



Ottawa, Wednesday, March 15, 2006

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Ms. Rhéaume,

**CRTC Broadcasting Notice of Public Hearing – 2006-1
Review of Commercial Radio Policy**

Executive Summary

1. For more than 60 years, the Canadian Conference of the Arts has been the voice of Canadian artists, cultural producers and the heritage community, and of their organizations, and an active participant in public policy debates on arts and culture.
2. Since the 1998 Commercial Radio Policy was introduced there has been an explosion in the use of alternative distribution technologies. While these have brought declining music sales, they have been both a challenge and an opportunity for commercial radio. CCA believes the CRTC should immediately revisit the 1999 New Media decision and develop appropriate regulations, for Internet Service Providers as distribution undertakings, and for Internet broadcasters. The CCA believes it is imperative for the CRTC to level the playing field for all broadcasters. It can do this only by addressing, at the earliest opportunity, the serious threat to the integrity of Canadian content regulations it has created with its Satellite Radio decision, and by moving expeditiously to introduce appropriate regulations for the Internet.
3. Despite the changing technological environment, commercial radio remains an important means of distribution, and continues to play a critical role in the development of Canadian music and artists. Commercial radio broadcasters are financially healthy and this is likely to continue for the foreseeable future, since they remain an attractive medium for advertisers. Many radio broadcasters already have well-developed Internet distribution models, which can attract additional advertising and other revenues. Consequently, CCA believes that licensees should be increasing their commitments to all genres of Canadian music and artists, with a particular focus on new and emerging artists.

4. CCA fully endorses the objectives of the *Broadcasting Act*, foremost among which are that the system must be Canadian owned and controlled, and that the programming provided must be predominantly Canadian, be varied and comprehensive, and come from a variety of sources. In light of the healthy financial state of commercial radio broadcasters and the *Act's* objectives, CCA is recommending that Canadian content levels be increased: for popular music to at least 40%; for classical music to at least 25%; and for jazz music immediately to at least 20%. CCA also believes that content should be calculated on the basis of three-hour time slots, from 6:00 am to 6:00 pm to correct the predisposition of some licensees to program Canadian material at times when audiences are lower. CCA would not oppose a phase-in period for the higher content levels in popular and classical music.
5. CCA supports the existing requirements for French-language broadcasters to program French-language vocal music.
6. CCA believes that new regulations and incentives are needed to promote airplay for new and emerging artists and for Canadian artists in specialized categories. A system of bonus credits may be appropriate in the context of rising Cancon requirements.
7. CCA recommends that commercial radio broadcasters make an annual contribution to Canadian Talent Development of no less than \$10 million. The appropriate minimum public benefit in the case of transfers of ownership should be increased to 10%. The bulk of the new CTD should flow to existing arms-length agencies involved in talent development, primary Factor/MusicAction.

Who We Are

8. Established in 1945, the Canadian Conference of the Arts is an umbrella organization bringing together hundreds of thousands of Canadian artists and creators, cultural producers, exhibitors, presenters, distributors, heritage institutions, professional cultural organizations in every arts discipline and trade associations in all cultural industries. CCA members encompass the rich diversity of Canada's cultural communities and both official languages.
9. CCA advocates for the needs of the community and is an authority on public policy in arts and culture. CCA's objective is to create an environment conducive to the arts and culture, through public policies and programs which can ensure a vibrant and dynamic Canadian presence throughout the arts, and in every cultural industry. CCA seeks appropriate opportunities for Canadian stories and music, and access for Canadian artists and cultural producers to Canadian and global audiences. These objectives guide CCA's public policy work.
10. The CCA is pleased to have this opportunity to offer comments in response to key elements of CRTC PN 2006-1. We will comment only on those issues relevant to our objectives and the interests of the community we serve. CCA would welcome an opportunity to appear before the Commission to discuss its views in greater detail.

