



The Interactive & Digital Media Industry  
Association of British Columbia

## Submission to the Labour Relations Code Review Panel

March 20, 2018

Formed in 1997 as New Media B.C., and now in our 20th year, **DigiBC** is the **Interactive and Digital Media Trade Industry Association of British Columbia**. We support companies falling into three verticals. The first is Interactive Digital Media (IDM) which includes Video Games, Augmented Reality (AR), Virtual Reality (VR), and Mixed Reality (MR). The second is Animation and Visual Effects (VFX), and the third is Digital Marketing sectors in the Province.

In 2017, DigiBC members created innovative products and services in video games across all Interactive Digital Media platforms (including Augmented Reality, Virtual Reality and Mixed Reality sectors), Animation and VFX, and Digital Marketing sectors. Member companies include home-grown B.C. success stories such as *Finger Food Studios*, *Next Level Games*, and *Atomic Cartoons* as well as industry-leading, multinational companies such as, *Electronic Arts*, *Microsoft*, and *Animal Logic*. All members are part of a vibrant, valuable ecosystem that supports companies of all sizes, from small startups to those employing thousands within the Province.

DigiBC wishes to thank the Panel for the opportunity to provide written submissions. We look forward to outcomes that deliver fair laws for workers and employers, ensuring continued growth in the IDM and Animation & VFX sectors for the short and long-term benefit and prosperity of the Province.

### **Overview of the Industry**

The global video games industry now generates more revenue than both the movie and the music industry combined, with more than 2.2 billion gamers expected to generate over \$108.9B in game revenues in 2017.

Importantly, a successful game employs a large team of engineers, artists, producers, project managers, business analysts, marketers, community managers and customer support professionals, and provides robust, ongoing economic value to the jurisdiction in which it is located.

## Benefits of the IDM Sector for the B.C. Economy

The benefits of having a robust and sustainable IDM and Animation & VFX sector in the Province include:

1. IDM contributes significant economic value;
2. IDM provides significant well-paid, permanent employment opportunities across a uniquely broad spectrum of roles spanning both creative arts and technology;
3. IDM companies fuel a broader technology and innovation ecosystem;
4. IDM is appealing to youth and inspires young people to pursue STEM-based careers (also sometimes referred to as STEAM);
5. IDM clusters are located throughout the Province.

## Economic Value and Permanent Employment Opportunities

The IDM and Animation & VFX sector is a clean, knowledge-based industry that employs a predominantly youthful workforce. The average age of employees in the sector is 31 years old. Our employees have an exceptionally broad spectrum of technological and creative skillsets and are paid very well compared with other industries. For example, the average full-time salary in B.C. for video game company employees in 2016 was estimated to be \$87,810, which was almost twice the B.C.-wide average salary of \$46,075.

Careers in the IDM and Animation & VFX sector also dispel any myth that ‘art’ and ‘well-paid career’ are incompatible. There is a wide array of career choices for artists, writers, musicians and designers across the IDM and Animation & VFX sector where multi-talented art and tech professionals work together to deliver the stunning products and services that our industry is known for.

The IDM and Animation & VFX sector is part of the broader technology industry in B.C. which is made up of over 1,150 companies, that employ over 16,500 people in predominantly full-time, family supporting jobs. In fact, based on a recent study undertaken by the Vancouver Economic Commission, it was found that “[i]n Vancouver, over 60 studios make up the VFX and Animation industry, comprising the world’s largest cluster of domestic and foreign-owned studios.”<sup>1</sup>

At the end of 2017, if the IDM and Animation & VFX sector continued to grow at the 2016 growth rate of 3%, we estimate over 6,000 full time equivalent jobs will exist in the Province just in Interactive Digital Media. If the VFX and Animation industries are included that number of full time equivalent jobs more than doubles. The total impact to the Province of just the Interactive Digital Media jobs alone in 2017 is estimated as follows:

- Total annual B.C. GDP = \$1,080M
- B.C. taxes generated annually = \$77M

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<sup>1</sup> Vancouver Economic Commission, *The word is out that Vancouver is the place to be for VFX & Animation* (Vancouver: Vancouver Economic Commission, Digital Entertainment & Interactive, VFX & Animation), online: <http://www.vancouvereconomic.com/vfx-animation/>, (accessed March 19, 2018).

- 12,000 total FTE jobs (including direct and induced)

### Fueling a broader technology and innovation ecosystem

A strong IDM and Animation & VFX sector underpins a broader technology and innovation ecosystem. This is because interactive entertainment represents a massive global market opportunity in its own right, but also because many of the skills at the heart of innovative technology companies are developed within a vibrant IDM and Animation & VFX sector.

