Writers Guild of Canada

February 13, 2018 **Filed Electronically**

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

Dear Mr. Seidl:

Re: Broadcasting Notice of Consultation CRTC 2017-359: *Call for comments on the Governor in Council's request for a report on future programming distribution models*—Phase 2 Comments

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. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

EXECUTIVE SUMMARY

ES.1 The WGC was pleased to see that many interveners in the first phase of this proceeding recognized the vital role of cultural policy tools, and regulation in particular, in the support of Canadian content production and distribution. We feel there was a general consensus that Canadian culture and expression is an important part of our society, and that government has a role to play in ensuring that Canadian content continues to survive and thrive in the digital age.

ES.2 We also note the concerns expressed by some interveners that cultural policy objectives not unduly impinge upon other public policy goals for the communications sector. These goals include free and open access by Canadians to the Internet, affordability of communications services, and net neutrality. The WGC supports these goals as well, and we submit that nothing the WGC has proposed is antithetical to any of them.

ES.3 In our comments to Phase 1 of this proceeding, we made reference to a report entitled Canadian Media in a Digital Universe, produced by Nordicity for the "Digital Media at the Crossroads" (DM@X) conference of January, 2016, and co-sponsored by the WGC. We also stated that an updated version of this report was scheduled to be presented at the January 27, 2018 DM@X Conference, and the WGC intended to submit it in "Phase 2" of this proceeding. The updated version of the report is now available. It is entitled *The Digital Media Universe in Canada:*

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Measuring the Revenues, the Audiences, and the Future Prospects, and can be accessed on the DM@X website.

ES.4 The WGC was pleased to examine the Reference Document, and notes the important information that it contains. In our view, the Reference Document confirms and/or supports a number of the points that we ourselves made in Phase 1. These include Charts 1, 2, 4, 5, 8, 10, 12, 13, 15, 18, 20, and 26.

ES.5 Some interveners in Phase 1 of this proceeding, including Netflix and Professor Michael Geist, note the recent increase in foreign sources in the financing of Canadian television production, combined with the entry into the Canadian market of Netflix and increased production activity by it and other foreign over-the-top (OTT) services. Professor Geist concludes that this means there is no need to regulate OTT services. Firstly, however, Geist's claim that the increase in financing comes from OTTs like Netflix is a guess, not a fact. Secondly, Canada's success is the very result of such policies. More importantly, Geist's position hinges on a bet—a bet that foreign financing that has increased over the past few years will remain strong in the foreseeable future. Professor Geist may be in the position to make such bets, but we submit that the Commission, the federal government, and the audiovisual sector their decisions affect, are not. What the WGC and many others have proposed with respect to OTT regulation is simply that they be required to make a minimum contribution to the creation of Canadian content. If Geist is right, and these services will do so regardless, then such regulation harms nobody, since it simply reflects what they would have done in any event. If Geist is wrong in his predictions of the future, however, and OTTs not subject to cultural regulation don't contribute, then the consequences are almost certain to be disastrous for the sector.

ES.6 The WGC opposes the proposal by The Canadian Association of Content Exporters (CACE-ACEC) to modify the CAVCO Key Creative Point System to add one (1) additional point in respect of a production where the producer has contracted with a Canadian-based global distribution company so as to grant the worldwide rights. We question whether such a proposal is properly within the scope of this proceeding, and we oppose the proposal on its merits because it is a *de facto* point reduction for Canadian creative personnel, which would harm the Canadian talent pool.

