

# **ACTRA**

**ACTRA Submission to Canadian Heritage and  
Innovation, Science and Industry**

**Consultation on a Modern Copyright Framework for Online  
Intermediaries**

**May 31, 2021**

## Introduction

ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) and ACTRA Performers' Rights Society (PRS) welcome the opportunity to provide their feedback and recommendations to the Departments of Canadian Heritage and Innovation, Science and Economic Development (ISED) as part of the joint Consultation on a Modern Copyright Framework for Online Intermediaries.

For over 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recordings, radio and digital media. ACTRA PRS is a collective management organization (CMO), incorporated by ACTRA, mandated to represent the rights and interests of artists who perform in audiovisual productions and on sound recordings. ACTRA and ACTRA PRS represent the collective voice of over 32,000 professional performers working in the English-language recorded media sector in Canada as well as performers represented in partnerships with CMOs from 21 different countries, including the UK, Germany, Spain and India.

From its earliest days, ACTRA has actively contributed to public policy development processes and played a critical policy role in Canada and internationally. Through its own work and that of its branches and hundreds of leading Canadian performers, ACTRA plays an indispensable role advocating for Canadian storytellers.

ACTRA has taken steps to negotiate use provisions into our contracts to ensure performers are paid for their work throughout the lifetime of its use but strong copyright legislative provisions are still necessary to ensure a complete set of internationally recognized rights for audiovisual performers.

Residuals and royalties, payments for the use and exploitation of their work, at home or internationally, are the fair compensation all performers deserve. In ACTRA's view, there is no valid reason for audiovisual performers to be denied the statutory rights that their fellow sound recording performers possess in Canada and both sound recording and audiovisual performers possess around the world.

The types of economic and moral rights ACTRA seeks for its members are the international standard. Countries around the world grant performers rights for their audiovisual performances which, in Canada, have only been enjoyed by performers of audio performances under the *1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* ("Rome Convention") and the *1996 WIPO Performances and Phonograms Treaty* ("WPPT"). To date, Canada has taken no substantive steps to grant similar rights to audiovisual performances.

The International Federation of Actors (FIA) – of which ACTRA is a founding member and a strong supporter – was instrumental in efforts to create and ratify the *WIPO Beijing Treaty on Audiovisual Performances*. The Treaty, which was adopted on June 24, 2012, and came into force on April 28, 2020, addresses the longstanding need to extend the economic and moral rights of actors and performers to audiovisual performances, including films, videos and television programs. Over 70 countries, including Canada's major trading partners, have recognized the full value of audiovisual performances to all participants by signing the Beijing Treaty.

While Canada's *Copyright Act* (the Act) is an important piece of legislation that has a material impact on performers and their ability to sustain a living and contribute to Canadian culture, new technology has dramatically changed the way creative industries work and the Act needs to reflect the new economic reality in which our artists operate.

In recent years, we have experienced an explosion in the amount of global audiovisual content created, exploited, and consumed online. The online entities that facilitate access to such content have also proliferated and diversified. This increased exploitation and consumption of audiovisual content has only reinforced the need for the international protection of audiovisual rights. Canada too must meet the global standard for performers' rights in their audiovisual performances in order to maintain and grow a thriving domestic cultural industry.

ACTRA is pleased to participate in this consultation process, which is intended to help the Government ensure that Canada's copyright framework for online intermediaries reflects the evolving digital world and advances the key priorities of protecting the use of copyright-protected content online, safeguarding Canadians' rights online, and facilitating a flourishing digital market.

**Yet most importantly, either prior to, or at the same time as, introducing new copyright measures for online intermediaries, Canada must implement rights for audiovisual performers in consideration of the *WIPO Beijing Treaty on Audiovisual Performances*.**

ACTRA is in the process of finalizing its recommendations on the important decisions that signatories must make when implementing the Beijing Treaty. As a result, those recommendations are not included here but shall be finalized for the planned consultation on Artificial Intelligence.

In this submission, ACTRA makes the following recommendation on options developed by the Government of Canada for stakeholder and public consideration in the context of Canada's copyright framework:

**01 Decide Whether Social Media Services are Broadcasters, Online Intermediaries, or Both**

The latest amendments to Bill C-10 contemplate the inclusion of social media services as broadcasters in the Broadcasting Act. The Government of Canada's consultation brief contemplates social media services as online intermediaries. Therefore, ACTRA recommends a clear framework be established, outlining when online intermediaries, especially those that primarily exhibit user generated content, would be regulated by the *Broadcasting Act*, the *Copyright Act*, or both Acts.

**02 Limit the Ability for Online Intermediaries to Claim Safe Harbour (Section 4.1 of Consultation Brief)**

Any measures that limit the ability for online intermediaries to claim safe harbour are positive for Canadian performers. The following comment in the consultation brief is especially important to ACTRA and its members: "The clarifications could also provide a clearer incentive for intermediaries falling outside of the safe harbours to enter into equitable licensing agreements with rights holders for uses of their content through the intermediaries' services." With respect to submissions relating to safe harbour provisions, we defer to the submissions by our partner, the Coalition for the Diversity of Cultural Expressions (CDCE).

**03 Carefully Consider Collective Licensing and Avoid a One-Size Fits All Solution (Section 4.2 of Consultation Brief)**

The consultation brief outlines two options for an online intermediaries collective licensing scheme: compulsory licensing and extended licensing. In both internal discussions and discussions with our partners, there is no agreement that the options, as described, accurately reflect the reality of collective licensing or even the options as they are titled. Further, the selection of compulsory licensing versus extended licensing for online intermediaries has the potential for significant positive or negative impacts

on Canadian performers and these impacts would differ in a variety of sectors. For instance, in the audiovisual industries, a compulsory or extended licensing scheme that allows online intermediaries, or their users, to share content in a manner that is currently considered infringement would undermine the economic structure of the entire sector. For music on sound recordings, however, this same choice would be less of a concern and would likely increase compensation for Canadian performers.

Accordingly, ACTRA's recommendation is to revisit and refine the options for potential licensing schemes in order to meet the following three principles:

- First, do not undermine the ability for performers (or their representative organizations) to negotiate payment for use of content (both audio and audiovisual) on online intermediaries;
- Second, do not enable one Collective Management Organization (CMO) to automatically assume the administration of rights over a second CMO, which may represent a significant number of rights holders with content shared via online intermediaries; and
- Third, implement industry-specific schemes for different sectors, and different rights holders within those sectors, that reflect the specific interests of those rightsholders. A 'one size fits all' approach will inevitably disenfranchise some segment of the Canadian performer base.

#### **04 Support for Partner Submissions**

ACTRA supports the submissions by the CDCE, the Canadian Private Copying Collective, and Re:Sound.

#### **Conclusion**

ACTRA remains steadfast in our support of the recommendations made by the Standing Committee of Canadian Heritage in its May 2019 *Shifting Paradigms* report, specifically, to extend moral and economic rights to audiovisual performers under the *Copyright Act*. We are finalizing recommendations on the inclusion and implementation of audiovisual rights in the *Copyright Act* and are excited to share those recommendations in the upcoming consultation on Artificial Intelligence.

ACTRA appreciates the opportunity to share our views as part of this Consultation on a Modern Copyright Framework for Online Intermediaries. We would be pleased to address any questions of clarification from the Departments of Canadian Heritage or ISED.

Sincerely,

A handwritten signature in black ink that reads "Marie Kelly". The signature is written in a cursive, flowing style.

Marie Kelly  
National Executive Director  
ACTRA