



April 16, 2021

Valerie Creighton  
President and CEO  
Canada Media Fund  
50 Wellington Street E., Suite 202  
Toronto ON M5E 1C8

Dear Ms. Creighton:

**Re: 2021 CMF Virtual Industry Consultations**

The Writers Guild of Canada (WGC) is pleased to participate in the CMF's 2021 consultation. I was pleased to participate in the discussion with you and your staff on March 23, 2021, involving the industry unions and guilds, and we encouraged the Canadian, English-language screenwriters who make up our membership to participate in the relevant "Virtual Town Hall" held in April. Please accept these written comments in support of the WGC's views on these important issues.

**Screenwriters are IP creators**

In the CMF's discussion paper for this consultation, "2021 CMF Virtual Industry Consultations: Spark Courage," dated March 11, 2021, the CMF states [emphasis in original]:

As we look to the future, content—**our creative IP**, owned and controlled by Canadian companies—needs to remain at the core of what the CMF does. Content **made by Canadians, and available to Canadians and the world**, however and wherever audiences experience it—on a TV screen, laptop, mobile phone or headset, through a gaming console or streaming stick, on a broadcaster's channel or video-on-demand app.

The WGC supports this statement. In that context, we would emphasize that **screenwriters are IP creators**. By the extension, of course, **Canadian screenwriters are Canadian IP creators**.

"IP" refers to "intellectual property", and intellectual property in the context of linear audiovisual content means copyright. Under copyright, an "author" creates a copyrightable "work", which then attracts all the rights and protections accorded by the *Copyright Act*. Copyright protects expressions of

ideas, and not the ideas themselves<sup>1</sup>—it protects creative *works*, not ideas for works. Authors are the first owners of the copyright in their works, which they typically then transfer to others in the normal course of business to exploit in the marketplace. The *Copyright Act* describes any such creator as an “author”, and term applies to the writer of a novel, the sculptor of a sculpture, the painter of a painting, and the composer of a musical composition. The Act provides that copyright can only subsist for “original” works, and the author is therefore the individual who gives the work its “original” character. Screenwriters are the authors and first owners of the copyright of their scripts.<sup>2</sup> Screenwriters and directors are, jointly, the authors of the audiovisual content—the “cinematographic works”, in the parlance of the Act—they create.<sup>3</sup> Screenwriters and directors transfer the applicable IP that they create to producers, and Canadian producers’ ability to retain and control that IP subsequently is an important element of the Canadian film and television sector. We must never lose sight, however, of how that intellectual property is created, and by whom. Any vision for the future of the Canadian domestic audiovisual sector that is focused on IP must also be focused on Canadian IP creators, which fundamentally includes Canadian screenwriters.

### **The CMF must remain a 10-point fund**

The CMF currently includes the following eligibility requirement in its Performance Envelope Program, through which the bulk of the funding to linear audiovisual content flows, as well as for its other relevant funding programs:

The Television Component will be certified by the Canadian Audio-Visual Certification Office (CAVCO) and has achieved 10/10 points (or the maximum number of points appropriate to the Television Component), as determined by the CMF using the CAVCO scale.

This requirement is a fundamental element of the CMF’s programs, and must be retained, in full, and not diluted or diminished with additional exceptions or with the expansion of CMF funding for lower-point productions.

As the CMF is well aware, screenwriters are a component of the CAVCO scale, accounting for two points out of ten. The minimum requirement for the Canadian Film or Video Production Tax Credit (CPTC) is six points out of ten, with two points being earned by the screenwriter *or* the director. Given that the CRTC has adopted a similar definition to that of the CPTC for Canadian programming in the broadcasting system, this 6-point standard has become viewed as the (minimum) definition of “Canadian content” as it pertains to Canadian creative talent. The result, then, is that such 6-point production, in which the participation of Canadian screenwriters is optional, is often treated as “Canadian” in the domestic audiovisual sector writ large.

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<sup>1</sup> See *Donoghue v. Allied Newspapers Ltd.* (1937), [1938] 1 Ch. 106 at 109.

<sup>2</sup> This is expressly recognized by producers under the *Independent Production Agreement* (IPA) between the WGC and the CMPA.

<sup>3</sup> *Les Films Rachel Inc. v. Duker & Associés Inc. et al.* [1995] J.Q. no 1550 (QL).

Serial (dramatic) television, however, the form at the centre of what the CMF funds, is creatively driven by screenwriters. As is well understood in Hollywood and beyond:

Television is a writer's medium. Always has been. ...Great dramatic television is serialized; the stories are ongoing, often from season to season, weaving a vast, multiple-hour tale. It is the novel to film's short story.