ES.7 Some interveners in the first phase argued that the nature of the Internet itself resolves the challenges of creating Canadian content, and/or that "broadcasting-style regulation" is unworkable in the digital era and represents an "outdated" model for cultural policy. Such comments are a kind of technological determinism which does not address the fundamental question of financing the production of Canadian content. Moreover, in our respectful submission it is some of these critics who are living in the past, circa 2009, when it was plausible to claim that simply by connecting multiple computers together into a network, the inevitable net result would be social and economic good for everyone. A lot has happened since then. We've had fake news, interference in elections by hostile foreign powers, filter bubbles driven by algorithms, increased strain on quality journalism, rising political extremism, co-opting of "neutral" platforms by authoritarian governments, and a general failure to achieve the utopia we were confidently assured of just 5-10 years ago. Liberal democracies are now faced with the many challenges of how to maintain what's best of our societies, while also adopting what is best of the digital revolution. These are socio-political issues, but they are also cultural issues, because the two cannot be separated. We submit that a vibrant 21st century democracy will need to take steps to nurture and support its cultural life, and nobody should find such outcomes guaranteed by deterministic notions like "the course of history". In this sense, the WGC is not looking backward—it is looking clearly and purposely forward.

INTRODUCTION

1. The WGC is pleased to have provided comments in the first phase of this proceeding, and has reviewed with interest the comments of other participants and the "Reference Document" provided by the Commission. In our comments in "Phase 2", we would like to note what we believe are some common themes of other interveners, provide additional research to the Commission, and rebut what we believe are incorrect and/or misleading arguments provided by others in "Phase 1".

KEY THEMES & GENERAL COMMENTS

2. The WGC was pleased to see that many interveners in the first phase of this proceeding recognized the vital role of cultural policy tools, and regulation in particular, in the support of Canadian content production and distribution. We feel there was a general consensus that Canadian culture and expression is an important part of our society, and that government has a role to play in ensuring that Canadian content continues to survive and thrive in the digital age.

3. We also note the concerns expressed by some interveners that cultural policy objectives not unduly impinge upon other public policy goals for the communications sector. These goals include free and open access by Canadians to the Internet, affordability of communications services, and net neutrality.

4. The WGC supports these goals as well, and we submit that nothing the WGC has proposed is antithetical to any of them. The WGC does not seek to limit or restrict Canadians' access to lawful content from anywhere. Seeking, for example, that OTT services contribute to the creation of Canadian content does not imply that other, non-Canadian content is unavailable in Canada. OTT contributions to Canadian culture should also not result in any meaningful price increases to consumers, since they represent a fraction of many foreign OTT's global content budgets, and in any event are part of their stated business model, which is to provide content to local and global audiences everywhere. Similarly, an ISP levy would likely amount to less than the HST currently paid on such services, and there is no reason why such a levy could not be designed in a progressive manner to only apply to higher-cost, higher-bandwidth plans that are clearly designed largely to stream video content. The fact that Internet affordability is an issue today, in the absence of any such levy, and in the face of healthy ISP profitability, means this is a larger issue, which the cultural community cannot and should not be made the solution for. And none of our proposals undermine net neutrality, since they would be public policies of general application that don't involve ISPs discriminating against any particular lawful content or sources of content. In short, there is no fundamental contradiction between robust and effective policies to support Canadian cultural expression in the digital age on the one hand, and those to support Internet access, affordability, or net neutrality on the other.

5. The reality is that virtually every developed country in the world employs some combination of cultural policy tools, and Canada has historically chosen to significantly utilize those that involve the regulation of private entities. Canada could have chosen a different path, such as the robust public broadcasting model used in countries like the United Kingdom and Germany. We did not do so, however, and now we are in a position where a number of the crucially important regulatory tools we have long relied upon are threatened by the shift to digital. In such an environment, some ask whether

regulation or incentives are the best way forward. Such a question is an important one, but it also begs the question of what incentives are contemplated. In our experience, the incentives that seem most common are monetary incentives, which ultimately means increased direct spending on production by government. This is always an option, yet it also shifts an increased burden from the media companies that profit from the Canadian market to Canadian taxpayers, and from stable, predictable regulatory requirements to the vagaries of annual budgets and changing governments. As such, the WGC seriously questions whether such a shift is the best public policy outcome. In the current context, in which large, global corporations increasingly play a stronger role in the production and distribution of content in Canada, we believe it is entirely reasonable to expect them to contribute to Canadian cultural life if they are to operate in and profit from the Canadian market.

