



October 3, 2014

Filed Electronically

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2014-190-3, Final Submission

Let's Talk TV

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. We are pleased to provide our final written submission in this proceeding.

What would we do?

2. At the WGC's appearance at the public hearing in this proceeding on September 11, 2014, the Vice-Chairman, Broadcasting, Tom Pentefountas began by noting the change currently occurring in the broadcasting system and the risks of inaction, and asked simply, "What would you do different?" We would like to take this opportunity to expand upon our answer.
3. As we acknowledged at the public hearing, this is a difficult question, and we don't envy the Commission's position in tackling it. We do not have all the answers ourselves. But we would begin by borrowing from the Hippocratic Oath (at least as it's popularly known) to say this: First, do no harm. The Canadian broadcasting system is already under a number of stresses. Change is occurring and will continue to occur. Creators, producers and broadcasters are adapting to it and will continue to adapt. They will continue to adapt, or they will cease to exist. In such an environment, regulatory decisions can have a multiplier effect, hastening change at a pace that is less manageable than it might have been otherwise. With such inherent uncertainty, we submit that the Commission must have confidence that there will be little or no unintended consequences to its actions.
4. Secondly, we submit that the Commission must apply a cost-benefits analysis to its proposals. Many of the Commission's proposals would have both positive and negative impacts on the broadcasting system, but with some the cons far outweigh the pros. We believe that the proposal to weaken or eliminate simultaneous substitution is one example of this. Without question, simsub has been an irritant for some consumers, particularly during the Super Bowl when many viewers want to watch American advertisements. We understand that viewing these ads has become as much a part of the Super Bowl experience for some as the game itself. Yet the advertisements are available on the Internet and, while frustrating to some to miss them, many Canadians still tune in to watch and enjoy the game. Comparing this irritation to the loss of potentially hundreds of millions of dollars to the Canadian economy, we submit that the losses to the system, including potential job losses, should

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offset other considerations. It's unlikely that any government or government agency would directly spend \$450 million so that Canadians can watch live Super Bowl commercials. That would probably be seen as a waste of taxpayers' money. Yet the removal of \$450 million from the Canadian economy would surely be comparable. As such, we believe it would be preferable for all parties to attempt to educate consumers on the value of simsub, rather than to eliminate it. The costs of eliminating the policy outweigh the benefits.

5. Thirdly, we would argue that the Commission must take care to the extent that its policies attempt to anticipate the future of television. Everybody agrees that television is changing, but nobody knows for sure at what pace, or what form its next iteration will take. At the public hearing, Chairman Jean-Pierre Blais pointed some interveners to paragraphs 25-32 of the Public Notice¹ and asked them if those paragraphs accurately described our current situation. Most if not all interveners agreed, and we would as well. But at the same time, paragraphs 25-32 are not a *complete picture* of our situation. And how could eight paragraphs ever hope to be? Those paragraphs do not, for example, describe the rate of change. They do not predict the extent of change, even in the short-to-medium term. We know that viewership is becoming increasingly on-demand, yet it is unclear just how far that trend will progress. Will *all* viewing eventually become on-demand, except for live events such as sports? Or will people continue to want, as part of their overall media experience, a steady stream of linear programming that they don't *have* to choose from? Will blockbuster content continue to rule, or will unlimited shelf space allow "long tail" content to predominate? How will the value propositions of broadcasting, cable subscriptions, and OTT change over time? We don't know the answers to these questions, and we submit that's because they are largely unknowable. To the extent that the Commission attempts to make policy decisions based on expectations for the future, we submit that it risks misreading the tea leaves in a manner that does more harm than good. In short, the Commission has identified technological change as the driver of many of its proposals in this proceeding. We submit that the Commission must let that technology, and the business models that follow it, stay in the driver's seat. We submit that the Commission cannot lead the ecosystem—the ecosystem must lead the Commission, as it leads all of us.
6. Finally, we would argue for the need to maintain the cultural and social policy objectives of the *Broadcasting Act*, even as the means to achieve them may change. As we tried to express in our written submission of June 27, 2014, changes in technology and consumption habits haven't changed everything. We still live in our own country called Canada, the challenges of telling our own stories have not gone away, and we still must make a space for ourselves in whatever form our media and broadcasting landscape will take.

