



December 18, 2015

Filed Electronically

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. May-Cuconato:

Re: Broadcasting Notice of Consultation CRTC 2015-467

Call for comments on the Commission's policies relating to Certified Independent Production Funds

The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

Executive Summary

ES.1 The WGC would like to see the Canadian broadcasting system become more creator- and talent-driven, with a greater focus on creativity. This includes support for script and concept development, as one of the key opportunities for improvement in the system. The nature of development has changed significantly over the past 5-10 years, with increased pressure to develop materials before a broadcaster will financially commit to the project. This has in turn put pressure on screenwriters to work for free—something which is not sustainable and which contributes to poorer-quality programming, the withdrawal of good scripts and ideas from the Canadian system, or both. The WGC is pleased to see the Commission specifically identify this issue in the Notice of Consultation, and recommends that more Certified Independent Production Funds (CIPFs) create script and concept development funding programs. Such programs should not require a broadcaster commitment to trigger funding, should have as few barriers to access as possible, and should focus on the scriptwriting process itself.

- ES.2 The WGC believes that the Commission should either increase or maintain the 8-out-of-10 point content certification requirement. While it appreciates the recognition of the essential nature of screenwriters in the “pilot projects”, the WGC does not recommend that requirements for CIPFs be amended to allow them to access funding. There is already significant flexibility with regard to Canadian talent in the overall production sector, and a case has not been made why additional flexibility is required, particularly where public funds are at issue. Reducing point requirements reduces opportunities for talent in a sector that relies upon retaining that talent. In general, reducing point requirements does not impact all creative roles equally, with screenwriters being more likely to be non-Canadian as point requirements drop. Screenwriters are an essential foundation of the creative “voice” of most programming, and as their opportunities in Canada are reduced, pressure on them to leave Canada is increased, with a net loss to the system as a result. Any experimentation should be implemented cautiously—if the Commission does choose to make programs under the pilot projects eligible for CIPF funding, it should limit how much funding such projects may receive and/or how much total funding CIPFs can deliver under the pilot programs.
- ES.3 With respect to promotion and discoverability, screenwriters generally already participate in this process to the extent that they can and that business arrangements allow. One opportunity for additional promotion of programming is through the development of a creator “star system” in Canada, which publicizes creators and showrunners, as is currently the case in other jurisdictions.
- ES.4 Audience success should be a key goal of CIPFs, if isn’t already. However, audience success cannot be known with certainty before something is funded. Success is also a challenge to define. Further, overemphasis of audience success can be counterproductive to the extent that it inhibits risk-taking, experimentation, and/or high-quality programming that appeals to more niche audiences.
- ES.5 The WGC supports the removal of the requirement that a producer have a broadcast licence agreement to access CIPF funding. Such a move would likely allow for the creation of more online production. However, the Commission should be mindful of longer-term impacts of diverting money derived from the regulated sector into the “unregulated” sphere. This includes regulatory asymmetries and erosion of traditional broadcasters’ ability to support Canadian content. As we continue the transition into the digital world, multiple policy tools must also transition, including Canadian content obligations for over-the-top services. If the Commission decides to eliminate the broadcast licence requirement, it should consider whether new funding triggers from online platforms will be required as a form of “market validation” and, if so, whether to treat Canadian and non-Canadian triggers differently. We also submit that the 10-point certification system should apply equally to television production and online production.
- ES.6 The Commission should require CIPFs to submit specific information to the Commission, such as that set out in the Notice of Consultation, and supports the comments of the Directors Guild of Canada in this respect.
- ES.7 The Commission should continue to limit the amount of funding that may be allocated to unrelated digital media projects, but consider increasing the limit from 10% to 15%.
- ES.8 The Commission should monitor and reassess a CIPF’s certification periodically to ensure that it is operating in a manner consistent with the Commission policies and the certification criteria.

ES.9 The WGC supports the Commission’s objective of ensuring that CIPFs are independent from their contributors.

Introduction

1. The WGC is pleased to provide comments in this proceeding on the Commission’s policies relating to Certified Independent Production Funds (CIPFs). As the first major policy proceeding on the creation of Canadian programming since the release of the Commission’s “Let’s Talk TV” decisions last spring, we look forward to the opportunity to discuss a policy framework that is future-focused and relevant to Canadians as creators, consumers, and citizens.
2. As a general theme, the WGC would like to see the Canadian broadcasting system become more creator- and talent-driven. Broadcasting is ultimately a business, and traditional business concerns will always play an important role in how it operates. But it’s also a creative sector, and creativity *is* our business. Different countries and different eras have found the balance between art and commerce in different places. In the WGC’s view, English-Canadian programming production in the 21st century is over-rotated towards the mechanics of business deals, too often at the expense of creativity. WGC members who work as writer-creators and showrunners in other jurisdictions, mostly notably in the United States, detect a different attitude there towards creators, and a different focus on creative risk-taking. Those jurisdictions see their business interests as resting on the foundation of well-executed creative vision. Canada has no shortage of talent and expertise, working in all parts of the broadcasting system. Nevertheless, wherever a “Golden Age of Television” has dawned, in our view it has done so based on creative vision and investment in the artists who realize that vision. Canada must build upon a similar strategy.

Q.1 How can CIPFs better contribute to a more robust and well-capitalized Canadian production sector that is better able to exploit longer-term revenue opportunities and partner with broadcasters?