UPDATED NORDICITY REPORT

6. In our comments to Phase 1 of this proceeding, we made reference to a report entitled *Canadian Media in a Digital Universe*, produced by Nordicity for the "Digital Media at the Crossroads" (DM@X) conference of January, 2016, and co-sponsored by the WGC. We also stated that an updated version of this report was scheduled to be presented at the January 27, 2018 DM@X Conference, and the WGC intended to submit it in "Phase 2" of this proceeding.

7. The updated version of the report is now available. It is entitled *The Digital Media Universe in Canada: Measuring the Revenues, the Audiences, and the Future Prospects*, and can be accessed on the DM@X website.[1]

8. Section 2 of the report discusses digital advertising. It demonstrates the continued growth of digital advertising revenues, and the continued decline of television advertising revenues. It also notes the high volume of Internet ad revenue largely going to channels dominated by international market leaders.[2]

9. Section 3 of the report discusses broadcasting and television content. It demonstrates the "digital preference" by younger demographics,[3] the continued decline of television advertising revenues,[4] the rise of over-the-top (OTT) and the erosion of broadcasting distribution undertakings (BDU) subscriptions[5] and revenues,[6] and the massive content budgets of global streaming services and a comparison to spending in Canada.[7]

THE REFERENCE DOCUMENT

10. In December, 2017, the Commission published the Reference Document,[8] to "help guide the conversation during this phase of the consultation."

[1] Nordicity, *The Digital Media Universe in Canada: Measuring the Revenues, the Audiences, and the Future Prospects,* Digital Media at the Crossroads conference, Jan 2018 (http://www.digitalmediaatthecrossroads.ca/pdfs/NordicityReport2018.PDF).
[2] Section 2.3
[3] Section 3.3a-e
[4] Section 3.4
[5] Section 3.8a-b
[6] Section 3.9
[7] Section 3.10a-b
[8] https://crtc.gc.ca/eng/television/program/s15r.htm

11. The WGC was pleased to examine the Reference Document, and notes the important information that it contains. In our view, the Reference Document confirms and/or supports a number of the points that we ourselves made in Phase 1. These include the following:

- *Chart 1: Top Ten Most Valuable Companies by Market Capitalization, 2007, 2011, 2017.* This chart demonstrates the sheer size of global digital players like Apple, Google, Amazon, and Facebook. To the extent that such companies affect content production and distribution—or are content producers and distributors themselves—the resources they can bring to bear, in comparison to those of Canadian companies, is staggering.
- *Chart 2: Business Model Highlights*. This chart states that, for Amazon, video and audio services are loss-leaders for their e-commerce ecosystem. As it is commonly understood, a loss leader is a pricing strategy where a product is sold at a price below its market cost to stimulate other sales of more profitable goods or services. Such a strategy is only available to companies that have other, more profitable goods or services to sell in connection with the loss-leading service. Canadian content and media companies are generally not in this position.
- *Chart 4: Share of TV Viewing by Platform in Canada, 1991, 2005 and 2017 Estimate*, and *Chart 5: Share of TV Viewing by Platform by Language and Age, 2017 Estimate*. These charts demonstrate the growing impact of online TV, in particular in the English market and among younger viewers. There is every reason to believe these trends will continue, as projected by *Chart 8: Traditional and Online TV Viewing in Canada per Capita from 2005 to 2017 and 2018 to 2026 Projection*.
- *Chart 10: TV Revenues for Select Countries*. As stated in the headline above this chart, the U.S. market dwarfs most other countries, including Canada's, at over 17 times larger than ours. We would further note that Canada's TV revenues are presumably for the English and French markets *combined*. But Canadian content is typically produced for, and generates revenue against, only one of Canada's official-language markets. This makes the disparity between the markets even greater.
- *Chart 12: TV Content Spending, 2017*. This chart demonstrates the incredible spending power of global, mostly U.S.-based content companies, in comparison to their Canadian counterparts. In particular, the highest-spending global company, NBCU, expends more than quadruple what the highest-spending Canadian company, Bell, expends. Moreover, spending numbers for the Canadian companies in the chart presumably include all their content spending, including on local news, sports, and drama programming, whereas many if not most of other companies listed specialize in fewer types of programming. For example, Netflix, Amazon, and AMC do not do news or sports programming. Given the fact that much local TV programming in the U.S. is made and aired by independently owned stations with network affiliation agreements, we would ask whether this chart effectively excludes a large component of the American content ecosystem which is included in the Canadian examples.
- *Chart 13: Number of Scripted Original Series in the US, 2002, 2009 and 2016*. This chart demonstrations the explosion of scripted original series in the U.S. over the past few years, and the increased competition this brings.
- *Chart 15: Advertising Revenue for Internet, TV and Radio, 2007 to 2016 and 2017 to 2021 Projection*, and *Chart 16: Advertising Revenue for TV and Online Video, 2007 to 2016 and 2017 to 2021 Projection*. These charts demonstrate the decline in advertising revenues for television, both actual and projected, in favour of increased digital advertising revenues. As noted in the 2018 Nordicity Report noted above, *The Digital Media Universe in Canada: Measuring the Revenues, the Audiences, and the Future Prospects*, digital advertising is dominated by Google

