



August 21, 2015

Filed Electronically

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

Dear Mr. Traversy:

Re: Application 2015-0726-1 – Amendments to nature of service – YTV

1. 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.
2. In the above-noted application, Corus Entertainment Inc. (Corus) requests to delete the following condition of licence (COL) for YTV:
 13. In each broadcast year, the programming distributed by the licensee shall include a minimum of 90 hours of original, first-run Canadian programs that have been acquired from an independent production company by YTV, either through co-production or licensing arrangements.
3. The WGC opposes this request.

Independent production serves the objectives of the *Broadcasting Act*

4. As the Commission is aware, the *Broadcasting Act* states that “the programming provided by the Canadian broadcasting system should...include a significant contribution from the Canadian independent production sector.”¹ The policy rationale for supporting independent production is traditionally viewed as being to support a diversity of voices and expression², and the WGC concurs with that assessment. We continue to believe that a diversity of voices in the system is enhanced by policies that support independent production.

¹ *Broadcasting Act*, s. 3(1)(i)(v)

² See *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Peter S. Grant and Chris Wood (2004), pg. 275-281

Independent production is unrelated to genre exclusivity

5. The COL with respect to independent production is unrelated to genre exclusivity, and therefore there is no policy basis upon which to delete this COL at this time. The genre exclusivity policy was eliminated following the Let's Talk TV proceeding, in particular in Broadcasting Regulatory Policy CRTC 2015-86³ (the Policy), released March 12, 2015. Nowhere in the Policy, nor anywhere in the consultation process leading up to that decision, did the Commission link genre exclusivity with independent production. The Commission made no such link, we are aware of no other parties who made that link (prior to these applications), and we submit that there is none. Genre exclusivity deals with what a program or a programming service is about. As the Commission stated in the Policy, this refers to "programming of a specific type from specific program categories or relating to certain subjects."⁴ Independent production rules are fundamentally about the nature of the entity that produces that programming. They are unrelated concepts.
6. This fact seems frankly quite plain to us, so we are puzzled as to why Corus has applied to delete an independent production COL in the guise of being "consistent with paragraphs 254 and 255 of LTT content decision (BRP 2015-86)".⁵ Perhaps Corus has inferred that the logic of the elimination of the genre exclusivity policy specifically, or the totality of the Commission's decisions arising from the Let's Talk TV proceedings generally, imply that all discretionary services are or should be treated essentially the same from a regulatory perspective.
7. If so, we would make two points in response. Firstly, the Commission clearly intended the opposite, stating in the Policy that, "As is currently the case, the Commission will have the option of imposing individual conditions of licence on particular services."⁶ For example, in the same decision the Commission noted that exhibition requirements might differ between discretionary services, such as with regard to children's and youth programming.⁷ As such, even if we are to see more competition between services, it does not follow that all services are necessarily the same.
8. The second point flows from this. Even if wider-ranging regulatory parity is contemplated, we submit that now is not the appropriate time to implement it, since it would be a predetermination of what the Commission has said will occur at the next licence renewal. The Commission was clear that while elimination of the genre exclusivity policy is effective immediately, other key changes would be considered and implemented at licence renewal in 2017.⁸ We submit that it is far more appropriate to assess such changes then, when all the issues can be properly contemplated by the Commission and addressed by Canadians at a public hearing, rather than piecemeal in this application, in which Corus essentially makes its arguments about independent production in a reply phrase where interveners have no opportunity to challenge those statements.

Corus and Nelvana

9. YTV and similar Corus services are in a distinctive position because of Corus's relationship with major content producer Nelvana Ltd. (Nelvana). While the "90-hour COL" that Corus now seeks to delete was implemented prior to Corus's acquisition of Nelvana, we submit that it has become part of the Commission's overall analysis of independent production. Indeed, it is natural that the Commission would consider all factors in deciding how to balance objectives at various times over the years, as the industry evolves and services are renewed, and that includes how existing COLs may relate to changed circumstances.

³ Paras 232-256

⁴ Para. 232

⁵ Appendix 1, Corus application

⁶ Para. 309

⁷ Para. 196

⁸ For example, see Broadcasting Regulatory Policy 2015-86, paras 300-310

10. For example, the Commission recently deliberated on this issue when Corus acquired the TELETOON channels and Cartoon Network from Bell Media Inc. In the decision approving that transaction,⁹ the Commission stated that it “places great importance on independent...production, not only in the context of this particular transaction, but in the overall attainment of the objectives of the Act.”¹⁰ The Commission then specifically confirmed that “as a corporation wholly owned by Corus, Nelvana will not be considered an independent producer”¹¹ and found it appropriate to:

...impose a condition of licence requiring the licensee of TELETOON/ TÉLÉTOON to devote 75% of its expenditures for original first-run Canadian programming to non-related producers. It will also continue to expect TELETOON/TÉLÉTOON to ensure that at least 75% of all original, first-run Canadian programming exhibited is acquired from non-related producers.¹²

11. In that proceeding, the Canadian Media Production Association (CMPA) had also asked that TELETOON be subject to a 90-hour-original-programming COL for independent production, similar to the current COL for YTV that Corus is now asking to delete. The Commission chose not to implement such a COL for TELETOON because it believed “that TELETOON/TÉLÉTOON’s Canadian programming expenditure (CPE) and PNI obligations, coupled with Corus’s commitments regarding on-screen tangible benefits, will ensure the creation of original Canadian programming in the next licence term”.¹³ Those expenditure requirements included COL #12 above. As such, it appears clear that in the TELETOON decision the Commission identified the Corus-Nelvana relationship as relevant to the question of independent production and then considered two possible policy tools—a 75% spend and a 90-hour exhibition rule—to address that relationship. The Commission ultimately chose to implement one but not the other. Such a choice clearly implies that both tools have a similar if not identical purpose. YTV currently does *not* have a COL comparable to TELETOON’S COL #12—only the expectation¹⁴ (which TELETOON *also* has) that 75% of all original, first-run Canadian programming exhibited is acquired from non-related producers¹⁵. We submit that the Commission has made the same choice with respect to YTV but has simply chosen the other policy tool. That this happened in stages over time rather than all at once in a single proceeding does not change that basic fact.

12. As a result, if the Commission were to grant Corus’s application for YTV with respect to independent production, YTV would have lower independent production requirements than similarly-situated TELETOON. This would not be an example of the regulatory consistency that the Commission appears to be pursuing in the Let’s Talk TV decisions. Again, in the circumstances, even if the Commission is considering changing or harmonizing independent production conditions across discretionary services as part of a “level playing field”, we submit it should do so in the group-based licence renewal process, when all licensees and services within the major broadcast groups can be considered together, in a holistic and consistent manner.

13. For these reasons, the WGC opposes the aspect of Corus’s applications to eliminate the COL with respect to independent production.

⁹ Broadcasting Decision CRTC 2013-737

¹⁰ *Ibid*, para. 55

¹¹ *Ibid*, para. 57

¹² *Ibid*, para. 60; Implemented at COL #12 in Appendix 3 to that Decision.

¹³ *Ibid*, para 61

¹⁴ As the Commission is aware, expectations are not binding upon licensees in the way that COLs are.

¹⁵ Also note that this was implemented in Broadcasting Decision CRTC 2006-381, which was the first licence renewal following Corus’s purchase of Nelvana, and in which the Commission noted Nelvana’s affiliated status in relation to the issue of independent production.

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
Sylvie Courtemanche, sylvie.courtemanche@corusent.com

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