Context of the CRTC Review

11. The objectives for Canada's broadcasting system are provided in the *Broadcasting Act*. Foremost among these are that the system should be Canadian-owned and controlled, that radio programming should be predominantly Canadian and that listeners should be provided with varied and comprehensive programming from a variety of sources. The *Act* also states

that programming should be of a high standard, balanced on matters of public concern, relevant to local communities and reflect Canada's rich cultural diversity. Services must be provided in English and French.

12. The CRTC has launched a review of the Commercial Radio Policy which came into effect in 1998. In the past eight years, there have been significant changes to the environment in which commercial radio operates and significant changes as well for the music industry with which it has a symbiotic relationship. Commercial radio broadcasters are an important part of the distribution system for information, music and entertainment materials, and thus the Commission is reviewing important cultural issues.
13. Technological change is a key overarching theme for these hearings. Since 1998 there has been an explosion in the use of alternative distribution technologies. Audiences have new ways of receiving news and information, and new ways of receiving music. According to Statistics Canada, in 2004, six out of ten Canadian households were connected to the Internet and many Canadians routinely used the Internet at work. Computer networks, including the Internet, will become even more pervasive as competition to supply a range of improved telecommunications services heats up. The recent announcement by Toronto Hydro that it will provide wireless Internet access throughout the downtown core of that city later this year highlights this development. Digital downloading has become a significant way to acquire music, and streaming of broadcasting signals and podcasting are an increasingly common way of making programs available to Canadians and other listeners.
14. The new distribution technologies have had a greater impact on the music business than they have had on any other cultural industry. Largely as a consequence of electronic file sharing, music sales have declined dramatically, both in Canada and internationally. In the five year period ending in 2003, the value of music sold in Canada was down by 28%. The decline has continued since then, the figures released by the Canadian Recording Industry Association for 2005 revealed a further 4% decline in sales from 2004. While sales from legal downloads now represent 6% of sales in most industrial nations, in Canada the figure is only 1% because Canada's *Copyright Act* does not address digital distribution technologies.
15. While overall music sales are declining, leading Canadian artists have been relatively successful. In the past decade, a number have become global stars, joining a coterie of Canadian singers, musicians and bands who have reached the pinnacle of popular success. The share of the top 200 best selling albums in Canada gained by Canadian artists increased from 15.1% in 2001 to 27.2% in 2003. According to SOCAN, the copyright collecting society representing composers, authors and publishers of musical works for certain of their rights, 2002 was the first year in history that royalties to Canadian artists from international sources exceeded Canadian payments to foreign artists.
16. Despite the challenges from new distribution technologies, radio remains an important means of distribution. While Canadians are listening to one hour less radio today than they did in 1999, the overall average Canadian still listened to 19.5 hours per week in 2004, divided between the home, work and the car. The average figure tells only part of the story, as there are significant age differences: 12-17 year-olds listened to only 8.5 hours of radio per week, down from 11.3 hours per week in 1999; and 18-24 year-olds listened to 15.7 hours per week. Since there is no evidence that today's young people listen less to music than did previous generations, one must conclude that they are acquiring it in new ways. CCA also believes commercial radio broadcasters can benefit from the new distribution technologies, many already have well-developed Internet strategies, including streaming, program replays and value-added materials.

17. Commercial radio continues to play a crucial role in the development of Canadian artists and the music industry. Airplay is an important way to expose audiences to music and artists. For more than 30 years, the CRTC's Canadian content rules, which require broadcasters to provide Canadian music in their schedules, have underpinned the emergence and development of Canadian music producers and artists. CCA firmly believes that the current international success of a number of Canadian musicians and signers is based on this long-standing regulatory tool, which remains as relevant today as it was when it was first introduced.