and Facebook which, unlike print and broadcast media, are not motivated to re-invest in content, since it's not their business model.[9] This, combined with the fact that these Internet giants are located outside of Canada, means not only is Canadian content production deprived of a key source of revenue, but Canada is deprived of the tax revenue from digital advertising profits.

- *Chart 18: Traditional and Digital Subscription TV Revenues, 2007 to 2016 and 2017 to 2021 Projection*. This chart demonstrates the actual and projected decline in traditional subscription TV revenues, compared with the actual and projected growth of online subscription TV revenues.
- *Chart 20: Peak period Traffic Composition by Category: North American Fixed and Mobile Networks*. This chart demonstrates the degree to which fixed and mobile networks are dominated by real-time streaming entertainment. This is particularly the case of fixed networks, of which two-thirds are real-time streaming entertainment, and the largest portion of that is Netflix alone. Clearly, the growth of these networks, and the demand for greater broadband capacity is directly linked to the growth of online content. This is why the WGC has argued, and continues to argue, that "telecommunications issues" like access and reliability, can no longer be separated from "broadcasting issues" like cultural diversity and content creation.
- *Chart 26: Economic Surplus/Shortfall on Canadian TV without Subsidies ($ millions)*. This may be the most important chart in the Reference Document. It clearly demonstrates that, "the only genres of TV content that have a meaningful financial surplus on an aggregate basis are sports and other (which includes lifestyle and reality programming) in the English-language market." This is the fundamental challenge of the Canadian marketplace, and the reason we have a cultural policy toolkit, which includes broadcast regulation. The WGC is grateful that the Commission has examined and attempted to quantify this challenge, which sits at the heart of our submissions in this proceeding.

WGC RESPONSES TO PARTICULAR PHASE 1 STATEMENTS

The Impact of Foreign Financing

12. Some interveners in Phase 1 of this proceeding, including Netflix and Professor Michael Geist, note the recent increase in foreign sources in the financing of Canadian television production, combined with the entry into the Canadian market of Netflix and increased production activity by it and other foreign OTT services. Professor Geist concludes:

> The precise amount of Netflix spending in the Canadian market remains unknown, but the [Canadian Media Producers Association's] own data calls into question demands for regulations for over-the-top video providers. The data suggests that Canada has created a world-class production environment that is capable of attracting significant investment without new regulation. With foreign financing growing faster than any other source of funding and comprising nearly one of every five dollars spent on English-language television production, the notion of cramming old policies into a new, successful marketplace would represent a step backward for Canadian cultural policy.[10]