Companies in the IDM and Animation & VFX sector also serve as a breeding ground for new, innovative companies in the wider technology industry. These companies collectively already boast over 500 new jobs. In total, we estimate that at least 20 companies and 700 new jobs have been created in the last five years in B.C. directly by video game company alumni starting new companies in the broader technology sector.

### Appeal to Youth and Interest in STEM

The IDM and Animation & VFX sector also represents one of the most accessible faces of technology to the broader population. The natural ‘curb appeal’ of video games continues to motivate many young people to consider careers in technology.

The talent pool, skills and expertise that have been established here in B.C. thanks to our strong history of video game development are now of particular relevance in the rapidly emerging era of virtual reality, augmented reality and mixed reality technology and platforms.

B.C. is well-positioned to be a leader in this next generation of computing and to breed the cultural technologists locally as described above.

### IDM and Animation & VFX clusters are located throughout the Province

The IDM and Animation & VFX sector has strong foundations in Vancouver and Burnaby and is expanding throughout the Province in places such as Port Coquitlam, Victoria, Kelowna, Parksville and Nelson. The mobile nature of the business ensures that there is opportunity for the IDM and Animation & VFX sector to spread to and cover every part of the Province.

### IDM and Animation & VFX Sector – Lack of Union Representation - By Choice

It is important to understand the unique nature of the IDM and Animation & VFX sector. This is reflected in how workers engage with individual companies. Workers have significant flexibility in choosing not only where they work but how they work. They will frequently move from one employer to another and will often demand non-traditional types of working engagements like remote work or unusual working hours. Workers are looking for arrangements that fit with their own individual needs. Employers in the IDM and Animation & VFX sector must compete for

workers in this highly competitive environment. The result has been an industry that typically has excellent working conditions and high paying roles.

The lack of any meaningful presence by trade unions in the IDM and Animation & VFX sector (and the broader technology sector) is a deliberate choice by those workers and is not the result of a lack of access to representation or a dated Labour Code. The excellent working conditions, the high paying nature of the roles and the demand for a variety of non-traditional engagement models has simply meant that workers have chosen not to bargain collectively. It would be wrong to make assumptions or draw other conclusions based simply on the lack of a meaningful trade union presence in the sector.

### IDM and Animation & VFX Sector – Highly Mobile and Sought After Businesses

Unlike most other sectors driving the B.C. economy, businesses in the IDM and Animation & VFX sector are highly mobile. Companies are highly sought after by governments in other Provinces and in other countries. Those jurisdictions have and continue to attempt to lure away employers by offering significant incentives like tax credits and similar measures. Ensuring we retain a competitive business environment in B.C. is paramount to not only the continued growth of the sector, but to simply retaining what we have created over the past 35 years.

### Our Submission

This submission, while respecting the protected right to collective bargaining, directs consideration towards the importance of the IDM and Animation & VFX sector and the potential effects proposed changes to B.C.'s Labour laws may have on this vital part of the new and growing economy. In particular, we wish to share our perspective on the following two topic areas which we believe are likely to be raised by many stakeholders during the Panel's review.

1. Preserving the secret ballot process for certification
2. Sectoral Bargaining

#### **1. Preserving the secret ballot process for certification**

DigiBC believes the secret ballot process for certification should be maintained in B.C. and argues against any proposal to implement card-based certification. The secret ballot process protects the ability of workers to make informed, self-interested decisions, that are free from confrontation and pressure.<sup>2</sup>

A move towards a card-based certification process shifts the balance of power unfairly in the favour of union organizers.<sup>3</sup> The interests of employers and workers in B.C. will be impacted by a

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<sup>2</sup> Canadian Chamber of Commerce, *Proposed Policy Resolutions Annual General Meeting*, (Fredericton, New Brunswick: Canadian Chamber of Commerce, 2017). Chapter 31, at 53-54 [*Policy Resolutions*]; Ontario Ministry of Labour, *Changing Workplaces Review Summary Report*, (Toronto: Ontario Ministry of Labour, 2017). Chapter 11.2, at 322 [*Ontario Report*].

<sup>3</sup> Policy Resolutions, *supra*, note 1 at 54.

process that is vulnerable to abuse, misinformation and intimidation all of which undermine the ability of workers to express their true opinions in a legitimate and democratic form.<sup>4</sup> We discuss some of these concerns further below.