And in television, the actual telling of the story is everything—the narrative flow of that story and the character development within that story solidify greatness, if present.<sup>4</sup>

The screenwriter begins with a blank page. There is no greater act of creation than to start with an empty piece of paper, or computer screen, and to fill it with stories, characters, ideas, emotions, and details—to fill it with *life*—all within the framework of the television form. This is the screenwriter's art and the screenwriter's craft. This fundamental creative act is necessary before anybody else in the production process can do their job. Without the script, there is nothing to produce, nothing to direct, nothing to perform. Legendary filmmaker Alfred Hitchcock said, "To make a great film you need three things – the script, the script, and the script."<sup>5</sup> Nobody can shoot an empty sheet of paper. Even when a television show is adapted from another form, like a novel, the screenwriter's job is foundational, and the screenwriter remains the creator of their show, just as much as the novelist is the creator of their novel or the playwright of their play.<sup>6</sup>

The authorial voice of television comes from the writing process—from the screenwriter. And at the centre of the writing process is the showrunner. A showrunner is a writer-producer who is the chief custodian of the creative vision of a television series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale. The showrunner concept emerged in the U.S. in the 1980s, where it has become closely associated with a "Golden Age" of television, and it has since expanded internationally, including to Canada. Showrunners are writer-producers who control and guide the creative vision of the show.<sup>7</sup> Showrunners are fundamentally both screenwriters and producers, and they creatively control dramatic television production. There are a

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<sup>4</sup> Goodman, Tim, "Critic's Notebook: The Rise of the TV Auteur? No Thanks." *The Hollywood Reporter*, October 10, 2018, <https://www.hollywoodreporter.com/bastard-machine/critics-notebook-rise-tv-auteur-no-thanks-1150887>.

<sup>5</sup> "Alfred Hitchcock: Quotes." *IMDB*, <http://m.imdb.com/name/nm0000033/quotes>.

<sup>6</sup> In professional film and television production, books, plays and other media are always adapted into a script by a screenwriter. No producer or director hands out copies of a novel to key cast and crew on the set to shoot from. Adaptation is as much a creative act as "original" writing, since audiovisual content differs fundamentally from other media. What works creatively in a novel, for example, may not work on the screen: emotions that were evoked in prose must now be evoked visually or with dialogue; an "interior monologue" on paper must be externalized in action and performance; or, a book that takes 20 hours to read must be condensed to ~10 1-hour episodes. This is why, for example, major awards, like Oscars and Emmys, are given to adapted scripts/screenplays, and the same novel can be adapted brilliantly (see Stanley Kubrick's famous 1980 film, *The Shining*) or poorly (see ABC's forgotten 1997 miniseries of the same name).

<sup>7</sup> E.g. Collins, Andrew. "Showrunners – TV's lords and creators." *The Guardian*, September 16, 2016 <https://www.theguardian.com/media/2013/sep/16/showrunners-tv-writers-creative-power>.

significant number of talented, experienced Canadian showrunners, and they are the creative forces behind their shows. Ins Choi took his experiences growing up in a Korean-Canadian family and turned them first into a play, and then in a television show, as co-creator of the hit CBC sitcom, *Kim's Convenience*. Jared Keeso and Jacob Tierney bring a uniquely Canadian sensibility to their show *Letterkenny*, streaming on Crave. Joseph Kay is the creator/showrunner of *Transplant*, the highest-rated Canadian drama in 2020, and a critical success on NBC. Floyd Kane created *Diggstown*, about a Black lawyer navigating law and life in Nova Scotia, and Black screenwriters Marsha Greene and Annmarie Morais created the upcoming *The Porter*, and put together the first all-Black Canadian writer's room. Indigenous showrunner Ron E. Scott has been responsible for *Blackstone* and *Tribal*, both of which deal with issues affecting Indigenous communities in Canada, such as pipelines, the right to clean water, social services, and missing and murdered Indigenous women. And Dan Levy's *Schitt's Creek* has garnered numerous accolades in Canada and the United States, thanks to his unique creative vision.

These creators—these *screenwriters*—must remain a central component of the CMF. It is far from sufficient to claim that content is Canadian simply because it was shot within our borders, was (partially) financed with Canadian money, its copyright is owned by a Canadian production company, or its (Canadian) distribution or broadcast rights are held by a Canadian distribution company or broadcaster. This is a creative industry, and Canadian creative work is fundamentally made by Canadian creators. Television is fundamentally made by Canadian screenwriters. Very frankly, if it's not Canadian-written, it simply is not Canadian content.