3. Screenwriters occupy a particular position in the production process: At or near the beginning, at the creation point for much of a program’s characters, themes, narrative, tone, and vision. This is the screenwriter’s primary focus, and the place from which many of the WGC’s comments come. As such, we feel that improved support for script and concept development is one of the key opportunities for improvement in the system, and we were pleased to see the Commission specifically refer to this issue in the Notice of Consultation (the Notice). We will expand upon this further below, at Q.4.
4. In a broader sense, however, we’d like to begin the discussion by examining the premise of the Commission’s question.
5. As stated in the Notice, the Commission set out its findings on funding models for Canadian programming in Broadcasting Regulatory Policy CRTC 2015-86, “Let’s Talk TV: The way forward - Creating compelling and diverse Canadian programming”¹ (BRP 2015-86). Specifically, the Commission stated that, currently, “there is often little to no long-term monetization of much Canadian programming” and that this diminishes “opportunities to create virtuous cycles of Canadian production”. The Commission appears to identify two causes of this problem: 1) poorly capitalized independent production companies which, “lack the capacity to support long-term

¹ Paras. 107-141

exploitation and export of content”; and 2) the fact that broadcasters, “do not have an incentive to promote its long-term exploitation and export, since the international rights are often held by producers under the current terms of trade agreements between these parties.”²

6. With regard to the second factor, it is presumably not directly at issue in a review of CIPFs, but it may be worth noting that the Terms of Trade Agreement between the Canadian Media Production Association (CMPA) and the large private broadcaster groups is a relatively new development. The agreement came into force in the summer of 2011, about 4½ years ago.³ Prior to that, there were no binding terms of trade agreements in existence in the English market that we are aware of. As such, before the summer of 2011, broadcasters were presumably free to invest, heavily if they wished, in Canadian programming and to negotiate for international rights in exchange for that investment. Generally speaking, it is our understanding that broadcasters did not do this. Despite being unencumbered by a terms of trade agreement for years—indeed, decades—prior to 2011, broadcasters tended not to contribute financing beyond licence fees that were at or near the minimum levels necessary to trigger funding from sources such as the Canada Media Fund (CMF). There may be exceptions to that rule, and some broadcasters may dispute our view but, at the very least, we’ve seen no quantitative analysis of pre- and post-terms of trade broadcaster investment levels as an evidentiary basis for the finding that terms of trade is or was a barrier to broadcaster investment. And we submit that 2011 is not that long ago—by then the current media landscape that BRP 2015-86 seeks to address had largely revealed itself to the entire sector.
7. Nevertheless, the Commission stated that it would allow programming services to apply to remove requirements to adhere to a terms of trade agreement, effective 29 April 2016. We expect broadcasters to decline to enter into new terms of trade agreements when the current agreement expires in 2017, at which point broadcasters will again be unencumbered in their negotiations with producers. If the Commission is correct in its view that the Terms of Trade Agreement was a barrier to the success of the industry—a view that we are frankly skeptical about—that barrier will be gone in a year and a half and the second factor of the Commission's analysis will have presumably been fully addressed.
8. With regard to the first factor—poorly capitalized independent production companies—the WGC understands that the Commission hopes these companies will generate more revenue from exploitation of their productions in the international marketplace. But their ability to do so will presumably rely largely on the deals they strike with broadcasters which, following the elimination of terms of trade, will be incented to take some form of ownership and/or revenue position in international rights.
9. It is also possible that the Commission expects some degree of consolidation in the production sector. The WGC has no comment on whether or how this might happen, or what its ultimate impact on the success of Canadian programming might be. In any event, however, it is unclear to us what role CIPFs might have in the merger and consolidation of production companies.

² Para. 117

³ Terms of Trade Agreement between Astral Television Networks, A Division of Astral Broadcasting Group Inc., Bell Media Inc., Rogers Broadcasting Limited, Shaw Media Inc. and The Canadian Media Production Association, signed April, 2011: <http://cmpa.ca/sites/default/files/documents/terms-of-trade/2011-04-26-Terms-of-Trade-Agreement-Astral-Bell-Rogers-Shaw.pdf>

Q.2 What barriers currently prevent or impede CIPFs from contributing to the above-noted objective?

10. Given the above analysis, other than our comments on specific questions below, it is unclear to the WGC at this time that there are any barriers preventing or impeding CIPFs from contributing to the objective stated in Q.1. As such, subject to review of and reply to the submissions of other interveners, the WGC has no further comments to make on this issue at this time.

Q.3 How can CIPFs encourage Canadian producers to develop strategies and processes that will improve their ability to engage in the following: international co-productions and co-ventures; promotion; discoverability of their productions in order to increase audience viewership; and the distribution of their productions on an international basis?

11. Subject to review of and reply to the submissions of other interveners with respect to international co-production/co-venture, or international distribution, the WGC has no further comments to make on those issues at this time.

12. With respect to promotion and discoverability, the screenwriter's first duty is to contribute to the production of a high-quality program. Programming is easier to promote and discover when it's well worth watching.

13. Screenwriters' direct contribution to promotion and discoverability, when there is one, is generally in partnership with the marketing departments of broadcasters, which traditionally control television promotion in Canada. In our members' experience, broadcasters and producers work together on promotion activities, and the contribution of screenwriters is based on the terms of various business agreements in effect. Screenwriters are sometimes limited by such agreements in what they can do, but they actively participate in such processes where appropriate, and many are also on social media platforms such as Twitter, promoting both their productions and themselves. Many screenwriters would be pleased to expand their role in promotion.

14. As for the WGC itself, one of our ongoing activities is to organize a regular event entitled "Writers Talking TV", in which Canadian writers and showrunners discuss their craft in front of live audiences. Discussion is moderated by WGC members, and the event usually includes a screening of an episode of the program being discussed. The events are recorded and are available as a podcast on the WGC's website.⁴

15. One opportunity for additional promotion of programming is through the support and development of a creator "star system" in Canada. While many viewers choose what to watch based on the actors appearing on screen, many others do so based on the creator behind the project. The rise of serialized drama in the United States, generally associated with the current Golden Age of Television, has been largely driven by showrunners—writer-producers whose creative vision defines their projects and whose names are known even to many casual viewers. These include Vince Gilligan of *Breaking Bad*, Matthew Weiner of *Mad Men*, David Chase of *The Sopranos*, Jenji Kohan of *Orange is the New Black*, and Adam Price of *Borgen*. These creators sell shows and attract viewers. The Canadian industry has been slow to adopt this creative-driven approach, but we believe the benefits of it are clear. CIPFs could play a formal or informal role in encouraging creator-driven

⁴ <http://www.wgc.ca/nolevel/wgcpodcasts.html>

productions, as well as promoting their involvement and supporting their fan base. When *Orphan Black* co-creator Graeme Manson makes his next show—or *Motive*'s Dennis Heaton, or *19-2*'s Bruce Smith—there should be as many promotional opportunities attached to his name as with any of the other talented individuals who work on that program.

