# Writers Guild of Canada

January 22, 2016 **Filed Electronically**

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. May-Cuconato:

**Re: Broadcasting Notice of Consultation CRTC 2015-467**

**Call for comments on the Commission's policies relating to Certified Independent Production Funds—Reply**

1. The Writers Guild of Canada (WGC) is the national association representing more than 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.

2. We are pleased to provide comments in the reply phase of this proceeding on the Commission's policies relating to Certified Independent Production Funds (CIPFs).

**Support for script and concept development**

3. The WGC was pleased to see so many interveners acknowledge the importance of script and concept development, support CIPF funding for script and concept development, and in many cases make proposals similar to ours to the effect that a licence agreement or development agreement from a Canadian broadcaster should not be required to trigger development funding. Those who noted the importance of development and/or called for development funding in their submissions included the Bell Broadcast and New Media Fund, the Canadian Media Production Association (CMPA), the Cogeco Fund, Creative BC, the Directors Guild of Canada (DGC), DHX Media Ltd., entertainmentOne (eOne), the Forum for Research and Policy in Communications (FRPC), the Harold Greenberg Fund, the Independent Production Fund, On Screen Manitoba, and the Quebec English-language Production Council. We are aware of no submission that argued that script and concept development was unimportant or unworthy of funding, even if not all CIPFs saw a development role for themselves. We believe this unanimity—or near-unanimity—on the value of development

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speaks to its crucial role in making successful Canadian programming, and the need for funding to further support it.

**The criterion requiring a production to achieve 8 out of 10 points for Canadian content certification**

4. In our initial written submission, the WGC expressed its view that the Canadian industry should be more talent- and creator-focused. Central to this vision is a Canadian content production system that puts Canadian creativity front-and-centre, which includes maintaining a robust point certification system for Canadian creative personnel. As such, we were disappointed to see a number of interveners, including some CIPFs themselves, call for CIPFs to turn away from Canadian talent by lowering point requirements.

5. Before responding to those calls directly, we would first like to note that several interveners supported maintaining the 8-out-of-10 certification requirement. This includes the FRPC and Telefilm Canada, the latter of which is a CIPF that was not created by, nor has any affiliation with, a broadcasting distribution undertaking (BDU) or vertically integrated entity. Telefilm Canada stated that, “The criteria that the Commission presently uses to certify independent production funds do not create barriers in our view."[1] The WGC agrees.

6. With regard to those who did call for lower point requirements, we submit that they did not provide sufficient evidence—or, indeed, much of any evidence at all—to support their view. Lower point requirements result in fewer opportunities for Canadian talent, and therefore harm the Canadian talent pool, exacerbating "talent drain" to other production centres, such as Los Angeles, and reducing the appeal of the sector to talented young people considering whether to embark upon a creative career. As such, we submit that there must be compelling evidence and argument demonstrating that this harm is justified. We've seen nothing of the kind in the interventions of this proceeding.

7. For example, the Shaw Rocket Fund proposed a 6-out-of-10 requirement, but in support of their view referred to the value and the success of projects it funded which achieved between 8 and 10 points.[2] The WGC agrees that these were high-quality, successful productions—and that this success was achieved within the current framework. The success of 8- and 10-point productions does not support reducing point requirements below those levels. The Shaw Rocket Fund then referred to a 7-point production for which it says, "the broadcaster and producer much needed Rocket Fund investment,"[3] yet to our knowledge the production in question is being or has been made.[4] This may be an argument that the Shaw Rocket Fund was not able to invest in this project, but it's not an argument that Shaw Rocket Fund investment was necessary to produce it.

8. Some interveners supported their call for a lower, 6-out-of-10 point requirement, based on a proposed alignment with the Canadian Film or Video Production Tax Credit (CPTC). The WGC would first reiterate our comments in our initial submission, that the funding structure of the CPTC and

[1] Intervention of Telefilm Canada, para. 31
[2] Intervention of Shaw Rocket Fund, para. 58
[3] Intervention of Shaw Rocket Fund, para. 59
[4] CNW, “Jason Priestley and Molly Ringwald Star in New Original Comedy The Wonderful Wayneys for DHX Television”, July 23, 2015: http://www.newswire.ca/news-releases/jason-priestley-and-molly-ringwald-star-in-new-original-comedy-the-wonderful-wayneys-for-dhx-television-518315331.html

