



Broadcasting Notice of Consultation 2023-139

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Ottawa, 12 May 2023

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Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations

Summary

The Commission is seeking comments on its proposed *Online Undertakings Registration Regulations*, which would require that certain online audio and video services operating in Canada be registered with the Commission. Registration requirements are meant to be light, allowing the Commission to collect information, such as basic contact and corporate information as well as information regarding the essential features of the broadcasting services offered. The proposed *Online Undertakings Registration Regulations* are set out in Appendix 1 to this notice.

The Commission does not intend to require all online audio and video services operating in Canada to be registered. Accordingly, the Commission is also seeking comments on who should be exempt from these regulations. Appendix 2 to this notice sets out a proposed exemption order that lists the types of online undertakings that would not need to be registered with the Commission.

The Commission will accept comments that it receives on or before **12 June 2023**. Only parties who file comments may file a reply to matters raised during the comment period. Replies must address only the issues raised during the comment period. The deadline for the filing of replies is **27 June 2023**. All parties who file comments will also have the opportunity to file a final reply to any replies received. The deadline for the filing of final replies is **12 July 2023**.

Today, the Commission has also launched a proceeding to review certain current exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings (Broadcasting Notice of Consultation 2023-140). Interested persons should note that each of these notices of consultation initiates a separate proceeding, and that they must file comments on the record of each proceeding in which they would like to participate. Given certain common elements between the various proceedings, interested persons should monitor the developments of each proceeding.

Background

1. On 27 April 2023, the *Online Streaming Act* came into force.¹ This Act includes, among other things, amendments to the former *Broadcasting Act* that account for the impact that Internet audio and video² services have had on the Canadian broadcasting system. The current *Broadcasting Act* provides the Commission with clear powers and tools to, among other things, regulate online undertakings operating in whole or in part in Canada, regardless of their country of origin.³ As set out in the current *Broadcasting Act*, “online undertaking” means “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.”
2. Paragraph 10(1)(i) of the current *Broadcasting Act* grants the Commission the power to make regulations respecting the registration of broadcasting undertakings with the Commission. Pursuant to subsection 2(1) of the current *Broadcasting Act*, the definition of “broadcasting undertaking” now includes online undertakings.
3. The current *Broadcasting Act* does not apply to the online activities of Canadians; for example, social media posts made by Canadians are not regulated in any way under that Act. It also does not apply to the creators of digital content – whether audio or video content –, such as podcasters or Canadians that post videos online. The online services that may be regulated under the current *Broadcasting Act* include only those services that distribute online audio or video content in Canada, and only some of those services will be regulated by the Commission.
4. There are currently no explicit or direct exclusions to the definition of “online undertaking.” However, subsections 2(2.1) and 2(2.3) of the current *Broadcasting Act* set out the following exclusions on what it means to carry on broadcasting undertakings:
 - **Exclusion — carrying on broadcasting undertaking: (2.1)** A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider’s affiliate, or the agent or mandatary of either of them — does not, by the fact of that use, carry on a broadcasting undertaking for the purposes of this Act.
 - **Exclusion — certain transmissions over the Internet: (2.3)** A person does not carry on an online undertaking for the purposes of this Act in respect of a transmission of programs over the Internet

¹ *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, SC 2023, c 8.

² The term “video” is used in this notice of consultation, whereas the term “audio-visual” is used in the amended *Broadcasting Act*.

³ Under the former *Broadcasting Act*, in order to legally operate in whole or in part in Canada, a broadcasting undertaking was required to be either licensed by the Commission or exempted from the obligation to hold a licence by way of an exemption order. Under the current *Broadcasting Act*, to legally operate in Canada, online undertakings no longer need to hold a licence or be exempt from holding a licence.