Q.4 How can the Commission assist CIPFs in incenting Canadian production companies to better engage and invest more in script and concept development, both earlier in the production development process and over the longer production term?

16. The nature of script and concept development has changed significantly in English-Canada over the past 5-10 years. Previously, when a writer and/or producer came up with an idea for a television program, they pitched that idea to a broadcaster, orally or with minimal supporting written material. This was a *concept* pitch and, if the broadcaster liked the concept, a development agreement between the producer and broadcaster would be entered into to further develop the idea, often financed by the broadcaster or by the broadcaster in conjunction with a funding body.
17. This model no longer predominates. Today, broadcasters expect significant development materials as part of the initial pitch. Whereas before, broadcasters would have received an oral description of the project, now they want to see fully developed treatments, scripts, bibles, or even produced material such as "sizzle reels" showing the visual look and feel of the program. This effectively front-loads development activity onto the producer and, in many cases, in turn onto the writer him or herself. Broadcasters are investing less of their own money in development, expecting that much if not all of the work will be borne by the writer and/or producer. This in turn translates into pressure on writers to work for free. The WGC surveyed its membership in 2013, and found a significant number of screenwriters, including very senior ones, had been pressured to perform work for free. For example, 72% of all respondents working in television said that they had provided uncompensated work before signing a writing/development contract with a producer. While some self-directed work may occur at this stage, 54% of this work was "always" or "often" at the request of a producer, either for a new pitch or to rewrite an existing pitch. Even when a contract between writer and producer is signed, the pressure to work for free often remains, with 44% of television writers surveyed reporting that they had worked for free. 63% of those writers said that the pressure to provide free work was coming from the producer, not from themselves. This is not a sustainable model.
18. In addition to this specific phenomenon, the WGC believes that for a long time the Canadian industry has tended to "rush to production", and in the process give development too short a shrift. While the ultimate cause of this may vary, it is likely that both broadcasters and producers put most of their focus on the production phase, though perhaps for different reasons. For producers, production triggers key payments of licence fees and production funding, which is a crucial source of cash flow. For broadcasters, it is production spending that ultimately generates the lion's share of their Canadian Programming Expenditure (CPE), exhibition, or other regulatory requirements.
19. The result is underdeveloped programming, and screenwriters carrying the burden of financing or co-financing the development phase. The former leads to poorer-quality programming. The latter leads to scriptwriters who carry a portion of the risk of development, which they are not equipped to carry and often do without the chance of reward generally associated with financial risk. As a consequence, many senior screenwriters are currently avoiding this situation altogether, writing scripts "on spec" that they in turn own and control. Having invested their own sweat equity in the

project, screenwriters are more likely to turn to the larger, better capitalized and less risk-averse international marketplace when it comes time to sell, bypassing the Canadian broadcasting system altogether. In the ultimate irony, some WGC members are seeing their projects rejected by Canadian broadcasters only to find buyers in the U.S. which return to the Canadian system as a foreign acquisition. This is the very definition of a lost opportunity.

20. In this context, the WGC is pleased to see that the Commission has identified engagement and investment in script and concept development as a priority in the Notice. Great programming is based on great scripts. Writing and development is an essential foundation for most if not all programming that the CIPFs support, and as noted at the beginning of this submission, the WGC believes that the Canadian broadcasting system should be more creative- and creator-oriented. Greater emphasis on script development is an excellent way to achieve this.
21. Since most CIPFs do not currently have a script and concept development funding program,⁵ one thing that CIPFs can do in this regard is to create them. The CIPFs' primary function is to fund content, so directing some of that funding to development appears to be a natural fit between the CIPF's role and the Commission's objectives.
22. If this is done, the WGC would recommend that any such program or programs be designed with our comments above in mind. In particular, script and concept development funding programs should not have a requirement for a broadcaster statement of interest or a broadcaster financial commitment, as a funding trigger. Many broadcasters have demonstrated a tentativeness in investing in development. The CMF has years of experience with this, with a development program, triggered by broadcaster financing,⁶ which was underspent for much of its existence. In fact, only in 2013-2014, following a \$1 million program reduction, was the CMF able to fully expend its development allocation.⁷ This was not a reflection of lack of need for development support. Rather, it was a reflection of an industry focus elsewhere, including broadcaster hesitancy to commit its own funding to development.
23. Further, a CIPF development funding program should have as low a barrier to entry as possible, to allow for simplified access by producers and writers who wish to act as their own producer. While all funders have corporate, accounting, and documentation requirements as part of fulfilling their obligations of due diligence, our members who access funding often report excessive—and growing—red tape that represents a barrier to access. This is particularly important for writers who wish to exert greater control over their intellectual property and access funding themselves, but who lack business affairs departments or easy access to those skill sets. It is likely beyond the scope

⁵ E.g., The Harold Greenberg Fund does have the "Script Development Program" (<http://www.bellmedia.ca/harold-greenberg-fund/script-develop/>); the Bell Broadcast and New Media Fund has a "Cross Platform Digital Media Development" program, but this is targeted to digital media projects (<http://bellfund.ca/funding-programs/development-program/>), while its "TV Development Online" program is to "enhance the development of potential new television programming by supporting the production of 'pilot' content produced for online testing" (<http://bellfund.ca/funding-programs/tv-development-online/>); the Shaw Rocket Fund "is a production fund and not a development fund" (http://www.rocketfund.ca/wp-content/uploads/2014/03/SRF_TV_Investment_Guide_0414.pdf).

