



Coalition  
for the Diversity of  
Cultural Expressions

Submission from the Coalition for the Diversity of Cultural Expressions

for the

*Canadian Public Consultation on the Functioning of the Canada-United States-Mexico  
Agreement (CUSMA)*

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## 1. Presentation

The [CDCE](#) brings together the main Anglophone and Francophone professional organizations in Canada's cultural sector. It encompasses more than 50 organizations that collectively represent the interests of more than 350,000 creators and professionals and 3,000 companies in the book, film, television, new media, music, performing arts and visual arts sectors.

The CDCE is strongly committed to both the economic health of the cultural sector and the vitality of cultural creation. It intervenes primarily to ensure that cultural goods and services are excluded from trade negotiations and that the diversity of cultural expressions is represented and protected within the digital environment.

The CDCE actively champions the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, striving to ensure its robust and effective application at the national level. The Coalition ensures that the government's ability to implement policies supporting local cultural expressions is protected and effectively applied, and that trade liberalization and technological advances do not lead to content homogenization or disrupt local ecosystems under foreign investment pressures. The CDCE also serves as the secretariat for the [International Federation of Coalitions for Cultural Diversity](#) (IFCCD).

## 2. Introduction

For over 25 years, the Coalition for the Diversity of Cultural Expressions (CDCE) has been the voice of the cultural sector, working to protect and promote the diversity of cultural expressions. Throughout its history, it has relied on the steadfast support of the Canadian government to secure exemptions for culture in trade negotiations, in support of Canada's cultural sovereignty.

The CDCE thanks Global Affairs Canada for organizing this *Canadian Public Consultation on the Functioning of the Canada-United States-Mexico Agreement (CUSMA)*, which provides an opportunity to share its preliminary concerns and recommendations as preparations begin for the first joint review of CUSMA in 2026. This input also aims to help shape priorities for the work to be undertaken in 2025 as Canada assumes the chair of the fifth meeting of the CUSMA Free Trade Commission.

This submission provides an overview of priority issues for the cultural sector in light of these important processes. The CDCE hopes this contribution will initiate a constructive dialogue with Global Affairs Canada on key areas of concern to prioritize for the protection of Canada's cultural sovereignty. Our comments are informed by the active input of several CDCE members who have shared their concerns, as well as by the expertise of specialists in the interplay between trade agreements and culture.

**We offer our collaboration in producing targeted analyses to support elements that may require clarification or reinforcement.**

In this submission, we reaffirm Canada's commitments to protecting the diversity of cultural expressions, provide an update on the legislative and regulatory context related to Canadian cultural sovereignty, and reference a *Study on the "E-commerce" and "Intellectual Property" provisions within the CUSMA, CPTPP, and CETA trade agreements*.

## 3. Canada's Commitment to Protecting the Diversity of Cultural Expressions in Trade Agreements

The societal importance of culture has been affirmed repeatedly by the Canadian government, civil society, and companies in the telecommunications and broadcasting sectors. Beyond declarations, this commitment has been embodied in the actions of the Canadian and Quebec governments, along with civil society, ultimately leading to the adoption of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005, with Canada as its first signatory.

Cultural expressions give form to our identity, allowing us to share it, present it to the world, and enable it to evolve. They foster social integration, help us interpret our past, and inspire us to imagine the future. They inform, entertain, and represent an invaluable collective heritage. For this reason, over the decades, Canadian governments have adopted cultural policies and laws that have enabled

countless artists and cultural enterprises to thrive.

### **3.1. Canadian Public Support for Measures to Promote and Protect the Diversity of Cultural Expressions**

The Canadian public places great value on Canadian cultural content and supports federal government involvement, as evidenced by multiple surveys over the years. Here are a few examples:

A key Canadian report published by the CRTC in 2018, *Harnessing Change*, noted that “78% of Canadians consider Canadian-made content to be personally important or moderately important.” Additionally, “Many focus group participants expressed support for the government’s role in creating Canadian content. Some believe that Canadian content helps strengthen unity and a shared identity. Others pointed out that financial support to ensure the production of Canadian content helps develop talent among actors, writers, and producers and creates jobs across Canada.”<sup>1</sup> (CDCE translation)

In 2022, four years later, a study by the Association québécoise de l’industrie du disque, du spectacle et de la vidéo (ADISQ) revealed that 73% of Quebec’s population believes “the government should enact legislation requiring online music platforms (Apple Music, Spotify, YouTube, etc.) to contribute to music funding, as traditional radio does,” and that 67% of the population thinks “the government should implement legislation to ensure that online music platforms (Apple Music, Spotify, YouTube, etc.) highlight Francophone music from Quebec more prominently.”<sup>2</sup> (CDCE translation).

