January 28, 2014

Mr. John Traversy
Secretary General
CRTC
Ottaw, ON K1A 0N2

**Re: Broadcasting Notice 2013-558**
**Notice of Consultation**
**Response to comments on the Commission's approach to tangible benefits and determining the value of the transaction**

1. Regarding Broadcasting Notice of Consultation 2013-558, the Canadian Independent Music Association (CIMA) would like to be considered an intervener in this proceeding, and submit its second intervention, in response to comments raised by participants in Broadcasting Notice of Consultation 2013-558.

2. By way of background, CIMA represents Canada's independent music industry, which consists of more than 220 Canadian-owned companies and professionals engaged in the worldwide production and commercialization of Canadian music. These Canadian-based companies, in turn, represent thousands of Canadian artists and bands.

3. CIMA's members are exclusively small and medium sized businesses, which include record producers, record labels, publishers, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.

4. Some of the great Canadian independent artists and bands represented by our members include Feist, Rush, Broken Social Scene, Sarah McLachlan, K'naan, City and Colour, and Metric, to name but a few.

5. CIMA is dedicated to ensuring the long-term development of the Canadian-owned music sector, and to raise the profile of Canadian independent music both in Canada and around the world.

6. CIMA also operates MusicOntario, the Ontario-based Music Industry Association (MIA) dedicated to the development of companies and emerging artists. MusicOntario provides professional development programming, networking opportunities, and information to emerging Ontario artists and businesses. MusicOntario also conducts advocacy for Ontario's industry, giving it a prominent voice at the provincial level. Through MusicOntario, CIMA ensures that Canada's largest concentration of music activity is well served at a local level. It is estimated that approximately 80 percent of national music-related business investment happens in Ontario.

7. It is on behalf of these Canadian-owned small businesses that CIMA is speaking and providing comments on the tangible benefit system, as well as the calculation of the value of ownership transactions.

**<u>The Enduring Value of the Commission's Tangible Benefit Policy</u>**

8. In their replies to broadcast proceeding 2013-558, several interveners argued that the tangible benefit policy has outlived its usefulness, and must be either scaled back or eliminated altogether. CIMA disagrees with the recommendation that benefits should be reduced, and rejects the premise that the policy has ceased to be relevant to the Canadian Broadcast system.

9. Those who recommended eliminating or scaling back the policy often correctly interpreted that tangible benefits existed in lieu of a competitive acquisition process, where multiple broadcasters would attempt to out-bid each other with commitments to fund and showcase Canadian content. Further, they noted that benefits are in place to ensure measurable improvements to the communities served by the broadcasting system; and that acquisitions served the public interest. The basis of their argument against the current tangible benefit policy appears to be that: regulatory requirements imposed after the creation of the tangible benefit policy adequately fulfill the objectives of the Broadcasting Act; and, increasing economic pressures on broadcasters have made tangible benefits infeasible.

10. **CIMA submits that tangible benefits are a key component of helping the broadcast system achieve the aims of the *Broadcasting Act,* particularly as it undergoes significant consolidation.** First, 3.1.S of the act states that "private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them**,** i) contribute to the creation and presentation of Canadian programming." Second, 3.1.I of the Act states that programming should "include a significant contribution from the Canadian independent production sector." The objectives of both of these sections are potentially put at risk by consolidation in the broadcast sector.

11. Tangible benefits directly ensure that the independent production sector is able to make a "significant contribution" to broadcast programming in a consolidated media environment. Large vertically integrated companies operate with an entirely different business model than the independent production sector. Major commercial radio broadcasting is a centralized, big-business industry. In 2012, commercial radio recorded over $1.6 billion in annual revenue, 70% of which was concentrated in the largest five broadcasters. Conversely, independent music production is a decentralized, small-business oriented industry. Indeed, the majority of CIMA's 220 Canadian music businesses have only one or two employees and make less than $50,000 annually. Tangible benefits provide a great deal of the funding that these companies use to make investments in Canadian content; production, promotion, touring, showcasing, digital marketing, artist development and exporting efforts all contribute to the creation of content, and are supported, in part, through the availability of tangible benefit funding. All of this investment leads to a healthier, more robust music industry.

12. Indeed, much of the current "contribution of the independent production sector" is due, in part, to the support of broadcasters. Currently, 23.5 percent of albums sold in Canada are by Canadian artists, and 60 percent of this market-share is controlled by independent labels. The success that Canada's small-businesses have had selling Canadian music to Canadians is a direct result of the investments by radio broadcasters, as well as multiple levels of government. If this support were to be significantly reduced or eliminated, it is not certain that Canada's small-business-oriented independent music industry would be able to make many of the production, marketing and promotional investments needed in

order to make the “significant contribution” the broadcasting act requires.