⁶ CMF Development Program Guidelines, 2015-2016, section 2.A.3: http://www.cmf-fmc.ca/documents/files/programs/2015-16/guidelines/2015-16_dev_guidelines.pdf

⁷ CMF 2013-2014 Annual Report, Funding Results→Convergent Stream→Development: <http://ar-ra13-14.cmf-fmc.ca/funding/convergent/development/>

of this review to canvas all potential or actual instances of excessive red tape for all CIPFs. As such, we simply make the general statement that CIPF development funding should be as "user friendly"—and as writer friendly—as possible.

24. Finally, a CIPF development funding program should focus to the greatest degree possible on *writing*. Development rightly involves a number of costs, such as travel, business affairs, producer's fees, and corporate overhead. However, we submit that in most if not all cases, in the genres that the CIPFs support, true development comes down to writing work. And only writers write. We submit that CIPF funding should focus on that work, and not be unduly diverted to preproduction or early-production costs, which would result in just more production funding under a different name.
25. With all that said, we are cognizant that the Commission's question implies encouragement for *producers* to invest more in script and concept development. In that respect, we believe that CIPF funding of development is unlikely to cover 100% of development costs, and therefore such funding will indeed incent producers to invest their own resources in development because it is being "matched" on some level by CIPF money. However, more direct methods to incent producer engagement may be available. For example, many CIPFs hand pick the projects they fund through a selective process. CIPF evaluators may wish to make production funding contingent on a sufficiently developed script, and instruct producers go through another development phase before committing to production. This could also be part of a CIPF's development funding process: Where a CIPF's evaluator(s) believe more development is appropriate, they could fund that development. This would be a subjective decision, certainly, but ultimately in a creative industry everything boils down to what decision-makers believe will make a good project.

Q.5 Should CIPFs take audience success into consideration as part of the funding approval process? If yes, how should CIPFs measure audience success?

26. Audience success for Canadian programming should be a key goal of CIPFs, and indeed of the entire broadcasting system. However, whether or not something is successful can only be known with certainty after the fact. All programming is financed and produced with the hope that it attains success with audiences, and we have no reason to believe that CIPF funding decisions are an exception to that. While there are several methods that try to improve the odds of success, nothing is foolproof and there are no guarantees. CIPFs generally select projects for funding based in large part on its creative quality and the business expertise of its makers.⁸ We suspect that most if not all CIPFs already choose projects or have procedures in place to increase their chances of finding a sizeable audience.
27. At this time we are uncertain what more could be done by CIPFs to take audience success into consideration, at least within their current project selection process. The first step would presumably be to define what "audience success" means. This is not a simple task—many broadcasters, producers, and public policy makers wrestle with the question regularly. Should we focus on total viewing numbers, or take into account critical acclaim and/or a smaller but highly dedicated fan base? Should we focus on Canadian audiences or count all international viewers? What is the appropriate timeframe to consider—the first run of the program or, in the case of

⁸ E.g. for the Shaw Rocket Fund, "The Rocket Fund's primary focus of any investment is the strength of the creative content and the potential of the program to resonate with children today." Television Guidelines, Rev. 0414, pg. 5: http://www.rocketfund.ca/wp-content/uploads/2014/03/SRF_TV_Investment_Guide_0414.pdf

series, of that series or each episode; or more of the “long tail” of its lifespan? In the experience of some of our members, it now takes at least two years to know for sure if they have a successful project on their hands. And any definition of success, if formalized as part of the CIPF’s funding process, can entrench structural advantages or disadvantages across the system.

28. For instance, the CMF uses a “performance envelope” system that does seek to make audience success a key part of project funding.⁹ Even this system, however, responds to audience numbers after the fact. In the CMF’s performance envelopes system, “broadcasters are allocated envelopes to support production in television and digital media based on past performance in commissioning and airing convergent projects.”¹⁰ Envelopes are recalculated each year based on previous performance in a number of “performance factors”. This includes “audience success”, which makes up the majority—55%—of the “weighting” of the various performance factors.¹¹ The intended result is that when broadcasters choose programming that is successful with audiences, their performance envelope grows—when they choose programming that is not successful, their envelope shrinks. And knowing this in advance, they do their best to choose successful programs.
29. There are several advantages to this system, including relative predictability and transparency. However, it does not come without drawbacks. For example, the sheer reach of larger broadcasters can result in naturally higher audience numbers which smaller or more regional broadcasters cannot compete with, notwithstanding the quality of their programming.¹² Such phenomena can perpetuate over time, with past performance resulting in larger or smaller envelopes, which makes commissioning programming easier or harder, which in turn results in further similar performance, and so on. At this time the WGC makes no comment on which system is better—indeed, they both have pros and cons—but for now simply notes that they are attempts to fund the best content rather than guarantees of it.
30. In fact, the WGC believes there is a danger to *over* reliance on audience success as a consideration for funding approval. Since hit programming cannot be assured, overemphasis on success can have the opposite of the intended effect, reducing risk-taking and resulting in bland, generic programming that is neither popular nor critically respected. In the United States, many of the programs that we now associate with the current “Golden Age of Television” were *not* widely popular with audiences, particularly early in their run and when compared with more mainstream network programs. For example, *Mad Men* achieved average audiences of less than one million viewers in its first season.¹³ Scaled to the population of Canada, this would amount to weekly viewership of less than 110,000, leaving it well outside of the weekly Top 30 in this country. Even *Mad Men*’s series high ratings for the finale of 4.6 million viewers scaled to Canada’s population would garner it just over 500,000 here. If Canada seeks to produce this kind of programming, overemphasis on audience success is unlikely achieve that goal.