Commercial Radio is Financially Healthy

18. In the Public Notice, the Commission has established its objectives for the process, which include, "to establish conditions for a commercial radio sector that makes effective contributions to Canadian artists through airplay of Canadian music and French-language vocal music, and contributions to Canadian talent development (CTD) that are commensurate with the financial health of the sector." Thus, it is crucial to evaluate the financial circumstances of the sector.
19. In the mid-1990s, commercial radio in Canada went through a challenging period financially and the CRTC responded to the difficulties in its policies and decisions, most noticeably by relaxing ownership restrictions and by significantly reducing the contributions directed to Canadian Talent Development. CTD declined from a level of roughly \$7 million to \$1.8 million annually, which remains today the basic contribution.
20. Fortunately, the challenging period is behind us and CCA believes that Canada's commercial radio broadcasters are now in a healthy financial situation that is likely to continue for the foreseeable future. It is therefore approaching these hearings from the perspective that licensees should be increasing their commitments to all genres of Canadian music and artists, with a particular focus on new and emerging artists.
21. Commercial radio is currently a profitable business sector, as the average annual revenue growth for all commercial radio was 4.5% between 2000 and 2004. FM stations had revenue increases of 6.7% annually in this period and total profits before interest and tax (PBIT) were 16.3% in 2000 and 18.3% in 2004. PBIT for French-language stations was 14.8% in 2000 and 11.9% in 2004. Preliminary data for 2005 show these trends continuing and reveal that total revenues for commercial radio reached more than \$1.323 billion in the year.
22. This robust financial performance is likely to continue in the foreseeable future because commercial radio remains an important vehicle for advertisers. According to the Association of Canadian Advertisers, commercial radio is profoundly a local medium and remains attractive for advertisers since it is possible for them to target their message, and to know what audience will be delivered by the particular station at a given time.
23. Radio advertising is also attractive because the cost of production of the individual commercial is far less than it is for a television commercial. Advertising clutter is not as prevalent, not only are there fewer commercials per hour, the irritation factor is less than with television, since radio is an ambient, background medium. Radio stations that distribute their programs via the Internet are exploiting new advertising and other commercial opportunities, as well as serving their existing audience base in new ways.

Commercial Radio and New Distribution Technologies

24. CCA believes it is important in this process to review two areas in which the CRTC has made decisions that have enormous consequences for the ability of the broadcasting system to meet the objectives of the *Act*, the 1999 New Media decision and the 2005 decision to license satellite radio subscription services. We understand it is beyond the scope of the current hearing for these matters to be reconsidered directly, but the issues are so fundamental they must be raised in this context.
25. In its 1999 New Media decision, the CRTC found that some of the material on the Internet falls within the definition of broadcasting. However, it decided not to introduce regulations for Internet broadcasting, but instead to proceed by way of an exemption order. In its 1999 decision, the CRTC stated that it would reconsider this issue in five years, a period that expired two years ago.
26. Since the New Media decision was issued, the Internet has become an increasingly important means for distributing music, audiovisual programs and other cultural content. It has become an important vehicle for acquiring music and buying books. It is an increasingly important source of streamed audio programming and it is poised to become a principal means of delivering audiovisual content, including movies and television shows. Broadcasters are moving aggressively into the Internet, effectively creating a situation in which they can operate an unregulated service that is competing directly with their own conventional, regulated broadcasting service. In this environment, the CCA believes it is essential for the CRTC to develop and introduce appropriate regulations to ensure that a wide range of Canadian arts and cultural products is made available through the Internet and other computer networks.
27. CCA believes that the CRTC can and must regulate the Internet and other computer networks. It must regulate Canada's Internet Service Providers as gatekeepers, in a manner analogous to broadcast distribution undertakings. It must regulate Canadian broadcasters with respect to the content they offer on the Internet and other computer networks, in a manner analogous to their regulation as broadcasting undertakings.
28. With respect to material that falls within the definition of broadcasting, ISPs are providing services equivalent to broadcast distribution undertakings. Appropriate regulations would include requirements to provide priority for Canadian websites and services, and to make a contribution to the production of Canadian music and audiovisual programs delivered over the Internet. In 2004, ISPs had gross revenues of \$1.7 billion according to Statistics Canada. With respect to broadcasters, since the *Broadcasting Act* is neutral as to the means of delivering the programs to audiences, CCA believes that broadcasters using the Internet or other computer networks to distribute their signal can and should be regulated as broadcasting undertakings to ensure they contribute to achieving the objectives of the *Act*.
29. In its 2005 decision on satellite radio, the CRTC decided to issue licenses to three applicants. Two of these, Sirius Canada and Canadian Satellite Radio, have now launched their subscription services, both of which essentially provide U.S. content. In its decision, the CRTC requires that eight out of every 100 channels provided on the services must be Canadian, and these channels must have a Cancon level of at least 85%. The two services must also contribute 5% of their gross revenues to CTD.
30. Like many others in the cultural sector, the CCA is extremely concerned about this decision. We can safely assume that Canadian artists will receive some airplay on the 92 non-