CIPF programs are different, and that the CPTC as a labour-based tax credit does not support non-Canadian labour costs. Secondly, we submit that simply because a lower-requirement source of production funding exists doesn't mean that its requirements are "correct", or that most or all funding sources should align with it. The Canada Media Fund (CMF) is a 10-out-of-10 funder. The argument can just as easily be made that CIPFs should align with the CMF as that they should align with the CPTC. Thirdly, we note that Shaw Communications called for alignment with the CPTC by arguing that digital media broadcasting undertakings (DMBUs) can benefit from the tax credit but don't have the same regulatory obligations as licensed broadcasters.[5] For one thing, the CPTC Guidelines state that an eligible production must have, "confirmation in writing from a Canadian distributor or a CRTC-licensed broadcaster that the production will be shown in Canada within the two-year period following its completion."[6] It is our understanding that DMBUs are neither licensed broadcasters nor Canadian distributors under the CPTC Guidelines and, as such, DMBUs cannot trigger the CPTC by themselves like licensed broadcasters can. For another thing, licensed broadcasters can also access the supposed "benefit" of a 6-out-of-10 tax credit if they forgo other public funding, just like a DMBU would have to, so it's unclear what the "asymmetry" is in this respect.

9. Most interveners argued in favour of a lower point requirement simply on the basis of "increased flexibility". It is undoubtedly true that a reduced, 6-point requirement would increase flexibility. So would a 4-point requirement or a 2-point requirement. So would eliminating all requirements that Canadian talent have any role in "Canadian" production at all or, indeed, eliminating all eligibility requirements entirely, so the CIPFs could invest in any sector of the Canadian economy that they wished. CIPFs do not exist solely to be "flexible". They have a mandate that ultimately resolves to the *Broadcasting Act*, in particular to section 3, "Broadcasting Policy for Canada", which does not include the word "flexibility" even once.[7] By contrast, the Act does refer to making "maximum use, and in no case less than predominant use, of Canadian creative and other resources".[8] When speaking about "flexibility", then, the question is, flexibility to do what, and why, and how does that connect with the Act and the outcomes that CIPFs are intended to achieve? How is that outcome worth the damage to the Canadian talent pool? We submit that these questions are not answered—or even meaningfully raised—by those seeking point reductions.

10. We'd like to comment in particular on the submission made by eOne. eOne has made a set of statements and proposals that ultimately result in a two-point reduction in the point requirements for Canadian creative personnel. The WGC disagrees not only with eOne's proposal, but also with several of the comments eOne puts forward in support of it. eOne proposes that:

> ...Canadian qualifying productions receive two "points" for securing a Canadian distribution company to sell international rights. In exchange, the Canadian

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[5] Intervention of Shaw Communications Inc., para. 18-19

[6] CPTC Program Guidelines, Canadian Audio-Visual Certification Office, Published April 2, 2012, "Overview of Eligibility Requirements", 9. See also CPTC Program Guidelines, section 6.02.

[7] The concept of being "readily adaptable to scientific and technological change" in s. 3(1)(d)(iv) refers, clearly, to scientific and technological change, and it is far from clear what creative personnel requirements have to do with science and technology.

[8] s. 3(1)(f)

distributor will commit to and cover a certain percentage of the production budget for marketing and promotion, with a global focus.[9]

11. Firstly, it should be clear that this proposal results in a *de facto* point reduction for Canadian creative personnel. It goes without saying that a distributor is not a creative production role in anywhere near the sense that a screenwriter, director, actor, cinematographer, editor, or any of the other roles currently recognized in the 10-point system are. If the minimum point requirements for CIPF funding remains 8-out-of-10, but two points may be earned by the attachment of a Canadian distributor, the result is a 6-out-of-10 requirement for the actual creative roles.

12. Secondly, while we encourage Canadian distributors to distribute and contribute to financing Canadian television programming, we see no reason to encourage that participation by muddying the waters of a points system designed to assess creative participation. We acknowledge that other ways of defining Canadian content are possible, but if an entirely new system for defining "Canadianess" is sought, it should be considered holistically, and not on an *ad hoc* basis at the suggestion of a single entity in the sector.