13. Firstly, to be clear, the CMPA data Professor Geist quotes is "foreign" financing, not "Netflix" financing. Geist acknowledges this, but nevertheless goes on to imply that the uptick is largely attributable to Netflix and/or OTTs spending generally, and therefore no public policy response to OTT

[9] Section 6.1
[10] Submission of Michael Geist, Canada Research Chair in Internet and E-commerce Law, pg. 3.

services is necessary. Simply put, this is a guess on Geist's part, not a fact. There are other possible explanations for the increase, including that Canadian productions have become increasingly successful in attracting international financing from various sources, private and public, on the global content market that has long existed. Moreover, the increase Geist quotes is $146 million over two years. Yet the commitment by Netflix to invest $500 million over five years in Canada, announced by Minister of Canadian Heritage Mélanie Joly as part of "Creative Canada",[11] has been clearly and consistently characterized as *new* spending by the OTT service.[12] How can $100 million in Netflix spending per year be "new" spending, if Netflix was already contributing the lion's share to a $146 million annual increase, as Geist suggests? Clearly it can't, so Geist's surmise seems flawed at best. As such, we think it's better to make public policy decisions based on facts, and not on the guesses and extrapolations of Professor Geist.

14. Secondly, even if the recent growth of foreign financing *was* from Netflix (and/or other OTTs), the WGC would nevertheless reject the argument that that means OTT services should not be subject to Canadian content regulation. For one thing, the very same "world class production environment" that Geist refers to is itself a product of decades of cultural policies to support the sector in Canada, with broadcasting regulation crucially amongst them. Geist is effectively suggesting that a policy success argues for its own elimination, and/or that our success today is "just right" and we cannot or should not do even better. We submit that neither of these views are reasonable.

15. More importantly, Geist's position hinges on a bet—a bet that foreign financing that has increased over the past few years will remain strong in the foreseeable future. What is now will continue to be; a trend of a few years is automatically the new normal. Professor Geist may be in the position to make such bets, but we submit that the Commission, the federal government, and the audiovisual sector their decisions affect, are not. What the WGC and many others have proposed with respect to OTT regulation is simply that they be required to make a minimum contribution to the creation of Canadian content. If Geist is right, and these services will do so regardless, then such regulation harms nobody, since it simply reflects what they would have done in any event. If Geist is wrong in his predictions of the future, however, and OTTs not subject to cultural regulation don't contribute, then the consequences are almost certain to be disastrous for the sector, including to the unique Canadian voices and tens of thousands of jobs they represent. This is the difference between what an academic can surmise about, and what a regulator and/or government must consider: the real-world consequences of being wrong.

16. Contrary to Geist's optimistic view, the WGC has already discussed reasons why the current global content boom, and its affects in Canada, may be unsustainable. As we said in Phase 1 of this proceeding, Netflix's content commissioning is being financed to a very large degree by debt. In July, 2017, the Los Angeles Times estimated that "Netflix has accumulated a hefty $20.54 billion[13] in long-term debt and obligations in its effort to produce more original content."[14] In October, 2017, it was

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[11] Speech, Hon. Mélanie Joly, Minister of Canadian Heritage, *Launch of Creative Canada*, September 28, 2017 (https://www.canada.ca/en/canadian-heritage/news/2017/09/creative_canada_-avisionforcanadascreativeindustries.html)

[12] E.g. Interview with Hon. Mélanie Joly, Minister of Canadian Heritage, CTV's *Question Period*, October 1, 2017 (https://www.ctvnews.ca/politics/heritage-minister-joly-says-netflix-money-is-new-for-full-canadian-productions-1.3613234)

[13] All figures in this paragraph are in U.S. dollars.