A 2022 SOCAN study surveying Canadians nationwide on both music and audiovisual content found that 68% of respondents “believe it is important for foreign online companies and social media platforms to support and promote Canadian music, TV shows, and films” (see Appendix 1).

### **3.2 The Cultural Exemption and CUSMA: A Review of Origins and Evolution**

The cultural exemption first appeared in Canada during negotiations for the Canada-U.S. Free Trade Agreement. The idea of excluding culture from trade negotiations had already been included in the recommendations of the Macdonald Commission<sup>3</sup>.

As Ivan Bernier and Anne Malépart<sup>4</sup> remind us, as early as 1985, representatives from the cultural sector embraced this recommendation, forming a “Strategy Committee for the Communications and Culture Industries.”, successfully convincing political and media circles of the need to protect

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1 CRTC (2018) Emboîter le pas au changement. L’avenir de la distribution de la programmation au Canada <https://crtc.gc.ca/fra/publications/s15/pol1.htm#pr1>

2 Rapport *Consommation de musique québécoise francophone*, préparé pour ADISQ, PAR Léger, 17 mai 2022 : [https://www.adisq.com/medias/pdf/fr/Sondage\\_LEGER\\_pour\\_ADISQ\\_appui\\_musique.pdf](https://www.adisq.com/medias/pdf/fr/Sondage_LEGER_pour_ADISQ_appui_musique.pdf)

3 Canada. Bureau du Conseil privé (1985), Rapport - Commission royale sur l’union économique et les perspectives de développement du Canada. Vol. 1 / Donald S. MacDonald, président, p. 421. [http://publications.gc.ca/collections/collection\\_2014/bcp-pco/Z1-1983-1-1-2-fra.pdf](http://publications.gc.ca/collections/collection_2014/bcp-pco/Z1-1983-1-1-2-fra.pdf)

4 Bernier, Ivan, et Anne Malépart, « Les dispositions de l’Accord de libre-échange nord-américain relatives à la propriété intellectuelle et la clause d’exemption culturelle », dans *Les cahiers de propriété intellectuelle*, Montréal, 1994, Vol. 6, no 2, pp. 139- 171.

Canada's cultural industries from the already dominant U.S. industries.

The Canadian government committed to keeping cultural identity and sovereignty outside the scope of the negotiations. However, this position had to be negotiated with a partner who held a different view.

The exemption was ultimately achieved, though not without compromise. Apart from a few exceptions (such as the removal of tariffs on tapes and records), the primary concession was the inclusion of a retaliation clause. This clause, still in effect today, permits the adoption of compensatory measures "with an equivalent commercial effect" in response to any cultural measure that would otherwise be inconsistent with the Agreement.

The North American Free Trade Agreement (NAFTA) carried forward the exemption established in the FTA under Annex 2106, but referenced it "exclusively" in relation to FTA provisions. Notably, this exemption applied only between Canada and the United States, between Canada and Mexico, and any other state that might join the agreement. However, under NAFTA, Mexico received only a few specific protections<sup>5</sup>. Additionally, some adjustments were made to the definition of cultural industries, broadening the exemption's scope to include individuals.

Under the World Trade Organization's General Agreement on Trade in Services (GATS), although a proposal by several states to exclude cultural services was rejected, Canada leveraged the flexibility within the agreement to avoid making commitments on market access and national treatment for cultural services.

The negotiations for the Multilateral Agreement on Investment (MAI), which aimed to liberalize investments in the cultural sector, prompted civil society organizations, along with the governments of Quebec, Canada, France, and the Francophonie, to mobilize for a cultural exemption. It was within this context that the Coalition for the Diversity of Cultural Expressions was founded in 1998.

The collaborative efforts of cultural sector stakeholders and governments culminated in the adoption of UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005. The Convention's preamble underscores the dual nature of culture, stating that "cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value."<sup>6</sup> The Convention further affirms the sovereign right of signatory states to implement measures and policies that protect and promote cultural diversity within their territories (Article 5).

Canada was the first country to ratify the Convention. Today, over 155 countries, along with the European Union, have ratified it. While the Convention does not supersede other treaties, Parties are required to take it into account when interpreting and applying these other agreements (Article 20) and to promote its objectives and principles when entering into new commitments (Article 21). These

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<sup>5</sup> See Annex 1 of NAFTA

<sup>6</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000142919>

obligations are binding for all Parties to the Convention.

The Comprehensive Economic and Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) marked a departure from Canada's traditional approach by including reservations in specific chapters rather than a blanket exemption. In CETA, these reservations offer robust protection for Canada's ability to implement policies that safeguard its cultural sovereignty<sup>7</sup>.