13. Thirdly, while the WGC opposes this proposal for the same reasons discussed above, the eOne proposal also appears to run counter to the Commission's stated objectives. In Broadcasting Notice of Consultation CRTC 2015-467, the Notice initiating this proceeding, the Commission indicated its desire to "incent and improve engagement in, among other things, international co-productions and co-ventures,... [and] international distribution".[10] The WGC understands that the ultimate goal of this strategy is to leverage international financing into Canadian production, for a "more robust, well-capitalized and self-sufficient Canadian production sector"[11]. eOne, however, argues the following:

> In a scenario where CIPFs could fund 6/10 CAVCO point productions, they would bring needed financing to programming that currently can only be funded with international financing contributions and Canadian content tax credits. However, if the point system is relaxed, there needs to be a mechanism that ensures that Canadian companies are not drained of their IP by the foreign investment and IP ownership that will certainly be attracted to a more flexible creative environment in the Canadian funding system.[12]

14. It is highly questionable: a) whether or not 6-out-of-10 point productions currently *only* receive funding from CPTCs and international financing—in our experience that's untrue; b) whether or not lowering the current point requirements for CIPFs would actually result in additional international financing in Canada; and c) even if it did result in more international financing, whether that would be worth the harm to the Canadian talent pool. But what is certain is that eOne's proposal would likely nullify the alleged benefit of reducing point requirements by reducing the incentive of international financiers to actually invest, due to the restriction of their access to distribution rights. International financiers will not invest in Canadian content if there is little or no benefit to them, no matter what the point requirements are. If international financiers can't obtain distribution or other

[9] Intervention of entertainmentOne, para. 22
[10] Broadcasting Notice of Consultation CRTC 2015-467, para. 9
[11] Broadcasting Notice of Consultation CRTC 2015-467, para. 8
[12] Intervention of entertainmentOne, para. 22

rights for their investment, why would they invest? Note that eOne's proposal for protection of Canadian distributors does *not* come in exchange for a specific, meaningful production financing commitment from them, so foreign money is not being forgone in exchange for Canadian money. Rather, only an unspecified "certain percentage...for marketing and promotion" is proposed.[13] As a result, in seeking to protect Canadian distributors—which include eOne—from international competition at the expense of Canadian talent, eOne has made a proposal that stymies the objective that the Commission is trying to achieve.

15. Fourthly, there are already incentives and protections with respect to Canadian distributors in the larger Canadian production ecosystem. For example, as noted above the CPTC requires a Canadian broadcaster *or distributor* to trigger eligibility.[14] And the Standard Recoupment Policy of the CMF allows "eligible distributors"—i.e. that distributors distributing in Canada are Canadian, among other things—to recoup their distribution advances ahead of other equity investors.[15] eOne states that, "As a 'first dollar in' investor, eOne takes on much of the risk in its television productions."[16] But to our knowledge, distribution advances are generally contingent upon completion of financing, and are not paid out until such financing is in place, including that of public funders. In that context, a distributor's financing appears no more risky than that of any other. If there are challenges facing Canadian distributors, or policies that would better incent them to invest in Canadian production, there are other ways to do so and other forums for that debate. We submit that it doesn't belong in discussions of creative point requirements.

16. Finally, we would like to reiterate our comments in our initial submission, to the effect that reduced point counts do not impact all creative roles equally, and those most affected include Canadian screenwriters. The WGC strongly believes that Canadian content is not and should not be defined primarily by nationality of the producer or a (minority) financier. Rather, the identity of the creator(s) is a fundamental component of what makes audiovisual content—especially television programming—Canadian. Lowering point requirements erodes that identity, and contributes to a talent drain out of the country that, in other policy contexts, we collectively lament. This is a creative Canadian industry. We should be building it predominantly and to the greatest extent possible on the talent of creative Canadians.

**Promotion and discoverability**

17. Several interveners called upon the Commission to allow CIPFs greater latitude to fund promotion and discoverability initiatives. While the WGC acknowledges the importance of promotion and discoverability, we believe there is always a concern that increased funding may not result in increased promotional activity, but rather could displace existing promotional activity normally undertaken by broadcasters and/or distributors. One of the challenges in finding new ways to promote Canadian content is that promotional options tend to clump at opposite ends of a cost continuum. Some promotion can be done quite inexpensively, most notably through social media. Other promotion campaigns are incredibly expensive, requiring spending in the seven, eight, or even

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[13] Intervention of entertainmentOne, para. 22

[14] CPTC Program Guidelines, Canadian Audio-Visual Certification Office, Published April 2, 2012, "Overview of Eligibility Requirements", section 6.02.