[14] Ng, David. "Netflix is on the hook for $20 billion. Can it keep spending its way to success?" *Variety,* 29 July 2017 http://www.latimes.com/business/hollywood/la-fi-ct-netflix-debt-spending-20170729-story.html

reported that Netflix would raise $1.6 billion more in debt financing to "fuel content-buying binge."[15] This raises questions about the sustainability of this approach, and what Netflix's medium-to-long-term plans are. Clearly, Netflix cannot continue to lose an estimated $2.5 billion per year[16] forever. As such, it seems logical that the company can only reach profitability through significant growth of its subscriber base, significantly raising its subscription rates, or some combination of the two. To the extent that Netflix relies on growth of its already market-leading subscriber base, such a strategy implies the potential to become a dominant OTT player globally, and potentially *the* dominant OTT player. If such a position were to reach the level of a monopoly—or one of the key players in an oligopoly—the impacts of that can be predicted, from potential loss of consumer choice, higher prices, and little or no room for voices or content from other sources or platforms. This could very well include scaling back production levels, particularly in smaller markets like Canada.

17. Geist does not explain how requiring OTT services like Netflix to do what they are already doing, in support of Canadian cultural objectives, would be "a step backward for Canadian cultural policy". It is precisely upon these kinds of regulations that we've been moving forward since the advent of broadcasting and content distribution. The WGC disagrees that what has been successful in the past, with no clear downside, should be discarded now, based on guesses from incomplete data and assumptions about the future.

Proposed Changes to CAVCO Points Requirements

18. The Canadian Association of Content Exporters (CACE-ACEC) made the following proposal in the first phase of this proceeding:

> CACE/ACEC proposes that the CAVCO Key Creative Point System be modified to add one (1) additional point in respect of a production where the producer has contracted with a Canadian-based global distribution company so as to grant the worldwide rights, exclusive of pre-sales, to exploit the production in all media, prior to the commencement of principal photography.
>
> This would increase the total number of points available up to eleven (11) points from ten (10) with the project still required to earn a minimum of six (6) points in order to qualify for the CPTC.[17]

19. This proposal was supported by other comments, including eOne and Corus Entertainment Inc. The WGC strongly opposes this proposal.

20. Firstly, we question whether such a proposal is properly within the scope of this proceeding, which has been undertaken pursuant to the *Broadcasting Act* and follows from Order in Council PC 2017-1195, which in turn was made in the context of the Government of Canada's announcement to review the *Broadcasting Act* and the *Telecommunications Act*. Yet CACE-ACEC's proposal is with respect to the Canadian Film or Video Production Tax Credit (CPTC), which is established in the *Income Tax Act*

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[15] Spangler, Todd. "Netflix to Raise $1.6 Billion More Debt Financing to Fuel Content-Buying Binge." *Variety*, 23 Oct 2017 http://variety.com/2017/digital/news/netflix-debt-financing-1-6-billion-content-spending-1202596303/

[16] Holloway, Daniel. "FX's John Landgraf Sounds Alarm on 'Titanic Struggle' in Entertainment Economy." *Variety,* 9 Aug 2017 http://variety.com/2017/tv/news/fx-john-landgraf-tca-1202520845/

[17] Submission of the Canadian Association of Content Exporters (CACE-ACEC), pg. 27.

and associated regulations, and administered by the Canadian Audio-Visual Certification Office (CAVCO) and the Canada Revenue Agency, not the Commission. A review of the CPTC seems out of place, to say the least, in a report with respect to the *Broadcasting Act*.

21. Secondly, the WGC opposes the proposal on its merits. Such a proposal is a *de facto* point reduction for Canadian creative personnel. It goes without saying that a distributor is not a creative production role in anywhere near the sense that a screenwriter, director, actor, cinematographer, editor, or any of the other roles currently recognized in the 10-point system are. If the minimum point requirements for the CPTC remains at 6, but a point may be earned by the attachment of a Canadian distributor, the result is a 5-point requirement for the actual creative roles. Lower point requirements result in fewer opportunities for Canadian talent, and therefore harm the Canadian talent pool, exacerbating "talent drain" to other production centres, such as Los Angeles, and reducing the appeal of the sector to talented young people considering whether to embark upon a creative career. As such, we submit that there must be compelling evidence and argument demonstrating that this harm is justified.

