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Coalition of Canadian Audio-visual Unions

Viewing and expenditure incentives for English-language Canadian television drama – Call for Comments

Submission of the Coalition of Canadian Audio-visual Unions (CCAU) to the CRTC re Broadcasting Public Notice CRTC 2005-81

October 25, 2005

A. Introduction

1. This is the submission of the Coalition of Canadian Audio-visual Unions (CCAU) with respect to the CRTC's call for comments on proposed viewing and expenditure incentives for English-language Canadian television drama set out in Broadcasting Public Notice CRTC 2005-81 (the "Public Notice").
2. The CCAU is a coalition of ten Canadian audio-visual unions. The members of the CCAU include the following organizations that financed the preparation of this submission: the Alliance of Canadian Cinema Television and Radio Artists ("ACTRA"), the Directors Guild of Canada ("DGC"), the National Association of Broadcast Employees and Technicians, Local 700 CEP ("NABET"), and the Writers Guild of Canada ("WGC"). The other members of the CCAU are the American Federation of Musicians – Canada ("AFM-Canada"), Union des artistes ("UdA"), the Communications, Energy and Paperworkers Union of Canada ("CEP"), Association des réalisateurs et réalisatrices du Québec ("ARRQ"), Syndicat des techniciennes et techniciens du cinéma et de la vidéo du Québec ("STCVQ"), and Société des auteurs de radio, télévision et cinéma ("SARTEC").
3. This submission focuses only on English-language Canadian drama and the proposals set out in the Public Notice. We do not comment here on issues relating to French-language drama, other than to note that the environment for French-language drama in Canada is entirely different and calls for different approaches. Accordingly, references to "Canadian drama" in this submission relate only to English-language Canadian drama unless otherwise specified.



4. The CCAU is keenly interested in the presence a broad range of high quality Canadian dramatic programming within our broadcasting system. To that end, we have taken an active role in CRTC proceedings relating to Canadian drama. Specifically, the CCAU filed a comprehensive brief with Ms. Trina McQueen in late 2002 within the context of her review of the state of English-language drama in Canada for the Commission and Canada. An updated version of that brief was made public in March 2003. The CCAU also filed a detailed submission with the CRTC on November 28, 2003 in response to the Commission's call for comments on mechanisms to support Canadian dramatic productions set out in Public Notice CRTC 2003-54, as well as a submission dated June 4, 2004 relating to the incentives set out in Public Notice CRTC 2004-32.
5. Most recently, the CCAU released a major report on the future of Canadian television drama on June 13, 2005, in Banff. That report was entitled "The Need for a Regulatory Safety Net: Broadcasting Policy and Canadian Television Drama in English Canada in the Next Five Years." A copy of the report is attached as Schedule 1.
6. As will be seen in that report, the CCAU strongly objects to the notion that the crisis in Canadian drama production can be addressed solely by incentives. The CRTC has a broad tool kit of regulatory powers to address this crisis. The airing of Canadian drama must be seen as a fundamental obligation of all free-to-air television broadcasters, and not simply something that they should be lured into doing. Regulation is by far the most effective tool to achieve results and the CCAU will continue to press vigorously in this connection.
7. That being said, the CCAU does not necessarily oppose incentives as such. In our earlier submissions, we have expressed support for a balanced package of measures that includes incentives as well as regulatory requirements. Provided that they supplement and do not replace clear regulatory requirements, the Commission's proposed package of incentives set out in the Public Notice may be able to play a useful role.
8. However, the adoption of incentives of this kind should not be seen as representing any kind of total solution to the crisis in Canadian drama problem. The crisis can only be properly addressed by a combination of regulatory measures and incentives. To the extent that the CRTC focuses on incentives at this time, therefore, *they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians.*
9. These regulatory requirements, *which should be imposed no later than the time of the next regulatory review of the conventional TV licences*, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama. More specifics on these requirements are provided in the report attached in Schedule 1.