Canadian channels, since some of them are now global stars. On the other hand, the Canadian channels are permitted to broadcast 15% non-Canadian content. Balancing these two factors with the core requirement, one must still conclude that the decision of the CRTC effectively creates a Cancon level overall on satellite radio which might reach 10%, well below the levels required to be programmed by Canada's conventional commercial radio broadcasters.

31. While satellite radio may not replace existing broadcasting services, particularly if digital radio technology is rolled-out, there is no doubt that the satellite services will increasingly compete with conventional licensees. These licensees, quite appropriately, are obligated to program substantially higher levels of Canadian artists and music.
32. The other concern we have with the satellite radio decision is that it has established a Canadian content ghetto, since the bulk of the Canadian material will be played on dedicated Canadian channels. We believe that the most effective way of marketing and promoting Canadian artists and music, indeed all Canadian cultural products, is by integrating them with foreign works. Canadian jazz music should be available on the jazz channel and Canadian classic rock music should be played alongside artists from other countries. Financial subsidies for Canadian producers and artists can help to ensure that Canadian works can compete in the integrated marketplaces.
33. In this submission, CCA is proposing that the CTD contribution of commercial radio broadcasters should increase significantly. We believe as well that there is and should be a relationship between Canadian content levels and the obligation to promote Canadian talent development. A licensee with a lower level of Cancon should have a correspondingly greater obligation to support CTD. As a point of comparison, CCA believes that the appropriate level of contribution by the satellite radio services to CTD should perhaps be as high as 20% of gross revenues, which is quadruple the level imposed by the Commission.
34. The CCA believes it is imperative for the CRTC to level the playing field for all broadcasters. It can do this only by addressing, at the earliest opportunity, the serious threat to the integrity of Canadian content regulations it has created with its Satellite Radio decision, and by moving expeditiously to introduce appropriate regulations for the Internet.

Canadian Content Regulations

35. Given the financial health of commercial radio broadcasters and the increasing availability of high quality Canadian music in all genres, CCA believes it is appropriate for the minimum Canadian content levels to increase for all commercial radio broadcasters, to no less than the following levels:
 - popular music – at least 40%
 - classical music – at least 25%
 - jazz music – immediately, to at least 20%

CCA is eager to see even higher Canadian content levels than we have proposed. We observe that one way to achieve this objective might be through a judicious reinterpretation of the definition of a Canadian recording. We note that works of distinguished Canadian artists such as Diana Krall and Jon Vickers may not qualify as Canadian, despite the relative undersupply of Canadian composed or written jazz or classical works for them to perform.

36. CCA believes that the content should be calculated on the basis of three-hour time slots, from 6:00 am to 6:00 pm, Monday to Friday, with the existing calculation basis for other time periods. This will solve once and for all the predisposition of some licensees to program

Canadian material at times when audiences are lower. It will ensure the appropriate exposure of Canadian artists and music in prime time.