- a) that is ancillary to a business not primarily engaged in the transmission of programs to the public and that is intended to provide clients with information or services directly related to that business;
 - b) that is part of the operations of a primary or secondary school, a college, university or other institution of higher learning, a public library or a museum; or
 - c) that is part of the operations of a theatre, concert hall or other venue for the presentation of live performing arts.
5. In short, the exclusion contained in subsection 2(2.1) of the current *Broadcasting Act* indicates that all persons who upload content on social media, including those persons who upload content and/or have their own channel of user-generated content and earn revenues, but are not affiliated or form part of the social media platform or act on its behalf, do not carry on a broadcasting undertaking and therefore are not subject to the current *Broadcasting Act*. This would include any of the requirements set out in the *Online Undertakings Registration Regulations* proposed in Appendix 1 to this notice of consultation.
6. Similarly, subsection 2(2.3) of the current *Broadcasting Act* states that persons who upload audio or video programs over the Internet for the purpose of supporting a business whose main activity does not consist in broadcasting programs over the Internet, or are part of the work of educational or cultural institutions, are not subject to the current *Broadcasting Act*. This means that institutions such as schools, universities, libraries and museums, or any business that is not primarily engaged in the distribution of audio or video content online in Canada, are not subject to the current *Broadcasting Act*, even if they, for example, offer video content on their websites. Consequently, they are also not subject to any registration requirements the Commission may impose.

Why create a public registry of online streaming services?

7. Currently the Commission has only limited information on online undertakings operating in Canada. Requiring online undertakings to be registered with the Commission would allow it to (1) keep track of online undertakings operating in Canada, and (2) collect the most basic information from these undertakings. Having such information would also help to better understand the Canadian online broadcasting landscape more generally.
8. Accordingly, in general, the proposed registration requirements would support the regulation and supervision of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act*. More specifically, the information obtained upon registration would enable the Commission to

achieve the policy objectives set out in paragraphs 3(1)(a.1),⁴ (f.1),⁵ (q)⁶ and (r)⁷ of the current *Broadcasting Act*.

9. In Appendix 1 to this notice of consultation, the Commission sets out its proposed *Online Undertakings Registration Regulations*. These proposed regulations would specifically allow the Commission to:
- (i) create an up-to-date public registry of online undertakings, with the view of fulfilling the Commission's regulatory mandate in accordance with the policy objectives set out in the *Broadcasting Act*; and
 - (ii) gather essential information from and provide regulatory information to these undertakings, where necessary.

Overview of the proposed *Online Undertakings Registration Regulations*

10. The appended proposed *Online Undertakings Registration Regulations* have the following features:
- a. These regulations only relate to the obligation for online undertakings, or online streaming services, to be registered with the Commission.
 - b. To the extent that they do not form part of a class specified in an order made under subsection 9(4) of the current *Broadcasting Act*,⁸ all online undertakings operating⁹ in Canada must be registered with the Commission. This requirement applies to Canadian and foreign undertakings that operate in Canada.

⁴ 3(1)(a.1): "each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;"

⁵ 3(1)(f.1): "each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve;"

⁶ 3(1)(q): "online undertakings that provide the programming services of other broadcasting undertakings should

- (i) ensure the discoverability of Canadian programming services and original Canadian programs, including original French language programs, in an equitable proportion,
- (ii) when programming services are supplied to them by other broadcasting undertakings under contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and
- (iii) ensure the delivery of programming at affordable rates;"

⁷ 3(1)(r): "online undertakings shall clearly promote and recommend Canadian programming, in both official languages as well as in Indigenous languages, and ensure that any means of control of the programming generates results allowing its discovery;"

⁸ See the section below entitled "Exemption from the proposed Regulations".

⁹ In the proposed *Online Undertakings Registration Regulations*, operating an online undertaking is equivalent to carrying on an online undertaking.