10. Within that context, the following are the CCAU's comments regarding the Public Notice.

B. Executive Summary

11. The following is a summary of the CCAU's recommendations set out in this submission.

- (a) To the extent that the CRTC focuses on incentives, they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.
- (b) The CCAU supports the Commission's development of separate viewing targets for conventional and specialty television services. Although there are some caveats that need to be noted, we consider that the Commission's annual targets constitute a useful and achievable objective for each station group.
- (c) It would also be useful for the CRTC to provide supplementary trending information on the viewing levels for Canadian drama for each station group, both on an absolute basis, and as a proportion of total viewing for the station group. This would give observers a much better sense of whether progress is being made. Therefore the CCAU strongly recommends that the Commission publish trending numbers of this kind in its annual *Broadcasting Policy Monitoring Report*.
- (d) The CCAU also supports the Commission's proposed incentive for increasing expenditures by private TV stations on Canadian drama, and in particular the Commission's proposal to set an expenditures benchmark of 6% of conventional broadcasters' gross revenues on Canadian drama as a trigger for additional advertising minutes to be made available. However, it is the CCAU's view that the 6% benchmark should be increased over time to 7% and that this should be imposed as an expenditure requirement at the next licence review hearings.

C. Proposed incentives to increase viewing to English-language Canadian drama

12. In the Public Notice, the Commission has proposed some modifications to the viewing incentive outlined in Public Notice 2004-93. In its original proposal, The Commission had proposed that television stations (both conventional and specialty services) within a particular broadcast group would be eligible to receive bonus advertising minutes if the whole group increases the percentage of viewing to Canadian drama across all of the stations in the group to the percentage of viewing to all drama aired by the services in the group.



13. In the Public Notice, the Commission has proposed to modify this by having a common objective apply to private English-language conventional TV stations only. Specialty services would be dealt with separately. As stated by the Commission:

12. In order to obtain the annual incentive, the conventional television services within an ownership group, collectively, would be required to attain an overall increase in the ratio of viewing to English-language Canadian drama, as a percentage of viewing to all drama broadcast by the stations that meets or exceeds the target set by the Commission. The required annual increase would represent one-fifth of the difference between the industry objective and the overall level achieved by the stations in 2003/04. Under this proposal, all of the ownership groups would have the same objective. In order to earn the incentive, those ownership groups whose English-language conventional television stations achieved levels of viewing to Canadian drama in 2003/04 that were lower than the levels attained by other such groups would be required to obtain larger annual increments in the overall level of viewing to Canadian drama.

13. As a common industry objective, the Commission considers that it is reasonable to expect private, English-language conventional television services, over a five-year period, to increase the hours of viewing that they attract to English-language Canadian drama to 16.5% of viewing to all drama broadcast by these services. An increase to 16.5% would equate to an approximate 80% increase over the current industry average of 9.2%. Such an increase of 80% also equates to the objective of 6% set by the Commission in Public Notice 2004-32 with respect to increases in expenditures by these broadcasters on Canadian drama, relative to the current industry average of 3.3%.

14. Using the 16.5% industry objective, the following would be the annual viewing targets for the three largest groups:

Broadcast year	CTV	CHUM	Global
2003/04 (base year)	10.5%	9.1%	8.4%
2004/05	11.7%	10.6%	10.0%
2005/06	12.9%	12.1%	11.6%
2006/07	14.1%	13.5%	13.3%
2007/08	15.3%	15.0%	14.9%
2008/09	16.5%	16.5%	16.5%

14. In regard to English-language specialty services, the Commission has proposed that they be dealt with on an individual basis.

15. In general, the CCAU fully supports the above approach, as representing a useful; and achievable target for each station group. The CCAU particularly supports the idea that conventional TV stations be treated separately from the specialty services.

16. At the same time, the CCAU feels it appropriate to express two cautionary notes. The first relates to the fact that the denominator is not “all viewing” but only “viewing to all drama programs.” This means that the use by the Commission of the “viewing to all drama” denominator would allow a



broadcaster wishing to increase its “score” for a given amount of Canadian drama viewing to achieve this by simply dropping a U.S. dramatic series and substituting it with any other type of U.S. programming such as a reality series¹. By decreasing the denominator in this way, the broadcaster could inflate its “score” for Canadian dramatic programming. This is a somewhat perverse result.

