Writers Guild of Canada

June 27, 2014 **Filed Electronically**

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

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2014-190

Let's Talk TV

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. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

The WGC is pleased to submit our views with respect to Broadcasting Notice of Consultation CRTC 2014-190 (the Notice). This submission is structured in two parts. The first part is a broad, first-principles discussion on the Canadian television system—what it looks like now, why it looks that way, and where the WGC feels it should be going. The second part contains the WGC's responses to selected issues from the Notice that the WGC believes are of particular importance to its members and to the Canadian broadcasting system, namely:

- Maximizing choice and flexibility
- Access to non-Canadian programming services
- Simultaneous substitution
- Financing and promoting compelling Canadian programming
- Genre exclusivity and protections for Category A services
- Streamlined licensing
- Other Matters: Reporting

For each issue we will provide the WGC's general thoughts, followed by responses to the Commission's specific questions.

Given our membership and expertise, the WGC's comments in this submission focus primarily on the English-language television market.

The WGC wishes to appear at the public hearing scheduled to commence on September 8, 2014, in Gatineau, Quebec in order to further elaborate on the issues addressed in this submission from the perspective of English-language screenwriters.

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EXECUTIVE SUMMARY

PART I: A "BIG PICTURE VIEW" OF THE CANADIAN TELEVISION SYSTEM

A First-Principles Discussion of English-language Canadian Television

ES.1 In what we believe to be the spirit of the Let's Talk TV process, the WGC would like to begin its submission with our vision for Canadian television. We'd like to talk about what it is, what it could be, what it should be, and the challenges and opportunities that exist between there and here. We feel this discussion is useful to frame the issues that follow, and also because the reasons behind Canada's cultural policies may not always be popularly understood. As the Commission reaches out to Canadians for their views on Canadian television, we feel it's important to connect their feedback to the structural, economic, and historical realities faced by the Canadian television sector.

ES.2 We would first argue that arts and culture have value, beyond and in addition to their economic value. The WGC believes this value is real, and is part of the reason that Canada and most other developed countries have cultural principles and policies. In Canadian television, these principles and policies are largely enshrined in the *Broadcasting Act*.

ES.3 The television sector also creates direct economic value. Canadian film and television production generated $3.5 billion in gross domestic product in 2012-13, and television sector revenue in 2012 was $6.514 billion. In 2012-2013, Canadian television production created almost 51,000 full-time equivalent jobs. These jobs will be crucial in a 21st century information economy based on services, technology, and the creation of intellectual property.

ES.4 We think that Canadians as consumers should have choices, including the ability to receive the best programming content from Canada and around the world. We think that Canadians as citizens should be able to access content that they want and need to participate in Canadian society.

ES.5 We think that Canadians as creators should have the ability to develop and exercise their talents in creating Canadian content. With respect to developing their talents, creators need opportunities to hone and perfect their craft, and this often means having an industry in which to work while they do so. With respect to exercising their talents, Canadian creators need opportunities to make content—and to make good content—that, in television, involves financial investment and the decisions of broadcasters to take creative risks.

ES.6 The English-language Canadian television sector faces a variety of challenges that are not present in other markets. Specifically: 1) The English-language market is significantly smaller than many other television markets, particularly that of the United States; 2) High-quality television content is expensive, and these costs do not scale to Canada's smaller market; 3) A shared language with the United States, which is the largest and most successful producer of television content in the world, introduces a direct and powerful competitor; 4) Geographical proximity to the United States means that that competition has existed in a direct form from the very beginning of the medium's existence; 5) A shared language and geographical proximity to the United States facilitates migration of talent to the United States, undermining a "critical mass" forming around the talent that remains in Canada; and 6) "Cultural cringe" leads many Canadians to undervalue their own cultural production. In sum, these are "The Challenges" facing English-language Canadian television, and they combine to create a situation in which it is more economically attractive to Canadian broadcasters to purchase foreign, and particularly American, programming than to make their own, regardless of the popularity or success of the Canadian programming. These are the reasons that English-language television needs regulatory support to survive and thrive.

Key Themes of this Submission

ES.7 Chief amongst the WGC's key themes in this submission is the ongoing need for regulation in the broadcasting system, to respond to negative outcomes caused by The Challenges and to implement the broadcasting policy for Canada as laid out in the *Broadcasting Act*.

ES.8 To the extent that there is a view that the Internet has erased barriers to the creation and distribution of quality content, such that the traditional elements of the broadcasting system such as broadcasters, distributors and professional creators, are no longer necessary for the production of culture, we believe this view to be incorrect. Traditional elements of the existing system continue to play essential roles in content creation and distribution, particular with regard to financing content. We believe wholeheartedly that the Internet provides new opportunities for creators to create and for audiences to find and access content, but the Internet has not yet replaced a number of the key functions of traditional media.

ES.9 Another key theme for the WGC is the need to continue to distinguish between different forms of "broadcasting" within the Canadian broadcasting system. Television, and linear television in particular, is one form, and should be regulated in accordance with its fundamental characteristics. The characteristics of other forms, such as over-the-top (OTT), and on-demand in particular, should not be the basis upon which to determine the appropriate regulation of linear television.

ES.10 Another key theme for the WGC is the belief that regulation of "broadcasting" should extend to currently exempt broadcasting undertakings, such as OTT providers. As has been acknowledged by the Commission before, including in this Notice, increasingly broadcasting activities are being done outside of traditional channels, largely on the Internet and via mobile devices. It has been five years since the Commission comprehensively reviewed the Exemption Order for Digital Media Broadcasting Undertakings. The WGC feels that it is time to reconsider the impacts that OTT is having on the Canadian broadcasting system, and the appropriate response to those who obtain the benefit of operating in the Canadian market without any obligation to contribute to Canadian content.

ES.11 The final key theme we would raise is "The Risk of Many Changes". Let's Talk TV has raised a significant number of different but interconnected issues. The Notice of Consultation proposes a number of changes to the broadcasting system that each change by itself could have cascading effects through the sector. Enacting multiple changes could multiply these effects. In particular, should the Commission implement pick-and-pay, in combination with an expansion of the availability of non-Canadian services and an elimination of the preponderance rule, that would be the perfect storm that could very well end the Canadian broadcasting system as a separate and distinctly Canadian system.

PART II: WGC RESPONSES TO SELECTED ISSUES FROM THE NOTICE

Maximizing Choice and Flexibility

ES.12 The WGC understands that consumers want greater choice and flexibility in their programming services, and understands the trend towards *à la carte* service selection.

ES.13 However, the WGC has significant concerns regarding the Commission's proposal, particularly with respect to the "pick-and-pay" component. In our view, pick-and-pay would likely have significant negative impacts on the television sector, including the disappearance of channels, a loss of a diversity of voices, and lost jobs for creators.

ES.14 To the extent that pick-and-pay is combined with the elimination of the preponderance rule and/or increased access by non-Canadian programming services, the result will likely be an overall loss of Canadian choices within the television system.

ES.15 The WGC strongly believes that there is absolutely a need to continue to give priority to the carriage of Canadian programming services. The WGC strongly believes that there is absolutely a need to maintain the requirement that each subscriber receives a preponderance of Canadian services.

ES.16 For consumers, many will not save money under pick-and-pay, and many may pay more for same, or pay the same for less.

Access to non-Canadian Programming Services

ES.17 The WGC believes it is important at the outset to distinguish between non-Canadian services and non-Canadian programming. With respect to programming, we submit that Canadians already have access to a wide variety of non-Canadian programming via Canadian services. With respect to non-Canadian services, the impact on the Canadian broadcasting system of increased access to them is much more significant because Canadian broadcasters have regulatory obligations to finance and present Canadian content, while non-Canadian services do not. As such, to the extent that non-Canadian programming generates revenue for a Canadian broadcaster, a portion of that revenue is invested back into Canadian programming. This may occur directly under the Commission's Canadian programming expenditure (CPE) and programs of national interest (PNI) expenditure requirements , or simply by contributing to the overall financial health of the broadcaster. Non-Canadian programming distributed in Canada by a non-Canadian service has no similar benefit to the Canadian system.

ES.18 As such, the WGC fundamentally opposes the expansion of non-Canadian services in Canada.

ES.19 To the extent that the Commission seeks to expand access to non-Canadian services while relying on an "exclusive program rights" test, the WGC believes that this would not be sufficient to offset the negative impact on the Canadian system, for two reasons. Firstly, non-exclusive rights have far less value than exclusive rights, particularly when the program in question is already associated with the brand of the non-Canadian service, so even if non-exclusive rights are technically available, their association with established services makes them de facto exclusive to the non-Canadian service, since purchasing the rights, even at a discount, lowers value to the purchasing broadcaster.

ES.20 Secondly, the proposed test against undue harm is one that looks only at a particular point in time, namely, at the time it is deciding whether or not to add the service to the Eligible List. This is particularly relevant given that U.S.-based services may change their “nature of service”. Once a service gains access to the Canadian system, it is harder to remove that service.

ES.21 In the WGC's view, the entry of a non-Canadian service into the Canadian broadcasting system effectively displaces an actual or potential Canadian service. As such, any non-Canadian service operating in Canada causes an undue negative impact, since it uses its advantages from its home market, and is unaffected by The Challenges facing Canadian content makers, such that is pushes out Canadian options and Canadian content, without having the regulatory obligations that attach to Canadian services.

Simultaneous Substitution

ES.22 The WGC has historically viewed simultaneous substitution (or "simsub") as a something of a double-edged sword. On the one hand, it repatriates audience and thereby revenue that would otherwise be lost due to viewing to U.S. broadcasters who do not hold the programming rights in question in Canada. As a result, simultaneous substitution contributes to the financial health of broadcasters and generates revenue that may be invested in Canadian content. On the other hand, it has tended to tie Canadian broadcast schedules to those of the U.S. networks, which can lead to suboptimal scheduling of Canadian programming and ultimately reduces the chances of success for such programming. Simsub also generally makes key timeslots, like the 10pm-11pm slot, unavailable for Canadian shows. WGC members in particular have sought access to this

10pm slot, since it has been the natural home for edgy, adult-oriented programming that many writers want to write. Simsub has also been said to push up the acquisition costs to Canadian broadcasters of non-Canadian programming, since it raises the value of the programming and therefore the competition for it.

ES.23 On balance, the WGC does not support the simple elimination of simultaneous substitution. While the value of simsub to the Canadian broadcasting system has been debated, it has been pegged at $200 million annually or higher. At a time when traditional broadcasters are facing increased competition from other sources of content and entertainment, it is difficult to ignore this kind of revenue influx to the system. This is particularly important given that the Commission has elected to encourage the production of Canadian content through expenditure requirements that operate as a percentage of broadcasting revenue.

ES.24 We also believe it is time for the Commission to seriously consider non-simultaneous substitution (NSS). NSS would presumably provide the best of both worlds: it would allow Canadian broadcasters to repatriate audiences lost to U.S. broadcasters while at the same time unshackling Canadian schedules from those of U.S. broadcasters. It should be technically feasible, given the development of digital program insertion and the fact that some broadcasters already use similar technology to dynamically insert ads in programming targeted by region or timeframe. Given the possibilities of NSS, the WGC believes that the Commission should closely examine it during the Let's Talk TV process.

ES.25 If NSS is implemented concurrently with simultaneous substitution, there may be other incentives for broadcasters to prefer simsub to NSS. As such, we believe that NSS should be made as attractive to broadcasters as simsub is.

ES.26 The WGC does not have the technical expertise to definitively judge the feasibility of NSS. To the extent that some industry stakeholders may resist NSS for non-policy reasons, and to the extent that those who resist, such as broadcasting distribution undertakings (BDUs) are also the ones in possession of the best information as to NSS's feasibility, the WGC proposes that the Commission consider a reverse onus test for NSS, requiring that such opponents make a clear case for why NSS is not feasible.

ES.27 There is a potential challenge with NSS in that it may encourage broadcasters to purchase more U.S. programming because it will allow them more flexibility in which to schedule it. If NSS is implemented, we submit that the Commission should monitor for this potential outcome.

ES.28 We believe NSS may also benefit Canadian consumers, since it may free Canadian broadcasters from U.S. network schedules, and thereby allow Canadian broadcasters to focus more on the needs of their own, Canadian audiences.

Financing and Promoting Compelling Canadian Programming

ES.29 We are pleased to see the Commission say, in the Notice, that the *Broadcasting Act* states "that the broadcasting system should provide Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity". The WGC wholeheartedly agrees.

ES.30 At paragraph 77 of the Notice, the Commission said that it was prepared to consider, "Imposing CPE requirements on all licensed television stations and specialty and pay services." The WGC supports this proposal.

ES.31 Also at paragraph 77 of the Notice, the Commission also said that it was prepared to consider, "Counting expenditures by licensed programming services for online or on-demand only productions toward their CPE requirements." The WGC supports this proposal to the extent that the Commission also counts the revenue generated by online or on-demand only productions as "broadcasting revenue" upon which CPE and PNI requirements are based.

ES.32 With respect to how programs will be delivered in the future, while we hesitate to make ambitious predictions, we do believe that programming will continue to require both talent and financing, and any delivery system of the future must find ways to supply both those things to the system.

ES.33 With respect to modifying funding mechanisms, we believe that to the extent that funding is currently connected to the revenues of BDUs, which is but one form of distribution, funding should continue to be available regardless of the relative health of a particular distribution method. Funding sources should, to the extent possible, continue to be part of a "virtuous circle" with the content it supports.

ES.34 With respect to whether regulatory measures are required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming, we believes they are absolutely required. Given The Challenges discussed above, high-quality Canadian content simply would not and will not exist without regulatory supports. Given this reality, the WGC believes in a suite of regulatory supports for Canadian content, which includes expenditure requirements, funding support, exhibition requirements, and promotional supports/encouragements.

ES.35 With respect to encouraging the production of certain types of programs as it has done in the past, we believe that the Commission should continue those encouragements, with Canadian drama being chief among the types supported. Certain types of programs, such as drama, are risky and expensive, yet valuable to the system and are underrepresented on Canadian screens despite their popularity.

ES.36 The WGC strongly disagrees with eliminating requirements such as exhibition requirements. We do not understand how the elimination of such requirements would be "an effective and appropriate incentive for producing Canadian programming or programming of certain types". We are not aware of exhibition requirements preventing or limiting the production of Canadian programming. We believe that exhibition requirements work in concert with other requirements to ensure, among other things, that Canadian content is produced and available to the Canadian public. We also submit that the *Broadcasting Act* requires the Commission to ensure that a predominant proportion of broadcasters' schedules are devoted to the exhibition of Canadian programming. If the Commission were to eliminate or significantly reduce current exhibition obligations, we submit that it could have failed to exercise its obligations under the Act, and the decision could therefore be subject to appeal on jurisdictional grounds.

ES.37 With respect to encouraging the promotion of Canadian programs, the WGC agrees that promotion is a crucial element in the success of Canadian television programming. Anything that would incent or encourage broadcasters to make commitments to promote their Canadian programming would be welcome. We believe that broadcasters should be encouraged to promote Canadian programs on a variety of platforms, and not just on their own channels and services. We are skeptical, however, of simply diverting production funding into promotion, since it may serve merely to displace existing promotional activities and therefore not result in incremental promotional spending, and since it would undoubtedly reduce the quantity and/or quality of Canadian content, as less money would be available for production. Further, we submit that non-simultaneous substitution would also be an effective form of promotional support, since it would allow Canadian broadcasters to schedule programming in a manner that works best for Canadian audiences.

ES.38 With respect to updating the definition of broadcasting revenues to reflect all broadcasting activities by licensees, the WGC agrees with this proposal.