Consumer Expectations in the Digital World

7. At the WGC's appearance at the public hearing on September 11, 2014, Chairman Jean-Pierre Blais asked about the opportunities for communicating the realities of broadcasting to Canadians, and noted the importance of social consensus. We agree that the social consensus is very important. The challenges in this regard are significant. To expand on what we feel is a related topic, one of the themes we have seen in the Let's Talk TV proceeding is that of consumer expectations in the digital world, and how that translates to regulatory issues.
8. Harvard Business School professor Anita Elberse has observed the following:

That most consumers have a limited understanding of the peculiar cost structure of entertainment goods makes it harder to manage their perceptions of what prices are fair. In my experience, the public often overestimates how much it costs to manufacture, package, and ship hardcover books, CDs, DVDs, or other physical products, causing

¹ Broadcasting Notice of Consultation CRTC 2014-190

many people to expect greater savings on digital products (which eliminate many of those costs) than media businesses can realistically offer.²

9. This has been our experience as well. If, in the near future, a new technology were introduced that could inexpensively teleport inanimate objects anywhere on the globe, we would expect consumers to anticipate lower prices on many goods, because the costs of shipping and distributing those goods would have been reduced or eliminated by technology. If goods could be “teleported” from a factory to a local retail store at little or no cost, people would expect the savings on shipping and freight to be passed on to them, and rightly so.
10. Yet it is unlikely that they would walk into an automobile dealership and expect to purchase a new pickup truck for \$900. It is unlikely they would go to Ikea and expect a new dining room set for \$7.99. That’s because they would intuitively understand that while they’re saving on distribution, those shipping costs didn’t make up 70%-90% of the purchase price. They’d understand that obtaining raw materials, product design, manufacturing, and marketing all cost money, and are all reflected in the price. They would understand that shipping and distribution costs are, in fact, a relatively small component of overall costs. The same understanding does not seem to apply to entertainment or cultural goods. Perhaps this is because of their intangible nature, or perhaps it is because the “hit model”, in which success is unpredictable and a minority of successes helps to pay for a majority of failures, is not popularly understood.
11. Whatever the cause, we struggle with it because these misconceptions are held by many of the people who are also our audiences as creators, and our customers as business people. And nobody wants to tell the customer that they’re not right. Nevertheless, to the extent that Canadian consumers expect to be able to pay \$3 per channel for unbundled television, or under \$10 a month for all content forever, we cannot build a regulatory system based on such unrealistic expectations. We submit that attempts to deliver on unrealistic expectations will result in consumer disappointment, damage to the cultural sector, and erosion of public confidence in regulators.
12. We were struck by the written submission of the Groups for the Public Interest³ dated June 27, 2014, which noted both that survey results demonstrate that Canadians want Canadian content,⁴ yet also argued to eliminate several of the regulatory policies that support that Canadian content⁵. While there is no doubt a balance to be struck, we suggest that Canadians likely cannot have it both ways. If we are to have Canadian content in a Canadian broadcasting system, we will have to pay for it and will have to support it, often through regulatory measures.

Regulation of Over-the-Top Services

13. The WGC would first like to state our view that the entry of over-the-top (OTT) services into the Canadian market is a positive one for both consumers and creators. We support more choice for Canadian consumers, and as creators we see OTT services as new opportunities for the creation and distribution of high-quality Canadian content.

