SOCAN

Society of Composers, Authors and
Music Publishers of Canada

Société canadienne des auteurs,
compositeurs et éditeurs de musique

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Competition Policy Review Panel
280 Albert Street
10th Floor
Ottawa, Ontario
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RE: SUBMISSION ON CONSULTATION PAPER

On behalf of the members of **The Society of Composers, Authors and Music Publishers of Canada/Société canadienne des auteurs, compositeurs et éditeurs de musique** ("SOCAN"), I am filing this submission in response to the Competition Policy Review Panel (the "Panel") request for submissions regarding its consultation paper entitled *Sharpening Canada's Competitive Edge* dated October 30, 2007 (the "Paper").

Page 21 of the Paper notes that Canada maintains specific regimes to govern, review or restrict investment in six sectors:

- Telecommunications
- Cultural Industries
- Broadcasting
- Transportation Services
- Uranium Production
- Financial Services

SOCAN's submission focuses on the first three sectors and is presented under the following headings:

1. Who we are

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2. Why Canadian Content Regulations and Broadcasting Foreign Ownership Restrictions are important to SOCAN

3. The Adverse Impact on Canadian Cultural Sovereignty of Removing Foreign Ownership Restrictions in the Broadcasting, Telecommunications, and Cultural Industries

4. The International Trade Treaty Implications of Changing Canada's Foreign Ownership Rules

5. The Impact of Foreign Ownership Rule Changes in the Telecommunications Sector on the Broadcasting Sector

6. Conclusion

1. WHO WE ARE

SOCAN is a not-for-profit Canadian-owned and operated organization that represents composers, lyricists, songwriters and publishers of musical works from across Canada and around the world.

On behalf of our over 25,000 active Canadian members, and members of the affiliated, similar societies from around the world, SOCAN collectively administers *performing rights* in music and lyrics -- musical works.

The performing right is that part of copyright that gives owners of musical works the sole right to perform in public, to broadcast their works, or to authorize others to do so, in return for royalty payments.

Performing rights are essential for music creators and their publishers because they are remunerated by the performing rights royalties they receive when their songs are used (i.e. performed in public or broadcast) by music users.

2. WHY CANADIAN CONTENT REGULATIONS AND BROADCASTING FOREIGN OWNERSHIP RESTRICTIONS ARE IMPORTANT TO SOCAN

When broadcasters or other users play musical works written by Canadians, royalties remain at home with Canadian creators. On the other hand, when users play more foreign music, royalties are paid to foreign sources.

It is for this reason that SOCAN has always supported measures which promote the use of Canadian music, including the *Broadcasting Act* and the Canadian Content rules of the Canadian Radio–television and Telecommunications Commission ("CRTC").
As discussed below, SOCAN is concerned that, if foreign ownership restrictions in the broadcasting industry are directly or indirectly changed, Canadian Content rules may be adversely affected.

3. THE ADVERSE IMPACT ON CANADIAN CULTURAL SOVEREIGNTY OF REMOVING FOREIGN OWNERSHIP RESTRICTIONS IN THE BROADCASTING, TELECOMMUNICATIONS, AND CULTURAL INDUSTRIES

The Paper's Appendix 2 discussion of the broadcasting investment regime describes on page 43 the important role that ownership rules play in promoting Canadian cultural sovereignty, and recognizes that Canada's trading partners also limit the foreign ownership of broadcasters:

> *While some developed countries have no restrictions, others like the U.S., France and Japan have foreign ownership limits on over-the-air broadcasters.*
>
> *In Canada, our relatively small, diverse population and the availability of U.S. broadcasts limit the degree to which market forces alone can ensure the provision of a range of Canadian news and entertainment programming in both official languages.*
>
> *Canadian ownership rules in broadcasting and broadcasting distribution, established under the Broadcasting Act, ensure that Canadian news and entertainment programming is made from a Canadian perspective and with Canadian audiences in mind.*

SOCAN strongly supports the Paper's recognition that Canada's national sovereignty objectives cannot be achieved by simply allowing market forces to govern the broadcasting sector.
SOCAN is not alone in this regard. It was recently reported that a Harris/Decima weekly omnibus survey showed that 66% of voters believe broadcasting and communications are too important to national security and cultural sovereignty to allow foreign control.

