



July 27, 2007

Robert A. Morin  
Secretary General

Submitted via E-Pass

Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario K1A 0N2

Dear Mr. Morin,

**Re: Broadcasting Public Notice CRTC 2007-70 – Call for comments on the Canadian Television Fund (CTF) Task Force Report**

1. This is the Writers Guild of Canada's written intervention regarding the CRTC's call for comments on the CTF Task Force Report.
2. The Writers Guild of Canada (the WGC) is the national association representing more than 1,800 screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent.

**Executive Summary**

3. The CTF is vital to the health of the Canadian independent production sector, as witnessed most recently during the funding crisis this past winter. The Commission should only implement changes that will **clearly support the indigenous production industry** as mandated by the Broadcasting Act.
4. By conducting its review privately rather than through a public process the CRTC Task Force has not been fully informed on all of the issues. The result is that many of the Recommendations will have unintended results if they are implemented. The Commission can and should rectify this situation by instituting an **oral public hearing** on the issues within its jurisdiction. And if there is an oral public hearing the WGC would like to attend.
5. **CTF review is premature** because the impact of the shift to Broadcaster Performance Envelopes has not yet been felt by the industry. Heritage should remain in oversight of the CTF and oversee any guideline adjustments as may be necessary as they have since the CTF was instituted. There is no need for duplication of supervision between Heritage and the Commission. Heritage is well placed to ensure that the interests of the public and of cable subscribers who both fund the CTF are represented.

6. **“Cultural” and “Market-driven” are not antithetical concepts** as many 10 point programs have earned large audiences in Canada and have been commercially and internationally successful. Decreasing the level of Canadian content does not guarantee or even increase the odds of success. Success depends on creative talent, truly Canadian programs based on fresh, original ideas and intangibles such as the current tastes of the audience.
7. Rather than create two separate funding streams, which would be confusing, complex and unnecessary, **should the CRTC determine that economic factors be considered, the CTF Board could amend the guidelines to provide bonus funding for projects which demonstrate a solid business plan.**
8. **BDU Regulations should not be amended to include CTF objectives.** Funding objectives should be more flexible and responsive to industry change than can be reflected in legislative regulations. Guidelines can be revised in response to industry change and industry practice. Actual and potential return is improperly being suggested as an essential criterion given the CTF’s requirement to support Canadian programming in a highly competitive environment dominated by the U.S. entertainment industry. In a free market Canadian programs would not be made as Canadian broadcasters would much rather license bigger budget U.S. programs, for a fraction of the cost of what it would cost to licence an original Canadian program.
9. Canadian television programs cannot be ‘meaningfully developed’ by Canadians or ‘reflect Canadian experiences’ if they are written by non-Canadians. **A Canadian program is one that is written and produced by Canadians.**
10. **New programs such as new media funding should not be implemented without new sources of revenue to fund those programs.** Benefits packages and return on equity investments will not be sufficient to generate enough revenue to fund new media programs.
11. The Commission may not have jurisdiction to change the Board of Directors without the consent of the Department of Heritage. The Board of Directors has recently been revised in response to the Auditor General’s report and does not need to be revised again so soon. To be effective the Board should continue to have the **experienced input of producers and broadcasters**, who both benefit from the CTF but who also work within the existing conflict of interest guidelines. However, should the Commission determine that producers should be removed from the Board then broadcasters, who also directly benefit from the Board, should also be removed.
12. **The most important recommendation in the CTF Task Force Report is the one that recommends that the BDU Regulations be amended to give the requirement that BDU contributions be made monthly the force of law.** This recommendation should be implemented immediately.
13. The recommendation that CBC’s guaranteed envelope be limited to the Heritage contribution **undercuts the CBC’s budget** without any suggestion for

replacement. The Broadcasting Act requires that the CBC continue to be adequately funded.