ES.39 With respect to the appropriateness of the current funding model for community channels, the WGC believes that the amount of funding received by community channels is out of balance compared with the amount received by the CMF and the certified independent production funds (CIPFs). Considering the types of programming funded by the CMF and CIPFs, particularly with respect to their high risk and high cost, and considering increased pressure on the CMF's funding, we believe that a better balance should be struck between funding for community channels and the CMF/CIPFs, with increased funding to the latter.

ES.40 With respect to how the Commission and Canadians should measure success with respect to encouraging the production of compelling Canadian programming, the WGC supports a variety of metrics, both quantitative and qualitative. Quantitative measures may include hours of programming produced. Qualitative measures may include audience ratings, awards won or nominated for, social media buzz, series renewals, and international sales.

Genre Exclusivity

ES.41 The WGC has traditionally supported genre exclusivity under past and current policy frameworks because we agree with the objectives of the policy, which include a diversity of programming genres and the protection of revenues by limiting competition and thereby enabling Category A services to meet their higher Canadian programming obligations. The WGC would expect to continue to support genre exclusivity should the now-existing policy framework continue. We understand, however, that should the Commission implement a pick-and-pay framework, competition between services may require a different approach. We would expect that channels would seek flexibility to remain competitive, and the genres they serve would arguably be a more accurate reflection of what the market for broadcasting content could bear.

ES.42 We note, however, the risks in eliminating the policy. One is a "rush to the middle", in which all broadcasters seek to stake out territory in the most profitable genres of programming. Another risk is that because part of the rationale for the policy is to protect what are now Category A services in exchange for higher Canadian content obligations, without genre protection these services will apply for and may receive a reduction in those obligations. If the Commission does choose to eliminate the genre exclusivity policy, we submit it should either maintain current Canadian content obligations for current Category A channels, or implement counterbalancing measures elsewhere in the system.

Streamlined Licensing

ES.43 The WGC is unclear as to the implications of this approach, and does not see in what ways this would simplify the actual working realities of regulated entities, the Commission, or Canadians. We do feel, however, that the Commission's proposals may be tantamount to placing the administrative cart before the policy horse. In our experience, licensing categories are regulatory tools used to implement policies, which themselves have particular objectives. As such, the WGC submits that any administrative streamlining be considered after the policy determinations of the present proceeding, and be based on the outcomes of this proceeding, presumably in a different proceeding.

Other Matters: Reporting

ES.44 One final matter that we would like to raise involves the Commission’s collection, examination, and publication of information reported by licensees or other entities subject to the Commission’s jurisdiction, in particular, programming spending data filed by the large English-language designated television broadcast groups in their reports to the Commission. As we have mentioned in other proceedings, this information is crucial to organizations like the WGC, as it allows us to monitor the impacts of the Commission’s policies on our members and on the broadcasting system as a whole. This information is a critical link between Commission policies and the outcomes of those policies, and as such we feel that there is a vital public interest in their detail, accuracy, and availability.

ES.45 The WGC believes that such reporting, particularly with respect to CPE and PNI spending, must be sufficiently detailed so as to reflect the activities of licensees on a service-by-service basis. We also submit that such reporting should be sufficiently accurate so that the Canadian public can rely on the information when it participates in public proceedings before the Commission.

PART I: A "BIG PICTURE VIEW" OF THE CANADIAN TELEVISION SYSTEM

A First-Principles Discussion of English-language Canadian Television

1. When the Commission launched the "Let's Talk TV" process in October, 2013, it began by asking Canadians to reflect on what Canadian television is and should be, not simply in terms of specific rules and policies, but in a broader sense. In this spirit, the WGC would like to begin its submission with our vision for Canadian broadcasting. We'd like to talk about what it is, what it could be, what it should be, and the challenges and opportunities that exist between there and here. We feel this discussion is useful to frame the issues that follow in Part II, and also because the reasons behind Canada's cultural policies may not always be popularly understood. As the Commission reaches out to average Canadians for their views on Canadian television, we feel it's important to connect their feedback to the structural, economic, and historical realities faced by the Canadian television sector.

2. We would first argue that arts and culture have value, beyond and in addition to their economic value. This is sometimes a difficult argument to make because its value is not quantifiable or tangible. But the WGC believes that it is real, and it is part of the reason that virtually every developed country in the world has a set of cultural policies established on a variety of economic and non-economic principles. Cultural economist David Throsby has argued for *both* the economic and cultural values of the arts and cultural sector, and has identified values such as: national, regional, or local cultural identity; celebrating diversity, and its link to social cohesion; ensuring continuity through shared heritage and education; and the values of excellence and innovation in art itself.[1] These values apply internationally, and Canada is no exception, with several of these principles having been enshrined in the *Broadcasting Act*. Section 3(1) of the Act—the Broadcasting Policy for Canada—includes statements like "the Canadian broadcasting system…provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty"[2]. The Act states that the Canadian broadcasting system should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada"[3], and "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view"[4]. These are not purely economic concerns—they are cultural concerns, connected to Canada as a nation and a society. The WGC strongly believes in these intangible elements of the Canadian broadcasting system, and it is implicit in many of our comments throughout this submission.

3. There is also the economic value of the television sector to consider. Canadian film and television production generated $3.5 billion in gross domestic product in 2012-13,[5] and television sector revenue in 2013 was $6.514 billion.[6] In 2012-2013, Canadian television production created almost 51,000 full-time equivalent jobs, 20,000 of those being direct jobs and almost 31,000 being spin-off jobs.[7] Notably, many of these jobs are part of the 21st century "information economy" based on services, technology, and the creation of intellectual property (IP). Given the challenges facing Canada's manufacturing sector, and the pitfalls of being overly reliant on natural resource extraction, these jobs are likely to become more important in the future. IP creation is the business that our

[1] *The Economics of Cultural Policy,* David Throsby, 2010, pages 42-45.
[2] Section 3(1)(b)
[3] Section 3(1)(d)(i)
[4] Section 3(1)(d)(ii)
[5] *Profile 2013: Economic Report on the Screen-based Media Production Industry in Canada*, Canadian Media Production Association, Exhibit 2-2, page 21. We are unable to separate film and television with respect to this information.
[6] Communications Monitoring Report, 2013, page 75
[7] *Profile 2013: Economic Report on the Screen-based Media Production Industry in Canada*, Canadian Media Production Association, Exhibit 2-34, page 42

members are in, generating original content and valuable entertainment brands for both traditional and digital distribution models all over the world. As the digital economy grows, Canadian creators will continue to have an important role, both culturally and as wealth generators through IP.

4. We would now like to ask, “What should the Canadian television system look like?” What is an ideal broadcasting system, from the perspective of citizens, consumers and creators?

5. We think consumers should be able to receive the best programming content from Canada and around the world. They should be able to view what they want, when they want. Consumers expect to have choices, and in an increasingly globalized and digitized environment, that means choices from every corner of the planet. The WGC supports choices on Canadian television screens. But we think for that concept to have meaning, it must include Canadian choices. For reasons that we will discuss in a moment, high-quality international content is more plentiful, very well publicized, and cheaper for Canadian broadcasters to acquire than Canadian content. In such circumstances, international content could dominate Canadian screens. The WGC believes that that would not offer to Canadian consumers the full range of choices to which they are entitled. We believe that choices for consumers must include Canadian choices—indeed, Canadian choices should be front-and-centre, at the core of the Canadian system. No doubt others could add to this list. They have spoken to the Commission during the Let's Talk TV process thus far, and will no doubt continue to do so.

6. From a citizen’s perspective, we think Canadians should be able to expect access to content that they want to participate in Canadian society. We believe that this includes access to Canadians news, documentary, and current affairs programming. But it also includes access to creative and dramatic content, since it is as much through this that we understand ourselves and our society as anything else. Pablo Picasso famously said that art is a lie that tells the truth[8], and some truths are better understood through art or narrative than through bald statements of fact or opinion. We believe that Canadians are entitled to have access to a wide range of content about themselves, their society, and their country, both factual and artistic.

7. It is from a creator's perspective, however, that the WGC believes it has a particular expertise. WGC members are the writers who give first form to many types of television programming, in particular to television dramas. They face that towering wall called The Blank Page, and before they fill it with words, virtually nobody else on a production can do a thing. Writers create worlds and characters, design narrative arcs and story architecture, imbue events with themes and meaning. Writers are essential to the creative process. We believe they are the first creators, and an essential pillar of the Canadian television production sector.

8. Writers are the driving forces behind the most successful television there is. But to be successful, they need three crucial things: talent, the ability to develop their talent, and the opportunity to exercise it. The talent part is at least partially outside of the Commission's purview. To a certain degree, talent is likely something a person is born with and/or acquires or hones during their youth. But talent development and the opportunity to exercise that talent is very much a subject that we believe is before the Commission in these proceedings.

9. It is a popular misconception that creative people simply are born knowing everything they need to know to be creative. But while a very few prodigies may have essentially begun their career at the top of their form, the vast majority of creators take time to develop their abilities. This is typically referring to as "honing of craft"—practicing the skills that transform a spark of inspiration into a fully articulated script, television show, or other creative work. Honing craft is not a minor, auxiliary concept for creators. It is an essential, core component of their work. Malcolm Gladwell described

[8] Actually a paraphrase—Picasso said, in full, speaking about the “unrealistic” style of cubism: “We all know that Art is not truth. Art is a lie that makes us realize truth, at least the truth that is given us to understand. The artist must know the manner whereby to convince others of the truthfulness of his lies. If he only shows in his work that he has searched, and re-searched, for the way to put over lies, he would never accomplish anything.”

the concept as the "10,000 hours rule" in his book *Outliers*. The Wikipedia article on the book explains as follows:

> A common theme that appears throughout Outliers is the "10,000-Hour Rule", based on a study by Anders Ericsson. Gladwell claims that greatness requires enormous time, using the source of The Beatles' musical talents and [Bill] Gates' computer savvy as examples. The Beatles performed live in Hamburg, Germany over 1,200 times from 1960 to 1964, amassing more than 10,000 hours of playing time, therefore meeting the 10,000-Hour Rule. Gladwell asserts that all of the time The Beatles spent performing shaped their talent, and quotes Beatles' biographer Philip Norman as saying, "So by the time they returned to England from Hamburg, Germany, 'they sounded like no one else. It was the making of them.'" Gates met the 10,000-Hour Rule when he gained access to a high school computer in 1968 at the age of 13, and spent 10,000 hours programming on it.
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> In Outliers, Gladwell interviews Gates, who says that unique access to a computer at a time when they were not commonplace helped him succeed. Without that access, Gladwell states that Gates would still be "a highly intelligent, driven, charming person and a successful professional", but that he might not be worth US$50 billion. Gladwell explains that reaching the 10,000-Hour Rule, which he considers the key to success in any field, is simply a matter of practicing a specific task that can be accomplished with 20 hours of work a week for 10 years. He also notes that he himself took exactly 10 years to meet the 10,000-Hour Rule, during his brief tenure at The American Spectator and his more recent job at The Washington Post.[9]

10. It's important to note that the "10,000 hours rule" is about *practice,* typically in the course of working and doing, not training or education. Individuals seeking 10,000 hours of practice need to learn how to do it first, and a course, symposium, diploma, or 4-year degree does not begin to cover the amount of time required to become proficient. As such, those seeking to create an environment in which to nurture creativity cannot simply found a college program in the subject. The 10,000 hours rule is something that's only really achievable by those who can practice their craft for years *by working*. As such, the mere presence of an industry in which creators can hone their talent is a crucial component of their success. And for those creators who are not independently wealthy, the ability to earn a living while they create is essential. Despite the popular image of the starving artist, creators are also people who prefer to have food on their table, a roof over their heads, and the possibility of having and raising a family. If they cannot have those things in a creative field, many will find something else to do with their lives, and we will all have lost the benefit of what they might have contributed to our culture.

11. Separate from having the talent and honing the craft is the opportunity to make the content. It may go without saying, but a creator cannot create a successful piece of content if they are never given the opportunity to make it in the first place. In television, given the costs and resources involved, there are typically a number of people involved in deciding whether a particular project gets made. A painter may be able to exercise absolute choice in what to paint because all they need to invest in is a canvas, some paint, and the time. But a television writer does not write in isolation—they work with producers and broadcasters, among others, to make a program. Ultimately, broadcasters[10] need to make the financial investment in the program. In the Canadian context, that means that: Canadian broadcasters exist; they have the money to spend on content; they either want to spend that money on content or they have the regulatory obligation to do so; and they actually then spend the money. (And these things cost money to produce with or without the writer's fee.) Broadcasters and other decision-makers also need to make decisions on *good* content, which often involves taking risks. WGC members report rarely finding decision-makers who are interested in taking the creative risks necessary to make truly break-out content. The risk-averse nature of English-Canadian broadcasting

[9] http://en.wikipedia.org/wiki/10_000_hours_rule

[10] As of yet no other entities have meaningfully stepped into the shoes of broadcasters to perform this role—not at the same scale, and not to a significant degree in Canada.

is an oft-discussed topic in the television industry, and the solution to it is unclear. But, regardless, if creators are to create successful content they need the opportunity to create *content.* And since quality cannot always be guaranteed, they need the ability to try and fail. Once again, quantity plays a key role in quality. The U.S. Hollywood system is often looked to as the hallmark of success for content creation. Well, one of the characteristics of the Hollywood system is the sheer quantity they produce, and the number of failures they go through in order to get successes. Canadian creators need something like those opportunities as well.

12. These are the key factors that form a creator's perspective for making successful content. In addition to making good programming, there are other things creators would like to see in the Canadian system. From their perspective, the Canadian broadcasting system should provide a place to tell their stories, and a platform upon which to build their career. For a Canadian creator, having an ideal Canadian broadcaster system would mean that their professional success would not be related to how well they can negotiate the American immigration system, so as to access the job market in Los Angeles, California. It would mean that the creator's reality can be reflected in their work, without having to change the Canadian place names or details that were part of the experience of their formative years because the American market would likely not understand the references.

13. As has been remarked upon by other commentators, the English-Canadian television sector faces a variety of challenges that are not present in other markets, and are certainly not present in the United States. Canada's proximity to the U.S.—including proximity to American media—has arguably established that country's content as the benchmark against which others are measured in the minds of many Canadians. It is not surprising, then, if some Canadian observers question why the U.S. appears capable of producing copious quantities of high-quality information and entertainment programming while Canada apparently does not. Those observers may ask why American media companies appear not to need regulatory support or financial subsidies, and puzzle over the apparent confidence and quality of much American programming in comparison to Canadian offerings.

14. The answer comes in many forms, and we believe it has nothing to do with talent or ability. For starters, cultural products are typically best suited to their own culture—that's partly what makes them "cultural products"—which means their own home market. The Canadian market is relatively small compared to many developed countries, and much smaller than the U.S. The current population of the United States is almost 320 million[11], compared to just over 35 million for Canada[12]. The English-speaking Canadian population is smaller yet, at 23 million to 28 million[13]. Film and television production does not scale well to market size—it costs between $1 million and $3 million per hour to produce high-quality series drama no matter how many people watch it. Unlike production of many physical goods, the costs are incurred almost entirely at the front end, with little ability to match the outlay to the market size. For example, a manufacturer of chairs could build their product in a small facility, growing the market gradually from local to regional to national to international, building their production capacity as they go. Generally speaking, it costs more to make more chairs—it costs less to make fewer chairs. If the market is local, the investment needed to serve that market can be scaled down to match. This isn't true for television shows. To make a television show that matches the production values of a top U.S. or other international show—production values that Canadian audiences have come to expect—you must invest the same amount as the U.S. or international producer, but with a domestic market less than one-tenth of the size from which to recoup. This is a structural challenge faced by Canadian content makers.