22. We submit that CACE-ACEC does not provide such compelling evidence. In its rationale, CACE-ACEC refers to "flexibility", and the May 2017 study by the Canadian Media Producers Association (CMPA), *Exporting Canadian Television Globally*. The WGC disputes the findings of that study, and has argued at length, in the first phase of this proceeding and elsewhere, that Canadian creators must be at the centre of Canadian cultural policy, and not "traded away" for the benefit of other players in the Canadian system. With respect to "flexibility", it is undoubtedly true that a reduced points requirement would increase flexibility. So would a 4-point requirement or a 2-point requirement. So would eliminating all requirements that Canadian talent have any role in "Canadian" production at all or, indeed, eliminating all eligibility requirements entirely, so the CPTC would be eligible to any sector of the Canadian economy. The CPTC and other public funding does not exist solely to be "flexible". The CPTC has a mandate that ultimately goes to the creation of Canadian content, which includes the significant contribution of Canadian talent. When speaking about "flexibility", then, the question is, flexibility to do what, and why, and how does that connect with the public policy outcomes that we are seeking? How is that outcome worth the damage to the Canadian talent pool? We submit that these questions are not answered—or even meaningfully raised—by this proposal.

23. Finally, the CACE-ACEC proposal appears to be very similar to that proposed by eOne in Broadcasting Notice of Consultation CRTC 2015-467: *Call for comments on the Commission's policies relating to Certified Independent Production Funds*. The WGC responded to this proposal in greater detail in our reply comments to that proceeding, in particular at paragraphs 10-16.[18] As we concluded there, reduced point counts do not impact all creative roles equally, and those most affected include Canadian screenwriters. The WGC strongly believes that Canadian content is not and should not be defined primarily by nationality of the producer or a (minority) financier. Rather, the identity of the creator(s) is a fundamental component of what makes audiovisual content—especially television programming—Canadian. Lowering point requirements erodes that identity, and contributes to a talent drain out of the country that, in other policy contexts, we collectively lament. This is a creative Canadian industry. We should be building it predominantly and to the greatest extent possible on the talent of creative Canadians.

[18] http://www.wgc.ca/files/WGC%20Reply%20CRTC%20Review%20Independent%20Funds.pdf

The Implications of the Internet for Canadian Content

24. Some interveners in the first phase argued that the nature of the Internet itself resolves the challenges of creating Canadian content, and/or that "broadcasting-style regulation" is unworkable in the digital era and represents an "outdated" model for cultural policy.

25. The WGC has already addressed these arguments in our Phase 1 comments, in particular at paragraphs 39-43 of our submission. In addition to those comments, we would like to respond to particular statements of others in the first phase.

26. In its comments, Netflix argues:

> Online audio and video distribution is not the 'evolution' of traditional broadcasting. Online distribution over the internet is an electronic marketplace for all media — it's not a single 'medium of communication'. Successful online media policy will be grounded in the characteristics of the internet, and the manner in which Canadians interact with, and consume, online content.[19]

27. Netflix lists the ways in which traditional broadcasting and OTT services differ. It leaves out, however, many of the ways in which they are the same. Perhaps most crucially, it leaves out the matter of financing content, which is generally much more expensive to produce than books or music. It also leaves out how OTT services are largely substitutional for traditional broadcasting, both in terms of viewing and in terms of program acquisition. Netflix itself has repeatedly picked up seasons of programming that were previously, or would normally, be available on traditional broadcast channels.[20]

28. Netflix also seems to suggest that cultural policy questions are a matter of technological and/or market determinism, arguing that, "As the open internet dissolves barriers to entry and overcomes the technological constraints of broadcasting, the market is more likely to succeed."[21] Again, the barrier to the creation of high-quality, high-cost, high-risk content is not technological, it is financial, and that remains so for Canada's small market, and smaller still English-language market.