⁹ CMF 2015-2016 Performance Envelope Manual: <http://www.cmf-fmc.ca/documents/files/env-admin/manuals/perf-env-manual-2015-2016.pdf>

¹⁰ <http://www.cmf-fmc.ca/envelope-administration/manuals/>

¹¹ CMF 2015-2016 Performance Envelope Manual, section C.1.3: <http://www.cmf-fmc.ca/documents/files/env-admin/manuals/perf-env-manual-2015-2016.pdf>

¹² <http://www.cmf-fmc.ca/documents/files/about/ind-outreach/2015-16/cmf-briefing-note-sep-9.pdf>

¹³ Variety, “Mad Men’ Finale Ratings: DVR Playback Boosts Series to Record-High 4.6 Million”, May 19, 2015, accessed December 15, 2015: <http://variety.com/2015/tv/ratings/mad-men-finale-ratings-amc-drama-draws-3-3-million-sets-demo-high-1201499468/>

Q.6 What incentives could the Commission introduce to increase and promote the creation of online productions? Which restrictions relating to the funding of online productions, if any, should be removed, and why?

31. The WGC understands that by “online productions”, the Commission is referring to linear audiovisual works, similar if not identical to traditional television programming, which are produced primarily for distribution via online platforms, such as “over the top” (OTT) services. We understand that “online productions” are therefore different and distinct from “digital media projects” as defined and discussed later in the Notice.
32. The primary incentive that would increase and promote the creation of online production would likely be as the Commission has suggested: The removal of the requirement that a producer have a broadcast licence agreement, as a precondition for funding. While such a requirement may not have been an absolute bar to funding online production—some productions have *both* a broadcast licence agreement and a distribution deal with an online platform¹⁴—removing the requirement would assist online video platforms with funding platform-exclusive Canadian content.
33. Other, more intrusive means to incenting online production are theoretically available—for example, obligating CIPFs to divert a portion of their funding to such production—but the WGC believes that such methods would not be appropriate at this time. We believe that the broadcasting system should be opening the door to online content, so to speak, but not forcing anybody through it.

Q.7 What impact would the removal of the requirement that a producer have a broadcast licence agreement have on the creation of Canadian content as a whole? For example, would it allow for the creation of more online production?

34. As discussed above, removal of the requirement for a broadcast licence agreement would allow online platform-exclusive content to be funded by CIPFs. This could increase the prevalence of Canadian content on these platforms overall.
35. While the WGC supports this move, we note that the immediate-term benefits must be considered against longer-term impacts. As has been stated by various parties in the past,¹⁵ the funding that CIPFs receive is ultimately derived from regulated broadcasting activities, namely, BDU subscription revenues. Online platforms themselves have no regulatory obligations to commission Canadian online production, and the Internet Service Providers (ISPs) which provide access to these platforms do not contribute to the system in the way that BDUs do. Traditional broadcasters continue to represent a significant source of production financing for Canadian content, no matter which platform it is on. Transferring revenues derived from the regulated sector to the unlicensed sector, absent other regulatory adjustments in the overall system, risks weakening traditional broadcasters’ ability to finance content.

¹⁴ E.g. *Between* was a Canadian partnership between Rogers and Netflix:
<http://www.theglobeandmail.com/report-on-business/netflix-rogers-shomi-to-partner-on-tv-drama/article21163862/>

¹⁵ Broadcasting Regulatory Policy CRTC 2015-86, Para. 113

36. This is why it remains essential that, as we transition towards an online space, we must shift many of the policy pillars that supported Canadian programming in the traditional broadcast system over to the digital one. This includes regulatory obligations for OTT services and, while currently outside of the ambit both of the Commission and of this proceeding, contributions from the ISPs that increasingly carry and benefit from broadcasting content.
37. If the Commission chooses to remove the requirement for a broadcast licence agreement, we submit that the Commission should consider several potential impacts. Firstly, it must decide whether it is simply removing the broadcast licence requirement from traditional broadcasters, or if it is also adding a financing requirement from online video platforms. The traditional broadcast licence requirement functions to link funding to the Canadian broadcasting system, but it also provides a form of “market validation”—a signal from industry that the project to be funded is of interest to the marketplace and has a shot of being successful with audiences. This function may be of equal value for online productions. The requirement also helps ensure that the project is better financed, by requiring (generally) private-sector investment as a precondition for a CIPF investment. Funding bodies leverage additional financing in this way, increasing the total pool of investment in the system. This function is just as relevant to online production as to traditional broadcast programming, and the WGC recommends that such a “triggering” obligation remain for online platforms. If the Commission accepts this recommendation, it may also wish to decide whether to have different minimum financing levels for Canadian and non-Canadian online platforms.
38. Secondly, the Commission will have to consider whether and how to apply the points system to online production. The WGC’s views on the appropriate minimum points requirements are expressed later in our submission. But here it’s important to note that traditional television programming is typically certified by the Canadian Audio-Visual Certification Office (CAVCO) or by the Commission using a 10-point scale. Given that online production is essentially just television programming presented on a different platform, the WGC submits that the same points requirements are just as applicable to online production. Given that CAVCO generally only certifies Canadian productions which are applying for the Canadian Film or Video Production Tax Credit (CPTC), and given that the CPTC requires “confirmation in writing from a Canadian distributor or a CRTC-licensed broadcaster that the production will be shown in Canada within the two-year period following its completion”¹⁶—a requirement that, in our understanding, could not be met by an online video platform, Canadian or not—it is presumably the Commission which would be certifying such online productions. As such, the Commission must turn its mind to the question.
39. The WGC submits that the objectives of the *Broadcasting Act* are just as relevant to online production as to that of traditional television programming. This includes sections 3(1)(d)(ii) and 3(1)(f) of the Act, as noted by the Commission in the Notice. Section 3(1)(d)(ii) refers to, “programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming...”. Section 3(1)(f) refers to making “maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming...”. We submit that the points system supports these objectives, and should be maintained with respect to online production, such as programming for services like Netflix, Shomi and CraveTV. Indeed, if the Commission and/or the CIPFs were to discard these requirements for online production, it would represent a clear loophole that could

