Writers Guild of Canada

WGC WRITTEN SUBMISSION TO THE STANDING COMMITTEE ON CANADIAN HERITAGE

EVOLUTION OF THE TELEVISION INDUSTRY IN CANADA
April 28, 2009

Executive Summary:

The Writers Guild of Canada (WGC) welcomes the opportunity to participate in the House of Commons Standing Committee on Canadian Heritage review of the Evolution of the Television Industry in Canada. **In addition to this submission we look forward to having the opportunity to appear as a witness before the Heritage Committee on this matter.**

The Canadian broadcasting system is a complicated arrangement of interdependent businesses all governed by the principles of the *Broadcasting Act*. The *Broadcasting Act* exists to ensure that first and foremost Canadians have access to Canadian programming on a Canadian-owned broadcasting system. While local programming and local stations are important components of this system they cannot be examined without looking at the whole system. In particular any review of the challenges to funding programming needs to look at all revenue sources for broadcasters and all regulatory programming obligations to which they are subject. Private broadcasters may feel that they exist solely to provide profits to their shareholders, however as businesses regulated under the *Broadcasting Act* they have a higher duty to Canadians. Broadcasters are required to provide Canadians with a wide variety of Canadian programming even if during a recession that obligation temporarily impacts their level of profits.

We are not calling on broadcasters to bankrupt themselves. The WGC recognizes that we are at a time when the conventional broadcast business model needs adjustment. This structural adjustment has unfortunately coincided with a global recession which is expected to reduce advertising revenues. These issues are before the CRTC right now as it conducts its one year licence renewal hearing. However, the case has not been made before this Committee or the one year licence renewal hearings at the CRTC to justify providing conventional broadcasters with relief from their Canadian programming obligations, not for local programming, priority programming or independent production. Canadian programming obligations are not the source of their financial difficulties. Therefore the WGC proposes:

- In order to conduct an accurate assessment of the true extent of the crisis in Canadian television the CRTC needs to provide stakeholders with more detailed reporting on local television as well as disaggregated data for individual conventional broadcasters.
- Complicated policy issues should be deferred until the April 2010 group licensing hearing at the CRTC when they can be carefully reviewed and assessed.

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- The Standing Committee on Canadian Heritage should encourage the government to amend the Broadcasting Act to provide the CRTC with the ability to enforce regulations through fines and penalties
- The Standing Committee on Canadian Heritage should further examine legislation on pharmaceutical advertising restrictions,
- The government should be encouraged to make a settlement on the return of Part II fees
- The government should consider funding for underserved communities to continue to receive conventional services through the digital transition.

Brief:

Introduction

The WGC thanks the Standing Committee on Canadian Heritage for initiating this timely review of Canadian television. The WGC is a national association representing 2,000 professional screenwriters working in English-language film, television, radio and digital media production.

Although film and television production is a collaborative process that brings together people with many talents and skills, screenwriters are the first and primary creators of Canadian content. As storytellers, they create the characters and events in programs that reflect our national identity, and instill a true sense of what it means to be Canadian. Our WGC members are the creators of indigenous dramatic series such as *Flashpoint,* thought-provoking movies of the week and miniseries such as *Mayerthorpe* and original digital content such as the webisodes created for *Degrassi: The Next Generation*. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent and preserving our unique culture.

Since the WGC represents screenwriters working in English, our comments are limited to the concerns of the English-language conventional broadcasters. While many of these issues impact the French-language broadcasters and television production community we leave it to our French colleagues to address those and other more specific issues.