37. While CCA believes there is sufficient high quality Canadian material to support these higher minimum standards and additional prime time exposure, it would entertain the possibility of phasing in the higher Cancon levels for popular and classical music over a five year period. In the context of rising Cancon levels, it is also possible to consider introducing bonus credits for new and emerging artists. CCA believes that commercial radio should be doing more to expose audiences to up and coming Canadian artists.
38. In support of higher Cancon levels, CCA notes that, in the last eight years, some licenses issued by the CRTC already require content levels in excess of the standards established by the 1998 policy in each of these music categories. Several licensees have agreed to meet or exceed the CCA's proposed standards for popular and jazz music. In any case, we would urge the Commission to reject any argument based on lack of availability, since higher content levels are, at least in part, designed to encourage more production activity and to promote higher quality, and a phase-in period would enable this to take place. The history of Canadian content rules in radio broadcasting clearly supports this thesis.

Requirements for French-language Broadcasters to Program French-language Vocal Music

39. CCA wholeheartedly endorses the objective that the commercial radio sector must make an effective contribution to French-language popular music through airplay and contributions to CTD. In the 1998 policy, the CRTC established that 65% of the vocal music played by French-language licensees must be in that language and at least 55% must be played between 6:00 am and 6:00 pm.
40. CCA believes that these changes have achieved the objectives established in 1998 and continue to be appropriate today.

Development of New Canadian Musical Talent

41. Maintaining a vibrant Canadian music industry requires the continuing emergence and development of new and exciting talent. It also requires maintenance of the infrastructure necessary to bring the works of Canadian artists and performers to Canadian and global audiences. The entire community, from individual artists and their organizations, music producers and distributors, arts services organizations to broadcasters, has a common interest to support and encourage new and emerging talent. Commercial radio has a critical role to play in this process and it does so in two ways – by providing airplay for the new recording artists and by making financial contributions to Canadian talent development, primarily through arms-length funding bodies. CCA believes that the financial health of the commercial radio industry should bring increased commitments to CTD.
42. With respect to airplay, audience exposure is critical to success. While some musical artists have achieved a degree of recognition exclusively through the Internet, other distribution channels and live performance, the CCA believes that radio airplay is usually a critical factor to the successful emergence of most new artists. Commercial radio can and should be doing more to provide this exposure to emerging Canadian artists.
43. In its 2005 study, the CRTC revealed that new Canadian artists received only 6.7% of airplay on the English-language stations in three markets, compared to 5.0% in 1997. New

Canadian artists received 16.4% of airplay on the French-language stations in two markets, compared to only 7.0% in 1997. The definition used by the CRTC basically provides that an artist qualifies as “new” if the sound recording is played within two years of release.

44. CCA believes these figure tell only part of the story. We understand, for example, that airplay of new artists is skewed toward the non-prime time hours and certain categories may have difficulty getting heard. For example, the Canadian Music Centre reports that contemporary Canadian classical composers receive little or no airplay at all on Canada’s classical commercial radio stations. The Centre also reports that contemporary Canadian classical compositions have disappeared from the Canadian Broadcasting Corporation/Radio Canada schedules. In all cases, CCA finds that this is unacceptable.
45. CCA believes that the most effective policy means of addressing deficiencies is to use both regulations and incentives, and we would support this integrated approach to encouraging and promoting airplay for new and emerging artists, and for Canadian artists in specialized categories. A number of interveners to this process are putting forward recommendations for regulations and incentives in this area and we will leave it to the Commission and others to determine the appropriate way to achieve the basic objective. As we have noted earlier, we believe it is possible to consider bonus credits for airplay of new and emerging artists in the context of rising Cancon requirements.
46. The current annual base level contribution made by commercial radio to CTD is \$1.8 million. This amount is paid by individual broadcasters according to a formula developed by the Canadian Association of Broadcasters and has remained the same since it was first introduced in 1995. The amount is supplemented by benefits provided on the transfer of ownership which must be at least 6% of the value of the transaction and by commitments made voluntarily during a competitive licensing process.
47. The CTD contributions flow through a combination of Factor/MusicAction, Radio Starmaker Fund/Fonds RadioStar and local initiatives. CCA notes that, since Factor/MusicAction receives considerable financial support from the government, they are completely transparent in their operation and publicly accountable for the funds they receive. We urge the Commission to ensure that a major share of the additional CTD contribution flows to them.
48. CCA believes strongly that it is time to increase significantly the contribution that commercial broadcasters make to Canadian talent development. CCA believes an annual minimum amount of \$10 million or more is appropriate. Others in this process are putting forward concrete proposals on how such an amount should be raised from each individual licensee and we will express no position on this issue beyond the necessity to achieve a substantially higher level.
49. With respect to the flexibility of stations to support purely local initiatives, CCA is concerned that amounts allocated directly by stations may not be achieving the basic objective, which is to promote the emergence and development of artists who can add to the diversity of Canadian music. CCA would prefer that broadcasters’ CTD contributions be directed exclusively to the existing national programs, which do have local and regional components.
50. Alternatively, local amounts could be directed to support the local music industry association in the province in which the licensee is located. Each of the provincial associations has cooperative marketing and promotional programs that are aimed at local artists and we believe these are more viable than purely local initiatives. If a local radio station wishes to continue to provide support to a local school orchestra, and we encourage such a laudable