The poll results also showed that 82% of Canadians agree that it is important that the Canadian government work to maintain and build a culture and identity distinct from the United States.

4. THE INTERNATIONAL TRADE TREATY IMPLICATIONS OF CHANGING CANADA'S FOREIGN OWNERSHIP RULES

The Paper's Appendix 2 discussion of the cultural industries investment regime describes on page 44 the unique nature of cultural goods like musical works, and recognizes that there may be international trade implications to changing Canada's foreign ownership rules:

> *Given Canada's relatively small, diverse market and given that its cultural businesses are small in comparison with their global competitors, successive Canadian governments have based public policy in this area on the premise that market forces alone are insufficient to ensure the availability of a suitable range of Canadian cultural products.*
>
> *Cultural exemptions in international trade agreements such as the NAFTA recognize that cultural goods are unlike any other product.*
>
> *The right of countries to maintain measures to protect and promote cultural expression is reaffirmed by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression.*

SOCAN submits that the Panel cannot treat Canada's foreign ownership regime as a purely domestic issue, because there are international trade treaty implications involved as well.

For example, if foreign investment is permitted in the broadcasting sector, a foreign investor could attack Canadian Content rules on the grounds that they constitute illegal "performance requirements" under the ***North American Free Trade Agreement*** ("NAFTA") or other international trade treaties.

The investment chapter of the NAFTA creates absolute standards that Canada must apply to NAFTA and other foreign investors – even if Canada does not apply these standards to its own nationals.

NAFTA Article 1106(1) creates obligations regarding "performance requirements", which limit a state's ability to develop its domestic economy by requiring foreign investors to increase exports, decrease imports, balance trade, transfer technology, or to use ***local labour, goods, or services***:

> *No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or*

operation of an investment of an investor of a Party or of a non-Party in its territory:

.....

(b) *to achieve a given level or percentage of domestic content;*

(c) *to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;...*

But for the NAFTA's "cultural exemption" (which, in practice, has not provided absolute protection – e.g., the split-run magazine dispute with the United States), Article 1106 could prohibit the application of CRTC Canadian Content regulations to foreign investors, which would adversely affect SOCAN's Canadian members.

SOCAN therefore submits that, if the Panel wishes to consider opening the Canadian broadcasting sector up to foreign investors, it must carefully measure the risks of triggering international trade obligations that, so far, have not been an issue due to the lack of foreign investment in the broadcasting sector.

5. The Impact of Foreign Ownership Rule Changes in the Telecommunications Sector on the Broadcasting Sector

The dividing line between the broadcasting industry and the telecommunications industry is no longer clear.

For example, although the *Telecommunications Policy Review Panel Report* issued in March, 2006 (the "Telecommunications Report") focussed on the telecommunications sector, it concluded with an Afterword regarding Canadian broadcasting policy, which the authors found to be inextricably linked to the matters reviewed under their mandate.

The Telecommunications Report called for the establishment of a comprehensive review by independent experts of Canada's broadcasting policy framework. With respect to foreign ownership, the Panel stated:

> *On the question of foreign ownership rules, the Panel recommends that no changes be made to the current limits on foreign ownership of telecommunications firms which are also licensed broadcasters, pending the review of the sector.*

In addition, the Paper's Appendix 2 discussion of the telecommunications investment regime recognizes on page 43 that, "many telecommunications carriers have been granted licenses and/or provide services under the *Broadcasting Act.*"

By reason of this technological convergence and corporate integration, SOCAN submits that, before the Panel recommends removing any foreign ownership restrictions in the *telecommunications* sector, it must carefully consider any direct or indirect effects such changes may have in other sectors, including the *broadcasting* sector.

6. CONCLUSION

SOCAN strongly supports the Paper's recognition that cultural goods like musical works are not commodity products, and that market forces alone cannot achieve Canada's sovereignty objectives in the telecommunications, broadcasting and cultural industries.

In addition to recognizing the sovereignty implications of changing foreign ownership restrictions in these sectors, SOCAN submits that the Panel must also consider how any changes could affect Canada's international trade obligations.

Finally, SOCAN submits that the Panel must consider any direct and indirect consequences that changes to ownership rules in the telecommunications sector could have on the broadcasting sector.

SOCAN appreciates this opportunity to comment on the Paper and would be pleased to respond to any questions the Panel may have regarding this submission.

Yours sincerely,

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CPS/jb