15. English Canada also shares a language with the United States, which makes competition from American content that much stiffer. The world loves Hollywood film and television, but a viewer in France, Germany, or Japan faces a language barrier that must be overcome with subtitles or dubbing—two things that can frustrate immersion in an entertainment experience, and can mark something as, at least to some degree, "foreign". Even most other English speaking countries like

[11] United Stated Census Bureau, http://www.census.gov/popclock/

[12] http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm

[13] http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo15-eng.htm

the United Kingdom and Australia have accents that clearly and plainly distinguish themselves from Americans. Canada, outside of certain regions, does not have "non-American" accents. It is harder to think of a characteristic that more defines and delineates culture than language, and English Canada's shared language with the U.S. makes American cultural products that much more permeable to Canada's national and cultural fabric.

16. Geographical proximity also plays a role. As the Commission is aware, broadcasting began by using Hertzian waves propagated over the air to receiving antennae in people's homes. Since the majority of Canadians are located near the Canada-U.S. border, this meant that many Canadians could receive American television at home. From the beginning, then, Canadian broadcasters and content creators have had to compete directly with U.S. content, and have never had an "incubational phase" as many other countries did prior to the widespread availability of content on the Internet.

17. Proximity and shared language have also made it easier for Canadian talent to exit the Canadian industry to work in Hollywood. Canadian actors like Jim Carrey, Ellen Page, and Ryan Gosling are among the most well-known expatriates to Los Angeles, but many more Canadians work behind the scenes as writers, directors, and other creative roles. Several Canadian writers have begun their careers in Canada before moving to Hollywood to work, such as Hart Hanson,[14] R. Scott Gemmill,[15] and Semi Chellas[16]. The pull of Hollywood is strengthened by the fact that U.S. studios celebrate the writer, more so than in Canada we believe, as well as by Canadian broadcasters who increasingly require American financing in Canadian shows. These things are part of the reason that California is the WGC's second largest membership region. The success of Canadians in Hollywood and elsewhere is to be celebrated, and it is a testament to the depth of Canada's talent pool that many more Canadians choose to stay in Canada to create content within the Canadian system. But to the extent that television production, like other creative industries, tends to form synergizing clusters, the pull of talent south of the border challenges the Canadian broadcasting system to retain a critical mass of creators.

18. Finally, while little discussed in these types of proceedings, it's also worth noting the extent to which English Canadians suffer from "cultural cringe" in respect of much Canadian content. "Cultural cringe" is described in an excellent Wikipedia article as follows:

> Cultural cringe, in cultural studies and social anthropology, is an internalized inferiority complex which causes people in a country to dismiss their own culture as inferior to the cultures of other countries. It is closely related, although not identical, to the concept of colonial mentality, and is often linked with the display of anti-intellectual attitudes towards thinkers, scientists and artists who originate from a colonial or post-colonial nation. It can also be manifested in individuals in the form of cultural alienation.[17]

19. This concept has been explored in a number of countries. Australian writer Henry Lawson expressed it in the context of his country over 100 years ago:

> The Australian writer, until he gets a "London hearing," is only accepted as an imitator of some recognized English or American author; and, as soon as he shows signs of coming to the front, he is labelled "The Australian Southey," "The Australian Burns," or "The Australian Bret Harte," and lately, "The Australian Kipling." Thus no matter how original he may be, he is branded, at the very start, as a plagiarist, and by his own country, which thinks, no doubt, that it is paying him a compliment and encouraging him, while it is really doing him a cruel and an almost irreparable injury. But mark! As soon as the Southern writer goes "home" and gets some recognition in England, he is "So-and-So, the well-

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[14] Writer for *The Beachcombers, North of 60*, and *Traders,* now creator and writer of Fox's *Bones*

[15] Writer and producer for *JAG, ER,* and *NCIS: Los Angeles*

[16] Creator and writer for *The Eleventh Hour*, now writing and producing AMC's *Mad Men*

[17] http://en.wikipedia.org/wiki/Cultural_cringe

known Australian author whose work has attracted so much attention in London lately"; and we first hear of him by cable, even though he might have been writing at his best for ten years in Australia.[18]

20. The existence of "cultural cringe" in Canada or a "Canadian inferiority complex" has been debated in various circles. As a psychological state it is hard to quantify, or even to prove that it exists. No doubt, it may be a sensitive subject for some, since it suggests a reality that many Canadians may not wish to acknowledge. Nevertheless, we believe that it exists, because it is part of our members' daily working experience. It is one of the reasons that the WGC argues, before the Commission and elsewhere, for the primacy of Canadian creators in the Canadian broadcasting system. WGC members do battle with the phenomenon of cultural cringe, and the business attitudes that go with it, all the time. But we believe that they are and have been overcoming it, that Canadians do and will continue to appreciate their efforts in putting Canadian cultural expression on a firm, confident footing with the best content that the world can offer.

21. Collectively, we refer to these factors as "The Challenges", and they combine in various ways to create a situation in which there is a powerful economic incentive for Canadian broadcasters to purchase foreign programming—particularly American high-cost programming, such as drama—rather than to make their own, regardless of the popularity or success of the Canadian programming. American programming can recoup its production costs in its own domestic market, thereby making it possible to sell it to other markets, like Canada, at a deep discount—cheaper than it took to make, and cheaper than it would cost the Canadian broadcaster to make its own original content. The American programming is typically popular and high-quality, and it comes with much promotional material already produced in the U.S., made possible by the marketing synergies there, as well as with a Hollywood star system that is itself a powerful promotional tool. Linguistic and geographical proximity makes the content familiar and attractive to Canadian viewers and there is no "cultural cringe" to overcome. All of these things makes buying U.S. content a very attractive proposition. This, in turn, creates a reality in which Canadian broadcasting cannot thrive without regulatory support. We know that Canadians want access to Canadian content.[19] And we know that creators want to make it. If we are to have it, we need a regulatory framework that responds to The Challenges and mitigates their effect.

22. Fortunately, Canada possesses the foundation of that framework in the form of the *Broadcasting Act*, which is the legal basis upon which the Commission regulates broadcasting. Parliament has long recognized the challenges facing Canadian broadcasting[20] and the current iteration of its response is the *Broadcasting Act*, primarily section 3: the Broadcasting Policy for Canada. The Broadcasting Policy for Canada includes concepts like the effective ownership and control of the system by Canadians; its essential role in the maintenance and enhancement of national identity and cultural sovereignty; encouragement of the development of Canadian expression; maximum and not less than

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[18] Colin Rodrick (ed.) Henry Lawson, Autobiographical and Other Writings 1887–1922 (Angus & Robertson, 1972) pp.108–109

[19] Based on WGC research, between January 6, 2014 and June 15, 2014, *Rookie Blue* pulled in an average of 1.7 million Canadians per episode, *Saving Hope* drew 1.57 million, *Murdoch Mysteries* attracted 1.37 million viewers, and 1.21 million Canadians tuned into *Motive.* To compare, top-rated U.S. scripted dramas such as *Bones, NCIS* and *Big Bang Theory* drew an average of 1.9 million to 3 million Canadians per episode. (2013-2014 Numeris/BBM National Top Programs Reports Archive http://www.bbm.ca/en/weekly-top-30-tv-programs/26-weekly-top-30-tv-programs/national-weekly-top-30-tv-programs/198-2013-14-national-top-program-reports-archive-2). Also, critical- and fan-favourites *Orphan Black* and *Bitten* are two of the top series on Space and have amassed a dedicated social media following. Bell Media press release: May 2, 2014 http://www.bellmediapr.ca/Network/Space/Press/Seeing-Double-Space-Orders-Second-Season-of-Hit-Original-Drama-ORPHAN-BLACK; Bell Media press release: May 22, 2014 http://www.newswire.ca/en/story/1359701/space-orders-second-season-of-its-original-smash-hit-series-bitten

[20] The "Aird Report" in 1929 being one of the first, and including the Massey Report in 1951, the Fowler Report in 1965, and through the Caplan-Sauvageau Report in1986.

predominant use, of Canadian creative resources; and that the system serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children. We believe that these concepts are wholly consistent with the principles discussed thus far in this submission, and ultimately go to the heart of the issue—the importance of having a truly Canadian broadcasting system in Canada.

Key Themes of this Submission

23. Chief amongst the WGC's key themes in this submission is the ongoing need for regulation in the broadcasting system, to respond to negative outcomes caused by The Challenges and to implement the broadcasting policy for Canada as laid out in the *Broadcasting Act*. There may be a view amongst some Canadians that the Internet has erased all barriers to the creation and distribution of quality content, so the traditional elements of the broadcasting system such as broadcasters, distributors and professional creators, are no longer necessary for the production of culture. This idea is sometimes referred to as the "democratization of the arts"[21] and is arguably a strain of "cyber-utopianism"[22] which, while a broader subject, tends to view the digital revolution as inherently emancipatory and empowering for individuals—an unmitigated good for, among others, all content creators. These views tend to lead to a conviction in neoliberal economics and deregulation, in the belief that the new "perfect markets" created by the Internet will naturally lead to the creation of the best content, which will automatically find its ideal audience online, with the financial rewards of such content flowing to those who most deserve them.

24. In the WGC's view, such cyber-utopianism is misguided. We believe wholeheartedly that the Internet is providing and will continue to provide new opportunities for creators to create and for audiences to find and access content. But the Internet has not yet replaced a number of the key functions of traditional media. For one, Internet companies have been slow to make the kinds of financial investments in original content that traditional media companies make. For example, in a July 19, 2013 article for Variety, Todd Spengler compared Netflix to HBO, noting:

> This year Netflix will spend about $150 million on original programming (again, which it licenses) whereas HBO's budget for originals is around $1 billion. Netflix expects spending on originals to increase, from about 5% of annual content acquisition costs to 10% to 15% over the next few years, content chief Ted Sarandos said at a recent investor conference.
>
> Netflix's 2013 lineup comprises five shows: "House of Cards," Eli Roth's "Hemlock Grove," "Orange is the New Black" from "Weeds" creator Jenji Kohan, "Derek" with Ricky Gervais and season two of "Lilyhammer."
>
> HBO's current and recent series and shows are at least triple that. They include "True Blood," "Game of Thrones," "Boardwalk Empire," "The Newsroom," "Enlightened," "Hard Knocks," "Hello Ladies, "Family Tree," "Getting On," "Vice," "Girls," "Eastbound and Down," "Veep," "Real Time with Bill Maher," "Real Sports with Bryant Gumbel" and "Treme," plus miniseries "Parade's End." HBO also produces a broader scope of original programming that includes movies like "Behind the Candelabra," around 30 docus per year and 16 scheduled boxing matches (not including pay per view events).[23]

25. The relatively small content investments by Internet/OTT companies at this time also means that those companies are not creating a substantial and sustainable content industry—the kind of industry in which a critical mass of quantity can result in a significant degree of quality, or in which creators can work towards their 10,000 hours. It's notable that when Netflix decided to move to original content production, they went to established content creators who had already cut their teeth in

[21] http://medical-dictionary.thefreedictionary.com/democratization+of+the+arts
[22] http://en.wikipedia.org/wiki/Cyber-utopianism
[23] https://tv.yahoo.com/news/netflix-hbo-real-204617505.html

traditional media.[24] Many business successes are built at least in part on existing infrastructure, so this fact is neither strange nor a reason to criticize Netflix. It's simply an example of the larger creative foundation on which their success is built. The WGC welcomes further forays into content creation from Netflix and other OTT services. We simply feel it's important to be aware of larger context of creation as a business.

26. Another key theme for the WGC is the need to continue to distinguish between different forms of "broadcasting" within the Canadian broadcasting system. Setting radio aside, when the *Broadcasting Act* was last updated there was essentially one form of audiovisual broadcasting, and that was television. Television was, and is, largely a linear form of content delivery—content is produced and then "aired" at a particular time, for reception by the public (in the case of OTA) or by subscribers (in the case of content delivered by broadcasting distribution undertakings(BDUs)) simultaneously with its transmission. While BDU-delivered VOD has been developing within the system for some time, it was really the Internet that created the widespread demand for "anytime, anywhere" content. And, as the Commission is aware, "Internet broadcasting" remains exempt from regulation at this time[25], even though it appears clear that much content delivery on the Internet meets the definition of "broadcasting" under the Act.[26] As a result, there are now effectively two "broadcasting systems": television and, for lack of a better word, "non-television". And while the Commission and others rightly seek, in this proceeding and elsewhere, to envision a world in which both are treated equally and harmoniously, we should not forget that they each have different characteristics.

27. For example, Professor Michael Geist has made the following point on simultaneous substitution:

> I made the case for gradually eliminating the simultaneous substitution policy late last year, arguing that the policy hurts Canadian broadcasters (by ceding control over their schedules to U.S. networks) and Canadian content (which suffers from promotion). <u>Moreover, simultaneous substitution will become less important over time as consumers shift toward on-demand availability of programs.</u>[27] [Emphasis added]

28. Mr. Geist is likely correct that consumers will increasingly shift to on-demand programming over time, and it is also true that simultaneous substitution cannot play a role in on-demand programming distribution. But it also strikes us as strange to suggest, as Mr. Geist appears to do, that the unsuitability of simultaneous substitution for on-demand programming is an argument for its elimination for <u>linear</u> programming. Nobody knows for sure how long linear programming will last—it may ultimately disappear entirely, or audiences may forever retain an interest in live and "event" programming that is experienced by a majority of people simultaneously. It is not our role to try to predict that, and we suggest that nobody can claim to do so. But the main point is that for now, television continues to exist and continues to be a linear platform, and that regulation of *television* should continue to reflect the realities of *television*, not what might someday replace television as we know it. We believe this is a concept that should apply in all considerations of changing regulation, whether it pertains to simultaneous substitution, programming expenditures, availability of non-Canadian services, and others. In the case of simultaneous substitution, should the day come that the vast majority of people view programming on-demand, simultaneous substitution will likely disappear because linear television will have disappeared. Until then, we submit that the Commission should not read the eulogy before the funeral—in fact, while the subject is still in many respects quite healthy.

29. This leads to another key theme, which is the WGC's belief that regulation of "broadcasting" should extend to currently exempt broadcasting undertakings, such as OTT providers. As has been

[24] See further discussion below at paragraph 99
[25] Broadcasting Order CRTC 2012-409
[26] Broadcasting Regulatory Policy CRTC 2009-329, paragraph 5
[27] *The CRTC's Simultaneous Substitution Program,* Blog of Michael Geist, January 28, 2014, http://www.michaelgeist.ca/content/view/7056/

acknowledged by the Commission before, including in this Notice, increasingly broadcasting activities are being done outside of traditional channels, largely on the Internet and via mobile devices. It has been five years since the Commission comprehensively reviewed the Exemption Order for Digital Media Broadcasting Undertakings.[28] The WGC feels that it is time to reconsider the impacts that OTT is having on the Canadian broadcasting system, and the appropriate response to those who obtain the benefit of operating in the Canadian market without any obligation to contribute to Canadian content. We feel that this must form a crucial element of the regulatory picture.

30. The final key theme we would raise is "The Risk of Many Changes". As the Commission is well aware, Let's Talk TV has raised a significant number of different but interconnected issues. The Notice raised dozens of issues and asked 80 separate questions in relation to them. The Notice proposes a number of changes to the broadcasting system. Each change by itself could have cascading effects through the sector. Enacting multiple changes could only multiply the effects.