13. The stated purpose of Radio Starmaker, the largest beneficiary of tangible benefit funding, is to invest in emerging artists with radio potential. The fund is an independent production sector/broadcaster collaboration that provides emerging artists with varies degrees of success with the marketing and publicity reach they need to achieve radio play. Starmaker highlights several artists as breakout stars, which allows radio programmers to “sort through the noise” of the decentralized independent music industry. In the last several years, Starmaker funds helped launch emerging then-independent artists Carly Rae Jepsen, The Weeknd and Classified into Juno-award winning artists who have all achieved significant radio play. In short, Radio Starmaker is a mutually beneficial initiative that has a track record of creating independent Canadian content for radio broadcast, achieving the “significant contribution from the independent production sector” component of Canada’s broadcasting policy. Eliminating or reducing tangible benefits would potentially reduce the fund’s effectiveness, in turn reducing its ability to support the goals of the act.

14. Tangible benefits also fund important granting programs provided by FACTOR, which assist the development of independent Canadian content in a variety of ways. Whether through support for emerging artists to produce their first demo, to export their music domestically or internationally, to market and promote more effectively, or for any other standard music business development need, FACTOR helps ensure that talented emerging artists receive support early in their career. Without this support, the pool of independent Canadian artists developed enough to achieve radio airplay would be *much* smaller. **It is for this reason that CIMA recommended in our original submission to BNC 2013-558 that 0.5% of the overall transaction value should be diverted from discretionary initiatives to FACTOR/MUSICACTION.**

15. With regards to the argument that economic pressures on broadcasters necessitate the end of tangible benefits, CIMA submits that the financial health of the broadcast industry is stable. Since 2008, revenues have grown consistently, while profits have been strong in all years since the recession, growing in most. This is particularly true in radio, where profit before interest and tax (PBIT) has grown from 18 to nearly 20 percent in just three years between 2009 and 2012, totalling over $323 million in the latest published fiscal year. Though many broadcasters cited financial concerns for their undertakings as a key rationale to scale back the tangible benefits policy, CIMA has seen no concrete evidence that the radio broadcast industry faces any real challenge paying them. To quote the broadcasting act, tangible benefits are a contribution “consistent with the financial and other resources available” to radio. In stark contrast, Canada’s independent production sector is comprised of small businesses with very low, unstable revenues: 60 percent of Canadian independent music companies generate less than $50,000 annually, with nearly half existing as sole proprietorships. The removal of tens of millions in financial support from the system will almost certainly impact these small businesses adversely, limiting the amount of Canadian content being developed.

16. It is precisely the strong financial health of the radio sector that caused CIMA to recommend in our initial submission to BNC 2013-558, dated December 5th 2013, that the Commission consider a tangible benefit minimum of 10% for radio. The benefits were lowered in decision 1998-41 in order to recognize the financial difficulty being faced by the radio broadcast industry in 1998. Since this time,

the industry has more than made up any losses incurred, and posted 3.7% growth between 2011 and 2012. **CIMA fully supports the proposal of ADISQ and others that the Commission raise the minimum tangible threshold for radio stations to 10%.**

**<u>Ensuring CCD Compliant Spending</u>**

17. One suggestion that was proposed in several interventions was to increase the proportion of tangible benefits spent at the broadcaster's discretion. In many proposals, it has been proposed that this increase should come at the expense of the mandatory minimum contribution to Radio Starmaker/Fonds Radiostar or FACTOR/Musicaction.

18. CIMA has serious concerns with raising the proportion of overall benefits that radio-broadcasters can allocate on a discretionary basis. Moreover, CIMA strongly advises the commission against any re-allocation of funds from Radio Starmaker/Fonds Radiostar or FACTOR/Musicaction to discretionary benefits.

19. In BNC 2013-572, a broadcast proceeding running parallel to 2013-558, it is stated that "despite establishing a more flexible approach to non-compliance, the Commission notes that a large number of licensees remain in non-compliance on an annual basis." One of the most significant issues with non-compliant stations is the spending of money on non-compliant Canadian Content Development (CCD) initiatives. Indeed, there are countless examples of broadcasters spending discretionary funds on initiatives which are not CCD-Eligible. While many broadcasters outline their proposed discretionary tangible benefit expenditures in advance of acquisition, others simply report the amount that they will spend on a discretionary basis, leaving compliance monitoring entirely up to the Commission.

20. When determining the eligibility of an initiative funded by discretionary benefits, the commission must devote considerable resources to investigating the minute details of the event or program in question. For instance, while concerts, festival and showcases count as eligible initiatives, certain types of festival expenses such as t-shirt production are not. In broadcast decision 2012-629, Sirius XM was found to have made exactly this error after considerable analysis by the Commission. It was the considerable bureaucratic burden of compliance investigation which caused the commission to exempt small stations from making CCD contributions at all in Broadcasting Regulatory Policy 2013-297. Given the difficulties already faced by the commission in ensuring regulatory compliance, it would make little sense to increase the proportion of benefits broadcasters can spend on a discretionary basis.