² A. Elberse, *Blockbusters: hit-making, risk-taking, and the big business of entertainment*, Henry Holt and Co., 2013, pg. 173

³ Public Interest Advocacy Centre (PIAC), Consumers’ Association of Canada (CAC), Council of Senior Citizens Organizations of British Columbia (COSCO), National Pensioners Federation (NPF), Option consommateurs (OC), and Canadian Ethnocultural Council (CEC)

⁴ E.g. paragraphs 275-281

⁵ E.g. The Groups for the Public Interest argues to mandate “pick and pay”, eliminate the preponderance rules for discretionary services, and relax rules on non-Canadian programming services arguably beyond what the Commission had originally proposed in in Broadcasting Notice of Consultation CRTC 2014-190 .

14. Nevertheless, as we described in our initial written submission to this proceeding,⁶ OTT services do not eliminate the challenges faced in ensuring that Canadian options exist in the system. In certain respects, they may even exacerbate them. Throughout the hearing, the CRTC noted the rate of change in the system and the risks of standing still and doing nothing. The WGC believes that failing to bring OTT services into the regulatory system in a way that makes sense would be an expression—perhaps the definitive expression—of standing still amidst change. On July 17, 2014, it was announced that Netflix would have the exclusive Canadian rights for Disney feature films in the pay-TV window, starting in 2016.⁷ This will include titles from Disney Live Action, Walt Disney Animation Studios, Pixar Animation Studios, Marvel Studios, Lucasfilm, DisneyNature and DreamWorks Studios. This deal effectively excludes Canadian pay television channels that would otherwise have had access to those rights. With examples such as this, we believe it is no longer tenable to hold that Netflix or other OTTs are merely complimentary to traditional broadcasting. We believe they will soon be directly competitive, if they are not already.
15. As such, the time has come to bring OTT into the tent. The question that typically follows, however, is how, and is it even possible? While we don't have either the space or the resources to fully answer that question here, we do think it's useful to note that another jurisdiction, Australia, has already answered many of those questions.
16. On April 30, 2012, the Australian federal government released the Final Report of the Australian Convergence Review.⁸ This report followed several years of consultation, during which the Convergence Review Committee “received 340 written submissions and 28,000 comments and undertook an in-person consultation programme across Australia”. The result was a comprehensive proposal to regulate across all media, including Internet-based media, based in part on the size of the business undertaking. In other words, small undertakings would be exempt from regulation, while large, profitable, professional media companies—called “content service enterprises”—would be subject to regulation, no matter what platform they operated on. The rationales expressed for such regulation will be familiar to the Commission and those with knowledge of Canadian cultural policy: concerns about concentration of media ownership, and the production and distribution of Australian and local content, for example.
17. The Australian model may not be completely applicable to Canada—while we share some things in common with Australia, we differ in others. But the main point is that another jurisdiction has spent considerable time and money—we understand the cost of the review to have been in the millions of dollars—on the subject and come to the conclusion that all-platform content regulation is both desirable and feasible. We even see some of the same themes reflected in the comments of others regarding the scale factor—e.g. if we regulate online, we should focus on large commercial players, while allowing small organizations to innovate and ensuring that individuals have full freedom of expression.⁹
18. That said, we don't expect the Commission to launch an OTT or “all-platform” regulatory framework at the conclusion of this hearing, for a variety of reasons. The WGC lacks the resources available to the Australian Convergence Review Committee, and therefore we cannot undertake by ourselves to propose a comprehensive framework. This is all the more reason, however, for the Commission to continue to study the issue, including collecting information that is essential to that study. As such, we support the Commission in seeking information from Google and Netflix in the Let's Talk TV process, and in future processes. We support the Commission in its desire to make regulatory

⁶ See WGC submission, paragraphs 23-25 and 98-100

⁷ <http://variety.com/2014/digital/news/netflix-disney-reach-exclusive-streaming-pact-for-canada-for-first-run-films-1201263977/> Retrieved September 29, 2014.