31. It is the WGC's firm belief that if the Commission were to enact most or all of the proposed changes in the Notice, the Canadian system we know today would likely cease to exist. Because of The Challenges discussed earlier, Canadian broadcasting requires regulatory support. And yes, this means an element of regulatory protection from largely American services, to ensure a space for Canadian voices amidst an increasingly louder global milieu. "Protectionism" is a dirty word to some, but as we hope we've started to show in this submission, culture and content is different than other forms of production, faces structural challenges unrelated to its quality or popularity, and has value beyond a simple monetary value. We recognize that the Commission may seek to move from “protecting” Canadian culture to “promoting” it, and we agree with this in principle. Yet we cannot ignore our structural challenges, and that for something to be promoted it must have a chance to come into being in the first place. If we are to retain a Canadian culture in any form, we will need to protect and cultivate it, not by excluding other cultures, but by ensuring there is a prominent space in Canada for our own.

32. We also believe that, as a more technical point, the implementation of multiple changes at once makes it more difficult to track the impact of those changes many times. If the Commission implements half a dozen significant changes as a result of this process, and if the quantity or quality of Canadian programming decreases thereafter, it will be difficult if not impossible to pinpoint which change caused or was related to the decline. We recognize that the Commission may believe it necessary to act on a number of fronts at this time. However, we would simply emphasize what the Commission already knows: that the Canadian broadcasting system is a complex system with many moving parts, dependent on a number of supporting regulatory pillars. When the issue is removing those pillars, we believe it is essential to act cautiously, and to ensure that removal of one pillar is accompanied by the strengthening and/or addition of others. In addition, we believe that the Commission must closely monitor the impacts of any changes it chooses to make, so that it can change course quickly should the outcomes be not as expected. In this era of accelerating change, the Commission must be able to adjust rapidly in the event of unintended consequences.

PART II: WGC RESPONSES TO SELECTED ISSUES FROM THE NOTICE

Maximizing Choice and Flexibility

33. In the Notice, the Commission proposed a new model for the distribution and packaging of television services to maximize consumer choice and flexibility. The model would require BDUs to offer a small, all-Canadian basic service and promote this small basic service, which would include only: local Canadian television stations; 9(1)(h) services; provincial educational services, in provinces where there is one; and in some cases, the community channel and the provincial legislature programming service. All other licensed or exempt programming services and non-Canadian services would be

[28] Broadcasting Notice of Consultation CRTC 2009-330. The Commission has amended the Exemption Order since then, most recently in Broadcasting Order 2012-409, but these amendments were relatively minor and did not consider the appropriateness of exemption as a whole.

available to subscribers on a standalone (pick-and-pay) basis as well as via custom packages of discretionary programming services (build-your-own-package). BDUs could continue to offer discretionary programming services in pre-assembled packages to subscribers in the same manner as they do now.

34. The WGC understands that consumers want greater choice and flexibility in their programming services. On-demand services, made increasingly popular by the Internet and mobile technologies, have been able to provide consumers with *à la carte* content, and consumers therefore increasingly expect more tailored entertainment experiences—what they want, when they want. The WGC supports this in principle. Certain cultural products have always been available in a "pick and pay" format, such as books and feature films, and there are advantages for both creators and consumers in adapting to new business and distribution models that includes digital, *à la carte*, on-demand distribution.

35. That said, the WGC has significant concerns regarding the Commission's proposal, which would mark a substantial departure from the current distribution business model, used both in Canada and the United States, and could have significant negative impacts across the broadcasting system. In our view, the core component of the Commission's proposal is the requirement for a "pick-and-pay" option, whereby subscribers could buy as many or as few channels as they wish (in addition to the simple basic service), on a per-channel basis.

36. Studies of the impact of pick-and-pay have been prepared for the U.S. market. Two in particular found net negative effects, both on consumers and on the television industry. Needham & Company, a U.S. investment banking and asset management firm, stated the following in July, 2013:

> Unbundling dwarfs any other risk to the TV ecosystem, as we calculate that ~50% of total TV ecosystem revenue (about $70 billion) would evaporate and fewer than 20 channels would survive in an *à la carte* world where consumers are required to bear 100% of the cost of the channel. Today, advertisers bear ~50% of TV content costs.[29]

37. Needham further elaborated as follows, noting the major differences between online video and television:

> **Bundling Economics**. The TV ecosystem is bundles built on top of bundles. We calculate that bundling adds 100% to annual TV ecosystem revenue. Online premium video is the most unbundled form of content, because each show is on-demand, so no show helps any other show.
>
> **The TV Ecosystem** generally splits revenue 50%/50%, between content and distribution plus content typically keeps about 80% of advertising revenue in their programming. By contrast, the enormous power disparity in premium online video drives poor economics, with typical splits of 30% to content creators and 70% to the platform (i.e., YouTube). This slows content investment and innovation.
>
> **Prepayment**. For a distribution ecosystem to be healthy it must have compelling content. Because 70-90% of programming generally turns out to be B or C (non-hits) titles, if only hits are paid for, about 80% of programming makes zero money and content investment collapses. The TV ecosystem's "upfront market" guarantees 70-80% of total revenue for the broadcasters plus about 25% of total cable network revenue. In addition, most cable networks garner about 50% of their total annual revenue from guaranteed monthly payments from cable, satellite and telco companies under 3-5-year contracts (i.e., long-term visibility), implying that 70-80% of their budgets are guaranteed before new programming airs. Since advertising is the dominant model for online video, there is no

[29] The Future of TV, Needham Insights, July 11, 2013, http://assets.fiercemarkets.com/public/sites/cable/futuretv.pdf

revenue associated with content unless it is viewed. By implication, B and C titles have no revenue associated with them and therefore the turnover of online content creation companies is high.

Content Spending. We estimate that total spending in online premium content will reach approximately $750 million in 2013. We estimate that the increase in TV ecosystem spending will hit $1.5 billion and that total TV spending will reach $45 billion in 2013. These numbers suggest margin pressure and the fact that spending on internet content isn't catching up to TV.

Discovery. In TV and film, marketing and advertising costs often add 40% to the costs incurred to produce content. Online, the most prevalent forms of discovery are sharing and recommendation engines. For example, we believe YouTube grants limit marketing spending to less than 10% of total costs.[30]

38. The WGC believes that this highlights a key point, which is a recognition of the differences between television content and online content, and a questioning of the belief that however YouTube or Netflix operates, so television broadcasters should operate as well. There are currently services and programming that television provides—news, sports, a certain quantity and quality of documentary and drama, just to name some—that few if any online services provide at the same scale, quantity, and/or quality.[31] This should not be considered a reality without a reason, but rather as a situation that exists at least in part because of television's business models and the resulting capacity to spend money on content.

39. Pick-and-pay also presents challenges for consumers. An assumption that may be held by proponents of unbundling is that it will provide significant cost savings to consumers. However, a study from the University of Warwick and Centre for Economic Policy Research and Stanford University concluded the following:

> We measure how the bundling of television channels affects short-run social welfare. We estimate an industry model of viewership, demand, pricing, bundling, and input market bargaining using data on ratings, purchases, prices, bundle composition, and aggregate input costs. We conduct counterfactual simulations of à la carte policies that require distributors to offer individual channels for sale to consumers. We estimate that negotiated input costs rise by 103.0% in equilibrium under à la carte. These are passed on as higher prices, offsetting consumer surplus benefits from purchasing individual channels. Mean consumer and total surplus change by an estimated -5.4% to 0.2% and -1.7% to 6.0%, respectively. Any implementation or marketing costs would reduce both, and would likely make à la carte welfare-decreasing.[32]

40. In short, consumers may not save money under pick-and-pay, and it's possible that they may actually pay more for the same, or pay the same for less.

41. It is also important to consider the differences between the American and Canadian broadcasting systems that could make the Canadian system more susceptible to the negative impacts of pick-and-pay. Fundamentally, the U.S. broadcasting system produces nearly 100% of the content that it broadcasts. As such, demand for American content is closely linked to demand for the American services that provide it. Unfortunately, the Canadian system is much more mixed, with non-Canadian

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[30] *Ibid*

[31] We distinguish here between television content offered online, usually by the same organization that produced and exhibited it on television, and "Internet-only" organizations, without links to traditional media organizations and that wholly produce and distribute their own content.

[32] TheWelfare Effects of Bundling in Multichannel Television Markets, Gregory S. Crawford and Ali Yurukoglu, April, 2011, http://www.stanford.edu/~ayurukog/bundling_welfare.pdf

content being amongst the most popular. In 2011-2012, only 44% of television viewing in English Canada was to Canadian programming.[33] Many of the most popular programs on English Canadian television are not Canadian. In analyses of the impact of pick-and-pay on the American system, it is commonly considered that channels will be lost, but Americans can remain safe in the knowledge that all of the remaining channels will be American ones. The fact that the Canadian television system is so reliant on foreign programming makes this a quite different picture here. The adoption of pick-and-pay in Canada, particularly in combination with other policies such as the loss of the preponderance rule and/or expanded access to non-Canadian television services, could have far more significant and negative effects in Canada. In very simple terms, the WGC believes that if the Commission were to move to a pick-and-pay model, in combination with the elimination of a preponderance requirement and a largely open-access policy for foreign television services, it would likely mean the end of the Canadian broadcasting system in any recognizable form. Given "The Challenges" discussed in Part I above—which pick-and-pay would very likely exacerbate—it would be difficult-to-impossible for Canadian content and Canadian broadcasters to compete with non-Canadian, particularly American, content. As such, much of it would simply disappear. This would be bad for Canadians as citizens, as consumers, and as creators, and very likely be contrary to the *Broadcasting Act*.

42. We would now be pleased to respond to some of the Commission's specific questions on this issue, as stated in the Notice.

Q1. What are the potential effects, both positive and negative, of the proposed approach set out in paragraphs 40 to 48 above on different elements of the broadcasting system, including consumers, discretionary services, BDUs, the production sector, OLMCs and ethnic broadcasters?

43. One of the overall effects of the Commission's proposed approach will likely be to sort channels into winners and losers. The most popular services will obtain the advantages in the market that their popularity confers; the least popular services will not and will therefore likely disappear. Moderately popular channels that don't disappear will nevertheless find themselves at the bottom of a great divide between them and the highly popular services and, as a result, will likely be less well capitalized with less to spend on programming.

44. For consumers, the proposed approach will offer greater choice and flexibility for discretionary services. They will be able to pick precisely the discretionary channels they want, and will not have to obtain discretionary channels they don't want. It's is unclear however, whether, on balance, television will actually be cheaper or a better value for most consumers. Popular channels, absent other factors such as the Commission's re-regulation of prices, will be able to charge more. For those consumers wanting a moderate package of services, including popular sports, movies, and lifestyle services, they may pay the same or more for their choices on an *à la carte* basis than they did for a package. Those consumers may well receive less for the same price, since the other packaged channels that they didn't watch as much of will no longer be available, or won't be available for the same price. Certainly, some consumers who only want a very few channels may benefit from pick-and-pay, and other consumers may elect to stay with bundled services like they have now. But, the benefit to consumers as a whole may be welfare decreasing overall.

45. For discretionary services, there will likely be some big winners and some big losers. Sports channels are likely to remain strong under the Commission's proposal, as will certain premium movie channels. Niche or so-called "micro-niche" channels will likely be unable to negotiate sufficient carriage fees, and will therefore disappear. That is more likely in the case of independent services, which may not have the financial support of a larger broadcasting group to sustain them as they seek ways of improving their subscription rates. To the extent that independent services become unviable, they will likely seek to exit the system by selling their channels, probably to large, vertically integrated

[33] Communications Monitoring Report 2013, Table 4.3.5 Average weekly viewing hours of Canadian programs distributed by Canadian English- and French-language television services, by program origin, genre and region; English-language services, All of Canada excluding Quebec Francophone market; 2011-2012

broadcast groups. As a result, we could see even further consolidation in an already highly consolidated sector, and a further loss of a diversity of voices.

46. The creative/production sector will have fewer services to sell content to—fewer "doors to knock on". There may also be an overall reduction in the volume of production. If this occurs, opportunities will be lost, followed by jobs in the creative/production sector. As noted elsewhere in this paper, quantity of production is not unconnected to quality. With fewer shows being made, there will be fewer chances for hits to emerge, and fewer opportunities for younger creators to hone their craft. The WGC believes that pick-and-pay will, on balance, have a negative impact on creators.

Q4. What effect would this approach have on the affordability of television services? Is there a particular impact on the affordability of sports services, for example?

47. As noted above, popular channels will likely have a considerable price tag, while less popular channels will be more affordable. Affordability will depend on what channels consumers pick. Consumers seeking a small number of channels and/or less popular ones may see their cable/satellite bills decrease. Consumers seeking a larger number of channels, or a package of services as are provided now are unlikely to see a significant change in the affordability of television, though there will be fewer channel options available to them.

Q5. What effect would this approach have on the cost of program acquisition?

48. We would think that the sharpening of competition in a pick-and-pay world, and the creation of big winners and big losers, would extend to program acquisition costs. Just as the value—or at least the perceived value—of sports rights has skyrocketed in recent years, in the belief that it is among the shrinking pool of content that can keep viewers invested in the traditional broadcasting system, so too will "guaranteed hits" become even more valuable to broadcasters. The cost of acquiring such programming will likely go up. The cost of acquiring other programming may go down. In both cases, the ripple effect will transfer throughout the production sector, raising or lowering costs, wages, and/or quality depending on whether the content is considered to fall in one camp or the other.

Q8. What role, if any, should the Commission play regarding penetration-based pricing agreements?

49. Having adopted the logic of the free market in establishing pick-and-pay as a mandatory option, the Commission may have trouble justifying market intervention in the price of individual channels. In that sense, pick-and-pay may represent a slippery slope that the Commission may feel pressured to follow all the way down to the bottom.

50. That said, the Commission could identify services that it believes should not be "lost from the system", and ensure that those channels are available at a price that maximizes their chances for survival. Given that their price to consumers will only be one factor among several, however, that is likely to be a difficult proposition.

Q10. Are there barriers to implementing the Commission's proposed approach? What is the earliest feasible timeframe to implement this approach, in light of all the possible implications?

51. Non-Canadian programming services that are available in Canada may object to being unbundled in Canada, particularly where they are not presented as such in their home country. This may apply in particular to American services that currently operate in Canada. The WGC does not have particular expertise in this regard, but there may be political or legal barriers to unbundling such services in Canada.

52. Once again, the impact of the Commission's decision on this subject may have serious ramifications if combined with other policies as proposed in the Notice. In particular, should the Commission significantly expand the availability of non-Canadian services in Canada, and should those services demand and be granted an exemption from the pick-and-pay requirement, this would bestow upon

Canadian services all of the negative consequences of unbundling while sparing non-Canadian services from those consequences. This could create a significant competitive disadvantage for Canadian channels and Canadian content, that would be *in addition to* those that have already been identified in this submission. The WGC would strenuously oppose such a combination of policies that would further disadvantage Canadians and Canadian broadcasting over foreign competition.

Q11. How can BDUs continue to give priority to the carriage of Canadian programming services? Is there a need to maintain the requirement that each subscriber receives a preponderance of Canadian services?

53. The WGC strongly believes that there is absolutely a need to continue to give priority to the carriage of Canadian programming services. The WGC strongly believes that there is absolutely a need to maintain the requirement that each subscriber receives a preponderance of Canadian services.

