

Transcript of WGC/DGC Pay-TV oral presentation on new Pay-TV licence applications (NPH 2005-6) – October 27, 2005

Gail Martiri, Director of Policy, WGC

Monique Twigg, Research and Policy Manager, DGC

Intervention

Ms Twigg: Good morning, Mr. Chairman, members of the Panel, Commission staff, Ladies and Gentlemen. My name is Monique Twigg, National Research & Policy Manager of the Directors Guild of Canada. The DGC is a national labour organisation representing over 3,800 key creative and logistical personnel in the film and television industry.

Ms Martiri: Good morning. I am Gail Martiri, Director of Policy of the Writers Guild of Canada. The WGC is the national association representing more than 1,800 screenwriters working in film, television, radio and new media production in Canada. Our consultant in this proceeding, Peter Lyman, of Nordicity Group, joins us.

Ms Twigg: The WGC and DGC actively promote the continued growth of a healthy Canadian film and television industry at both the policy and professional levels.

We see this proceeding as an excellent opportunity to enhance Canadian film and TV drama programming. The challenge for the CRTC is whether to adopt a competitive model – or the “rivalrous” model as the Vice Chair has correctly termed it - and put in place the appropriate measures to make it work as anticipated, or to deny the applicants and set the stage to increase requirements on the incumbents to more fully support Canadian content.

If we look at the economics of this matter, one thing is clear - the Pay-TV sector has grown significantly over the last several years. It is now a solid contributor to

Canadian programming, and its growth has generated profits that exceed those of the conventional and specialty television universe. In 2004, the pay-TV sector as a whole reached 25% EBITDA 20% for specialty-TV services, and 11% for conventional television. Unfortunately, we weren't able to do an up-to-date profit analysis for TMN and Movie Central since we were dealing with 2-year old figures. Nevertheless, we note that EBITDA for these two pay services grew from 17.9% in 1999 to 27.2 % by 2003. We didn't have access to the 2004 figures, and we recommend that the CRTC release this data immediately.

As a result of this growth, the pay sector has recently become an essential financing partner with other broadcasters in the production of new Canadian television drama programs such as *Slings and Arrows* and *Regenesis*. Given its financial success, we believe the pay sector can afford to offer a greater choice of high quality, indigenous English-language features and drama series to audiences, whether or not the Commission opts for a competitive model in this proceeding.

This brings us to the question of competition and its impact on the Pay-TV sector.

Although we have not taken a position regarding competition, we trust that the Commission will carefully weigh the risks and benefits. While competition could drive revenue growth and thus increase spending on Canadian programming, we believe a competitive model would need regulatory conditions to protect Canadian content. This is not incompatible with the successful launch of a new service.

If the Commission opts for a competitive model, it should allow exclusivity for foreign programming to enable pay-TV providers to differentiate their services and offer consumers a meaningful choice.

Since most applicants' business plans rely on foreign content as their main attraction, a new entrant would need the opportunity to own an exclusive window

for at least some top U.S. movies if they hope to entice subscribers to switch or subscribe to two services.

Upon reviewing other submissions and the rebuttals of the applicants, we concluded that service differentiation is possible, especially if the services increase their contribution to Canadian production. Though there is a limited supply of top-rated movies in any given year, pay-tv services can make their services more attractive by offering high-quality, original Canadian drama series. We look forward to seeing the programming information the applicants have been asked to provide to see what they have in mind.

It is likely that competition will lead to bidding wars for premium U.S. content. We don't want to see a situation, where the winner is the Hollywood studios, who jack up the prices for their programming. If this occurs, the result will be severely diminished bottom lines, with consequences affecting Canadian programming.

We have seen the results of bidding wars play out in the conventional television sector, where spending on U.S. programming has exploded and, as a consequence, spending on Canadian programming has suffered. A recently published Coalition of Canadian Audio-visual Unions (CCAU) report, which was appended to our written intervention, details the specific figures.

The pay sector must avoid a replay of this scenario. Although the CPE guarantees that the pay sector will make a minimum level of investment in Canadian content, we don't want to see weakened pay-TV services coming back to the Commission for regulatory relief in future. Spotlight characterized this possibility as the nuclear winter scenario. The analogy is not quite correct – while we have never experienced a nuclear winter, we have seen the pay-TV sector's mandated contribution to Canadian content cut in the past when it ran into difficulties through competition.

Ms Martiri: Thank you Monique.

To mitigate the risks of competition, and increase support for Canadian production, we have proposed five (5) recommendations.

First, we propose that the Commission increase the rate of the CPE to at least 40%. Since all services will have to incorporate this higher domestic expenditure requirement into their business plans, they will be forced to cap the amount of money they spend on U.S. content, if they aim to meet shareholders' expectations. This higher CPE will also help ward off any decrease in real investment in Canadian productions if revenues are negatively affected by price competition or other factors.

Second, exclusivity should be permitted for indigenous programming, including movies, to stimulate Canadian production. All pay services will have to support the production of original Canadian films and series to attract audiences and fulfil their exhibition requirements. Also, there is no incentive for them to promote Canadian shows if they are on the competitor's roster.

Third, we recommend that the CRTC disallow the use of licence-fee top-ups as eligible Canadian programming expenditures for both Pay TV and Specialty broadcasters. In 2003, for example, this practice diverted \$5.8 million that could have gone to Canadian production. Eliminating the licence fee top-up will give the system more integrity, will clarify what is actually being spent, and will relieve some pressure from the Canadian Television Fund.

Fourth, the CRTC must tighten current rules for all licencees to ensure that permitted "equity investments" are truly "at risk."

Fifth, all pay-TV licencees should increase their support for script and concept development. Development financing is the research and development stage for

our industry. Like any other industry, investing in this R& D stage is the most cost effective way to increase the quality of our projects -- we need a sufficient amount of script material to make sure that a project works on the page before we spend millions to shoot it. The successful Hollywood model knows this lesson well. LA studios develop about ten scripts for each production made, with most operating at twice this level to improve their chances of getting a hit.

Although the majority of applicants have proposed fixed dollar amounts for development, we believe this is a flawed approach. By setting development expenditures as a percentage of revenues, the CRTC will ensure that this investment grows as the sector prospers. We believe that 3% of gross revenues is the right level of investment in this crucial research and development stage and propose this form part of the overall 40% CPE.

In conclusion, whether or not competition is introduced, it is our position that the financially successful pay TV sector must increase its commitment to Canadian production to provide Canadian audiences with greater choice of home-grown content. The measures we have proposed today are designed to achieve this aim.

We look to the CRTC for guidance on the issue of whether the market can support competitive Pay-TV services at this time. We also look to the Commission to uphold, in its decision, a key objective of the *Broadcasting Act*– to ensure that all broadcasters fully support Canadian films and television programs, to the best of their ability. Thank you.