



Writers Guild of Canada



DIRECTORS GUILD OF CANADA
LA GUILDE CANADIENNE
DES RÉALISATEURS

September 27, 2005

Ms. Diane Rhéaume

Secretary General

Canadian Radio-television and Telecommunications Commission

Gatineau, Quebec

K1A 0N2

Dear Ms. Rhéaume,

Re: Broadcasting Public Notice 2005-82: Call for comments on a regulatory framework for mobile broadcasting services.

A. Introduction

1. The Writers Guild of Canada (WGC) and the Directors Guild of Canada (DGC) submit the following remarks in response to the Commission's call for comments on a regulatory framework for mobile broadcasting services.
2. The Writers Guild of Canada (WGC) is the national association representing 1,800 screenwriters working in English-language film, television, radio and multimedia production in Canada. WGC members are the creators of Canadian stories including feature films like *Mambo Italiano*, indigenous dramatic series such as *Da Vinci's Inquest* and *Corner Gas*, the popular mini-series *Trudeau* and *H₂O*, and renowned children's programming like the *Degrassi* series. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent. For over sixty years, the WGC and its predecessor has negotiated collective agreements setting out minimum rates and terms for screenwriters with independent producers and broadcasters. The WGC has negotiated separate Independent Production Agreements with the Canadian Film and Television Production Association (CFTPA) and the Association des producteurs de films et de télévision du Québec (APFTQ), representing English and French-language independent producers in Canada. The WGC also has agreements with CBC Radio, CBC-TV, CTV, the NFB and TVOntario. A founding member of the Canadian Coalition of Audio-visual Unions (CCAU), the WGC works closely with screenwriters' organizations worldwide through the International Affiliation of Writers Guilds (IAWG) and administers the Canadian Screenwriters Collection Society to collect royalties and levies from secondary uses abroad. By hosting events such as the



Canadian Screenwriting Awards, and publishing its magazine, *Canadian Screenwriter*, the WGC keeps screenwriters in the spotlight.

3. The Directors Guild of Canada (DGC) is a national labour organisation representing key creative and logistical personnel in the motion picture industry. Founded in 1962, today it represents over 3,800 members in 48 different craft and occupational categories covering all areas of filmmaking: direction, production, editing and design. The DGC actively promotes the continued growth of a healthy Canadian film and television industry at both the policy and professional levels. The DGC negotiates collective agreements with the Canadian Film and Television Production Association (CFTPA) and administers and enforces these agreements for English-language production in Canada. The DGC is currently negotiating collective agreements with the Association des producteurs de films et de télévision du Québec (APFTQ) and the National Film Board of Canada (NFB). The DGC is a member of the Coalition of Canadian Audio-visual Unions (CCAU) and works with directors organisations worldwide as a member of the International Association of English-speaking Directors Organisations (IAESDO). The DGC hosts the annual DGC Awards, publishes the quarterly magazine *Montage* on the art and craft of filmmaking and administers the Directors Rights Collective of Canada (DRCC) to collect royalties and levies from secondary uses abroad.
4. The DGC and WGC are committed to building a vibrant indigenous audio-visual industry that showcases Canadian English-language programming and the creators who make them. Over the last several years, both guilds have been active within the Canadian Coalition of Audiovisual Unions to ensure that the CRTC maintains and enhances the broadcast regulatory framework to encourage the production and exhibition of Canadian programming. Therefore, WGC and DGC members are keenly interested in the applications before the Commission in this proceeding and their potential impact on the Canadian broadcasting landscape

B. Scope of the current process

5. The CRTC issued the current call for comments in response to a letter from the Canadian Association of Broadcasters (CAB) requesting that the CRTC clarify the nature of the planned mobile broadcasting services that Rogers Wireless (Rogers), Bell Mobility (Bell) and LOOK Communications Inc. (Look) had announced. Since CAB's April 2005 letter, TELUS Mobility (Telus) has also announced a similar service.
6. The CRTC has requested that the four companies provide descriptions of their proposed services, including an outline of the content to be offered, the contents' origin



and a description of how the service would be delivered to subscribers. The services were also asked to comment on whether the new services should be considered broadcast services, and the appropriate form of regulation to oversee them. The companies were also asked to comment on whether the services should be subject to the new media exemption order.

7. Following submissions from the proposed services, the CRTC requested stakeholders' comments on whether the proposed mobile broadcasting services fall within the scope of the new media exemption order or whether a new exemption should be issued.

C. Descriptions of the proposed services

8. The three companies propose services to provide mobile telephone customers with audio-visual content screened on their wireless handsets. Customers would be required to subscribe to the service, paying a monthly fee for transmission of audiovisual content on compatible handsets. The services would rely on wireless transmission to broadcast content originating on a server in the United States, through the internet to a Canadian server operated by the wireless carrier. The telephone companies' wireless networks would be used to transmit the content to customers' mobile telephones.
9. The three wireless carriers stated that their services would fall within the definition of broadcasting set out in the *Broadcasting Act*. However the three companies also indicated that their wireless services would qualify for exemption from licensing pursuant to the New Media Exemption Order (NMEO). The main justification for this proposed exemption stems from the fact that the services would be "delivered and accessed over the internet."

D. The proposed services must be licensed and regulated under the *Broadcasting Act*

10. The DGC and WGC believe that the proposed wireless services fall under the definition of broadcasting under the *Broadcasting Act*, and we disagree that the services would qualify for exemption from regulation under the NMEO. We concur with ACTRA's, the Friends of Canadian Broadcasting and the CFTPA's positions that the proposed services must be licensed and regulated as broadcast services, in compliance with the *Broadcast Act* and Canadian content regulations.
11. CRTC 1999-197 defines services exempted from regulation under NMEO as those which "provide broadcasting services delivered and accessed over the Internet." While the proposed wireless services will use the internet to deliver the service from the U.S. based server to Canadian servers operated by Rogers, Bell and Telus,



subscribers can only receive the content if it is broadcast to the customer's wireless mobile device. The wireless services are not proposing transmission of content that can be accessed directly from the internet; transmission to a wireless cell phone, via a closed telephone network operated by Rogers, Bell or Telus, is a fundamental component of the proposed services. For this reason, we do not agree that the proposed services should be subject to the NMEO or any other exemption.

12. The DGC and WGC also share the CFTPA's concerns that the proposed services would transmit broadcast programming content that is copyrighted material. We support the CFTPA's position that these services should not operate under an exemption order because the content creators' explicit consent is required before live streaming of broadcast content can occur. Simply put, this is a different use not covered by broadcast licences that the broadcast programming undertaking has negotiated with content creators.
13. For these reasons, the WGC and DGC do not agree that the proposed services fall under the NMEO and further oppose the issuance of a new exemption order to cover these services. We strongly believe that these broadcasting services should be subject to licensing and regulation.
14. We strongly recommend that the CRTC launch a full public process to consider applications for wireless services to broadcast audiovisual content to wireless devices. We further urge the Commission to ensure that all broadcast services, including the proposed wireless transmission services, are operate under licences that include Canadian content and related regulations to ensure that they fulfill all obligations set out in the *Broadcasting Act*.
15. DGC and WGC appreciate the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink that reads "Pamela Brand".

Pamela Brand
National Executive Director & CEO
Directors Guild of Canada

A handwritten signature in black ink that reads "Maureen Parker".

Maureen Parker
Executive Director
Writers Guild of Canada