14. The market-driven funding stream also reduces available funds for **educational broadcasters** without any direct mention of them. Programming for educational broadcasters should continue to be supported.
15. The market-driven funding stream proposes to limit development to the Heritage funded stream. **Market-driven programs require adequately funded development just as much as 'cultural' programs.**

### General Comments

16. **The WGC appreciates the CRTC Task Force's support of the CTF and its role in independent production.** The Canadian independent production sector is dependent on CTF for financing. Any risk to the CTF, as witnessed during the winter's financing crisis, risks the entire independent production sector in Canada. It employs thousands of Canadians in highly skilled jobs as well as supporting the goals of the Broadcasting Act to support a Canadian broadcasting system. In fact, the CTF has enabled Canadian talent to succeed both at home and abroad. Names such as Malcolm MacRury ("Black Harbour", "Deadwood") and Hart Hanson ("Traders", "Bones") would not have become household names without CTF support. Keeping that in mind, the Commission should only implement recommendations from the Task Force that clearly support the Canadian independent production sector, as they are bound to do by the Broadcasting Act.
17. The CRTC Task Force was set up in response to certain BDUs calling for changes to the CTF outside the normal course of business. The Task Force chose to have private meetings with stakeholders where no one stakeholder knew what the other stakeholders were suggesting or recommending and no notes were taken by the Task Force. No documents were submitted. No statistics were supplied to support assertions. There was no opportunity for a balanced assessment of the issues as the Task Force frequently only heard one side of the story on issues. For example, when the WGC met with the Task Force it only discussed the following issues:
  - WGC support for the importance of the CTF to the independent production sector
  - WGC support for the CTF as it is currently structured including its ability to adapt guidelines as required by changing circumstances
  - The need for monthly BDU payments to be given the force of law as regulation and the need for financial penalties for non-payment
  - WGC support for the CTF Board as currently structured including the need for board members with industry experience.

As can be seen from the above, in the WGC's brief meeting with the Task Force many of the issues raised in the Report and specifically addressed in the recommendations were not raised in discussion with the WGC. We assume that

our experience is not unique and that each participant addressed their own primary concerns with no knowledge of what was being discussed with the other participants. The result is a Report that will have unintended results if all of the recommendations are implemented and is over-reaching in its scope. This could have been avoided if instead of a Task Force, an unusual step to say the least, the CRTC had implemented its standard public hearing process from the beginning.

18. **Any comprehensive review of the CTF is premature** as the CTF is currently operating with a new funding mechanism, the Broadcaster Performance Envelopes (“BPE”) which has not yet had a chance to be fully assessed as productions financed through the BPEs are only now being broadcast. The decision was made to restructure the CTF to allocate money to broadcaster envelopes as the broadcaster is closest of all elements of the Canadian broadcasting system to knowing what audiences want. The BPEs are calculated on the basis of factors that include audience success. Their impact on the success of programs has not yet been determined as we are only at the beginning of the second year of funding under the BPEs.
19. The Commission delegated authority for oversight of the Cable Production Fund to the Department of Heritage when the Department of Heritage decided to augment the funds of the Cable Production Fund with Telefilm’s Broadcast Fund and additional Heritage funds and created the Canada Television and Cable Production Fund (now known as the Canadian Television Fund). It is useful to repeat here the reasoning from the Commission’s decision to transfer oversight to the Department of Heritage<sup>1</sup>. The three reasons are:
  - The new CTCPF Board represented a wide range of cultural and financial interests as it included a broad cross-section of the industry: producers, broadcasters, cable distributors, CBC, pay and specialty services, Canadian government and Telefilm.
  - The Commission did not see the need for a duplication of supervisory roles with the Department of Heritage.
  - The Commission was satisfied that the presence of the Department of Heritage on the Board and its involvement through the Contribution Agreement ensured that the interests of the public and of cable subscribers continued to be represented. [emphasis added]
20. **We see no reason that the Commission’s reasoning and determination at the time of its transfer of oversight to Heritage needs to be overturned.** The CTF will still benefit from a well-represented Board provided that the Task Force Report’s Recommendations 11, 12 and 13 are not implemented, there is still no need for a duplication of supervisory roles and Heritage continues to play a crucial role in representing the public and cable subscribers, or in other words, those who are funding the CTF.

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<sup>1</sup> Public Notice CRTC 1996-159, *Transfer of Oversight of the Cable Production Fund (CPF)*