Terms of Reference

The Standing Committee on Canadian Heritage has decided to conduct a study on the evolution of the Canadian television industry and the impact of the economic crisis on that industry and on local television. While a lot of the focus of the Terms of Reference has been on local programming, the WGC feels that it is necessary to discuss the entire Canadian broadcasting system rather than just one sector. While local programming and local stations are important and do seem to be in crisis, they are only one aspect of the Canadian broadcasting system. Furthermore, none of the stakeholders seem to be able to agree on the extent of the crisis or the reason for the crisis. The entire system is at risk for a variety of reasons and both the problems and the solutions must be examined on a system-wide basis in order to ensure its health. Measures intended to support one sector cannot be implemented without reviewing how they could potentially affect any other sector of the television industry. This has become increasingly apparent as the witnesses before this Committee repeatedly raise issues related to their overall Canadian content obligations to explain or justify their actions in respect of local programming and their proposed solutions. Accordingly, the WGC will address the Terms of Reference in light of both Canadian programming in general and where appropriate specifically local programming. Only by looking at what the entire Canadian broadcasting system needs to survive and prosper will Canadians get the television that they want and deserve. And Canadians do want Canadian programming that reflects their society, values and perspective – as proven by a Harris/Decima poll conducted last year.[1]

Role of the CRTC

It must be noted that this study is very timely for all of the witnesses that are appearing before the Committee as it overlaps with the CRTC's hearings on renewal of the private conventional broadcasters' licences. Many of the issues being raised and the solutions being sought after are within the jurisdiction of the CRTC. The CRTC plays a very important role in Canadian broadcasting as it provides a public forum for all interested stakeholders, including members of the public, to participate in the formation of broadcasting policy. As an arm's length agency it is well-placed to provide objective analysis of competing interests with the goal of upholding the principles of the *Broadcasting Act*. Parliament enacted the *Broadcasting Act* to protect and encourage a Canadian-owned broadcasting system that would provide Canadians with television that reflects their lives and experiences. Due to the size and proximity of the American broadcasting system, regulation is necessary to fulfill those principles. Without regulation, the Canadian broadcasters who have prospered under the protections of the *Broadcasting Act* would come to mirror their U.S. competitors in attempts to increase profits above all. The conventional broadcasters have come before you and complained about the regulatory policies of the CRTC. While they have not been perfect, and in particular we question the regulatory policies regarding expenditure on drama, the CRTC policies have evolved over time in response to broadcasters' consistent failure to support the principles of the *Broadcasting Act* regarding providing a variety of Canadian programming to Canadian audiences. They will continue to evolve in response to the current licence renewal hearing and next year's group licensing hearing. We will urge the CRTC to continue to support Canadian programming and in particular Canadian drama through those evolving regulatory policies.

Parliament and this Committee play an important role in providing oversight of the CRTC and ensuring that the CRTC has the necessary resources to fulfill its mandate and uphold the principles of the *Broadcasting Act*. We welcome the Committee process and being provided with the opportunity to inform and enlighten the Committee on the evolution of Canadian television.

The Problem of Funding

This is the most important question in this review and the upcoming CRTC licence renewal hearing. Broadcasters are under financial pressures and are looking for both additional revenue sources and relief from Canadian content obligations. Cable and satellite companies do not want to be the sources for additional revenues. Consumers

[1] 78% of Canadians felt it was important to them to have a choice of television programs that reflect Canadian society, values and perspectives according to Harris/Decima poll Canadian Attitudes Towards Canadian Programming and CTF Issues, January 25, 2008

are reluctant to pay more to keep what services they have. The independent production community, including the WGC, is concerned about further erosion of Canadian content programming.

However, before discussing possible solutions to the current crisis the stakeholders and this Committee need to have all available evidence put before them. The WGC and their colleagues within the independent production community asked the CRTC to release detailed historical data on individual broadcaster expenditures and revenues as part of the upcoming OTA licence renewal hearing. This request was denied on the basis of protecting fair competition. Further, the CRTC does not provide stakeholders with reporting on what is spent on local programming or what revenues are specifically generated by local programming. Without this statistical information any assessment of the health of local programming is mere conjecture.

The WGC has been making the case that Canadian drama is underfunded since expenditure requirements were lifted by the CRTC in 1999. We have done so with charts and graphs based on CRTC financial information which show the decline in spending by Canadian broadcasters. For example, in 2000 English language private conventional broadcasters spent $62 million on Canadian drama and $325 million on foreign drama. In 2007 these broadcasters spent $53 million on Canadian drama and $490 million on foreign drama. The ratio of foreign drama to Canadian went from 5.2 to 1 in 2000 to 9.1 to 1 in 2007. These are hard facts which clearly demonstrate that Canadian broadcasters are spending increasing amounts of money on foreign (primarily U.S.) drama to the detriment of Canadian drama. As has been said, they have been blowing their brains out in Hollywood in bidding wars.