17. The opposite is also true. If a TV station were to replace a U.S. reality program (or any other type of non-drama program) with a U.S. dramatic series, the denominator would increase. As a result of this, the broadcaster’s Canadian “score” would automatically drop, even though the ratings for its Canadian drama stayed the same. Thus, a broadcaster’s viewing to Canadian programming could vary over the course of a particular period of time simply by changing the broadcaster’s denominator (e.g. dropping and picking-up more U.S. drama, as mentioned), and not by improving the broadcaster’s viewing to Canadian dramatic programs in the least.
18. Given the possibility that results might be affected by such exogenous factors, it would be useful for the CRTC to provide supplementary trending information on the viewing levels for Canadian drama for each station group, both on an absolute basis, and as a proportion of total viewing for the station group. This would give observers a much better sense of whether progress is being made. Therefore the CCAU strongly recommends that the Commission publish trending numbers of this kind in its annual *Broadcasting Policy Monitoring Report*. If this information cannot be made available, we recommend that the Commission adopt the “all viewing denominator” to avoid the significant issue discussed above.
19. In that context, the CCAU also fully supports the use by the CRTC of metered viewing data over the whole year, instead of sweep weeks data. The latter data always understated the real viewing for Canadian drama in a typical week because stations tended to focus on heavily promoted U.S. stunt programming in sweep weeks and to relegate their Canadian series to other weeks. Providing metered data for the whole year will give a much more accurate picture, although Canadian drama will still suffer to the extent it is scheduled in off-peak viewing times.
20. The second cautionary note is that drama ratings are inherently unpredictable and are driven by many factors outside a broadcasters’ control. This is part of the risk/reward characteristic of popular cultural products. The U.S. TV business is littered with drama and comedy series that were heavily promoted and were scheduled in prime time but which failed to garner an audience.
21. To maximize the audience potential for Canadian drama (and realizing that success can never be assured), we need more investment, better promotion and better time slots during the regular season. And even more important, we need more financial support for script and concept development.

¹In making this point, it should be understood that this impact has nothing to do with the comparative viewing for a typical U.S. reality series vs. a typical U.S. drama series. Rather, it is simply the result of the U.S. drama viewing denominator being reduced by whatever viewing was attributable to the U.S. drama series that was dropped in favour of the non-drama program. The result is that the station group’s “score” under the CRTC’s methodology would automatically rise, even though viewing to Canadian drama over the period had not changed.



- 22. In that connection, the CCAU report attached as Schedule 1 contains disturbing information on the decline in Canadian drama expenditures by the private TV stations in English Canada. As shown at p. 27 of that report, Canadian drama spending by those stations, including spending required by benefits, dropped to only \$53.6 million last year, the lowest level in seven years.
- 23. These caveats aside, the CCAU still believes that keeping track of ratings is a very useful exercise. And since the ratings scores would be used only to determine whether “bonus” minutes are to be awarded, the caveats we have expressed are not crucial.
- 24. At the same time, the CCAU believes that it is the Canadian drama expenditure incentive where real attention should be paid, since this is a performance measure that is wholly within a broadcasters’ control, and which has been declining, not increasing.

D. Proposed incentive to increase expenditures on English-language Canadian drama

- 25. In Public Notice CRTC 2004-32, the Commission proposed an incentive is to increase expenditures on Canadian drama by the English-language conventional television industry, as a percent of total revenues from 4% to 6% over a five-year period (2004/2005 – 2009/2010). In order to be entitled to this expenditures incentive, each ownership group would be required to increase the spending by its conventional television stations on Canadian drama, as a percentage of total revenues, by 0.4 percentage points per year, or by two percentage points over a five-year period.
- 26. In the Public Notice, the Commission has modified this to propose an identical target for each station group. The targets are set forth below:

Broadcast Year	Canadian programming expenditures as a percentage of gross revenues
2004/05	3.9%
2005/06	4.4%
2006/07	4.9%
2007/08	5.5%
2008/09	6.0%

- 27. In its previous comments, the CCAU commended the Commission for establishing a steadily increasing expenditure benchmark for Canadian drama, excluding licence fee top-ups, for conventional TV in English Canada. Although the CCAU would prefer an ultimate benchmark of 7%, it considers the Commission proposal to be a useful measure to push stations to steadily increase their financial commitment to Canadian drama, and a way to monitor progress in that area. However, the end result of this process should be specific licence requirements, not just incentives.



28. The CCAU notes that at paragraph 97 of Public Notice CRTC 2004-32, the Commission stated the following with respect to its evaluation of the incentive package:

“The Commission has proposed viewing and expenditure targets to be achieved by the industry over a five-year period. Nevertheless, the Commission would evaluate the industry’s progress towards these targets on an annual basis. The results of this evaluation would be made public in the Commission’s Broadcast Policy Monitoring Report. If the annual results do not demonstrate sufficient progress towards the targets, the Commission could introduce necessary changes to its policy at any time.” [Emphasis added]

29. In that connection, we note the following statement in the Public Notice, at para.23:

“In the Commission’s view, given that the amounts expended on Canadian drama are directly within the control of the larger groups, each of the groups is capable of achieving the targets.”

The CCAU completely agrees.

30. The CCAU strongly encourages the Commission to introduce necessary changes to its policy, prior to the next conventional licence renewal hearings, if the results do not demonstrate that there has been a meaningful increase in the support for original Canadian drama within our system.
31. Time is of the essence with respect to drama. This sector cannot wait until the licence renewals of the conventional broadcasters for satisfactory support mechanisms to be implemented. Talent will leave the country or exit the industry if the crisis is not addressed immediately. If it does not appear that the broadcasters are taking advantage of the Commission incentive package and that there is not an improvement in the number of hours and dollars for Canadian drama, the Commission should, as expeditiously as possible, amend its policy.
32. In our submission to the Commission in response to Public Notice CRTC 2003-54, the CCAU proposed that the Commission require broadcasters to spend at least 7% of gross revenues on Canadian drama, not including licence fee top-ups. It is our view that at the next hearings to review the licences of the large station groups, which can occur as early as 2006, this 6% target that the Commission has established should be converted to a 7% broadcaster expenditure requirement in order to ensure sufficient funding to the Canadian drama sector into the future.
33. As the Commission has pointed out in the Public Notice, its proposal consists of an incentive package. It has not imposed additional regulatory requirements on broadcasters. While there is a potential for increased benefits to broadcasters and to the broadcasting system, broadcasters may decide not to take advantage of the Commission’s proposed incentive package and can opt out. In such a case, support to Canadian drama will not be improved and further Commission involvement will be required. The Commission, and the public, should therefore closely monitor the impact of the incentive package on drama over the next year.



E. Conclusion

34. As we have stated many times before, Canadian drama is a key element of our broadcasting system. It is imperative that measures be adopted in order to ensure that this type of programming continues to exist, develop and prosper in Canada.
35. Provided that it supplements and does not replace clear regulatory requirements, the Commission's proposed package of incentives set out in the Public Notice may be able to play a useful role.
36. However, the adoption of incentives of this kind should not be seen as representing any kind of total solution to the crisis in Canadian drama problem. The crisis can only be properly addressed by a combination of regulatory measures and incentives. To the extent that the CRTC focuses on incentives at this time, therefore, they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.
37. The CCAU, therefore, has presented what it hopes are constructive comments on the incentive package with a view to having it apply as a transition regime until the Commission can review the licences of the conventional broadcasters. At that time, a stronger regulatory regime will need to be adopted in order to ensure that broadcasters fully play their part in ensuring a strong presence for Canadian drama over the airwaves.

All of which is respectfully submitted.

THE COALITION OF CANADIAN AUDIO-VISUAL UNIONS

October 25, 2005