21. In contrast to discretionary benefits, contributions to FACTOR, Radio Starmaker and Music Industry Associations (MIAs) like CIMA and MusicOntario are easily accounted for and are directed to broadly and effectively assist the companies and artists that create Canadian music. Many interventions highlighted that discretionary benefits better serve local communities than those directed to FACTOR or Radio Starmaker. **CIMA submits that the objective of serving local communities would be better served by directing a greater proportion of tangible benefits to local and provincial music-industry associations.** Music industry associations successfully provide a variety of specific and tangible benefits to the local communities they serve - that is their mandate. For instance, CIMA's

MusicOntario division runs a variety of artist and business development workshops in communities across Ontario. These provide direct, professional development, networking and mentorship opportunities to Ontario artists within their own communities. This sort of activity is highly beneficial to emerging artists. Further, MIAs have the capacity to offer many different kinds of support. For instance, CIMA engages in the commercial export of emerging Canadian artists to a variety of domestic and international markets. Through these music export missions, CIMA has found that international success brings greater domestic sales and touring revenue to emerging artists and their companies.

22. Further, the commission states in BNC 2013-558 that its revised approach to tangible benefits should eliminate self-serving initiatives; that is, those initiatives that do not yield measurable improvements to the communities served and to the broadcast system as a whole. While this comment was raised in the context of television benefits, the problem is not exclusive to television. Countless instances of broadcaster spending on initiatives that could be considered "self-serving" can be found in the CRTC's license renewal cases. Though this is certainly not the rule in the radio sector, a cursory review by CIMA revealed several noteworthy instances; a radio station which spent a portion of CCD funds on focus groups to test audience reaction to programming; a "win-to-get-in" contest for concert tickets; a revenue-generating concert; and a variety of other initiatives that do not meet the spirit or intent of the Canadian Content Development regulations.

23. CIMA submits that Radio Starmaker, FACTOR, and music industry associations like CIMA all have mandates to broadly serve the industries that develop Canadian content, and all are focused at the local level. Any funding provided to these industry initiatives is guaranteed not to be "self-serving." They would be allocated according to the needs of the music industry, going directly to initiatives supporting the creation and commercialization of Canadian content, and the development of emerging artists.

**<u>Supporting Increased Transparency</u>**

24. Several interventions supported the implementation of increased transparency measures for the spending of tangible benefits. CIMA notes that support for this increased transparency came from broadcasters, two provincial Canadian governments, and several creative industries. As it did not come up in our original submission, **CIMA affirms its support for any measure to increase the transparency surrounding the spending of tangible benefits.**

25. This transparency should come in the form of public reporting on all tangible benefit expenditures. This reporting should be as detailed as possible, outlining which initiatives have received tangible benefits, and how these funds have been used and spent.

**<u>Factoring New Media into the Valuation of a Transaction</u>**

26. In paragraph 54 of BNC 2013-558, the Commission mentioned that it was considering adding the value "distribution on other platforms" to the value of the licensed service. It used online distribution as a possible example.

27. Several major broadcast distribution undertakings indicated that they would not support the inclusion of the value of "unlicensed" distribution into the tangible benefit asset calculation, due to the fact that

regulations are only supposed to apply to licensed services. Since Broadcasting Public Notice 1999-197, all online media services have been exempt from any regulations stemming from the broadcasting act.

28. In our first submission to BNC 2013-558, CIMA argued that a valuation of radio assets that did not include online revenue was bound to become increasingly divorced from the real value of a radio broadcaster. **If the Commission finds that it does not have the authority to include the online assets of a radio station in the overall value used to calculated tangible benefits for the reasons stated by the broadcasters, it should take the steps outlined below in order to maintain the ongoing relevancy of the tangible benefit system.**

29. In broadcasting regulatory policy 2009-329, the Commission extended this exemption to the present day, with the conclusion that a successful commercial business model for broadcasting in new media has yet to emerge. This may be true for some forms of broadcast media, but the Commission's own analysis in Table G of "Perspectives on Broadcasting in New Media" demonstrated that online streaming was in place across the majority of surveyed radio licensees. Moreover, half of surveyed stations made use of online-only banner ads. CIMA submits that a business model has emerged in radio, and that **online radio retransmission, streams, and online advertising should no longer be subject to the new media exemption order**, but should rather be incorporated into the reach of radio broadcaster license requirements. This approach seems reasonable given that broadcaster revenues derived in part from the successful commercial exploitation of Canadian music is being realized across all media platforms.

**Conclusion**

30. Thank you for allowing CIMA the opportunity to provide comments on Broadcasting Notice 2013-558. We ask that the Commission consider our submission when it deliberates this important issue. If there are any questions or concerns, please direct your staff to contact Chris Martin, Research and Communications Coordinator at chris@cimamusic.ca. Further, CIMA would be pleased to address the Commission directly, should an oral submission be required.

Yours sincerely,

**Stuart Johnston**
President

Canadian Independent Music Association
stuart@cimamusic.ca
416.416.485.3152 ext. 232
30 St. Patrick Street
2nd Floor
Toronto ON, M5T 3A3