54. As described above, it seems very likely, if not a certainty, that pick-and-pay will result in big winners and big losers. Given the prevalence of non-Canadian content in the Canadian system, and "The Challenges" described in Part I of this submission, if Canadian programming services do not have priority and are subject to a preponderance rule, it is likely that many of the "big losers" under pick-and-pay will be Canadian. Again, should the Commission implement pick-and-pay, in combination with an expansion of the availability of non-Canadian services and an elimination of the preponderance rule, that would be the perfect storm that could very well end the Canadian broadcasting system as a separate and distinctly Canadian system.

Q12. How should the Commission and Canadians measure the success of the Commission's approach with respect to ensuring choice and flexibility in the selection of programming services?

55. The WGC believes that the measure of success in this respect is directly related to the definition of success. While it seems clear that the Commission's broad objective is "ensuring choice and flexibility in the selection of programming services", there is significant room for interpretation in this regard. From the perspective of consumers, success in offering choice is measured by whether the choice is available. But that could be considered in terms of whether consumers can choose services on an *à la carte* basis—i.e. the simple question of whether or not the Commission implements its proposal—or whether there is a wide range of programming to choose from. If programming services do disappear as is widely predicted, then choice is arguably diminished. Or, put another way, the Commission may have to choose between "choice" and "flexibility".

56. Pick-and-pay will also impact broadcasters, BDUs, "Canadians as citizens" and "Canadians as creators", and those perspectives on success are different yet. It is possible to see this issue as a "consumers' issue", so their perspective may be the only one to be considered. Yet surely all perspectives are relevant and important. The WGC would focus on availability of choices, as a foundation of choice, and consider a balance between the desire for flexibility and the reality of real choice in the system.

57. The WGC struggles with answering this question because we don't find the definition of success clear, and we would make similar comments elsewhere in this proceeding where the Commission asks for measures of success of proposed policies.

<u>Access to non-Canadian Programming Services</u>

58. We believe it is important at the outset to distinguish between non-Canadian *services* and non-Canadian *programming*. The WGC understand "services" to refer to broadcasters or channels, such as Showcase, The Comedy Network, or Sportsnet in Canada, and HBO, Comedy Central, or ESPN in the U.S. We understand "programming" to refer to the content presented on those services, such as *Game of Thrones*, *Orphan Black*, *The Amazing Race,* or *The Amazing Race Canada*. In the Notice, the Commission said this, at paragraph 50:

> While Canadians already have access to many non-Canadian services, some participants in Phases 1 and 2 asked that the availability of such services be increased. While each person might prefer a specific service, a number of participants asked for unfettered selection of different kinds of programming. This included a desire for programming from non-traditional and international sources. Others pointed to types of programming from countries including France, the United Kingdom (UK) and other European nations as well as the U.S. as being emblematic of quality programming. The Commission therefore wishes to explore the potential impact on the Canadian television system of allowing increased access to non-Canadian services.

59. This paragraph alternates between references to services and programming in such a way as to be unclear to us what exactly it is that Canadians have told the Commission they want more of. No doubt, Canadians referred both to programming and services in their feedback. However, it is important to distinguish between the two and note what we believe is the dramatic difference between the availability of more non-Canadian *programming* in Canada, and the availability of more non-Canadian *services*.

60. With respect to programming, we submit that Canadians already have access to a wide variety of non-Canadian programming via Canadian services. Popular American programming like *The Big Bang Theory, The Daily Show,* and *Game of Thrones* are already available through Canadian broadcasters. Frankly, it's unclear to us what popular programming is *not* currently available to Canadians. Nor are we aware of barriers for Canadians to non-Canadian programming generally, since anything that is currently unavailable, or which may in the future become available, could be purchased by a Canadian service and shown on the Canadian system. The WGC does not oppose the availability of non-Canadian programming in Canada and, with 66% of English-Canadian viewing to non-Canadian programming already,[34] it does not appear that Canadians fundamentally lack access.

61. With respect to non-Canadian services, however, the impact on the Canadian broadcasting system is much more significant for the following fundamental reason: Canadian broadcasters have regulatory obligations to finance and present Canadian content, while non-Canadian services do not. As such, to the extent that non-Canadian programming generates revenue for a Canadian broadcaster, a portion of that revenue is invested back into Canadian programming. This may occur directly under the Commission's Canadian programming expenditure (CPE) and programs of national interest (PNI) expenditure requirements[35], or simply by contributing to the overall financial health of the broadcaster. Non-Canadian programming distributed in Canada by a non-Canadian service has no similar benefit to the Canadian system.

62. As such, the WGC fundamentally opposes the expansion of non-Canadian services in Canada. We strongly believe that were the Commission to do so, the added benefit to Canadians would be minor—again, given the wide availability of non-Canadian programming currently—while the negative impact on the Canadian broadcasting system would be significant. This is particularly true should the Commission implement its proposal for "Maximizing Choice and Flexibility" discussed above. As we have said before, pick-and-pay in combination with the removal of the preponderance rule and the expanded availability of non-Canadian services in Canada would very likely mean the end of the Canadian broadcasting system in any recognizable form. We don't believe that most Canadians seek that outcome, and we certainly don't believe that such an outcome would be consistent with the *Broadcasting Act*.

[34] Communications Monitoring Report 2013, Table 4.3.5 Average weekly viewing hours of Canadian programs distributed by Canadian English- and French-language television services, by program origin, genre and region; English-language services, All of Canada excluding Quebec Francophone market; 2011-2012

[35] Broadcasting Regulatory Policy CRTC 2010-167

63. To the extent that the Commission seeks to expand access to non-Canadian services while relying on an "exclusive program rights" test, the WGC believes that this would not be sufficient to offset the negative impact on the Canadian system. The Commission has described its potential test for undue negative harm as follows, at paragraph 52 of the Notice:

> One possible approach would be to authorize all non-Canadian services for distribution in Canada, except where it can be demonstrated that distributing a particular non-Canadian service would have an undue negative impact on the Canadian television system. For example, a non-Canadian programming service would be approved for distribution in Canada unless it holds exclusive program rights that would otherwise be available in Canada or if the non-Canadian service is an important source of programming for a Canadian service. As with the current approach, the Commission would continue to consider these applications on a case-by-case basis and would rely on evidence filed to demonstrate that authorizing a particular non-Canadian service for distribution in Canada would have an undue negative impact on the Canadian television system.

64. The WGC believes that this is an insufficient measure for a number of reasons. Firstly, exclusivity is the primary unit of value in the broadcasting system, both within Canada and without. As stated by McCarthy Tétrault in a 2011 opinion:

> Exclusive content purchases by Canadian conventional and, later, pay and specialty programming services, have been a constant in audiovisual media markets since the inception of over-the-air broadcasting. Linear programming services differentiate themselves from each other on the basis of content that is acquired exclusively. Virtually no program aired by licensed Canadian conventional, specialty and pay services is acquired by the licensee on a non-exclusive basis.[36]

65. As such, non-exclusive rights have far less value than exclusive rights, particularly when the program in question is already associated with the brand of the non-Canadian service. Even if non-exclusive rights are technically available, their association with established services makes them *de facto* exclusive to the non-Canadian service, since purchasing the rights, even at a discount, lowers value to the purchasing broadcaster. We note how seldom, if ever, Canadian broadcasters have purchased original, first-run shows on A&E or Spike, two non-Canadian services currently on the Commission's *Revised list of non-Canadian programming services authorized for distribution* (the “Eligible List”). To our knowledge, Canadian broadcasters have not acquired non-exclusive rights to shows like *Intervention* or *Hoarders*, and we believe the low value due to non-exclusivity is the main, if not only reason.

66. In addition, the Commission's proposed test against undue harm is one that looks only at a particular point in time, namely, at the time it is deciding whether or not to add the service to the Eligible List. Why this should be the only relevant time period is unclear. Just because rights to a given program or programs are not currently held by a Canadian broadcaster doesn’t mean they would never be, and for the reasons noted above, once a service is added to the Eligible List, a Canadian service is thereby effectively precluded from later acquiring them—or a new Canadian service is precluded from launching altogether. It does not appear a coincidence to us that we have HBO Canada, but there appears to be no interest in launching A&E Canada, or AMC Canada.

67. This is particularly relevant given that U.S.-based services may change their “nature of service”. To the extent that access to non-Canadian programming services is related to genre exclusivity, it is only a harmonious relationship if the non-Canadian programming services themselves have a consistent genre. For example, AMC is listed on the Eligible List. It is our understanding that AMC was added to the list when it was primarily or exclusively a service for classic American films. Since then, AMC has moved heavily into original drama production, and now is arguably known best for original series

[36] CRTC Policy on Exclusive Program Rights, Peter S. Grant, Grant Buchanan and Bram Abramson, McCarthy Tétrault LLP, April 2011, submitted by Bell Canada to Broadcasting Notice of Consultation 2010-783

like *Mad Men*, *Breaking Bad*, and *The Walking Dead*. Such a service is arguably directly competitive with any number of Canadian drama channels, such as Bravo! or Space, yet it remains on the Eligible List.

68. We believe that Peter Miller essentially made the same point in his March, 2013 discussion paper on genre exclusivity, where he said:

> The notion of "partially or totally competitive" is a question of fact at a moment in time. Pass the test and a foreign service is allowed in, and to all intents and purposes is never kicked out. Don't pass the test and you can always reapply.[37]

69. In the WGC's view, the entry of a non-Canadian service into the Canadian broadcasting system effectively displaces an actual or potential Canadian service. As such, any non-Canadian service operating in Canada causes an undue negative impact, since it uses its advantages from its home market, and is unaffected by The Challenges facing Canadian content makers, such that is pushes out Canadian options and Canadian content, without having the regulatory obligations that attach to Canadian services. We believe the Commission should not be expanding access to non-Canadian services—if anything, it should be tightening its approach, since it has already allowed non-Canadian services into the system that arguably compete with Canadian services. And once a service is let into the Canadian market, it is difficult to try to remove it should it later become partially or wholly competitive with a licensed Canadian television service.

Q13. Is there a way to remove barriers to the entry of more non-Canadian programming services into Canada without an undue negative impact on the Canadian television system?

70. In the WGC's view, no. As discussed above, *any* entry of non-Canadian programming services into Canada will have an undue negative impact on the Canadian television system.

Q14. What are the possible approaches to authorizing non-Canadian services for distribution in Canada, particularly in the absence of genre requirements for Canadian services?

71. Consistent with our views as stated previously in this submission, the WGC does not believe that the Commission should expand its current approach to authorizing non-Canadian services for distribution in Canada.

Q15. Should the Commission choose to adopt a test such as that proposed in paragraph 52 above, what evidence should parties be required to provide?

72. Consistent with our views as stated previously in this submission, the WGC does not believe that the test proposed at paragraph 52 of the notice is sufficient to prevent an undue negative impact on the Canadian television system.

Q16. How should the Commission and Canadians measure success and determine whether the Commission's approach is providing access to non-Canadian programming services without any undue negative impact on the Canadian television system?

73. Consistent with our views as stated previously in this submission, the WGC does not believe that the Commission should expand its current approach to authorizing non-Canadian services for distribution in Canada.

74. In addition, as discussed earlier in Part I of this submission, any changes that the Commission makes with respect to access to non-Canadian programming services are likely to be made in conjunction with other policies as proposed in the Notice. Should the Commission or others identify undue negative impacts on the Canadian television system following the changes, it will be difficult if not

[37] Peter H. Miller, *The CRTC's Genre Protection Policy: A 2013 Discussion Paper*, March 15, 2013, pg. 27

impossible to determine which policy or policies caused the negative impact. As such, not only does the WGC believe that this proposal should not be implemented, we also believe that its success or failure would be difficult if not impossible to measure.

Simultaneous Substitution

75. The WGC has historically viewed simultaneous substitution (or "simsub") as a something of a double-edged sword. On the one hand, it repatriates audience and thereby revenue that would otherwise be lost due to viewing to U.S. broadcasters who do not hold the programming rights in question in Canada. As a result, simultaneous substitution contributes to the financial health of broadcasters and generates revenue that may be invested in Canadian content. On the other hand, it has tended to tie Canadian broadcast schedules to those of the U.S. networks, which can lead to suboptimal scheduling of Canadian programming and ultimately reduces the chances of success for such programming. Simsub also generally makes key timeslots, like the 10pm-11pm slot, unavailable for Canadian shows. WGC members in particular have sought access to this 10pm slot, since it has been the natural home for edgy, adult-oriented programming that many writers want to write. Simsub has also been said to push up the acquisition costs to Canadian broadcasters of non-Canadian programming, since it raises the value of the programming and therefore the competition for it.

76. The WGC is keenly aware of the pros and cons of the policy. On balance, however, the WGC does not support the simple elimination of simultaneous substitution. While the value of simsub to the Canadian broadcasting system has been debated—and the WGC lacks the expertise to properly estimate the value ourselves—it has been pegged at $200 million annually or higher[38]. At a time when traditional broadcasters are facing increased competition from other sources of content and entertainment, it is difficult to ignore this kind of revenue influx to the system.

77. More importantly, however, from the perspective of the creative community, is the impact that simsub has on the production of PNI under the group-based licensing policy. As the Commission is aware, the group-based policy requires designated groups to spend 5% of their broadcasting revenues on PNI.[39] The Commission has a variety of tools at its disposal to encourage the production of underserved Canadian programming such as PNI, and it currently relies heavily on the PNI expenditure requirement as a key pillar of support. The WGC strongly believes in the importance of PNI in the broadcasting system, and therefore supports the mechanisms that support its production. We believe in the PNI expenditure requirement, and would argue—and have argued—that as a percentage it should be higher than 5%. In the current framework, the WGC supports measures like simultaneous substitution that help to maintain broadcasting revenues, particularly when their negative impacts on consumers are relatively minor.[40]

78. The WGC believes it is also time for the Commission to seriously consider non-simultaneous substitution, which is an option the Commission itself has suggested in the Notice. Non-simultaneous substitution (or NSS) is the replacement of the same program regardless of when it is broadcast. NSS would presumably provide the best of both worlds: it would allow Canadian broadcasters to repatriate audiences lost to U.S. broadcasters while at the same time unshackling Canadian schedules from those of U.S. broadcasters. It should be technically feasible, given the development of digital program insertion[41] and the fact that some broadcasters already use similar technology to

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[38] The Impact of Non-Simultaneous Substitution on Private Canadian Over-the-Air Broadcasters' Advertising Revenues, Nordicity Group Ltd., December 14, 2009

[39] Broadcasting Regulatory Policy CRTC 2010-167

[40] While the WGC is sensitive to consumer complaints about simultaneous substitution, we feel that they are addressable by other means, such as improving the technical manner in which the substitution is done, and educating viewers about the availability of Superbowl commercials on other sources.

[41] http://en.wikipedia.org/wiki/Digital_Program_Insertion

dynamically insert ads in programming targeted by region or timeframe.[42] Given the possibilities of NSS, the WGC believes that the Commission should closely examine it during the Let's Talk TV process.

79. Unfortunately, the WGC lacks the technical expertise to definitely speak to the feasibility of NSS. We see no reason to doubt its viability, but we suspect that some broadcasters and/or BDUs may object to NSS as being unduly complicated or expensive. There may also be an inertia to simsub, to the extent that it's a "known quantity" around which a number of business and operational practices have been established. While we don't doubt that NSS may have costs, we are concerned that it may be dismissed out of hand by those in the broadcasting system who may not believe that their interests are well served by NSS. But if NSS benefits the system as a whole, then we think it's worth pursuing. Given this potential resistance, the WGC proposes that the Commission, if it shares our views, consider placing a reverse onus on broadcasters and BDUs that object to NSS—i.e. that the Commission is prepared to go forward with NSS unless parties can demonstrate precisely how and why it is not feasible. Opponents to NSS would need to provide concrete evidence to that effect. While we realize that such an approach is not typical for policy proceedings, in this case those who may oppose NSS on non-policy grounds—possibly BDUs—are the ones in possession of the information necessary to determine its feasibility. The WGC believes that an honest discussion on NSS may require additional leverage exerted by the Commission.

