions the Commission may have.