21. However, if the Commission determines that a review of the CTF is necessary and that there are valid reasons to retrieve authority over the BDU contributions, **then the CTF review should be part of an oral public hearing** in the same way that the Independent Funds are being reviewed in the fall. Only through an oral public hearing process can all relevant parties be heard and the Commission gain a balanced view of the issues. The oral hearing process exists to enable the public and stakeholders to assist the Commission in its deliberations. The suggested changes to the CTF affect too many members of the industry to be the result of an ad hoc private process.
22. It must be noted that **BDU contributions to Canadian programming under the *Broadcasting Act* actually are monies belonging to their subscribers rather than to the BDUs themselves.** As part of the 1993 Structural Hearing the Commission agreed that the BDUs could keep half of the Capital Expenditure (“CAPEX”) rate increase previously granted to assist with infrastructure costs provided that the other half was directed to the new cable production fund. The CAPEX was intended to be a temporary increase to help the BDUs with specific capital expenditures. When it was no longer needed they received a bonus of 50% of the increase which they still collect today. They are merely a conduit for the other 50% which is paid by the subscribers to the CTF. It is NOT and never has been BDU money. This is why the Commission commended Heritage’s ability to ensure that the interests of the cable subscribers were represented (see above, paragraph 19) on the CTF Board of Directors.
23. Accordingly, it is the Commission’s duty to ensure that the contributions of Canadians to the Canadian broadcasting system, whether as taxpayers via the Heritage contribution or as cable subscribers via the BDU contributions, are spent on truly Canadian programming created by Canadians and not US or international programming masquerading as Canadian programming. **Canadians are entitled to see their money spent on Canadians.**
24. Finally, **the WGC objects to the basic premise that 10 point Canadian Content productions are not market-driven and cannot be commercially successful.** Current 10 point productions are as diverse as “Corner Gas”, “Little Mosque on the Prairie” and “Trailer Park Boys”. All have been successful with audiences and are earning revenues from exploitation throughout the world. In fact, the newspapers this past week have been full of articles about “Corner Gas”’s featured time slot on WGN in the U.S. this fall. The show’s ‘Canadian-ness’ is not seen as a detraction. The WGN executive director of marketing is quoted as saying “It’s a family show, with no bad language or adult situations, and it should appeal to our key audience in the Midwestern U.S.. In between New York and Los Angeles, there are a lot of towns like Dog River in America.”<sup>2</sup> Or in other words, by capturing the specific the series has been able to illuminate the universal.

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<sup>2</sup> Quoted in “Prairie life heads to Middle America” article by Andrew Ryan, *Globe and Mail*, July 23, 2007

25. The producers of these television series intended to both make money and to tell a particularly Canadian story. **The uniqueness of those Canadian stories is what makes them interesting to audiences around the world.** That being said, a Canadian story does not need to wave the flag and be 'cultural' to be Canadian. Any story written and produced by Canadians is a Canadian story. "Degrassi: The Next Generation" and "Life with Derek" both take a Canadian perspective on growing up in today's world and are successful on Canadian and US broadcasters. "Nature of Things" is a wide-ranging documentary series about the world around us but always with a Canadian point of view. "DaVinci's Inquest" is firmly rooted in downtown Vancouver but reflects a familiar urban environment that now viewers in 85 countries around the world can relate to. All of these projects are 100% Canadian and highly successful for their genre.
26. Further, diluting the Canadian-ness of the production to 80% Canadian is no guarantee that more productions will be successful. In fact, there are no guarantees when it comes to the success of creative material as so much depends on the ever-changing tastes of the audience. To quote well-known Hollywood screenwriter William Goldman "Nobody knows anything".<sup>3</sup> **A key contributor to success however, is Canadian stories based on fresh, original ideas which are told well by Canadian writers.** In a normal week during the main broadcast season the BBM top 30 program ratings in Canada will include 10 point Canadian programs like "Little Mosque" and "Corner Gas"<sup>4</sup> doing better than bigger budget U.S. programs like "Lost" and "Law and Order". In fact, three factors which have great impact on audience success are adequate production budget, consistent and prominent scheduling and visible promotion. When broadcasters provide high enough licence fees to fund a high quality budget, schedule a program in a consistent slot in prime time and let the audience know that the program is on the air, those programs earn large audiences.
27. For all of the foregoing reasons **the WGC disagrees with the need to create a separate funding stream for private sector money targeted towards market-driven projects.** Any changes which the CTF needs to implement to address concerns of stakeholders can be done through the existing structure and with a fully staffed Board of Directors representing the stakeholders. Should the CRTC determine after an oral public hearing that it is necessary the CTF Board could easily adjust the existing CTF guidelines to take into greater consideration economic factors such as business plans, international sales projections and market interest without making such a radical restructuring with potential negative effects for so many creators, producers and broadcasters.