80. The WGC also expects that NSS would likely be implemented in addition to, and not as a replacement for, simultaneous substitution. We are not aware of a reason why the Commission would require a signal to be substituted in all non-simultaneous situations, but not when the Canadian airing happens to be simultaneously with the American one. Where Canadian broadcasters have a choice between simultaneous and non-simultaneous substitution, they may still prefer the simultaneous option for a variety of reasons, such as promotional synergies with U.S. network advertising campaigns. If an American network regularly announces that a show will air "Tuesday at 9pm", a Canadian broadcaster holding those rights may hesitate to schedule its program differently. This is a challenge with NSS, and while the WGC does not have a simple solution at this time, we do feel that however implemented, NSS will have to be made as attractive as possible to broadcasters as simsub is. Otherwise, its potential as a tool for better promoting Canadian content will have been lost.

81. There is also the potential challenge with NSS in that it may encourage broadcasters to purchase *more* U.S. programming because it will allow them more flexibility in which to schedule it. Whereas the logistics of U.S. scheduling may have forced Canadian broadcasters to choose between U.S. shows, NSS may allow them to air both. As such, we submit that the Commission, if it implements NSS, should ensure that its exhibition and other policies in support of Canadian content remain strong, to ensure that NSS does not have the unintended consequence of reducing Canadian content on screen, and/or increasing the costs of U.S. programming.

82. NSS has a consumer angle as well. NSS, by potentially freeing Canadian broadcasters from U.S. network schedulers, would allow them to focus more on the needs of their own, Canadian audiences. It would allow Canadian broadcasters to put Canadian audience needs front and centre. Whatever programming strategies they would choose, it would more likely represent their Canadian viewers, and less likely be dictated by American programmers.

83. Finally, we would briefly revisit the point made earlier in this submission, at paragraphs 26-28 above, regarding those arguments against simsub or NSS based on "the move to an on-demand world". Simsub and NSS are plainly predicated on a linear television model in which programming is broadcast at particular times and received simultaneously by the viewer. Simsub and NSS are likely not appropriate for on-demand programming. But simsub and NSS do not apply to on-demand

[42] Press Release, CHCH and Cogeco Cable Canada First to Offer Television Advertising by Geolocation In Canada, Toronto, Canada, February 11, 2014, http://www.marketwired.com/press-release/chch-cogeco-cable-canada-first-offer-television-advertising-geolocation-canada-tsx-cca-1877849.htm

programming and we're not proposing that they be applied to on-demand programming. They should be applied to linear programming, so long as there is linear programming for them to apply to. If linear broadcasting ceases to exist, then simsub, NSS, or some variant thereof will also cease to exist. But until then, these policies have vitally important uses, and we do not understand arguments against linear television policies that are based on non-linear models.

Q17. Should simultaneous substitution be maintained? If so, why is it still beneficial and necessary, and why do its benefits outweigh its costs and other drawbacks?

84. As per the discussion above, the WGC believes that simultaneous substitution should be maintained. It remains relevant to linear television, and repatriates audience and therefore revenue to Canadian broadcasters. This revenue forms the basis of broadcaster spending on Canadian content, particularly with respect to CPE and PNI expenditure requirements in the Group-based licensing policy, which calculates such expenditure requirements as a percentage of broadcasting revenue.

85. Simsub's drawbacks, in particular its linkage of Canadian broadcasting schedules to those of American networks, would be mitigated at least in part by non-simultaneous substitution.

Q18. What is the current and prospective value of simultaneous substitution to broadcasters?

86. As the Commission has noted in the Notice, simultaneous substitution has been valued at approximately $200 million per year as recently as 2006-2007. While the WGC cannot independently verify this valuation, we have little reason to believe that it has decreased substantially in the past seven years. However, the WGC will leave this question to broadcasters, and others who are better positioned to value the policy.

Q19. Are there alternatives to simultaneous substitution, such as non-simultaneous substitution (the replacement of the same program regardless of when it is broadcast), that could fulfill the public policy objectives that simultaneous substitution was implemented to fulfill? If so, what would these alternatives be, why are they necessary, and how could they be implemented?

87. The WGC supports non-simultaneous substitution in addition to simultaneous substitution, as an option to mitigate the negative impacts of simsub on Canadian broadcast schedules. We encourage the Commission to explore this option with broadcasters and BDUs and to consider shifting the onus to those parties who oppose non-simultaneous substitution and who possess the relevant evidence to support their position.

Q20. If the Commission were to decide to eliminate simultaneous substitution, how, and in what timeframe, should this change be implemented?

88. The WGC does not recommend eliminating simultaneous substitution, and therefore has no timeframe for its elimination to recommend.

Q22. How should the Commission and Canadians measure success and determine whether the Commission's new approach is achieving its objectives?

89. Should the Commission implement non-simultaneous substitution, the Commission could measure the extent to which the option is taken advantage of by broadcasters, and the degree to which broadcasters refrain from mirroring U.S. network television schedules when other options are available to them.

90. It may also be appropriate to measure how revenues for non-Canadian programming change, or not, in relation to the costs of this programming. Ideally, simsub and/or NSS should result in higher broadcaster revenues to broadcasters, but the net gain to the system may be neutralized if the costs of acquiring non-Canadian, and particularly American, programming were to rise in lock-step with the revenues. However, with respect to Canadian programming, as long as the Commission maintains

an expenditure requirement at a significant level that is based on a percentage of broadcasting revenue, there will likely be a net gain to the system to the extent that more Canadian content is produced.

Financing and Promoting Compelling Canadian Programming

91. As discussed at Part I of this submission, the WGC strongly believes in regulatory supports for Canadian content within the Canadian broadcasting system. These regulations are necessary because of "The Challenges" previously discussed. We are pleased to see the Commission say, in the Notice, that the *Broadcasting Act* states "that the broadcasting system should provide Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity". The WGC wholeheartedly agrees.

92. At paragraph 77 of the Notice, the Commission said that it was prepared to consider, "Imposing CPE requirements on all licensed television stations and specialty and pay services." The WGC supports this proposal. We believe that all elements of the broadcasting system should contribute to the production and presentation of Canadian programming, and expenditure requirements are among the most effective method of doing so, since they ensure a minimum level of production and production value, which exhibition requirements alone tend not to achieve.

93. At paragraph 77 of the Notice, the Commission also said that it was prepared to consider, "Counting expenditures by licensed programming services for online or on-demand only productions toward their CPE requirements." The WGC supports this proposal to the extent that the Commission also counts the revenue generated by online or on-demand only productions as "broadcasting revenue" upon which CPE and requirements are based. To the extent that the Commission extends its ambit to online and on-demand activity, we believe that it should capture "both sides of the equation" in this respect.

94. We are pleased to answer the Commission's specific questions in this regards as follows.

Q28. How will programs be delivered in the future (i.e. in five years and 10 years from now) and who will be the future aggregators and curators of programming?

95. We hesitate to attempt to predict the future, since such exercises are very often proven wrong not long after they are made. Any number of factors could affect how programming is delivered and curated in the 2020s and beyond.

96. We do believe, however, that delivery and aggregation will need to align with the costs and logistics of content production. It seems likely that content production will continue to require at least two resources: money and talent. Short of a large-scale shift towards the socialization of content creation, those resources will have to come from the marketplace, and will therefore be governed by the rules of the marketplace. In the case of the money, that includes a possibility for a return on investment. In the case of talent, that includes the ability of talented creators to earn a living—to pay their rent/mortgages, put food on their table, and raise their children—in the course of exercising their talents.

97. The traditional television model has obviously developed in ways to address these issues of money and talent. Television broadcasters earned revenue first, in the case of OTAs, by selling advertising, and second, in the case of specialty channels, by seeking subscription fees in addition to advertising. The amounts earned in this model more-or-less covered the costs of making or acquiring new, original content for their channels plus room for a profit margin.[43]

98. Many of the new content delivery services of the kind relevant to this proceeding—essentially, OTTs—have developed new, innovative ways of *distributing* content, but in the WGC's view they

[43] In the case of Canadian content, public funding also played and plays a significant role.

have not displayed the same level of innovation in content *production*. Netflix is regularly referred to as amongst the most successful OTT entity, and clearly Netflix has invested in the production of original content. But it's important to recall that Netflix built the bulk of its business purely as a distributor of content, first by mail-order and then by digital distribution over the Internet. The majority of Netflix's content remains library content—content that was produced over decades by traditional media companies and that Netflix could then purchase at a discount. The majority of Netflix's catalogue was not initially financed or produced by Netflix. Certainly, they paid for the right to distribute the content and both they and the content owners likely benefit from the relationship. But it was as a distributor of library content that Netflix's business was originally built on, not on the production of new content.

99. It is well known that Netflix now licenses original content, such as *House of Cards* and *Orange is the New Black*. But Netflix commissioned that content through largely traditional means, using established Hollywood talent who developed their careers in the traditional media business. *House of Cards* was developed for Netflix by Beau Willimon, as an adaptation of a 1990 BBC television series, which was itself based on a 1989 novel. The Netflix version of *House of Cards* was executive produced by Hollywood veterans such as David Fincher and Kevin Spacey. The original novel was a product of the traditional publishing industry, the BBC series was the product of a well-funded public broadcasting system, and the Netflix version was made by established film and television professionals with decades of experience in the traditional media sector. *Orange is the New Black* was created by Jenji Kohan, whose television career began as a writer in in the mid-1990s for shows like *The Fresh Prince of Bel-Air*, *Sex and the City*, and *Will & Grace*. She created *Weeds* for Showtime before being given the chance to make *Orange is the New Black* for Netflix. In both cases, Netflix has done the natural thing—go to established content creators to make its own original content. It simply must be noted how and why those established creators existed for Netflix to hire. No doubt, Netflix and other OTT services will one day play this role as well. But if Netflix was to produce the same quantity of content as that produced by many broadcasters, they would likely spend much more on creation than they do now, and it's highly questionable that they would be able to charge under $10 a month for their service.

100. The point is not that Netflix or OTTs generally are "bad"—the point is that they have not eliminated the need to develop talent and spend money on new high-quality content, so analysts should hesitate in concluding that their model is a replacement for television, or is what all television should become. However content is distributed, creative people will be needed to make it, and money will need to be spent, and the digital revolution, while lowering some select costs of production and distribution, has not fundamentally changed that fact.

Q29. Do funding mechanisms for Canadian programming need to be modified to take into account changes in the way Canadian programming is watched?

101. Yes. Currently, a significant portion of the financing for Canadian content comes from the Canada Media Fund (CMF), which in turn derives the majority of its revenue from regulated contributions from the BDU sector.[44] When the vast majority of Canadians received television content via BDUs, as is the case today, this results in a kind of virtuous circle in which BDU revenues contribute to Canadian content that Canadians then enjoy via the services provided by the BDUs.

102. BDUs, however, simply provide a form of distribution for television, which is now being—or at risk of being—supplanted by other forms, most notably the Internet. For 2012-2013, the CMF reported a decline in BDU revenues for the first time,[45] indicating a trend[46] towards lower BDU revenues that is very likely linked to "cord cutting" or "cord shaving".

[44] CMF 2012-2013 Annual Report, Financial Overview, http://ar-ra12-13.cmf-fmc.ca/finance/management_discussion_and_analysis
[45] *Ibid*

103. The WGC believes that Canadian content is valuable regardless of whether it is distributed via BDU or another method. As such, it is unclear why the funding for Canadian content should be fundamentally linked to a particular distribution method. We believe that funding sources should be diversified at the same time that distribution options diversify. The natural next step in this regard would be a levy on Internet Service Providers (ISPs). The WGC is aware that this option was considered, became the subject of a legal proceeding, and was ultimately decided at the Supreme Court of Canada, which held that the Commission does not have the legal authority to impose an ISP levy under current legislation and ISP business practices. At this point, an ISP levy is a tool currently unavailable to the Commission. But the problem remains—if BDU contributions to the CMF continue to decline, so will the quantity and quality of Canadian content, and we believe new sources must be identified to offset that trend.

104. In addition, to the extent that content becomes increasingly "multiplatform", there may be an argument in favour of funding bodies adjusting their eligibility rules accordingly. We understand that the CMF and other independent production funds are required to fund only linear content that is destined for the traditional broadcasting system. This is logical because in those cases the money to support the content came from the traditional broadcasting system. To the extent that funding is sourced outside that system, it may make sense that it support content that is made available outside the system. However, the WGC believes that each piece of the whole should move harmoniously, so that the virtuous circle is maintained.

Q30. Are any regulatory measures required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming? If so, what would those measures look like?

105. As discussed in Part I of this submission, the WGC believes that regulatory measures are absolutely required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming. High-quality Canadian content simply would not and will not exist without regulatory supports, for the reasons previously mentioned—Canada's small domestic market, the nature of cultural production, and competition from the largest content producer in the world in the geographically adjacent and linguistically identical market.

106. Given this reality, the WGC believes in a suite of regulatory supports for Canadian content. This includes expenditure requirements, funding support, exhibition requirements, and promotional supports/encouragements.

107. We would stress that this is not a "belt and suspenders" approach to regulation. Where market forces are working against the creation and exhibition of Canadian content, simply having one or two measures in place may not result in desirable outcomes. Broadcaster expenditure requirements alone may be insufficient if those requirements don't result in financing sufficient or high-quality content. Exhibition requirements alone could result—and, indeed has resulted—in low-cost, low quality content simply to fill that quota. Financing alone may not result in highly visible, well-promoted content if broadcasters have insufficient incentive to exhibit content in a meaningful way.

108. Happily, the Commission already has most of these mechanisms in place, and the result is a growing Canadian content sector that we strongly believe is improving and building audiences every year. More and more, Canadian break-out hits like *Orphan Black* not only capture Canadian audiences and accolades, but international ones as well. The Canadian television sector is, we feel, just beginning to hit its stride. It would be a tragedy, then, if in this context we were to eliminate those tools that have helped us become successful.

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[46] BDU contribution growth to the CMF has slowed over the past few years—contributions increased 10.3% in 2010-2011, increased 1.9% in 2011-2012, and declined by 0.7% in 2012-2013. See CMF Annual Reports, Financial Overview, for those three years.

Q32. Should the Commission encourage the production of certain types of programs as it has done in the past? If so, which types of programs should be supported?

109. Yes, the Commission should encourage the production of certain types of programs as it has done in the past, Canadian drama chief among them. The Commission has long sought to support certain types of programming, including drama, through a variety of policies. In 1994, with the creation of the Cable Production Fund—now the CMF—the Commission identified “under-represented categories” of drama, documentaries and children’s programs[47]. This was followed by requirements for “priority programming” for OTA broadcasters, and currently the Commission imposes expenditure requirements for “programs of national interest”[48].