gesture, they should do so from their advertising or charitable budget, rather than from their CTD obligation.

Ownership Rules

51. CCA strongly supports the current limits on foreign ownership of Canadian broadcasters and distribution undertakings, and we will vigorously oppose any effort to increase these limits. Higher levels of foreign ownership of Canadian cultural industries will inevitably result in lower levels of Canadian content production and distribution. We are particularly concerned about current efforts both in Canada and at the World Trade Organization to increase significantly, or to eliminate entirely, limits on foreign ownership of Canadian telecommunications companies. These are essential for cultural reasons, as telecommunications providers are playing an increasingly active role in program delivery. Also, if these efforts succeed, there will be pressure to bring similar changes to existing regulations governing broadcasters and distribution undertakings.
52. In general, we believe that diversity of Canadian ownership promotes diversity of genres and diversity of content. While we are not proposing any changes to the current rules respecting how many stations can be owned by one Canadian entity in a single market, we believe that the Commission, in licensing new applicants and in all hearings related to transfer of Canadian ownership, should favour independently-owned and operated licensees over multi-station owners.
53. Prior to the 1998 Commercial Radio Policy, the public benefit package that was provided in the case of transfers of ownership was roughly 10% of the value of the transaction, the same figure that prevails for television. In the 1998 policy, this was reduced to 6%. CCA believes, given the current overall financial health of the commercial radio broadcasting business, it is appropriate for the minimum public benefit to be returned to 10% of the value of the transaction, with the bulk of the funding to flow to arms-length organizations involved in Canadian Talent Development.

Serving Canada's Diverse Communities

54. Canada is a multicultural, multiracial, multiethnic society. Ethnic and racial minorities are now one-third of the population of Vancouver and Montréal, and more than 50% of the population of Toronto. There are important First Nations communities in many of our cities. Last November, Canada became the first country to ratify the new UNESCO *Convention on the protection and promotion of the diversity of cultural expressions*. In conformity with the objectives of this Convention, CCA supports efforts by the Commission to encourage the development of commercial radio services for our diverse communities.
55. CCA believes there are several vehicles through which the Commission can promote diversity including:
 - encouraging existing licensees to provide specialized programming as part of their overall service,
 - through the use of low power radio stations, or
 - through the issuance of new licenses.
56. While we have no concrete proposals to put before the Commission, we do believe it is important to consider how to develop an appropriate Canadian component to these specialized services. CCA believes that a Canadian content level of 10% is the absolute minimum that should be achieved for services that rely on recorded music. We note that the

Commission currently provides in its Canadian content regulations that, where 7% or more of the musical selections broadcast during an ethnic programming period are Canadian selections, this programming is excluded from calculation of the overall weekly Cancon requirements. We urge the Commission to increase this to a minimum of 10%, if necessary on a progressive basis over the next five years.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alain Pineau', written in a cursive style.

Alain Pineau, National Director
Canadian Conference of the Arts