The secret ballot voting system is critical in allowing workers to obtain the information they need regarding the benefits and costs of union representation and affords them the privacy to confidentially express their preferences on whether they wish to be represented by a union.<sup>5</sup>

### Certification based on Misinformation and Undue Pressure

A card-based certification process will not always reflect the preference of workers regarding union representation. It opens the door for certification based on misinformation and undue pressure from unions or employees who are union supporters.<sup>6</sup> Under a card-based certification model, the union is often the only source of information for workers during the campaign and this denies workers the opportunity to have access to a full range of information, free from bias regarding the effects of certification. This one-sided method ultimately prevents workers from making balanced and informed decisions in relation to their vote.<sup>7</sup> Workers may sign union cards without being properly advised of the implications of that signature; for example, a worker may believe that they will still have the right to educate themselves and decide whether to cast a ballot for or against unionization when in fact the signature constitutes their vote.<sup>8</sup>

By contrast, the current secret ballot voting system discourages unions from taking advantage of inappropriate or biased methods of organizing and using misinformation to secure the support of workers.<sup>9</sup> It allows employees to vote their conscience – whether in favour of unionization or not – in a method which protects the privacy of their choice.

### Intimidation, Undue Influence and the Confrontational Nature of Card-Based Certification

A secret ballot also ensures workers have the ability to make a clear decision privately, without fear of intimidation.<sup>10</sup> A card-based process, on the other hand, introduces the real risk of pressure tactics and confrontation. This is true even when workers are well informed. The use of pressure tactics by unions (or even co-workers) may cause workers to sign union cards under undue influence and contrary to their own wishes. Without a secret ballot vote there is no opportunity for workers to express those wishes free from that influence.<sup>11</sup>

A card-based certification system also has the potential to create hostilities between co-workers within a company. The pressure from union supporters on their co-workers to sign union membership cards, without those co-workers later having the option to make a truly private choice, creates potential conflicts between co-workers who must continue to work together after the

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<sup>4</sup> *Ibid.*

<sup>5</sup> Policy Resolutions, *supra*, note 2 at 54.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

certification campaign commences.<sup>12</sup> In the IDM and Animation & VFX sector, the work is by necessity complex and collaborative. This type of needless animosity would be devastating to the entire game making process. By contrast, a secret ballot vote is conducted in a neutral environment by the Board which means the process is less vulnerable to abuse, fraud and intimidation from union organizers.<sup>13</sup>

In other forums, supporters of a card-based certification have argued that the ability of employers to communicate with workers during the certification campaign leaves workers subject to intimidation by an abuse of employer power.<sup>14</sup> They assert that employers might threaten a worker's job security, wages, or the alteration of any number of conditions of employment if a union campaign is successful.<sup>15</sup> We believe that in those instances there are adequate remedies under the existing Code and these already protect against such unfair labour practices.<sup>16</sup> However, if there is evidence that this type of abuse exists and it is not being adequately addressed in the current Code, there is a more effective way for the Panel to deal with it. Rather than eliminating the democratic secret ballot process for all workers, we believe the Panel would be better served by simply looking at changes in the Code that bolster the remedies available to the Board in those limited circumstances where employers have acted improperly.<sup>17</sup>

### Inconsistency with democratic norms

The legitimacy and credibility of the certification process are important factors in upholding the public's trust and confidence in the union certification process.<sup>18</sup> Replacing the current secret ballot voting system with a card-based certification model is inconsistent and with the norms for electoral processes in Canada.<sup>19</sup>

In sum, our first submission is that the Panel should reject any suggestion that B.C. move away from a secret ballot certification process. This process is essential in providing for an environment where workers can decide whether to be represented by a trade union free from, misinformation, undue influence or threats. Card-based certification unnecessarily subjects workers to direct potential pressure from co-workers and unions. Whereas, secret ballot voting safeguards workers from intimidation or pressure from union organizers, co-workers and even employers alike and helps ensure that their true preferences are represented.<sup>20</sup>

## **2. Sectoral Bargaining**

DigiBC anticipates that the Panel will hear submissions urging it to consider some type of industry based or sector-based bargaining ("Sectoral Bargaining"). While this type of bargaining may be appropriate and useful in some industries, it is our view that it is impractical and inappropriate in

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<sup>12</sup> *Ibid.*

<sup>13</sup> Policy Resolutions, *supra*, note 2 at 54.

<sup>14</sup> Ontario Report, *supra* note 2 at 321.

<sup>15</sup> *Ibid.*

<sup>16</sup> Labour Relations Code [RSBC 1996] c. 244, s.6.

