



April 15, 2009

Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Submitted via E-Pass

Dear Mr. Morin,

**Re: Broadcasting Notice of Consultation CRTC 2009-132 – Canadian Broadcasting Corporation called to a hearing**

1. The Writers Guild of Canada (the WGC) is the national association representing 2000 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in maintaining a strong and vibrant Canadian broadcasting system containing high quality Canadian programming.
2. The WGC is very concerned about the pattern of broadcaster behaviour that this hearing demonstrates. While we are specifically concerned with CBC's actions in reformatting Country Canada into bold without applying to amend the channel's nature of service, we are equally concerned about what appears to be broadcasters' repeated disregard of the licensing process, the policy of genre exclusivity and the authority of the CRTC.
3. The WGC would like to appear at the public hearing to expand on its comments and answer any questions that the Commission might have.
4. In the Notice of Consultation CRTC 2009-132, the Commission set out the history of the specialty service originally called Land and Sea and owned by Corus Entertainment Inc. and the CBC when it was licensed in 2000. The key part of the nature of service which is a condition of licence is:

“The licensee shall provide a national English-language Category 1 specialty television service for rural Canadian families, with a focus on

adults 25-54. The service will provide information, interaction and entertainment from a rural perspective.”

5. Control of the service, whose name was changed to Country Canada, was transferred fully to the CBC in 2002. In 2007 the CBC met with the Commission to discuss changing the nature of service of Country Canada without having to apply for an amendment to its condition of licence. The Commission made it clear at that time that any departure from the nature of service would require an amendment to the service’s condition of licence. Then the CBC went ahead without Commission approval. They relaunched Country Canada as bold on March 27, 2008 as a service that is ‘home to the best performing arts, intelligent drama and daring comedy’.
6. bold makes no attempt to disguise itself or wrap itself in its old nature of service. While CBC staff attempted to justify to the CRTC the change in programming as consistent with the nature of service and ‘of value to Canadians, particularly rural Canadians’, the service’s website says plainly “bold, which replaces CBC Country Canada, is home to the world’s best performing arts, intelligent drama and daring comedy.” There is no attempt to frame the programming as being from a ‘rural perspective’ or about rural living. In fact, there appear to be two primary strands of programming, neither of which is about the rural experience. The first is performing arts programming: “The Metropolitan Opera Series”, “Opera Easy”, “Cirque du Soleil presents”, “Solos the Jazz Sessions” etc.. The second strand is repeats of CBC series: “This is Wonderland”, “The Tudors”, “Da Vinci’s City Hall”, “CBC Winnipeg Comedy Festival”, “Dr. Who” etc..
7. This is a far cry from how the original Country Canada was promoted. In a free preview promotion from 2003 it is described as follows:

“CBC Country Canada connects Canadians with regional news stories, issues and current affairs that reach beyond the big city limits. Their programming is as diverse as our nation. And there's something for everyone - documentaries, Saturday night commercial-free movies, gardening and lifestyle shows, sporting events, live call-in shows and specials.”

What was important at that time was that a substantial proportion of the schedule was live programming such as the “Cross Country Checkup” call-in show. The service was proud that the majority of live programming originated outside the urban centres, from places like St. John’s and Winnipeg.

8. At a time when conventional broadcasters are moving away from local stations and local programming because they say that they cannot afford to continue those services, Canadians should be able to at least turn to their public broadcaster, the broadcaster that they pay for with their tax dollars, to provide them with rural and regional programming. In particular, when the channel has been licensed as one to service rural Canadian families, those families must be able to rely on that channel to provide them with programming specific to their perspective.

9. The WGC does not object to bold or its programming strategies per se. In fact, we welcome a channel that focuses on performing arts and CBC dramas. The WGC has not been happy to see performing arts disappear from the CBC schedule and it would under other circumstances welcome a digital channel from the CBC dedicated to performing arts, particularly Canadian performing arts. We also understand why the CBC might want a service to give the public more opportunities to view CBC dramas and to amortize the costs of licensing those dramas. This is the business model used by the private broadcasters who all have secondary conventional networks and specialty services which can take advantage of programming synergies. It is part of the CBC's mandate under the *Broadcasting Act* to provide 'a wide range of programming that informs, enlightens and entertains'<sup>1</sup> and that includes performing arts and drama. However, that mandate also includes offering programming that "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions" and this is what Land and Sea/Country Canada was licensed to do. Regional and rural programming is in no way the same as performing arts. It is insulting to those living in the regions to say that providing rural Canadians with access to performing arts is providing a service from a rural perspective.
10. The WGC supports the CRTC's decision that the CBC could not morph Country Canada into bold without an amendment to the condition of licence. We suspect that if the CBC had applied for such an amendment then the CRTC would have held a public hearing and called for comments on the application. It is likely that Canadians would have objected to losing Country Canada, particularly at a time when they are losing local stations across the country. The CBC appears to have decided to not risk public opposition to the amendment but to ignore the process including the CRTC's explicit instructions, and rebrand the service. The other option would have been to apply for a new service and that is still possible. While we understand that the CBC has limited funds that does not entitle them to bypass the licensing process.
11. The CBC is acting as if it does not need to listen to the CRTC or follow its regulations. The WGC has repeatedly called on Parliament to provide the CRTC with the power to impose financial and other penalties for non-compliance and will continue to do so. The CBC's disregard of the CRTC is yet another example of a regulated entity flouting regulation. The CRTC has few tools in its arsenal to enforce the *Broadcasting Act* and its regulations. It can, as it did recently with Shaw Communications as a result of repeated violation of regulations<sup>2</sup>, renew a BDU or a broadcaster for a short term when its licence comes up for renewal. Another option is a mandatory order to conform to conditions of licence, which is the solution that the CRTC is pursuing here after a year and a half of correspondence with the CBC.