At the WGC, we continue to battle a massive drain of Canadian creative talent out of the country, as opportunities for a creative livelihood abound in Hollywood while they are stagnating here. From the WGC's perspective, this has reached a crisis level. Currently, the WGC's largest membership region is Toronto, but its second-largest region, running not far behind, is Los Angeles. That is worth emphasizing. The WGC is a guild of Canadian screenwriters, yet more of our members are working out of an American city than out of Montreal, Vancouver, or anywhere else in this country other than Toronto. This represents a generational loss of Canadian screenwriters, most of whom we are likely never to get back.

We must ensure that the **Canadian authorial voice** is and remains central to the meaning of Canadian content/programming. The final report of the Broadcasting and Telecommunications Legislative Review Panel, "Canada's communications future: Time to act", stated:

There is no question that productions in which all key creative positions are occupied by Canadians — which have a Canadian writer, a Canadian director, and Canadian lead actors — are more likely to reflect a Canadian perspective.<sup>8</sup>

The 2017 Creative Canada Policy Framework, in making "investing in Canadian creators" one of its three pillars, was explicit:

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<sup>8</sup> Page 151.

Creators, broadly defined, must be at the centre of our new approach for the creative industries. They are the heart of the ideas and work that fuel our creative industries.<sup>9</sup>

The CMF must reflect this foundational concept. Failure to do so would be the death knell for both Canadian screenwriters and the uniquely Canadian content they create.

Further to this, we noted that the CMF's "Spark Courage" consultation document, a reference to a potential CMF vision to "Scale support to the level of benefit to Canadian workers and companies across the value chain."<sup>10</sup> We initially considered that a possible interpretation of this statement is that the CMF was considering "scaling support" to productions that are 6/10 to 10/10 and points in between, such that even if 10/10-point productions remain part of the CMF criteria, and even if they received more CMF funding than lower-point productions, the net result would be an erosion of the overall position of 10-point production in the industry as (some) resources moved to lower-point content. Your comments in the meeting of March 23 with the other unions and guilds indicated that this is *not* the CMF's intention with this language. We were pleased to hear that, and trust that the CMF continues to understand that the importance of supporting 10-point, fully Canadian production is paramount and will only grow as new foreign online players become ever more integrated into the Canadian domestic production and broadcasting systems. We already have an industry-wide "scale" that runs from 6-point for the CPTC to 10-point for the CMF. For the CMF to reduce its own requirements would not "introduce flexibility to the system", it would simply scale the entire system downwards, towards lower CAVCO points requirements.

### **Development: Precarious work**

Script and concept development is the "R&D stage" of audiovisual content creation. It is overwhelmingly a *writing* stage and therefore it is overwhelmingly done by writers. It is generally risky and the outcome is uncertain—many projects that are developed at this stage never go to production. In contrast to production, when financing is generally secure and everybody working can expect to be paid, writers working in development face less secure financing, and are often pressured into working, in whole or in part, for less or even for free. And once the script is finished, their material has left their hands and is more difficult to control. A cast or crew member who isn't paid one week cannot be expected to show up on set the next—a screenwriter who disputes payment for a script that has already been delivered can only avail themselves of after-the-fact remedies or processes, such as labour grievance. Meanwhile, the fear of labour action resulting in lost writing opportunities in the future remains.

The WGC commends the CMF for its work in bringing the Early-Stage Development Program to fruition. This program is an important part of a sustainable industry for screenwriters, and the continued demand on the program demonstrates its need. We hope to continue to work with the CMF to fine tune this and other programs that recognize the unique challenges of development and work to improve them.

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<sup>9</sup> Creative Canada Policy Framework, "The path forward: taking action along three pillars".

<sup>10</sup> Page. 11.

**Embracing change**

The CMF has embarked upon this consultation on the eve of what we hope will be the passage of (a version of) Bill C-10. This important legislation should ultimately result in the integration of online undertakings, largely foreign owned and controlled, into the Canadian broadcasting and domestic content production systems.

This will mean changes to both the CMF's programs and the larger industry, as we adapt to the new realities that brings. The WGC embraces this process. We recognize both the value and the inevitability of new online players both contributing and benefitting from the Canadian system, and look forward to working with them and the CMF to ensure the process is maximally beneficial to everybody, Canadians and Canadian audiences most of all.

Yours very truly,

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

Maureen Parker  
Executive Director

c.c.: Council, WGC  
Kelly Wilhelm, Chief Strategy Officer, CMF  
Nathalie Clermont, VP, Programs and Business Development, CMF  
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