110. Throughout, the Commission has articulated the rationale for encouraging these types of programming. In its 1994 “Cable Production Fund decision”, the Commission stated:

> The financial disincentives broadcasters face in acquiring Canadian drama, documentaries and children's programs have resulted in a situation in which such programs are particularly under-represented on Canadian television screens. As a general rule, Canadian programs are not more costly to produce than non-Canadian programs. They are, however, more costly for Canadian broadcasters to acquire. Even if a Canadian and a non-Canadian program draw similar audiences and advertising revenues, the margin between the cost of the Canadian program and the revenues it generates tends to be much smaller than the margin for the equally-popular non-Canadian program, and may even result in a net loss for the broadcaster. The Commission has concluded that the main focus of the production fund should be on facilitating the broadcasting of high quality Canadian programs in under-represented categories in peak viewing periods. To do so, the production fund must support productions which meet these criteria.[49]

111. In the group-based licensing policy over 15 years later, the Commission said:

> The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values. In addition, the Commission considers that programs that celebrate Canadian creative talent in English Canada, such as The Geminis, The Junos, The Giller Prize, The National Aboriginal Achievement Awards, The East Coast Music Awards, and The Aboriginal Peoples Choice Music Awards, promote Canadian culture and are also of national interest.[50]

112. The Commission has, rightly in our view, reiterated the same theme in both of these decisions: certain genres, such as drama, are risky and expensive, yet valuable to the system and are underrepresented on Canadian screens despite their popularity. The WGC submits that this remains unchanged in 2014, and the Commission should continue to require the production of this type of programming in the future.

Q33. What form should incentives take? Would eliminating certain requirements, for example, exhibition requirements, be an effective and appropriate incentive for producing Canadian programming or programming of certain types?

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[47] Public Notice CRTC 1994-10
[48] Broadcasting Regulatory Policy CRTC 2010-167
[49] Public Notice CRTC 1994-10
[50] Broadcasting Regulatory Policy CRTC 2010-167, paragraph 71

113. As stated above, the WGC feels that the current suite of incentives employed by the Commission to support the production of certain types of Canadian content, such as high-quality drama, are necessary.

114. The WGC strongly disagrees with eliminating requirements such as exhibition requirements. We do not understand how the elimination of such requirements would be “an effective and appropriate incentive for producing Canadian programming or programming of certain types”. We are not aware of exhibition requirements preventing or limiting the production of Canadian programming. As stated above, we believe that exhibition requirements work in concert with other requirements to ensure, among other things, that Canadian content that is produced—much of which contains an investment by the Canadian public in the form of tax credits and funding contributions—is actually available to that same public.

115. Expenditure requirements and public funding also do not apply to all types of programming. To the extent that they do not overlap, there may be no regulatory support at all for certain programming. And expenditure requirements alone on certain types of programming may also be insufficient if the requirements are not set high enough.

116. In the absence of a clear rationale for the elimination of exhibition requirements, we must to some degree speculate as to the thinking behind the Commission’s question. Various thinkers have at times argued against exhibition requirements on a number of bases. In 2010, the C.D. Howe Institute argued that the following would occur at the emergence of a “wired IPTV” phase of broadcast development, in which content delivered over the Internet dominates over that delivered traditionally over the air or via BDUs:

> In such a world, Canadian exhibition content quotas lose coherence. First, viewers can potentially watch video distributed from anywhere in the world, not just from Canadian broadcasters or BDUs. There may be intellectual property issues, and geo-blocking as a consequence, but there is no regulatory or technological obstacle to the penetration in Canada of video content from foreign sources.
>
> Second, even if Canadians could view only “Canadian” websites, exhibition quotas do not make much sense in a “pull”-driven model of broadcasting. While television quotas that require broadcasters to show a certain amount of Canadian programming in prime time may achieve the objectives of making the shows available to Canadians, and may better assure viewership given the primacy of these hours for viewers’ demand, there is no time-based model to impose quotas on website-broadcasters.
>
> Third, even if there were some attempt to require websites showing videos to provide the option of Canadian programming, regulating such a requirement would be impractical. To what websites would the requirement apply? Who would monitor the hundreds of thousands of websites to ensure compliance? The IPTV model will render exhibition quotas obsolete.[51]

117. In our view, this relates to one of the WGC’s “Key Themes” discussed at Part I of this submission. The authors of the C.D. Howe paper are likely correct that exhibition requirements are ineffective in an on-demand environment. But the Commission does not generally apply them to on-demand content, and the WGC is not seeking to impose them upon on-demand services. Exhibition requirements apply to linear television services, and the WGC would argue for maintaining those requirements. The WGC agrees that regulators cannot rely on exhibition requirements alone, on an indefinite basis, as the sole solution to “The Challenges” of Canadian content. We feel strongly, however, that the solution to the emergence—and it is an emergence, that is happening gradually over time—of on-demand entertainment options contemporaneously with the continued existence of

[51] Scrambled Signals: Canadian Content Policies in a World of Technological Abundance, C.D. Howe Institute, page 24

linear broadcasting, is to regulate each method of distribution accordingly. The fact that on-demand platforms exist is not a reason, in our view, to eliminate exhibition requirements for linear services.

118. Another argument against exhibition requirements appears to have been made by Peter Miller, in which he said the following:

> Second, the shift to on-demand (in all its forms) means a massive change in how we consume TV. It includes time-shifting, binge viewing and watching shows on smart phones or tablets on the way to work. But beneath all this is a more fundamental shift from volume to quality. In the former world, we never got to watch all the shows we wanted – we caught most of the ones we really cared about, and then happened to watch "whatever was on". It wasn't always the best TV, but it was good enough.
>
> Today, we can watch the best TV – and only the best. In this "golden age of TV", we can watch practically every major sporting event. If we miss the first season of a drama series that takes off, we can catch up on the missed episodes and join in progress. We can PVR or use on-demand to watch only the really good stuff. And to do that, we're going to stick with BDU service, likely with premium packages.
>
> But for those of us who are happy with "good enough" TV, there's suddenly a much cheaper option at hand. For one tenth the cost, rabbit ears and a Netflix subscription gives hours of good TV a week. TV Everywhere is eroding the option of online on-demand access to TV station programming but, for many, this is still better TV than as little as five or 10 years ago.
>
> What does this shift from volume to quality mean from a policy and business perspective? The Commission recognized the first implication in reducing Cancon exhibition quotas from 60% to 55% in the last TV policy decision. That trend will need to continue.[52]

119. To the extent that elimination of exhibition requirements is based on a focus of "quality over quantity", we would argue—and our members' experiences confirm this—that *nobody knows what quality is before it's made*. To consumers of content, what's good—and, in particular, what they like—appears eminently obvious *once they see it*. They may be tempted to believe, therefore, that the people making the content must have known too, from the beginning, how it would turn out. That the logical conclusion to this line of thought is that content makers the world over have intentionally made thousands of hours middling-to-bad content, knowing all along how poor the results of their labours would be, is rarely discussed. The truth is, nobody knows what quality is until it's crafted, polished, and completed for the audience. For that reason, content industries have always relied on a certain quantity—a critical mass—to produce quality. It's called the "hit model", and in it the prevalence of hits follows a power law relationship.[53] A certain quantity of content is made, a minority of that content is a hit, and the revenues from those hits pay for the cost of producing all the content.

120. As such, it's unclear to the WGC how the reduction or elimination of exhibition requirements ensures or even encourages quality over quantity. A variety of factors go to whether a certain television show is good, and requiring that less of it be aired on television has no connection that we can see to increasing that likelihood.

121. The WGC is also concerned that the elimination of exhibition requirements would be directly contrary to the *Broadcasting Act*. Section 3(1)(f) of the Act states the following:

> 3. (1) It is hereby declared as the broadcasting policy for Canada that
> …

[52] CARTT Comment: Three ideas as we head into the meat of the TV Review, April 24, 2014
[53] http://en.wikipedia.org/wiki/Power_law

(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources; [Emphasis added]

122. Section 3(1)(f) uses the imperative "shall", and refers to both creation *and presentation* of programming. As such, we submit that the Act requires the Commission to ensure that a predominant proportion of broadcasters' schedules are devoted to the exhibition of Canadian programming. If the Commission were to eliminate or significantly reduce current exhibition obligations, we submit that it could have failed to exercise its obligations under the Act, and the decision could therefore be subject to appeal on jurisdictional grounds.

Q34. If exhibition requirements are generally reduced or eliminated, would there still be a need for specific exhibition requirements for particular types of programming, e.g. local or children's programming?

123. As discussed above, the WGC believes that exhibition requirements should not be generally reduced or eliminated, for any type of programming.

Q35. Should the Commission encourage the promotion of Canadian programs, here and abroad? If so, how?

124. The WGC agrees that promotion is a crucial element in the success of Canadian television programming. Viewers will typically not watch what they're not aware of, and building interest and "buzz" is and has always been essential to success in the entertainment business. Our members have consistently seen the difference between the success with audiences of shows that are well promoted, and those that are not.

125. As noted above in the comments by Needham Insights, promotion costs are often 40% of production budgets, which amounts to millions of dollars per show, and tens of millions of dollars or more for a season of shows on a large network. In some cases, promotion budgets approach 100% of the production budget. Writers are traditionally not closely involved in promotion, but we do know that it requires money and the will of the show's key's backers—typically broadcasters—to spend that money. Anything that would incent or encourage broadcasters to make commitments to promote their Canadian programming would be welcome.

126. One troubling trend we've noticed is the tendency for some Canadian broadcasters to limit the promotion of some Canadian shows to promotional messages on their own stations, with no promotional activity occurring beyond that. In such a case, a show destined to air on a particular channel will be advertised on that channel, and/or on channels or platforms owned within the same corporate group, but no advertising will be done on other platforms—no billboards, no transit ads, no promotional events or other marketing. We understand that when this is done, it's because it is significantly less expensive to the broadcaster in question. The Commission could look at ways of ensuring that promotional activities are multi-platform and multi-media, and aren't simply limited to services of common ownership.

127. We've also noted instances where broadcasters appear to wish to exert exclusive control over promotional activity, so as to prevent producers or creators from doing their own promotion. Certain types of promotion can be effectively done by producers, creators, or others involved in the production. The Commission could consider ways of encouraging broadcasters to allow greater scope in promotion by other parts of the content value chain.

128. We are frankly skeptical, however, of the efficacy of simply diverting production funding into promotion for several reasons. Firstly, we would be concerned that it would not actually generate new, additional promotional activity. Rather, funding for promotion could simply displace existing

promotion budgets, with no incremental promotional spending and the only impact being on the broadcaster's bottom line. Secondly, it would undoubtedly reduce the quantity and/or quality of Canadian content, as less money would be available for production. We recognize that the Commission may believe that the time has come for a focus on quality and success over quantity, and while we agree on the importance of the former. But as we've said previously in this submission, quality and quantity are linked, and cannot be easily separated. Nobody knows what will be successful before it happens, and promotion can help a great show find its audience but it cannot turn a middling show into a great one. The WGC believes that the best promotion is having a great show, and while promotion is essential, if the question is how to apportion scarce resources, we feel that making content continues to provide the best return on investment.

129. Further, we submit that non-simultaneous substitution would be an effective form of promotional support, since it would allow Canadian broadcasters to schedule programming in a manner that works best for Canadian audiences. This could result in Canadian programming in better timeslots, which in turn could provide further incentive to broadcasters to promote the content.

Q36. Is the current way to calculate contributions to Canadian programming still appropriate? For example, should the Commission update its definition of broadcasting revenues to reflect all broadcasting activities by licensees?

130. Yes, as noted previously in this submission, the WGC agrees that the Commission should update its definition of broadcasting revenues to reflect all broadcasting activities by licensees.

131. It is clear that broadcasting is increasingly becoming a multi-platform activity, and that broadcasters are engaging with audiences on all platforms. The question of counting online or on-demand-only content as part of broadcasting revenue was raised recently at the Commission in Broadcasting Notice of Consultation CRTC 2014-26, the group-based licence renewal for Rogers Broadcasting Ltd. In that proceeding, Rogers indicated that it planned to exploit its recently purchased rights to NHL hockey on multiple platforms, which raised questions for both the Commission and interveners on how those revenues and expenses—which would likely represent very significant amounts of money—would be treated pursuant to the group-based licensing policy.

132. This is increasingly an issue for all types of programming, and the WGC believes that it's important for the Commission to follow the realities of broadcasting as it spreads and migrates to other platforms.

Q37. Does the current funding model for community channels continue to be appropriate?

133. The WGC believes that the amount of funding received by community channels is out of balance compared with the amount received by the CMF and the certified independent production funds (CIPFs). Considering the types of programming funded by the CMF and CIPFs, particularly with respect to their high risk and high cost, and considering increased pressure on the CMF's funding, we believe that a better balance should be struck between funding for community channels and the CMF/CIPFs.

134. As the Commission is aware, funding for both community channels and the CMF/CIPFs[54] flows from the same section of the *Broadcasting Distribution Regulations*—section 34. Section 34(5) requires that:

> ...if a [BDU] licensee distributes its own community programming on the community channel in the licensed area, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year less any allowable contribution to local expression made by the licensee in that broadcast year.

[54] Or, the CMF/CIPF's share of funding via CRTC regulation, where the funder receives multiple sources of funding.

135. Before 2012, BDUs were authorized to allocate up to 2% of gross revenues derived from broadcasting to local expression. By 2010, however, growth in BDU revenues had significantly outstripped the rate of inflation, with a resulting increase in funding for local expression. In Broadcasting Regulatory Policy CRTC 2010-622 (the Community Television Policy) the Commission noted that:

> [37.]...between 1998 and 2009, contributions to local expression by Class 1 BDUs increased from $67 million to $119 million, a 78% increase over this period. The Commission further notes that the total increase of $52 million has largely exceeded the growth of $17 million that can be attributed solely to inflation. As the current contribution model is based on a percentage of BDU gross broadcasting revenues, any growth in these revenues will generate proportional increases in contributions to local expression. In this regard, the Commission notes that BDU gross broadcasting revenues grew at a compound annual rate of 8.5% over the past four years.
>
> 38. The Commission considers that the community television sector has benefited significantly from the growth in total contributions to local expression that has resulted from increases in BDU revenues and recognizes the improvements in community programming over the last decade. Further, although the Commission acknowledges that various metrics can be used to evaluate the success of community channels, it nonetheless considers that overall viewing to community channels remains modest relative to the growth in contributions to this sector.
>
> 39. Based on the above, the Commission determines that the current level of contributions to local expression is sufficient to allow the community sector to attain its objectives. As a result, the Commission considers that local expression contribution levels should remain stable for the foreseeable future and that further increases to total contributions to local expression are not warranted at this time. Accordingly, the Commission has issued today Broadcasting Notice of Consultation 2010-623, which sets out for public comment detailed questions with respect to the following determination relating to the most effective mechanism to maintain the current contribution levels to local expression:
>
> The maximum dollar contribution to local expression by each terrestrial BDU licensee will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010 (the 2010 contribution level). This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index (CPI), as reported for the period ending 31 December of the preceding calendar year.
>
> Given the likelihood that the revenues of terrestrial BDUs will continue to grow, once the 2010 contribution level (adjusted annually for inflation) represents 1.5% of the licensee's gross revenues derived from broadcasting activities, the allowable allocation to local expression will revert to a percentage formula (i.e., 1.5% of a BDU's gross revenues derived from broadcasting activities).
>
> The difference will be directed to Canadian programming initiatives.

136. This approach was implemented via a process that culminated in Broadcasting Regulatory Policy CRTC 2012-154 and the subsequent amendment of the *Broadcasting Distribution Regulations*.