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<sup>1</sup> S. 3(1)(l) of the Broadcasting Act

<sup>2</sup> Broadcasting Decision CRTC 2008-234

12. The WGC has some experience with lengthy delays caused by broadcasters trying to avoid complying with their conditions of licence as it took several years of correspondence between the WGC, CRTC and History Television before History Television accepted the determination that “CSI: New York” did not fit its nature of service. Broadcasters and BDUs know that the CRTC does not have effective means at its disposal to enforce the regulations. The result is that too often they chose to disregard the CRTC or postpone compliance until they absolutely had to. This undermines the integrity of the entire Canadian broadcasting system.
13. What we are also seeing here is a pattern of non-compliance with the concept of genre exclusivity. During the BDU/Discretionary services hearing some broadcasters requested flexibility on nature of service or elimination of genre exclusivity altogether. However, the Commission determined<sup>3</sup> that it was not in the interests of diversity of voices to grant those requests. Diversity of voices is necessary because it ‘provides viewers with a wide range of Canadian programming choices’ and ‘ensures the maximum contribution to the creation of Canadian programming’. These are two pillars of the *Broadcasting Act*.
14. Further, the Commission determined that it could simplify the rules governing genre exclusivity by relying on the nature of service narrative descriptions in order to preserve diversity of programming “where the narrative description is sufficient to ensure that the service will not be directly competitive with any other Category A service and will remain true to its genre”.
15. The WGC was heartened by the Commission’s restatement of the principles behind genre exclusivity, as genre exclusivity is essential to diversity of programming voices. Without it, broadcasters are likely to choose lowest cost programming of any genre and run the risk of their specialty services becoming merely rebroadcasters of network television. Services would become indistinguishable from each other. However, despite the Commission’s affirmation of the importance of genre exclusivity, broadcasters have been repeatedly either flaunting the rules or attempting to stretch them beyond recognition and in fact programming schedules are sadly becoming hard to distinguish. For example, last week the WGC intervened in the application by Rogers Broadcasting Limited to amend the conditions of licence of Outdoor Life Network to allow it to broadcast repeat U.S. dramas like “Lost”, sitcoms, cartoon and stand up comedy programs. As we stated in our intervention, these amendments to the conditions of licence are unlikely to be consistent with Outdoor Life Network’s nature of service as an outdoor adventure channel. This is another attempt by a broadcaster to reduce costs and increase profits by buying cheap U.S. programming regardless of whether it fit its nature of service.
16. We could point the Commission to many more examples of broadcasters stretching or ignoring the narrative description of their nature of service but given the WGC’s limited resources as a non-profit organization it just cannot keep up

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<sup>3</sup> Broadcasting Public Notice CRTC 2008-100 Paragraph 250

with the broadcasters repeated contraventions of their conditions of licence. The Commission must have the ability to fine and penalize broadcasters for infringing their conditions of licence. Without that, we have fallen into an environment of disrespect for the process and for the *Broadcasting Act*.

17. The WGC encourages the Commission to stand firm in its position that the programming strategy for bold is inconsistent with the original conditions of licence. The Commission should issue a mandatory order requiring immediate compliance with the regulations and resumption of programming consistent with the service's nature of service definition. Should the CBC wish to offer a service providing Canadians with performing arts and repeat CBC dramas it should apply for a new licence.

18. We thank you for this opportunity to provide you with our comments.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, cursive script.

Maureen Parker  
Executive Director

c.c.: Rebecca Schechter, President, WGC  
Kelly Lynne Ashton, Director of Policy, WGC  
Bev Kirshenblatt, Senior Director, Regulatory Affairs, CBC

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