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Canadian Independent Music Association

April 1<sup>st</sup>, 2014  
Mr. John Traversy  
Secretary General  
CRTC Ottawa, ON K1A 0N2

**RE: Broadcasting Notice 2013-572 and 2013-572-1  
Notice of Consultation**

**Call for comments on a targeted policy review for the commercial radio sector**

1. Regarding Broadcasting Notice 2013-572, 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 2013-572.
2. By way of background, CIMA represents Canada's independent music industry. Our membership consists of 222 Canadian-owned companies and professionals engaged in the worldwide production and commercialization of Canadian music. These Canadian-based companies employ more than 2,400 people and represent more than 6,000 Canadian artists.
3. CIMA's members are exclusively small and medium-sized businesses (half of which are sole proprietors), 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. Our members are located in every province and in the Yukon Territory.
4. CIMA is dedicated to ensuring the long-term development of the Canadian-owned music sector, and to raising the profile of Canadian independent music both in Canada and abroad.
5. As specified in our first intervention, CIMA primarily represents music businesses that receive Canadian Content Development Funds. As such, we have chosen to target our responses on questions relating to CCD compliance and how CCD relates to technological and business development.
6. It is on behalf of these Canadian-owned small businesses that CIMA is speaking and providing comments on the targeted policy review for the commercial radio sector.

**Innovation & Regulatory Frameworks: The introduction of HD Radio**

7. The majority of interveners seemed to be more or less in agreement that digital radio services should be subjected to the regulatory requirements as outlined in the



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- Broadcasting Act. In most cases, the interveners agreed that digital radio services should be subjected to the *same requirements* as analog technology.
8. In the replies to Broadcasting Notice 2013-572, several interveners argued that digital radio services, and specifically HD Radio, should be exempted from licensing requirements during the initial development and expansion period.
  9. Concerns were raised about the implementation of a regulatory regime being 'premature', 'tedious and expensive', and potentially 'stifling' the implementation process.
  10. In most cases, the interveners recognized that digital radio services would eventually be subjected to the same requirements as analog radio, but they were largely in favour of an exemption to at least cover the early stages of its rollout in Canada. For example, the Canadian Association of Broadcasters (CAB) suggested that it was too early to develop any regulatory scheme applicable to HD radio, but that the issue should be revisited in 3 years within the context of a comprehensive commercial radio policy review.
  11. **However, CIMA is of the opinion that licensed commercial broadcasters operating in Canada should support the objectives of the Broadcasting Act in a manner similar to other broadcasters, including the obligation to contribute Canadian Content Development (CCD) funds.**
  12. To support this, we provided evidence of an existing regulatory precedent for HD Radio in our first intervention: the case of digital radio, a technology that was subject to the conditions of license standard to commercial radio.
  13. In particular, the findings of the Commission, as reported in Broadcasting Decision 2006-160, highlighted that the stalled growth of digital radio as a medium in this country was not tied to issues surrounding regulatory and/or legislative requirements. None of the reasons the Commission identified as causing the slow growth of digital radio had anything to do with the regulatory or licensing requirements.
  14. Furthermore, the case of Sirius XM Satellite Radio provides an important counterpoint to the argument that licensing and/or regulatory requirements stifles innovation. It's important to note that while being subject to the commercial radio licensing regime, Sirius XM's subscriber base has grown at about 8% annually on average for the past 3 years, and they've been able to make significant contributions to CCD.
  15. In summary, despite the counterarguments brought forward by several interveners, **CIMA remains committed to the idea that the Commission already has a regulatory precedent for HD radio at its disposal and following from that, HD radio should not be exempted from the licensing requirement to participate in the CCD regime.**

#### Addressing systematic compliance issues

16. With a large portion of CIMA's membership dependent on the receipt of CCD funding, CIMA was particularly interested in the interventions submitted that responded to the Commission's questions about compliance and enforcement.



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17. The economic repercussions of non-compliance are substantial, both on the music industry businesses that rely on this funding, the artists that they represent, as well as the broader economy.
18. While most of the interveners were in agreement that non-compliance was a significant obstacle for the Commission, there was significant variation in the responses, particularly with regards to the source of the problem.
19. Several interveners argued that non-compliance was the exception rather than the rule. For example, the Canadian Association of Broadcasters argues that missed and late payments are often a result of a misunderstanding or misinformation rather than bad faith.
20. What followed from this characterization of non-compliance was fundamental disagreement with any sort of financial penalty, and instead favouring ‘softer’ mechanisms like increased early monitoring and improving clarity. This resulted in a host of proposed mechanisms that largely focused on putting non-compliant broadcasters on the public record (when appropriate) and improving the Commission’s ability to effectively monitor compliance before it becomes an issue.
21. While CIMA also has support for the “softer” enforcement mechanisms favoured by broadcasters and the measures proposed by the Commission, the evidence simply runs counter to the idea that non-compliance is a rare occurrence. As CIMA’s analysis uncovered, 38% of commercial radio licensees had, at some point or another, failed to remit sufficient CCD or CTD (Canadian Talent Development) funds. This resulted in a shortfall of \$1,048,100 uncovered during the 2013 license renewal period, \$686,000 of which was left unpaid until the renewal of license – an issue of significance that negatively impacts the emerging Canadian artists who depend on this funding.
22. For this reason, **CIMA continues to believe that the most effective way for the Commission to encourage greater compliance with CCD regulations would be to increase regulatory requirements in the form of a late payment fee.**
23. CIMA’s proposal is the implementation of an interest payment of no less than 2% monthly, which offers restitution for the lost productivity and time to the content development industry directly (who bears the brunt of the consequences of missing payments), as well as ensures that the penalty is proportional to the magnitude of the missed and/or late payment. It would also serve as an incentive for payments to be made in a timely manner. This form of late payment penalty is not dissimilar to those imposed by broadcasters’ parent companies on consumers who are delinquent in paying their bills.
24. The Canadian Council of Music Industry Associations (CCMIA) was also in agreement with the idea of imposing a financial penalty, suggesting that having a significant financial contribution would be an important component of a graduated penalty response leading up to a suspension of license.
25. Further support for a financial penalty was stated by the Association québécoise de l’industrie du disque, du spectacle, et de la vidéo (ADISQ), who also argued in support of a late penalty on non-compliant broadcasters.



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26. We understand that the broadcasters have questioned the Commission's ability to impose a late payment fee, but CIMA feels that this is an effective tool and one which the Commission needs to implement.
27. Thank you for allowing CIMA the opportunity to provide comments on Broadcasting Notice 2013-572 and 2013-572-1. We ask that the Commission consider our submission when it deliberates this very important issue. If there are any questions or concerns, please direct your staff to contact Lisa Fiorilli, Research and Communications Coordinator, at [lisa@cimamusic.ca](mailto:lisa@cimamusic.ca). Further, CIMA would be pleased to address the Commission directly, should an oral submission be required.

Yours sincerely,

Stuart Johnston  
President

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