137. The WGC believes that these amendments resulted from the Commission's recognition that funding for community channels had grown to or beyond what was sufficient for those channels to achieve their objectives. The amendments also occurred amidst concerns that community channels were not being operated fully within their intended mandate, and/or that BDUs had sufficient motivation to operate such channels without regulatory support. In their oral comments to the Commission in Broadcasting Notice of Consultation CRTC 2009-661, the consultation that lead to the

current Community Television Policy, the Canadian Association of Community Television Users and Stations (CACTUS) noted a number of changes and challenges in the way that BDUs were operating community channels. They noted in their oral comments that:

> In 1982 Canada had 294 distinct community channels. Reviewing community channel schedules today suggests that there are only about 20 in all of English Canada. Most are sharing so much programming that they are really regional networks.[55]

138. CACTUS also pointed out the dearth of community involvement in the channels, stating:

> On the few distinct services that remain, cable companies report that less than a third of programming is made by the community. In the last two years, the cable industry as a whole failed to meet the 30% minimum established by the CRTC in 2002.[56]

139. As a whole, BDU-operated community channels appear to be less and less oriented to community programming, and increasingly *de facto* local broadcasters, which compete with other local television stations and promote their overall BDU brand and their communications services.

140. While the WGC does not object to opportunities for local expression, we do question the funding contribution balance that is currently being struck between community channels and the CMF/CIPFs, particularly given how BDUs currently operate their community channels. In 2013, Class 1 BDU contributions to the creation and production of Canadian programming saw over $125 million directed to local expression, while the CMF received just over $121.6 million. CIPFs obtained just over $27.5 million. We again note the drop, for the first time, in BDU contributions to the CMF in 2012-2013.[57]

141. In a context in which the Internet provides a plethora of opportunities for community-level expression in all forms, including audio-visual content on video-sharing sites and social media, at the same time that the quality standards and audiences expectations for professional-level content is growing, we question whether this is an appropriate balance. The WGC does not oppose community programming, nor do we oppose funding for its creation. But we believe that the current model for community programming is no longer appropriate, and a better balance must be struck, which sees appropriate funding go to real community initiatives, while professional content supported by the CMF and CIPFs better matches the demand.

Q38. How should the Commission and Canadians measure success with respect to encouraging the production of compelling Canadian programming?

142. The WGC supports a variety of metrics to measure success in encouraging the production of compelling Canadian programming. One measurement is generally not sufficient—success needs to be measured in terms of both quantity and quality. Quantitative measures may include hours of programming produced. Qualitative measures may be more complicated, but could include audience ratings, awards won or nominated for, social media buzz, series renewals, and international sales.

Genre Exclusivity

143. The WGC has traditionally supported genre exclusivity under past and current policy frameworks because we agree with the objectives of the policy, which include a diversity of programming genres and the protection of revenues by limiting competition and thereby enabling Category A services to

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[55] Paragraph 8
[56] Paragraph 12
[57] CMF 2012-2013 Annual Report, Financial Overview, http://ar-ra12-13.cmf-fmc.ca/finance/management_discussion_and_analysis

meet their higher Canadian programming obligations.[58] The WGC would expect to continue to support genre exclusivity should the now-existing policy framework continue.

144. We understand, however, that should the Commission implement a pick-and-pay framework, competition between services may require a different approach. We would expect that channels would seek flexibility to remain competitive, and the genres they serve would arguably be a more accurate reflection of what the market for broadcasting content could bear.

145. We would note, however, the risks in eliminating the policy. One is the oft-noted "rush to the middle", in which all broadcasters seek to stake out territory in the most profitable genres of programming. (Note that we say profitable, not popular, since certain genres like drama are popular but also very expensive and therefore very risky, with slimmer profit margins than other genres such as reality television.) In this scenario, niche programming categories get smaller and may disappear—the disappearance of some services is virtually guaranteed in a pick-and-pay environment—while only the largest, broadest-appeal services survive.

146. Another risk is frankly much closer to the WGC's heart. The Commission has grounded the genre exclusivity policy partly in the rationale that protection enables Category A services to meet their higher Canadian programming obligations. Even with a declaration by the Commission that opening any or all Category A services up to competition is done in a belief that they are mature enough to support their obligations without protection, we believe the owners of those services will nevertheless seek reductions in Canadian content requirements as a *quid pro quo* for losing their exclusive status. Unfortunately, while some Canadian broadcasters do see Canadian content as an opportunity to brand and differentiate themselves, the WGC believes that many continue to see Canadian content as a tax they must pay in order to profit from the rebroadcasting of American programming, and may seek to do less Canadian as a result of the change in policy.

147. We note in this respect the report to the Commission released on June 6, 2014[59], which appears to argue in favour of eliminating the genre exclusivity policy. While the report provides a number of compelling arguments in this regard, we would stress two things. Firstly, the comparison to the U.S. "free market experience" and its putative connection to the "golden age of drama", to the extent that it is intended to be instructive in the Canadian context, does not take into full consideration the prevalence of U.S. original content in each market. As noted repeatedly in this submission, the vast majority of programming on American television is American content, and American channels brand their services though high-quality, high-cost, high-risk content that is much more economically viable in the U.S. than it is in Canada. The differences in the two markets make it much more feasible for an American channel to produce "brand strengthening" content. Canadian channels, with 10% of the U.S. market size and a fraction of the financial resources, are much less likely to be able to do the same thing.

148. Secondly, with respect to Category A services and their higher Canadian content obligations,[60] the WGC feels that the report does not adequately address how elimination of genre protection will impact those services. The report suggests that three things have changed in recent years that now obviate the need for genre protection, namely:

> 1. The popular Category Bs are almost all now into their 2nd term of licence. They therefore have Canadian Content (Cancon) exhibition requirements of 35%
>
> 2. The group licensing framework now imposes a 30% CPE on all corporate Category Bs with more than $1 million in revenue. That captures all corporate Cat Bs except those in their first year or two of operation

[58] Broadcasting Decision CRTC 2011-441, paragraph 73
[59] The CRTC’s Genre Protection Policy: A 2013 Discussion Paper, Peter Miller, March 15, 2013
[60] *Ibid,* pages 24-25

3. It is almost impossible to launch a new English-Language Category B service today. Subscribers don't want them. BDUs don't want them. And established broadcasters don't want them. There may be an argument for micro niche channels, but OTT generally provides a much better vehicle for such programming.

149. Regarding the first point, many Category A services currently have Canadian content exhibition requirements as high as 60-65%[61], which remains markedly higher than the 35% quoted for Category Bs. Category As also typically commission a significantly higher level of original Canadian programming as compared to Category Bs. Regarding the second point, this may be true (with respect to Category B services with over 1 million *subscribers*), but that still leaves a number of Category Bs, both within and without a designated group, with lower Canadian content obligations. And to the extent that Category B obligations are largely *corporate group* obligations, it's unclear to what extent corporate groups, should genre exclusivity be eliminated, will seek to recalibrate their Canadian content obligations based on how many former Category As and Bs each group has. Regarding the third point, the WGC's research indicates that two Category B channels were launched in 2011, and five were launched in 2012—channels such as Cartoon Network, and FX Canada.

150. Regardless, it's frankly unclear to us how any of these points argue against the fact that protection for Category A services supports higher Canadian content requirements, or why eliminating the policy would have no negative impact on Canadian content levels in the broadcasting system. We feel that the report understates the level of Canadian content obligations that Category A channels have in comparison to Category B channels, and our concern therefore remains that elimination of the policy will lead to arguments for lower Canadian content obligations for former Category As. If the Commission does choose to eliminate the genre exclusivity policy, we submit it must be aware of the potential impact on Canadian content obligations and be prepared to either maintain current levels for current Category A channels, or implement counterbalancing measures elsewhere in the system.

Q58. Are regulatory measures necessary to promote programming diversity? If so, what measures can best achieve this objective?

151. In the current system, the WGC believes that the genre exclusivity policy has delivered on its objective of promoting programming diversity. We believe that in the absence of such a policy, the diversity of the Canadian broadcasting system would be diminished.

152. That said, if the Commission implements its proposals with respect to pick-and-pay, as stated in the Notice, there may be a diminished rationale for the policy, since consumers would be able to drop channels that change their nature of service in such a way as to no longer deliver the programming that consumers signed up for the service to get.

153. It's unclear how the Commission could maintain diversity of programming in a pick-and-pay world, when channel choice would be largely at the discretion of the consumer. The WGC would think that some loss of diversity of programming is likely to be one of the impacts of the Commission's proposal to maximize channel choice.

Q59. What are the implications, both positive and negative, of eliminating the genre exclusivity policy? What would be the earliest feasible timeframe to implement this approach, in light of all the possible implications?

154. As discussed above, loss of the genre exclusivity policy risks a loss of programming diversity, as broadcasters "rush to the middle" to program the most popular content. While a certain degree of

[61] See, for example: The Comedy Network, Appendix 16 to Broadcasting Decision CRTC 2011-444, condition of licence # 3; Showcase, Appendix 8 to Broadcasting Decision CRTC 2011-445, condition of licence #3; and Bravo!, Appendix 4 to Broadcasting Decision CRTC 2011-444, condition of licence # 3.

diversity has been maintained in the U.S. without such policies, those results will not necessarily be replicated in Canada.

155. Also as discussed above, loss of genre protection may quickly lead to requests from "former Category A" channels to reduce their Canadian content obligations in exchange for their lost protection. If granted by the Commission, this would likely result in an overall decrease in Canadian content across the broadcasting system.

Q60. Even in the absence of genre exclusivity, should programming services be required to identify the broad genres of programming they offer to ensure that consumers get the type of programming they expect from those services? What should these broad genres be?

156. Provided that other policies continue to exist, such as expenditure requirements on programs of national interest, it is unclear what value would remain in requiring broadcasters to identify the broad genres of programming they offer to ensure that consumers get the type of programming they expect from those services, particularly if pick-and-pay is implemented. Those consumers who feel that they are not getting what they expected from those services could and presumably would drop those channels. As elsewhere, the logic of the Commission's implementation of pick-and-pay may be difficult to reverse.

Q61. How should the Commission and Canadians measure success with respect to ensuring a diversity of programming?

157. The WGC has difficulty in seeing genre exclusivity as anything other than an all-or-nothing proposition. If the Commission were to eliminate genre exclusivity, it is unclear what role the Commission would continue to have with respect to ensuring a diversity of programming as it pertains to the genres of discretionary channels.

158. The Commission could note the current diversity in the system and then measure the extent to which genres represented by each service remain or not. For example, the Commission could note that currently History Television exists, and provides history programming, and then see if History Television continues to provide such programming after the elimination of the policy, or if another channel arises to provide such programming should History Television vacate the genre. This could be done for each existing discretionary service—or for each Category A service.

159. The challenge becomes what to do if diversity declines. The Commission would have to either reinstate the policy, or take some other action which the WGC currently has been unable to conceive of.

Streamlined Licensing

160. At paragraphs 114-117 of the Notice, the Commission discusses a proposal to "consolidate all programming services into three types, based on the way in which these services are distributed to Canadians by BDUs". These would be "Basic services", "Discretionary services", and "On-demand services".

161. The WGC is unclear as to the implications of this approach, and does not see in what ways this would simplify the actual working realities of regulated entities, the Commission, or Canadians. Certainly, there would be fewer categories, but merely having fewer categories in and of itself may not result in simpler processes or lower costs of regulatory compliance.

162. We do feel, however, that the Commission's proposals may be tantamount to placing the administrative cart before the policy horse. In our experience, licensing categories are regulatory tools used to implement policies, which themselves have particular objectives. The WGC finds it difficult to comment on these proposals to the extent that they are "primarily administrative". For example, the genre exclusivity policy is one reason why the Commission distinguishes between

Category A, Category B, and Category C licenses for specialty services. The genre exclusivity policy presages the existence of different categories, presumably, and not the other way around.

163. As such, the WGC submits that any administrative streamlining be considered after the policy determinations of the present proceeding, and be based on the outcomes of this proceeding, presumably in a different proceeding. In that way, we feel they could better reflect the intentions of whatever policy the Commission ultimately lands on.

Other Matters: Reporting

164. One final matter that we would like to raise involves the Commission's collection, examination, and publication of information reported by licensees or other entities subject to the Commission's jurisdiction, in particular, programming spending data filed by the large English-language designated television broadcast groups in their reports to the Commission. As we have mentioned in other proceedings, this information is crucial to organizations like the WGC, as it allows us to monitor the impacts of the Commission's policies on our members and on the broadcasting system as a whole. This information is a critical link between Commission policies and the outcomes of those policies, and as such we feel that there is a vital public interest in their detail, accuracy, and availability.

165. One issue in this respect is reporting on CPE and PNI spending by individual television services in their annual returns to the Commission. The Commission currently requires the designated television groups to publicly report this data in aggregate form by sector (OTA and specialty/pay separately), which means that spending information is not available on a service by service basis. The WGC believes that data by individual service should be publicly available, so that industry stakeholders and other members of the public can assess the impacts of the flexibility provisions of the group-based policy, among other things. We believe that data by individual television services should be publicly available with respect to CPE and PNI spending, spending by PNI programming category, and spending on non-Canadian programming.

166. 168. A closely related issue is the accuracy of the reports filed by the designated television groups and posted on the Commission's website. Members of the public rely on the Commission to verify the completeness and accuracy of the groups' reporting to ensure their compliance with the group-based licensing policy framework. The WGC believes it is important to express briefly here our increasing frustration with the lack of accurate detailed data that are publicly available on an ongoing basis for interested parties to do research and modelling to support their submissions and recommendations to Commission proceedings.

167. For example, the WGC[62] recently found apparent errors and discrepancies in some of the television groups' PNI spending reports filed with the Commission for 2012 and 2013 and asked Commission staff to explain the issues.

168. Commission staff has told us that after investigation, it was determined that the 2012 PNI spending reports were filled out differently by the various television groups and certain data were provided in ways that the Commission did not intend. The net result is that industry stakeholders (and perhaps even the Commission) do not know what each of the television groups spent on original PNI in 2012.

169. Commission staff has told us that staff spent considerable time with the television groups in 2013 making some revisions to the reports and ensuring that they would be filled in more accurately and in a more comparable manner. Commission staff has informed us that for the 2013 reports, the accuracy and comparability of the reporting has been improved and internal processes have been implemented for verifying annual returns data against the data contained in the television groups' PNI reports, something that did not occur with the 2012 PNI spending reports.

[62] Jointly with the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA); the Directors Guild of Canada (DGC); and the Canadian Media Production Association (CMPA)

170. Regarding the 2013 PNI spending reports, Commission staff has told us that some discrepancies were found between annual returns data and what was submitted in the PNI reports but that they were not material. While the WGC acknowledges that progress is being made to ensure the accuracy of television groups' CPE and PNI spending, the fact that there was any discrepancy at all between annual returns data and some of the 2013 PNI spending reports, material or not, is a concern to us and we believe should be a concern to the Commission.

171. Moreover, while Commission staff has acknowledged that there were problems with the 2012 PNI spending reports and the quality of the data, it is very troubling to us that Commission staff has not required the television groups to resubmit the 2012 reports with accurate original PNI spending data. In fact, we have been told that we shouldn't expect any further revisions/additions to the 2012 reports.

172. What this means is that when the television groups next go before the Commission to renew their group licences, industry stakeholders will have an incomplete picture of their spending on PNI and therefore it will be difficult for interested stakeholders to meaningfully participate in the next group licence renewal proceeding.

173. We urge the Commission to address this issue. The Commission is proposing, in this proceeding, some very substantial changes to the broadcasting regulatory framework, and very likely will have major impacts on the broadcasting system, if implemented. As we've noted previously in this submission, we feel the Commission will need to closely monitor the impact of those changes, and may have to react quickly if unintended consequences result. We request that the Commission take note of the transitional difficulties in reporting that occurred with respect to group licensing, and ensure that similar problems do not arise following this proceeding.

Conclusion

174. We thank the Commission for the opportunity to comment at this phase of the proceeding, and we look forward to expanding upon our comments at the public hearing beginning on September 8, 2014.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC

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