⁸ *Convergence Review: Final Report*, Commonwealth of Australia, 2012

⁹ We note that this principle is often reiterated by those seeking or discussing regulation of OTT services. For example, see the written submissions in this proceeding dated June 27, 2014 of: the Groups for the Public Interest, paragraph 268; CBC, paragraph 48; and the Ontario Ministry of Tourism, Culture and Sport, paragraph 182.

decisions based on evidence. It appears clear that Google and Netflix have information that is relevant to this proceeding, and we support the Commission in obtaining that information.

19. We are aware that the Commission has decided to remove the evidence of Netflix and Google from the public record. However, we do note that both companies have argued that they already contribute to the objectives of the *Broadcasting Act*, as part of their view that no further regulation of OTT is necessary. At the public hearing, Google stated that, “Canadian creators are playing an active role in the success of YouTube. Each year, millions of hours of new Canadian content are uploaded to the platform.”¹⁰ Yet later in its appearance, Google stated:

Internally we are able to determine where the content was uploaded from, which is what we are defining as Canadian content for the purpose of this discussion.

As noted in my submission and in my presentation, that identifying something as Canadian content in the sense that the CRTC uses rules to determine it or, say, for a CAVCO scale for example, is not information that we have.¹¹

20. We submit that content that is merely uploaded from Canada does not meet any reasonable definition of “Canadian content”, even in its broadest sense. If we understand Google’s statement correctly, “Canadian content” for Google would include even clearly foreign content—including professionally produced foreign content—that is uploaded from Canada. If part of Google’s argument against regulation is that it already meets the objectives of the *Broadcasting Act*, the Commission must be in the position to verify how the objectives are being met.
21. Similarly, Netflix also argued that it is already providing Canadian content on their platform, and that they have a “Canadian” category to search from. But Netflix also appeared to acknowledge that only one show that they have financed—the latest season of *Trailer Park Boys*—would meet the Commission’s definition of “Canadian”,¹² and that their “Canadian” category includes programming with only limited, or even tenuous, connections to Canada.¹³
22. The WGC believes that issues such as these are critical to understanding the future of television, and that evidence on these issues is necessary for the Commission to make an informed decision. We support the Commission’s efforts in this regard, and would support the Commission taking any available legal recourse to assert its jurisdiction and obtain the necessary information.

Terms of Trade

23. At the public hearing, Vice-Chair Pentefountas asked us about the Terms of Trade Agreement (TOT) between the Canadian Media Production Association (CMPA) and the large, private, English-language broadcasters. While we do believe that TOT is best addressed by the CMPA and the broadcasters which are subject to it, we would like to note our support for TOT, in principle and in practice. The WGC believes that TOT supports productive and equitable relations between producers and broadcasters, and by extension benefits the broadcasting system as a whole, including screenwriters.
24. We are aware that certain broadcasters oppose TOT, and some have argued that it is an impediment to innovative and effective program production and exploitation. For example, Rogers Communications argued that TOT “removes the financial incentive for broadcasters to invest in big

¹⁰ Transcript, paragraph 344

¹¹ Transcript, paragraphs 393-394

¹² Transcript, paragraphs 21065-21070

¹³ Transcript, paragraph 21094

budget productions since it severely limits [their] ability to recover investments [they] make in high-cost Canadian programming”.¹⁴

25. The WGC seriously questions this position. Firstly, it appears to us that TOT does provide broadcasters with an opportunity to invest in programming. Section 7 of TOT explicitly provides for broadcaster equity investment, it simply ensures that such an investment is made in addition to a traditional licence fee, and not in replacement of it. Secondly, it is our understanding that broadcasters actively participated in the negotiation of TOT. They were not simply forced to sign a prepared draft. If equity investment on different terms was so vital to those broadcasters, why did they not negotiate for their position? Further, before TOT came into effect—only three years ago—broadcasters were presumably not bound by its terms. Were they making the financial investments then that they now claim are so crucial? If so, why did they sign away those opportunities? If not, why not? Surely the landscape has not changed so drastically since the summer of 2011, such that investment is crucial now but wasn't then. In our experience, broadcasters were *not* making significant equity investments prior to 2011, and were in fact relying on substantial financing from public sources such as the Canada Media Fund and production tax credits. And they continue to do so today. Presumably the best evidence in support of the broadcasters' position would be data showing substantial broadcaster equity investment in productions before TOT was implemented, and a drop in those investments afterwards. To our knowledge, no broadcaster has provided such evidence. This strikes us as telling.