For the CPTPP, substantial concessions were made, particularly in the e-commerce chapter, which does not include a specific cultural exemption. However, following the United States' withdrawal, Canada signed letters with the remaining 10 partners to establish bilateral agreements clarifying that "Canada may adopt or maintain discriminatory requirements obliging service providers or investors to make financial contributions toward Canadian content development and may adopt or maintain measures that limit access to foreign online audiovisual content."<sup>8</sup> According to some legal experts, uncertainties remain about the true scope of the e-commerce commitments within the CPTPP and their potential impact on future Canadian cultural policies in the digital space.

During the NAFTA renegotiations, the United States pushed for cultural concessions from Canada, specifically targeting the e-commerce chapter. Having gone through a similar experience with the CPTPP, the CDCE and its members were fully aware of this risk. Fortunately, Canada succeeded in retaining a broad cultural exemption that applies across the entire agreement, including e-commerce.

However, the retaliation clause remains in place, allowing it to be invoked against measures that do not comply with the agreement. Without excluding culture from specific commitments beyond the broad exemption, retaliatory measures are permitted for all such commitments. As Ivan Bernier and Véronique Guèvremont noted after the initial texts were published, Canada has taken on new commitments under the Canada-United States-Mexico Agreement (CUSMA)<sup>9</sup>, especially in the area of e-commerce, which remains relatively unregulated in Canada.

## **4. The importance of Protecting Culture in the Field of E-Commerce**

The CDCE regularly contributes insights on the impacts of technology and online cultural content distribution models, suggesting strategies to ensure the protection and promotion of cultural diversity.

Advancements in technology and online content distribution models have a significant impact on cultural ecosystems at multiple levels. Below are some examples.

### **4.1 Broadcasting Act: At the Heart of Canadian Cultural Sovereignty**

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<sup>7</sup> <https://www.ledevoir.com/culture/496243/alena-les-industries-quebecoises-de-la-culture-et-l-alena-2-0>

<sup>8</sup> Les lettres reprennent la même formulation et sont disponibles en ligne : <https://www.international.gc.ca/trade-commerce/tradeagreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/letters-lettres.aspx?lang=fra>

<sup>9</sup> <https://www.ledevoir.com/opinion/idees/538439/une-menace-a-la-souverainete-culturelle-du-canada>

For decades, the *Broadcasting Act* has empowered Canada to protect and promote cultural diversity within its borders. This culturally focused, enabling legislation grants the CRTC authority to implement regulations that support both the funding and visibility of Canadian content, which has proven highly effective in traditional media over the years.

However, although the CRTC has historically had the power to regulate online broadcasting services, it chose to exempt them and waited for the legislature to modernize the Act to grant it unequivocal authority.

Appendix 2 contains a report from SOCAN that clearly illustrates the impact of an unregulated system on Canadian creators. SOCAN, the collective management organization representing Canada's songwriters and composers, notes that on digital audio platforms, only 10% of royalties paid in Canada go to Canadian songwriters and composers, with 90% flowing to foreign rights holders. In traditional media, these percentages are 29% and 70%, respectively.

#### **4.1 Modernizing Canada's Legislative Framework: Obligations for All Online Services**

In April 2023, Canada enacted the *Online Streaming Act*, updating the *Broadcasting Act* and joining a growing number of countries with laws regulating digital platforms to protect and promote the diversity of their cultural expressions.

Under the modernized *Broadcasting Act*, the CRTC is now required to swiftly develop and enforce regulations that oblige both domestic and foreign online platforms to contribute financially to the development, promotion, and recommendation of Canadian content. Shortly after the *Online Streaming Act* was adopted, the CRTC released its [Regulatory Plan for modernizing Canada's broadcasting framework](#), outlining a phased, three-stage approach to implementing the updated Act. This section highlights the key elements related to financial contributions required from platforms, as well as provisions for content showcasing and discoverability.

##### **4.1.1 Funding**

On June 4, the CRTC issued a key decision, [Broadcasting Regulatory Policy CRTC 2024-121: The Path Forward – Supporting Canadian and Indigenous Content through Basic Contributions](#). In this decision, the CRTC announced that it “will require online streaming services with annual contribution revenues of \$25 million or more, and that are not affiliated with a Canadian broadcaster, to allocate 5% of these revenues to designated funds. The Council expects this requirement to take effect in the 2024-2025 broadcasting year, beginning on September 1, 2024, and estimates that the new contributions will generate approximately \$200 million annually.” (CDCE translation)

These funds, with allocations specified in the decision, will be directed toward supporting the creation of Canadian and Indigenous content.