¹⁶ CPTC Guidelines, Published April 2, 2012, section 6.02:
<http://www.pch.gc.ca/eng/1332443014216/1332443541505>

evade Canadian talent obligations altogether. Most of Canada's major English-language broadcast groups are now associated with online platforms.¹⁷ As such, if the points system did not apply to online production, a broadcaster seeking to avoid those requirements could simply structure productions as online production with an "additional window" on its traditional broadcast properties. This would undermine the Canadian creative sector as well as the objectives of the Act. For these reasons, points requirements should apply to online production.

Q.8 What would be the best way to measure success in terms of achieving a more robust, well-capitalized and self-sufficient Canadian production sector?

40. The WGC struggles to come up with objective, quantitative measures of success that would comprehensively capture the Commission's objectives. "Capitalization of production companies in Canada" is not something that is currently measured to our knowledge, nor is it clear how such a measurement might be undertaken. Simply counting the number of production companies strikes us as unhelpful, since it would have to contemplate the nature of the single-purpose production companies that are a part of the industry but do not accurately reflect the number of ongoing independent operations. Public funding will likely always be a part of the Canadian production sector, as it is in many other countries, so the mere presence of funding—or the amount of funding being used—hardly seems a reasonable proxy for the health of the industry. Quantity of production, or "production volume", is one indicator that already exists. But quality of production is also vital, and quality is not objectively measurable other than, perhaps, aggregated critical reception.

41. As such, subject to review of and reply to the submissions of other interveners, the WGC has no further comments to make on this issue at this time.

Q.9 Are the current criteria for certifying independent production funds still appropriate? For example, do they help foster a more robust, well-capitalized and self-sufficient Canadian production sector, or do they create barriers in achieving this objective?

42. Subject to our comments below, and subject to review of and reply to the submissions of other interveners, the WGC believes the current criteria for certifying independent production funds are still appropriate.

Q.10 What revisions and/or new criteria should be adopted to achieve the Commission's above-noted objective?

43. See above, at Q.9.

Q.11 In regard to the criterion requiring a production to achieve 8 out of 10 points for Canadian content certification, how could this criterion be revised to better allow CIPFs to participate in the pilot projects announced by the Commission in Broadcasting Regulatory Policy 2015-86?

44. In BRP 2015-86, the Commission announced two pilot projects and made as a requirement for both that the screenwriter is Canadian. The WGC appreciates this recognition of the central importance

¹⁷ CraveTV is owned by Bell Media; Shomi is jointly owned by Rogers Communications and Shaw Communications; CBC makes much of its programming available on cbc.ca.

of the screenwriting role, and believes strongly that great Canadian writing is the foundation for great Canadian television, especially for the live-action drama/comedy productions that are the subject of the pilot projects.

45. However, the WGC does not support expanding the pilot projects to receive funding from the CIPFs. While the current pilot projects will allow such productions to be certified as Canadian by the Commission and to count towards the regulatory requirements of television programming services, allowing such productions to access CIPF funding is an additional step that the WGC does not feel is appropriate at this time.
46. Firstly, the WGC questions the premise of the pilot projects themselves. We note that the pilot projects were not put forward, either by the Commission or by any industry sector or stakeholder, at any time during the Let's Talk TV consultation process, and therefore they were not discussed at any length prior to their announcement. We also note that while the Commission in BRP 2015-86 identified things like international distribution as an objective¹⁸, it did not explain how the pilot projects would contribute to achieving that objective. There appears to be a historical line of argument in the broadcasting sector that in order for Canadian programming to be more successful—critically or commercially, domestically or internationally—it must become less Canadian, at least with regards to the Canadian talent involved in making it. Such discussions often hinge on the word "flexible", or "flexibility", which the Commission itself used four times in paragraphs 115-131 of its policy statement. It's hard to argue against "flexibility" as a concept, but seeking "greater flexibility" is simply the first part of an unfinished sentence. Flexibility of what, for whom, and why? Considering the Canadian production system as a whole, there is already a significant amount of flexibility available depending on the type of production at issue. The CMF is a 10-out-of-10 point fund, and requires a high level of Canadian talent in order to be eligible for funding. As stated in the Notice, CIPFs are generally 8-out-of-10 point funds. The CPTC requires only 6 points, and a so-called "service production"—i.e. a production that is at least partly produced in Canada, and which may use some Canadian talent, but which is owned, controlled, and creatively driven from outside of Canada—can access the Film or Video Production Services Tax Credit (PSTC) with no points requirements at all.
47. Many of these sources of funding are not mutually exclusive—money from the CMF, CIPFs and CPTC can be combined in the same production—resulting in a situation in which each level of increasing "Canadianess" generally corresponds to additional funding. And, of course, no Canadian producer or broadcaster is obligated to obtain this funding. A producer or broadcaster who doesn't wish to meet the criteria of the various funding bodies or tax credits is free to produce or commission programming that is financed privately, through their own resources or through private financial markets. This highlights the fact that public funding is an exchange: funding obtained from taxpayers and consumers in exchange for programming that meets certain public policy objectives, including the use of Canadian talent to tell Canadian stories to Canadians.
48. As such, system-wide, there is already significant flexibility within the Canadian production sector. If *still more* flexibility is required, why? What specific problem does additional flexibility address, and is solving that problem worth the trade-offs involved in employing less Canadian talent? Why should such flexibility focus on talent, rather than other aspects of the production value chain? What are the international precedents, if any, for such flexibility? For example, did the recent

¹⁸ Para. 122

international success of Scandinavian television¹⁹ depend upon a reduction in the use of Scandinavian talent? Which of the world's television systems has benefitted from reducing the role of its national talent, and how applicable is that example to Canada? Such questions do not appear to have been asked and answered, and the WGC questions whether they could be satisfactorily.