Promotion of Canadian Content

26. We perceive that the Commission has put a particular emphasis on promotion in this proceeding. The WGC agrees that promotion is a crucial component in positioning Canadian programming for success, both domestically and internationally.

27. In this regard, we support the Commission in exploring promotional opportunities, including discoverability tools for Canadian content. As media becomes increasingly non-linear, on-demand, and competitive, the tools consumers use to find what they're looking for become more and more relevant to broadcasting and cultural policy. While the WGC does not have specific expertise in this area, we support the Commission's examination of this option for promoting Canadian programming.

28. With respect to counting promotional spending towards a broadcaster's Canadian programming expenditure (CPE) requirements, we would like to again stress the risk that doing so would simply displace existing promotional spending with spending that would otherwise have gone to production, thereby reducing production without increasing promotion.

Proposal by Entertainment One

29. At the public hearing, on September 19, Entertainment One (eOne) made a proposal to:

...establish a more flexible Canadian content point system that can be made available to Canadian producers and broadcasters on a certain number of qualified high budget television programs each year, provided that the worldwide distribution rights are retained by a bona fide global content exporter who has demonstrated a track record of investing a significant and material amount into Canadian content programming.¹⁵

30. eOne did not provide greater specifics on their proposals in their written submission dated June 24, 2014, nor at their appearance at the public hearing, so the WGC does not have the benefit of a complete proposal to consider. To the extent that a major proposal is raised so late in this process, with very limited opportunity for us to consider and respond to it, we would think this raises questions of procedural fairness. However, given the information available, we interpret the “flexibility”

¹⁴ Written submissions in this proceeding dated June 27, 2014 of Rogers Communications Inc., paragraph 152

¹⁵ Transcript, paragraph 22272

described by eOne to mean a lowering of the current point requirements, a relaxation of how the points system is applied, or both. In such a case, we presume that eOne's proposal would result in productions engaging fewer Canadians performing key creative functions.

31. As such, in the absence of further information, we interpret eOne's proposal to be that successful Canadian programming must be made less Canadian. We recognize that the definition of "Canadian content" has been much debated over the years, and that different criteria could be used in the definition. Content could be designated as "Canadian" in reference to who owns its various rights, who controls production decisions from a "business perspective", where it is made, where it is set, who performs its key creative functions, or its visible "Canadianess". While we recognize the complexity of this issue, we find it hard to understand why making better Canadian content should mean fewer Canadian creative resources. Surely our broadcasting policy is not just concerned about successful content, but successful *Canadian* content. In defining what that means, it is not clear to us why the nationality of the distributor should be a privileged criterion over that of the talent. On the contrary, the notion that corporate ownership and control should be a fundamental component of cultural policy has been questioned—for example, the C.D. Howe Institute has argued that "it is reasonable to conclude that owners of for-profit corporations are likely to be motivated by the bottom line, not others' conceptions of patriotic responsibilities, which would render Canadian ownership restrictions of dubious worth in any technological era."¹⁶ While we find ourselves in the difficult position of having to speculate on a proposal that we have not seen in any detail—and we would hope that successful Canadian content can be made where *all* participants in the value chain are Canadian—we must state our view that Canadian programming must be born of Canadian creativity if the concept is to have any meaning.