#### 4.1.2 Promotion and Recommendation

The updated [Canadian Broadcasting Act](#) includes a provision requiring online platforms to prominently promote and recommend Canadian programming in both official languages as well as Indigenous languages, ensuring that any content control mechanisms generate results that enable its discoverability (3(1)(r)).

The CRTC has scheduled a public consultation on this section of the Act for spring 2025, as outlined in its regulatory [plan](#), under the categories *Consultation on Definitions of Canadian Audiovisual Content* and *Consultation on Audio Content*.

Furthermore, the *Order Issuing to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)* reaffirms this requirement: “The Commission is directed to consider both established and emerging means of discoverability and showcasing to promote a wide range of Canadian programming [...]”

The [Order Issuing to the CRTC \(A Sustainable and Equitable Regulatory Framework for Broadcasting\)](#) reaffirms this obligation, stating: “The Council is directed to take into account both established and emerging methods of discoverability and promotion to support a wide range of Canadian programming. [...]”

#### 4.2 The Importance of the Cultural Exception in Enabling Canada to Implement its *Broadcasting Act*

These legislative and regulatory processes have taken place amid tensions and opposition from affected stakeholders.

For example, the review of Bill C-11 elicited responses from U.S. Trade Representative Katherine Tai, particularly during ministerial meetings of the Canada-United States-Mexico Agreement (CUSMA) Free Trade Commission. Canada, however, has consistently defended its right to adopt this key legislation, maintaining that it does not constitute discriminatory treatment and complies with its trade obligations. Various Canadian media outlets have covered these discussions, with articles such as [U.S. concerned Ottawa’s online streaming bill could impact trade with Canada](#) (July 2022) and [U.S. says Canadian online news, streaming bills ‘discriminate’ against American businesses](#) (November 2022). Similar reports followed the Act’s passage, including a [Globe and Mail](#) article (May 2024) reporting that some members of Congress consider the modernized Broadcasting Act to be discriminatory toward Americans.

Since the CRTC began implementing the Act, several platforms subject to its regulations have openly challenged it. An article published in [The Globe and Mail](#) on July 4, 2024, reports that multiple streaming platforms, including Netflix, Amazon, and Spotify, have filed lawsuits against the CRTC in response to its decision to impose financial contributions. These platforms raised concerns about the confidentiality of financial data and criticized the CRTC’s allocation of a portion of these funds to a

support fund for independent local news.

On September 30, 2024, DIMA, "the global voice of music streaming," launched a [national communications campaign](#) titled *Scrap the Streaming Tax*, in which the organization urges Canadians to oppose the requirement to allocate 5% of their revenues to Canadian content under the modernized *Broadcasting Act*, claiming that it leads to higher costs for consumers.

#### **4.3 Access to data**

To build effective regulations, the CRTC and civil society need access to sufficient data to assess the impact of these services on Canada's broadcasting ecosystem.

Since consultations began following the modernization of the *Act*, Canadian cultural organizations have observed that available data remains inadequate. The Professional Music Publishers' Association (APEM), along with the Quebec Association of the Music Industry (ADISQ), the National Music Industry Alliance (ANIM), Artisti, the Fédération culturelle canadienne-française (FCCF), the Quebec Musicians' Guild (GMMQ), the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the Collective Management Society for the Rights of Phonogram and Videogram Producers (SOPROQ), the Society of Professional Authors, Composers of Quebec and Artist-Entrepreneurs (SPACQ-AE), and the Union des artistes (UDA), have submitted a Part 1 application to the CRTC, requesting that the Council "gather and publicly release data from major online streaming services on the listening, promotion, and recommendation of musical works."

Initially driven by the music sector, this request has since garnered support from the audiovisual industry, including support from the Association québécoise de la production médiatique (AQPM) and the Canadian Media Producers Association (CMPA).

In its submission, APEM underscores the "inequity in access to data that is of public interest. Online streaming services hold extensive data, while other stakeholders struggle—or are unable—to access the information necessary for an accurate assessment of the landscape. Making this data public would allow all stakeholders involved in the modernization process of the regulatory framework to build a shared understanding of the issues at stake."

It's important to note that this request has also encountered opposition, particularly from DIMA, Apple Music, and Sirius XM, who argue that the requirements would be overly complex or place an undue burden on regulated companies. This underscores that access to data—a fundamental requirement for any measures to protect cultural sovereignty—relies on laws that mandate it.

Together, these examples highlight that Canadian cultural sovereignty in broadcasting must be actively safeguarded and promoted—it cannot be assumed. Measures taken by Canada are closely scrutinized and subject to a power dynamic that places Canadian cultural ecosystems at a disadvantage.