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<sup>3</sup> "Adventures in The Screen Trade" by William Goldman, 1989 in reference to the inability of Hollywood executives to predict a film's success prior to release. See also the following academic reference to the unpredictability of film or television success: "Hollywood Economics: How Extreme Uncertainty Shapes the Film Industry" by Arthur de Vany, 2003;

<sup>4</sup> Note, summer programming has little original drama. However, see the BBM Top 30 for the week of March 12 – 18, 2007 when the "Corner Gas" finale beat out the first two Hockey Night in Canada playoff games as well as a number of U.S. season finales.

28. Should the Commission decide to implement the market-oriented private sector funding stream despite our concerns, we hope that the Commission take into consideration our comments in respect to some of the specific recommendations of the Task Force Report.

### Comments on Recommendations

Recommendation 1 – amend BDU Regulations to include objectives

29. The Task Force has proposed that BDU Regulations be amended to include the following draft objectives:
- Qualifying Canadian programming must meet a minimum of 8/10 points using the CAVCO scale, be broadcast in prime time, and continue to fall within the CTF's traditional genres of drama, children's and youth, documentary and variety/performing arts programming;
  - Audience success must be the primary criteria for continued funding; and
  - Actual and potential return on investment must be a factor in allocating funding while taking into account the different realities of English and French markets.
30. **The WGC does not believe that the objectives of the private sector funding stream should be enshrined in the BDU Regulations.** Funding objectives change based on industry circumstances, philosophies of the government of the day and available funding. In the past the CTF has been flexible enough to be able to adjust its objectives in response to changing circumstances through a rigorous process of Board review. In particular the current objectives of the CTF, as embodied in the 10 point talent threshold and production in Canada requirements were instituted as a result of massive oversubscription which led to industry uncertainty as funding was dependent on where the project fell in the application line. In 1998 the CTCF (as the CTF was then known) Board was able to act quickly to rectify the situation and bring stability to the industry by unanimously revising the criteria. Enshrining the objectives in regulation which require parliamentary approval prohibits the CTF from making timely adjustments and politicizes what is intended to be a non-political process.
31. Further, **the objectives as set out above in paragraph 29 are incomplete and are best suited for inclusion in guidelines where they can be more adequately described.** In particular "audience success" requires more definition, as the CRTC has acknowledged in this Public Notice. Currently "audience success factors" are a complete set of guidelines for the broadcasters used in calculating the BPEs. The Task Force Report does not refer to the current definition so it is unclear whether it applies (ie hours tuned per CTF program) or whether a new definition is contemplated. If the latter, guidelines rather than regulation should identify if audience success is a factor of audience size, audience share, distribution revenue or some combination of the foregoing and whether it is national or international in scope. Audience success should also take into consideration the broadcaster and its potential reach (ie a network

can garner a larger audience than a specialty channel) and the format (ie children's and youth programming have a smaller target audience).

32. "Actual and potential return" is both unclear and contrary to the fundamental core of why we have the CTF. It is unclear how a new program would have an actual return or how a new program's 'potential return' would be judged. More importantly **financial return should not be an essential criterion for financing**. As the Task Force acknowledges when it addresses the importance of the CTF, there are unique economic factors faced by the Canadian broadcasting system which supports a small population with two major languages next door to the world's largest producer of popular television programs. The Broadcasting Act and all other government-supported initiatives were instituted to support the production of Canadian programs, recognizing that in a free market these programs would never be made as Canadian broadcasters would gladly license the bigger budget U.S. programs at a fraction of the cost. The CTF exists therefore primarily to ensure that Canadian programs exist on the Canadian broadcasting system. International sales and profit are clearly a goal of every producer but are not properly threshold requirements for financial support from Canadians.
33. If terms such as "audience success" and "actual and potential return" are in the guidelines they can be easily adjusted where necessary as they are put into practice. Over the years the CTF has repeatedly adjusted its policies and guidelines in response to industry feedback and worked hard to simplify their guidelines. Adding new unproven terms such as 'potential return' will only complicate the guidelines rather than meet the Task Force's goal of simplifying them.
34. The Task Force Report does not say how "audience success" and "actual and potential return" are to be assessed or by whom. It is not clear whether the Task Force is suggesting that the market-oriented fund will now be a subjective fund in contrast to the existing CTF which has always been an objective fund. If it were to encompass a subjective fund there would have to be two separate applications and two analysis procedures. The CTF would also then be taking over the role of programmer from the broadcasters, who are closest to the audience and can therefore know best which programs have the best odds of being successful with the audience.