WGC's Positions on Proposals in the Working Document

32. We would like to briefly provide the WGC's views on several of the proposals put forward by the Commission in Broadcasting Notice of Consultation CRTC 2014-190-3, the "Working document for discussion". We reference the "theme" of each proposal as it is presented in the Appendix to the working document.
33. Regarding Theme 1. Small Basic, the WGC remains concerned about the impact that this proposal, in combination with the Commission's proposals for "pick and pay", will have on the Canadian broadcasting sector. During the hearing, the Commission heard evidence from numerous interveners who predicted lost revenues, lost channels, and lost jobs from forced unbundling. The parties who supported unbundling, such as the Groups for the Public Interest and the Competition Bureau of Canada, did so without the benefit of detailed, evidence-based studies. On September 26, 2014, an "E-Brief" from the C.D. Howe Institute also argued against unbundling.¹⁷ The WGC is not in a position to independently assess the issue, but our members are in the position to be significantly impacted by the result. We respectfully submit that with such potential for damage to the Canadian broadcasting system, the Commission should first do no harm with respect to these proposals.
34. That said, if forced to choose from the two options in the Working Document, the WGC would prefer Option B.
35. Regarding Theme 2. Pick and Pay, as with our comments above, we remain concerned about the impacts of this proposal, in combination with the Commission's proposals on a small basic service.
36. Regarding Theme 4. Simultaneous Substitution, the WGC remains concerned about the elimination or diminution of the simultaneous substitution policy. While we cannot independently measure the

¹⁶ L. Hunter, E. Iacobucci, and M. Trebilock, *Scrambled Signals: Canadian Content Policies in a World of Technological Abundance*, C.D. Howe Institute, 2010, page 27

¹⁷ L. Hunter, E. Iacobucci, and M. Trebilock, *Let the Market Decide: The Case Against Mandatory Pick-and-Pay*, C.D. Howe Institute, 2014

value of the policy ourselves, we note that it's been assessed at between \$200 million¹⁸ and \$450 million,¹⁹ which in our view is a very significant amount of money. For better or worse, these revenues form much of the foundation upon which high-quality Canadian content is built. This is particularly the case where CPE and programming of national interest (PNI) expenditure rules are the primary policy tools with which to ensure its production and availability. In applying a cost-benefit test to the decision, we believe that removing \$450 million from the Canadian economy so that some Canadians can watch Super Bowl commercials that are otherwise available on YouTube would be a bad tradeoff for Canada as a whole.

37. We are also disappointed that there was no exploration of non-simultaneous substitution (NSS) at the public hearing. We understand that there may be challenges in implementing NSS, and that broadcasters and BDUs generally opposed the idea. But we were struck at the lack of detailed rationale for their opposition—in many broadcasters' written submissions the issue was dismissed in a paragraph or less. We would have hoped that NSS would have been fully explored in this process, and we hope that the Commission will consider it in its deliberations from available information.
38. All of that said, if forced to choose from the two options in the Working Document, the WGC would prefer Option B.
39. Regarding Theme 5. Preponderance, we frankly prefer the Commission's proposed Option A, since it better preserves the overall preponderance of Canadian channels in the broadcasting system, which we believe is a central tenet of the *Broadcasting Act*, in particular section 3(1)(a), that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians."
40. However, we recognize that the logic of unbundling makes enforcement of a preponderance of channels received difficult, from a consumer perspective. As such, we would ask the Commission to consider options in addition to those two offered in the Working Document. For example, the Commission's proposals would allow BDUs to continue to offer predetermined packages of channels and, provided that they continue to have the flexibility to do so, BDUs will presumably price their offerings in such a way as to make those packages attractive to consumers. As such, to the extent that packages will continue to make up a significant portion of subscriptions, the Commission could consider preponderance rules for those packages, in a similar way that it does now.
41. Regarding Theme 9. Distribution of non-Canadian programming services, the WGC supports the Commission's proposal to not expand its current approach to authorizing non-Canadian services for distribution in Canada. In fact, as we stated in our written submission of June 27, 2014, we would support a further tightening of this policy.
42. Regarding Theme 10. Redefining broadcasting revenues, the WGC supports the Commission's proposal. As broadcasting activities occur more and more online, it is important that regulatory tools move with them. This is particularly important to the extent that the Commission intends to rely increasingly upon expenditure requirements to encourage the production and availability of high-quality Canadian programming.
43. Regarding Theme 11. Programs of National Interest (PNI), the WGC supports the continuation of this policy. We believe this is particularly important to the extent that the Commission intends to rely increasingly upon expenditure requirements to encourage the production and availability of high-quality Canadian programming. As we noted at the hearing, the definition of PNI should be narrowed to include only expenditures on *original* programming.
44. Regarding Theme 12. Programming Requirements (CPE), the WGC supports the proposal that all licensed television stations and specialty and pay services would be subject to CPE requirements; that the group-based licensing approach would be maintained and CPE levels would be adjusted