<sup>17</sup> Ontario Report, *supra* note 2 at 321.

<sup>18</sup> *Ibid.*, at 324.

<sup>19</sup> Policy Resolutions, *supra*, note 2 at 53.

<sup>20</sup> *Ibid.*, at 54.

the IDM and Animation & VFX sector and in fact inappropriate for the entire technology sector in the Province. We discuss our position further below.

### Lack of Collective Bargaining History

There are a limited number of examples of compulsory multi-employer Sectoral Bargaining that exist in Canada (such as in the construction industry or the film industry). Those limited examples demonstrate that there are many unique requirements that must exist for it to be successful. Key among those is the presence of an established history of collective bargaining.<sup>21</sup> It is simply not feasible to force employers in sectors with no meaningful prior collective bargaining history into a highly sophisticated multi-employer, multi-union collective bargaining regime. In other words, before mandating employers to bargain together, collective bargaining has to begin with individual employers.<sup>22</sup> An incremental, evolutionary approach is more likely to be successful than an imposed multi-employer model that has no foundational support.<sup>23</sup>

We note that no jurisdiction in Canada has imposed any form of mandatory multi-employer collective bargaining on employers in a sector that did not already have a meaningful history of collective bargaining.<sup>24</sup> The absence of established collective bargaining in the IDM and Animation & VFX sector would make it inappropriate for the Panel to consider it here.

### Lack of Common Interest in IDM and Animation & VFX Sector

Sectoral Bargaining was previously discussed in B.C. in the form of the “Baigent-Ready model” in 1992. Under this model, it was proposed that sectors could be defined by geographic areas, such as a neighborhood, city, metropolitan area or province, that contained similar enterprises with employees performing similar work.<sup>25</sup> It is of note that the model was never accepted and that is true even though the economic circumstances for such a model were more favourable in 1992 than they are today. Today the economy is far more diverse and new industries such as the IDM and Animation & VFX sector and the wider technology sector offer a very different landscape. The diverse nature of employers who make up the IDM and Animation & VFX sector mean there is very little common interest among employers and that is a necessary pre-condition to any consideration of multi-employer bargaining.<sup>26</sup>

### Following recommendations in Ontario

The impracticalities of Sectoral Bargaining, were discussed and summarized in the recommendations of the *Changing Workplaces Review Final Report*<sup>27</sup> in Ontario, which proposed amendments to Ontario’s Labour Laws in 2017 (the “Ontario Report”). The recommendations from the Ontario Report rejected the model for many of the reasons we have already discussed

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<sup>21</sup> Ontario Report, *supra* note 2 at 355-356.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Ontario Report, *supra* note 2 at 356.

<sup>27</sup> Ontario Report, *supra* note 2.

above. We share their view and suggest there exists nothing unique in B.C.'s economy, or the IDM and Animation & VFX sector in particular, that would make it appropriate here.

### Uncertainty and Disruption

Any scenario which forces a diverse group of employers with no established history of collective bargaining into Sectoral Bargaining is likely to be chaotic and highly disruptive. The transition process would be fraught with massive uncertainty.<sup>28</sup> There is a significant potential for that process to destabilize what is currently a growing and important part of B.C.'s new economy.

In sum, it is our view that the necessary requirements for Sectoral Bargaining simply do not exist in the IDM and Animation & VFX sector or the wider technology sector in this Province. As noted above, the IDM and Animation & VFX sector is made up of a very diverse group of employers which includes small startups, multi-national companies and everything in between. These employers have no established history of collective bargaining.<sup>29</sup> To simply assume that in these circumstances they could be forced into a multi-employer, multi-union collective bargaining regime is inappropriate.

### Summary

Nurturing the continued growth of the IDM and Animation & VFX sector is critical for both the short and long-term benefit and prosperity of the B.C. economy. The IDM and Animation & VFX sector provides a work environment characterized by high paying jobs, excellent working conditions and significant flexibility for workers. This environment reflects the demands of workers in the new economy. In this new reality, workers have simply chosen not to be represented by trade unions. That choice is not the result of a lack of access nor outdated legislation but rather a decision the workers have made based on their unique reality. That choice should be respected as it would have been if they had chosen differently. We urge the Panel not to come to the process with pre-conceived notions about access or representation.

Again, we are grateful for the opportunity to participate in this process and look forward to the Panel's recommendations in August.

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<sup>28</sup> *Ibid* at 355-356.

<sup>29</sup> *Ibid*.