#### Recommendation 2 – Market-oriented private sector funding stream

35. As mentioned above, **'cultural' and 'market-oriented' are not mutually exclusive**. The WGC sees no need to institute a separate fund. The CTF as currently structured encourages broadcasters to license programming that will result in 'audience success' in its calculation of the Broadcast Performance Envelopes ("BPE"). In fact 'driving audience success' is one of the four guiding principles of the CTF. 'Market-oriented' and 'potential for return' can go beyond a broadcaster's interest in its domestic market to reflect international sales appeal. Accordingly should the CRTC determine after an oral public hearing that additional economic criteria should be considered then the CTF Board could amend the guidelines and allocate additional 'bonus' funding for projects that

- demonstrate a solid business plan. Revising the guidelines to provide for 'bonus' funding that recognizes market potential will create much less upheaval than will likely occur from the Task Force Recommendations while creating the same incentives the Task Force is looking for. Precedent for the 'bonus' approach exists with the Quebec Regional French Language Productions which currently earn a bonus 'incentive' on top of the CTF licence fee top up.
36. The CTF has tried to operate as a dual fund program when it worked with Telefilm to administer the Equity Investment Program (EIP) and Licence Fee Program (LFP). That process was confusing, added additional paperwork to the process of financing television production and after a time was revised to one stream with an optional EIP investment for those that qualify. There no reason to return to a funding system that has been proven not to work.
37. 'Cultural' productions also aim for market success as **no writer or producer intends to not make money when creating and producing television**. Therefore, given that each fund will have less money than the entire CTF currently has, it is very likely that producers will be forced to apply to both streams with separate applications, analysis and decision-making.
38. Separate from but similar to the proposed 'objectives', the Task Force has recommended the following 'essential criteria' as part of the 'simple and flexible' program guidelines for the new funding stream:
- Underlying rights are owned and significantly and meaningfully developed by Canadians;
  - Projects must reflect Canadian experiences; and
  - Projects must be certified by CAVCO and attain a minimum of 8/10 points.

- The market-driven funding stream has removed the requirement that the production be set in and shot in Canada, lowered the point threshold from 10 points to 8pts and changed "speaks to Canadians about, and reflects, Canadian themes, and subject matter" in favour of "reflect Canadian experiences".
39. Given the goal of simple guidelines, the WGC assumes that the market-driven funding stream will use the same definition and explanation of "Underlying rights are owned and significantly and meaningfully developed by Canadians" as currently exists within the CTF guidelines. The WGC supports that definition as it makes it clear that Canadian writers and/or showrunners must have 'significant and meaningful involvement in the project, from concept to script'. Projects cannot fulfill this test if they are developed by non-Canadian writers and/or showrunners.
40. For clarity, when a television program is first conceived a Concept is written which briefly describes the program. That is further developed by the writer into a Pitch document which in two to three pages. If a broadcaster expresses interest a writer will then write a pilot episode and a Series Bible. The Series

Bible would include the overall story, the arc of the story over the season, character descriptions, location descriptions and episodic story ideas. It sets down the vision of the series for all of the writers, directors and the broadcaster. Finally Scripts are written. The showrunner generally writes the Concept, Pitch and Bible during the development of the series and then writes some or all of the Scripts as well as story editing Scripts written by other writers. Each of these development stages is crucial to the success of any series or program. If this work isn't created and written by Canadians in the preproduction phase, the program that results will not go to air with a Canadian perspective. Therefore, **development of all of these stages by a Canadian writer is required in order for the program to be meaningfully developed by Canadians.**

41. Further, it would be very difficult for a non-Canadian writer or showrunner to 'reflect Canadian experiences' though the exact meaning of this phrase is unclear. While the Task Force must have had a goal in mind when they changed the wording the report does not reflect it. Canadian funds should go to Canadian projects and it takes much more than a Canadian producer and a Canadian production crew to determine that the program is Canadian. Again, the Broadcasting Act (s. 3(1)(d)) states that the Canadian broadcasting system should "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity". The existing CTF guideline is closer to the values enshrined in the Broadcasting Act. It is the CRTC's mandate to uphold the Broadcasting Act, not undermine it.