¹⁸ Broadcasting Notice of Consultation CRTC 2014-190, paragraph 59

¹⁹ Written submissions in this proceeding dated June 27, 2014 of Bell Canada, paragraph 119

initially to maintain the current level of dollar expenditures; and that CPE would increase over the licence term. We believe this is particularly important to the extent that the Commission intends to rely increasingly upon expenditure requirements to encourage the production and availability of high-quality Canadian programming. As we noted at the hearing, the definition of CPE should be narrowed to include only expenditures on *original* programming.

45. Regarding Theme 12. Programming Requirements (Exhibition Requirements), as we expressed at the public hearing, the WGC is concerned about the impact on children's programming of the proposal to eliminate exhibition requirements for the broadcast day. As we understand the Commission's proposal, it would apply to both conventional and specialty/pay channels. Should the Commission implement its proposals regarding a small basic service and pick and pay, in combination with elimination of genre protection, children's specialty and pay services may be at risk. The elimination of Canadian exhibition to those services may further exacerbate the problem.
46. Further, at the hearing, Vice-Chair Pentefountas asked us about exhibition requirements. Specifically, he asked, "And then you would not be adverse, as I have read from your document, to relaxing the rules on exhibition if we were to increase the rules on expenditure?"²⁰ We took the question to refer to the Commission's proposal in the Working Document and focused our response on that issue. But, to the extent that it was a general question, we would express our support for exhibition requirements generally—i.e. we would not support a regulatory approach whereby the sole or primary mechanism to encourage Canadian content production and availability was expenditure requirements with a complete elimination of exhibition requirements. As we stated at the hearing, any attempt to induce the production of *quality* programming which does not pay attention to *quantity* of programming is unlikely to achieve its objective over the medium-to-long term.
47. To give an example of what we mean, consider a system in which only expenditure requirements exist, and there are no exhibition requirements at all. In such a system, Canadian broadcasters may choose to commission fewer shows, while financially contributing more money to each show—i.e. they make fewer, bigger-budget shows. For the sake of illustration, let's imagine that this results in three shows of a particular type—for example, English drama series—whereas before there were ten shows. From a writing perspective, those three shows are unlikely to hire as many writers as the previous ten shows did—writing opportunities are unlikely to increase simply because the budget does. As a result, production volumes as measured in dollars may stay the same, but job opportunities decrease by 70%. Those writers *not* hired on the three shows cannot simply wait for the next season. They must feed their families, pay their rent or mortgages, and think about their future. They will therefore either leave the country, likely to the U.S., or leave the television business. Once they leave, they are unlikely to return. The talent pool shrinks thereby, and when the next three shows are ready to be made in the following season, there are fewer people to make them. The same writers who worked on the first three shows will not necessarily be available for the next three. Their success may also draw them to Hollywood, or if they are older they may retire. The talent pool thereby shrinks further. This only has to occur through a few production cycles before it becomes potentially unsustainable. Simply put, high-quality Canadian content will not exist without Canadian talent to make it, and below a certain threshold of quantity there will be no talent over the long term.
48. Whether or not a 70% reduction in the talent pool is the correct estimate of the contraction is not the purpose of our example. It's simply meant to illustrate the principle. The Commission may wish to make its own assessment as to the degree of the impact. The point is that we think there will be one. The WGC is naturally concerned about the impact this will have on the employment opportunities of its members—that's part of our job. The Commission may or may not share those concerns, or it may share them but prefer to balance them in favour of consumers or other factors. But we must point out the impact on the production and availability high-quality Canadian content. Where quantity decreases—because of lost exhibition requirements, or for other reasons—there will very likely be an impact on quality, if not in the immediate term then in the longer term.