49. Secondly, while the Commission has presumably already implemented the pilot projects for the purposes of certifying productions under them as "Canadian", we note the distinction between that and funding. It is one thing to certify a program that has already been produced as Canadian. It is another thing to direct public funding to produce such a program. In particular, we submit that the Commission should take note of a significant difference between tax credits and funding from CIPFs, namely, that tax credits are generally labour-based, and therefore the amount of the tax credit is related to the amount paid to Canadians, including to Canadian talent. Such a system naturally limits the benefit of tax credits on productions that minimize the Canadian personnel employed. CIPFs generally do not take this approach. While CIPFs have discretion over the amount of funding provided to a given production, some base their funding on the total budget, including non-Canadian costs.²⁰ CIPF funding of productions under the pilot projects will mean funding is directed to non-Canadians. Depending on the approach taken, such funding could be significant if appropriate limits are not put in place.
50. Thirdly, that these are *pilot* projects indicates that they are intended to be experimental in nature. Experiments are generally undertaken with the possibility of failure in mind, and with analysis of results before the next experiment is made. The pilot projects were announced less than a year ago and, to our knowledge, no program or programs have sought certification under them. As such, the Commission has no experience on which to base its analysis of the pilots before opening them up to receipt of contributions from CIPFs.
51. Finally, the WGC submits that if the Commission is to change the CIPF points criterion so as to allow pilot projects to access their funding, it should: 1) limit the amount of funding each production can access, to a level below what a 8-point project would receive; and/or 2) limit the total amount of funding a CIPF can direct to productions funded under the pilot projects. Again, the pilot projects are clearly experimental in nature, and the Commission has indicated that it will evaluate them in at least three years.²¹ It is our understanding that with the pilot projects the Commission intends to improve the state of the Canadian production sector by leveraging new international financing to Canadian programming. It is possible, however, that the pilot projects will not be a success, and may even harm the sector if they result in further talent drain out of Canada. Such unintended consequences can and should be limited by circumscribing the pilots to a limited pool of CIPF resources.

¹⁹ E.g. The Telegraph, "Scandinavian TV: How to make a Killing", April 21, 2012, retrieved December 15, 2015: <http://www.telegraph.co.uk/culture/tvandradio/9216222/Scandinavian-TV-How-to-make-a-Killing.html>

²⁰ E.g. for the Harold Greenberg Fund, "The Fund may invest up to 10% of the total production budget, to a maximum of \$150,000 on any single project.", Equity Investment Program Guidelines and Checklist, pg. 1: http://www.bellmedia.ca/wp-content/uploads/2014/11/Equity-Investment-Program-Guidelines-and-Checklist_Bell-2015.pdf

²¹ Broadcasting Regulatory Policy CRTC 2015-86, Para. 131

Q.12 What change, if any, should be made to the amount that may be allocated to unrelated digital media projects? Or is it necessary to limit funding to these types of productions at all?

52. The WGC submits that the Commission should continue to limit funding to unrelated digital media projects. Unlike "online production", which is effectively "television-like programming" made available via online platforms, "digital media projects" are largely interactive projects of a very different nature, and where such projects are unrelated to a television production the link between it and the regulated broadcasting sector is even more distant. As we argued above under Q.7, funding for CIPFs comes from the regulated sector, and there are risks associated with diverting a significant portion of that funding to unregulated activities. The same reasoning applies to this question.
53. That said, there may be growing opportunities for Canadian talent and Canadian content in this area. As such, the WGC would recommend a gradual increase of the limit on unrelated digital media, from 10% to 15% of funding, with ongoing monitoring to determine the impacts of the increase.

Q.13 Should the Commission revise the current requirement that to be eligible for funding, a production must obtain at least 8 points out of 10 for Canadian content certification? If yes, what should the minimum threshold be? What other criteria that are not part of the current point system could be used to count towards the minimum threshold?

54. The WGC would support an upward revision of the points requirements for CIPFs, from 8 to 10 out of 10. Alternatively, the WGC believes the current points requirements are appropriate and should stay as they are.
55. Given the pilot projects that the Commission proposed in BRP 2015-86, however, we presume that an upwards revision is not what the Commission has in mind. Rather, we presume that the Commission is seeking input on whether CIPFs should fund productions with less than 8 points. The WGC strenuously opposes such a reduction.
56. First, it must be acknowledged that reductions in the minimum point requirements do not impact all roles equally. It might be one thing if reducing minimum point requirements from 8 to 6, for example, was just as likely to result in a non-Canadian editor or cinematographer working on a given production as it would a non-Canadian screenwriter. We would still oppose such a reduction, but at least its impact would be diffused throughout the production sector. Unfortunately, however, such impacts are not spread around. The WGC knows, both from the experience of our members and from unpublished research, that as point requirements drop, certain roles are more likely than others to be affected, and that screenwriters are indeed the most impacted. For example, as point requirements fall from 10 to 8, it is the screenwriting role that is most likely to be non-Canadian, followed by performers and then directors. In fact, non-Canadian screenwriters can be up to twice as prevalent in 8-out-of-10 projects compared to performers. The WGC does not have direct access to publicly available versions of this data—we believe it is available to CAVCO and may be available, or made available, to the Commission—so we cannot provide precise numbers or references at this time. But we are confident that the overall trend is a real one. As such, we submit that any consideration for lowered point requirements must take this into account.
57. As stated at the beginning of our submission, screenwriters are a crucial part of television production, and creators of the narrative, thematic, tonal, and dramatic foundations of the program.