29. Similar arguments are taken to frankly bizarre lengths by the Internet Society, Canada Chapter (ISCC). The ISCC argues as if the theoretical access to content—or access to audiences by content creators—is the same as actually making that content. The question of financing expensive production for a small market is not contemplated.

30. the ISCC also makes comments that fundamentally misunderstand content production. For example, it states:

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[19] Submission of Netflix, pg. 8.

[20] For example, Netflix outbid Channel 4 in the U.K. for *Black Mirror*, (https://www.theguardian.com/media/2016/mar/29/netflix-channel-4-charlie-brooker-black-mirror). In Canada, Netflix obtained exclusive Canadian subscription-video service for Disney live-action and animated feature films in the pay-TV window (https://www.theglobeandmail.com/report-on-business/netflix-canada-to-get-disney-titles-eight-months-after-theatrical-release/article19658830/).

[21] Submission of Netflix, pg. 8.

> For the first time, Canadian creators will be compelled to compete on equal terms with their counterparts internationally; the risks that competition on this scale present do, however, come with the correlative benefit of having access to lucrative global markets.[22]

31. This suggests that Canadian access to international markets and/or competition with international content in the Canadian market is somehow new. Simply put, the international content market was not created by the Internet. Film and television has been an international business since there was film and television. The global market MIPCOM have been in existence since 1985, and Canadians have had American and UK programming available on their screens, competing with Canadian programming for viewership, since there were screens and Canadians in front of them. It is ironic that an organization so seemingly unaware of broadcasting history would consign the objectives of the *Broadcasting Act* to "obsolescence", and claim that, "Most of what the Commission is assigned to do on the broadcasting side of its mandate is irrelevant to the course of history."[23] We submit that nobody knows the "course of history" as it relates to the future, the ISCC or otherwise. Our collective objective should be preparing for contingencies with desired outcomes in mind, not pronouncing on the "course of history" or consulting a crystal ball.

32. Finally, many of these comments use the rhetoric of the past to characterize the regulation of OTT players. Such approaches are "outdated" or "a step backward". The *Broadcasting Act* is "obsolete", and those who argue for its continued relevance are "living in the past".

33. The WGC lives in the present day. In our respectful submission it is some of these critics who are living in the past. They live in an era, circa 2009, when it was plausible to claim that simply by connecting multiple computers together into a network, the inevitable net result would be social and economic good for everyone. It was in this time that so-called cyber-utopians could argue that simply by creating open, "neutral" platforms, the world would become more free, more fair, more inclusive, and more democratic. The Internet was all opportunity, and no downside, everybody would benefit, and we would be led to this future by progressive technology companies who would, by choice or design, not "be evil".

34. A lot has happened since 2009. We've had fake news, interference in elections by hostile foreign powers, filter bubbles driven by algorithms, increased strain on quality journalism, rising political extremism, co-opting of "neutral" platforms by authoritarian governments, and a general failure to achieve the utopia we were confidently assured of just 5-10 years ago. Liberal democracies are now faced with the many challenges of how to maintain what's best of our societies, while also adopting what is best of the digital revolution. These are socio-political issues, but they are also cultural issues, because the two cannot be separated. We submit that a vibrant 21st century democracy will need to take steps to nurture and support its cultural life, and nobody should find such outcomes guaranteed by deterministic notions like "the course of history". In this sense, the WGC is not looking backward—it is looking clearly and purposely forward.

[22] Submission of The Internet Society Canada Chapter, pg. 5.
[23] Submission of The Internet Society Canada Chapter, pg. 8.

CONCLUSION

35. The WGC is pleased to provide comments in the first phase of this proceeding, and we look forward to participating in the second phase.

Yours very truly,

Maureen Parker
Executive Director

c.c.: Council, WGC

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