²⁰ Transcript, paragraph 9478

49. We would also note that at the public hearing, certain interveners proposed new ways of doing things that stressed innovation, quality, and a focus on the global market—things that the Commission appears to favour. Yet when the Commission directly asked these interveners about “quantity versus quality”, their responses, in our view, did not suggest abandoning the former in search of the latter. For example, Mr. Morayniss of eOne—and here we find ourselves agreeing with him—responded to Chairman Blais’s question in this regard by saying:

So it's not necessarily about a reduction of volume, it's really about saying: How do we create [*sic*] home-grown big hits in Canada that actually deliver significantly more money than we are currently deriving from our Canadian shows, even our big drama series?²¹ [*Emphasis added*]

50. A similar question was put to Irene Berkowitz, which in answer she referred to the work of Anita Elberse.²² We didn’t take Ms. Berkowitz’s answer to support a significant drop in quantity as the way to achieve quality, but in any event, we would note that in *Blockbusters...*, Elberse has pointed out that the “blockbuster strategy” is really only available to large studios.²³ The Commission may wish to consider whether any Canadian broadcaster is actually large enough, on an international scale, to pursue such a strategy effectively. In addition, Elberse noted that the blockbuster strategy can actually stifle innovation, as content makers pursue proven formulas.²⁴ The applicability of these factors to Canada must also be considered.

51. Regarding Theme 13. Genre Protection, the WGC remains concerned about the impact this might have on the production and availability of high-quality Canadian programming. In our initial written submission, we expressed the concern that the loss of genre exclusivity could be accompanied by calls for lower Canadian content requirements from owners of former Category A channels. We now see that our concerns were well founded, since Corus²⁵ and Shaw²⁶ have suggested or sought such reductions in the event of the policy’s elimination.

52. Regarding Theme 29. Implementation, we would reiterate our statements at the public hearing, that implementation of new policies should be careful and measured, particularly given the significant potential for negative impacts of many of the proposals. At the public hearing, Commissioners at times used the metaphor of a “roadmap” to express possible implementation strategies for the new framework. Building upon that metaphor, we agree that a roadmap is useful, but also note that in planning a long drive the route would be subject to revision if one arrived to find a bridge was washed out, or the car was running low on gas, or if the reasons for setting out in the first place drastically changed.

53. We find it hard to overemphasize just how big some of the Commission’s proposals are, and just how much they might affect the Canadian television system, possibly forever. We have built our system over decades. We have constructed a series of interlocking pillars that support what has become a multi-billion dollar economic sector. We have developed a talent base and fought to provide opportunities for them in the face of the massive entertainment giant just south of our border. We believe that we’ve gotten better and better over the past several years, producing more and more shows that compete head on with the best from the U.S. and the world. We are prepared for the challenges and opportunities of the future. We are facing forward. But we still need a launch pad from which to take flight. The Commission has and does help provide that launch pad, and we ask that you endeavour to keep it strong as we move into the next era.

²¹ Transcript, paragraph 22305

²² Transcript, paragraphs 2003-2006

²³ *Supra*, Note 2, pg. 28

²⁴ *Ibid*, pg. 35

²⁵ Written submissions in this proceeding dated June 27, 2014 of Corus Entertainment Inc., paragraph 32

²⁶ Written submissions in this proceeding dated June 27, 2014 of Shaw Communications Inc., paragraph 16

Conclusion

54. We thank the Commission for the opportunity to participate in this process.

Yours very truly,

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

Maureen Parker
Executive Director

Cc: National Council, WGC

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