The defence which has been presented by CTV and CanWest is that with audience fragmentation they need to spend more money on big name U.S. series in order to attract large audiences to their conventional networks. They say that without spending more on these big name U.S. series they would not be able to afford the costs of Canadian programming. This argument ignores the fact that conventional broadcasters have always been after big name U.S. series in order to make the most advertising revenues possible. While this may explain why suddenly three years ago English language conventional broadcasters expenditure on foreign drama skyrocketed with a 19.7% increase between 2005 and 2006 it does not explain why their spending on Canadian drama plummeted by 25%. For each of the past three years English language conventional broadcasters have spent significantly more on foreign drama while the expenditure on Canadian drama has stayed low. By their argument would the increase in foreign drama spending not have meant that at the very least the expenditure on Canadian drama spending would have remained stable or even increased? We question what happened three years ago to cause this dramatic increase in foreign drama spending and decrease in Canadian drama spending. We doubt that it was audience fragmentation, which has been happening since specialty services were first licensed in 1994. We suspect that the real culprit was a round of consolidation that increased the ability of CTV and CanWest in particular to pay higher and higher licence fees in their desire to outbid each other for this programming. The truth we suspect is that the broadcasters have no interest in licensing Canadian programming because it does not generate the same degree of profit as American programming. We dispute their assertion that Canadian programming makes no profit. But it is clear that they will only exhibit Canadian programming when regulation requires it.

Foreign – Domestic Expenditure Ratio

After being presented with this evidence, the CRTC has floated the idea of a 1:1 spending ratio on Canadian programming. The WGC is supportive of the concept of a 1:1 spending ratio for English language conventional broadcasters but sees some potential pitfalls and will be discussing this at the upcoming hearing. Specifically, an overall 1:1 expenditure ratio would allow broadcasters to average out excessive foreign drama spend against almost non-existent foreign news spend. Any 1:1 ratio would need to have safeguards specifically for Canadian drama since drama is the category with the most excessive expenditure on foreign. We advocate a policy that would also take into consideration that there is less of a foreign expenditure problem in French-language television and would also have to prevent conventional broadcasters from getting the credit for minimal foreign expenditure spending from specialty broadcasters owned by the same company. The intent of the 1:1 ratio is to prevent excessive foreign expenditure and support Canadian programming so any policy would need to ensure that Canadian programming was not in a worse position than it is now due to the advantages of group licensing.

The 1:1 expenditure policy solution and current stakeholder discussions with the CRTC are possible because of the financial reporting that is available to us. We would like more but we have enough to make our case and see potential pitfalls. This is not the case with local programming. We have anecdotes from the broadcasters and conjecture from stakeholders. For example, we have heard that local ad revenues have dropped because they are not being pursued. It is easier for a broadcaster to make one phone call to a national advertiser than to make several to a number of local advertisers. Donna Skelly of CHCH is betting her community-driven model of local television on the belief that there is an underserved market of local advertising. There is also the question as to what extent national programming and advertising subsidizes local or larger markets subsidize smaller markets. If these suppositions are true then the premise that local programming cannot support itself through local advertising is false. The CRTC should therefore look at the overall health of the broadcasters and their financial commitments.