- c. The registration information for online streaming services, including contact information, must be kept up to date.
 - d. There is no fee to register an online streaming service with the Commission.
 - e. Failure to register an online streaming service or to otherwise comply with the *Online Undertakings Registration Regulations* would constitute a violation under the current *Broadcasting Act*. A person who commits a violation by contravening the *Online Undertakings Registration Regulations* may be subject to an inquiry by the Commission, which could result in the application of specific measures, as the Commission deems appropriate, to promote compliance.
 - f. The Commission must be notified when an online streaming service stops operating in Canada. The Commission may deregister online streaming services if it is unable to verify that the service is operational.
 - g. Online streaming services that have been deregistered and subsequently resume operating in Canada must be re-registered with the Commission.
11. In regard to the information to be collected upon registration, section 2 of the proposed *Online Undertakings Registration Regulations* specifies the information to be requested upon registration.
12. The registration requirements are meant to be light. The *Online Undertakings Registration Regulations* would require basic information about the online streaming service, including general contact information; the place where the service is incorporated; the location of its head office; and the most essential features of the broadcasting services offered by the online streaming service, for example, whether it offers audio or video services.
13. The Commission intends to publish a list of registered online undertakings operating in Canada on the Commission's website.
14. The *Online Undertakings Registration Regulations* would allow online streaming services that need to register to do so within 60 days after the coming into force of the regulations. After this timeframe, online streaming services that begin operating in Canada and need to register would have to be registered within 30 days.

Exemption from the proposed Regulations

15. As noted above, the definition of "online undertaking" is very broad, and may include undertakings whose activities do not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act*.
16. Subsection 9(4) of the current *Broadcasting Act* allows the Commission to exempt persons who carry on broadcasting undertakings of any class specified in an exemption order from any or all of the requirements of Part II of that Act or of a regulation made under Part II, where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of that broadcasting policy. Given this,

and to allow it to focus on those online streaming services it considers appropriate to monitor, the Commission considers that it may be appropriate to exempt persons who carry on certain classes of online undertakings from the requirement to register.

17. 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:

- i) online undertakings whose single activity and purpose consists of providing video game services;¹⁰
- ii) online undertakings whose single activity and purpose consists of providing unique transactions;
- iii) online undertakings affiliated with a broadcasting ownership group¹¹ that has, after deducting any excluded revenue,¹² annual Canadian gross revenues¹³ from broadcasting activities of less than \$10 million; or
- iv) 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.

Call for comments

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.

¹⁰ While the Commission has historically held the view that video games are not broadcasting, the Commission is proposing to explicitly exempt them to avoid any ambiguity.

¹¹ "Broadcasting ownership group" means a person that controls one or more persons that carry on one or more affiliated broadcasting undertakings to which the *Broadcasting Act* applies, and includes all persons that carry on those broadcasting undertakings.

¹² "Excluded revenue" means revenue that originates from providing video game services or unique transactions.

¹³ "Annual revenues" means revenues attributable to the person or that person's subsidiaries and/or associates, if any, collected from the Canadian broadcasting system across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

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. Specifically, the Commission is seeking comments on the following:
- a. whether or not the persons who carry on online undertakings of the above-mentioned classes should be required to register their undertakings (that is, whether the registration of these online undertakings would contribute in a material manner to the implementation of the broadcasting policy set out in the *Broadcasting Act*);
 - b. whether persons who carry on online undertakings of other types or classes should be considered for exemption from registration requirements, and why;
 - c. the wording of the proposed exemption order, including definitions;
 - d. the proposed exemption threshold level;
 - e. the appropriate method or metrics to establish exemption thresholds (e.g., a broadcasting ownership group's gross revenues from broadcasting activities);
 - f. the moment when the proposed exemptions should apply if, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities move above or below the threshold from year to year; and
 - g. any other issues that may be essential to the proposed exemption order.