[15] CMF Business Policies: Appendix B (2015-2016), Chapter 6: Standard Recoupment Policy – Convergent Stream: http://www.cmf-fmc.ca/documents/files/programs/2015-16/guidelines/appendix_b_2015_2016.pdf

[16] Intervention of entertainmentOne, para. 8

nine figures.[17] The former type of campaign may require little or no funding execute, while the latter are beyond the scope of any Canadian funding body, let alone a CIPF, to realistically contemplate. Promotional opportunities that fall somewhere in the middle exist, but overemphasis on them drains resources from production, and ultimately we believe that a quality show is its own best marketing. As such, if the Commission does contemplate expanding the scope for CIPFs to fund promotional activities, we submit that funding should be targeted to ensure effectiveness and be capped at a percentage of overall funds, preferably 10% or less.[18]

**Funding to CIPFs vs. CMF**

18. Several interveners called for an adjustment to the proportion of funding that a BDU may direct to the CIPFs versus the CMF. These were generally proposals to increase the amount of funding to CIPFs, and were generally proposed by CIPFs that have affiliations with BDUs and vice-versa.[19]

19. The WGC does not support these proposals. The CMF remains the "core" funding body receiving and administering BDU contributions to Canadian expression. The CMF funds high-cost, high-risk programming genres that are of value to Canadians, such as drama, documentary, children's and youth, and variety/performing arts. As many other interveners have acknowledged, CIPFs are "complementary"[20] to the CMF, delivering targeted or "niche"[21] funding. In Public Notice CRTC 1997-98, the Commission stated that it was "vital" to the CMF's predecessor, the Canada Television and Cable Production Fund (CTCPF), that it "be provided with realistic amounts of capital to enable it to fund a significant amount of quality Canadian production." Accordingly, the Commission determined that a BDU must direct a minimum of 80% of its contribution to the CTCPF. The WGC believes the same principle applies today.

20. We note in particular the request of the Shaw Rocket Fund to allow BDUs to direct their entire contribution to the CIPF of their choice.[22] Consistent with our views above, the WGC opposes this proposal. Firstly, such a major reallocation would destabilize the funding ecosystem, and significantly undermine the objective that the Commission endorsed in Public Notice CRTC 1997-98 and has upheld ever since.

21. Secondly, the WGC disagrees with the reasons put forward by the Shaw Rocket Fund in support of this proposal. The Shaw Rocket Fund argues that, "CIPFs should be allowed to compete for a greater portion of BDU contributions."[23] We submit that the funding that the CMF and each CIPF would receive in a "fully flexible" environment would almost certainly not be the result of "competition" between funds, but rather it would reflect the particular strategic goals of each BDU and the association of each BDU with the CIPF that bears its name. Even to the extent that the CMF and

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[17] For example, *Star Wars: The Force Awakens* could be considered a project that practically markets itself , yet its studio reportedly spent approximately $350 million (USD) on promotion prior to release: http://www.vanityfair.com/hollywood/2015/12/star-wars-force-awakens-box-office-totals

[18] The CMF limits eligible marketing expenses for television components to 3% of Categories B+C of the production budget. See CMF Performance Envelope Guidelines, 2015-2016, section 2.3.2.TV.2: http://www.cmf-fmc.ca/documents/files/programs/2015-16/guidelines/2015-16_perf_env_guidelines.pdf

[19] E.g. Bell Broadcast and New Media Fund, Shaw Rocket Fund

[20] Intervention of the Bell Broadcast and New Media Fund, para. 8

[21] Intervention of BCE Inc., Q.13, pg. 4

[22] Intervention of the Shaw Rocket Fund, para. 28, 30

[23] *Ibid.*

CIPFs did actually "compete" with each other for funding, it seems likely that funders would seek to align, to the greatest degree possible, with the objectives of the largest BDUs, which also generally means the largest vertically integrated entities. This would not be competition based on quality of programming or efficiency of funding, but on alignment of strategy with a few BDUs, and would therefore be at odds with the greater independence from BDU contributors that the Commission appears to be seeking in paragraphs 19-24 of the Notice in this proceeding.

**Counting digital spending towards CPE**

22. Some interveners suggested that the Commission should allow broadcasters to devote a percentage of their Canadian programming expenditures (CPE) to digital/online programming. The WGC questions whether this is within the scope of the Notice, since it does not directly impact CIPF funding but rather speaks primarily to broadcasters' regulatory obligations. Nevertheless, the WGC would oppose such a move to the extent that the Commission does not also count digital/online revenues towards broadcasters' CPE and programming of national interest (PNI) obligations. Allowing digital spending to count towards meeting CPE obligations without requiring that same activity to contribute to revenues would be an unbalanced approach that would undermine the intentions of these regulations.

**Conclusion**

23. The WGC thanks the Commission for having had the opportunity to provide comments in this proceeding.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC

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