Making the Financial Case

To have a fully informed discussion in front of this Committee and/or the CRTC, the CRTC should provide the public with:

- Expenditure on local programming broken down by CRTC categories (i.e. news, sports, drama etc.)
- Revenues broken down by source of programming (i.e. identify both local and national ads generated by local programming)
- Local programming expenditure by BDUs (i.e. cable 10 type programming)

Until we have those statistics we can only review the overall revenues of the broadcasters. Conventional broadcasters' ad revenue did go down slightly in the past year (drop of 1.9%) however this was more than compensated for by a 7.6% increase from the specialty sector. Ad revenues from the specialty sector have had an average growth rate of 9.2% over the last two years. This is why both CTV and CanWest have launched or acquired so many specialty channels in the last few years. The large corporate broadcasters have developed a business plan based on diversifying their broadcast holdings to include both mass market conventional broadcasters and niche market specialty broadcasters. They then report to their investors on the health of their broadcasting operations. For example, on April 9, 2009 CanWest announced an operating profit of $32 million for that quarter from its Canadian broadcast holdings. This, despite the economic downturn, was an increase of 60% from the same time the previous year. These healthy revenues would suggest that the conventional broadcasters have sufficient revenues in general to be able fund local programming and local stations.

CTV has said that CRTC and this Committee should not look at the combined broadcast holdings because while the specialties might subsidize their conventional operations in their situations, other owners of specialty services do not have conventional operations that need to be subsidized. From this perspective a review of ownership groups would be unfair. However, this only looks at one part of the equation as CTV (and the other conventional broadcasters) are amortizing the cost of programming and administration over both specialty and conventional broadcasters, which standalone specialty services also cannot do. Synergies are created by using the same offices, studios, programming personnel etc. for both conventional and special services. Conventional broadcasters licence the mass market U.S. programming which the specialty services cannot afford. It must be remembered that while as a sector they are healthy and have revenues on par or better than conventional, each individual specialty service is much smaller than individual conventional networks. CTV, which has earned the largest share of the television audience, is unlikely to be put at a competitive advantage by Astral or Corus and their groups of specialty services.

There are varying opinions on whether the Canadian conventional broadcasting sector is in crisis or not. The WGC has not yet seen any evidence to support conventional broadcasters being near financial collapse, with the exception of CanWest Global. As we are all aware and CanWest has admitted in front of this Committee, CanWest Global is suffering from excessive debt from acquisitions and from losses in their newspaper holdings[2], though as pointed out above their broadcast holdings are prospering. CanWest's financial situation should not be a factor in any assessment of broadcasting policy. These large corporations all seem to be competing to be the company or the sector in the greatest financial difficulties. The cable and satellite companies have taken the position that they too would be put in financial difficulties if they were required to make further contributions to Canadian programming or to Canadian broadcasters. They have taken this position despite the release of the CRTC's Statistical Financial Summaries for 2008 showing a 16% increase in revenues and a PBIT Margin of 25.3%. According to a recent Nordicity study the average across all industries in Canada last year was 10.4%[3]. If there is a crisis no case has been made that it has been caused by Canadian programming obligations. Therefore relief from Canadian programming obligations should not be the solution.

Broadcasting is profitable. Audience fragmentation is real but that has driven conventional broadcasters to become multi-platform distributors of programming, finding

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[2] According to CanWest Global's Second Quarter 2009 report 83% of their non-cash $1.19 billion write-down of assets was related to their publishing operations.

[3] Analysis of Canadian Broadcaster Financial Performance and programming Expenditures by Nordicity Group Ltd., March 2009, appendix to CFTPA submission to CRTC 2009-113 Private Conventional TV Licence Renewals

their own business solutions to the challenges at hand. Having said that, however, we do believe that changes may need to be made in order to ensure that the Canadian broadcasting system survives this economic downturn and thrives. The Canadian broadcasting system can only be said to thrive when it is living up to the goals of the *Broadcasting Act*, which include supporting the production and exhibition of a wide diversity of Canadian programming. The *Broadcasting Act* refers to programming that is 'varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes, be draws from local, regional, national and international sources'[4]. This section of the *Broadcasting Act* refers to local programming but also priority programming and drama. It means a balanced broadcasting system that meets the varied needs of our population. We understand that private broadcasters and cable companies exist to earn revenues for their shareholders however we feel that they need to be reminded that they conduct business in a regulated environment that both protects them and obligates them. Broadcasters and cable companies do not get to ignore or be formally relieved of their obligations in order to increase their profits. We hope that the CRTC will reject any applications by broadcasters to reduce or remove their regulatory programming obligations.