Canadian screenwriters are a crucial element in making *Canadian* programming, which is defined as much by its fundamental sensibility as anything else. As such, a reduction in the number of programs written by Canadians will result in a real loss of the "voice" that makes our programming what it is. That's the short-term impact. The longer-term impact is even more serious: If Canadian screenwriters find that they cannot make a living at their craft in Canada, they will be even more inclined to leave the country for other jurisdictions, most likely the United States. Already, many WGC members have moved to Los Angeles to further their careers, and many others think about making such a move on a regular basis. This talent drain is one of the fundamental challenges that the Canadian broadcasting sector faces.

58. Many English Canadian screenwriters are familiar with the same disheartening story. They work within a system where (private) broadcasters' fundamental business model for decades has been to purchase lower-cost foreign programming to resell to the Canadian market, which in turn creates a structural emphasis that turns away from commissioning original programming and towards acquisitions. Producers produce in such a system, often undercapitalized, as the Commission has pointed out,²² and seek as many "known quantities" as they can to reduce the sizeable risk involved in original, high-budget production. Many talented and dedicated individuals are producers, or work for broadcasters' original programming departments, and many of these individuals seek to make the most and the best "fully Canadian" content that they can. But the system helps to create and perpetuate a fear of risk, and a concern that Canadian talent isn't "good enough" to meet the daunting challenges of the next hit show. The result is pressure from both broadcasters and producers to hire non-Canadian key creatives and, buried underneath, lay an assumption that Canadian talent simply can't compete with the best the world has to offer. Underemployed, or told they aren't good enough, many Canadian screenwriters labour for as long as possible under these conditions until, eventually, they move to the United States, many of them finding great success there. And then, back in Canada, broadcasters, producers and government policy makers wonder why they left, how we can bring them back, or protest that the remaining Canadian talent pool isn't deep enough. The WGC submits that more effort can be directed to ensuring that Canadians don't leave our system to begin with.

59. Reducing point requirements may provide more "flexibility". It will also force Canadian creators to leave Canada. Such a result would be counterproductive when we are still in the process of building our industry, and indeed are finding the domestic and international success that we've long sought. It's long been a business truism that you can't cut your way to growth. The WGC submits that the Canadian production sector cannot make more and better Canadian programming by making it less Canadian using less Canadian talent.

Q.14 Should the definition of what constitutes a "digital media project" be revised? What other forms of productions should be eligible for funding under this criterion?

60. Subject to review of and reply to the submissions of other interveners, the WGC has no recommendations to revise the definition of "digital media project" at this time.

²² Broadcasting Regulatory Policy CRTC 2015-86

Q.15 Should the Commission monitor and reassess a CIPF's certification periodically to ensure that it is operating in a manner consistent with the Commission policies and the certification criteria?

61. Yes, the Commission should monitor and reassess a CIPF's certification periodically to ensure that it is operating in a manner consistent with the Commission policies and the certification criteria. While we are aware of no specific instances of CIPFs materially straying from their initial mandates, it is logical that the Commission's policies and certification criteria are not intended to apply only at the date of certification, but for the life of the CIPF or until those policies and criteria change. Periodic review would therefore be appropriate.

Q.16-25 The governance of CIPFs

62. The WGC supports the Commission's objective of ensuring that CIPFs are independent from their contributors. Subject to review of and reply to the submissions of other interveners, the WGC has no further comments to make on this issue at this time.

Q.26 Should CIPFs be required to submit reports to the Commission to ensure that these funds continue to operate in a manner consistent with the Commission's policies and to inform the Commission, and Canadians, as to how the funds they administer are being spent? If yes, would it be sufficient for a CIPF to provide the Commission with its annual report, where such a report is published?

63. Yes, CIPFs should be required to submit reports to the Commission, for the reasons set out in the Notice.

64. No, it would not be sufficient for a CIPF to provide the Commission with its annual report, where one exists, also for the reasons set out in the Notice.

Q.27 Should the Commission require CIPFs to submit specific information to the Commission, such as the following: amounts spent on the administration of the fund; amounts dedicated to unrelated digital media projects; the composition of the Board and the relationship between each Board member and BDUs; amounts of funding allocated based on linguistic markets; amounts of funding given to local, regional, national and/or international productions; and/or the number of funded projects in relation to the number of applications received?

65. Yes, the Commission should require CIPFs to submit specific information to the Commission, such as that set out in the Notice.

66. In addition to the above information, and within reasonable bounds of confidentiality, the Commission should also consider requiring CIPFs to report on the international sales and other revenue generated by funded projects. As the Commission shifts its focus to international distribution and co-financing opportunities, the revenues generated by these productions becomes more and more a matter of public policy debate. Such information should be available to the public so it can form part of the policy discourse at Commission proceedings.

67. The WGC has had an opportunity to review the submissions in this proceeding of the Directors Guild of Canada (DGC). We agree with and support the DGC's recommendations under this question for standardized reporting, including the specific information the DGC has proposed be reported.

Q.28 Which information reported by a CIPF, if any, should be treated on a confidential basis and/or be audited?

68. The WGC is not aware of any compelling reason why any information of the kind discussed in the Notice should be treated as confidential. In general, the WGC believes that all information reported by a CIPF, operating as it does within a regulatory mandate to serve, ultimately, the Canadian public, should be treated, *prima facie*, as public information. We submit that there should be a robust presumption that information collected by the Commission should be publicly available, and the onus should be upon those seeking to make it confidential to prove their case to a sufficiently high standard. The Canadian broadcasting system benefits from open, informed policy discussions, and this is only possible when information about the system is also open and accessible.

Conclusion

69. The WGC is pleased to provide comments in this proceeding, and we look forward to commenting again in the reply phase.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', written in a cursive style.

Maureen Parker
Executive Director

c.c.: National Council, WGC

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