#### Recommendation 3 – Equity Investment

42. This is not a new concept and in fact CTF currently has the option to make equity investments in projects over and above the licence fee top up. The WGC does not object to a portion of CTF funding being allocated to equity. However, the Task Force seems to be under the impression that equity investment can generate sufficient revenue to fund new media. While Canadian distributors have greatly benefited from successful Canadian television series, very little revenue has flowed back to the equity-based funding agencies in recent years due to the crash of the international television market. The WGC is concerned that the Task Force may not have a full picture of the issues on this topic and are concerned that the Recommendations envision the CTF spending money on new media that it is unlikely to have.

#### Recommendation 4 – Increased Licence Fees

43. As the Task Force noted on page 12 of the report, and as the Canadian Coalition of Audio Visual Unions (CCAU) of which the WGC is a part, has consistently been reporting, Canadian broadcasters pay very low licence fees for domestic programming in comparison with other similar jurisdictions. As the CCAU has also been reporting, since the 1999 Over the Air Broadcast Policy removed expenditure requirements, Canadian broadcasters have been spending less and less on domestic programming while spending increasing amounts on foreign programming. Spending on all Canadian programming has diminished as a percentage of the overall programming budget from 50% in 1999 to 40% in 2006,

while broadcaster spending on Canadian drama has dropped over 30% since 2000. Annual expenditures on English Canadian drama have dropped from \$62 million or 4% of ad revenue in 2001 to \$40 million or 2.3% of ad revenue despite the Commission's goal of 6% as stated in the drama incentive policy (Public Notice CRTC 2004-93).

44. **The WGC feels that the real answer to the crisis in funding Canadian television programming is the reinstatement of an expenditure requirement. However an increase in the licence fee thresholds is another tool aimed at the same goal – Canadian broadcasters need to pay a more appropriate amount of the cost for the Canadian programs they carry, keeping in mind that funding Canadian programming is one of the costs of the broadcast licence that they have been granted by the CRTC. Accordingly, the WGC supports the recommendation that the CTF Board increase the minimum licence fee paid by broadcasters for CTF-supported productions of either stream.**

#### Recommendation 7 – New Media Funding

45. As the Task Force pointed out on page 12 of its report the CTF is oversubscribed. Adding new objectives to the CTF without new resources will exacerbate the oversubscription. **The WGC strongly supports more funding for 'new media' however not at the expense of television programming.** Accordingly no existing CTF revenues should be allocated to New Media.
46. Should the CRTC wish to impose an additional contribution on the BDUs specifically for New Media that could be decided as part of this process. However, it may be more appropriate to bring the internet service providers (ISPs) and wireless carriers within the regulatory framework and impose a contribution on the ISPs and wireless carriers to support Canadian programming that will be carried by them. Such a framework would be more appropriately part of a review of the New Media Exemption Order. The basic concept that those who benefit from Canadian "new media" should be contributing to the cost of its production is a concept supported by the WGC.

#### Recommendation 8 – New Media Exploitation

47. The WGC encourages broadcasters and producers to come to terms regarding the exploitation of programming on new media platforms. It is in every party's best interests to be able to distribute programming to Canadians on the multiple platforms available to Canadians and to earn revenues from such exploitations. As a participant in exploitation revenues, the WGC would like to see Terms of Trade entered into between the producers and the broadcasters as it would affect all programming regardless of the source of financing. However, as an alternative, the WGC does support the Task Force's proposal that should agreements not be entered into, the CTF would impose a 50/50 sharing of net revenues from new media exploitation, provided that revenues are defined to include revenues directly generated by the programming, including advertising. The WGC's goal is to ensure that writers are appropriately compensated both for the writing services provided and for exploitation of their work on all platforms.

#### Recommendation 9 – Annual Reports

48. The WGC believes that the kind of detailed reporting recommended here will release to the public confidential business information about the projects and producers funded. Currently CTF reports quarterly on projects receiving CTF support. As the CTF is not a subjective fund and it is the broadcasters role to determine which projects should access their envelope, then there are no 'reasons for support' to be released. All projects selected by broadcasters which hit minimum requirements will be supported. Finally, the reporting suggested does not take into account the time it takes to produce a television program as it is very unlikely that any audience success will have been determined by the date of an annual report. Should the Task Force be recommending that the reports keep track of the success of past years funded programs this would be a significant administrative burden.