Broadcaster Subsidies

While broadcasters have said that they are not looking for handouts it must be recognized that this is a heavily subsidized industry already. When reviewing broadcasters' overall health, it would then be important to take these subsidies and revenue streams into consideration. That includes the Local Programming Improvement Fund ("LPIF"), the DTH Small Market Local Programming Fund, compensation for distant signals, and Canadian Television Fund licence fee top up for programming. While the LPIF has been referred to by CTV as a 'Band-Aid' and not a solution, it must still be factored in to any review of broadcasters' revenues. The DTH Small Market Local Programming Fund[5] funds local programming for independently owned small market stations and could have its eligibility expanded to assist more small market stations. Distant signals compensation has been dismissed by CTV as likely to result in non-financial remuneration but it will be a benefit regardless. CTF allows broadcasters to licence programming at a fraction (on average 37%) of their cost. Whether these revenue streams are directed to local or not they each help make it possible for broadcasters to afford local programming and stations.

Another factor impacting revenues is carriage of local stations on satellite. Satellite BDUs should be required to carry local stations before finding room for pornography. We understand from CTV that this additional coverage would go far to improving the revenues in local markets such as Windsor and Timmons.

Solutions

The principles of the *Broadcasting Act* remain a cornerstone of Canadian identity. Regulation must be maintained in order to keep Canadian programming on the air. As

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[4] Broadcasting Act, s. 3(1)(i)(i) and (ii)

[5] The Small Market Local Programming Fund is funded by DTH providers Bell ExpressVu and StarChoice. In 2007-2008 it funded over $8million of local programming for 17 independently owned small market television stations.

stakeholders cannot agree on the problems or their extent, it is even harder to agree on the solutions. Broadcaster calls for great flexibility in regulation should not be heeded as historically greater flexibility has resulted in less high quality Canadian programming on the air[6]. Something must be done but these are very complicated issues with insufficient evidence for a thorough review. The CRTC has deferred complicated policy discussions until group licensing in April 2010 and the WGC supports this decision. The short term financial crisis should be dealt with by simple short term solutions which will be canvassed at the current one year renewal hearing. More complex policy discussions involving financial support of local programming and Canadian programming will be better informed after the CRTC has had a chance to provide the public with more detailed statistical information. We all need to arm ourselves with the facts.

This Committee has asked – what can the Federal Government do to assist in these circumstances? Canadian programming obligations are conditions of broadcasters' licences. These conditions will be addressed in the upcoming one year term licence renewal and the subsequent seven year term renewal hearing. However, it is not enough for the CRTC to set conditions of licence and broadcast policies. The CRTC must have the necessary tools to be able to enforce them. Again and again the broadcasters and the cable and satellite operators have failed to fulfill their regulatory obligations and the CRTC's only recourse has been either a sternly worded letter or threat of pulling their licence. The CRTC needs a system of fines and non-monetary penalties with which to enforce obligations. Parliament needs to amend the *Broadcasting Act* to provide the CRTC with these tools.

Other possible solutions within Parliament's jurisdiction have been suggested, such as:

- relaxing restrictions on pharmaceutical advertising,
- eliminating Part II fees which are currently before the Supreme Court of Canada and negotiating a settlement on return of collected Part II fees with broadcasters; and
- Providing funding for digital transition to cover the cost of maintaining service for underserved small communities.

We take no position on these issues but urge this Committee to review these concrete suggestions which are outside the CRTC's jurisdiction and which could positively impact conventional television in Canada.

Conclusion

The WGC is before this Committee both as a representative of Canadian screenwriters but also a representative of Canadian audiences. We urge this Committee to keep in mind the principles of the Broadcasting Act to provide Canadians of all walks of life with a diverse Canadian broadcasting system which reflects our collective and individual experiences.

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[6] Expenditure requirements were removed and replaced with priority programming exhibition requirements in the 1999 Over the Air Television Policy in the name of 'flexibility'