Procedure

20. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
21. The Commission invites comments that address the issues and questions set out above. The Commission will accept comments that it receives on or before **12 June 2023**. Only parties who file comments may file a reply to matters raised during the comment period. The deadline for the filing of replies is **27 June 2023**. All parties who file comments will also have the opportunity to file a final reply to any replies received. The deadline for the filing of final replies is **12 July 2023**.
22. Today, the Commission has also launched a proceeding to review certain current exemption orders and the transition from conditions of exemption to conditions of service for

broadcasting online undertakings (Broadcasting Notice of Consultation 2023-140). Interested persons should note that each of these notices of consultation initiates a separate proceeding, and that they must file comments on the record of each proceeding in which they would like to participate. Given certain common elements between the various proceedings, interested persons should monitor the developments of each proceeding.

23. Interested persons are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1.
24. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
25. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
26. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
27. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

28. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The

Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

29. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
30. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

31. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
32. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
33. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
34. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

35. Links to interventions, replies and final replies filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.

36. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Notice of Consultation CRTC 2023-140, 12 May 2023
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010

Appendix 1 to Broadcasting Notice of Consultation CRTC 2023-139

Proposed *Online Undertakings Registration Regulations*

Online Undertakings Registration Regulations

Interpretation

Definition of *operator*

1 In these Regulations, *operator* means a person who carries on an online undertaking to which the *Broadcasting Act* applies.

Registration

Registration return

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:

- (a) the online undertaking's name;
- (b) the operator's name, mailing address, phone number and email address;
- (c) if different than the contact information filed under paragraph (b), contact information for a contact person for the operator, such as their name, title, mailing address, phone number and email address;
- (d) the place where the online undertaking is incorporated or otherwise formed, if any, and the location of its head office; and
- (e) the broadcasting services offered by the online undertaking.

Request for additional information

3 (1) If it appears to the Commission that a registration return is incorrect or incomplete, the Commission may request that the operator submit any information that is necessary to correct or complete the registration return.

Submission of additional information

(2) The operator must submit the requested information to the Commission as soon as feasible.

Updates to registration return

4 An operator must notify the Commission of any change to information previously submitted by submitting the updated information with 30 days after the day on which the change occurs.

Request for deregistration

5 (1) An operator must submit a request to deregister their online undertaking within 30 days after the day on which they cease to carry on the undertaking.

Deregistration

(2) An online undertaking must be deregistered if, after an attempt to contact the operator using the information on file, the Commission is unable to verify that the operator continues to carry on the undertaking.

Electronic submission

6 All information that is submitted under these Regulations must be submitted electronically in the format specified by the Commission.

Transitional Provision

Registration deadline – existing undertaking

7 If an operator began carrying on an online undertaking before the day on which these Regulations come into force, the operator must register the undertaking by submitting to the Commission, within 60 days after that day, a registration return that contains the information referred to in section 2.

Coming into Force

Registration

8 These Regulations come into force on the day on which they are registered.

Appendix 2 to Broadcasting Notice of Consultation CRTC 2023-139

Proposed exemption order respecting classes of online undertakings in relation to the proposed *Online Undertakings Registration Regulations*

Exemption order respecting classes of online undertakings in relation to the *Online Undertakings Registration Regulations*

Interpretation

The following definitions apply in this exemption order.

Annual revenues means revenues attributable to the person or that person's subsidiaries and/or associates, if any, collected from the Canadian broadcasting system across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which the revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

Broadcast year means the period beginning on September 1 and ending on August 31.

Broadcasting ownership group means a person that controls one or more persons that carry on one or more affiliated broadcasting undertakings to which the *Broadcasting Act* applies and includes all persons that carry on those broadcasting undertakings.

Excluded revenue means revenue that originates from providing video games services or unique transactions.

Unique transaction means a one-time rental or purchase of an individual program transmitted or retransmitted over the Internet.

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.

Video games service means the transmission or retransmission of video games over the Internet to enable users to select and play video games.

Description

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:

- i) online undertakings whose single activity and purpose consists of providing video game services;
- ii) online undertakings whose single activity and purpose consists of providing unique transactions;
- iii) 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
- iv) 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.