## 4.5 Developments in Generative Artificial Intelligence

Over the past year, the rapid advancement of generative artificial intelligence has disrupted society as a whole, with the cultural sector particularly impacted. The CDCE has produced several documents outlining the risks this technology poses to cultural ecosystems and presenting proposals to mitigate these risks.

Canada's *Copyright Act* currently prevents companies developing generative AI systems from using protected works without consent or compensation to train these systems, and it is essential that this protection remains in place. Nonetheless, significant challenges remain, particularly in terms of transparency.

While CUSMA does not yet address artificial intelligence, we have seen AI-related clauses emerge in recent years, especially in the CPTPP. Establishing a legal framework to ensure legal certainty and build trust in AI is a priority for Canada's cultural ecosystem. It is essential to maintain maximum flexibility within free trade agreements to support this goal.

## 4.6 Global Challenges in the Digital Age

Countries worldwide are grappling with the challenge of adapting laws to the realities of the digital era, and it is certain that cultural policies in many nations will evolve in the coming years. In this context, at the June 2023 Conference of the Parties to UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the Parties requested that the Convention's Secretariat establish an expert group to develop recommendations on four key areas to enhance the Convention's application in the digital environment. These areas are as follows:

- Linguistic diversity in online cultural content;
- Discoverability of local and national cultural content online;
- Increased transparency of digital platforms;
- The impact of artificial intelligence on the cultural and creative industries.

The work of the Expert Group will culminate in a report containing recommendations, which will be submitted to the Intergovernmental Committee in February and subsequently presented at the Conference of the Parties in June 2025.

As a testament to its leadership in this field, Canada, together with the government of Quebec, co-organized the first meeting of UNESCO's Expert Group on the Diversity of Cultural Expressions in the Digital Environment. The meeting was held in Quebec City from May 27 to 30, 2024, with support from the CDCE, which hosted a full day of conferences on these topics.

It is therefore reasonable to expect that these recommendations will lead to the development of legislation that addresses the four themes identified by the Parties.

## 5 CUSMA: Key Areas of Concern

The CUSMA agreement was concluded between the United States, Mexico, and Canada in November 2018 and came into effect on July 1, 2020. It is the latest iteration of the North American Free Trade Agreement, which originally came into effect in 1994.

### 5.1 Broad Cultural Exemption

As highlighted in the previous section, while the broad cultural exemption in CUSMA unequivocally preserves Canada's ability to protect its cultural industries, including within the digital environment, the retaliation clause has also been retained.

This means that if Canada enacts a measure to protect its cultural industry that conflicts with a provision of CUSMA, Mexico and the United States may respond with a retaliatory measure, known as a retaliatory measure with comparable effect.

As outlined in previous sections of this document, this creates ongoing tension whenever Canada takes steps to protect the diversity of its cultural expressions. The threat of retaliatory measures, which has never been enforced since the agreement's inception, could primarily arise if a Canadian measure were to conflict with the principle of national treatment—a risk that experts consulted by the CDCE assess as minimal.

Nonetheless, this provision means that Canada must exercise caution when drafting measures to protect the cultural industry.

### 5.2. New Clauses That Could Impact Canada's Cultural Sovereignty: E-Commerce and Intellectual Property Rights

In 2021, Professor Céline Castets-Renard, chairholder of the Global Responsible Artificial Intelligence Research Chair at the University of Ottawa, conducted a study for the CDCE to examine new clauses in trade agreements that could impact Canada's cultural sovereignty, focusing on provisions related to digital trade, intellectual property rights, intermediary liability, and data.

This report, which analyzes the CUSMA, CPTPP, and CETA agreements, identifies several key areas of concern within CUSMA. We encourage readers to review the [report in its entirety](#).

## 6. Conclusion

As part of this consultation, Global Affairs Canada is inviting Canadians to provide their perspectives on the challenges and opportunities brought about by CUSMA.

In this submission, the CDCE has highlighted various factors illustrating the imbalance faced by Canadian creators and cultural businesses compared to their U.S. counterparts, particularly concerning the consumption of cultural content online and the need to uphold a strong, broad cultural exemption.

Additional issues were raised by CDCE members; however, due to time constraints, the analyses needed to build a consensus on potential solutions among our extensive membership were not fully completed. These issues include measures related to national treatment that pose particular challenges for neighboring rights holders of sound recordings.

We emphasize that this consultation marks an initial step for us, and we hope it will be an opportunity to begin a constructive dialogue with Global Affairs Canada. Our goal is to carry out **further targeted analyses in the short and medium term to clarify or strengthen key elements where necessary.**