#### Recommendations 11, 12, 13 – Board of Directors

49. The Task Force Report includes several recommendations which would change the structure and composition of the Board of Directors. First, we question whether the Commission has jurisdiction to change a Board of Directors that governs both the Heritage contributions and the BDU contributions without the consent of the Department of Heritage. Further, the WGC is of the opinion that such change is not necessary. The CTF Board of Directors was just updated to provide additional independent directors to address concerns of the Auditor General. The WGC does not see the need for more change. While certain BDUs have complained about their lack of representation on the CTF Board it must be noted that each of Shaw and Vidéotron had a representative on the Board until they quit this past winter during the funding crisis. The BDUs had representatives on the Board when it unanimously agreed to increase the point threshold for eligibility from 8point to 10point.

50. The WGC is not averse to the concept of a nominating committee who would propose names for the Board of Directors. The WGC's concern is the composition of the Board of Directors. The CTF Board of Directors should be made up of people with experience in television production, broadcasting, new media and communications rather than real estate, accounting or other unrelated industries. This experience is needed in order to fulfill the advisory role of the Board of Directors, provide guidance to staff and liaise with the Department of Heritage and the BDUs. Given the Board of Directors role in reviewing, revising and updating guidelines for the CTF it is imperative that the individual directors have relevant experience to bring to their roles.

51. Accordingly, **the WGC disagrees with Recommendation 13 which proposes that the independent production sector not be represented on the Board.** The broadcasters are as much beneficiaries of the Board as are the producers but the input and wisdom of both sectors are required for a balanced, experienced Board. Any potential conflict of interest can be managed by the Board's conflict of interest guidelines which the Task Force admits has worked well to date. However, should the producers be removed from the Board the

WGC feels that a balanced approach would be to remove the broadcasters as well as they are equally beneficiaries of the CTF.

52. The WGC welcomes the suggestion that an advisory committee be put in place to 'ensure that perspectives of the independent production sector are brought to the Board and included in the development of program guidelines'. We recommend that such an advisory committee include creators (ie writers, directors, performers) who are integral to the development and production of high quality Canadian programming.

Recommendation 14 – Chair of the Board of Directors

53. The WGC believes that the CTF and the industry is best served with a Chair of the Board of Directors who has familiarity and experience with the broadcasting industry but who is independent of contributors or beneficiaries of the fund. An independent Chair would work to create consensus from the disparate perspectives on the Board of Directors.

Recommendation 19 – Public Review Leading to Objectives

54. As stated above in Paragraph 12, the WGC does not believe that the objectives proposed should be included in the BDU Regulations. However, the WGC strongly believes that any proposed change to the CTF and the BDU contributions should be subject to an oral public hearing rather than a paper call for comments process as currently being undertaken.

Recommendation 20 – Monthly BDU Contributions

55. **The WGC applauds the CRTC Task Force for recommending that the BDU Regulations be amended to require that the BDU monthly contributions according to Circular No. 426 be given the clear force of law as regulation.** These regulations should be introduced to the BDU Regulations at the earliest opportunity independent of any other CTF-related changes or amendments to BDU Regulations. Industry stability should not be subject to the whims and strategies of the BDUs. However, regulation will not be enforceable on its own unless there are also clear financial penalties for breaching those regulations. The issue of penalties is more appropriately part of the upcoming hearing on BDU Regulations however the CRTC may wish to include specific financial penalties for breach in any suggested regulations proposed at this time.

Recommendation 21 – Ongoing Review of CTF

56. The Task Force appears to assume that the CTF will not implement the objectives of the market-driven funding stream unless compelled to by regular reviews. This assumption is insulting to the integrity of the Board of Directors. Further it suggests a heavy hand of regulation at a time when the CRTC is seeking to lighten its regulatory approach to upholding the Broadcasting Act. The WGC does not support the notion of regular reviews to ensure CTF compliance.

Recommendation 22 – Allocation of Benefits to the CTF

57. We will address the benefits policy as part of the Diversity of Voices hearing as directed. Allocating a portion of benefits packages to the CTF is a good idea however it will have limited impact. While the WGC encourages increasing the financing available to the CTF, given that the existence of benefits packages is dependent on mergers and acquisitions in the industry and is therefore inherently unpredictable, the allocation of tangible benefits to the CTF can only be considered as a bonus payment to the CTF and should not be considered by it to be a regular source of revenue. The CTF cannot take any allocation of benefits monies into consideration when they plan from year to year on their available revenue and spending plans.
58. There is also the question of which stream of the CTF any benefits money should be appropriately allocated to. As it is not BDU money and has as a goal the benefit of the Canadian broadcasting system, the WGC suggests that if there are two separate streams it would be appropriate to allocate any benefits bonus to the so-called 'cultural' stream.

Other  
CBC

59. The Task Force Report throws in after the Recommendations that CBC's access to CTF funds is currently governed by the Contribution Agreement between CTF and the Department of Canadian Heritage (DCH) and is beyond the jurisdiction of the CRTC. The Task Force then states that projects qualifying for the market-driven funding stream 'should be eligible for licensing by the CBC'. They do not say that CBC projects will continue to be able to access a guaranteed 37% of the CTF. That is either an oversight or a proposal to undermine the CBC by reducing its budget. **The budget of the CBC is clearly outside the mandate of the CRTC Task Force and inappropriately dealt with as part of this Report.** Without a guaranteed allocation the Task Force appears to expect the CBC to answer its legislated mandate under the Broadcasting Act (s. 3(1)(m)) while competing with private broadcasters for the market-driven funds. This is not a level playing field as private broadcasters' only goal is to maximize profits for shareholders. It is no secret that Shaw and Vidéotron objected to the CBC having a guaranteed envelope but without it the CBC would be completely unable to fulfill its mandate as a public broadcaster to be distinctively Canadian, reflect the regions, to contribute to the flow of cultural expression, contribute to national consciousness and identity and reflect the multicultural and multiracial nature of Canada. Unless the CRTC is, at the same time, providing another source of guaranteed financing for CBC programming it is hobbling the CBC at a time when all parties agree that the CBC is underfunded and requires assistance to meet its mandate under the Broadcasting Act. The two stream proposal should not be implemented if it is going to risk CBC's revenue without any replacement mechanism.

## Educational Broadcasters

60. The Task Force Report is silent on educational broadcasters. However, like the CBC, educational broadcasters have legislated mandates that oversee their programming decisions and these mandates cover more than audience success. Under the current CTF audience success is only one factor to be considered. Regional licences and historical spending in particular have allowed educational broadcasters to earn envelopes that are big enough to generate educational programs of value to Canadian audiences. **A shift of the BDU contributions to purely market-driven will undercut the educational broadcasters and put at risk many children's television programs.**

## Development

61. The Task Force Report also makes a brief reference to development financing remaining with the Contribution Agreement between DCH and CTF. The WGC hopes that this also was an oversight as it suggests that market-driven projects do not require development financing. If this is true the WGC would like to know on what basis this decision was made. Either the Task Force believes that writers and producers should finance development from their own pockets or they believe that market-driven projects will come to producers fully developed by non Canadian writers. The first premise puts an unfair financial burden on writers and producers while the second contravenes the criteria that projects be developed by Canadians. Even extremely market-oriented US studios recognize the need for paid development of television programs. It simply makes sense to ensure that a program works on paper before you enter the very expensive production stage. Development, including audience testing and pilot production, is an essential and expensive early step to ensure commercial success. **The WGC strongly suggests that should a market-driven funding stream be implemented, an appropriate portion of it be allocated to development.**

## Suggestions for Monitoring and Enforcing Compliance

62. **Failure to remit the monthly BDU contributions should be subject to immediate fines and mandatory orders enforcing payment.** BDUs should not be allowed to throw public temper tantrums by withholding legislated payments in an attempt to get their way when working within the system could not achieve their goals.
63. The CTF has done an excellent job meeting its objectives to date. There does not seem to be a need for added 'enforcement' measures to require it to do its job. Annual reports will provide the CRTC and the public with sufficient information on projects to meet any monitoring requirements.

## Meeting Objectives

64. The WGC considers that detailed Annual Reports are sufficient monitoring measures to ensure that objectives are being met. The WGC is concerned however that the Commission may be of the opinion that CTF's success in meeting objectives can be objectively defined by graphs and charts. As with all

arts disciplines, television is subjective and its success is in many ways subjective. Objective metrics against which support of Canadian programming can be measured will be difficult to define.

### **Commission's Role**

65. The CRTC is proposing that the CTF have two funding streams which are managed by DCH on the one hand and CRTC on the other hand. Any dispute resolution role that CRTC could play in this environment would have to be done in conjunction with DCH. The WGC would only feel comfortable with both parties equally weighing in on any dispute as it would not always be clear that a dispute was related solely to one stream or another.

66. We thank you for this opportunity to provide you with our comments.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, cursive script.

Maureen Parker  
Executive Director

c.c.: WGC Council  
Kelly Lynne Ashton, Director Industrial and Policy Research, WGC

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